SECTION 3

PAN Hampshire and Isle of Wight Practice Guidance

64. Guidance on information sharing

Sharing the right information, at the right time, with the right people, is fundamental to good practice in safeguarding adults, though this is often complex. The Care Act 2014 emphasises the need to empower people, to balance choice and control for individuals against preventing harm and reducing risk, and to respond proportionately to safeguarding concerns.

This guidance is aimed at supporting partner organisations to understand their roles and responsibilities and to co-operate with one another to share information for safeguarding purposes in accordance with the statutory guidance provided by the Act.

The 4LSAB and their partner agencies also acknowledge their role in sharing strategic information to improve local safeguarding practice and highlight the responsibilities of partner agencies and others to comply with requests for information from the Board (Section 45 'the supply of information'). This guidance covers information sharing in a range of contexts relating to adult safeguarding including:

- Raising concerns about abuse or neglect (or risk of this of an adult with care and support needs)
- Undertaken and sharing the outcomes of safeguarding enquiries
- Responsibilities to share information and make referrals to DBS and/or professional bodies
- Exchange information in the context of allegation management with the relevant SAMA
- Exchange information between the SAMA and the Local Authority Designated Officer concerning children
- Share information arising from the context of a Safeguarding Adult Review or other form of multi agency learning review.

65. Key messages

When sharing people's information, recognise that:

- Adults have a general right to independence, choice and self-determination including control over information about themselves. In the context of adult safeguarding these rights can be overridden in certain circumstances
- Emergency or life-threatening situations may warrant the sharing of relevant information with the relevant emergency services without consent
- The law does not prevent the sharing of sensitive, personal information within organisations. If the information is confidential, but there is a safeguarding concern, sharing it may be justified
- The law does not prevent the sharing of sensitive, personal information between organisations where the public interest served outweighs the public interest served by protecting confidentiality – for example, where a serious crime may be prevented
- The Data Protection Act enables the lawful sharing of information
- There should be a local agreements or protocols in place setting out the processes and principles for sharing information between agencies
- An individual employee cannot give a personal assurance of confidentiality
- Frontline staff and volunteers should always report safeguarding concerns in line with their organisation's policy – this is usually to their line manager in the first instance except in emergency situations
- It is good practice to try to gain the person's consent to share information
- As long as it does not increase risk, practitioners should inform the person if they need to share their information without consent
- Organisational policies should have clear routes for escalation where a member of staff feels a manager has not responded appropriately to a safeguarding concern
- All agencies **must** have a whistleblowing policy
- The management interests of an organisation should not override the need to share information to safeguard adults at risk of abuse
- All staff, in all partner agencies, should understand the importance of sharing safeguarding information and the potential risks of not sharing it
- All staff should understand when to raise a concern with Adult Services
- The six safeguarding principles should underpin all safeguarding practice, including information sharing.

66. The seven golden rules to sharing information

- Remember that the Data Protection Act 1998 and human rights law are not barriers to justified information sharing, but provide a framework to ensure that personal information about living individuals is shared appropriately
- Be open and honest with the individual (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so
- Seek advice from other practitioners if you are in any doubt about sharing the information concerned, without disclosing the identity of the individual where possible

- Share with informed consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, there is good reason to do so, such as where safety may be at risk. You will need to base your judgement on the facts of the case. When you are sharing or requesting personal information from someone, be certain of the basis upon which you are doing so. Where you have consent, be mindful that an individual might not expect information to be shared
- Consider safety and well-being: Base your information sharing decisions on considerations of the safety and well-being of the individual and others who may be affected by their actions
- Necessary, proportionate, relevant, adequate, accurate, timely and secure: Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those individuals who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely (see principles)
- Keep a record of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

67. Powers or obligations to share information for adult safeguarding

Referring to the Disclosure and Barring Service

The Safeguarding Vulnerable Groups Act (2006) places specific duties on those providing 'regulated' health and social care activities. They must refer to the Disclosure and Barring Service (DBS) anyone who has been dismissed or removed from their role because they are thought to have harmed, or pose a risk of harm to, a child or adult with care and support needs. This applies even if they have left their job and regardless of whether they have been convicted of a related crime. The statutory guidance to the Care Act 2014 requires Designated Adult Safeguarding Managers to work with partner agencies to ensure that referral of individual employees to the DBS is carried out promptly and appropriately.

Professional codes of practice

Many professionals, including those in health and social care, are registered with a body and governed by a code of practice or conduct. These codes often require those professionals to report any safeguarding concerns in line with legislation. The statutory guidance to the Care Act 2014 requires all organisations in contact with people with care and support needs to have in place an allegations management process that enables referrals of individual employees to regulatory bodies are made promptly and appropriately.

The Health Care Professions Council (HCPC) is the Professional Body that regulates social workers and allied health professionals. HCPC professional standards were amended in Jan 2016 to require all those registered with that body to comply with a professional DUTY to take appropriate action to address and report concerns about safety or wellbeing of people

using services, follow up concerns and be open and honest if things go wrong.

Duty of Candour

The Duty of Candour requires all health and adult social care providers registered with CQC to be open with people when things go wrong. The regulations impose a specific and detailed duty on all providers where any harm to a service user from their care or treatment is above a certain harm threshold.

The Duty of Candour is a legal requirement and CQC will be able to take enforcement action when it finds breaches. The Duty requires providers to offer an apology and state what further action the provider intends to take in this situation. In practice, this means that care providers are open and honest with patients when things go wrong with their care and treatment.

If the provider fails to comply with the Duty, CQC can move directly to prosecution without first serving a warning notice. This policy embraces this Duty in relation to safeguarding adults, and all Section 42 enquiries and safeguarding processes must check that this Duty has been fulfilled.

The regulations also include a more general obligation on CQC registered providers to "act in an open and transparent way in relation to service user care and treatment". This means that the default position should be to be open, honest and candid, unless there are justifiable reasons for not being so – for example because the service user actively says that they do not want further information about the incident. However, these circumstances should be the exception rather than the norm. Further information can be found at Duty of Candour.[1]

Commissioners

Those commissioning services should consider whether contracts should place an obligation on service providers to share safeguarding information. Any specifications would need to be in line with policy, regulation and the law.

Sharing information on prisoners

The statutory guidance to the Care Act 2014 requires Local Authorities to share information about people with care and support needs in, or in transition from or to, prison or custodial settings. This includes 'the sharing of information about risk to the prisoner and others where this is relevant'.

Sharing information on those who may pose a risk to others

The Police can keep records on any person known to be a target or perpetrator of abuse and share such information with safeguarding partners for the purposes of protection 'under

[1] http://www.cqc.org.uk/sites/default/files/20140725_nhs_fppr_and_doc_consultation_final.pdf

Section 115 of the Crime and Disorder Act 1998, and the Data Protection Act 1998, provided that criteria outlined in the legislation are met'. All police forces now have IT systems in place to help identify repeat and vulnerable victims of antisocial behaviour.

The statutory guidance to the Care Act 2014 states that Safeguarding Adults Boards should have a 'framework and process for any organisation under the umbrella of the SAB to respond to allegations and issues of concern that are raised about a person who may have harmed or who may pose a risk to adults'. Designated Adult Safeguarding Managers should 'ensure the control of information in respect of individual cases is in accordance with accepted Data Protection and Confidentiality requirements'.

Multi Agency Safeguarding Hubs

The establishment of Multi Agency Safeguarding Hubs (MASH) formalise arrangements for information sharing in the safeguarding context. The purpose is to ensure that relevant information about potential safeguarding concerns in respect of adults and children is shared appropriately by the partner agencies where necessary. This enables the level of risk to be assessed appropriately and allows for suitable responses to be agreed.

As the MASH model is implemented more widely locally, separate information sharing agreements and protocols will need to be put in place to provide the basis for sharing information between the agencies engaged in the MASH in order to facilitate and govern the efficient, effective and secure sharing of timely and accurate information. It is acknowledged that the disclosure of any personal data must be bound to both common law and statute, for example defamation, the common law duty of confidence, the Data Protection Act 1998 and the Human Rights Act 1998.

Information sharing agreements or protocols

This framework acknowledges that information sharing agreements and/or protocols are useful tools which enable inter-agency communication, facilitate effective partnership working and support decision making. Local agencies will put in place appropriate agreements to address key points from the Data Sharing Code of Practice including:

- The information that needs to be shared
- The justification for sharing personal information
- Organisations that will be involved
- What people need to be told about the data sharing and how this information will be communicated
- Measures to ensure adequate security is in place to protect the data
- Arrangements to provide individuals with access to their personal data if requested
- Agreed common retention periods for the data
- Processes to ensure secure deletion takes place.

68. Key principles in line with Care Act 2014

Record-keeping

Good record keeping is a vital component of professional practice. Whenever a complaint or allegation of abuse is made, all agencies should keep clear and accurate records and each agency should identify procedures for incorporating, on receipt of a complaint or allegation, all relevant records into a file to record all action taken. When abuse or neglect is raised managers need to look for past incidents, concerns, risks and patterns. We know that in many situations, abuse and neglect arise from a range of incidents over a period of time.

In the case of providers registered with CQC, records of these should be available to service commissioners and the CQC so they can take the necessary action. Staff should be given clear direction as to what information should be recorded and in what format.

The following questions are a guide to recording practice:

- What information do staff need to know in order to provide a high quality response to the adult concerned?
- What information do staff need to know in order to keep adults safe under the service's duty to protect people from harm?
- What information is not necessary?
- What is the basis for any decision to share (or not) information with a third party?

Records should be kept in such a way that the information can easily be collated for local use and national data collections.

All agencies should identify arrangements, consistent with principles and rules of fairness, confidentiality and data protection for making records available to those adults affected by, and subject to, an enquiry. If the alleged abuser is using care and support themselves then information about their involvement in an adult safeguarding enquiry, including the outcome, should be included in their case record. If it is assessed that the individual continues to pose a threat to other people then this should be included in any information that is passed on to service providers or other people who need to know.

The Care Act 2014 establishes the importance of organisations sharing vital information related to abuse or neglect with the Safeguarding Adult Board (SAB). In order to carry out its functions effectively, the SAB may need access to information that a wide number of people or other organisations hold in order to enable or assist the SAB to do its job.

Section 45 of the Act ensures that if the SAB requests information from a body or person who is likely to have information they MUST share what they know with the SAB at its request. However, the information requested must be for the purpose of enabling or assisting the SAB to perform its functions. The body or person requested to supply the information must have functions or engage in activities of a nature that the SAB considers it's likely they have information relevant to a function of the SAB.

Confidentiality

Agencies should draw up a common agreement relating to confidentiality and setting out the principles governing the sharing of information, based on the welfare of the adult or of other potentially affected adults. Any agreement should be consistent with the principles set out in the Caldicott Review published 2013 ensuring that:

- Information will only be shared on a 'need to know' basis when it is in the interests of the adult
- Confidentiality must not be confused with secrecy
- Informed consent should be obtained but, if this is not possible and other adults are at risk of abuse or neglect, it may be necessary to override the requirement; and
- It is inappropriate for agencies to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations when other adults may be at risk.

Where an adult has refused to consent to information being disclosed for these purposes, then practitioners must consider whether there is an overriding public interest that would justify information sharing (e.g. because there is a risk that others are at risk of serious harm) and wherever possible, the appropriate Caldicott Guardian should be involved in the decision-making. In these circumstances it would be good practice to only share information without consent in the context of a documented risk assessment.

Decisions about who needs to know and what needs to be known should be taken on a case by case basis, within agency policies and the constraints of the legal framework. Principles of confidentiality designed to safeguard and promote the interests of an adult should not be confused with those designed to protect the management interests of an organisation. These have a legitimate role but must never be allowed to conflict with the welfare of an adult. If it appears to an employee or person in a similar role that such confidentiality rules may be operating against the interests of the adult then a duty arises to make full disclosure in the public interest.

Exchange or disclosure of personal information must be made in accordance with the law on confidentiality and the Data Protection Act 1998 where this applies. The Home Office and the Office of the Information Commissioner have issued general guidance on the preparation and use of information sharing protocols. The Caldicott principles provide the basis of ethical and appropriate information sharing.

The Caldicott Principles

Based on the findings of the Information Governance Review – To Share or Not to Share?

- Justify the purpose(s). Every proposed use or transfer of personal confidential data within or from an organisation should be clearly defined, scrutinised and documented, with continuing uses regularly reviewed, by an appropriate guardian.
- Don't use personal confidential data unless it is absolutely necessary. Personal confidential data items should not be included unless it is essential for the specified purpose(s) of that flow. The need for adults to be identified should be considered at each stage of satisfying the purpose(s).

- Use the minimum necessary personal confidential data. Where use of personal confidential data is considered to be essential, the inclusion of each individual item of data should be considered and justified so that the minimum amount of personal confidential data is transferred or accessible as is necessary for a given function to be carried out.
- Access to personal confidential data should be on a strict need-to-know basis. Only those individuals who need access to personal confidential data should have access to it, and they should only have access to the data items that they need to see. This may mean introducing access controls or splitting data flows where one data flow is used for several purposes.
- Everyone with access to personal confidential data should be aware of their responsibilities. Action should be taken to ensure that all those handling personal confidential data are made fully aware of their responsibilities and obligations to respect individuals' confidentiality.
- Comply with the law. Every use of personal confidential data must be lawful. Someone in each organisation handling personal confidential data should be responsible for ensuring that the organisation complies with legal requirements.

The duty to share information can be as important as the duty to protect confidentiality. Health and social care professionals and other staff should have the confidence to share information in the best interests of adults within the framework set out by these principles. They should be supported by the policies of their employers, regulators and professional bodies.

Links to relevant information

For more information on information sharing please use the links below:

SCIE Guidance on Information Sharing [2]

Government Guidance on Information Sharing [3]

69. Guidance on managing allegations against people in a position of trust

Introduction

The Care Act 2014 requires the local authority, its relevant partners and those providing universal care and support services to have clear policies reflecting those from the local Safeguarding Adults Board for dealing with allegations against people in positions of trust i.e. anyone working in either a paid or unpaid capacity, with adults with care and support needs. These policies should clearly distinguish between an allegation, a concern about the quality of care or practice or a complaint.

[2] http://www.scie.org.uk/care-act-2014/safeguarding-adults/sharing-information/?dm_i=4O5,35JEP,1Q7ZG2,BATI1,1

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417696/Archived-information_sharing_guidance_for_practitioners_and_managers.pdf

Where concerns are raised about someone who works with adults with care and support needs, the employer (or student body or voluntary organisation) must assess any potential risk to adults with care and support needs who use their services, and, if necessary, to take action to safeguard those adults. This framework must have clear recording and information-sharing guidance and timescales for action and be mindful of the need to preserve evidence. This will be whether the allegation or concern is current or historical.

Hampshire and Isle of Wight 4LSAB Allegations Management Framework

In order to develop a consistent approach and to promote best practice across Hampshire and the Isle of Wight, the four Local Safeguarding Adults Boards have established a joint framework and process for how allegations against people in positions of trust should be notified and responded to.

The Allegations Management Framework is an overarching framework setting standards around the management of allegations against people in a position of trust, supported by clear reporting requirements and arrangements across the whole system - this includes clear information-sharing arrangements and explicit timescales for action. This is an overarching Framework and so individual organisations will be expected to develop its own business process detailing how it will implement this framework internally. This document replaces the 4LSAB DASM framework published in May 2015.

The Framework is based on the following principles:

- It reflects a proportionate, fair and transparent approach and seeks to build on current internal allegations management processes rather than replacing these.
- It applies to anyone working in a position of trust such as employees, volunteers or students, in a paid or unpaid capacity regardless of the sector. It deals with current as well as historical allegations.
- The sharing of information will be justifiable and proportionate based on an assessment of the potential or actual harm to adults or children at risk.
- Partner organisations are expected to align (or develop) current allegations management processes in line with the standards set out in this framework.

In order to gain assurance of robust internal allegations management processes in organisations not represented on the LSAB, the Boards will look to commissioners to use existing frameworks and processes to ensure safe working procedures including the management of allegations, are implemented within the organisations from whom they commission services.

Commissioning organisations should build reporting requirements into their existing procurement, commissioning and contract arrangements to ensure that provider organisations promptly share information about incidents falling within the remit of this Framework with their commissioners.

Responsibilities of partner organisations

Individual organisations are responsible for responding to allegations regarding any person working for them in a position of trust with adults with care and support needs and for

undertaking all necessary action in line with their internal process and agreed timescales. The specific responsibilities of individual organisations include:

- Establishing a clear internal allegations management procedure setting out the process, including timescales, for investigation and what support and advice will be available to individuals against whom allegations have been made. This procedure should reflect the 4LSAB Allegations Management Framework.
- Ensuring their staff and managers have access to expert advice and guidance to enable them to fulfil their responsibilities when responding to allegations.
- Responding promptly to allegations regarding their staff and for undertaking all necessary action in line with their internal process and agreed timescales.
- Monitoring the progress of cases to ensure that they are dealt with as quickly as possible, consistent with a thorough and fair process.
- Ensuring appropriate systems are in place to support and provide regular updates to the employee in respect of the investigation.
- Making prompt referrals to the Disclosure and Barring Service (DBS) and/or Professional Registration Bodies, as relevant.
- Ensuring appropriate recording systems are in place and that these provide a clear audit trail about the decision making process and any recommendations arising from the investigation and subsequent actions.
- Ensuring the control of information in respect of individual cases is in accordance with accepted data protection and confidentiality requirements.
- Maintain records of the number and nature of allegations made and using this data to inform service improvement and development.

Whilst no longer a requirement in the Care Act 2014, the LSABs strongly encourage partner organisations to establish a nominated lead or Safeguarding Allegations Management Advisor (SAMA), to provide advice and guidance to their organisation and to maintain oversight of complex cases involving allegations against people in a position of trust. The SAMA should have a significant level of expertise and knowledge in adult safeguarding and they should also have an operational leadership role in respect of their organisation.

70. Applying this Framework in practice

This section provides guidance on how concerns should be reported and the process to be used to respond to these. As this is an overarching framework, individual organisations will be responsible for providing detailed guidance for staff reflecting any organisational requirements and standards that must be followed.

If a 'person in a position of trust' is alleged to have abused or harmed an adult with care and support needs, or who may pose a risk of abuse to an adult with care and support needs, it is essential that the concerns are appropriately reported and responded to under the Hampshire 4LSAB Multi-Agency Safeguarding Adults Policy and Guidance (May 2015).

Examples of concerns could include allegations that relate to a person who works with adults with care and support needs who has:

- Behaved in a way that has harmed, or may have harmed an adult or child
- Committed a criminal offence against, or related to, an adult or child
- Behaved towards an adult or child in a way that indicates they may pose a risk of harm to adults with care and support needs
- Concerns could also arise from the person's home / personal life, as well as within their work and may include situations such as:
- A person has behaved (or is alleged to have behaved) towards another adult in a way that indicates they may pose a risk of harm to adults with care and support. For example, this may include situations where a person is being investigated by the police for domestic abuse to a partner, and undertakes voluntary work with adults with care and support needs.
- A person has behaved (or is alleged to have behaved) towards children in a way that indicates that they may pose a risk of harm to adults with care and support need. For example, this may include situations where a person is alleged to have abused a child, and is a student undertaking professional training to work with adults with care and support needs.
- A person is the subject of a formal safeguarding enquiry into allegations of abuse or neglect which have occurred in one setting. However, there are also concerns that the person is employed, volunteers or is a student in another setting where there are adults with care and support needs who may also be at risk of harm.
- When a person's conduct towards an adult may impact on their suitability to work with, or continue to work with children, this must be referred to the local authority's designated officer (LADO).

The purpose of the process is to ensure that risks potentially posed by the person are appropriately managed, alongside the specific safeguarding needs of the adult at risk. Allegations must be investigated promptly in line with the organisation's internal allegations management policy. In the interests of transparency and accountability, organisations must ensure clear recording of decisions and recommendations arising from the investigation.

Where a formal section 42 safeguarding enquiry is being undertaken, the function can be carried out as part of the enquiry process and this should include:

- An assessment and management of risk posed by a 'person in a position of trust' to be considered in the initial safeguarding planning meeting and subsequent meetings
- Any action taken in respect of a person to be included in the safeguarding enquiry report
- Supporting documentation should be reviewed as part of the Checking and Review stage of the safeguarding enquiry
- Further actions to safeguard or manage risk should be included in the safeguarding plan

Where a formal safeguarding enquiry is not being undertaken, a 'Managing Concerns Meeting' should be convened to assess and determine the actions required to manage the risk posed by a 'person in a position of trust'. Such meetings may need to include Care Quality Commission, safeguarding lead, LADO, commissioning, contracts, police and other relevant parties where appropriate to the case. Individual organisations will determine who should chair such meetings. The purpose of Managing Concerns Meeting' is to undertake a

collaborative assessment of the level of risk posed by the person about whom concerns have been raised and to clarify what information should be shared with the employer. The sharing of information will be justifiable and proportionate based on an assessment of the potential or actual harm to adults or children at risk.

Where it is necessary to refer individuals to the DBS and/or the relevant professional body, these referrals will be made promptly and made no later than five working days from when the case is concluded.

71. Information Sharing

Decisions on sharing information must be justifiable, proportionate and based on the potential or actual harm to adults or children at risk. The rationale for decision-making should always be recorded. When sharing information between agencies about adults, children and young people at risk it should only be shared:

- Where relevant and necessary, not simply sharing all the information held;
- With the relevant people who need all or some of the information; and
- When there is a specific need for the information to be shared at that time.

In deciding whether the information should be shared, it is necessary to consider the key question of whether the person has behaved or may have behaved, in a way that means their suitability to undertake their current role or to provide a service to adults with care and support needs should be reviewed.

There may be times when a person is employed to work with adults but their behaviour towards a child or children (for example outside of work) may impact on their suitability to work with or continue to work with adults. Likewise, there may also be times when a person's conduct towards an adult outside of work may impact on their suitability to work with or continue to work with children. All these situations must be risk assessed individually in order to make a decision about referring the case to the relevant organisation.

Informing the person about whom concerns have been raised:

- Unless it puts the adult at risk or a child in danger, the person should be informed an allegation against them has been made and that it will be shared with their employer. They should be offered a right to reply.
- If possible, the person's consent should be sought to share information and advised what information will be shared, how and who with. Each case must be assessed on its own individual merits as there may be cases where informing the person about details of the allegation increases the risks to a child or adult at risk.
- The person should be given the opportunity to inform their employer themselves – sometimes the immediacy and nature of the risk won't allow for this.
- The organisation should check appropriate information has been shared with the employer to enable them to assess risk, and review the suitability of the person continuing to work and any other actions required.

Informing the employer:

a) The employer must be informed if there are concerns about an employee during the course of their work.

b) If concerns arise in the person's personal or private life, or in another work setting, the decision to share information must be justifiable and proportionate and based on the potential or actual harm to adults at risk. The decision to share information and the rationale for doing so should be recorded.

c) Decisions about sharing information should consider the key question of 'whether the person has behaved or may have behaved, in a way that questions their suitability to undertake their current role or to support adults at risk'.

d) The following issues should be taken into consideration when making decisions about sharing information with the employer:

- Nature and seriousness of the actions/behaviour
- The context within the actions/behaviour occurred
- Frequency or patterns of actions/behaviour
- Nature of the person's access/role with adults at risk
- Potential impact on an adult with care and support needs

Informing other local authorities:

a) If the person is employed, volunteers or is a student (paid or unpaid) in another local authority area, inform the relevant local authority area.

b) If there is also a risk to children, also inform the relevant LADO.

Working jointly with the police:

a) If the concerns involve possible criminal offences to either an adult or child, liaise with the police about the need for possible criminal investigation.

b) When the police are undertaking criminal investigations, they have a common law power to disclose sensitive personal information to relevant parties where there is an urgent 'pressing social need'.

c) A pressing social need might be the safeguarding or protection from harm of an individual, a group of individuals, or society at large. This could include informing a relevant employer about criminal investigations relating to their employee where this has been assessed as necessary and appropriate in a particular case.

Informing the LADO and children services:

a) If the person may pose a risk of harm to his/her own children, or other children/young people in the course of their private life, children services should be informed without delay.

b) If the person may pose a risk to children/young people in the course of their work, paid or unpaid, the LADO should be informed without delay.

Informing Commissioning and Contracts Teams:

a) Where the concerns involve a person working in a commissioned service, inform the relevant commissioning/contracts team.

b) Within their own procedures, commissioning/ contracts teams can take action as deemed appropriate to ensure the service has appropriate standards of practice to prevent and respond to any future risk of harm.

c) In accordance with local arrangements, if the person works for the NHS, the CCG safeguarding lead must be informed.

d) If the person works for the police, the Police safeguarding lead must be informed.

Informing the Care Quality Commission:

a) If the person is employed or volunteers for a regulated service provider, CQC should be informed.

b) CQC can take action as deemed appropriate within their own procedures to ensure the service has appropriate standards of practice to prevent and respond to any future risks of harm.

c) This includes the employer's 'fitness' to operate and responsibility to safeguard adults at risk

Informing Professional Bodies:

a) If the person is registered with a professional body and there are concerns about their fitness to practice, the employer/volunteer manager must refer to the professional body's published guidance and consider the need to raise the concern with that professional body.

b) A Professional Body has a range of options where appropriate, these usually include suspending the person from practice, de-registering them or imposing conditions of practice that the person must work under. See Appendix A for more information about referrals to Professional Bodies.

72. Risk Management

Employer risk assessment and management process:

a) The organisation must have a mechanism for gaining assurance that the presenting risks have been appropriately assessed and responded to seeking evidence of the action taken as required.

b) Employers are responsible for assessing the risk in the context of their service. Only the employer has the power to suspend an employee, redeploy them or make other changes to their working arrangements, and so must be responsible and accountable for the decision reached.

Risk management arrangements:

a) Risk management arrangements are the responsibility of the employing organisation taking into account their assessment of the risk, their own internal policies and procedures, and employment law.

Review of working arrangements:

a) The employer is responsible for assessing and managing the risk of harm posed by the person taking into account the nature and seriousness of the allegation, harm to any patients/service users, and the risk of repeated incidents/on-going behaviour.

b) Sometimes the employer will need to consider suspending an employee - this should not happen automatically but only after they have considered if the circumstances of a case warrant a person being suspended until the allegation is resolved.

c) Whilst it's the employer who makes this decision, it is entirely reasonable to request a risk assessment where the employer has decided NOT to suspend.

d) The employer should also make arrangements to keep the individual informed about developments in the workplace

Supervision and Training

a) Supervision and training may be relevant to managing aspects of a presenting risk.

b) Supervision is a formal process ensuring the performance of each member of staff in a team, section, or unit is evaluated and reviewed so that, where necessary, learning and change can take place. Supervision is an important vehicle for meeting practice standards.

c) Supervision should address any issues of practice that are below the expected standard; and be used to ensure the practice of employees and volunteers reflects essential values and principles of practice, including choice, capacity, consent, privacy, dignity and respect to patients/service users, as well as the promoting safeguarding and individual wellbeing.

d) Training should be used to ensure employees, students and volunteers have the appropriate skills, knowledge and attitudes; but also in response to identified needs as may emerge from practice, supervision or personal development programmes.

Suspension:

a) Suspension may not be required if risks can be managed through changes to working arrangements such as:

- Not working with a particular patient/service user
- Working in a non-patient/service user contact role whilst the allegations are being investigated.
- If a person is suspended, they are entitled to know in broad terms the reasons for this.

b) Whilst an individual must be afforded the right to respond, this must be at an appropriate time.

c) Care should be taken to ensure information is not shared at the point of suspension that may prejudice a subsequent enquiry/investigation or place any person at additional risk.

d) Suspension should always be considered in any case where there is cause to think:

- an adult with care and support needs is at further risk of abuse or neglect, or
- the allegation warrants investigation by the Police, or
- is so serious that it might be grounds for dismissal, or
- the presence of the person in the work place will interfere with the enquiry/ investigation process

e) Where a person is suspended, they are entitled to know in broad terms the reasons for the suspension. Whilst an individual must be afforded the right to respond to allegations or concerns raised, this must be at an appropriate time and care should be taken to ensure information is not shared at the point of suspension that may prejudice a subsequent enquiry/investigation or place any person at additional risk.

73. Support for the person against whom allegation has been made

Alongside the duty of care towards the adult at risk, is the duty of care to the employee. The employer needs to provide support to minimise stress associated with the process, this may need to include:

- Support to understand the procedures being followed
- Updates on developments
- Opportunity to respond to allegations/concerns
- Support to raise questions or concerns about their circumstances.

There may be limitations on the amount of information that can be shared at a particular time in order not to prejudice any enquiry/investigation or place any person at risk. Support may be available via occupational health or employee welfare arrangements where they exist. If the person is a member of a union or professional association or network he or she should be advised that they may wish to seek support from that organisation.

The person may also wish to seek independent advice regarding employment issues. Such advice and support however, should be supplementary to that provided by the employer. There may be occasions where there is a need to agree changes to the person's working arrangements or to the support provided, to safeguard them from unfounded allegations in the future.

74. Disciplinary hearing processes and responsibilities

The need for, and timing of, a disciplinary hearing is a decision for the employer and will depend on the specific circumstances of the situation. Consideration should be given to whether the decisions or findings within any police or safeguarding adults process may potentially affect decision making within the disciplinary process, and vice versa. Such decisions will need to be reached on a case-by-case basis.

Disciplinary hearings will be focused on the conduct of the individual as an employee. Decisions reached should, however, also give due consideration to the organisation's responsibility to safeguard children and adults at risk. Employers who are also service providers or service commissioners have not only a duty to the adult at risk but also a responsibility to take action in relation to the employee when allegations of abuse are made against him or her. Employers must ensure that their disciplinary procedures are c with the responsibility to protect adults at risk of abuse or neglect.

If an organisation removes an individual (paid worker or unpaid volunteer) from work with an adult with care and support needs (or would have, had the person not left first) because the person poses a risk of harm to adults, the organisation must make a referral to the Disclosure and Barring Service. It is an offence to fail to make a referral without good reason. Please see Appendix B for more information about DBS referrals.

Where it is necessary to refer individual employees to the DBS and/or the relevant professional body, these will be made promptly and as soon as possible once the investigation has concluded. This includes sharing with the professional body, the supporting evidence required as part of the referral

75. Recording and data collection

Individual organisations should maintain appropriate records of cases in line with the Data Protection Act 1998 requirements and individual organisational policies around information governance and record retention.

Individual organisations should also establish monitoring arrangements to enable to activity relating to allegations against staff to be tracked. Collated anonymised information about the number and nature of allegations made and their outcomes should be produced at least annually and these reports shared with relevant boards, committees and leadership teams to inform service improvement and development.

76. Support from the Local Safeguarding Adult Board

The LSABs will provide on their respective websites information about how and to whom to report concern about possible abuse or neglect which will ensure non commissioned or

funded voluntary organisations and charities can access information about their responsibilities to act upon concerns about abuse or neglect.

The 4LSABs have established a SAMA network comprised of professionals who have an advisory or support role in their organisation around allegations management in order to facilitate all essential networking and information sharing across agencies. This also provides an opportunity for regular updating. It is anticipated that the SAMA network would meet every six months.

77. Appendix A: Referrals to Professional Bodies

If the person is registered with a professional body and there are concerns about their fitness to practice, the employer/volunteer manager must refer to the professional body's published guidance and consider the need to raise the concern with that professional body.

A professional body has a range of options where appropriate, these usually include suspending the person from practice, de-registering them or imposing conditions of practice that the person must work under. The principal organisations within health and social care are:

- Nursing and Midwifery Council (www.nmc-uk.org)
- Health and Care Professions Council (www.hpc-uk.org)
- General Medical Council (www.gmc-uk.org)
- General Optical Society (www.optical.org)
- General Dental Society (www.gdc-uk.org)
- General Chiropractic Council (www.gcc-uk.org)
- Royal Pharmaceutical Society of Great Britain (www.rpsgb.org.uk)
- General Osteopathic Council (www.osteopathy.org.uk)

Each professional registration body:

- Maintains a public register of qualified workers
- Sets standards for conduct, performance and ethics
- Considers allegations of misconduct, lack of competence or unfitness to practice
- Makes decisions as to whether a registered worker can practice

Notification of a professional body is the responsibility of the employer. Where this action has been agreed with the organisation's nominated safeguarding lead, confirmation should be provided to them that the action has been completed. As the responsible authority for adult safeguarding, the local authority has the power to make a referral where the relevant criteria have been met, and should do so where it is necessary to ensure an appropriate referral has been made.

78. Appendix B: Referrals to the Disclosure and Barring Service (DBS)

On the 1st December 2012 the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged and became the Disclosure and Barring Service (DBS). This means that these same services are now provided by a single organisation rather than two.

The Disclosure and Barring Service can bar a person unsuitable to work with vulnerable people, including children, from working in regulated activity in the future. If a person is barred it becomes an offence for an organisation to knowingly engage that person in regulated activity.

Employers and volunteer managers of people working in 'regulated activity' have a legal duty to make referrals to the Disclosure and Barring Service in certain circumstances. The local authority also has a power to make a referral, and should do where it is necessary to ensure the appropriate referral has been made. Regulated activity is work (both paid and unpaid) with children or vulnerable adults that meets certain criteria. In relation to vulnerable adults, regulated activity in broad terms includes activities involved in:

- Providing health care
- Providing personal care
- Providing social work
- Providing assistance with cash, bills and/or shopping
- Providing assistance in the conduct of personal affairs
- Conveying the person

There is a duty placed on regulated activity providers and personnel suppliers to make a DBS referral in circumstances where they have permanently removed a person from 'activity' through dismissal or permanent transfer (or would have if the person had not left, resigned, retired or been made redundant); because the person has:

- Been cautioned or convicted for a relevant offence; or
- Engaged in relevant conduct in relation to children and/or vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm]; or
- Satisfied the Harm Test in relation to children and/or vulnerable adults [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists.

It is also possible to make a referral where this legal duty has not been met. For example, where there are strong concerns but the evidence is not sufficient to justify dismissing or removing the person from working with children or vulnerable adults. Such a referral would need to be compliant with relevant employment and data protection laws.

Where the need for a referral to the Disclosure and Barring Scheme (DBS) has been agreed with the organisation's nominated safeguarding lead, confirmation should be provided to them that the action has been completed. As the responsible authority for adult safeguarding, the local authority has the power to make a referral where the 'person in a position of trust' is employed in another organisation, and should do so where it is necessary to ensure an appropriate referral has been made.

The full up-to-date guidance and definitions must be referred to when deciding whether to make a Disclosure and Barring Service referral. For further information contact the Disclosure and Barring Service (DBS):

Helpline: 03000 200 190

Website: www.homeoffice.gov.uk/agencies-public-bodies/dbs

Email: customerservices@dbs.gsi.gov.uk

79. Guidance on gaining access to an adult suspected to be at risk of neglect or abuse

This guidance is based on the guidance published by the Social Care Institute of Excellence in October 2014. The aim of the guide is to clarify existing powers relating to access to adults suspected to be at risk of abuse or neglect. The safeguarding duties under the Care Act 2014 apply to an adult who:

- has needs for care and support (whether or not the Local Authority is meeting any of those needs)
- is experiencing, or at risk of, abuse or neglect
- as a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of, abuse or neglect.

The guide has been created to provide information on legal options for gaining access to people who fulfill the three criteria above where access is restricted or denied. It is intended as a source of ready reference in situations of uncertainty, rather than as a learning tool, laying out the potential routes to resolution. It is important that social workers and their managers are as clear as possible on which legal powers or options apply to which situations, and in cases of any uncertainty that they consult their senior managers and/or the legal department of the Local Authority. Throughout the guide there are links to information on the relevant legislation and case law, should you wish to consult this.

80. Key messages

Under Section 42 of the Care Act 2014, Local Authorities have a duty to make, or cause to be made, enquiries in cases where they reasonably suspect that an adult with care and support

needs is experiencing, or is at risk of, abuse or neglect, and, as a result of those needs, is unable to protect themselves from this actual or risk of abuse and neglect.

This duty to make or to cause adult safeguarding enquiries to be made does not provide for an express legal power of entry or right of unimpeded access to the adult who is subject to such an enquiry. Instead, there are a range of existing legal powers which are available to gain access should this be necessary. The powers which may be relevant to adult safeguarding situations derive from a variety of sources including the Mental Capacity Act 2005 (MCA), the Mental Health Act 1983 (MHA) and the Police and Criminal Evidence Act 1984 (PACE), along with the common law including the inherent jurisdiction of the High Court and common law powers of the police to prevent or deal with a breach of the peace.

Whether it is necessary to seek legal intervention and which powers would be the most appropriate to rely on in order to gain access to an adult to assess any safeguarding risk or otherwise protect an adult will always depend on the individual circumstances of the case.

The purpose of a safeguarding enquiry is for the Local Authority to clarify matters and then decide on what course of action (if any) is required in order to protect the adult in question from abuse and neglect. If any action is necessary, then it is for the Local Authority to take the lead in coordinating what action is appropriate and by whom. A safeguarding enquiry may not necessarily result in what is typically considered to be a 'safeguarding response', such as an investigation by the police or a health and social care regulator, but it could result in other action to protect the adult concerned, such as providing a care and support package for either or both the adult and their carer.

81. Practical issues to gaining access

The purpose of the safeguarding enquiry is to decide whether or not the Local Authority or another organisation, or person, should do something to help and protect the adult. In almost every case it is likely to be necessary to physically see and talk to the adult in order to be able to make that decision.

Good safeguarding practice begins with talking to the adult who there is concern about, unless there are exceptional circumstances that would increase the risk of abuse. That conversation will need to establish facts and, importantly, what the person wants to happen and how. Practitioners need to make personal contact with the people they are working with and establish a relationship. Therefore the issue of access and ability of the person to talk freely is critical.

If the adult has substantial difficulty in being involved, and where there is no one appropriate to support them, then the Local Authority must arrange for an independent advocate to represent them for the purpose of facilitating their involvement.

People must be assumed to have capacity to make their own decisions and be given all practicable help before anyone treats them as not being able to make their own decisions. Where an adult is found to lack capacity to make a decision then any action taken, or any decision made for them, or on their behalf, must be made in their best interests.

Organisations should always promote the adult's wellbeing in their safeguarding arrangements. People have complex lives and being safe is only one of the things they want

for themselves. Professionals should work with the adult to establish what being safe means to them and how that can be best achieved. Professionals and other staff should not be advocating 'safety' measures that do not take account of individual wellbeing, as defined in Section 1 of the Care Act.

82. Difficulties in gaining access

There will be a wide range of reasons why, and circumstances when, it may be difficult to gain access to an adult who is the subject of an adult safeguarding enquiry. Here are some examples:

- Access to the premises is being denied altogether by a third party on the premises, typically a family member, friend or other informal carer
- Access to the premises can be gained, but it is not possible to speak to the adult alone – because the third party is insisting on being present
- The adult at risk themselves (whether or not unduly under the influence of the third party) is insisting that the third party be present – clearly in such cases if the person is known to have capacity the issue of access in terms of the law does not arise.

However, the simple fact of access being refused should not automatically lead to consideration of the use of legal powers. Such situations are often complex and highly sensitive and, if they are to be resolved successfully and safely, will need sensitive handling by skilled practitioners. All attempts to resolve the situation should begin with negotiation, persuasion and the building of trust. Denial of access may not necessarily be a sign of wrong-doing by the third party; it may be an indication of lack of trust of authority, guilt about their inability to care or fear that the adult will be removed from the home. It is vital that until the facts are established the practitioner adopts an open-minded, non-judgmental approach.

If all attempts fail then the Local Authority must consider whether the refusal to give access is unreasonable and whether the circumstances justify intervention. There will need to be a Local Authority-led discussion about what the perceived risks are, the likelihood of risk or neglect occurring and the potential outcomes of both intervening and not intervening. As in any other situation, any decisions and the reasons for them should be clearly and fully recorded and shared with others as necessary and lawful. If the conclusion is that the use of legal powers is necessary and justifiable, the next step is to consider what powers would be most appropriate.

Therefore, Local Authority managers and practitioners involved in safeguarding need to be aware of existing legal powers which can be used if necessary to gain access to make enquiries, or cause enquiries to be made, in order to assess what (if any) safeguarding action is needed to protect an adult thought to be at risk of abuse and neglect because of their care and support needs.

Recourse to the courts and legal powers should be considered carefully and only as a last resort. Local Authorities must satisfy themselves that there are grounds to seek access and that the use of such powers will not be unlawful or leave an adult in a worse position.

Clearly any unlawful intervention could lead not only to judicial criticism but also to liability (whether as a result of a breach of human rights or otherwise).

83. Proportionality

Any interference by the state (meaning public bodies, or sometimes private bodies carrying out functions of a public nature) must be lawful and necessary. The stipulation of necessity encompasses a requirement of proportionality – that is, not 'taking a sledgehammer to crack a nut'. Where the use of any power of entry is thought necessary, it should be exercised proportionately, in relation to the risk and the apparent gravity of the situation.

If powers of intervention are to be exercised lawfully and proportionately, it follows that practitioners involved in safeguarding require a basic knowledge of what powers are available; in particular, when and how they can be used – and, just as importantly, when they cannot be – and whom to consult in cases of uncertainty.

Of course an emergency situation involving significant risk may justify the use of coercive powers – such as police entry to save life and limb – if there is clearly no time to attempt a negotiated, non-coercive approach.

84. Principle of necessity and proportionality linked to the principle of the least restrictive option

The principle of the least restrictive option helps to ensure that interventions are necessary and proportionate.

Section 1 of the MCA requires that, in respect of an act or decision done for a person who lacks capacity, consideration must be given to achieving the person's best interests in a manner which is least restrictive of the person's rights and freedom of action. Likewise the least restrictive principle is a guiding principle in the statutory Code of Practice for the Mental Health Act 1983: it states that:

'People taking action without a patient's consent must attempt to keep to a minimum the restrictions they impose on a patient's liberty, having regard to the purpose for which the restrictions are imposed.'

Furthermore, Section 1 of the Care Act 2014 states that a Local Authority, in exercising its functions under Part 1 of the Act in the case of an individual, must promote that individual's wellbeing and have regard to a number of factors including the need to ensure that any restriction on the individual's rights or freedom of action is kept to the minimum necessary for achieving the purpose for which the function is being exercised.

85. The duty to enquire arising during an assessment

If, when a practitioner is undertaking an assessment or a review of a care and support plan, they come to know or suspect that the adult is experiencing, or is at risk of, neglect or abuse, then this will trigger the duty to make enquiries under Section 42 of the Care Act

2014. Such a trigger can work both ways: an assessment for care and support can be during the course of a safeguarding enquiry.

The duty demands that either the Local Authority itself makes the enquiries, or (where appropriate) that it asks another person or agency to do so; for example, asking the police to investigate where a crime is suspected or asking a health professional if they visit the adult regularly.

The duty to make enquiries (or to cause them to be made) does not hinge on a request by the adult or anybody else and is not negated by a third party's refusal to grant access to the adult nor by the adult's refusal to participate.

Under the Care Act 2014, there is no express legal power of entry or right of unimpeded access to the adult. However, where necessary, Local Authorities can apply to the courts or seek assistance from the police to gain access in certain circumstances under existing powers.

At some point during the making of enquiries by the Local Authority, legal powers may be required to gain access to the person known or suspected to be experiencing, or at risk of, abuse or neglect. The following legal powers may be relevant, depending on the circumstances:

- **If the person has been assessed as lacking mental capacity in relation to a matter relating to their welfare:** the Court of Protection has the power to make an order under Section 16(2) of the MCA relating to a person's welfare, which makes the decision on that person's behalf to allow access to an adult lacking capacity. The Court can also appoint a deputy to make welfare decisions for that person
- **If an adult with mental capacity, at risk of abuse or neglect, is impeded from exercising that capacity freely:** the inherent jurisdiction of the High Court enables the Court to make an order (which could relate to gaining access to an adult) or any remedy which the Court considers appropriate (for example, to facilitate the taking of a decision by an adult with mental capacity free from undue influence, duress or coercion) in any circumstances not governed by specific legislation or rules
- **If there is concern about a mentally disordered person:** Section 115 of the MHA provides the power for an approved mental health professional (approved by a Local Authority under the MHA) to enter and inspect any premises (other than a hospital) in which a person with a mental disorder is living, on production of proper authenticated identification, if the professional has reasonable cause to believe that the person is not receiving proper care
- **If a person is believed to have a mental disorder, and there is suspected neglect or abuse:** Section 135(1) of the MHA, a magistrates court has the power, on application from an approved mental health professional, to allow the police to enter premises **using force if necessary** and if thought fit, to remove a person to a place of safety if there is reasonable cause to suspect that they are suffering from a mental disorder and (a) have been, or are being, ill-treated, neglected or not kept under proper control, or (b) are living alone and unable to care for themselves

- **Power of the police to enter to arrest a person for an indictable offence:** Section 17(1)(b) of PACE
- **Common law power of the police to prevent, and deal with, a breach of the peace:** Although breach of the peace is not an indictable offence the police have a common law power to enter and arrest a person to prevent a breach of the peace
- **If there is risk to life and limb:** Section 17(1)(e) of PACE gives the police the power to enter premises without a warrant in order to save life and limb or prevent serious damage to property. This represents an emergency situation and it is for the police to exercise the power).

More detail as to the application and limitation of these legal powers follows in the sections below:

Mental Capacity Act 2005 (MCA)[4]

Mental Health Act 1983[5]

Police and Criminal Evidence Act 1984[6]

86. Context of the Mental Capacity Act 2005 (MCA) in gaining access to an adult suspected of being at risk of neglect or abuse

View the Mental Capacity Act 2005 (MCA)[7]

An assessment to establish whether a person lacks capacity should take place whenever there is concern that an individual might lack the mental capacity to make a proposed decision. A person must be assumed to have capacity unless it is shown that they lack capacity.

Capacity must be assessed in accordance with Sections 2 and 3 of the MCA and decided on the balance of probabilities. Under Sections 2 and 3 of the MCA, it must be established that a person lacks capacity in relation to a specific and relevant matter at the material time. For example, a person lacks capacity to make a decision about whether or not to be admitted to a nursing home the following month for respite care.

In the context of this guide, the capacity in question could relate to, for example, the adult's capacity to make decisions about their situation or to cooperate with the Local Authority in undertaking the safeguarding enquiry.

An application may be made to the Court of Protection under the MCA to facilitate gaining access to an adult who lacks capacity or who there is a reason to believe lacks capacity, in a

[4] http://www.scie.org.uk/care-act-2014/safeguarding-adults/adult-suspected-at-risk-of-neglect-abuse/law/mca2005.asp
[5] http://www.scie.org.uk/care-act-2014/safeguarding-adults/adult-suspected-at-risk-of-neglect-abuse/law/mha1983.asp
[6] http://www.scie.org.uk/care-act-2014/safeguarding-adults/adult-suspected-at-risk-of-neglect-abuse/law/pcea1984.asp
[7] http://www.legislation.gov.uk/ukpga/2005/9

case of suspected neglect or abuse, where that access is being denied or impeded. The Court's permission to make an application will be needed. The Court of Protection must apply the fundamental principles in Section 1 of the MCA. The principles include:

- Assuming that a person has mental capacity unless it can be shown otherwise
- Not mistaking unwise decisions for decisions taken without capacity
- Acting in the person's best interests
- Considering less restrictive ways of achieving those best interests.

87. Personal welfare orders

The Court of Protection could make an order under Section 16(2) of the MCA relating to a person who lacks capacity's welfare, which makes the decision on that person's behalf to allow a third party (including Local Authority practitioners) access to that person. Failure to comply with an order of the Court of Protection could be a contempt of Court. The Court can attach a penal notice to the order, warning that failure to comply could result in imprisonment or a fine.

88. Appointment of a deputy

The Court of Protection may appoint a deputy for a person who lacks capacity under Section 16(2) who can make the decision on that person's behalf to allow a third party (including Local Authority practitioners) access to that person.

89. Interim orders and directions

The Court of Protection could make interim orders and directions under Section 48 if an application to the Court of Protection has been commenced but not yet determined if:

- There is reason to believe that a person lacks capacity in relation to the matter
- The matter is of a type covered by the powers of the Court, and it is in that person's best interests to make an order or give directions without delay.

The pending application could be in relation to whether the person lacks capacity, what arrangements would be in that person's best interests, or an application to authorise a deprivation of liberty. Interim orders/directions cannot be sought if there is no pending application.

90. Threshold for an interim order or directions

The Court may make interim orders or directions that include requiring immediate safeguarding steps relating to the adult's personal welfare to be taken.

91. Access under an interim order or directions

The interim order or directions may contain directions to permit a person entry to premises and access to that person. Obstruction by a third party of access to and assessment of that person may be a contempt of Court. A penal notice may be attached to the order or

directions, warning that a breach could result in imprisonment. The order or directions may be against not just the third party but also that person.

92. Inherent jurisdiction of the High Court

'Inherent jurisdiction' is a term used to describe the power of the High Court to hear any case which comes before it unless legislation or a rule has limited that power or granted jurisdiction to some other court or tribunal to hear the case. This means that the High Court has the power to hear a broad range of cases including those in relation to the welfare of adults, so long as the case is not already governed by procedures set out in rules or legislation. It is 'common law' developed by the High Court to control the procedures before it and to stop any injustices arising from it being prevented from hearing any case. It is not normally used in relation to people who lack capacity, because such cases are dealt with by the Court of Protection under the procedures established by the MCA.

However, inherent jurisdiction may still be relevant to an adult lacking capacity if the matter and intervention required are not covered by the MCA; for example, when making a declaration of non-recognition of a marriage or depriving a person of their liberty for the purpose of enforcing physical treatment. It will also sometimes be necessary for a Local Authority to make an application to the High Court to ask the Court to exercise its inherent jurisdiction to protect an adult with mental capacity. The order could in principle be directed against a third party and so relevant to a situation on which this guide focuses: the denial of access by a third party to a person suspected of experiencing, or at risk of, abuse or neglect.

93. Does the Mental Capacity Act or inherent jurisdiction apply?

The MCA only applies if a person lacks capacity within the meaning of Sections 2 and 3 of the MCA, subject to the Court of Protection powers under section 48 (see above) even if capacity has not been formally determined. If, however, the person has capacity but cannot take a decision (freely) because of coercion, undue influence or constraint – or other circumstances – then an application can be made relying on the Court's inherent jurisdiction.

94. Inherent jurisdiction and safeguarding

The courts continue to develop and explore the extent and application of its inherent jurisdiction, which is protective in relation to adults in vulnerable circumstances, and they will endeavour always to avoid undermining the principles in Section 1 of the MCA that an adult can take unwise decisions without this necessarily indicating a lack of capacity. Orders made under the Court's inherent jurisdiction may or may not be time-limited.

The courts will also be mindful that rash use of the jurisdiction would risk breaching Article 8 of the European Convention on Human Rights (ECHR) which relates to the right to respect for private and family life. However, at the same time, so-called 'positive obligations' to protect an individual's rights under the EHCR may require the courts to intervene by exercising its inherent jurisdiction. This implies that in appropriate cases, Local Authorities

should also be asking the courts to consider exercising its inherent jurisdiction on human rights grounds.

According to the courts, the inherent jurisdiction can be exercised for vulnerable adults, with or without capacity, who are 'reasonably believed' to be 'under constraint' or 'subject to coercion or undue influence', or for another reason 'deprived of the capacity to make the relevant decision', or prevented from making a free choice, or from 'giving or expressing a real and genuine consent'.

There has been no specific definition of what constitutes 'vulnerable' in such cases, and the jurisdiction is not confined to 'vulnerable' adults, but equally adults at risk of abuse and neglect do not automatically come under it. Factors to consider when an adult can be considered 'vulnerable' have been suggested; for example, people unable to take care of themselves or protect themselves from harm or exploitation by others. Those suffering from mental illness or physical disability may also be considered vulnerable, depending on the circumstances. Clearly, it will be easier to make a case for exercising the jurisdiction in relation to apparently vulnerable adults than for those who do not appear vulnerable.

The important thing to remember when considering applying to the Court to use its jurisdiction to grant an access order is that its purpose is not to overrule the wishes of an adult with capacity, but to ensure that the adult is making decisions freely**.** In the context of this guide, constraint, coercion or the undue influence of a third party may be preventing the adult's ability to make free decisions, and recourse to the Court's jurisdiction may be used to assist professionals in gaining access to assess the adult.

95. Orders against a third party

In situations such as those on which this guide focuses, it is possible that an order could be made against the person responsible for undue influence, constraint or coercion if this is also necessary to protect the adult in question. In one case, an order was contemplated against a son who was allegedly mistreating his parents. But even in such a case, the Court would want to scrutinise carefully any application for such an order, especially if the person(s) to be protected – in this case, the parents – do not support it. For instance, if the third party undertakes, plausibly, to co-operate on relevant matters, then the Court will not grant an injunction against them.

96. Context of the Mental Health Act 1983 in gaining access to an adult suspected of being at risk of neglect or abuse

View the Mental Health Act 1983[8]

Section 115

Under Section 115 of the Mental Health Act 1983 (Powers of entry and inspection) an approved mental health professional (AMHP) may at all reasonable times enter and inspect

[8] http://www.legislation.gov.uk/ukpga/1983/20/contents

any premises (other than a hospital) in which a mentally disordered person is living – if the professional has reasonable cause to believe that the person is not receiving proper care.

This power can only be used after the approved mental health professional, if asked, has produced a duly authenticated document showing that he or she is such a professional. Section 115 does not allow for forced entry, the use of force to override the owner's refusal to give permission to enter, or for force to be used to talk to a person alone in the dwelling. However, obstruction without reasonable cause by a third party of the approved professional acting under Section 115 could constitute an offence under Section 129 of the Act. If entry is still refused, the AMHP may consider whether an application for a warrant under Section 135 is justified.

Section 135(1)

This section of the Act is relevant to the focus of this guide because it is one way of gaining access to a person reasonably suspected of being ill-treated or neglected. In addition, the 'reasonable cause to suspect' condition is mirrored in Section 42 of the Care Act ('making enquiries').

Under Section 135(1), a magistrate may issue a warrant authorising a police officer to enter premises specified in the warrant, using force if necessary, and if it is thought fit, to remove a person to a place of safety (defined in Section 135(6)) for a mental health assessment. The constable must be accompanied by an AMHP and a doctor.

Such a warrant may be issued only if it appears to the magistrate from information received on oath from an AMHP, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder (a) has been, or is being, ill-treated, neglected or not kept under proper control, or (b) is unable to care for himself or herself and is living alone. A person who is removed to a place of safety can be held there for a period not exceeding 72 hours. This would be with a view to making an application for detention under the MHA or other arrangements for care and treatment. There also has to be a belief, but not a certainty, concerning the existence of a mental disorder – which is defined widely in Section 1 of the MHA.

Removal of the person to a place of safety is not inevitable. It should only take place 'if thought fit'. Having spoken to the person, it might be decided that removal is not necessary. Once a person has been removed to a place of safety, this does not necessarily mean an application for detention will be made under the MHA. It may be that 'other arrangements' for care can be made instead, such as an informal hospital admission, or regular home visits from a crisis resolution or community mental health team. In some cases, it may be decided to do nothing, once the person has been spoken to. In these instances, the legal authority to detain the person at a place of safety will lapse.

97. Context of the Police and Criminal Evidence Act 1984 in gaining access to an adult suspected of being at risk of neglect or abuse:

View the Police and Criminal Evidence Act 1984[9]

98. Powers of entry under the Act - 'saving life or limb'

Section 17(1)(e) of PACE gives the police the power to enter and search premises without a warrant, in order to **'save life or limb'** or prevent serious damage to property. However, it is not enough that the police should have a general welfare concern about somebody in order to use this power of entry, which may only be used in cases of emergency, **not** general welfare.

99. Application of Section 17(1)(e)

View the Police and Criminal Evidence Act 1984 Section 17(1).[10]

Serious bodily injury: the case of 'Baker' v. 'Crown Prosecution Service' [2009] EWHC 299 (Admin), para 25 In this case, the court held that the police would need to be concerned about serious bodily injury. The expression 'saving life or limb' is a colourful, slightly outmoded expression. It is here used in close proximity with the expression 'preventing serious damage to property'. That predicates a degree of apprehended serious bodily injury. Without implicitly limiting or excluding the possible types of serious bodily injury, apprehended knife injuries and gunshot injuries will obviously normally be capable of coming within the subsection. If the abuse suspected is of a type not related to seriously bodily injury, this section will be of no use.

100. Breach of the peace

There is a common law (i.e. not in legislation) power of entry to deal with a breach of the peace**.** It is in addition, and separate from, the powers of entry in Section 17 of PACE. A breach of the peace occurs when harm is actually done, or likely to be done, to a person or their property in their presence. It also occurs in instances when a person is in fear of being harmed in this way through assault, affray, a riot or other unlawful disturbance. In such cases an arrest can be made without a warrant.

In general, the power of the police to enter premises to prevent a breach of the peace only applies in emergencies. It is therefore unlikely to be justified in the majority of welfare-related cases.

101. Arrest without a warrant for an indictable offence

However, if Section 24(1) or (2) or (3) can be shown to apply (arrest without a warrant for an indictable offence), then the police do have the power to enter premises under Section

[9] http://www.legislation.gov.uk/ukpga/1984/60/contents
[10] http://www.legislation.gov.uk/ukpga/1984/60/section/17

17(1)(b). An indictable offence is one that can or must be tried in a Crown Court. In relation to safeguarding, examples of this would be evidence of:
· Ill-treatment or wilful neglect (see Section 44 of the Mental Capacity Act 2005 and Section 127 of the Mental Health Act 2012)

- Causing or allowing a vulnerable adult to die or suffer serious physical harm (see the Domestic Violence, Crime and Victims Act 200413)
- Theft (see Section 1 of the Theft Act 196814)
- Fraud (see the Fraud Act 200615).

It is important to remember that because the police will need detailed information about the offence before being able to act under this section, it cannot be used to gain access to a dwelling simply to discover whether a crime is being committed or not. Therefore, any information a Local Authority can provide for the police would need to be sufficient for an arrest to take place in relation to criminal law. Always remember that this section relates to crimes, not welfare.

102. Power to arrest a person, without a warrant, who is committing, is about to commit, or has committed a summary (i.e. non-indictable – Magistrates Court only) offence

Section 24 (4) and (5) of the Act deals with the power to arrest a person, without a warrant, who is committing, is about to commit, or has committed an offence. The police will need reasonable grounds for believing an arrest is necessary for one of the reasons listed in Section 24(5), before being able to act. Two key reasons that may be relevant in terms of safeguarding are:

- To protect a vulnerable person likely to be harmed or at risk of being harmed if the person in question is not arrested and other arrangements for the prevention of harm cannot be made
- To prevent that person from causing physical injury to another person.

In the context of this guide, if a Local Authority has reasonable cause to suspect that an adult is being subjected to abuse or neglect, the question will be whether this translates, under Section 24, into knowledge and reasonable grounds for suspicion; that the abuse constitutes a criminal offence; and whether it is therefore necessary to arrest the person for one of the reasons listed in Section 24 (4) & (5). There is no power of entry linked to Section 24 (4) & (5), unless it meets the criterion of Section 17(1)(e) – saving life or limb.

103. Summary of gaining access to an adult suspected of being at risk of neglect or abuse

This guide aims to clarify the different types of legal powers that can be called upon when access to an adult who is suspected to be at risk of neglect or abuse is required but, for whatever reason, is being denied or restricted. In this guide, such an access requirement is

triggered by a Local Authority's enquiry duty under Section 42 of the Care Act 2014. Although there is no express legal power of entry or right of access contained in this Act, other existing powers can be drawn upon. Which existing power is most appropriate depends on the circumstances of the case. Therefore, knowledge of the relevant sections of the Mental Capacity Act 2005 (MCA), the Mental Health Act 1983 (MHA) and the Police and Criminal Evidence Act 1984 (PACE), along with an understanding of the inherent jurisdiction of the High Court and the common law powers of the police are essential tools for social workers. However, it is strongly advised that advice and confirmation be sought from senior managers or legal teams before any action is taken, unless it is clear that the situation is an emergency ('saving life or limb'). In such emergency cases, the matter should be referred to the police for immediate action under Section 17(1)(e) of PACE.

104. References for SCIE's 'gaining access to an adult suspected of being at risk of neglect or abuse: a guide for social workers and their managers in England'

- Adult safeguarding: statement of government policy[11]
- Code of Practice: Mental Capacity Act 2005[12]
- Care Act 2014 Section 42[13]
- Mental Capacity Act Section 1(2)[14]
- Mental Capacity Act Section 50[15]

105. Guidance on honour based violence, forced marriage and female genital mutilation

106. Honour based violence, forced marriage and female genital mutilation

The 4LSAB area has developed a multi-agency guidance document for agencies and organisations to use with cases or suspected cases of honour based violence in 4LSAB area. It explains how pan Hampshire agencies should respond to incidents, (crime and non-crime) where honour based violence, forced marriage and female genital mutilation may be a consideration. This is generic guidance designed to maximise agencies' responses to cases of honour based violence. The information outlines a range of possibilities and issues that need to be considered in all HBV cases. It should also be recognised that HBV occurs across a range of differing and diverse communities for a number of different reasons, and the information needs to be applied on a case by case basis.

[11] https://www.gov.uk/government/publications/adult-safeguarding-statement-of-government-policy

[12] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224660/Mental_Capacity_Act_code_of_practice.pdf

[13] http://www.legislation.gov.uk/ukpga/2014/23/section/42/enacted

[14] http://www.legislation.gov.uk/ukpga/2005/9/section/1

[15] http://www.legislation.gov.uk/ukpga/2005/9/section/50

107. Forced marriage

Forced marriage has become a criminal offence under provisions brought in under the Anti-social Behaviour, Crime and Policing Act 2014. This legislation bans:

- Marrying someone who lacks the mental capacity to consent to the marriage, regardless of whether they are pressured to do it
- Taking someone overseas to force them to marry even if the marriage does not take place
- The use of violence, threats or coercion to cause someone else to marry, or behaviour that they should reasonably believe may cause the other person to marry without free and full consent.

The offences apply if either the perpetrator or victim is in England and Wales, habitually resident there or a UK national. Forcing someone to marry is now punishable by up to seven years in prison. The breaching of forced marriage protection orders will now become a criminal offence resulting in up to five years in prison. Anyone who has been forced to marry or threatened with it can apply for a protection order as can third parties such as the police, relatives and voluntary organisations.

108. References:

New Forced Marriage Offences[16]

A Right to Choose - Forced Marriage Statutory Guidance (HM Government, 2010)[17]

Guidance on Forced Marriage of People with a Learning Disability (ADASS, 2011)[18]

Guidance on Honour Based Violence, Forced Marriage and Female Genital Mutilation[19]

109. Guidance on safeguarding in commissioned services

This guidance is designed to provide a clear framework with which to respond to safeguarding concerns occurring in regulated NHS and social care settings. This framework recognises that promoting well being and safeguarding adults against abuse and neglect is an integral part of the commissioning and contracts processes and is underpinned by the following six principles:

[16] https://www.gov.uk/government/publications/circular-0102014-new-forced-marriage-offences/circular-0102014-new-forced-marriage-offences

[17] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35532/fmu-right-to-choose.pdf

[18] http://www.hampshiresab.org.uk/wp-content/uploads/2011-ADASS-Guidance-on-Forced-Marriage-of-People-with-a-Learning-Disability.pdf

[19] https://www.iwight.com/azservices/documents/2880-Honour-Based-Violence-Forced-Marriage-and-Female-Genital-Mutilation-Guidance.pdf

Principle	Outcome Statement
Empowerment – people being supported and encouraged to make their own decisions and informed consent	"I am asked what I want as the outcomes from the safeguarding process and these directly inform what happens."
Prevention – it's better to take action before harm occurs	"I receive clear and simple information about what abuse is, how to recognise the signs and what I can do to seek help."
Proportionality – least intrusive responses appropriate to presenting risks	"I am sure that the professionals will work in my interests, as I see them and they will only get involved as much as needed."
Protection – support and representation for those in greatest need	"I get help and support to report abuse and neglect. I get help so that I am able to take part in the safeguarding process to the extent to which I want."
Partnership – local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse	"I know that staff treat any personal and sensitive information in confidence, only sharing what is helpful and necessary. I am confident that professionals will work together and with me to get the best result for me."
Accountability – accountability and transparency in delivering safeguarding	"I understand the role of everyone involved in my life and so do they."

110. Provider responsibilities

There is an expectation that commissioned and grants funded services must have in place a range of processes to enable them to meet their duty of care to safeguard their service users. In addition to providing high quality and safe care, service providers are expected to:

- Have an up to date clear internal adult safeguarding policy and procedure consistent with the local Multi Agency Safeguarding Adults Policy and ensure all staff are aware of, and can act on concerns and allegations in accordance with the policy
- Have clear care governance arrangements in place to prevent abuse or neglect
- Have robust reporting mechanisms from the point of care to the senior management/Board and from the management/Board to the point of care to proactively monitor the risk of abuse and neglect in the care setting
- Adopt robust recruitment and employment practices, with checkable references, checkable ID, and appropriate DBS checks in place at the commencement of employment

- Ensure all staff receive training on the nature of abuse and neglect, recognising the signs and how to report concerns
- Ensure all staff have training in the Mental Capacity Act, Deprivation of Liberty Safeguards, and the Prevent Agenda commensurate with their roles and responsibilities
- Have a whistle blowing policy to enable staff to raise concerns outside their own chain of line management, including outside their organisation to the Local Authority where necessary
- Have robust mechanisms for service users, relatives and visitors to raise concerns including how to make a complaint and the contact number for the local safeguarding adults team
- Ensure where necessary, all service users are supported by an advocate
- Ensure staff governed by professional regulation, understand how their professional standards and requirements underpin their organisational roles to prevent, recognise and respond to abuse and neglect
- Ensure all Job Descriptions include a clear statement on the responsibility to prevent abuse and neglect and to report concerns. This statement must be commensurate with the responsibilities of the post
- Ensure that disciplinary procedures are compatible with the responsibility to protect adults at risk of abuse or neglect
- Correct abuse or neglect in their organisation and protect the adult from further harm as soon as possible. The Local Authority must be informed as well as the CQC and also the CCG where the latter is the commissioner
- Respond to allegations of abuse, neglect or misconduct including having robust processes in place to investigate the actions of members of staff
- Lead (at the request of the Local Authority) a section 42 enquiry providing any additional support the adult may need. This may be when the safeguarding enquiry relates to the conduct or actions of a staff member
- Information relating to the action taken and what the outcome is must be made available to the Local Authority in line with s67 or s68 Care Act 2014
- Fully co-operate with section 42 safeguarding enquiries being made by or on behalf of the Local Authority and to provide access to premises, staff and service users and relatives (including people funding their own care)
- Records should also be made available any independent advocate supporting the adult
- Report allegations against staff to the Designated Safeguarding Adults Manager for their sector or the Safeguarding Adults Lead in their organisation
- Ensure that the person who is alleged to have caused harm is appropriately informed and supported during the process and that information, advice and support is provided to the adult(s) harmed or their representative.

111. Commissioner responsibilities

As part of this framework, there is an expectation that commissioners will have in place a range of processes to ensure service users receive good quality and safe care. They must assure themselves that a provider is capable and competent in responding to allegations of

abuse or neglect, including having robust processes in place to investigate the actions of members of staff.

Commissioners should encourage an open culture around safeguarding, working in partnership with providers to ensure the best outcome for the adult. Commissioners will be transparent and proportionate in any decisions and actions taken to safeguarding service users and specifically it will:

- Place service users' well-being, quality of life and safety at the centre of all commissioning activity.
- Offer regular assurance of the safety and effectiveness of the services commissioned.
- Respond promptly and robustly to concerns about possible abuse or neglect arising in regulated care and support settings, adopting a person-led and outcome-focused approach.
- Make available a continuum of responses in order to ensure responses are proportionate to the nature and level of concerns raised and that these are undertaken by the appropriate body or organisation.
- Inform providers at the onset about the nature of any concerns and share minutes of meetings as appropriate.
- Request the provider to lead a section 42 enquiry when the concern relates to the actions or conduct of staff. However, the Local Authority will have to satisfy itself that the provider's response has been sufficient to deal with the safeguarding issue and, if not, to undertake any enquiry of its own and any appropriate follow up action (e.g. referral to CQC, professional regulators).
- There may be circumstances when it is inappropriate or unsafe for the provider to lead a section 42 enquiry. For example, this could be a serious conflict of interest on the part of the employer, concerns having been raised about non-effective past enquiries or serious, multiple concerns, or a matter that requires investigation by the police.
- Work in partnership with care providers ensuring responses are proportionate and based on a clear assessment and evidence of risk.
- Focus on service development and the achievement of sustained improvement within services.
- Maintain up to date, accurate information on all safeguarding adults concerns arising in regulated care settings to ensure informed decision making and risk assessment.
- Clearly document any actions or decisions taken under safeguarding adults arrangements.
- Work in partnership across Local Authority and NHS Commissioning organisations and other funding organisations sharing relevant information as appropriate.
- Inform CQC of safeguarding activity and progress so as to inform the regulatory process
- Make decisions to suspend and/or terminate a placement(s) independently of any enforcement action CQC may be taking and/or criminal justice action that may be in progress.
- Ensuring that appropriate processes are in place to respond swiftly and appropriately in the event of a home closure.

The ADASS Out-of-Area Safeguarding Adults Arrangements - Guidance for Inter-Authority Safeguarding Adults Enquiry and Protection Arrangements published in June 2016 will be Section 3

used to determine which Local Authority should lead the safeguarding process and which clarifies respective roles and responsibilities of host and placing authorities e.g. host authorities convene and manage the overall safeguarding process whereas placing authorities undertake specific activities aimed at safeguarding the individual such as review, assessment, protection planning and monitoring of care.

As this is an overarching Framework, each commissioning organisation will develop its own business process detailing how it will implement this framework internally.

112. Responding to concerns about individuals

Concerns relating to individual service users will be assessed by the Local Authority. If there is reasonable cause to suspect that an adult may be experiencing or at risk of abuse or neglect, then it will make (or cause to be made) enquiries to determine what (if any) action needs to be taken and by whom. The adult at risk (or their representative) should be asked their views on the situation and what outcome they are seeking and should be involved as far as possible in the process.

A person who has been assessed as lacking capacity to make decisions about their care and support should be provided with an IMCA if there is no one suitable to represent and support them. A person assessed as having capacity to make decisions about their care and support may be offered the support of an independent advocate if they would experience 'substantial difficulty' in being involved in the process and where there is no other suitable person to represent and support them. It would be the responsibility of the Local Authority to arrange advocacy support even when another organisation is leading the section 42 enquiry. The outcome of the safeguarding enquiry and subsequent actions should be recorded on the client record system.

113. Responding to concerns about organisational abuse

In cases of organisational abuse and where there are systemic issues, an appropriate manager will be designated to lead the safeguarding activity and to chair safeguarding meetings. This manager will oversee the formulation and implementation of service development plans.

If care reviews are required on other service users to ascertain if they are also at risk, these should take place within the usual care management process and recorded as such. If harm or risk of harm, is indicated for any other service user during the course of these reviews, a safeguarding adults' concern should then be raised for each individual for whom this is the case.

Contracts, procurement and quality improvement representatives should be actively involved in the safeguarding activity relating to organisational abuse and attend meetings as appropriate. In some circumstances, it may be appropriate for commissioning, contract team or quality improvement teams to lead the safeguarding enquiry.

Equally, where there is evidence of systemic abuse and neglect and non compliance with regulatory standards, the CQC must be informed and requested to take action.

Where there is evidence of potential criminal offences including offences relating to willful ill-treatment or neglect, the police must be informed and requested to take action.

Willful ill-treatment or neglect of an adult with needs of care and support is an offence under a number of statutes. Where the person lacks capacity, their willful ill treatment or neglect is an offence under section 44 of the Mental Capacity Act 2005. Section 127 of the Mental Health Act 1983 Act makes it a criminal offence to ill treat or willfully neglect a person receiving treatment, subject to a guardianship order or subject to after-care under supervision for a mental disorder in hospital or mental nursing care home by staff. In 2015, the willful neglect or ill-treatment of adults in health and social care services becomes a criminal offence under the existing Criminal Justice and Courts Bill. This new offence protects adults receiving domiciliary care but not those cared for informally, such as by a friend or family member. This offence allows the prosecution of both health and social care staff and organisations.

Commissioners will maintain a record system to log all concerns and enquiries relating to the services they commission. These records will indicate whether the concerns raised were substantiated, unsubstantiated or undetermined. Upon subsequent safeguarding concerns being raised this record system will be interrogated to ascertain any history of previous concerns relating to the service in question and the outcome of these. The name of the service will be recorded instead of the service users'. The following additional information will be recorded:

- Name of the care provider
- Company name (if applicable)
- Client group served
- Type of concerns alleged
- Number of service users referred
- Number of service users reviewed
- Number of meetings and action taken.

Any repeating and/or escalating pattern of concerns within a service should trigger a review to identify any underlying issues which may be adversely impacting on the operational effectiveness of the service and the improvement actions required.

114. Process for suspending or terminating placements

Restrictions on admissions or the suspension or termination of placements are consistent with the commissioner's duty of care but a specific process should be followed to avoid or minimise the risk of litigation. This process would include making sure there is a clear evidence trail to justify the decision and ensuring that issues and concerns are compared to the requirements of the contract. Safeguarding provisions have been built into commissioning and contract requirements.

In the case of serious risk to the life, health or well being of a service user and/or severe risk immediate action should be taken as part of the coordinated safeguarding process to

protect the safety and well being of service users such as suspending new placements, removal of the alleged perpetrator, bringing in specialist staff to address issues identified and removing service users based on evidence of risk.

The safeguarding process must be formally invoked (via a section 42 enquiry), be clearly documented and the evidence trail should provide information including the following:

- The nature of any allegations and evidence of harm arising from the neglect/poor practice alleged
- Information about who is involved (adults harmed and people alleged to have caused harm), the period of time in which the harm is thought to have been occurring
- Any history of safeguarding concerns, subsequent interventions and the outcome of these
- Whether the allegations/concerns have been upheld and an assessment of these in the context of the provider's contractual requirements
- Any other action taken to rectify the situation
- An assessment of the risks posed to the service user(s) by remaining in the placement including an assessment of the broad risks to **all** service users and how this informs the purchasing decision.

The responsible manager and/or registered manager or owner of the service should be informed as soon as possible of the concerns. Initially this should be done verbally and subsequently followed up in writing (a letter should be by recorded delivery). Both communications should explain the nature of the concerns, what aspect of the contract these relate to, the action needed to rectify the situation and the timescales within which this is to be achieved. The sanctions that will be applied in the case of non compliance with the contract should also be stated.

Following the letter, the provider may be invited to attend a specific meeting for further discussion about the concerns raised and to agree an action plan with specified timescales to rectify the situation. A review date will be set at which progress can be assessed. This meeting can be part of the safeguarding planning meeting or in addition to it.

The action plan should be reviewed within a specified date to ascertain if the agreed action has been undertaken and that any risks have been eliminated, minimised and/or managed.

The above process must be clearly and properly documented so as to provide evidence that safeguarding/adult protection concerns have been formally raised with the provider and the action needed to rectify the situation requested within a reasonable timescale and as agreed in the action plan. If there is sufficient evidence of the harm/neglect/poor practice and the provider has not taken the necessary steps to rectify the concerns raised, placements can be suspended and/or terminated.

The decision to suspend and/or terminate a placement can be made independently of any enforcement action CQC may be taking and criminal justice action.

The decision to continue with a placement must be subject to a full written risk assessment and the production of a safeguarding plan detailing monitoring and review arrangements.

Existing complaints procedures and/or legal processes should be referred to by providers where there is a dispute.

Contracts and any other service specifications will reflect this framework and will include a clause stating that placements may be suspended or terminated where service users are at risk and where there is evidence that the provider has not taken the necessary action to address the situation.

If admissions are restricted or placements suspended and/or terminated, the person responsible for the contract should inform other neighbouring Local Authority and NHS commissioners. In addition, they should consider (on a case by case risk assessed basis) the need to share this information more widely, for example by informing service users, relatives, Local Authorities further a field, other organisations and the public. This is consistent with the commissioner's duty of care and the need to protect the public interest. This action will help ensure that purchasers (who may not have direct knowledge of safeguarding concerns about providers locally) can make informed purchasing decisions. Please refer to Appendix A for suggested criteria for placing cautions or suspending placements.

115. Appendix A: Suggested criteria for placing cautions or suspending placements

Cautions	Suspensions
Single issue rather than systemic	Concerns form part of a pattern of organisational abuse placing service users at significant risk
Not part of an apparent pattern of abuse	Section 42 enquiry relating to an individual service user identifies serious concerns for others
No previous history of similar incidents recorded for the service provider	Serious harm, injury or fatality involved
Concerns have occurred in the past, but at lengthy and infrequent intervals	Deliberate intent to exploit/harm indicated
Police investigation to establish if a crime has been committed	Criminal offences may have been committed
No clear criminal offence described in the safeguarding concern	Care/clinical/nursing standards fall well below accepted standards placing service users at significant risk

No indication of on-going risk to the adult or other service users	Significant breach of an implied or actual 'duty of care'
Provider co-operative and willing to engage	Systemic and on-going poor management of service placing service users at significant risk
Incident being managed appropriately by the service provider	Inability of provider to sustain improvements
Limited involvement with the safeguarding process	Inability or unwillingness of provider to engage in the safeguarding process

116. Multi-Agency Risk Management Framework

1. Introduction

This guidance has been developed in partnership with the four Safeguarding Adult Boards in Hampshire and Isle of Wight and respective partner organisations. It sits alongside the Hampshire 4LSAB Multi -Agency Safeguarding Policy and Guidance (2015) and designed to provide guidance on managing cases relating to adults where there is a high level of risk but the circumstances may sit outside the statutory adult safeguarding framework but for which a multi-agency approach would be beneficial.

This guidance should be read in conjunction with the Hampshire 4LSAB Multi -Agency Safeguarding Policy and Guidance (www.hampshiresab.org.uk) and the 4LSAB related guidance Information Sharing and Prevention and Early Intervention. The guidance does not replace single agency risk management arrangements and instead seeks to build on and complement these by providing a multi-agency dimension. Professionals must also refer to relevant statutory frameworks and operational policies (such as the Care Programme Approach) which they are required to follow. It is intended as an overarching framework and so it is the responsibility of respective organisations to develop more detailed work place guidance around its implementation.

This guidance is likely to be useful to any professional who is working with adults experiencing an unmanageable level of risk as a result of circumstances which create the risk of harm but not relating to abuse or neglect by a third party such as:

a) Vulnerability factors placing them at a higher risk of abuse or neglect including mate crime, network abuse, etc.;
b) Self neglect including hoarding and fire safety;
c) Refusal or disengagement from care and support services;
d) Complex or diverse needs which either fall between, or span a number of agencies' statutory responsibilities or eligibility criteria;
e) On-going needs or behaviour leading to lifestyle choices placing the adult and/or others at significant risk;
f) Complex needs and behaviours leading the adult to cause harm to others;
g) 'Toxic Trio' of domestic violence, mental health and substance misuse and
h) Risks previously addressed via a section 42 enquiry but for which the need for on-going risk management and monitoring has been identified.

This guidance recognises that in complex cases, professionals are often dealing with long term and entrenched behaviours to which responses require a commitment to a longer term, solution-based approach which has at its core, a focus on building trust and a rapport with the adult. The guidance aims to provide an effective, coordinated and multi-agency response to these 'critical few' cases in order to facilitate:

- Timely information sharing around risk;
- Identification and holistic assessment of risk;
- Development of shared risk management plans;
- Shared decision making and responsibility;
- The adult's involvement and engagement in the process
- Improved outcomes for the adult at risk.

This guidance should be viewed and applied in the context of the general provisions of the Care Act 2014 which are intended to promote and secure wellbeing. The statutory guidance to the Care Act 2014 states that agencies should implement robust risk management processes in order to prevent concerns escalating to a crisis point requiring action under local safeguarding arrangements.

Partner organisations should ensure that they have the mechanisms in place to enable early identification and assessment of risk through timely information sharing and targeted multi-agency intervention. Multi-Agency Safeguarding Hubs may be one model to support this approach but they are not the only one. Individual organisations' policies and strategies for adult safeguarding should include measures to minimise the circumstances of risk including isolation, which can make adults vulnerable to harm.

2. Underpinning Principles

The following principles should be applied and integrated into risk management policy and practice across all organisations:

- All professionals and other staff have a vital role to play to make early, positive interventions with individuals and families so as to make a difference to their lives, preventing the deterioration of a situation or breakdown of a vital support network.
- All agencies - and the individuals employed within these - should work together to achieve the best outcome for the service user, whilst satisfying legal, professional and organisational responsibilities and duties.
- The support offered or provided under this Framework will form part of the organisation's 'business as usual' process.
- Partner organisations should ensure that they have in place mechanisms that enable early identification and assessment of risk through timely information sharing and targeted multi-agency intervention.
- Where there is risk of harm, appropriate action within an appropriate timescale must be taken. This framework adopts the principle of 'NO DELAY' so that the response is made in a timely fashion with due consideration to the level of presenting risk. In practice, this means that the pace of the process is determined by presenting circumstances and professional judgments about risk.
- Timescales adopted will be based on judgements about a range of factors such as risk level, complexity of the case or to work in a way that is consistent with the needs and wishes of the adult.
- All professionals should be aware of the rights of individuals in law and of the duties, powers and responsibilities of local authorities, health, housing, police as well as other agencies.
- Any agency or professional can initiate a multi-agency risk management meeting. However, a responsible manager from that organisation should be involved in the decision making process.
- Responses should be person centred and designed around the needs and wishes of the adult who will be actively encouraged to engage and participate in the management of the risks they are experiencing in their day to day life.
- Responses must reflect the five key principles of the Mental Capacity Act 2005 in which the adult is assumed to have capacity and, therefore, be able to make their own decisions (even unwise ones).
- Consideration of mental capacity should be made regularly throughout the process. Where a person is found to lack capacity in any area of decision-making, a best interest decision will be made and this must take into account the adult's views and wishes in accordance with the MCA Code of Practice.

- It is vital that the adult has as much control and choice as possible, and that process is guided by their needs and circumstances. Personalised information, advice, support and good advocacy are essential components to this.
- Having access to information and advice will assist the adult to make informed choices about support and will help him/her to weigh up the benefits and consequences of different options. Information and advice can enable the person to keep themselves safe in the first place by helping him/her understand their situation and what is needed to keep him or herself safe now and in the future.
- Professionals should aim to involve (with the consent of the adult) relatives and informal carers, friends, etc. as much as possible in the process as a means of building and/or strengthening the adult's support network.
- Professionals should adopt a flexible, innovative and solution focused approach to mitigating risk. This may involve trying out new ways of working or retrying previous ideas.
- Each agency involved in this process must allocate a lead worker to agree actions and make operational decisions about this case. The multi-agency forum must also identify someone to act as the lead coordinating professional for the process.
- Effective risk management is underpinned by clear, timely information sharing within and across organisations.
- The multi-agency risk management plan must be proportionate and focussed on the prevention, reduction or elimination of future risk of harm. This plan will be jointly owned by the adult and the professionals working with them.
- Professionals will be responsible for recognising, assessing, and recording areas of risk and actively responding to the identified risks. This includes the on-going monitoring and review of all risks.
- Professionals should seek legal advice from within their own at various stages throughout process from within their organisation as appropriate.
- All decisions and actions taken throughout the process must be accurately recorded, and a note made of all those involved in the decision making process and the rationale for the decision made. This is to support defensible decision making, a guide to which is outlined in section six.

3. Overview of the Multi-Agency Risk Management Process

A failure to engage with people who are not looking after themselves, whether the have mental capacity or not, can have serious implications for their health and well being as well as for the people involved in their care and support. An adult will be considered to be 'at risk' under this framework where s/he is unable or unwilling to provide adequate care for him/herself and:

- Is unable to obtain necessary care to meet their needs; and/or

- Is unable to make reasonable or informed decisions because of their state of mental health or because they have a learning disability or an acquired brain injury; and/or
- Is unable to protect themselves adequately against potential exploitation or abuse; and/or
- Has refused essential services without which their health and safety needs cannot be met but do not have the insight to recognise this.

The nature of any involvement centres on whether the adult concerned has the mental capacity to make decisions that have legal force. A person may have mental capacity and yet disagree with the views of the professional. This right is a right that cannot be taken away from a person who has mental capacity. It does not preclude the professional from entering into a dialogue with the person in order to explore the area of concern.

Involvement and the offer of support does not hinge on a request by the adult or anybody else and is not negated by a third party's refusal to grant access to the adult, or by the adult's refusal to participate.

It is important that the rights of the adult to make apparently unwise lifestyle choices and to refuse support are respected. However, consideration of the person's mental capacity (decisional and executive) to make a decision must be taken into account as well as their ability to understand and to manage in practice any risks and safety implications of the choice or decision being made.

Mental Capacity Act and Best Interests

When someone is believed to be lacking mental capacity to make decisions for him/herself staff should always consider:

- Is there a need to formally assess and record that the person who is believed to be lacking mental capacity - to make a specific decision - is in fact mentally incapable of making that decision?
- Is it likely that the person may regain mental capacity in the future and therefore should be involved and can make that decision for him/herself in the future?
- The wishes, feelings, values and beliefs of the person who has been assessed as lacking mental capacity.
- The views of family members, parents, carers and other people interested in the welfare, if this is practical and appropriate, of the person who has been assessed as lacking mental capacity.
- The views of any person who holds a valid Enduring Power of Attorney or a Lasting Power of Attorney (finance and/or welfare) made by the adult now lacking capacity (the Office of the Public Guardian can advise if a power of attorney is valid.)
- The views of any deputy appointed by the Court of Protection to make decisions on the person's behalf.

- Whether any decisions that need to be made have in fact already been made based merely on the appearance, age, medical condition or behaviour of the person who has been assessed as lacking mental capacity.
- Whether people are being motivated by a desire to bring about the death of the person who has been assessed as lacking mental capacity, or are making assumptions about the quality of that person's life.
- Any other information that may be relevant.

This Framework promotes an active rather than a passive approach to supporting an adult whose circumstances place them at risk. However, information and advice about how to minimise risk should be given to the individual who, with capacity, has refused to accept support together with information about how they can access reassessment in the future should they change their minds. It is important that decisions (either by the adult or the agency) are kept under constant review and re-evaluated as circumstances change or new information becomes available.

4. Identification and assessment of risk

Effective joint working to identify and assess risk

Where a person with needs of care and/or support is refusing support and in so doing so is placing him/herself or others at risk of harm, advice and information should be shared with the adult about the risk(s) of non intervention or intervention. Each agency involved with the adult should, as part of usual case management arrangements maintain a chronology of key events and complete and document their internal risk assessment and management plan.

Professional judgement will determine whether or not the level of risk has reached an unmanageable level for the organisation. Where this is the case, a multi-agency risk management process should be set in motion. Any agency can initiate this process and in doing so, it becomes the lead coordinating agency with responsibility for convening and chairing the initial meeting.

The purpose of the multi-agency risk management process is to ensure timely information sharing between agencies, to gain a holistic (multi-agency) overview of presenting risks and to develop a shared risk management plan. Decisions should be recorded and continually reviewed throughout the process.

The multi-agency risk assessment should consider the following aspects of the situation:

Risk Assessment

- Observation of the home situation and environmental factors
- Engagement in activities of daily living
- Functional and cognitive abilities of the person

- Underlying medical conditions
- Underlying mental health conditions or substance misuse issues
- Internal or external factors hindering the adult's implementation of decisions
- Domiciliary care and other services offered/in place
- Engagement in care and support plans
- Family and social support networks Environmental health monitoring
- Neighbourhood visiting by voluntary organisations
- Money management and budgeting.
- Impact of the situation on the individual.
- Public safety and risks to others.

This risk assessment may highlight circumstances or risks which would be more appropriately dealt with under another process such as the Care Programme Approach, Multi-Agency Risk Assessment Conference, Channel Panel, children's safeguarding, a 'Think Family' initiative or a s42 enquiry under adult safeguarding arrangements.

5. Support and management

Building trust and a positive relationship with the adult

The adult should, as far as possible, be included and involved in the assessment process and in developing a risk management plan to reduce or eliminate identified risks. Under normal circumstances, the person should be invited to attend any meetings with them being offered any support needed to enable them to participate fully. This support may also include offering and arranging an advocate if the adult is likely to experience substantial difficulty in participating in the meetings.

Where the adult continues to refuse all assistance and they have been assessed as having the mental capacity to understand the consequences of such actions, this should be fully recorded. This should also include a record of the efforts and actions taken by all agencies involved to provide support.

A capacity assessment should be carried out if appropriate, to determine if the person has the capacity to make specific decisions. Where a person is unable to agree to have their needs met because they lack the mental capacity to make this decision, then the 'best interest' decision making process should be used.

If the multi-agency risk management process has not been able to mitigate the risk of any behaviour which could result in harm, the professionals involved should consider notifying the relevant authority with safeguarding responsibilities (the local authority) of the steps taken (assuming the multi-agency lead has received consent to share personal information or deems it is necessary due to the exemptions in the Data Protection Act 1998). The local authority should then assess the circumstances of the case as well as the steps already taken to minimise presenting risks in order to determine what if any, further steps are required in accordance with the duty under section 42 of the care Act 2014 to undertake a

safeguarding enquiry. If further steps are deemed necessary then these might be undertaken in the context of a statutory safeguarding enquiry process but not necessarily.

In cases of self neglect, it is important to note that this does not necessarily prompt a s42 enquiry and decisions should be made on a case by case basis and will depend on the adult's ability to protect themselves by controlling their own behaviour. There may come a point when they are no longer able to do this, without external support. This process will not affect an individual's human rights but it will ensure that respective partner agencies exercise their duty of care in a robust manner as far as is reasonable.

Effective risk assessment will be based on:

- An up to date chronology (e.g. events and other factors which have increased risks)
- A clear analysis of risks to the adult, others people and the wider public
- Analysis of the benefits and risks of both intervention and non-intervention
- Activity linked to care and support plans
- A multi-agency approach and involvement of a wide range of appropriate professionals
- Active participation of the adult and a focus on building their networks of support
- Risk taking and risk management decisions being continually reviewed throughout
- Clear monitoring and review arrangements
- Regular review of the plan
- Effective management oversight, support and supervision
- Clear and accurate recording of decisions, actions and the rationale for these

6. Stages of the process

This section explains the various stages of the multi-agency risk management process.

a) Stage 1 - concern raised:

Key actions:

- Discussion with the person raising the concern.
- Discussion with the person about whom concerns have been raised.
- Ascertain what (if any) care and support the person is receiving from what agency.
- Ascertain whether any children or other vulnerable adults are at risk.
- Consider the mental capacity of the person (decisional and executive)
- If appropriate, carry out a capacity assessment on the specific issue.
- Consider whether referral to another process would be more appropriate.
- Consider whether the circumstances of the case engage the s42 enquiry duty.
- If no to the above, the responsible manager should convene a multi-agency meeting.
- Allocate the case to a lead professional.
- Lead professional compiles a chronology of risk and support offered/in place to date.
- Contact involved agencies (or agencies who may have a potential future role).

- Set up a multi-agency risk planning meeting.
- Attendees should be able to make decisions and commit resources for their agency.
- Each agency to be asked to identify a lead professional.
- Consider how the adult will be involved and if advocacy support is needed.
- Meeting to be chaired by the initiating organisation manager.

b) Stage 2 - multi-agency risk management planning meeting:

(The purpose of the meeting will be to consider the situation and clarify whether any further action can be taken, making the necessary recommendations)

Key actions:

- Provide a summary of any care and support offered or in place.
- Outline of the nature of the concerns and risks to the adult and others.
- Consideration of the adult's mental capacity.
- Produce a collaborative and holistic assessment of the risks.
- Identify any legal powers and remedies potentially available.
- Agree who will act as lead coordinating professional for the process.
- Agree information sharing arrangements.
- Agree a contingency and an escalation plan.
- Identify who is best placed to engage with the adult at risk.
- Consider how the adult will be involved and kept up to date.
- Agree who and how to engage with the adult and relationship building.
- Agree a SMART action plan, with timescales a named lead against each action.
- Set date for Review Meeting.
- Ensure the adult is given a copy of the risk assessment.

c) Stage 3 – review meetings

Key actions:

- Involve the adult (and others such as their advocate or members of their social/carer network)
- Update the risk assessment
- Update the escalation and contingency plan.
- Agencies share any new information.
- Consider mental capacity.
- Review multi-agency action plan.
- If insufficient progress has been made, consider an alternative approach.
- Other flexible, creative solutions may need to be explored.
- Revise action plan.
- Agree on-going monitoring and review arrangements.

The multi-agency monitoring and review process will continue until the identified risks are either resolved or managed to an acceptable level. It is important that consideration is given to the support needed by the adult to ensure their well-being and safety is maintained. Any on-going support should be clearly identified and agreed by relevant agencies before being referred back into the relevant case management process for on-going work.

The following table provides guidance on recording and defensible decision making. Practitioners should ensure that their recording in individual cases not only reflects the good practice highlighted below but also relevant legal, professional and organizational requirements and standards:

A defensible decision is one where:

- All reasonable steps have been taken to avoid harm.
- Reliable assessment methods have been used.
- Information has been collected and thoroughly evaluated.
- Decisions are recorded and subsequently carried out.
- Policies and procedures have been followed.
- Practitioners and their managers adopt an investigative approach and are proactive.

Decisions are defensible if they address the points above, and:

- Are a contemporaneous record maintained in a legible and approved system and format.
- Specify the rationale behind the decision in relation to the circumstances.
- Include references to relevant legislation and guidance.
- Are retained with other records about the individual (or organisation).
- Are 'signed' and dated by the person making the record.

Appendix A: Summary of key actions at each stage of the multi-agency risk management process

This process recognises that in complex cases, professionals are often dealing with long term and entrenched behaviours to which responses require a commitment to a longer term, solution-based approach which has at its core, a focus on building trust and a rapport with the adult. The guidance aims to provide an effective, coordinated and multi-agency response to these 'critical few' cases in order to facilitate:

- Timely information sharing around risk;
- Identification and holistic assessment of risk;
- Development of shared risk management plans;
- Shared decision making and responsibility;
- The adult's involvement and engagement in the process
- Improved outcomes for the adult at risk.

Stage 1 - concern raised:

Key actions:

- Discussion with the person raising the concern.
- Discussion with the person about whom concerns have been raised.
- Ascertain what (if any) care and support the person is in receipt of.
- Ascertain if any children or other vulnerable adults are at risk.
- Consider the mental capacity of the person (decisional and executive)
- If appropriate, carry out a capacity assessment on the specific issue.
- Consider if referral to another process would be more appropriate.
- Consider if the circumstances of the case engage the s42 enquiry duty.
- If no, the responsible manager should convene a multi-agency meeting.
- Allocate the case to a lead professional.- compiles a chronology
- Contact involved agencies and those who may need to have a future role
- Set up a multi-agency risk planning meeting.
- Attendees to be able to make decisions and commit resources for their agency.
- Each agency to be asked to identify a lead professional.
- Consider how the adult will be involved and if advocacy support is needed.
- Meeting to be chaired by the initiating organisation manager.

Stage 2 - multi-agency risk management planning meeting:

(The purpose of the meeting will be to consider the situation and clarify whether any further action can be taken, making the necessary recommendations)

Key actions:

- Provide a summary of any care and support offered or in place.
- Outline of the nature of the concerns and risks to the adult and others.
- Consideration of the adult's mental capacity.
- Produce a collaborative and holistic assessment of the risks.
- Identify any legal powers and remedies potentially available.
- Agree who will act as lead coordinating professional for the process.
- Agree information sharing arrangements.
- Agree a contingency and an escalation plan.
- Identify who is best placed to engage with the adult at risk.
- Consider how the adult will be involved and kept up to date.
- Agree who and how to engage with the adult and relationship building.
- Agree a SMART action plan, with timescales a named lead against each action.
- Set date for the review meeting.
- Ensure the adult is given a copy of the risk assessment.

Stage 3 – review meetings

Key actions:

- Involve the adult and others e.g. advocate or people in the social/carer network.
- Update the risk assessment.
- Update the escalation and contingency plan.
- Agencies share any new information.
- Consider mental capacity.
- Review multi-agency action plan.
- If insufficient progress has been made, consider an alternative approach.
- Other flexible, creative solutions may need to be explored.
- Revise action plan.
- Agree on-going monitoring and review arrangements.

Appendix B: Legal and Policy Context

Legislation

a) **Care Act 2014**

Section 1 – Wellbeing and prevention
Section 6 – Carers
Section 9 - Assessment
Section 42 – Safeguarding enquiry (neglect, abuse and self- neglect)

b) **Public Health Act 1936** allows District/Borough Councils to give notice to owners or occupiers of premises if those premises are *"in such a filthy or unwholesome condition as to be prejudicial to health".* The notice can require the owner or occupier to clean the premises. If they do not, the District/Borough Council can arrange to carry out the works themselves.

c) **Health Services and Public Health Act 1968** – including S.45: Duty to make arrangements for promoting the welfare of old people.

d) **Health and Social Care Act 2008** introduced a new single regulatory framework for health and social care**.** The registered person - usually the owner or manager - has a duty to inform the registration authority within 24 hours of any event that threatens the well-being of any resident (Regulation 18 notification). The registration authority is the Care Quality Commission.

e) **Mental Health Act 1983** (revised and extended in 2007) provides a comprehensive legislative framework to support the needs of both children and adults. It is based on the presumption that the right of people who have been assessed as having a 'disorder or disability of mind or brain' is safeguarded when they are being admitted to or treated within a psychiatric hospital. In addition, as much care and treatment as possible, both in hospital and outside, should be given on an informal basis – where the individual patient is able to exercise their own judgement in the matter (with certain additional safeguards in place for children and young people) - and in the least restrictive conditions possible. The Act also presumes that the main emphasis of care is care within local communities, not within hospital settings. S.135 specifically provides the authority to seek a warrant authorising a police officer to enter premises if it is believed that someone suffering from mental disorder is *being ill-treated or neglected or kept otherwise than under proper control* anywhere within the jurisdiction of the Court or, *being unable to care for himself, is living alone in any such place*. Mental Health Act 1983 (revised 2007)

f) **Mental Capacity Act 2005** became operational during 2007. Underpinning the Act are five statutory principles, the most important of which centre on the presumption of capacity unless proven otherwise, and the requirement to enable mentally capable individuals (aged 16+) to make decisions for themselves, even where those decisions may be at variance with what other people and organisations feel would be best. The MCA also provides a statutory framework to enable social care (and allied disciplines) to intervene in the lives of a person (aged 16+) where it can be demonstrated that, in relation to a specific decision that needs to be taken, the person lacks mental capacity to make that decision and therefore a decision needs to be made by a third party in the person's best interests. From April 2009, the Mental Capacity Act 2005 has made it unlawful to deprive of his/her liberty any adult person lacking mental capacity who is living in a care home or staying in a hospital. This can only be lawful if a Deprivation of Liberty Standard Authorisation is in place or a decision has been made to this effect by the Court of Protection.

Statutory Guidance:

Care Act 2014 - Statutory Guidance

Mental Capacity Act Code of Practice 2007

Hampshire and Isle of Wight Policies and Guidance:

Hampshire 4LSAB Multi-Agency Safeguarding Adults Policy and Guidance (2015)

Hampshire 4LSAB Information Sharing Guidance for Adult Safeguarding (2015)

Hampshire 4LSAB Guidance on Prevention and Early Intervention in Safeguarding (2015)

Appendix C: Example of a process for managing high risk cases

Area	Key actions	Outcomes
a) High risk cases	To produce a team 'risk register' reflecting all high risk cases. • All cases on the Register must be allocated to a named professional. • A flag must be added on to the client record system file to reflect high risk status. • The Register will be available to duty officers to assist in triaging calls. • The duty officer will alert the named professional of any contact from or about a person on the Register. • The Register will be reviewed and updated on a weekly basis. • If a person is removed from the Register, the manager will ensure that the flag is taken off the client record system. • The Register will be revised to indicate if there is an active multi- agency risk management process or another process such as a s 42 enquiry, MARAC, Channel Panel, etc. • Supervisors will review (with the relevant lead professional) all cases which are on the register. • The following criteria will be used to determine high risk cases:	Active case load focuses on the "critical few". Complex, high risk cases are managed effectively.

Area	Actions	Outcomes
	• Vulnerability factors placing them at a higher risk of abuse or neglect including mate crime, network abuse, etc.; • Self neglect including hoarding and fire safety; • Refusal or disengagement from care and support services; • Complex or diverse needs which either fall between, or span a number of agencies' statutory responsibilities or eligibility criteria; • On-going needs or behaviour leading to lifestyle choices placing the adult and/or others at significant risk; • Complex needs and behaviours leading the adult to cause harm to others and • Risks previously addressed via a s42 enquiry but for which the need for on-going risk management and monitoring has been identified. • 'Toxic Trio' of domestic violence, mental health and substance misuse.	

Area	Actions	Outcomes
Managing refusal or disengagement from support	Agree process for responding to non delivery of support e.g.: • *Allocation* • *Review of support needs* • *Capacity assessment on specific areas of decision-making* • *Monitor delivery of support* • *Agree a reporting and escalation protocol with care provider*. Agree thresholds at which the provider must inform the lead coordinating professional of undelivered 1 to 1 support and a trigger point for a review. Agree a standard regarding frequency of the provider's review of individual support plans (to be included in contracts) – monthly. Refer to Multi-Agency Risk Management Practice Guidance if concerns escalate. Agree criteria for referring the case for a s42 enquiry.	Prevention and early intervention re service users who have disengaged form support. Improved risk management of these clients. Timely reviews of support needs and adjustments as necessary to support plans.

117. Guidance on responding to self neglect and persistent welfare concerns

Recognising risk of abuse and neglect is an essential component of the safeguarding duty, but so to is ensuring an effective response that manages that risk in a manner that respects an adult's personal dignity, physical, mental and emotional wellbeing and the control they wish to exert over their own lives. Failure to do so can alienate the adult at risk and unwittingly increase the risk of harm if the adult then withdraws from necessary support.

When an adult with needs for care and support appears to be at risk of self neglect, is refusing care and support despite persistent welfare concerns or whose self-neglecting behaviours pose a risk to others it can be difficult for practitioners or concerned carers, friends/family members to understand how various legal powers and duties should be applied to find an appropriate solution.

The purpose of this guidance is to support practitioners, adults and their carers/family members to identify when to raise concerns regarding poor self care or lack of care for living conditions, set out what they may expect by way of a response and support defensible decision making in accordance with our duty of care. The multi-agency Risk Management Framework included in this policy provides an effective tool for responding to cases of self neglect and persistent welfare concerns.

118. What is self neglect?

The Care Act Guidance advises that 'self neglect' covers a wide range of behaviour including neglecting to care for one's personal hygiene, health or surroundings and includes behaviour such as hoarding. Research literature states the term 'self-neglect' is commonly used to refer to:

- Lack of self-care: in personal hygiene, in adhering to daily needs, in refusal of essential care or necessary medical treatment
- Lack of care of the living environment: hoarding, squalor and infestation

These definitions are a useful starting point, but interpretation needs to guard against an assessor's subjective and value-based interpretations. The 4 LSAB therefore recommends agencies consider the following aspects in relation to self-neglect:

- lack of care for self to an extent it threatens personal health and safety
- neglecting to care for personal hygiene, health or surroundings such that it has significant impact on the person's wellbeing or creates a public health hazard
- inability to avoid harm to self
- failure to seek help or access services to meet necessary health or social care needs

The LSAB requires agencies to think of these issues in a broad context – not just in terms of obvious manifestations such as hoarding. Other areas to consider would include; substance misuse issues, individuals with diagnosis of high functioning Autistic Spectrum Disorder who may have difficulties that bring them into frequent contact with services, prostitution wherein there may be situational incapacity or exploitation, people subject to frequent 'Missing Persons Alerts' wherein they may be putting themselves at risk of sexual exploitation or other significant harm, people with significant mobility issues who are not taking action to protect themselves from fire risk, those who are non concordant with medication, whom are Bariatric patients or whom as a result of vulnerabilities linked to their care and support needs are putting themselves at repeated high risk of significant harm.

LSAB promotes early intervention as the most effective means to manage cases where self-neglect is suspected or there are concerns regarding a vulnerable person's disengagement despite persistent welfare concerns. Experience has demonstrated that delaying intervention under a person's circumstances have become severe is costly, both in terms of the person's wellbeing and public resources.

It should be noted that self–neglect may not prompt a section 42 enquiry. A judgement should be made on a case by case basis. A decision on whether to respond is required under safeguarding will depend on the adult's ability to protect themselves by controlling their own behaviour. There may come a point when they are unable to do this without eternal support. The multi-agency Risk Management Framework included in section 3 of this Safeguarding Policy and Guidance provides an effective tool for responding to cases of self neglect and persistent welfare concerns where a section 42 enquiry is not being undertaken.

People working in LSAB partner agencies therefore have a vital role in the early recognition and prevention of self neglect and have a responsibility to recognise and act upon the risk factors associated with self neglect. This includes undertaking sufficiently robust initial enquiries to identify the type and level of risk to ascertain an appropriate response according to the attached toolkit.

An initial response should take into account the underlying MSP principles, but it should be understood that it is not necessary to obtain consent to share information or conduct enquiries where there is a significant risk of harm or where the behaviours pose a risk of harm to others. This is explored in more detail later.

119. Assessment of risks associated with self neglect and persistent welfare concerns

Working together to effectively assess the needs of people at risk of self-neglect or with persistent welfare concerns.

The LSAB promotes the use of a 'Social Psychological Model' to assess and intervene in cases of self-neglect and persistent welfare concerns. This model recognizes the interplay of a variety of physical, mental, social, personal and environmental factors – both internal and external. This model highlights a variety of important factors for consideration:

- underlying mental disorder, trauma response and/or neuropsychological impairment
- diminishing social networks and/or economic resource
- physical and nutritional deterioration
- personal philosophy and identify

Where a person with needs of care and support is self neglecting and/or refusing services and in so doing

placing themselves or others at risk of significant harm, a multi-disciplinary approach may be the most effective in gathering information regarding the extent of the risk and identifying an appropriate person or agency to take the lead in coordinating a person centred, outcome focused response.

The 4 LSAB recommend the use of the attached threshold toolkit to identify poor self care and determine the appropriate response. This incorporates HFRS's flags which highlight serious risk in respect of home fires and includes the Clutter Image rating tool to assist practitioners objectively assess the impact of living conditions. Practitioners from across the partnership agencies are expected to complete this tool in order to assist them to determine the most effective pathway for support, but the LSAB would also invite non-statutory agencies, carers, family or friends to use the tool where they have concerns.

Pathways for support may vary across the pan Hampshire areas, this toolkit has been designed to support robust risk analysis and takes into account concerns that could trigger a response in line with various agencies' statutory or contractual duties. It is important therefore that all sections are completed and that those making the referral use the comments section to explain what evidence they have to justify the level of concern.

If, following completion of the threshold toolkit, a practitioner believes further work should be undertaken either to prevent needs for care and support escalating, in line with duties under s2 Care Act 2014 or to address a moderate risk they may wish to work with the adult to complete a comprehensive assessment form. This comprehensive assessment form must be completed In all cases where the needs are identified as high.

The risk assessment gives consideration to the following aspects of the person's life:

- Presentations of self-neglect and Observation of home situation
- The individual's perception of their situation
- Engagement in activities of daily living
- Functional and cognitive abilities of the person
- Family and social support networks, including support by voluntary organisations
- Underlying medical conditions
- Underlying mental health conditions or substance misuse issues

The assessment should also consider

- Environmental factors
- Domiciliary care and other services offered/in place and whether living conditions are preventing necessary care being provided
- Environmental health monitoring
- Money management and budgeting.

120. Intervention and management

Research has confirmed that the most important factor in securing successful outcomes from interventions is for practitioners to build a positive relationship with people. The focus should be on assisting them achieve outcomes that matter to them and promote their wellbeing within a jointly acceptable timeframe.

In line with 'Making Safeguarding Personal' principles of good practice the person should, as far as possible, be included and involved in the assessment process and in developing a plan to reduce or

eliminate identified risks. The person should be invited to attend any meetings and comment on any findings or proposed actions.

The Care Act guidance [pg.14.14] advises a 'broad community approach' to safeguarding responsibilities so it is vital that statutory bodies understand the full extent of statutory powers for intervention when living conditions pose risk to an adult at risk or others. A list of relevant statutory and common law provision is set out below, together with links to relevant statutory guidance and Codes of Practice practitioners and carers will be required to follow.

It is also important, however, to note that some agencies may have statutory duties to intervene which are not dependent on the characteristics of the adult at risk. They may also have wider powers and duties to support information gathering. Practitioners should also refer to the guidance on gaining access to an adult suspected to be at risk of neglect and abuse (at section 72) for support in relevant cases.

121. Key Agencies and their role

Local Safeguarding Adults Boards

The Care Act 2014 established Local Safeguarding Adults Boards as a forum where key leaders from the criminal justice, health and care system work together to improve the health and wellbeing of their local population. As such they will have strategic oversight of this guidance and monitor its successful implementation.

Public Health and Environmental Health Service ['EHS']

Currently this agency has a range of powers to intervene where a property is in a condition that is prejudicial to health, these powers do not rely on a presumption that the individual affected by such intervention lacks capacity. Under s31of the Public Health Act 1984 a local authority has the power to cleanse premises, and if the occupier fails to comply or is incapable of doing it themselves, take the necessary action and charge.Section.32 permits the entry and removal of a person from the property to enable action under s31. The Environmental Protection Act 1990 provides powers of entry to inspect premises and serve improvement or prohibition notices where there is a hazard.
It is anticipated that EHS will have a crucial role under the protocol as a frontline agency in raising concerns and early identification of such cases. In addition, where properties are verminous or pose a statutory nuisance, EHS will take a leading role in case managing the necessary investigations and determining the most effective means of intervention.

However, where the individual residing in conditions that pose a threat only to their own welfare the powers available to the EHS may have limited or no effect. In cases involving persistent hoarders the powers may only temporarily address and/or contain the problem.

Landlords

Landlord's, including in the private sector, have an obligation to ensure that their properties are in a good state of repair and are fit for human habitation. Where the tenant is responsible for the disrepair the landlord has a right of action, including ultimately seeking possessions of the premises. The role of the landlord and powers afforded to them suggests they have a key role in raising concerns to the statutory authorities to particular cases and that consideration should always be given to their inclusion within protection planning discussions.

Housing Department
Under Part 1 of the Housing Act 2004 the Housing department have powers to take enforcement action where there is any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise) and can require access to residential premises in their district to assess if such a hazard exists. The duty to inspect the property is restricted to where there is an official complaint made by either a Justice of the peace or parish council. However, where there is evidence that there is imminent risk of serious harm to the health and safety of the occupier the local authority has emergency powers to serve a Remedial Action notice or an emergency probation notice prohibiting the use of the property. Further there are powers to serve a deferred action notice and take emergency remedial action. There is no requirement that the property is owned by the local authority, nor is the capacity of the inhabitant relevant to the exercise of those powers. But similarly the use of these powers in isolation will have limited effect on those who have persistent behaviours.

Local Authority Housing Department will be key partners, where an adult is at risk of homelessness as a result of self-neglect or hoarding behaviour, the housing department will offer pro-active advice and assistance to individuals and practitioners involved in their care to minimise any risk of homelessness. Early involvement from this team, particularly when considering alternative temporary or permanent accommodation options, is therefore essential.

Adult Social Care Department
In many cases an assessment of the person's needs for care and support (s9-10 Care Act) or more detailed consideration of their ability to protect themselves from risk (under MCA and/or s42 Care Act) procedures will be the best route to provide an appropriate intervention in situations of hoarding or self-neglect.

Under this protocol where an individual is already in receipt of ASC, known to the service or appears eligible for ASC support the relevant team manager will initiate the first strategy discussion and will ensure an allocated social worker is assigned to complete necessary assessments, including of the individual's capacity and social care needs. The allocated worker will then lead the strategy meeting and act as lead in coordinating any plan for intervention.

Mental Health Services
Aside from the role as lead agency where the individual is eligible or believed to be eligible for services from secondary mental health service the mental health team will have a crucial role within any investigation under this protocol, not least because, for many individuals, hoarding or self-neglect are the manifestations of an underlying mental health condition. Powers conferred by the Mental Health Act 1983 ['MHA'] to Approved Mental Health Professionals (AMHP) afford this team opportunity to take such steps as they consider reasonably necessary and proportionate to protect a person from the immediate risk of significant harm.

Section 115 MHA confer powers of entry and inspection, whether there is approved mental health on a particular person, the council may at all reasonable times enter and inspect any premises other than a hospital in which a mentally disordered patient is living, where the assessor has reasonable cause to believe that the patient is not under proper care. It must be recognised that this power is reliant on the

reasonable suspicion that the individual is suffering from a mental illness. If there is no such suspicion this power is not available. Similarly, where an AMHP believes a person is suffering from a mental disorder is unable to care for himself and living alone (or otherwise being ill-treated or neglected) the AMHP can apply for a warrant under s135 MHA to enter a property, using force if necessary, to remove a patient for treatment or care. Individuals acting under powers conferred by the Act benefit from immunity under s129 MHA, whereas those seeking to obstruct the inspection of premises or the exercise of functions under the act are guilty of an offence under s.129 MHA, but it must be noted that this would only assist where a third party sought to obstruct an assessment.

Further the powers available under the MHA to detain an individual for compulsory treatment are limited in cases of hoarding because expert opinion believes the most effective treatment is that which is provided consensually. However, it may be useful in cases of self-neglect or where it is required to treat the manifestations or symptoms of hoarding.

Finally Mental Health services may also be included within strategy discussions/ meetings to advise on access to secondary psychological treatment options and to secure access for the individual.

Police

As with AMHPs the Police have powers of entry and so may prove pivotal in gaining access to conduct assessments if all else fails for persistent cases. Under Section 17 (1) (a) of the Police and Criminal Evident Act 1984, the police has power to enter without a warrant if required to save life; or limb or prevent serious damage to property; or recapture a person who is unlawfully at large while liable to detained. Under the common law, the doctrine of necessity[20] would provide a defence if force is used to gain entry to private property to apprehend a dangerous mentally disordered person in cases of serious harm to themselves or others within the community.[21] Therefore, the reasonableness of time will presumably depend upon the urgency of the situation.

Where a third party seeks to obstruct assessment or frustrate lawful intervention by statutory services the Police may have additional powers of arrest for offences under either s127 MHA or s44 MCA, but again it is recognised that these powers will be used only in exceptional circumstances.

Primary Health Services (GPs, SCAS Ambulance Service and District nurses)

Anecdotally it is believed that in cases of chronic or persistent self-neglect, where individuals are reluctant to engage with social care services they remain compliant with primary healthcare services and will access their GP, district nursing service etc. As such it is envisaged that primary healthcare services will adopt this protocol and work as part of the multi-disciplinary team. The key role for primary health services will be to raise concerns and provide information to the strategy discussions and continue to meet need in accordance with their professional standard and duty of care.

As set out above they will also be expected under the protocol to provide preventative advice and support and monitor adults at risk who are engaged with their service, show signs of self-neglect or hoarding but where this does not pose a risk of significant harm.

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[20] Mental Health Law (2010), p.114 doctrine under R v Bournewood Community and Mental Health NHS Trust, ex p. L [1998] 3 ALL E.R 289

[21] R. (on the application of Munjaz) v Mersey Care NHS Trust [2003] All ER (D) 265 (Jul)
Neutral Citation: [2003] EWCA Civ 1036

Hampshire Fire and Rescue Service
HFRS are best placed to work with individuals to assess and address any unacceptable fire risk or risk to wellbeing and to develop strategies to minimise significant harm cause by potential fire risks. In the past they have also raised concerns where called to addresses repeatedly or where homes have significant damage because of a fire and the individual continues to reside at that address.

Research into case reviews highlight that utilising public health/ housing legislative powers in isolation may not be the most effective use of resources, particularly where a coordinated approach could provide protection and promote a long term solution. However, partner agencies must consider their statutory duties and the powers they have that may aid in gathering information to enable an assessment. 'No professional should assume that someone else will pass on information which they think may be critical to the safety and wellbeing of the adult'[22]. The LSAB support a multi-agency response, all partners must be mindful of their respective duty of care and exercise powers in accordance with this. They should also be mindful of the duty (under s6-7 Care Act) to cooperate and that this must be performed in a way that promotes the well-being of adults [s.6(6) Care Act]. Agencies who determine that they are required to act, notwithstanding the person's capacitated or incapacitated opposition, should set out in writing their reasons for doing so.

Key considerations for assessment and protection planning processes

122. Mental Capacity Act and Best Interests

If the person leading the enquiry believes that the person lacks capacity to be involved in the assessment or planning process an assessment should be carried out to determine if the person has the capacity to make decisions. Where there is a dispute between practitioners or with the adult, carers or family members regarding a person's capacity then local authorities can seek a declaration from the Court of Protection.

Findings from safeguarding case reviews and audits identified practitioners have historically wrongly believe that because a person appears lucid or articulates opposition, they have capacity to 'choose' to reside in poor living conditions and that therefore statutory services have no powers to intervene. This guidance intends to challenges assumptions.

Capacity assessments will need to accurately record how the various statutory and contractual duties of the relevant agencies were explained to the person, consider whether the person understands those and the cumulative impact of seemingly smaller decisions and analyse whether resistance to accept support or execute actions to address concerns is due to an impairment affecting their decision making capacity.

*When someone is believed to be lacking mental capacity to make decisions for him/herself a*ny intervention or support offered must comply with the duties set out in the Mental Capacity Act 2005 and associated MCA Code of Practice.

Where the person continues to refuse all assistance and they have been assessed as having the mental capacity to understand the consequences of such actions, this should be fully recorded. Practitioners should also include a record of the efforts and actions taken by all agencies involved to provide support

[22] Pg 14.43 Care Act statutory guidance

and confirmation that they have considered alternative means to meet any duty of care owed to the person or others affected by the living conditions.

123. Advocacy

Section 67 of the Care Act imposes a duty on the local authority to arrange an independent advocate to facilitate an individual's involvement in their assessment, care planning, review and any safeguarding enquiry or SAR where they have 'substantial difficulty' participating. 'Substantial difficulty' is explained by reference to the 4 stage test of decision making under s.3 MCA [see s67(4) CA and pg. 6.33 guidance]. The duty to appoint an independent advocate falls away if the local authority is satisfied that an appropriate person, who is not professionally engaged in care or treatment for that individual, is available and willing to support the adult ***and*** the person consents to the appropriate person acting or, where lack capacity, it is in their best interests for that person to act.

If the person is believed to lack capacity to agree to support or execute agreed actions because of an impairment to the mind or brain, then there is a duty to appoint an independent advocate under s35 MCA.

The advocate or appropriate person must take an active role, assisting the adult understand their rights and challenge decisions they believe are inconsistent with local authority's duties to promote wellbeing. Where the person is lacks capacity on the specific decision then the advocate or appropriate person advises the local authority to identify the person's 'best interest' under s4 Mental Capacity Act 2005.

Considering impact on wellbeing

Practitioners assessing an adult for care and support or a carer's need for support must carefully consider the consequential impact on wellbeing. Whilst the person's own view is an essential factor in that decision the assessor is ultimate responsible for determining whether there is consequential significant impact on a person's wellbeing.

Therefore, if a capacitated person was neglecting their self care or living in poor housing conditions, denying any impact on their wellbeing, they could still be found to have eligible needs because it is for the assessor's to determine *objectively* whether the impact is consequential.

However, the duty to meet needs under the Care Act 2014 hinges on what needs the person themselves wants met. So whilst they may be found eligibility for care and support under the Care Act, the local authority has no explicit powers to compel an adult to accept care and support. Even where the person lacks capacity you may need additional legal authority to act to remove risk. Such cases may require the lead agency to make an application to the Court of Protection, or if the person has capacity to the High Court under their Inherent Jurisdiction. Practitioners should always seek legal advice from their respective services in those circumstances.

124. Links to relevant legislation, policy documents and Codes of Practice

Legislative Framework

- Human Rights Act 1998
- Care Act 2014
- National Health Service Act 2006
- Mental Capacity Act 2005
- Inherent Jurisdiction of the High Court

- Mental Health Act 1983
- Public Health Act 1936, Environmental Protection Act 1990
- Police & Criminal Evidence Act 1984
- Rights of Entry (Gas and Electricity Boards) Act 1986
- Animal Welfare Act 2006
- Prevention of Damage by Pests Act 1949
- Housing Act 2004
- Refuse Disposal (Amenity) Act 1978
- Coroners & Justice Act 2009
- Common Law – Gross negligence manslaughter
- Willful Neglect (Mental Capacity Act 2005, s44)
- Building Act 1984
- Public Health (Control of Disease) Act 1984
- Crime & Disorder Act 1998

Codes of Practice

Mental Capacity Act 2005[23]

Mental Health Act 1983 (revised 2007)[24]

Office of the Public Guardian (Mental Capacity Act)[25]

Department of Health (Mental Capacity Act Deprivation of Liberty Safeguards)[26]

Policy Documents

Multi-agency Policy, Procedures and Guidance (Southampton, Hampshire, Isle of Wight and Portsmouth)

Selected references

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- Gibbons, S. (2006). Primary Care Assessment of Older People with Self-Care Challenges. *Journal of Nurse Practitioners*, 323-328.
- Poythress, E.L.; Burnett, J.; Naik, A.D.; Pickens, S.; Dyer, C.B. (2006). Severe Self-Neglect: An Epidemiological and Historical Perspective. *Journal of Elder Abuse and Self-Neglect*, 18 (4), 5-12.

[23] *http://www.southampton.gov.uk/living/adult-care/mentalhealth/default.aspx*

[24] *http://www.dh.gov.uk/en/Healthcare/Mentalhealth/InformationontheMentalHealthAct/DH_4001816*

[25] *http://www.publicguardian.gov.uk/mca/mca.htm*

[26] *http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/ index.htm*

125. Guidance on prevention and early intervention in adult safeguarding

Critical to the vision in the Care Act 2014 is that the care and support system works to actively promote well being and independence, and does not just wait to respond when people reach a crisis point. It is vital that the care and support system intervenes early to support individuals, helps people retain or regain their skills and confidence, and prevents need, or delays deterioration wherever possible. This approach applies equally to adult safeguarding.

The Care Act 2014 places a duty on Local Safeguarding Adults Boards to develop and implement a clear strategy around the prevention of abuse or neglect of adults at risk. Prevention is one of the core principles of safeguarding and as such forms a fundamental part of local adult safeguarding policy framework and arrangements.

The Safeguarding Adults Board will have an overview of the prevention work taking place in its area and will maintain links with other strategic forums and plans to ensure this work ties in with their work. These include links with the Health and Wellbeing Board, Local Safeguarding Children Board, Quality Surveillance Group, Community Safety Partnerships, Police and Crime Commissioner's Office and the Care Quality Commission.

This strategy recognises that there are a number of building blocks for prevention and early intervention, including:

- A well trained workforce operating in a culture of zero tolerance of abuse
- People being informed of their rights to be free from abuse and supported to exercise these rights, including access to advocacy
- A sound framework for confidentiality and information sharing across agencies
- Access to good universal services, such as community safety services
- Needs and risk assessments to inform people's choices
- Safeguarding to achieve a balance between protecting people and preserving their right to make decisions for themselves
- Availability of a range of options for tailored support to keep people safe from abuse
- An informed public that is aware of the issues to ensure the success and effectiveness of the strategy.

This guidance has been agreed by the four LSABs in Hampshire and the Isle of Wight and provides an overarching framework for the prevention and early intervention in safeguarding. Member organisations are invited to use this framework to inform the development of local plans and guidance to support this work.

126. Key messages

The following principles and key messages underpin this strategy:

- Prevention in safeguarding should be broadly defined and should include all health and social care user groups and service settings
- Prevention needs to take place in the context of person-centred support and personalisation, with individuals empowered to make choices and supported to manage risks

- Safeguarding monitoring data and other intelligence should be used to identify people, groups or localities most at risk in order to target preventive work
- Any not yet reached groups should be identified and strategies put in place to raise awareness and improve reporting amongst these groups and communities
- Implementation and extension of the personalisation agenda and direct payments has highlighted the need for the agencies to work preventively to ensure service users are supported to protect themselves and make informed decisions about action when experiencing or likely to experience abuse, neglect or exploitation
- Service users and their families, friends and carers should be actively encouraged to participate in developing solutions to challenges they may be facing. 'Co-production' is an approach which enables the individual to influence the support and services they receive (or when groups of people get together to influence the way services are designed, commissioned and delivered). This approach contributes to developing the resilience of individuals and helps promote self reliance and independence
- Effective prevention requires good partnership working and a multi disciplinary approach adopted within and across local services
- Robust risk management (undertaken within the context of positive risk taking) is an important tool in effective prevention and early intervention
- Safeguarding training strategies and programmes should address prevention and early intervention and include as core skills Making Safeguarding Personal, risk enablement, risk management, community safety, legal powers and remedies. Staff will access such training as relevant to their role.

127. Activities to promote prevention in safeguarding

Local services are encouraged to undertake a range of activities aimed at promoting general well being and maintaining independence as a means of eliminating or reducing the service user's vulnerability to potential exploitation, abuse or neglect.

General activities to promote well being may include:

- Providing universal access to good quality information
- Supporting safer neighbourhood
- Actively addressing hate crime or anti-social behaviour
- Promoting healthy and active lifestyles
- Reducing loneliness or isolation, such as via befriending schemes or community activities
- Encouraging early discussions in families/groups about potential future changes
- Having conversations about care arrangements if a family member becomes ill or disabled.

Specific activities to prevent exploitation, abuse or neglect may include:

- Identifying vulnerability factors and potential risks as part of the needs assessment and addressing these as part of the support planning process
- Using support plans to reduce loneliness or isolation and helping the person to strengthen or build their social and support networks
- Using accessible ways and support to help people understand the different types of abuse and its prevention including what to look out for and the steps to take if abuse is suspected
- Providing people with information about sources of independent information, advice and advocacy

- Providing people with information about the role of the Court of Protection and Office of the Public Guardian as well as the mechanisms available (e.g. power of attorney, deputyship, Department of Work and Pensions appointee-ship) to ensure their best interests are protected and to safeguard against financial exploitation if they lose their capacity to make welfare and/or property and financial decisions in the future
- Reinforcing through literature and day to day interactions with service users that everyone has the right to be free from abuse and ensuring where someone needs support in exercising this right, they can access appropriate support, including advocacy services
- Providing training and education of service users on exploitation and abuse in order to help them to recognise this and to have the interpersonal skills necessary to deal with the situation should this occur
- Developing and promoting a range of 'Keeping Safe' initiatives e.g. Mail and Telephone Preference Services, Safer Places, Safe and Sound, Buy with Confidence, Making Money Matter, No Cold Calling Zones, Mate Crime Awareness, Neighbourhood Watch, Dementia Friendly Communities.
- Ensuring there are effective links between local adult safeguarding arrangements and government strategies on PREVENT and Human Trafficking
- Monitoring adults for the risk of radicalisation given that current research has highlighted that radicalisers are increasingly targeting people with a learning disability or other vulnerabilities
- Ensuring people are safe in whatever setting they live and that they are protected by the crime prevention measures aimed at the whole community and that they can access mainstream criminal justice and victim support services. This requires effective links between adult safeguarding arrangements and the full range of community safety services and resources
- Supporting carers by offering a needs or carer's assessment and use this as an opportunity to explore the individuals' circumstances and consider whether it would be possible to provide information, or support that prevents abuse or neglect from occurring, for example, by providing training to the carer about the condition that the adult they care for has or to support them to care more safely
- Recognition that abuse or neglect may be unintentional and may arise because a carer is struggling to care for another person. This makes the need to take action no less important, but in such circumstances, an appropriate response could be a carer assessment and support package for the carer and monitoring
- Ensuring the person is able to access support and services to help them recover from the abuse or neglect they have experienced. This approach will also help build future resilience.

Activities to promote prevention and early intervention in care settings may include:

- Organisations should ensure that the principles of well being and adult safeguarding are directly linked into commissioning, contract and procurement activity
- Commissioners should assure themselves, through contracting arrangements that providers have clear arrangements in place to prevent abuse or neglect and that they undertake a range of activities aimed at keeping service users safe
- Care providers should be able to demonstrate a person centred approach to care; a zero tolerance of abuse and neglect which encourages whistleblowing; staff, service user and family awareness of the nature of abuse and what to do if this is suspected; safe recruitment practices; regular quality monitoring and audit of care; regular staff training and updating of skills and clear policies and practice guidance available to all staff and volunteers
- Care providers should make their staff aware through internal guidelines of what to do when they suspect or encounter abuse of adults in vulnerable situations. This should be incorporated in staff

manuals or handbooks detailing terms and conditions of appointment and other employment procedures so that individual staff members will be aware of their responsibilities in relation to safeguarding adults. This information should emphasise that all those who express concern will be treated seriously and will receive a positive response from managers

- Commissioners should assure themselves, through contracting arrangements that a provider is capable and competent in responding to allegations of abuse or neglect, including having robust processes in place to investigate the actions of members of staff
- Commissioners should put in place robust arrangements to enable poor or unsafe care to be identified and addressed at an early stage
- All commissioners or providers of services in the public, voluntary or private sectors should disseminate information about the multi-agency safeguarding policy and procedures.

128. Guidance on modern slavery and human trafficking

Modern Slavery includes human trafficking, slavery, servitude ad forced and compulsory labour. The Modern Slavery Act 2015 became law on 26 March 2015 and is designed to tackle slavery in the UK and consolidates previous offences relating to trafficking and slavery.

What is human trafficking?

- Human trafficking is defined as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- Human trafficking is international organised crime, with the exploitation of human beings for profit at its heart. It is an abuse of basic rights, with organised criminals preying on vulnerable people to make money. In most cases, victims are brought to the UK from abroad, but trafficking also occurs within the UK and children in particular are increasingly vulnerable to falling victim to exploitation. The United Nations Convention against Transnational Organised Crime (the 'Palermo Protocol') describes trafficking as:
  "The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. This includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. However, recent trends suggest that trafficking for labour exploitation could become more prevalent than other forms of trafficking. Child trafficking victims are brought to the UK for many purposes, including sexual exploitation, domestic servitude, benefit fraud, cannabis farming, street begging, theft and shoplifting".
- The greatest numbers of adult victims come to the UK from China, South East Asia, and Eastern Europe; child victims are trafficked in the greatest numbers from Vietnam, Nigeria, China and Eastern Europe. However, this is a truly international crime, with potential victims from over 80 different countries referred to the National Referral Mechanism since its inception and 47 different counties

identified as sources of child trafficking to the UK by the Child Exploitation and Online Protection Centre (CEOP).

- Victims may travel to the UK willingly, in the belief that they are destined for a better life, including paid work and may start their journey believing they are economic migrants, either legally or illegally. They may also believe that the people arranging their passage and papers are merely facilitators, helping with their journey, rather than people who aim to exploit them. In other cases, victims may start their journey independently and come to rely on facilitators along different stages of their journey to arrange papers and transportation.
- The ease of international travel has led to the opportunity for increased movement of people across borders, both legally and illegally, especially from poorer to wealthier countries such as the UK. This has created opportunities for traffickers who use poverty, war, crisis and ignorance to lure vulnerable migrants to the UK for exploitation.
- Traffickers use threats, force, coercion, abduction, fraud, deception, abuse of power and payment to control their victim. And most traffickers are organised criminals. It is estimated that 17% of organised criminal networks operating in the UK are involved in organised immigration crime, of which a small proportion is human trafficking. Some groups organise the trafficking process from beginning to end, while others sub-contract aspects of the process, such as money laundering, or obtaining illegal passports and visas.
- The Government has produced a strategy on human trafficking and this forms part of its wider strategy on violence against women and girls. It focuses on victim care and sets out how efforts to prevent people from becoming trafficking victims in the first place must be strengthened. To view a copy of this strategy click here: Home Office Strategy on Human Trafficking [27]

Identifying victims

There is no typical victim and some victims don't understand they have been exploited and are entitled to help and support. Victims are often trafficked to a foreign country where they cannot speak the language, have their travel and identity documents removed, and are told that if they try to attempt an escape, they or their families will be harmed. The following questions may be helpful in identifying potential victims of human trafficking:

- Is the victim in possession of a passport, identification or travel documents? Are these documents in possession of someone else?
- Does the victim act as if they were instructed or coached by someone else? Do they allow others to speak for them when spoken to directly?
- Was the victim recruited for one purpose and forced to engage in some other job? Was their transport paid for by facilitators, whom they must pay back through providing services?
- Does the victim receive little or no payment for their work? Is someone else in control of their earnings?
- Was the victim forced to perform sexual acts?
- Does the victim have freedom of movement?
- Has the victim or family been threatened with harm if the victim attempts to escape?
- Is the victim under the impression they are bonded by debt, or in a situation of dependence?
- Has the victim been harmed or deprived of food, water, sleep, medical care or other life necessities?

[27] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97845/human-trafficking-strategy.pdf

- Can the victim freely contact friends or family? Do they have limited social interaction or contact with people outside their immediate environment?

Role of Local Authorities

Research work undertaken by the SOLACE Study Group on Human Trafficking in 2008 identified five key areas of competence for Local Authorities in responding to the crime of human trafficking:

- Prevention of human trafficking – Local Authorities may have a role to play in assisting the police in disrupting organised criminal networks and reducing demand for victims of trafficking in their area
- Victim identification – Local Authority staff need to be able to recognise the signs that indicate that someone may be a victim of trafficking
- Victim support – Local Authorities will need to attend to the immediate physical needs of victims, as well as the longer term social and psychological needs
- Assistance with the repatriation of victims – in some instances, Local Authorities will be involved in the return of a victim to their country of origin
- Working in partnership – Local Authorities will need to cooperate with other agencies such as Third Sector and community organisations, the Police and immigration services, as well as other levels of government
- This highlights the need for Local Authorities to work closely with other agencies if they are to successfully address the challenges of human trafficking. At a local level, co-operation between councils, the police, clinical commissioning groups, safeguarding boards and voluntary bodies is essential
- The role of Local Authorities in combating human trafficking of adults goes well beyond referral to the police. Relevant frontline staff - social services, environmental health, licensing and housing officers for example, are expected to be equipped to identify possible victims. Local Authorities are also expected to provide advice and where necessary refer possible victims to appropriate bodies for safe accommodation and support. Local Authorities should also be sure they are not themselves employing, or using contractors who employ trafficked labour (e.g. cleaners, building workers)
- Training frontline staff to spot possible victims of trafficking is key to prevention and early intervention. A trafficking toolkit has been developed for Local Authorities and provides a wide range of information on responding to human trafficking. Please use this link to access the Trafficking Toolkit for Local Authorities[28]

The role of health services

- The NHS, both in the form of providers and commissioners, also has a critical role in understanding the agenda and in identifying potential victims of human trafficking and modern day slavery. Raising awareness through training and education is vital together with referral of concerns to their local Adult Services department.
- The second role for health providers is to provide a health response to any local operations led by the police, and commissioners have a role in ensuring that local NHS providers meet this obligation.

[28] http://webarchive.nationalarchives.gov.uk/20100920143917/http:/frontline.cjsonline.gov.uk/guidance/victims-and-witnesses/trafficking-of-people/

Reporting human trafficking

- Any suspicion that someone is at risk of harm or exploitation due to trafficking should be referred to the police for investigation. If there is immediate danger to the suspected victim or if it is believed the suspected victim is under 18 or a vulnerable adult, the police should be contacted straightaway. If there is urgent information that requires an immediate response, dial 999. If general information is held that could lead to the identification, discovery and recovery of victims in the UK, the police should be contacted using the 101 number.
- The UK Human Trafficking Centre (UKHTC) is a multi-agency organisation led by the National Crime Agency. It can help with advice on whether someone may be a victim of trafficking UKHTC's tactical advisors can also help you in engaging the police and other agencies investigating human trafficking. The UKHTC manages the National Referral Mechanism which is the process by which an individual is identified as a victim of human trafficking.
- The Salvation Army under a contract with the Ministry of Justice has responsibility for overseeing and co-ordinating the provision of a diverse range of quality support services to all identified adult victims of human trafficking in England and Wales. In accordance with Article 12 (1) and (2) of the Council of Europe Convention on Action against Trafficking in Human Beings possible victims of trafficking are entitled to such support, from the moment they are referred into the National Referral Mechanism for a minimum recovery and reflection period of 45 days. The Salvation Army has a 24-hour confidential Referral Helpline on 0300 3038151 available 24 hours a day, seven days a week which can be called not only by people who consider themselves a victim of trafficking and are in need of assistance but also nominated First Responders, other professionals or concerned individuals who have come into contact with someone they suspect may be a victim of trafficking and in need of assistance.

Making a referral about human trafficking

- The National Referral Mechanism is the process by which an individual is identified as a victim of human trafficking. Anyone considered under the National Referral Mechanism to be a possible victim of human trafficking is entitled to support – provided centrally, not locally - for a minimum recovery and reflection period of 45 days, during which any action to remove them from the UK is halted.
- Referrals to the National Referral Mechanism can only be made by authorised agencies known as First Responders. Authorised agencies in the UK are the Police, UK Border Force, Home Office Immigration and Visas, adult and children's social services and certain Non-Governmental Organisations.
- Regarding referrals from Adult Services, any social worker can make the referral to the UKHTC. However, internal organisations (such as Trading Standards, etc.) would need to refer into Adult Services anyone they suspected of being a victim of human trafficking. Staff in other organisations such as the NHS and the voluntary sector could also refer to Adult Services using this mechanism.
- The First Responder should complete a referral form to pass the case to the UK Human Trafficking Centre (UKHTC) which deals with referrals from the police, Local Authorities and Non-Governmental Organisations. The Home Office Immigration and Visas Service deals with referrals identified as part of the immigration process, for example where trafficking may be an issue as part of an asylum claim.

Referral to the UKHTC is voluntary and can happen only if the potential victim gives their permission by signing the referral form. In the case of children their consent is not required. Where an adult who is thought to be a potential victim of trafficking and may lack capacity, a best interest decision may be

needed about making the referral. To download an adult or child referral form go to the Gov.uk website[29]. Completed forms should be sent to the UKHTC Competent Authority via e-mail at UKHTC@nca.x.gsi.gov.uk or by fax to 0870 496 5534.

After a referral about human trafficking

Stage one – "Reasonable grounds"

The National Referral Mechanism Team has a target date of 5 working days from receipt of referral in which to decide whether there are reasonable grounds to believe the individual is a potential victim of human trafficking. This may involve seeking additional information from the first responder or from specialist NGOs or social services. The threshold at the Reasonable Grounds stage for the case manager is "From the information available so far I believe but cannot prove" that the individual is a potential victim of trafficking.

If the decision is affirmative then the potential victim will be:

- Allocated a place within Government funded safe house accommodation, if required
- Granted a recovery and reflection period of 45 days. This allows the victim to begin to recover from their ordeal and to reflect on what they want to do next, for example, co-operate with police enquiries, return home
- The referred person and the first responder are both notified of the decision by letter.

Stage two – "Conclusive decision"

During the 45 day recovery and reflection period the UKHTC will gather further information relating to the referral from the first responder and other agencies. This additional information is used to make a conclusive decision on whether the referred person is a victim of human trafficking. The target for a conclusive decision is within the 45 recovery and reflection period. The case manager's threshold for a Conclusive Decision is that on the balance of probability "it is more likely than not" that the individual is a victim of human trafficking.

The First Responder and the potential victim will both be notified of the decision. If the referred person is conclusively identified as a victim of trafficking, what happens next will depend on their wishes.

What happens next?

Co-operating with police enquiries

The victim may be granted discretionary leave to remain in the UK for one year to allow them to co-operate fully in any police investigation and subsequent prosecution. The period of discretionary leave can be extended if required.

Other circumstances

If a victim of trafficking is not involved in the criminal justice process, the Home Office may consider a grant of discretionary leave to remain in the UK, dependent on the victim's personal circumstances.

[29] https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms

Returning home

If they are from outside the European Economic Area, the victim can receive help and financial assistance to return home through the Home Office Assisted Voluntary Return of Irregular Migrants (AVRIM) process. If they are an EEA national, support organisations will put them in touch with their embassy and any relevant non government organisations who may be able to help.

What if the referred person is not found to be a victim?

If at any stage the referred person is confirmed not to be a victim of trafficking then dependent on the circumstances they may be referred to the appropriate law enforcement agency – the relevant police force or the Home Office. If it is decided by the Home Office that the person was not trafficked, and there are no other circumstances that would give them a right to live in the UK, they will be offered support to voluntarily return to their country of origin. The person can also be offered support to return to their country if they have been trafficked and do not wish to stay in the UK.

The Modern Slavery Act 2015

The legislation came into force in 2015 and strengthens the response of law enforcement and the courts by consolidating and simplifying existing modern slavery offences into one Act. Previously, modern slavery and trafficking offences were spread across a number of different Acts.

The legislation has introduced Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders to restrict the activity of individuals where they pose a risk of causing harm.

The Modern Slavery Act has ensured victims receive protection and support by creating a statutory duty for public bodies including the police, Local Authorities and immigration personnel to notify the National Crime Agency about potential victims of modern slavery. Other measures to enhance the protection and support of victims of human trafficking include:

- Creation of a statutory defence for victims of modern slavery so that those who are compelled to commit an offence are not treated as criminals by the criminal justice system
- New powers for Courts to order perpetrators of slavery and trafficking to pay Reparation Orders to their victims
- Extension of special measures so that all victims of modern slavery can be supported through the criminal justice process
- Provision of statutory guidance on victim identification and victim services
- A power for child advocates to support child victims of trafficking.

129. Guidance on safeguarding in prisons and approved premises

Introduction

Prisons and approved premises, like hospitals and care homes, should have their own internal safeguarding arrangements to respond to safeguarding concerns arising in prisons. Her Majesty's Inspectorate of Prisons (HMIP) has detailed these in *Expectations* published in 2012. This Framework outlines best practice in responding to the safeguarding needs of prisoners with needs of care support. It is not prescriptive but it

is a tool to help inform and shape the development of safeguarding arrangements in local prisons and other settings. It seeks to establish a consistent approach and may also be used by local prisons and other settings as a tool to benchmark their practice against the locally agreed multi-agency safeguarding arrangements. The legal and policy framework underpinning this guidance is detailed in **Appendix A.**

Partnership and constructive dialogue

This Framework seeks to engage local prisons in local safeguarding arrangements at the strategic level and to this end, to gain representation on local Safeguarding Adults Boards (SAB). The intention is to encourage constructive dialogue and shared learning around safeguarding in prison and support to prisons not only keep up to date with safeguarding requirements and guidance but also to help ensure safeguarding arrangements in prisons are robust and benefit from constructive dialogue with the local expert body of professionals.

Principles underpinning the framework

- Partnership and constructive dialogue between the local SAB and prisons will help prison staff to determine when safeguarding concerns can be appropriately and safely managed through internal procedures and when they might benefit from the support of external agencies.
- The local safeguarding team will not necessarily intervene in the prison as it may be more appropriate for the prison to do this. This Framework will build on existing processes within the prison to safeguard and there will be the opportunity for dialogue on the best approach.
- The notion of equivalence of care applies to prisoners, and this extends to safeguarding and to how safeguarding concerns are dealt with.
- Safeguarding is everyone's business and prisons should operate a zero tolerance of abuse and/or or exploitation of all prisoners, particularly adults at risk.
- The prison should have robust safeguarding arrangements in place, integral to its 'duty of care', to ensure that 'prisoners, particularly adults at risk, are provided with a safe and secure environment which protects them from harm and neglect.'
- The prison has a general duty of care to safeguard and to promote the welfare of **all** prisoners. However, it has additional safeguarding duties to prisoners with needs of care and support.

The prison's safeguarding arrangements will address the following issues:

- Recognition that in a prison environment that a person may not present as a vulnerable adult (because of the structured environment) but could be considered a person at risk if living in the community
- Prevention and early identification of risk to reduce harm will form an integral part of the prison's safeguarding arrangements
- A concern for safeguarding will be built into all standard operational procedures with prompts at each stage of the prisoner's journey in prison from reception to release
- Recognition that grooming and mate crime to exploit adults at risk fall within the remit of the prison's safeguarding procedures
- Recognition that some prisoners when released from prison, pose a risk to adults at risk living in the community and that appropriate information sharing and joint working with relevant agencies must take place

- Ensuring clear links between its safeguarding adults procedures and other protective, risk management and review processes. These include the local multi agency adult safeguarding procedures, Violence Reduction, MAPPA, Serious Case Review, PREVENT, Persistent and Prolific Offenders and initiatives such as Safer Custody, Through the Gate.

Key components of the safeguarding framework

The following section identifies the five key components of this framework which are safeguarding policy and procedures, information and awareness, prevention, workforce development and quality assurance. Benchmark standards have been set out for each of these domains and these are detailed under each heading:

Prison safeguarding policy and procedures

- This is consistent with local Multi Agency Safeguarding Adults Procedures and HMIP Expectations.
- The prison has identified safeguarding lead who sits at senior management team level and who is directly accountable to the prison governor regarding their safeguarding role.
- Safeguarding is addressed at each stage of prisoner's journey in prison.
- The Safeguarding Policy and Procedures have been cross referenced with standard operating procedures and are referenced in other policies e.g. whistleblowing, complaints information sharing.
- Mechanisms to ensure prisoners' vulnerabilities are recognised and responded to appropriately and in a timely manner.
- The prison ensures prisoners can access advocacy support where appropriate.
- The prison ensures that victims of abuse are able to access victim support services such as the Samaritans.
- The prison ensures prisoners can access where appropriate, access to pastoral and/or therapeutic support to help in the recovery from abuse.
- There is an internal escalation protocol highlighting when safeguarding concerns should be shared with the senior management team and/or prison governor.
- Thresholds have been defined to help the prison to determine when safeguarding concerns can be appropriately and safely managed through internal procedures or when they might to be addressed with the support of external agencies for example in highly complex cases and/or where the person at risk is judged to lack capacity.
- Safeguarding Policy and Procedures define the links and interfaces with other internal and external risk management and protective processes.
- Safeguarding expectations and requirements built into contracts with external providers.

Awareness and information

- Accessible leaflets and other publicity material (prisoners, staff, visitors and outside professionals) are readily available.
- Awareness raising sessions are provided for prisoners and staff.
- There is clear information about how to report concerns.
- There is a dedicated telephone number for prisoners to report safeguarding concerns.
- A network of safeguarding champions (prisoners and staff) is in place.

Prevention

- Tools are used to identify prisoner vulnerabilities upon admission (such as *Through the Gate*).
- Abusive and exploitative behaviour is cross referenced in prisoner behaviour code and disciplinary procedure.
- Keeping safe activities and materials are provided for prisoners.
- The prison operates a 'buddy' system and/or existing approaches such as Listeners or Insiders are expanded to include adult safeguarding.
- Robust risk assessment and risk management processes are in place.
- A multi agency safeguarding panel is in place to facilitate partnership working to respond collaboratively to safeguarding needs.
- Information sharing and risk management occurs to address the risks posed by prisoners upon release.

Workforce development

- There is a safeguarding training strategy defining the knowledge and skills required per role type.
- The prison operates safe recruitment practice (staff, contractors, volunteers).
- The professional duty of care and duty to act is built into the code of conduct of all staff, contractors, volunteers, etc. and is reflected in all contracts.
- The prison makes making referrals to DBS vetting and barring, professional bodies, etc. as appropriate.
- There is management oversight of safeguarding case work (such as supervision agenda item).

Quality assurance

- The prison undertakes regular practice audits.
- The prison participates in peer review processes with other prisons.
- There is a robust 'Learning from Experience' framework for when things go wrong and partner agencies are invited by the Prison to participate in case reviews and safeguarding adult reviews.

Legal and policy context for safeguarding in prisons and approved premises

The Care Act 2014

Under the Care Act 2014, prisons and approved premises have responsibility for safeguarding prisoners with needs of care and support. Prison governors and the National Offender Management Service (NOMS) may ask for advice from the Local Authority when faced with a safeguarding issue that they are finding particularly challenging. Local Authorities should follow the safeguarding policies and procedures of custodial settings in their area and work with prison and approved premises staff to ensure that all people in custodial settings are safeguarded.

Local Authority and care provider staff must understand what to do where they have a concern about abuse and neglect of an adult in custody. The prison must ensure that it has clear safeguarding policies and procedures that are explained to all visiting staff. Prison and probation staff may approach the Local Authority for advice and assistance in individual cases although the Local Authority will not have the legal duty to lead. Separate guidance for prisons and probation is being developed by the National Offender Management Service on safeguarding adults.

The Care Act statutory guidance (chapter 17) states that Local Authorities should consider inviting prison and probation staff to be members of Safeguarding Adult Boards. The inclusion of prison and probation staff on safeguarding adult boards should be agreed with all statutory board members and the SAB *"can act as a forum for members to exchange advice and expertise to assist prison and probation staff in ensuring that all people in custodial settings are safeguarded".*

Her Majesty's Inspectorate of Prisons (HMIP)

HMIP has shown its commitment to address the complex area of safeguarding adults at risk in prison through the inclusion in 2012 of a safeguarding section in its methodology *Expectations*. This outlines a prison's responsibilities to safeguard people at risk in the prison environment and also provides benchmark standards against which prisons will be judged in this respect. These are summarised below.

Safeguarding arrangements in prisons

- The prison promotes the welfare of all prisoners, particularly vulnerable adults at risk, and protects them from all kinds of harm and neglect.
- Prisoners, particularly adults at risk, are provided with a safe and secure environment which protects them from harm and neglect. They receive safe and effective care and support.

Indicators

- The risks to prisoners are recognised and there are guidance and procedures to help reduce and prevent harm or abuse from occurring.
- When abuse is alleged or suspected to have occurred, prompt and appropriate action is taken to protect the prisoner.
- An individual care plan is in place to address a prisoner's assessed needs. Care plans are thorough, reviewed regularly and involve staff from a range of disciplines.
- Up to date government and local guidance is accessible and safeguarding procedures are known and used by all staff, including how to raise a safeguarding concern.

Mental Capacity Act 2005

HMIP Expectations requires that the safeguarding policy and any prison codes of conduct are informed by the underlying five principles of the Mental Capacity Act 2005:

- A presumption of capacity
- The right for individuals to be supported to make their own decisions
- Individuals must retain the right to make what might be seen as unwise decisions
- Best interests
- Least restrictive intervention.

Where possible, access to advocates and/or appropriate adults is in place to aid prisoners' capacity to understand and consent.

Code of conduct and duty to report concerns

The prison has a code of conduct informing staff of their duty to raise legitimate concerns about the conduct of an individual in relation to the treatment and management of prisoners.

- Staff feel confident and safe to raise concerns.
- Staff awareness of their personal and professional responsibility to protect adults at risk.
- Staff undergo appropriate training.
- Safe recruitment practice and vetting procedures which comply with necessary legislation.

130. Guidance on multi-agency safeguarding roles and responsibilities

Introduction

The revised statutory guidance to the Care Act (2014) clarifies that there should be clear and collaboration should take place at all the following levels:

- Operational
- Supervisory line management
- Practice leadership
- Strategic leadership within the senior management team
- Corporate/cross authority
- Chief officers/chief executives
- Local authority members and PCC
- Providers of services
- Voluntary organisations

Local Authorities

Local Authorities with social services responsibilities have the lead co-ordinating role for safeguarding adults at risk of abuse, neglect or exploitation. This includes the co-ordination of the application of this Policy Framework into practice; lead responsibility for statutory safeguarding enquiries including the coordination of activity between organisations; ensuring that enquiries undertaken by other bodies on its behalf are robust and satisfactorily resolve the situation; lead the wider implementation of the making Safeguarding Personal approach; review of practice; facilitation of joint training; dissemination of information; and monitoring and review of progress within the Local Authority area.

In addition to that strategic co-ordinating role, the Local Authority adult social care department and integrated health and social care teams, also have responsibility for co-ordinating the action taken by organisations in response to concerns that a person at risk is being, or is at risk of being, abused or neglected.

All social workers undertaking work with adults should have access to a source of additional advice and guidance particularly in complex and contentious situations. Principal social workers are often well-placed to perform this role or to ensure that appropriate practice supervision is available.

Principal social workers in the local authority are responsible for providing professional leadership for social work practice in their organisation and organisations undertaking statutory responsibilities on behalf of the local authority. Practice leaders/principal social workers should ensure that practice is in line with this guidance.

As the professional lead for social work, principal social workers and senior healthcare safeguarding professionals should have a broad knowledge base on safeguarding and making safeguarding personal and are confident in its application in their own and others' work.

Health Care Professions Council (HCPC)

The HCPC is the Professional Body that regulates social workers and allied health professionals. HCPC professional standards were amended in Jan 2016 to require all those registered with that body to comply with a professional DUTY to take appropriate action to address and report concerns about safety or wellbeing of people using services, follow up concerns and be open and honest if things go wrong.

Elected members (Councillors)

Elected members have the following responsibilities in relation to safeguarding adults:

- They and their fellow councillors understand their responsibilities for safeguarding persons at risk
- The corporate strategy identifies the council's role in safeguarding persons at risk and what priority this is given
- The council formally considers the annual report of the Safeguarding Adults' Board, and the issues this identifies for the local council area.

Director of Adult Social Services

The Director of Adult Social Services has specific responsibilities under statutory guidance issued by the Department of Health. Within adult social services, the director has a responsibility to:

- Maintain a clear organisational and operational focus on safeguarding adults
- Make sure relevant statutory requirements and other national standards are met
- Make sure DBS standards are met.
- The Director is also responsible for either chairing, or ensuring the effective chairing of the local Safeguarding Adults Board.

Police

Hampshire Constabulary is determined to achieve equality of outcome for victims of crime. It is recognised that the impact of events which lead to the involvement of police services differ according to the needs of the recipient. All police officers and staff in the Constabulary must take into consideration that persons at risk in particular may have difficulty in engaging with the police service due to learning difficulties or other disabilities as well as cultural, language or other communication difficulties.

It is the responsibility of the police to lead investigations where criminal offences are suspected by preserving and gathering evidence at the earliest opportunity. Where necessary the police will interview the alleged victim, the alleged person causing harm, and any witnesses. As the lead investigating agency they will work with the Local Authority and other partner agencies in line with the local Safeguarding Adults Policy Framework to ensure that all relevant information is shared and identified risks are acted on

with a risk management or safeguarding support plan being agreed at an early stage.

In cases where criminal proceedings are deemed inappropriate, the police will work with partnership agencies in order to share information and agree courses of action to effectively safeguard adults at risk of harm.

Clinical Commissioning Groups (CCGs)

CCGs are groups of GPs that are responsible for designing local health services in England. They will do this by commissioning or buying health and care services including elective hospital care, rehabilitation care, urgent and emergency care, most community health services, mental health and learning disability services.

All staff and volunteers

All staff and volunteers from any service or setting should have in place adult safeguarding policy and procedures. Staff and volunteers from any service or setting who have contact with persons at risk have a responsibility to be aware of issues of abuse, neglect or exploitation. This includes personal assistants paid for from direct payments or personal budgets. All staff and volunteers have a **duty to act** in a timely manner on any concern or suspicion that an adult who is vulnerable is being, or is at risk of being, abused, neglected or exploited and to ensure that the situation is assessed and investigated.

All managers

All Managers in any service or setting should ensure that they:

- Make staff aware of their duty to report any allegations or suspicions of abuse to their line manager, or if the line manager is implicated, to another responsible person or to the Local Authority
- Meet their responsibilities under the Health and Social Care Act 2008 and ensure compliance with the CQC Essential Standards of Quality and Safety
- Operate safe recruitment practices and routinely take up and check references
- Adhere to and operate within their own organisation's whistleblowing policy in relation to any member of staff who raises concerns
- Link safeguarding procedures into internal quality assurance, governance and risk management processes
- Have mechanisms in place to ensure that learning from investigations leads to positive change and influences practice.
- Managers of 'regulated activity' must fulfil their legal obligations under the *Safeguarding Vulnerable Groups Act 2006*. Managers have responsibility for making checks on and referring staff and volunteers who have been found to have harmed a person at risk or put a person at risk of further harm.

Managers in regulated health settings should also report concerns as a Serious Incident Requiring Investigation (SIRI) in line with clinical governance procedures and a decision must be made whether the circumstances meet the criteria for raising a safeguarding concern in line with the Multi-agency Safeguarding Adults Policy and Procedures.

All commissioners and contractors

Commissioners and contractors of services should set out clear expectations of provider agencies and monitor compliance to defined quality standards or benchmarks. NHS commissioners have responsibilities for commissioning high quality health care for all patients in their area. However, they have particular duties for those patients who are less able to protect themselves from harm, neglect or abuse, for example, due to impaired mental capacity. All commissioners and contractors have a responsibility to:

- Ensure that they play an active role in the Adult Safeguarding Boards and liaise with regulatory bodies
- Ensure that managers are clear about their leadership role in safeguarding adults and assuring the quality of outcomes for people using services, the supervision and support of staff, and responding to, and investigating, a concern about a person at risk
- Ensure that agencies, from whom services are commissioned and contracted with, know about and adhere to relevant CQC registration requirements, guidance and CQC Essential Standards of Quality and Safety
- Ensure that all documents such as service specifications, invitations to tender, service contracts and service level agreements adhere to the Multi-agency Safeguarding Adults Policy and Procedures
- Commission a workforce with the right skills to understand and implement adult safeguarding principles
- Ensure staff have received induction and training appropriate to their levels of responsibility
- Ensure that people who commission their own care are given the right information and support to do so from those providing their care
- Ensure that the commissioning and contracting of services such as brokerage services includes information on safeguarding and dignity
- Ensure that services are commissioned in a way that raises service users' and carers' expectations in relation to quality of services
- Ensure that commissioning staff develop links with front-line staff to review performance of providers in relation to complaints, standards of care and safeguarding
- Ensure that commissioning and contracting sets out quality assurance and service standards that safeguard service users and promote their dignity and control, with clear reporting requirements placed on providers
- Ensure that contract monitoring has a clear focus on safeguarding and dignity, and that any shortfalls in standards are actively addressed
- Ensure that commissioning and contracting regularly audit reports of risk and harm and require providers to address any issues identified
- Ensure that reporting across providers is tracked, and under or over reporting patterns are addressed
- Ensure that when there is a pattern of concerns, a root cause analysis is carried out and where appropriate, a safeguarding concern is raised
- Ensure that there is robust, timely action when standards in services place service users at risk.

NHS funded services

The NHS is accountable to patients for their safety and well-being through delivering high quality care. This duty is underpinned by the NHS Constitution that all providers of NHS services are legally obliged to take account of. Quality is defined as providing care that is effective and safe and which results in a positive patient experience.

Some patients may be unable to uphold their rights and protect themselves from harm or abuse. They may

have the greatest dependency and yet be unable to hold the service to account for the quality of care they receive. The NHS has particular responsibilities to ensure that those patients receive high quality care and that their rights are upheld, including their right to be safe.

All providers of healthcare should have in place named professionals, who are a source of additional advice and support in complex and contentious cases within their organisation. There should be a designated professional lead in the CCG, who is a source of advice and support to the governing body in relation to the safeguarding of individuals and is able to act as the lead in the management of complex cases.

All commissioners and providers of healthcare should ensure that staff have the necessary competences and that training in place to ensure that their staff are able to deliver the service in relation to the safeguarding of individuals. This is strengthened by the development of the safeguarding adults: roles and competences for health care staff - intercollegiate document, which details the levels of training and competencies required for the different groups of staff in the organisations.

Managers of health services, their commissioners and regulators will also need assurance that where harm or abuse occurs, responses are in line with local Multi-agency Safeguarding Adults Procedures and national frameworks for Clinical Governance and investigating patient safety incidents. Health services must produce clear guidance to managers and staff that sets out who is responsible for any decision making processes and for initiating action under the above processes and to support clarity about what constitutes a safeguarding adults incident. Safeguarding in the NHS encompasses:

- A patient centred approach to how services are commissioned and assured
- Leading an organisational culture that safeguards patients
- Using systems and processes that support safeguarding and connect aligned areas
- Developing partnerships with patients, public and multi-agency partners
- Using robust assurance to understand and improve safeguarding adult's arrangements
- Commissioners working with providers, regulators and multi-agency partners to address concerns in services.

NHS managers and Boards

Managers and Boards have responsibility for implementing six fundamental actions to safeguard adults:

- Use the safeguarding principles to shape strategic and operational safeguarding arrangements
- Set safeguarding adults within the strategic objectives of the service
- Use integrated governance systems and processes to prevent abuse occurring and respond effectively where harm does occur
- Work with the Local Safeguarding Adults Board, patients and community partners to create safeguards for patients
- Provide leadership to safeguard adults
- Ensure accountability and use learning within the service and the partnership to bring about improvement.

Health practitioners

Health care staff are often working with patients who, for a range of reasons, may be less able to protect themselves from neglect, harm or abuse. Health care practitioners play a vital role in prevention and

reporting, responding and supporting the recovery of adults who may have experienced or are at risk of abuse.

Ambulance service

There are a number of ways in which staff may receive information or make observations which suggest that a person at risk has been abused or is at risk of harm. Staff will often be the first professionals on the scene and their actions and recording of information may be crucial to subsequent enquiries. Staff will not investigate suspicions and, if there is someone else present, will avoid letting the person know they are suspicious. If the patient is conveyed to hospital, the staff should inform a senior member of the A&E staff, or nursing staff if conveying to another department, of their concerns about possible abuse. They will complete a patient report form and give a copy to the staff at A&E or other location where clinical responsibility is being handed over. Staff should also follow local procedures for contacting the Local Authority

General Practitioners (GPs)

The British Medical Association issued *Safeguarding Persons at risk – a Tool Kit for General Practitioners* in October 2011, which contains the following guidance for GPs:

"Where doctors or other health professionals suspect that a serious crime may have been, or may be about to be, committed, action should be taken as a matter of urgency. Although health professionals owe a duty of confidentiality to all their patients, this duty is not absolute. Where an adult has the relevant decision making capacity, they retain the freedom to decide how best to manage the risks to which they may be exposed, including whether a referral through multi-agency procedures would help them. Where other individuals may be at risk of harm, however, or where there is concern that a serious crime may be, or may have been, committed a referral must be made through appropriate procedures. In these circumstances health professionals should discuss the matter with the social services adult protection team as a matter of urgency. It may also be necessary directly to contact the police."

The toolkit also refers to measures GPs should consider in relation to information sharing, reporting wider patient safety concerns and concerns in relation to regulated services and colleagues.

Patient Advice and Liaison Service (PALS) and complaints departments

PALS and complaints departments provided by acute, specialist and community health trusts have been established to provide confidential advice and support to patients, families and carers, including providing confidential assistance in resolving problems and concerns. PALS act as a focal point for feedback from patients to inform service developments and as such can act as an early warning system about concerns including quality of care for NHS trusts and Commissioning Care Groups.

PALS staff are in a position to recognise that a concern which is raised with them either by a patient or a carer or friend could indicate that the person is at risk of abuse or neglect. They should raise that concern with their own health trust via senior managers and safeguarding adult's leads and raise a concern to the relevant Local Authority to ensure that appropriate action is taken under the Multi-agency Safeguarding Adults Policy and Procedures.

NHS Improvement Agency (NHSI)

The NHSI is the independent regulator of NHS Foundation Trusts. They were established in January 2004 to authorise and regulate NHS foundation trusts. They are independent of central government and directly accountable to Parliament. The three main strands to their work are:

- Determining whether NHS trusts are ready to become NHS foundation trusts
- Ensuring that NHS Foundation Trusts comply with the conditions they signed up to including that they are well-led and financially robust
- Supporting NHS Foundation Trust development.

HealthWatch

HealthWatch is an independent consumer champion and a statutory part of the Care Quality Commission (CQC), to champion services users and carers across health and social care.

At local level:

- Local HealthWatch organisations ensure that the views and feedback from patients and carers are an integral part of local commissioning across health and social care
- Local Authorities are able to commission local HealthWatch or HealthWatch England to provide advocacy and support, helping people access and make choices about services, and supporting individuals who want to make a complaint. In particular, they will support people who lack the means or capacity to make choices; for example, helping them choose which General Practice to register with
- Local HealthWatch organisations are funded by and accountable to, Local Authorities and will be involved in Local Authorities' new partnership functions. To reinforce local accountability, Local Authorities are responsible for ensuring that local HealthWatch are operating effectively, and for putting in place better arrangements if they are not
- Local HealthWatch organisations provide a source of intelligence for national HealthWatch and will be able to report concerns about the quality of providers, independently of the Local Authority.

At national level:

- HealthWatch England provides leadership, advice and support to local HealthWatch, and is able to provide advocacy services on their behalf if the Local Authority wishes
- HealthWatch England provides advice to the Health and Social Care Information Centre on the information which would be of most use to patients to facilitate their choices about their care
- HealthWatch England provides advice to the NHS Commissioning Board, Monitor and the Secretary of State
- Based on information received from local HealthWatch and other sources, HealthWatch England has powers to propose CQC investigations of poor services.

Faith communities

Churches, other places of worship and faith-based organisations provide a wide range of activities for persons at risk and have an important role in safeguarding persons at risk and supporting their families. Religious leaders, staff and volunteers who provide services in places of worship and in faith-based organisations will have various degrees of contact with persons at risk.

Like other organisations that work with persons at risk, churches, other places of worship and faith-based organisations need to have appropriate arrangements in place for safeguarding and promoting the welfare

of persons at risk. In particular these should include:

- Procedures for staff and others to report concerns that they may have about the abuse, neglect or exploitation of a person at risk
- Appropriate codes of practice for staff, particularly those working directly with persons at risk
- Safe recruitment procedures, alongside training and supervision of staff (paid or voluntary).

Fire and Rescue Services

When adults become vulnerable they become vulnerable to fire. While the number of people within the population who meet the No Secrets definition of a vulnerable adult is very small the overwhelming majority of fire deaths occur within this population of people. For this reason The Fire and Rescue Service have two roles to play in safeguarding adults at risk.

The first is to support other agencies to recognise, assess and manage fire risks for vulnerable adults. Fire and rescue services will provide awareness raising and training around identifying and managing fire risks in the domestic environment and, through the home fire safety visit programme, visit identified adults at risk and provide advice that is specific to the occupant and their home environment.

The second is to have good internal safeguarding procedures. Fire and Rescue personnel respond to emergencies, visit people in their homes when carrying out Home Safety Checks and undertake Fire Safety (Protection) visits in residential/institutional settings. Fire and Rescue service staff should be trained to recognise a concern and report it appropriately. Where Fire and Rescue personnel have a concern that a person at risk may be being abused, neglected or exploited they must follow their internal safeguarding procedure.

Care Quality Commission (CQC)

The CQC regulates and inspects health and social care services including domiciliary services and protects the rights of people detained under the Mental Health Act 1983. They have a role in identifying situations that give rise to concern that a person using a regulated service is or has been at risk of harm, or may receive an allegation or a complaint about a service that could indicate potential risk of harm to an individual or individuals. CQC Safeguarding Protocol describes their role in safeguarding both children and adults. It covers all the relevant health and social care sectors for which CQC has regulatory responsibility. It provides the principles for how CQC will work to help ensure people are protected. It may also provide helpful guidance for stakeholders, providers of services and members of the public on the role of CQC in local safeguarding procedures.

Office of the Public Guardian (OPG)

The Office of the Public Guardian Safeguarding Adults Policy states that the organisation will strive to ensure that persons at risk receive their entitlement to safeguards that:

- Prevent abuse from occurring and/or continuing, where possible
- Identify abuse promptly
- Ensure the abuse ceases and the person causing harm is dealt with, wherever possible.

The OPG also undertakes to notify Local Authorities, the police and other appropriate agencies when an abuse situation is identified. The OPG may be involved in safeguarding persons at risk in a number of ways,

including:

- Promoting and raising awareness of legal safeguards and remedies, for example, lasting powers of attorney and the services of the OPG and the Court of Protection
- Receiving reports of abuse relating to persons at risk ('whistleblowing')
- Responding to requests to search the register of deputies and attorneys (provided free of charge to Local Authorities and registered health bodies)
- Investigating reported concerns, on behalf of the Public Guardian, about the actions of a deputy or registered attorney, or someone acting under a single order from the court
- Working in partnership with other agencies, including adult social care services and the Police.

The OPG can carry out an investigation into the actions of a deputy, of a registered attorney (lasting powers of attorney or enduring powers of attorney) or someone authorised by the Court of Protection to carry out a transaction for someone who lacks capacity, and report to the Public Guardian or the court.

Local Authorities can use the OPG protocol to refer concerns to the OPG relating to anyone who falls within the OPG definition of an adult at risk, as given above. The OPG will refer all concerns and allegations relating to people not covered by the OPG Safeguarding Adults Policy to the relevant adult social care service. Where it is considered that a crime has or may have been committed, a report will be made to the police.

Housing organisations

Staff who work in housing organisations are in a position to identify tenants who are vulnerable and are at risk of abuse, neglect and exploitation. They are therefore required to follow a multi agency policy guidance and toolkit in relation to this responsibility.

Crown Prosecution Service (CPS)

The CPS is the principal public prosecuting authority for England and Wales and is headed by the Director of Public Prosecutions. The CPS has produced a policy on prosecuting crimes against older people which is equally applicable to adults at risk, who may also be vulnerable witnesses.

Support is available within the judicial system to support adults at risk to enable them to bring cases to court and to give best evidence. If a person has been the victim of abuse that is also a crime, their support needs can be identified by the police, the CPS and others who have contact with the vulnerable adult. Witness Care Units exist in all judicial areas and are run jointly by the CPS and the police.

The CPS has a key role to play in making sure that special measures are put in place to support vulnerable or intimidated witnesses to give their best evidence. Special measures were introduced by the Youth Justice and Criminal Evidence Act 1999 and are available both in the Crown Court and in the magistrates' courts.

These include the use of trained intermediaries to help with communication, screens and arrangements for evidence and cross-examination to be given by video link.

Coroners

Coroners are independent judicial officers who are responsible for investigating violent, unnatural deaths

or sudden deaths of unknown cause, and deaths in custody, which must be reported to them. The Coroner may have specific questions arising from the death of an adult with care and support needs. These are likely to fall within one of the following categories:

- Where there is an obvious and serious failing by one or more organisations
- Where there are no obvious failings, but the actions taken by organisations require further exploration/explanation
- Where a death has occurred and there are concerns for others in the same household or other setting (such as a care home)
- Deaths that have occurred when someone was the subject of a deprivation of liberty
- Deaths that fall outside the requirement to hold an inquest but follow-up enquiries/actions are identified by the Coroner or his or her officers.

In the above situations the local Safeguarding Adults Board should give serious consideration to instigating a safeguarding adult review.

Probation Services

Following government reorganisation 'probation' has been split into two services: Community Rehabilitation Companies and the National Probation Service. These services protect the public by working with offenders to reduce re-offending and harm. It works jointly with other public and voluntary services to identify, assess and manage the risk in the community of offenders who have the potential to do harm. The services use the Offender Assessment System (OASys) to assess risk and identify factors that have contributed to offending. The Probation Service also has a remit to be involved with victims of serious sexual and other violent crimes.

Probation services share information and work in partnership with other agencies including Local Authorities and health services, and contribute to local Multi Agency Public Protection Arrangements to help reduce the re-offending behaviour of sexual and violent offenders in order to protect the public and previous victims from serious harm. Although the focus of the probation services is on those who cause harm, they are also in a position to identify offenders who themselves are at risk from abuse and to take steps to reduce the risk to those offenders in line with the principles of this Policy Framework.

Prison Service

The Prison Service promotes the welfare of all prisoners, particularly persons at risk, and protects them from all kinds of harm and neglect. Prisoners, particularly adults at risk, are provided with a safe and secure environment which protects them from harm and neglect. They receive safe and effective care and support. Prisons work to the following benchmark standards:

- The risks to prisoners are recognised and there are guidance and procedures to help reduce and prevent harm or abuse from occurring
- When abuse is alleged or suspected to have occurred, prompt and appropriate action is taken to protect the prisoner
- An individual care plan is in place to address a prisoner's assessed needs
- Care plans are thorough and reviewed regularly, involving all relevant staff
- Up-to-date Government and local guidance about safeguarding adults is accessible and safeguarding procedures are known and used by all staff, including how to raise a safeguarding concern

- The safeguarding policy and any prison codes of conduct are informed by the underlying five principles of the Mental Capacity Act 2005
- Where possible, access to advocates and/or appropriate adults is in place to aid prisoners' capacity to understand and consent
- The prison has a code of conduct informing staff of their duty to raise legitimate concerns about the conduct of an individual in relation to the treatment and management of prisoners
- Staff feel confident and safe to raise concerns
- Staff are aware of their personal and professional responsibility to protect persons at risk and undergo appropriate training
- Staff are subject to recruitment and vetting procedures which comply with necessary legislation.

Disclosure and Barring Service

The primary role of the Disclosure and Barring Service (DBS) is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups including children. The DBS was established under the Protection of Freedoms Act 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

Local Area Teams (LAT)

The LAT is a local extension of the NHS Commissioning Board and will have the following core functions of clinical commissioning group development and assurance, ensuring emergency planning within the NHS to secure both resilience and response and oversight of the whole health system within their area, with a particular focus on quality and safety. The LAT is responsible for commissioning of highly specialist services in addition to GP and dental services, pharmacy and certain aspects of optical services.

131. National practice guidance adopted locally

There are a number of nationally published guidance documents that this Policy framework has adopted. A summary is provided for each together with a link to the document:

Inter-Authority Safeguarding Arrangements (ADASS June 2016)

The guidance has been reviewed and updated to reflect new safeguarding duties under the Care Act (2014) and the accompanying Care and Support Statutory Guidance (2016). This includes, as fundamental, the person-centred, outcome-focused approach enshrined in Making Safeguarding Personal and the six national safeguarding adults principles. This document provides guidance for partner agencies when dealing with complex cross boundary issues. It is not a substitute for locally agreed multi-agency safeguarding adults policies and procedures, whether at individual Safeguarding Adults Board, sub regional or regional level. Local multi-agency procedures, together with the Care Act and statutory guidance take precedence.

Making safeguarding Personal - a toolkit for responses (Local Government Association, 2015) [30]

The toolkit is set out in a modular format with a summary of key areas. These areas range from models, theories and approaches to skills and areas of specialism that safeguarding practitioners need to be aware of. It can be used as a practitioner guide for pointers on how to respond to individual cases, or as a starting point resource for service development. It has been designed as a resource that will develop over time and allow updates and amendments to be made as development takes place or innovative and effective practice comes to light.

Adult Safeguarding and Domestic Abuse - a guide for practitioners (Local Government Association, 2015) [31]

This guide is for practitioners and managers in councils and partner agencies engaged in working directly or indirectly with people who have care and support needs, whose circumstances make them vulnerable, and who may also be victims of domestic abuse. Its purpose is to help staff to give better informed and more effective support to people who need an adult safeguarding service because of domestic abuse. It addresses situations where an adult who has care and support needs is being harmed or abused by an intimate partner or close family member in a way which could also be defined as domestic abuse.

Gaining access to an adult suspected to be at risk or abuse or neglect - a guide for social workers and managers in England (SCIE, 2014) [32]

This guide clarifies existing powers and legal options relating to access to adults suspected to be at risk of abuse or neglect where access is restricted or denied. It is intended as a source of ready reference rather than as a learning tool, laying out the potential routes to resolution. It is important that social workers and their managers are as clear as possible on which legal powers or options apply to which situations, and in cases of any uncertainty that they consult their senior managers and/or the legal department of the Local Authority. Throughout the guide there are inks to information on the relevant legislation and case law.

Safeguarding adults from harm - a legal guide for practitioners (SCIE, 2011)[33]

This guide is aimed primarily at practitioners working in various settings for organisations involved in safeguarding. But it may also be useful for volunteers and family. It aims to equip practitioners with information about how to assist and safeguard people. Knowing about the legal basis is fundamental, because the law defines the extent and limits of what can be done to help people and to enable people to keep themselves safe. This guide is intended to serve as a pointer to the law and to how it can be used. It tries to explain the law in reasonably simple terms, so it is selective and does not set out full details of each area of law covered. When it comes to the law, further advice will often be needed, but an awareness of it can help practitioners ask the right sort of question and explore possible solutions.

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30 http://www.local.gov.uk/documents/10180/6869714/Making+safeguarding+personal_a+toolkit+for+responses_4th+Edition+2015.pdf/1a5845c2-9dfc-4afd-abac-d0f8f32914bc

31 http://www.local.gov.uk/c/document_library/get_file?uuid=5928377b-8eb3-4518-84ac-61ea6e19a026&groupId=10180

32 http://www.scie.org.uk/care-act-2014/safeguarding-adults/adult-suspected-at-risk-of-neglect-abuse/files/adult-suspected-at-risk-of-neglect-abuse.pdf

33 http://www.scie.org.uk/publications/reports/report50.pdf