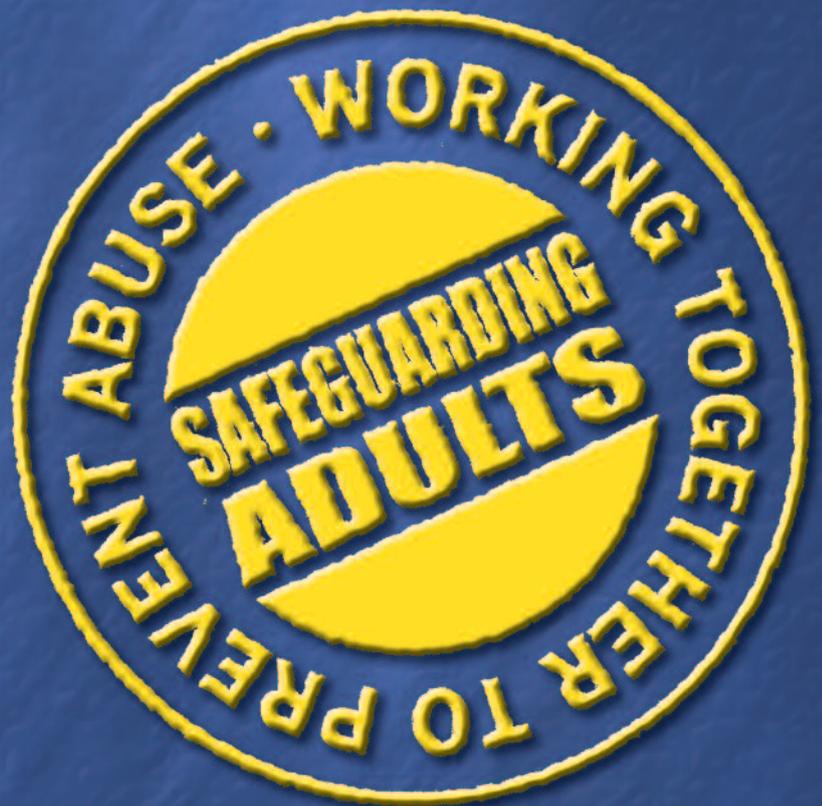


**"NO SECRETS"**

# **Safeguarding Adults: Multi-Agency Policy & Procedures**

Policy and Procedure for the Prevention of  
Abuse of Adults in Need of Safeguarding



Revised January 2010

Adult Social Care Services, Health and Police in Partnership with the CQC and the  
Voluntary and Independent Sector in Leicester, Leicestershire and Rutland

## **Welcome To Safeguarding Adults: Multi-Agency Policy & Procedures**

This document is designed to help you do your job. It is designed to be easy to use and comprehensive.

You can download this document on the internet from:

<http://www.leics.gov.uk>

<http://www.leicester.gov.uk>

<http://www.rutland.gov.uk>

• It is also available on the intranets of the following:

- Leicestershire County Council
- Leicester City Council
- Rutland County Council
- Leicestershire Police
- NHS Leicester City
- Leicestershire Partnership NHS Trust
- NHS Leicestershire County & Rutland
- University Hospitals Leicester NHS Trust
- Voluntary Action LeicesterShire
- Voluntary Action Rutland
- <http://www.varutland.org.uk>
- EMCARE
- <http://www.emcare.org.uk>

Your comments on this document are of great value, because they are based on your knowledge and experience.

If you have noticed an omission, or you think that it could be improved in any other way, please get in touch with us at:

[safeguardingadults@leics.gov.uk](mailto:safeguardingadults@leics.gov.uk)

## **Letter from the Chair of the Safeguarding Adults Board for Leicester, Leicestershire & Rutland**

Dear Colleagues,

In March 2000, the Department of Health published 'No Secrets' requiring statutory, voluntary and independent sector agencies to work together to produce policy, guidance and training about working with adults in need of safeguarding.

A set of procedures was published in Leicestershire, Leicester and Rutland in December 2001 assisting staff to fulfil their duty of care to protect and support. Those procedures were revised after a comprehensive review and reissued in March 2005. Such is the rate of change, at the present time, the Safeguarding Adults Board felt that it was appropriate to review the procedures again and I am happy to introduce these to you.

As you know 'No Secrets' is being reviewed by the Department of Health and many responses have been made to the consultation, highlighting some of the current issues that need to be addressed. While the Department of Health have not responded to these as yet, we have sought to incorporate in our revised local procedures much of the latest thinking and best practice. This is essential to ensure that our approach in Leicestershire, Leicester and Rutland remains as strong as possible.

We have a well established multi-agency approach with the Safeguarding Adults Board co-ordinating activity and holding individual agencies to account. I have been impressed by the strength of our partnership and significant progress has been made to ensure that we make a real impact. However, we know that there are always things that we can do better and this revised set of procedures will assist us to do just that, offering all our staff the guidance they need to safeguard adults and enable them to lead fulfilling lives in their communities.

Mick Connell  
*Chair of the Safeguarding Adults Board for  
Leicester, Leicestershire & Rutland*

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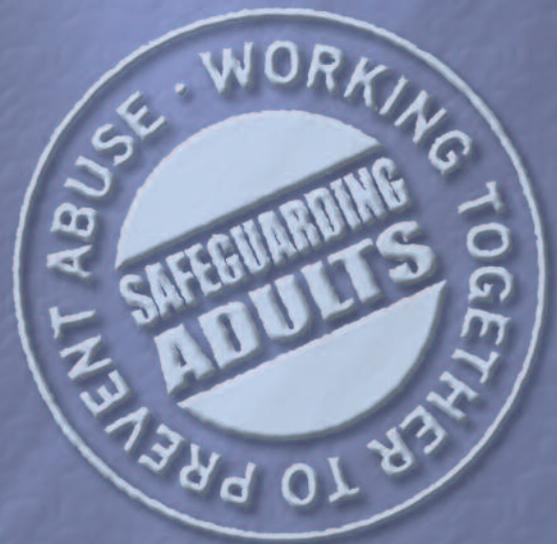
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# **Safeguarding Adults: Multi-Agency Policy**

**Origins, Standards, Definitions, Standards,  
Principles, Purpose**



Adult Social Care Services, Health and Police in Partnership with the CQC and the  
Voluntary and Independent Sector in Leicester, Leicestershire and Rutland

This Policy applies to all Adults in need of safeguarding and all agencies that have contact with Adults in need of safeguarding in Leicester, Leicestershire and Rutland.

## **Origins of the Policy and Procedures**

The Department of Health published 'No Secrets' in March 2000. The ADSS published National framework for Service Standards in October 2005. The application of both these underpinning philosophies is monitored locally by the Safeguarding Adults Board and Working Group.

## **Why Is It Called "Safeguarding Adults?"**

"Vulnerable adults" became "adults in need of safeguarding" to recognise a shift in service philosophy and practice since the launch of "No Secrets" in 2000. The term "Vulnerable Adults" can be disempowering and can also suggest that the cause of abuse is located with the victim rather than acts or omissions of others.

There can be confusion with the definition; a "Vulnerable Adult" in 'No Secrets' may be different to a "Vulnerable Adult" as defined in the Care Standards Act 2000; the definition is different yet again to that of a "Vulnerable Witness" as defined under the section 'Achieving Best Evidence' in the Youth and Criminal Justice Act 2002.

The term 'Adult Protection' implies a paternalistic approach.

'Safeguarding Adults' reinforces that all adults have the right to live free from abuse and degrading treatment, but that some people may have that right compromised. One such group of people are individuals who have community care needs.

Since the launch of 'No Secrets' (2000) it has been demonstrated that this group of people are more likely to experience abuse and may have difficulty accessing mainstream and/or specialist services to keep them safe.

## **The Service Standards**

### **Standards 1-2: Joint Planning and Capability**

#### **Standard 1**

Each Local Authority has established a multi-agency partnership to lead "Safeguarding Adults" work.

This set of standards outlines the multi-agency framework within which planning, implementation and monitoring of Safeguarding Adults work should take place, including a list of suggested partner agencies.

## **Standard 2**

Accountability for and ownership of "Safeguarding Adults" work is recognised by each partner organisation executive body.

This set of standards outlines the commitment and engagement of each of the partner agencies.

## **Standards 3, 4 & 5 - Prevention of Abuse and Neglect**

### **Standard 3**

The Safeguarding Adults policy includes a clear statement of every person's right to live a life free from abuse and neglect and this message is actively promoted to the public by the local strategic partnership, the Safeguarding Adult partnership, and its member organisations.

This set of standards looks at preventing abuse and neglect in the community.

### **Standard 4**

Each partner agency has a clear well-publicised policy of zero tolerance of abuse within the organisation.

This set of standards looks at preventing abuse and neglect within service delivery.

### **Standard 5**

The Safeguarding Adults partnership oversees a multi-agency workforce development/training sub-group. The partnership has a workforce development/training strategy and ensures that it is appropriately resourced.

This set of standards looks at the "Safeguarding Adults" training strategy.

## **Standards 6, 7, 8 and 9 - Responding to Abuse and Neglect**

### **Standard 6**

All citizens can access information about how to gain safety from abuse and violence, including information about the local Safeguarding Adults procedures.

This set of standards looks at the duties of (public) agencies under the Human Rights Act (1998) to intervene proportionately to protect the rights of citizens to live free from violence and abuse.

### **Standard 7**

There is a local multi-agency Safeguarding Adults policy and procedure describing the framework for responding to any adult "who is or may be eligible for community care services" and who may be at risk of abuse or neglect.

This set of standards looks at the joint systems and procedures in place.

### **Standard 8**

Each partner agency has a set of internal guidelines, which are consistent with the local multi-agency "Safeguarding Adults" policy and procedures and which set out the responsibilities of all workers to operate within it.

This set of standards looks at the systems in place in each partner agency.

### **Standard 9**

The multi-agency Safeguarding Adults procedures detail the following stages: Alert, Referral, Decision, Safeguarding Assessment, Strategy, Safeguarding assessment, Safeguarding plan, Review, Recording and monitoring.

This set of standards detail each stage of the multi-agency procedures.

## **Standards 10 and 11 - Access and Involvement**

### **Standard 10**

The safeguarding procedures are accessible to all adults covered by the policy.

This set of standards looks at whether all there is equality of access to safeguarding services.

### **Standard 11**

The partnership explicitly includes service users as they are partners in all aspects of the work. This includes building service-user participation into its membership: monitoring, development and implementation of its works; training strategy; and planning and implementation of their individual safeguarding assessment and plans.

This set of standards looks at how people who use services are engaged in the systems and partnership.

These Standards<sup>1</sup> are used to shape our Multi-Agency Development Plan and each organization is asked to audit their Safeguarding activity against these standards.

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<sup>1</sup> The full version of the ADASS report can be found at  
<http://www.adass.org.uk/images/stories/Publications/Guidance/safeguarding.pdf>

## **Safeguarding Adults Definitions**

### **Who is an 'Adult in Need of Safeguarding'?<sup>2</sup>**

Any person aged eighteen or over who:

Is or may be in need of community care services<sup>3</sup> by reason of mental or other disability, age or illness; and

Is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation.

### **What Constitutes Abuse?**

The term 'abuse' can be subject to wide interpretation. The starting point for a definition is the following statement taken from 'No Secrets':

Abuse is a violation of an individual's human and civil rights by any other person or persons.

Abuse may consist of a single act or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented, or cannot consent. Abuse can occur in any relationship and may result in significant harm to, or exploitation of, the person subjected to it. Abuse may be perpetrated as the result of deliberate intent, negligence or ignorance.

'Significant harm' should be taken to include: 'ill treatment including sexual abuse and forms of ill treatment which are not physical; the impairment of, or an avoidable deterioration in, physical or mental health; and the impairment of physical, intellectual, emotional, social or behavioural development.'

## **Multi-Agency Policy Statement**

All adults in need of safeguarding have the right to live their lives free from abuse of any description.

All agencies and individuals that have contact with adults in need of safeguarding have a duty to protect them from abuse.

Where abuse is reported to or suspected by any person in any agency the response will be prompt and in line with the Multi-Agency Procedures.

---

<sup>2</sup> Adult Social Care Departments have well established 'eligibility criteria' for their community care services. Nothing in 'No Secrets' or this policy varies those criteria. (See No Secrets Section 6.10). However, in practice anybody who is an Adult in Need of Safeguarding as defined by 'No Secrets' will normally be eligible for an assessment.

<sup>3</sup> 'No Secrets' defines community care services as 'all care services provided in any setting or context'.

The response will:

- Recognise those individuals to which the procedures apply;
- Take the matter seriously;
- Be timely, sensitive and maintain confidentiality as appropriate to each situation;
- Be coordinated between agencies;
- Be consistent with the service principles and practice of each agency and this policy;
- Promote human rights and every citizen's access to the law;
- Support the rights of individuals by respecting self-determination and informed choice;
- Acknowledge risk as an integral part of choice and decision-making; Ensure that risk assessments are completed and that these assessments are recorded and reviewed in order that risk can be minimised;
- Be effective in providing or negotiating solutions that are as simple and practical as possible and aim to prevent the risk of abuse recurring;
- Be sensitive to every individual's identity including culture, beliefs and ethnic background, gender, disability, age and sexuality.

### **Principles of the Multi-Agency Policy and Procedure**

- The overriding consideration at all times will be the appropriate protection of adults in need of safeguarding;
- Appropriate protection takes place alongside the need to ensure that individuals have self-determination and autonomy of choice;
- All staff have a duty to ensure that Adults in need of safeguarding receive the protection of the law;
- All staff have a duty of care and must take professional/personal responsibility for responding to any concerns about possible abuse;
- All staff have a duty to share information appropriately, to act and to co-operate with colleagues across all agencies, consistent with this policy and the Information Sharing Agreements and Protocols;
- Action taken must reflect a commitment to anti-discriminatory practice, to ensure that services are culturally appropriate, and to promote human rights;
- As far as possible all action taken must be with the knowledge and consent of the individual concerned.

## **Purpose of the Multi-Agency Policy and Procedure**

The procedures are intended to support good practice and sound professional judgement, and to:

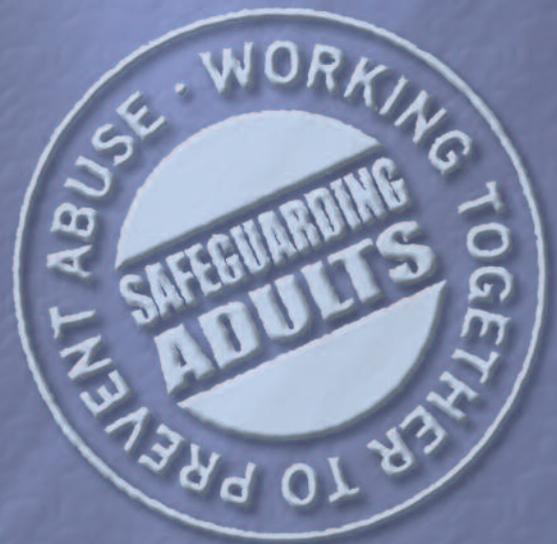
- Provide a coherent and consistent framework for recognising and taking action to prevent abuse of adults in need of safeguarding;
- Recognise and promote the benefits of effective multi-agency working through dialogue and co-operation, to form a collaborative partnership between the agencies that have contact with adults in need of safeguarding;
- Describe the common values, principles and law that underpin the protection of adults in need of safeguarding;
- Define the different types of abuse, signs, symptoms and indicators;
- Define the roles of each agency;
- Ensure that information on allegations and incidents of abuse is collected, monitored and reviewed in order to inform future practice;
- Complement other related policies, procedures and guidance.

## **Confidentiality and Information Exchange**

- The Data Protection Act 1998 and the Human Rights Act 1998, together with service standards and good practice, require information to be handled lawfully and sensitively;
- An over arching Information Exchange Agreement exists which covers the general issues surrounding the sharing of information between agencies;
- An Information Exchange Agreement specific to Safeguarding Adults has been developed (see [Appendix 2: Information Exchange Agreement](#)); Working together to protect Safeguarded Adults will often involve the need to exchange sensitive personal information and other information; This should be done in line with this agreement
- The Caldicott Committee in the Report on the Review of Patient - Identifiable Information (December 1997) summarised the following principles:
  - Information will only be shared on a need to know basis when it is in the best interests of the service user;
  - Confidentiality must not be confused with secrecy;
  - Informed consent should be obtained but, if this is not possible and other Safeguarded Adults are at risk, it may be necessary to override the requirement;
  - 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 vulnerable people may be at risk.

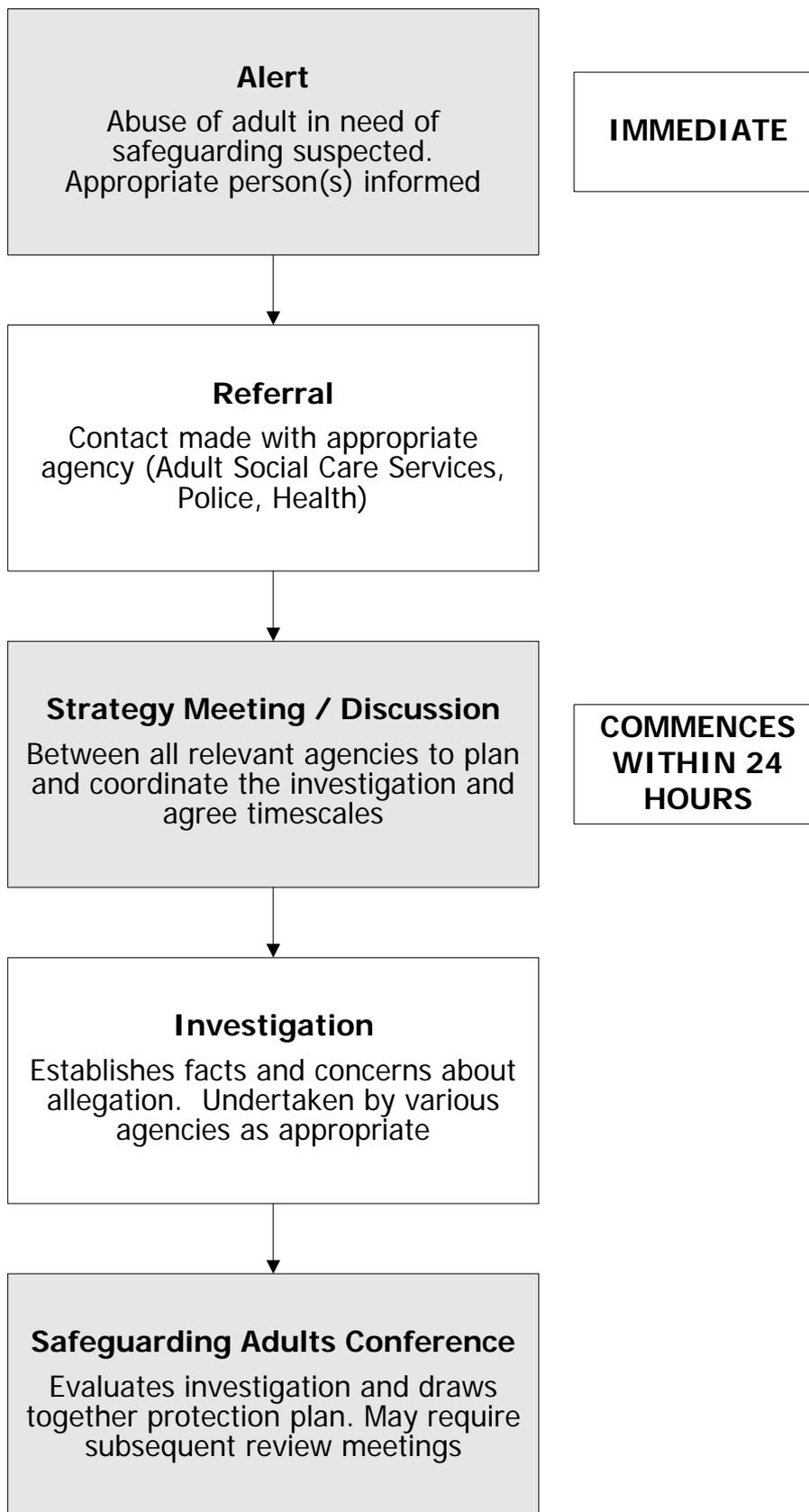
# **Safeguarding Adults: Multi-Agency Procedure**

Agency Processes, Procedures, Flowcharts



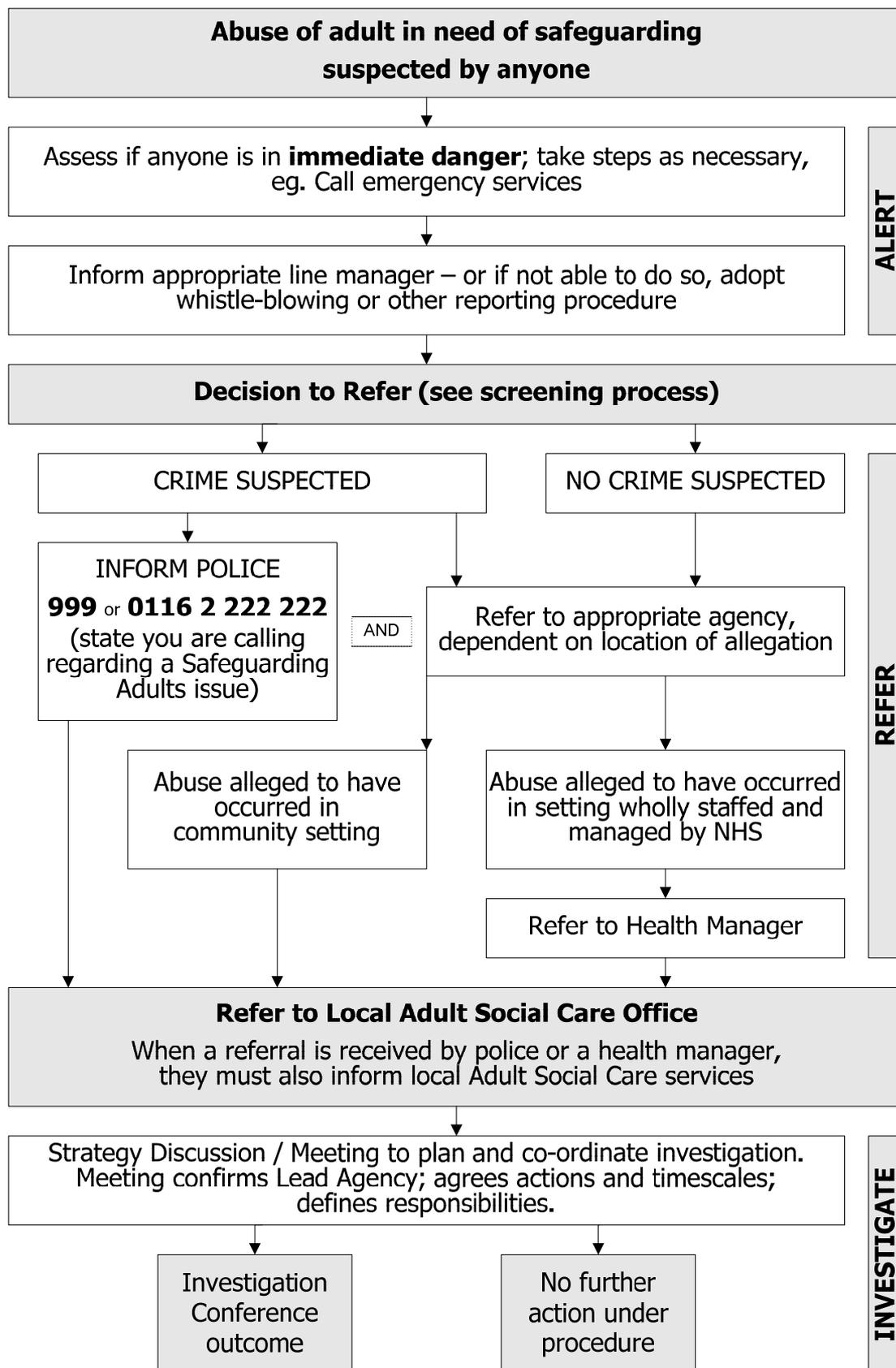
Adult Social Care Services, Health and Police in Partnership with the CQC and the Voluntary and Independent Sector in Leicester, Leicestershire and Rutland

## Flowchart 1: Safeguarding Adults Process



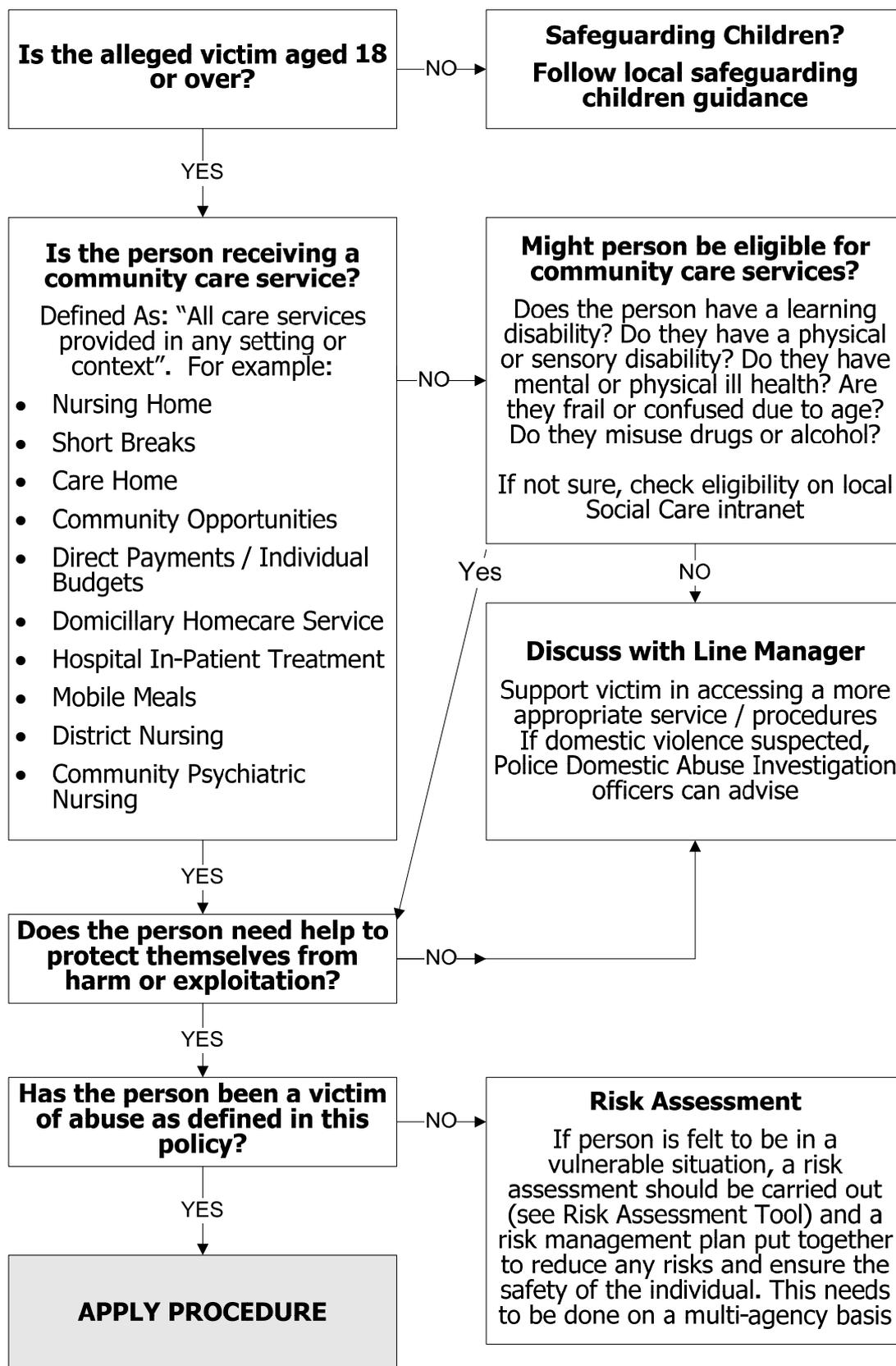
This flowchart is designed to give an overview of the overall multi-agency Safeguarding Adults process. This full procedure document should be referred to for complete details of the procedure.

## Flowchart 2: Safeguarding Adults Alert & Refer



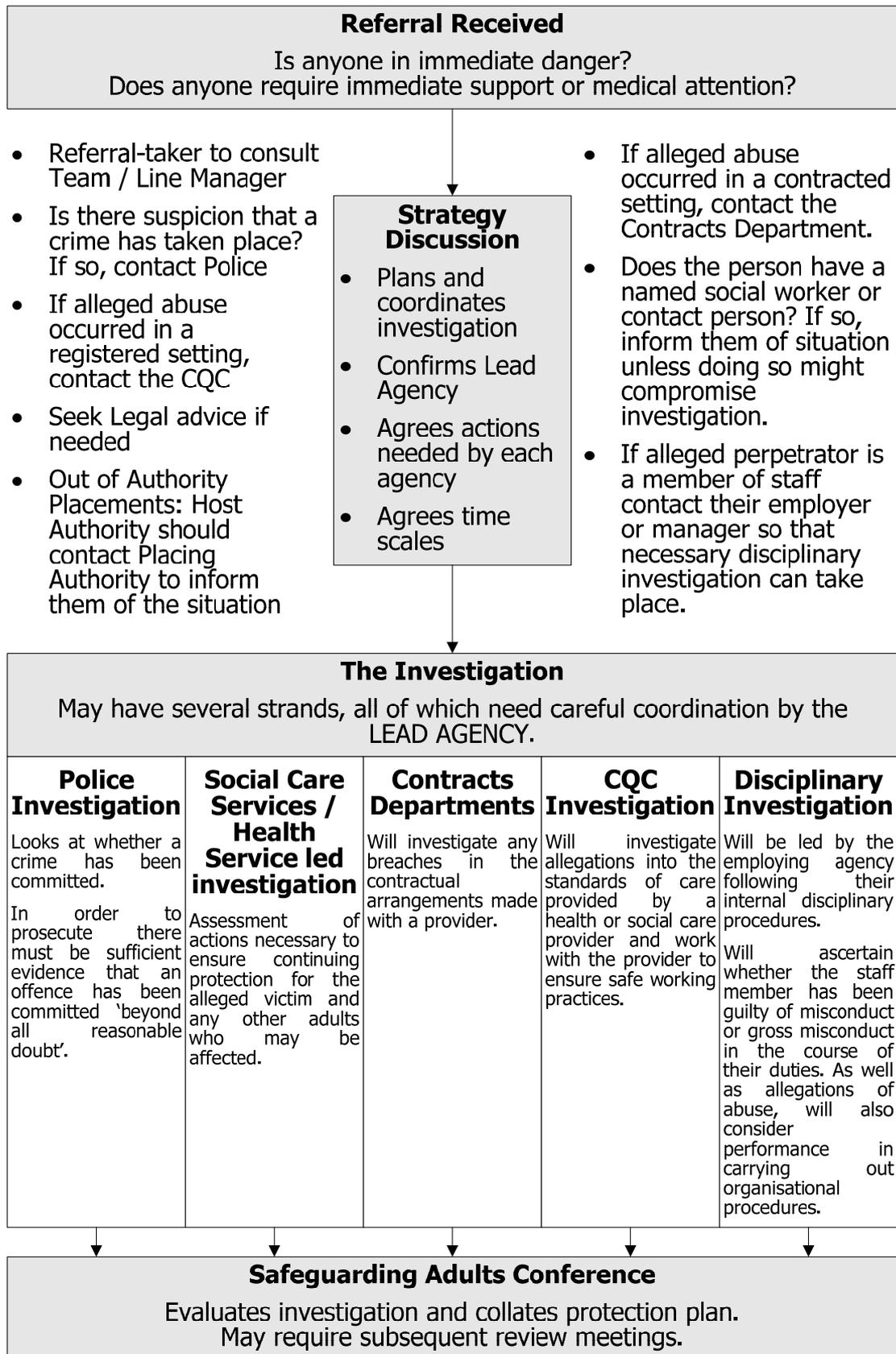
This flowchart is designed to give an overview of the multi-agency Safeguarding Adults alerting and referrals process. This full procedure document should be referred to for complete details of the procedure.

### Flowchart 3: Safeguarding Adults Screening Process



This flowchart is designed to assist in assessing whether the Safeguarding Adult Multi-Agency Policy and Procedure should apply. This full procedure document should be referred to for complete details of the procedure.

## Flowchart 4: Safeguarding Adults Investigation



This flowchart is designed to give an overview of the multi-agency Safeguarding Adults investigative process. This full procedure document should be referred to for complete details of the procedure.

## **Responsibilities of Staff in All Agencies**

This multi-agency procedure sets out what is expected of staff and volunteers working within any agency within Leicester, Leicestershire and Rutland who may come into contact with adults in need of safeguarding.

All agencies will have internal guidance for their staff and / or volunteers that complements this multi-agency procedure. Staff should be aware of how to access both the internal and multi-agency procedures.

Depending upon the agency they work for and their job role, staff responsibilities fall into one or more of the following categories:

- Alerting and referring;
- Receiving referrals;
- Investigation / co-ordination;
- Decision making;
- Monitoring.

### **It is the duty of all staff and volunteers in all agencies to:**

- Alert an appropriate manager, without delay, to any concerns, suspicions or evidence of abuse that they may see or hear about;
- Co-operate with any investigation of concerns of abuse by providing all the evidence that may be known;
- Never prevent or persuade another person from raising concerns, suspicions or presenting evidence;
- Record all factual information accurately and clearly, in line with their employing agency's requirements;
- Follow this multi-agency procedure and their internal procedures.

**It is the duty of all managers in all agencies to:**

- Have an operational knowledge of this procedure;
- Ensure that staff and volunteers have the appropriate support, training and supervision to carry out their role within this procedure and any internal procedures in a competent manner;
- Take action as required by this procedure. In particular, investigations into an incident should not be commenced without a strategy discussion / meeting between the relevant agencies (unless there are very exceptional circumstances);
- Discuss and refer, if necessary, any concerns to Adult Social Care services, the relevant health manager or the police as described in this procedure;
- Ensure that action is taken in accord with the principles of this policy and in accord with their agency's equal opportunities policy;
- Where another procedure has to be operated simultaneously (for example, complaints, grievance and discipline, etc.), ensure that the protection of any adult is the first consideration at all times.

## **Key Principles of Alerting, Referring and Investigation**

**All those making a complaint or allegation or expressing concern, whether they be staff, adults in need of safeguarding, carers, members of the public, can be reassured that:**

- They will be taken seriously;
- Their comments will be treated confidentially but their concerns may be shared if they or others are at significant risk;
- If they are a service user they will be given immediate protection from the risk of reprisals or intimidation;
- If they are staff they will be given support and afforded protection if necessary e.g. under the Public Interest Disclosure Act 1998;
- They will be dealt with fairly and in a non-discriminatory manner;
- They will be kept informed of action that has been taken and its outcome as far as possible.

## Alerting

The following steps should be taken by any staff member / volunteer when abuse of an adult in need of safeguarding is suspected:

- Make sure no one is in immediate danger;
- Call for police / ambulance if emergency situation;
- Remain calm - do not over-react or be judgmental;
- If abuse is recent, do not do anything that could disturb any possible forensic evidence;
- Record details of what has happened, in line with internal case recording systems and policies;
- An alert should be raised with the appropriate line manager.

**All alerts must be taken seriously by those receiving them.**

Usually the manager concerned will be the immediate line manager. If this is not appropriate, for example where that manager is the alleged perpetrator or the line manager is not available, concerns will be reported to another senior manager. Guidance for dealing with situations of this nature will be within each organisation's whistle-blowing procedure.

Some professionals (e.g. GPs, psychiatrists, psychologists, etc.) will alert by making a referral direct to the appropriate agency.

Following an alert, the line manager, in consultation with others if necessary, will collate all information and assess whether any individual is in immediate danger or any urgent action is necessary, and whether a referral is necessary.

If the incident is recent and / or serious and the alleged victim has injuries or is severely distressed, the priority for all must be:

- to ensure the alleged victim is as safe and comfortable as possible;
- to ensure they get any emergency medical treatment they need promptly;
- to contact the police if any crime is suspected;
- to ensure that any evidence of abuse is left undisturbed; There may be forensic evidence that would be pertinent to a police investigation: for instance, care needs to be taken about tidying up an area after an assault or offering baths or showers following a sexual assault; The police will advise on this; Refer to ['Strategy Meetings and Discussions'](#) in this procedure for further guidance regarding medical examinations and treatment of any alleged victims.

## Referring

A decision should be made as to whether the allegation / suspicion warrants referral under the multi-agency Safeguarding Adults Policy and Procedure. The screening process should be used to make this decision. The professional judgement of the line manager who receives the alert will normally be the key factor in deciding whether, and when, a referral should be made to the relevant agency.

The decision to refer may sometimes benefit from other professional perspectives. The local social care service access team could be contacted initially to discuss a case and whether it should be referred under these procedures.

Any allegation that fits the categories of the policy must be referred. If there is any doubt, a referral should be made.

It can sometimes be difficult to decide whether a particular act or act of omission is abuse or poor professional practice.

The seriousness or extent of abuse is often not clear when an alert is first raised. It is important, therefore, when considering whether it is appropriate to refer, that all allegations, alerts and concerns are treated seriously and approached with an open mind.

Adult social care services will usually have the responsibility for deciding whether the procedures should apply. Any decision should be made in discussion with the social care team manager, the referrer and other multi-agency colleagues as appropriate.

Where it is decided that the Safeguarding Adult Policy and Procedure is not appropriate, any victim of abuse should be supported to access an appropriate service.

The professional responsible for making a decision not to refer should document clearly how this decision was reached, who was consulted in making this decision, and what steps have been taken to ensure any risks have been minimised and any support that has been offered to the alleged victim/s as necessary.

**Where to refer to:**

Adult Social Care Services will normally be the appropriate agency to receive referrals.

- If the alleged victim is allocated to a specialist team, the referral should be made to this team;
- If no specialist team is allocated, or the specialist team cannot be contacted promptly, the referral should be made to the Adult Access Team covering the area where the abuse is alleged to have occurred;
- In situations primarily involving an allegation of criminal behaviour, a referral should be made to both the police and adult social care services.

In situations where the abuse is alleged to have occurred in a Health setting (any setting wholly managed and staffed by employees of the NHS), the referral should be made to the health service manager responsible.

If there is any doubt about which agency should receive the referral, it should be made to a local adult social care team.

The referrer should clearly state that they are making a referral under the Multi-Agency Safeguarding Adults Policy and Procedures.

All contact points for making referrals are in [Appendix 7: Useful Contacts](#).

**Allegations that Appear to Involve Criminal Behaviour**

Generally speaking, physical, financial, sexual and some aspects of psychological abuse (such as anti-social behaviour, hate crime, harassment, forced marriage and domestic violence) may also constitute a criminal offence.

Both the police and adult social care should receive a referral in these circumstances. If the police are contacted initially, the incident and / or crime reference number should be passed on to adult social care. If Adult Social Care Services are contacted initially, a discussion should take place between the referrer and referral-taker as to who is best placed to contact the police.

Staff need to recognise that the alleged victim may not wish a particular incident or disclosure to be further investigated or reported to the police.

Where the alleged victim states that they do not want the situation disclosed further or reported to the police, the situation should be discussed with line management and, where appropriate, multi-agency colleagues at the earliest opportunity.

It may be appropriate to have these discussions as part of a strategy discussion / meeting following the referral.

Consideration should be given to:

- The involvement of any paid staff or volunteers - any allegations involving a member of staff or volunteer must be investigated according to this procedure, including involving the police where necessary, regardless of the wishes of the alleged victim;
- The mental capacity of the alleged victim to make the decision regarding what action should be taken about the alleged abuse; Any assessments of mental capacity should be time and decision specific and carried out in accordance with the Mental Capacity Act 2005;
- If the alleged victim is assessed as lacking capacity to make a decision about any further investigation or police involvement in the concern, any decision made about the concern should be made in their best interests, in accordance with the Mental Capacity Act 2005;
- The seriousness and impact of the suspected abuse
- Whether any other adults / children are or may be placed at risk.

Further discussions with police / legal advisors and / or other agencies may be required. In these cases, every effort should be made by all professionals to keep the confidentiality of the alleged victim.

Any decision regarding whether to report the matter to the police should be discussed with great care with the alleged victim. The implications for him / her, and possibly others, should also be explored and discussed with an appropriate line manager and in an appropriate multi-agency arena.

A decision to report must be made in accordance with the Data Protection Act 1998 and any local information sharing protocols and agreements. The reasons for the decision should be explained to the alleged victim and recorded. What should be disclosed is the minimum amount of personal information necessary to achieve the purpose of the disclosure.

### **Information to Share on Making Referral**

The referrer will be expected to record (according to their own guidance for recording and record keeping) and share with the referral-taker where appropriate the following information:

- Details of whether to refer, including how this was reached;
- If no referral was made, what actions were taken to ensure minimisation of risk and support for those involved;
- Consent of the alleged victim to refer, and any wishes or feelings they may have expressed regarding how they wish the process to proceed following the referral; If this information is not available, it must be made clear why this is the case.;

## **Allegation / Concern**

- Details of the person raising the alert;
- Reason for concern;
- Date / time / location of any incident;
- Objective, professional description of any act witnessed or detailed by alleged victim;
- Details of any possible witnesses;
- Details of any possible evidence - written records should be stored securely; A written record should be made of any answer phone messages;
- Details of any possible indicators; These may be recorded on a [body chart](#).

## **Alleged Perpetrator**

- Name;
- Address;
- Gender;
- relationship to alleged victim;
- What contact they may have with alleged victim and / or others;
- if the alleged perpetrator is a member of staff, what actions have been taken prior to referral, e.g; suspension?

## **Referrer**

The staff member making the referral should share information about their organisation, role and contact details. They should record details of the worker and department receiving the referral and any action agreed between the referrer and the referral-taker, including arrangements for any feedback.

## **Anonymity**

All professional members of staff are expected to make referrals without anonymity.

If there are concerns regarding anonymity, a discussion should take place between the referrer and the referral-taker. Any decision reached should be proportionate to the situation and to the level of risk to the referrer, alleged victim and / or others.

## **Allegations Involving Members of Staff / Volunteers**

If the suspicion or allegation involves a member of staff or volunteer, Human Resources or employment advisors should be consulted at the earliest moment possible, and relevant HR processes should be followed. It is necessary to consider whether suspension from duty may be required.

(See '[Practice Guidance 9: Human Resources](#)' for further guidance)

## **Receiving a Referral**

This guidance is of primary relevance to those within health and social care organisations with a responsibility for receiving Safeguarding Adult referrals.

On receiving a referral, consideration should immediately be given to:

- The safety of the alleged victim and / or any others;
- The current status of the alleged victim and / or any others - is urgent medical attention required?
- The alleged perpetrator - if they are also an adult receiving a service, do they require any immediate support? If they are a member of staff or volunteer, are relevant HR processes being followed and support being offered as necessary?

## **Recording**

All information regarding the referral should be gathered, recorded and stored in accordance with local and national monitoring and case recording requirements. Each relevant organisation's recording system should support this.

In addition, the following details should be recorded:

- Whether the alleged victim is aware of the referral being made; If they are unaware, the reasons for this should be recorded;
- Any wishes or feelings the alleged victim may have expressed regarding how they wish the process to proceed following the referral;

## **Incidents Coming to Light Out of Office Hours**

Incidents coming to light out of office hours will be assessed by the Social Services Emergency Duty Team who will take any necessary action to safeguard the alleged victim and others who may be at risk pending the commencement of a full strategy discussion / meeting and investigation on the next working day.

## Strategy Meeting / Discussion

The strategy discussion or meeting will plan the multi-agency investigation. The form '[SA1: Record of Strategy Meeting](#)' (see [Appendix 1: Forms & Body Maps](#)) should be completed

The investigation should be co-ordinated and planned so that those who are involved are clear of their role and the roles of others. Investigations should not commence without a strategy meeting or discussion being held. On some occasions, however, the police may need to begin a criminal investigation without delay. They will take whatever action is necessary in order to minimise risk, secure evidence and detail offender/s.

The strategy discussion / meeting should COMMENCE within 24 hours of the referral being received (or the following working day if the referral is received out of office hours). The strategy discussion will be conducted according to the needs of each situation: in serious or complex cases, an actual meeting should be held. There will be occasions where contact by telephone and / or secure email will suffice.

Responsibility for co-ordinating the strategy meeting / discussion will sit with the agency that received the referral (either social care services or the relevant health trust). The form '[SA1: Record of Strategy Meeting](#)' should be completed by the worker co-ordinating the strategy meeting / discussion.

The specific purpose of the strategy discussion / meeting is to:

- Assess immediate risk and actions needed to manage that risk;
- Confirm the responsibilities of each agency;
- Agree what action is necessary;
- Decide time scales for these actions;
- Agree how alleged victims, carers and others will be involved in the investigation as appropriate.;

### Who Should Be Involved In This Stage?

- Where a crime is suspected, the police should be involved;
- If the concern relates to the conduct of a member of staff, the individual's line manager and / or HR department should be involved;
- Where the concern relates to a registered health or social care service, the Care Quality Commission (CQC) should be involved;
- Where the concern relates to a contracted service, the relevant contracting department should be involved;
- Where clarification of legal issues is require, the relevant legal advisors should be involved.;

Other professionals may be involved where their input is necessary to plan the investigation. This may include Speech and Language Therapists, Advocates, Community Psychiatric Nurses, GPs, consultants, care and support staff etc.;

Consideration should be given as to whether the referrer needs to be involved in the strategy discussion / meeting. If they have information that is necessary to plan the investigation, or if they are to be involved in the investigation, they should be involved. If there are concerns that they are in some way involved in the abuse, it would not be appropriate to involve them.

The alleged victim or perpetrator will not usually be involved in the strategy discussion / meeting, but their views about how they would like the investigation to proceed must be given due consideration.

Assumption about what an agency may or may not do should not be used as grounds to exclude them from the strategy discussion.

### **Points for Consideration at the Strategy Discussion / Meeting**

Immediate risk and actions needed to manage that risk;

- Agree lead agency;
- The Lead Agency

#### **The Lead Agency**

This is the agency with responsibility for leading the multi-agency response to allegations and concerns of abuse of adults in need of safeguarding.

The lead agency has responsibility for co-ordinating both the strategy meeting / discussion and the multi-agency investigation.

The lead agency will, obviously, have to work closely with other agencies to ensure the procedure is effectively applied.

Adult Social Care Services will be the lead agency where the abuse is alleged to have occurred in a COMMUNITY SETTING.

The relevant Health Trust will be the lead agency where the abuse is alleged to have occurred in a premises wholly staffed and managed by the NHS.

The lead agency will always be the agency covering the area where the abuse is alleged to have occurred. Where allegations concern individuals who are living in out of authority placements, the host authority will have responsibility for co-ordinating the strategy discussion / meeting and investigation. They will, obviously, inform and involve the placing authority. ([See Responsibilities of Host Authorities](#))

- Clarify what the concern / allegation is
- Consider the evidence that is currently available
- Consider the wishes of the alleged victim / victims
- Consider the needs of the alleged victim / victims; Arrange support from counselling / advice services / family / friends as appropriate;

- Consider whether the alleged victim is aware of any concerns that are held about them; If they are not, consider whether the concerns should be shared and, if so, who is best placed to do this;
- Consider whether the alleged victim is aware of their rights and options; If they are not, these options and rights must be explained to the alleged victim; Consideration should be given to who is best placed to do this; This may require the involvement of advocates, interpreters or Speech and Language Therapists;
- Consider whether there is a need for any assessments of capacity and / or the instruction of an Independent Mental Capacity Advocate (IMCA);
- Consider how the alleged victim and / or others are currently being supported; Ensure a risk management plan and up-to-date support plan are in place as necessary;
- Agree what further information is required and the best method and organisation / worker to obtain this; The information could be gathered by interview, assessment, case files, etc;
- Identify roles and responsibilities of each agency and individual taking account of:
  - The alleged victim's needs and wishes
  - Skills e.g; interviewing
  - Authority e.g; to interview an alleged perpetrator
  - Co-ordination and information sharing to avoid repeating tasks such as interview;
- Agree timescales for any actions taken
- Agree how information discovered in the course of the investigation will be fed back to the multi-agency group involved, as appropriate;
- Identify any resources required for the investigation and each agency's responsibility to provide these;
- Consider whether any other multi-agency forum would be appropriate to consider the case, for example, Multi-Agency Risk Assessment Conference (MARAC);
- Consider any specific issues that may arise if a child is the alleged perpetrator (see [next page](#));
- Consider issues around medical examination, ensuring that police are able to gather any evidence in a timely fashion (see '[Possible Medical Examination](#)' below)
- Where there is a potential conflict of interest (for example, where an investigation into a service provided by the local authority may involve looking at social care service policies and procedures or management), consideration should be given to the appointment of an independent person to lead the strategy meeting / discussion and investigation;

## **Children as Perpetrators**

If a child (under 18) is alleged to have perpetrated abuse against an adult in need of safeguarding, contact should be made with the local Children's Services Access Team / Duty and Assessment Service in order to ensure that the needs of the child are considered.

An early strategy meeting / discussion involving both adult and child services should then identify how the investigation should proceed.

If a Child Protection Plan or Children in Need Support Plan, is put in place, then any arrangements for joint monitoring should be identified and agreed following the conclusion of the investigation.

## **Possible Medical Examination**

If there is any question about the person needing either treatment or tests to be done either for medical or evidential purposes, appropriate medical advice and treatment must be sought after discussion with the line manager and the police.

Medical examination / treatment (other than in emergency) should not be given if sexual assault is suspected. The police will arrange for a police surgeon to conduct an examination in order to gather evidence.

All adults are assumed to have capacity to make decisions and have the right to decide whether to undergo medical examination and / or treatment.

Any assessments of mental capacity should be time and decision specific and carried out in accordance with the Mental Capacity Act 2005 Code of Practice.

If the alleged victim is assessed as lacking capacity to make a decision about medical examinations / treatment, any decision made about the concern should be made in their best interests, in accordance with the Mental Capacity Act 2005 Code of Practice.

Early communication with the police will ensure that evidence is preserved and that no action is taken that may contaminate a criminal investigation.

## **Retraction of Allegation**

If the allegation is retracted, in the majority of cases the strategy meeting / discussion should still take place to consider why the allegation was retracted. It may be that the alleged victim has been subject to intimidation or coercion. It may be that the allegation was untrue, in which case the reasons for this should be considered and future arrangements put in place to ensure the ongoing protection of the individual who made the allegation and those who may be subject to untrue allegations in the future.

## **Investigation**

The investigation may have several strands, all of which will require careful co-ordination. This co-ordination should take place at the strategy discussion / meeting stage.

### **Who Might Be Involved?**

#### **Police**

The police investigation considers whether a crime has been committed. The police will never lead a multi-agency Safeguarding Adults investigation, however, where criminal offences are suspected, criminal investigations must have primacy over other enquiries. The police will work closely with adult social care services and other relevant agencies to ensure that the welfare and care of adults in need of safeguarding is considered whilst ensuring that nothing is done in any other part of the investigative process that could interfere with the criminal investigation.

In order to prosecute there must be sufficient evidence that an offence has been committed 'beyond all reasonable doubt'.

Insufficient evidence to support a prosecution does not mean that there may not be steps that need to be taken in response to the alleged abuse to protect the alleged victim/s. These steps may include:

- Action by the Care Quality Commission (CQC)
- Disciplinary action by employers
- Legal actions
- Action by contracts departments

#### **Contracts Departments**

A contracts department will investigate any breaches in the contractual arrangements made with a provider. They may also need to liaise with contracts departments in other local authorities and / or health trusts as appropriate.

#### **Care Quality Commission (CQC)**

The CQC will investigate allegations concerning the standards of care provided by a registered health or social care service provider and work with the provider to ensure safe working practices and improved standards to ensure continuing protection for the alleged victim and adults who may be affected. Where improvements are not made the CQC has powers to take certain actions, including enforcement against the registered manager / provider.

#### **Disciplinary Investigation**

The disciplinary investigation will be led by the employing agency following their own internal disciplinary procedures. It will ascertain whether the staff member has been guilty of misconduct or gross misconduct in the course of his or her duties.

As well as the allegation of abuse the disciplinary investigation will also consider performance in carrying out organisational procedures. (see [Practice Guidance 9: Human Resources](#))

### **Adult Social Care Services / Health Service Led Investigation**

They will make an assessment of actions necessary to ensure continuing protection for the alleged victim and any other adults who may be affected.

Decisions will be based on professional judgement of the information presented.

### **Investigation Evidence**

You may find the [Risk Assessment Tool](#) in this manual helpful.

The investigation will consider:

- Was / is the situation abusive?
- Is this an isolated concern, or have similar concerns / complaints have been expressed previously?
- What evidence / indicators are there?
- What facts can be established about what happened, when and to / by whom?
- How long has the situation been going on?
- How does the alleged victim perceive the alleged abuse?
- What is the victim's mental capacity to make certain decisions? This is particularly relevant when assessing whether financial or sexual abuse has occurred;
- How does the alleged perpetrator perceive the alleged abuse?
- What actions does the alleged victim wish to see taken regarding the alleged abuse?
- Does the alleged victim have the mental capacity to make decisions regarding the alleged abuse?
- Could the alleged victim's decisions and action have been unreasonably influenced by anyone else?
- What is the impact to the victim?
- What are the rights and wishes of those involved?
- What is the legal context?
- Have there been any breaches of contract or regulation?
- What could have been done to prevent the abuse occurring?
- Staffing issues
- Management issues
- Review of policy / procedure / practice

## Large Scale / Institution-Wide Investigations

In addition to this guidance regarding all investigations, there may be additional considerations required in large scale / institution-wide investigations.

Whenever abuse is alleged or suspected, it is important to consider whether any other adults in need of safeguarding could be at risk.

The need for a large-scale investigation is evident where it is suspected that a number of adults in need of safeguarding have been abused

- in the same setting
- by the same perpetrator
- by a group of perpetrators

In all multi-agency investigations, there will be a variety of agencies involved and the investigative process may comprise of several individual investigations. Within a large-scale investigation, this will certainly be the case and it is imperative that a strategy meeting / discussion should be held among all agencies at the earliest possible time.

**It is recommended that this be an actual meeting rather than simply phone or email contact, given the number of organisations who may be involved and the need for clarity on the roles of each agency / professional.**

The strategy meeting may need to consider the following issues in addition to standard procedure:

- Immediate safety of all individuals involved; This may include the need to suspend or relocate a number of staff; Arrangements may need to be made for alternative accommodation or care provision for a number of individuals;
- Agree other organisations who may need to be involved, such as the CQC, contracts departments and / or other local authorities and health trusts;
- Agree how best to co-ordinate the investigation and who has overall responsibility for co-ordination and chairing of any subsequent meetings;
- Agree the roles and responsibilities of each agency and individuals involved and ensure that all are aware of how their part of the investigation fits into the over all multi-agency process;
- Decide who needs to be notified of the investigation, who is best placed to do this and how this should be done; Those who may need to be notified include: senior management, organisational Safeguarding Adults leads, legal services, elected members, Strategic Health Authority, family and relatives of those adults who may be at risk;
- Consider resource implications around the number of investigators needed, the facilities for conducting interviews, funding to relocate individuals at risk, etc;
- Consider how to support the alleged victim/s and their family / carers through the process and following its conclusion, including the possibility of advocacy services, support groups, etc;

- Consider how any media enquiries may be dealt with;
- Agree timescales and a framework for ensuring all involved are clear about any actions that have been taken;

### **Interviews - Best Practice**

- All interviews should start with a 'rapport' to help all involved relax and feel comfortable with the situation; In addition, this stage should be used to ensure that the adult in need of safeguarding knows and is comfortable with who is present and how the interview is being recorded; This stage also allows the interviewer to become familiar with the alleged victim's preferred method of communication; A 'free narrative' stage can then encourage the victim to freely recall in their own words the events that they have experienced;
- It should be considered whether it would be necessary to involve two workers in interviews - this could limit risk to workers and the individual, and limit the scope for disputes about what was said and by whom;

### **Open Ended Questions**

Open-ended questions are questions that may be answered in a range of possible ways and do not limit the person in the answer they might give: e.g. What? When? How? Can you tell me about?

Good communication skills are required to respond to open-ended questions. An additional difficulty is that the adult in need of safeguarding may have a desire to please and thus give the answers they believe the interviewer wishes to hear. This may be particularly true for people with learning disabilities.

### **Specific Questions**

A specific question asks the person to tell you about, or clarify particular details.

In addition they can be used to recap, or lead a person through a sequence of events e.g. what happened next?

### **Closed Questions**

Closed questions require a limited single word or yes / no response. For example: Was it...? Is it...?

Closed questioning may be the most used type of questioning with adults in need of safeguarding with severe communication difficulties. This style of questioning needs to take into account the risks of:

- '*suggestibility*' - the tendency to agree with any leading questions
- '*acquiescence*' - the tendency to say 'yes' to a question automatically or to agree to the second of two options

The bias (if any) in closed questions needs to be in the direction opposite to one's suspicions if the response is to carry weight.

## **Leading Questions**

A leading question is one which implies the answer or assumes facts which are likely to be in dispute. Interviewers should offer the least likely first.

## **At the End of the Interview**

The interviewer should summarise, in the person's own language, what he/she has said in the interview.

The interviewer should always check that the person knows who to contact if they have future concerns

The interviewer should ensure that the individual is aware of how any notes from the interview will be used, and give their consent to this.

## **Communication Issues in the Investigative Process**

Before carrying out any interviews / discussions with alleged victims and / or witnesses, it must be established that this would in no way compromise any criminal investigation.

Adults in need of safeguarding may experience difficulties in communicating for a number of reasons:

- English may not be their first language;
- They may have a sensory impairment;
- They may have little or no verbal communication because of a learning disability, stroke, brain injury or dementia;
- Their understanding of language may be limited;
- Their speech may be slurred or jerky;
- They may find it difficult to combine words into complete sentences or express or understand tenses and the passage of time;
- If someone has difficulty communicating this is likely to be exaggerated if they are tired, anxious or distressed;

## **If English is Not Someone's First Language**

Police (with sufficient notice) and Adult Social Care services have arrangements to provide interpreters in most languages.

If you are interviewing someone with the help of an interpreter (including BSL, SSE) ensure that you:

- Discuss with the interpreter their role prior to starting the interview - that is that they must use the exact "words" of the interviewer and adult in need of safeguarding and not make any presumptions about what the person may mean;
- Direct your questions to the adult in need of safeguarding, and not to the interpreter;

- If using an interpreter in a group discussion or meeting the chair must ensure that only one person speaks at any one time and that the pace of discussion allows the adult in need of safeguarding to participate;
- It is not good practice for family members or friends to act as interpreters: recognised interpreters are preferable;
- It is important to debrief the interpreter as they may have relevant observations or comments to make about the interview; Offer support to the interpreter as interviews of this nature can be distressing;

### **If Someone is Deaf or Has a Hearing Impairment**

- If they use BSL or another form of sign language, police and social care services have arrangements to provide interpreters;
- Find out if the person has a preferred side for you to sit on;
- Ensure that you sit so that your face can be seen - this not only helps lip reading but also allows your facial expression to be seen;
- Speak clearly and naturally;

### **If Someone Has a Hearing or Visual Impairment**

- Find out in advance the person's preferred method of communication;
- If the person can see a little ensure you do not block any light source, for example by standing between them and the window;
- Give the person time to adjust to their surroundings, particularly when moving from a bright to a dim environment;
- Do not leave the person alone without telling them where they are; Leave the person near an object, such as a table, that they can touch;
- If you are not skilled or practised in guiding someone with a visual impairment seek help from someone who is;

### **If the Person Has Difficulty Communicating Due to Dementia, Learning Disability, Stroke, Brain Injury or Mental Ill Health**

- Seek advice from someone who knows the person well, ensuring that they are not implicated in the allegation - try to determine how the person communicates, do they use gestures, objects, signs? What do specific gestures or phrases mean?
- Have anything that the person may wish to use available - pictures, paper, pen, objects;
- Find out in advance how any communication aids work and ensure that they are working / have batteries in;
- Plan in advance how you will explain the purpose of the interview to the person;
- A Speech and Language Therapist will be able to advise on how best to maximise a person's ability to communicate;

- Ensure that the person can see your face, use facial expression and gesture to reinforce what you are saying;
- Be sensitive to the expression on the person's face and to their gestures;
- Use short, simple sentences;
- Speak clearly, naturally and slowly;
- Avoid jargon;
- Avoid abstract words or ideas;
- Avoid double negatives;
- Use one point per question;
- Check that the person has understood you; Repeat or rephrase where necessary; - -- Give the person time to reply - do not interrupt them;
- If you have not understood what the person has said to you ask them to repeat what they have said - do not show any signs of impatience; Ask them to show you, point, gesture, write it down; Do not pretend to understand if you don't - tell the person you are having difficulty understanding them;
- Use names and terms that the person uses;
- Have regular short breaks as required;
- If you have to ask leading questions ensure that you record that this was the case;
- Consider using an advocate

Some adults in need of safeguarding may find it difficult to attend long meetings or interviews because of difficulty concentrating for long periods of time or due to the emotional aspects of the situation. In these cases, alternatives should be sought.

Consider the venue / environment where the interview will take place - ensure that it is comfortable and quiet with a minimum of distractions or interruptions. It may help to conduct the interview somewhere that is familiar to the adult.

Consider accessibility of any building where a meeting or interview is going to take place in terms of the person's physical ability and also as to whether certain locations may seem official and intimidating.

The alleged victim and others involved are may become distressed discussing the situation. Provision should be made to ensure all involved are given adequate support.

## **Conference**

The main purpose of the Safeguarding Adults conference is to evaluate the investigation and draw together a protection plan that aims to minimise, as far as possible, the risk of abuse occurring again.

### **Conference Purpose**

The conference has the following functions:

- to consider the findings of the investigation and the evidence presented;
- to plan any further action regarding the investigation that may be required;
- to plan any further assessments that may be required;
- to plan / review any risk management and / or care / support plans as required;
- to determine what information may need to be shared with other agencies, within the boundaries of confidentiality policies and relevant information sharing agreements;
- to create a protection plan;
- to evaluate lessons learnt;
- to formally close the Safeguarding Adults process

The protection plan should detail the following:

- Additional support required by the alleged victim and / or others as appropriate;
- Actions required by the alleged perpetrator/s;
- Triggers / indicators for further concern;
- Review and monitoring systems as necessary;
- Timescales for any actions agreed in the protection plan;

### **Calling the Conference**

The conference should be convened and chaired by the agency leading the process. This will be either social care services or a health trust (the lead agency will have been determined and confirmed at the strategy meeting / discussion).

The conference will be chaired by either a team manager or relevantly experienced senior practitioner where social care services are leading the process, or by an appropriate manager / practitioner where health are leading the process.

A Safeguarding Adults conference should be held when:

- An investigation concludes what abuse has, or is likely to have been, perpetrated;
- There is an ongoing risk or concern about the safety and / or welfare of the alleged victim/s;

- The alleged victim and / or their carer / family do not agree to the proposed care / support plan;
- There may be other adults in need of safeguarding within a care setting that may also be at risk;
- Reports have been received from various investigations that require follow up actions and / or a multi-agency discussion and response;

Any agency may request a conference be held at any stage of the process. If there is any disagreement regarding this, it should be reviewed through the line management structure, up to Assistant Director / Head of Nursing level.

There may be some cases where it is not necessary to hold a multi-agency conference. These may include instances where it has been clearly demonstrated that abuse has not taken place or where there is no longer any risk and the future support / care plan has been agreed to by all involved. In these cases, the decision not to hold a conference should be reached by multi-agency agreement, discussed with the alleged victim and clearly documented.

### **Who Should Attend a Conference?**

The lead agency will determine who to invite. This may include:

- The investigating worker from health and / or social care services;
- The team / line manager of the investigating worker
- Police
- Other professionals if appropriate, for example, GP, psychologists, Community Psychiatric Nurses, care or support staff, etc;;
- Manager / staff from provider setting, if appropriate and not implicated in any abuse;
- The Care Quality Commission (CQC) if the allegation concerns a registered care provider or setting;
- Relevant staff from contracts departments if the allegation concerns a contracted service;
- Organisational Safeguarding Adults Lead, where appropriate;
- Legal services, if appropriate;

### **Involving the Alleged Victim and their Carer / Family**

The alleged victim should be invited to attend the conference. They may wish to invite a family member / informal carer to attend with them. In these cases, careful consideration should be given to ensuring the conference is accessible. Consideration should be given to:

- Location of the conference;
- Duration of the conference;
- Number of people attending;
- Transport to and from the conference;
- Communication and language issues;

Time may need to be spent with the alleged victim and / or their carer / family prior to the conference to support them in playing a meaningful part in the conference.

In some cases, the alleged victim may chose not to attend the conference, or may lack the capacity to make this decision and it is not in their best interests to attend. In these cases the form [SA2-Consultation Form for Safeguarding Adults Conference](#) should be completed with the alleged victim. It may be appropriate to consider involving an advocate to represent the wishes and feelings of the alleged victim at the conference.

If the alleged victim is not present at the conference, it is vital that consideration is given as to how to ensure their wishes and feelings are fully considered at the conference.

## Creating the Protection Plan

The protection plan should be documented on [form SA5](#). It should detail the following:

- Any additional support required by the alleged victim and / or others as appropriate;
- Any actions required by the alleged perpetrator/s;
- Any triggers / indicators for further concern;
- Review and monitoring systems as necessary;
- Timescales for any actions agreed in the protection plan;

## Outcomes

There are four options regarding the status of the allegation.

**Substantiated** - all of the allegations are substantiated on the balance of probabilities.

**Partly substantiated** - this would apply to cases where it has been possible to substantiate some but not all of the allegations on the balance of probabilities. For example, 'it was possible to substantiate the physical abuse but it was not possible to substantiate the allegation on physical abuse'.

**Not substantiated** - it is not possible to substantiate on the balance of probabilities any of the allegations of abuse made.

**Not determined / inconclusive** - this would apply to cases where it is not possible to record an outcome against any of the other categories. For examples, where suspicions remain but there is no clear evidence.

## **Planning Outcomes**

The following points may be considered when planning outcomes:

### **For the Alleged Victim:**

- Moved to a safer environment;
- Increased monitoring;
- Referred to counselling;
- Community Care Assessment and services;
- Review of Self-Directed Support (individual budget / direct payment);
- Civil Action;
- Referral to a MARAC (Multi-Agency Risk Assessment Conference);
- Application to Court of Protection;
- Restriction or management of access to alleged victim by alleged perpetrator;
- Application to change appointee-ship;
- Application to Court of Protection regarding Enduring Power of Attorney;
- Referral to an advocacy scheme;
- Application for Guardianship;
- Use of the Mental Health Act;
- Moved to increased / different care;
- Management of access to finances;
- Support group accessed;
- Support to understand the implications of making unfounded accusations;
- Intervention refused by alleged victim;
- Training (e.g; sexuality and relationships, assertiveness, etc;) accessed;
- No further action;

### **For the Perpetrator:**

- Criminal prosecution / formal caution;
- Police action;
- Referral to Independent Safeguarding Authority (ISA);
- Referral to registration body (e.g; GSCC, NMC, etc.);
- Disciplinary action;
- Referral to MAPPA (Multi-agency Public Protection Arrangements: see [Appendix 4: MAPPA](#) and discuss with Line manager);
- Community Care Assessment;
- Removal of alleged perpetrator from property or service;
- Management of access to the alleged victim;
- Action under the Mental Health Act;

- Liaison / discussion with Children's Services;
- Counselling / training / treatment;
- Referral to court mandated treatment;
- Exoneration;
- Support if they have been subject to an untrue allegation;
- No further action;
- Not known

**For the Service Provider:**

- Criminal action / formal caution;
- Police action;
- Action by the Care Quality Commission (CQC);
- Action by contract compliance;
- Revised policy and procedures;
- Increased staff training / induction;
- Increased staff supervision;
- Increased staffing levels;
- Reviewed shift patterns;
- No further action

## **Minutes**

Conferences are formal meetings and require a minute taker. The Chair will have responsibility for making arrangements for minutes to be taken at the conference.

The minute taker should:

- Be adequately trained / experienced to take minutes at a conference of this nature;
- Meet with the Chair prior to the conference to gain an overview of the case;
- Have access to a glossary to assist with understanding of terminology used throughout the conference;
- Have adequate time following the conference to type up the minutes;
- Have the opportunity for a debrief with the Chair following the conference if required;

At the beginning of the conference, the Chair should make clear when minutes will be circulated, and arrangements to follow if any attendees wish to make changes to the minutes once they have been circulated.

## **The Role of the Conference Chair**

The Chair has a number of significant roles to play in ensuring the aims of the conference are met.

### **Before the Conference:**

Prior to the conference, the Chair should consider the following:

- Book venue, ensuring access needs as detailed above are taken into account;
- Compile list of attendees;
- Consider the need for a confidential slot;
- Circulate invites;
- Note any apologies;
- Arrange for reports to be sent if any organisations are not represented in person;
- Receive reports from other agencies where appropriate;
- Circulate an agenda and any reports where appropriate;
- Arrange and brief a minute taker;
- Organise any necessary refreshments;
- Consider safety issues;
- Meet with the alleged victim and / or family to support them to understand the purpose of the conference or ensure the completion of the Consultation Form for Conference where appropriate;

### **During the Conference**

During the conference, the Chair should consider the following:

- Introductions / apologies;
- Explain the purpose of the meeting;
- Circulate the confidentiality agreement and gather completed copies;
- Go through reports;
- Keep meeting focussed and on-track;
- Reassure any attendees, particularly the alleged victim and / or any family who may be present;
- Complete the Protection Plan ([form SA5](#));
- Feedback any findings from the investigation;
- Ensure wishes and feelings of victim are included and taken into account;
- Ensure all attendees are able to have a say;
- Ensure the minute taker is understanding what is being said and is noting action points, etc; as appropriate;
- Layout of the room

## **After the Conference**

Following the conference, the Chair should consider the following:

- Ensure the minute taker has time to write up minutes promptly;
- Proof read minutes;
- Send out minutes;
- Complete any follow up actions;
- Support for case worker;
- Follow up action points that should be being carried out by others;

## **Conflicts and Disagreements**

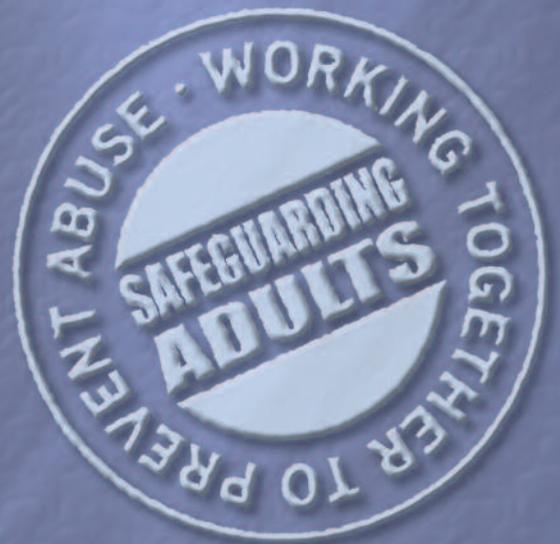
The safeguarding of adults should be a collaborative process, and in most circumstances it is assumed that conflicts can be prevented or resolved through effective communication and open dialogue between agencies.

In all cases, a resolution must be reached, In some cases, this may require involvement and advice via the line management structure and / or organisational Safeguarding Adults leads.

An agency's complaints procedure may be instigated where an individual or agency deems it necessary.

All conflicts / disagreements between agencies must be recorded.

# **Safeguarding Adults: Multi-Agency Practice Guidance**



Adult Social Care Services, Health and Police in Partnership with the CQC and the Voluntary and Independent Sector in Leicester, Leicestershire and Rutland

## Practice Guidance 1: Recognising Abuse

### Who Might Perpetrate Abuse?

Adults in need of safeguarding may potentially be abused by a wide range of people including:

- relatives and family members,
- other service users,
- paid care workers
- carers - anyone who is eligible for an assessment under the Carers (Recognition and Services) Act 1995;

There is particular concern where someone perpetrates abuse in a position of power or authority, not least where they may have access to many potential victims.

Perpetrators may be in need of safeguarding themselves. Agencies will have a responsibility to these individuals as well as to the victim. As an increasing number of people receive support through Direct Payment and Self Directed Support there are potential risks from unregulated care providers/personal assistants - see [Practice Guidance 12: Safeguarding & Personalisation](#)

A key factor in assessing the environment will be the degree of coercion or intimidation that may be present, often covertly, rendering an adult incapable of making their own decisions.

### Assessing Seriousness

In making any assessment of seriousness the following factors need to be considered:

- the safeguarding needs of the individual;
- the nature and extent of the abuse;
- the length of time it has been occurring;
- the impact on the individual; and
- the risk of repeated or increasingly serious acts involving this or other Safeguarded Adults;

The professional judgement of the Manager or Professional will play a major role in determining whether the procedures should be applied.

## **Recognising Abuse - Settings Where it Can Happen**

Abuse and neglect of adults in need of safeguarding occurs in all social groups regardless of class, race, religion or sex, cultural or other factors. Abuse and neglect can occur in a variety of settings. The adult in need of safeguarding may be:

- Living in own home;
- Living with relatives or friends;
- Staying or living in a residential or nursing home or supported lodgings;
- Attending a day centre or other establishment;
- A patient in hospital;
- Living on the streets;
- Caring for someone;

Some situations which may predispose towards abuse are:

- There is a relationship of unequal power;
- The adult in need of safeguarding suffers from a chronic, progressive and disabling condition requiring help beyond the ability of the carer to cope;
- There is a family history of violent behaviour, alcoholism, substance misuse or mental illness;
- There is a family history of abuse - sexual, physical, psychological or emotional abuse or neglect;
- The carer is emotionally and socially isolated or has personal difficulties or is vulnerable him/herself;
- The carer has been forced to substantially change their lifestyle;
- There is a poor relationship between the service user and the carer, perhaps reflected in them disliking each other or having minimal or no communication or a lack of personal insight;
- There are poor living conditions or financial problems;
- There has been a reversal of role between the carer and the adult;
- Isolated families may be victims and targets of Bullying, Harassment, Hate Crime and Anti-Social Behaviour

The context of the abuse or alleged abuse will partly determine intervention. Some settings, for example residential care homes, will already be subject to regulatory controls in legislation and relevant guidance.

## Recognising Abuse - Signs and Indicators

For information on the law relating to different types of abuse see [Practice Guidance 3: Legal Context](#). Broadly, abuse can be:

- Physical abuse;
- Sexual abuse;
- Psychological abuse (sometimes called emotional abuse);
- Financial abuse (sometimes called material abuse);
- Neglect or acts of omission amounting to abuse;
- Discriminatory abuse;
- Institutional abuse;

The Safeguarding Adults: Multi-Agency Policy and Procedure specifically excludes self-harm and self-neglect. Individuals in these circumstances may have needs and may require an assessment and/or risk assessment. However, they will not be dealt with specifically under this Procedure. Nothing in this policy varies, overrides or delegates the statutory responsibility of each agency.

For a more detailed definition of these, see following tables.

Note: Indicators are a GUIDE ONLY and the following lists are NOT EXHAUSTIVE. All situations must be discussed with the appropriate line manager. A full investigation and assessment is required to establish the existence of abuse leading to the significant harm of an adult in need of safeguarding.

**Table 1: Definition of Physical Abuse and What to Look For**

<b>Definition of Physical Abuse</b>		
Physical mistreatment of one person by another which may or may not result in physical injury		
<b><i>This May Include:</i></b>	<b>What to Look For</b>	
	<b><i>Person Being Abused:</i></b>	<b><i>Person Who Is Abusing:</i></b>
Beating	Disclosure	Explanation of injuries given not consistent with situation/lifestyle
Pushing	Fractures	
Slapping	Bruising	Adult in need of safeguarding perceived as un-cooperative or ungrateful for care / support given
Rough Handling	Physical Pain	
Shaking	Burns	Lack of understanding of the needs of the adult
Force-Feeding	Blisters	
Forced Marriage	Unexplained weight loss	
Burning	Unexplained falls	
Unreasonable confinement ( eg locked in, tied to a bed or chair)	Bite marks	
Misuse of medication	Pinch marks	
Misuse of restraint	Sleep disturbances	
Misuse of manual handling techniques	Recoiling from physical contact/flinching	
	Patterns of bruising /marks (eg always after weekends)	
	Evidence of old injuries occurring over a period of time	
	Time lapse before medical attention	
	Explanation of injuries given inconsistent with situation / lifestyle	

**Table 2: Definition of Sexual Abuse and What to Look For**

<b>Definition of Sexual Abuse</b>		
The involvement of a person in sexual activities or relationships that either they do not want and have not consented to or they cannot understand		
<b><i>This May Include:</i></b>	<b>What to Look For</b>	
	<b><i>Person Being Abused:</i></b>	<b><i>Person Who Is Abusing:</i></b>
Abuser exposing genitals	Disclosure	Over enthusiastic in carrying out personal care tasks, working alone with clients
Abuser touching victim's body (breasts, buttocks, genital or anal areas) for own gratification	Genital discharge	Personal care tasks taking significantly longer to perform than usual
Full sexual intercourse	Genital irritation	Use of offensive or suggestive sexual language
Rape (sexual intercourse without consent)	Sexually transmitted diseases	Openly showing favouritism and/or the Giving of gifts for no apparent reason
Forced Marriage	Bruising to upper thighs	
Rewards for sexual acts	Unusual difficulty walking	
Not allowing expression of sexuality	Torn, stained or bloody garments	
Withholding appropriate educational information	Offensive sexual language	
Using personal care tasks as an opportunity for the care giver's sexual gratification	Recoiling from physical contact	
Use of offensive or suggestive language	Persistent and inappropriate sexual behaviour especially in the presence of certain persons	
	Pronounced overly affectionate behaviour	
	Fear of males or females	
	Pregnancy	
	Not consenting to or understanding sexual activity	

**Table 3: Definition of Psychological Abuse and What to Look For**

<b>Definition of Psychological Abuse</b>		
Action or neglect by the carer or any person that while not of a physical nature severely impairs the psychological well being of the person		
<b><i>This May Include:</i></b>	<b>What to Look For</b>	
	<b><i>Person Being Abused:</i></b>	<b><i>Person Who Is Abusing:</i></b>
Threats	Frightened of specific individuals.	General lack of consideration to needs of adult in need of safeguarding.
Gross restriction of freedom	Stress and / or anxiety in response to certain people.	Adult in need of safeguarding perceived as un-cooperative or ungrateful for care / support given.
Withholding of security and affection	Lack of self esteem.	Use of abusive language.
Provoking fear of violence	Withdrawn, unresponsive and displays overly compliant behaviour.	Shouting.
Threat of institutional care	Displays compulsive behaviour.	Use of threats.
Threat to withdraw care or support	Reduction in skills and concentration.	Denial of access to reasonable requests.
Humiliation or ridicule	Lack of trust particularly with significant others.	Discriminatory comments.
Not treating with respect	Changes in sleep pattern.	Denying privacy.
Denial of the opportunity for privacy		Ignoring the person.
Shouting, yelling and swearing		Withholding affection.
Name-calling		Denial of social and cultural contact.
Use of bribes		
Forced Marriage		

**Table 4: Definition of Financial Abuse and What to Look For**

<b>Definition of Financial Abuse</b>		
Misappropriation or misuse of money / assets. Transactions to which the person could not consent or which were invalidated by intimidation / deception		
<b><i>This May Include:</i></b>	<b>What to Look For</b>	
	<b><i>Person Being Abused:</i></b>	<b><i>Person Who Is Abusing:</i></b>
Withholding pension or property book.	Insufficient funds in account.	Evasive when discussing finances.
Not spending allowances on the individual.	Account does not balance.	Buying goods with own preference as a priority.
Not allowing the person access to their money.	Unable to account for monies being spent.	Over keenness to participate in activities involving individual's monies.
Misuse of benefits.	Over protection of money or property.	Goods bought being frequently worn, used or in the possession of the abuser.
Mismanagement of bank accounts.	Money not available for activities.	Money earned by carers does not equal that being spent.
Denying access to money.	Accounts balancing but errors found in accounting.	
Misuse of Power of Attorney / enduring Power of Attorney.	Losses from accounts disguised.	
Forced Marriage	Forged signatures.	
Theft of monies.		
Theft of property.		
Embezzlement.		
Use of personal allowances to pay for care.		
Denial of legal advice or representation.		
Intimidation or extortion.		
Unreasonable restriction of a person's right to control their lives to the best of their ability		

**Table 5: Definition of Neglect / Acts of Omission and What to Look For**

<b>Definition of Neglect / Acts of Omission</b>		
Behaviour by carers that results in the persistent or severe failure to meet the physical and / or psychological needs of an individual in their care		
<b><i>This May Include:</i></b>	<b>What to Look For</b>	
	<b><i>Person Being Abused:</i></b>	<b><i>Person Who Is Abusing:</i></b>
Abandonment	Pressure sores	Denying individual's requests
Wilful failure to intervene, or consider the implications of non-intervention in behaviour which is dangerous to the individual concerned or to others	Dehydration	Denying others, including health and social care professionals, access to the individual
Failure to use agreed risk-taking procedures resulting in the person taking unnecessary risks	Disclosure by person using service	Seemingly uncaring attitude and cold detachment from individual
Not giving personal care	Complaints of pain or discomfort	Frequent failure in reporting individual's progress to others
Withholding of aids, eg hearing aids, spectacles, walking aids	Demanding eg food and / or drink	General lack of consideration toward the needs of the individual
Withholding food, drink, heat, light, clothing	Unkempt look	Individual perceived as uncooperative or ungrateful for care / support given
Not providing access to medical services	Unexplained accidents occurring	
Inadequate furnishings, bedding and appliances	Deterioration of health	
Limiting choice		
Denial of access to services or advocacy		
Withholding affection or communication		

**Table 6: Definition of Discriminatory Abuse and What to Look For**

<b>Definition of Discriminatory Abuse</b>		
Any form of abuse based on discrimination because of a person's race, culture, belief, gender, age, disability, sexual orientation etc Discrimination may be a motivating factor in other forms of abuse		
<b><i>This May Include:</i></b>	<b>What to Look For</b>	
<p>Any form of discrimination both direct and indirect based on the person's colour, language, faith and belief and his or her cultural norms and values, gender, sexuality, disability, class, age, HIV status</p> <p>Can be in the form of personal or institutional discrimination: Personal discrimination being the prejudice of the individual, Institutional discrimination being where systems and structures directly or indirectly discriminate against potential or actual users of the service</p> <p>Hate Crime</p>	<b><i>Person Being Abused:</i></b>	<b><i>Person Who Is Abusing:</i></b>
	<p>Disclosure</p> <p>Withdrawal, rejection of inappropriate services eg food, mixed gender groups</p> <p>Sometimes the individual may agree with the abuser just to have an easier life</p> <p>Low self esteem</p>	<p>Use of inappropriate 'nick names'</p> <p>Use of derogatory language / terminology</p> <p>Stereotyped views of the individual</p> <p>Lack of understanding and / or respect of person's emotional needs</p> <p>Denial of social and cultural contact</p> <p>Sees individual as not conforming to the system</p> <p>Sees individual as un-cooperative</p> <p>May react when challenged by saying 'I treat everyone the same' or 'they are getting the same treatment as everyone else'</p> <p>Enforcing rules and procedures which undermine the individual's well-being</p>

**Table 7: Definition of Institutional Abuse and What to Look for**

<b>DEFINITION OF ABUSE</b>		
<b>Repeated incidents of poor professional practice or neglect. Inflexible services based on the needs of providers rather than the person receiving services.</b>		
<i>This may include:</i>	<b>WHAT TO LOOK FOR</b>	
	<i>Person being abused:</i>	<i>Person who is abusing:</i>
<p>People using the service required to 'fit in' excessively to the routine of the service. Lack of homely environment, stark living areas. One commode used for a number of people. Lack of privacy for personal care. Deprived environment. Lack of procedure / guidelines for staff. No or little evidence of training programmes or development for staff. System that encourages poor practice. Lack of staff support / guidance. Repeated / unaddressed incidents of poor practice. Manager / person in charge implicated in poor practice.</p>	<p>Left on commode for long periods. Lack of personal clothing / possessions. Lack of stimulation. No support plan. No or inadequate risk assessment / management plans. Unexplained bruising / burns etc. Recoiling from specific individuals. Unauthorised deprivation of liberty. Limited or no access to primary / secondary healthcare. Repeated falls. Repeated infections. Pressure sores.</p>	<p>Staff seeing people using the service as a nuisance. Lack of understanding of people's disability / conditions. Staff seeing that their wishes / needs take priority over those of the people they are supporting. Coercion. Rough handling. Inappropriate use of power / control. Undue / inappropriate physical intervention. Use of illegal control and restraint. Misuse of medication. Misuse of nursing/medical procedures.</p>

## Practice Guidance 2: Financial Abuse

"No Secrets" defines financial abuse as:

"including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits;"

This may include:

- Misappropriation of money and/or other assets by various means such as theft or fraud;
- Transactions to which the person could not consent or which were invalidated by intimidation or deception;
- Misuse of assets legitimately accessed but wrongfully spent;
- Non-use of assets to meet the legitimate needs of a vulnerable person; Financial abuse may be opportunistic or may be planned;

The victim may have been deliberately targeted because of their vulnerability. Examples of this include:

- The perpetrator befriending the victim and then using their position of trust to gain financially from the victim - moving into their house to 'care' for them, becoming their appointee / attorney;
- Being over charged for services or tricked into receiving goods or services that they do not want or need;
- Distraction burglaries

Financial abuse may arise from a situation where the perpetrator was initially acting legitimately but then finds themselves having financial problems and so starts to stretch this legitimacy. This is likely to occur over a period of time. For example an attorney awarding themselves overly generous 'expenses' or buying things for the adult which are in fact for their own use.

The perpetrator may attempt to justify their actions by claiming that:

- It is what the person would have wanted - they would have wanted to help out;
- It is a payment for all the care given / sacrifices made;
- It is an advance on their inheritance;
- The victim does not need the money;

Usually, the key indicators of financial abuse are:

- The vulnerable person lacks belongings or services which they can clearly afford;
- Bills remain unpaid or lead to final demands;
- A high level of expenditure without evidence of the vulnerable person benefiting;

- The perpetrator who manages the financial affairs is evasive and/or uncooperative;
- The carer only asks questions of the social worker about the service user's financial affairs and does not appear to be concerned about the physical or emotional care of the service user;
- Recent acquaintances expressing sudden or disproportionate affection towards the vulnerable person with means;
- A reluctance or refusal to take up care assessed as being needed;
- Recent change of deeds or title to property;
- Unusual or inappropriate financial account activity;
- Enduring Power of Attorney obtained when the vulnerable person is not able to understand or make decisions;

Detection of financial abuse is not always easy. There may be no outward signs. Difficulties can arise when:

- The person is cognitively impaired;
- The person trusts the perpetrator with their financial affairs, or fears reporting a family member or friend;
- The situation has developed over a period of time making it difficult to define;
- There is fear of interfering in the rights, freedom or confidentiality owed to the person;

It is important to:

Be vigilant - In many cases financial abuse is accompanied by other forms of abuse. This is more likely where the perpetrator of the financial abuse is responsible for providing care / support to the victim. Look for other signs of abuse.

Record details of any concerns, however small. Financial abuse may come to light over a period of time making it difficult to pin point. It is important to look for patterns or situations becoming cumulatively more serious.

## **Investigation**

Many instances of financial abuse will constitute a criminal act. It is important to seek advice from the police at an early stage to avoid contaminating any evidence.

It may also be necessary to seek advice from legal advisers.

Other sources of advice are:

- [Department of Work and Pensions](#) - advice on benefits and appointees;
- [Office of the Public Guardian](#) - advice on Lasting and Enduring Powers of Attorney and the Court of Protection;
- Welfare Rights advisers - advice on benefits;

Any assessment of financial abuse will need to consider

- The intentions of the alleged perpetrator and the nature of their relationship with the victim;
- How were they able to access the victims money - how was this access set up?
- The extent of the alleged abuse - How much money is involved?
- The extent to which the money is being used properly to meet the victim's needs;
- The degree of harm or loss to the victim;
- Any conflicting interest the attorney/receiver has in terms of eventual inheritance / any competing claims from other relatives/associates;

## **Prevention and Good Practice**

### **Broad Principles of Good Practice**

Where an Adult is able to make informed decisions and handle their own financial affairs they should be encouraged and supported to do so.

The financial assets and possessions belonging to Adults are for their benefit. Their use by others without their knowledge and full consent can constitute theft or misappropriation and may be a criminal act.

The arrangements for providing support and assistance with financial affairs should be open and transparent. They should, however, not deny the adult their right to privacy about their financial circumstances.

A person can only be judged as lacking capacity to manage their own finances through an assessment under the Mental Capacity Act 2005.

### **Good Practice in Maintaining Financial Accountability Within Organisations**

The following is intended to be overall guidance. Staff should comply with their own agency's policies and procedures.

- Organisations should have a clear policy and guidelines governing all aspects of financial accountability including procedures for internal audits;
- Clear guidance should be issued regarding staff accepting gifts or hospitality from service users, their families or friends;
- Staff should be responsible for money and property only with their line manager's specific recorded approval in each case;
- Staff should not act as Receiver or Appointee outside of established practice, nor hold a joint account with the service user;
- Staff should not enter unoccupied property unofficially or unaccompanied;
- Staff should not use personal credit cards to purchase items on behalf of service users;

- Staff should not collect points from loyalty schemes for themselves when shopping on behalf of a service user;
- Proper financial records should be maintained; This should include:-
  - A basic accounting record for each service user recording all amounts received and spent;
  - Dates and signatures for each transaction
  - Receipt and payment entries supported by verifiable documentation
  - Details of deposits / withdrawals from bank account
- An inventory should be maintained for each service user
- Correction fluid should not be used on any financial recording sheets; Where an error has been made a line should be put through the figure and the correct amount entered alongside; The person making the correction should then initial the entry;
- A separate, designated account should be maintained for each service user
- Under no circumstances should cheques be pre signed;
- Care assessments/reviews should also ensure that sound financial arrangements are in place;

### **Preventative Measures that Can be Taken by Any Individual**

- Consider having benefits paid directly into bank account;
- Do not keep large amounts of money at home;
- Have duplicate bank statements sent to a trusted person;
- Ask a trusted person to read / explain anything that needs signing;
- Consider the use of telephone and mail preference lists - this should help to stop "Competition win" cons; There has also been a proven link between replying to such mail-shots and doorstep sellers;
- Ask all callers to the house for I;D;;
- Do not buy goods or services from doorstep sellers unless from a reputable company - Bettaware, Avon etc;;
- Give careful consideration to setting up a Enduring Power of Attorney - who to appoint as an attorney, the possibility of joint attorneys or adding conditions such as having to provide accounts to a solicitor or other independent party on a yearly basis;
- Consider making an advance statement or living will;

## Practice Guidance 3: The Legal Context

### Introduction

The legal framework relating to Adult Social Care and safeguarding is complex. It draws on criminal law and civil law as well as guidance to which local authorities, the NHS, the police and other agencies must have regard such as 'No Secrets'. It is a rapidly developing area that seeks to promote personal choice and autonomy as can be seen with the Mental Capacity Act and direct payments, for example.

In addition to written law and policy there are also the fundamental principles of consent, capacity and confidentiality which apply not only to safeguarding but every day social work, and care practice.

This guide aims to draw the relevant legislation and fundamental principles into a practical format for front-line workers to help them achieve a balance between exercising responsibilities and duties, promoting choice of the service user and avoiding unwarranted intervention into people's lives.

The 'No Secrets' Guidance identifies different forms of abuse as follows:

- "physical abuse, including hitting, slapping, pushing, kicking, misuse
- of medication, restraint, or inappropriate sanctions;
- sexual abuse, including rape and sexual assault or sexual acts to which the adult has not consented, or could not consent or was pressured into consenting;
- psychological abuse, including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks;
- financial or material abuse, including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits;
- neglect and acts of omission, including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating; and
- discriminatory abuse, including racist, sexist, that based on a person's disability, and other forms of harassment, slurs or similar treatment;"

The different types of abuse described may be criminal offences, e.g., assault, sexual offences and neglect under the Mental Health and Mental Capacity Acts. Where a criminal offence is suspected a referral must be made to the police for investigation.

Remedies through the courts are one form of redress but safeguarding adults is also about prevention and part of everyday practice. For example, effective assessment and care planning, being aware of responsibilities and powers available, engaging service users by seeking consent and participation in decision-making are all essential tools in minimising risks and vulnerability to abuse.

## **General Points**

When applying this policy workers are reminded of the following general points:

- The law is constantly changing and workers must establish with their own legal advisers what the current law is in respect of a given situation;
- Each agency has specific policies and guidance in relation to its duties, powers and responsibilities; Workers must act in accordance with their agency's policies;
- Where some form of statutory protective action is indicated, the agency with lead responsibility must consider whether to seek legal advice as soon as possible;
- Legal advice should only be shared with other agencies or service users where the adviser has consented to its release for specific purposes;
- Service users should always be advised of their right to independent advocacy and/or advice from an independent legal advisor;

This guide has been prepared in consultation with each agency's legal advisers but should not be seen as a definitive statement of the law.

## **The Legal Context Part 1: Consent, Capacity and Best Interests, Confidentiality**

Capacity and consent are central themes in safeguarding adults work, for instance: determining the ability of an adult to make lifestyle choices, such as choosing to remain in a situation where they risk abuse; determining whether a particular act or transaction is abusive or consensual; or determining how much an adult can be involved in making decisions in a given situation.

Consent and capacity are the starting points for all work with service users and they determine the relevant legal framework for decision-making and care planning. For example, where a person lacks the capacity to give consent principles under the Mental Capacity Act will apply and decisions will need to be made in the person's best interests or court order in complex cases.

These concepts together with best interests and the duty of confidentiality underpin the work of social workers, police officers, health care workers, in fact, just about anyone involved in the provision of public services such as health and social care services.

## Consent

This is the lawful authority by which an informal or paid carer, social worker, clinician, etc., may provide care, treatment, or any other intervention for another. Where a person cannot consent because they lack the relevant mental capacity a decision may be made on their behalf if it is in their best interests.

Valid consent:

- requires the decision-maker to have the mental capacity relevant to the decision; and
- it must be voluntary, i.e., free from fraud, deception, mistake, undue influence, threats, or other factors that may invalidate the consent;

Consent is not confined to care and medical treatment but applies in all kinds of situations and relationships such as agreeing to marriage, sexual relations, managing money, etc.

Consent may be expressly given or implied for example, by the person's conduct, but care must be taken not to assume consent has been given when in fact it is absent.

Absence of consent may arise because the person:

- is withholding their consent;
  - lacks capacity to give consent;
  - has learned not to raise an objection;
  - is being threatened, coerced or otherwise being put under undue pressure;
- or:
- lacks understanding about the true nature of the act or the consequences of it

Absence of valid consent may indicate abuse. Judging whether there is valid consent or not will depend on the individual and their specific circumstances.

In certain situations consent may be overridden. This is generally when it is in the public interest to do so such as disclosure of information to prevent a crime, or the circumstances are such that urgent action is required where it is a matter of life or death. This is known as the doctrine of necessity.

## **Mental Capacity and Best Interests**

In law every adult has the right to make their own decisions. A person is assumed to have capacity to do so unless it is proved that they do not. The level of capacity required depends on the complexity of the decision to be made.

An essential component of consent is having the mental capacity to make the decision in question. If a person lacks the mental capacity to make a decision, they cannot consent and no-one may give consent on their behalf.

For some people, for example those with dementia, the loss of ability to cope increases over time, so that the point at which they are no longer able to make decisions is hard to identify. In other cases the person's mental capacity may fluctuate.

In the cases of fluctuating or temporary incapacity the person's capacity to make a particular decision must be assessed at the time the decision has to be made. It may be possible to put off the decision until such a time as the person has recovered, and is able to make their own decision.

Where a person lacks the capacity to make a decision, or give consent even with help and support, a decision may need to be made in their best interests in the absence of a valid Enduring or Lasting Power of Attorney, or advance decision.

Capacity is a legal concept, and, save for a few activities, such as competence to act as a witness in court, or making a Will, the legal test to determine whether a person has capacity is set out in Section 3 of the Mental Capacity Act 2005. (See below)

### **Best Interests**

The person with responsibility for deciding whether the person lacks capacity and for making the best interests decision, is the person who needs to obtain consent/ lawful authority for the proposed course of action. This could be a health/social care, or other professional, relative, or carer. For example, in legal matters, such as making a will or Lasting Power of Attorney, the solicitor dealing with the case will need to be satisfied that the person has capacity before any documents are signed. If s/he thinks it is necessary, the solicitor will get an opinion from a doctor, or psychiatrist.

Where consent to medical examination or treatment is needed, the doctor or other healthcare professional proposing the treatment will need to decide whether the patient has capacity to consent to or refuse treatment and make the best interests decision.

Generally the law allows basic day to day actions to be performed by another person, such as a family member, or social care professional, for the welfare of someone who lacks capacity. This is covered by the principle that the acts are a matter of necessity".

In all cases the person performing these basic day to day actions should act in the best interests of the person who lacks the capacity to give consent. Best interests decisions are not just confined to medical treatment but include 'medical, emotional and all other welfare issues' (Re A(Mental Patient: Sterilisation) [2000]).

Section 5 of the Mental Capacity Act 2005 protects caregivers from liability for acts done in connection with the care and treatment in a person's best interests so long as they have not acted negligently.

There is no statutory definition of what is meant by best interests: it depends on the individual and their particular circumstances. However, Section 4 of the Mental Capacity Act 2005 offers a checklist of factors to be taken into account and is set out below. There is also further guidance in the Code of Practice for the Mental Capacity Act 2005 and case law.

## **Confidentiality**

Confidentiality simply means that where information is given in confidence there is a general duty not to disclose that information without the person's consent, or other lawful authority such as a court order. This duty applies to living persons and continues after the person's death. The duty of confidentiality is reinforced by Article 8 of the Human Rights Act 1998 which is a qualified right to respect for a person's private and family life and the Data Protection Act 1988.

There may be occasions where information should be disclosed, for example, disclosure is in the public interest to prevent crime or risk to health or life. However disclosure may not always be appropriate, particularly if the disclosure may put a person at greater risk of harm.

## **Confidentiality and Information Sharing**

Effective safeguarding needs a degree of information sharing between relevant agencies. In the 'Report on the review of patient-identifiable information' the Caldicott Committee set down the following principles to be applied when confidential information needs to be disclosed in the best interests of a patient:

- Information can only be shared on a "need to know" basis when it is in the best interest of the patient;
- Confidentiality must not be confused with secrecy;
- Informed consent must be obtained but, if this is not possible and other adults are at risk, it may be necessary to override the requirement;
- 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 people may be at risk;

The need for information sharing does not override obligations under the Data Protection Act, the Human Rights Act or the principle that consent to disclosure should be sought. It does mean however that any disclosure must be justified either by consent, in the public interest, or to comply with a statutory obligation.

Public interest can mean a disclosure required to prevent a crime or risk of serious harm to the person who is the subject of safeguarding as well as others.

Statutory obligations to share information include the disclosure of confidential information relating to patients subject to the Mental Health Act and information sharing under Section 115 of the Crime and Disorder Act 1998 where it is in the interests of reducing crime and disorder.

Appropriate care may also require information to be shared with family members/carers and consent should be sought. Unfortunately, not all carers or family members have the person's best interests at heart and disclosure may cause a person to be at greater risk of abuse or harm, so care must be taken and risks evaluated. This is a particular risk where the adult concerned is at risk of being forced to enter into a marriage. Workers' attention is drawn to the guidance issued by the Ministry of Justice which expressly advises against informing the victim's family, friends or members of the community that the victim has sought help.

## **The Legal Context Part 2: Local Authority Legal Responsibilities**

### **Community Care Assessment**

#### **Community Care Assessment - Section 47 National Assistance Act 1990**

Local authorities are under a duty to carry out a community care assessment in respect of any person who appears to them to be in need of community care services and to decide in the light of that assessment whether services should be provided to that person.

This duty applies regardless of nationality or immigration status. When carrying out an assessment, if there appears to be a need for NHS or housing services a local authority is under a duty to notify the NHS and housing.

In cases of emergency services may be provided pending an assessment; however services may not be provided if Schedule 3 of the Nationality, Immigration and Asylum Act 2002 applies other than to prevent a breach of a person's human rights.

### **Community Care Services**

#### **Residential Care - Section 21 National Assistance Act 1948**

Local Authorities are under a duty to provide residential accommodation:

- to persons aged 18 or over;
- ordinarily resident in their area;
- who are in need of care and attention; (this simply means needing to be looked after and is not confined to personal or nursing care ancillary to the provision of accommodation)
- by reason of age, illness, disability and any other circumstances;
- that care and attention is not otherwise available to them unless accommodation is provided under this section;

Local authorities are prevented from providing Section 21 accommodation to Asylum seekers and persons subject to immigration control if the sole reason why they are in need of care and attention is by reason of destitution or the effects of destitution.

Case law provides that

*'where an applicant's need for care and attention is to any material extent made more acute by some circumstance other than the mere lack of accommodation and funds, then, despite being subject to immigration control he qualifies for assistance' (Brown LJ in Westminster CC v NASS [ 2002])*

This is known as the 'destitute plus' test. Practically, it means that a foreign national to whom this applies may be eligible for accommodation under Section 21 if they are in need of care and attention, or their need for care and

accommodation is made more acute by a reason other than destitution such as age, illness, etc.

Persons from the European Economic Area (EEA) are not subject to the destitute plus test, however provision of community care services to EEA nationals is subject to conditions. Where those conditions are not met local authorities are prevented by Section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002 from providing community care services including residential accommodation under this section, save to the extent that it is necessary to avoid a breach of that person's human rights.

This provision also applies to:

- Non-EEA nationals with refugee status in other countries and their dependants present in the UK;
- Persons unlawfully in the UK and not seeking asylum;
- Failed asylum seekers who have not co-operated with removal directions;

After care under Section 117 Mental Health Act 1983 is not excluded by these provisions.

### **Withdrawing and Withholding of Support (Travel Assistance and Temporary Accommodation) Regulations 2002**

These regulations enable an EEA national, or person with refugee status in an EEA state to be assisted to return to the person's home state. Where the person has a dependent child accommodation may be provided pending departure from the UK.

The law on immigration, asylum and nationality is complicated and frequently changes, consequently workers should seek legal advice.

### **Non-Residential Welfare Provision**

#### **Section 29 of the National Assistance Act 1948 & Section 2 Chronically Sick and Disabled Persons Act 1970**

Section 29 requires a local authority to 'make arrangements for promoting the welfare of' persons over 18 ordinarily resident in their area who are 'blind, deaf or dumb, or who suffer from mental disorder of any description, and other persons aged 18 or over who are substantially and permanently handicapped by illness, injury, or congenital deformity or such other disabilities as may be prescribed' [by the government]

Section 2 of the Chronically Sick and Disabled Person's Act 1970 builds on this general duty to promote welfare by requiring local authorities to make arrangements for the provision of any, or all of the following services where that local authority is satisfied that it is necessary to meet the needs of a person ordinarily resident in their area:

- Practical assistance at home
- Provision of recreational facilities including library, TV and radio facilities, access to recreation and education facilities outside the home

- Travel provision or assistance to access services provided under Section 29 or similar
- Adaptations to property
- Facilitating the taking of holidays
- Provision of meals
- Provision of a telephone and any equipment required to enable its use

These welfare provisions are also subject to S54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002.

### **Removal to Suitable Premises of Persons in Need of Care and Attention: (National Assistance Act 1948)**

Section 47 NAA 1948 permits a local authority supported by a certificate from the community physician, to apply to a Magistrates Court to remove a person from his/her home in order to secure the care and attention they need, on the grounds that:

1. the person is suffering from grave chronic disease or, being aged, infirm or physically incapacitated, is living in unsanitary conditions; and
2. the person is unable to devote to him/herself, and is not receiving from other persons, proper care and attention; and
3. (in the opinion of the community physician) his/her removal from home is necessary either in his/her interests or for preventing injury to the health of, or serious nuisance to, other persons.

In practice, this is not often used and may infringe the Human Rights Act as well as be Deprivation of Liberty Safeguards considerations. Legal advice should be sought before making any application under this provision.

## **Carers Support**

### **Carers Recognition and Services Act 1995**

places duties on Social Services Departments:

- to assess, on request, the ability of a carer to provide and continue to provide care, and
- to take this into account when deciding which services to provide to the person in need of care;

### **Carers and Disabled Children Act 2000**

gives carers the right to services in their own right.

## **The Carers (Equal Opportunities) Act 2004**

builds on the existing provisions for carers and requires local authorities to:

- inform carers of their right to an assessment of their needs;
- consider a carer's work, study and leisure interests when carrying out an assessment;

It also gives local authorities powers to request assistance from housing, health, education and other local authorities in providing support to carers.

## **Housing (Homelessness)**

Statutory responsibilities for tackling homelessness are set out in Part 7 of the Housing Act 1996, generally it provides that housing authorities are under a general duty to provide advice and information about homelessness and prevent homelessness including provision of suitable accommodation for persons in priority need. Further guidance can be found in the Homelessness Code of Guidance for Local Authorities 2006. There follows an extract:

### **Extract from Homelessness Code of Guidance for Local Authorities 2006**

#### **'The homelessness legislation'**

3. The homelessness legislation places a general duty on housing authorities to ensure that advice and information about homelessness, and preventing homelessness, is available to everyone in their district free of charge. The legislation also requires authorities to assist individuals and families who are homeless or threatened with homelessness and apply for help.

4. In 2002, the Government amended the homelessness legislation through the

#### **Homelessness Act 2002 and the Homelessness (Priority Need for Accommodation) (England) Order 2002 to:**

- ensure a more strategic approach to tackling and preventing homelessness, in particular by requiring a homelessness strategy for every housing authority district, and
- strengthen the assistance available to people who are homeless or threatened with homelessness by extending the priority need categories to homeless 16 and 17 year olds; care leavers aged 18,19 and 20; people who are vulnerable as a result of time spent in care, the armed forces, prison or custody, and people who are vulnerable because they have fled their home because of violence.

5. The legislation places duties on housing authorities, and gives them powers, to meet these aims. But it also emphasises the need for joint working between housing authorities, social services and other statutory, voluntary and private sector partners in tackling homelessness more effectively.

6. The Government continues to supplement housing authorities' resources with specific programmes to help them deliver effective homelessness strategies and services, prevent homelessness, reduce use of temporary accommodation and end the worst manifestations of homelessness such as people sleeping rough and families with children living in bed and breakfast hotels.

#### **The homelessness review and strategy**

7. Under the Homelessness Act 2002 all housing authorities must have in place a homelessness strategy based on a review of all forms of homelessness in their district.

The first strategy was required by July 2003 and it must be renewed at least every 5 years (unless this duty has been disapplied by the Local Authorities Plans and Strategies (Disapplication) (England) Order 2005). The social services authority must provide all reasonable assistance.

8. The strategy must set out the local authority's plans for the prevention of homelessness and for securing that sufficient accommodation and support are or will be available for people who become homeless or who are at risk of becoming so. Housing authorities will therefore need to ensure that all organisations, within all sectors, whose work can help to prevent homelessness and/or meet the needs of homeless people in their district are involved in the strategy. This will need to include not just housing providers (such as housing associations and private landlords) but also other statutory bodies such as social services, the probation service, the health service and the wide range of organisations in the private and voluntary sectors whose work helps prevent homelessness or meet the needs of people who have experienced homelessness.

9. Housing authorities will also need to give careful consideration to the scope for joint working between social services and the many other key players in the district who are working to meet the needs of people who are homeless or have experienced homelessness.

#### **General duty to provide advice on homelessness**

10. The housing authority can provide advice and information about homelessness - and the prevention of homelessness - themselves or arrange for another agency to do it on their behalf. Either way, the advice and assistance provided will need to be up to date and robust if it is to be effective and help achieve the housing authority's strategic aim of preventing homelessness. The service will need to be wide-ranging so that it offers advice and information about not only housing options but also the broad range of factors that can contribute to homelessness. This might include, for example, advice on social security benefits, household budgeting, tenancy support services and family mediation services. The advice provided should also act as a signpost to other, more specialist advice such as debt management, health care and coping with drug and alcohol misuse, where this is needed.

### **The main homelessness duty**

11. Under the legislation, certain categories of household, such as families with children and households that include someone who is vulnerable, for example because of pregnancy, old age, or physical or mental disability, have a priority need for accommodation. Housing authorities must ensure that suitable accommodation is available for people who have priority need, if they are eligible for assistance and unintentionally homeless (certain categories of persons from abroad are ineligible.) This is known as the main homelessness duty. The housing authority can provide accommodation in their own stock or arrange for it to be provided by another landlord, for example, a housing association or a landlord in the private rented sector.

12. If settled accommodation is not immediately available, accommodation must be made available in the short term until the applicant can find a settled home, or until some other circumstance brings the duty to an end, for example, where the household voluntarily leaves the temporary accommodation provided by the housing authority. A settled home to bring the homelessness duty to an end could include the offer of a suitable secure or introductory tenancy in a local authority's housing stock (or nomination for a housing association assured tenancy) allocated under Part 6 of the 1996 Act or the offer of a suitable tenancy from a private landlord made by arrangement with the local authority.

13. Under the Homelessness (Suitability of Accommodation) (England) Order 2003, housing authorities can no longer discharge a homelessness duty to secure suitable accommodation by placing families with children, and households that include a pregnant woman, in Bed & Breakfast accommodation for longer than six weeks - and then only if more suitable accommodation is not available.

### **Applications and inquiries**

14. Housing authorities must give proper consideration to all applications for housing assistance, and if they have reason to believe that an applicant may be homeless or threatened with homelessness, they must make inquiries to see whether they owe them any duty under Part 7 of the 1996 Act. This assessment process is important in enabling housing authorities to identify the assistance which an applicant may need either to prevent them from becoming homeless or to help them to find another home. In each case, the authority will need to decide whether the applicant is eligible for assistance, actually homeless, has a priority need, and whether the homelessness was intentional (see below). If they wish, housing authorities can also consider whether applicants have a local connection with the local district, or with another district. Certain applicants who are persons from abroad are not eligible for any assistance under Part 7 except free advice and information about homelessness and the prevention of homelessness.

### **Interim duty to accommodate**

15. If an authority have reason to believe that an applicant may be homeless or threatened with homelessness, they must also decide if they also have reason to

believe that the applicant may be eligible for assistance and have a priority need for accommodation. They must do this even before they have completed their inquiries. If there is reason to believe the applicant meets these criteria, the housing authority have an immediate duty to ensure that suitable accommodation is available until they complete their inquiries and decide whether a substantive duty is owed under Part 7. This is an important part of the safety net for people who have a priority need for accommodation and are unintentionally homeless.

#### **When is someone homeless?**

16. Broadly speaking, somebody is statutorily homeless if they do not have accommodation that they have a legal right to occupy, which is accessible and physically available to them (and their household) and which it would be reasonable for them to continue to live in. It would not be reasonable for someone to continue to live in their home, for example, if that was likely to lead to violence against them (or a member of their family).

#### **Intentional homelessness**

17. A person would be homeless intentionally where homelessness was the consequence of a deliberate action or omission by that person (unless this was made in good faith in ignorance of a relevant fact). A deliberate act might be a decision to leave the previous accommodation even though it would have been reasonable for the person (and everyone in the person's household) to continue to live there. A deliberate omission might be non-payment of rent that led to rent arrears and eviction.

#### **Local connection and referrals to another authority**

18. Broadly speaking, for the purpose of the homelessness legislation, people may have a local connection with a district because of residence, employment or family associations in the district, or because of special circumstances. (There are exceptions, for example residence in a district while serving a prison sentence there does not establish a local connection.) Where applicants are found to be eligible for assistance, unintentionally homeless and in priority need (i.e. they meet the criteria for the main homelessness duty) and the authority consider the applicant does not have a local connection with the district but does have one somewhere else, the housing authority dealing with the application can ask the housing authority in that other district to take responsibility for the case. However, applicants cannot be referred to another housing authority if they, or any member of their household, would be at risk of violence in the district of the other authority.

#### **Other homelessness duties**

19. If applicants are homeless but do not have a priority need, or if they have brought homelessness on themselves, the housing authority must ensure that they are provided with advice and assistance to help them find accommodation for themselves - but the authority does not have to ensure that accommodation becomes available for them. The housing authority can provide advice and assistance itself or arrange for another agency to do this. The housing authority

must ensure that this includes a proper assessment of their housing needs and information about where they are likely to find suitable accommodation. Again, it will be crucial that the advice and assistance is effective and up to date if the housing authority's strategic aim of preventing homelessness is to be achieved.

20. Where people have a priority need but have brought homelessness on themselves, the housing authority must also ensure they have suitable accommodation available for a period that will give them a reasonable chance of finding accommodation for themselves. Sometimes, this may be for only a few weeks.

#### **Intentionally homeless families with children**

21. So, families with children who have been found intentionally homeless will not be owed a main homelessness duty; they will be entitled to advice and assistance and temporary accommodation for a short period only. If homelessness persists, any children in the family could be in need and the family could seek assistance from the social services authority under the Children Act 1989. It is therefore important that social services are made aware of such cases as soon as possible. Consequently, where a housing authority are dealing with a family that includes a child under 18 and they consider the family may be found intentionally homeless, they must make social services aware of the case. Where the family are found to be intentionally homeless by the housing authority, and social services decide the child's needs would best be met by helping the family to obtain accommodation, social services can ask the housing authority for reasonable assistance and the housing authority must respond.

#### **Notifications/reviews of decisions/appeals to county court**

22. Where authorities have reason to believe an applicant may be homeless or threatened with homelessness and make inquiries into the case, they must give the applicant written notification of their decision on the case, and the reasons for it insofar as it goes against the applicant's interests. Applicants can ask the housing authority to review most aspects of their decisions, and, if still dissatisfied, can appeal to the county court on a point of law. The county court can confirm or quash a housing authority's decision.

#### **Power to accommodate pending a review or appeal**

23. Housing authorities have the power to accommodate applicants pending a review or appeal to the county court, and they must consider whether to exercise this power in all cases. If the housing authority decide not to exercise this power pending a review, and the applicant wishes to appeal to the courts, he or she would need to seek permission to ask the High Court to judicially review the decision. If the housing authority decide not to exercise this power pending an appeal to the county court, the applicant can appeal to the county court to review the decision not to accommodate, and the court can require the housing authority to accommodate the applicant, pending the appeal on the substantive homelessness decision if the court considers this is necessary.

## **The Legal Context Part 3: General Legal Provisions**

### **Human Rights Act 1998:**

The Human Rights Act 1998 (HRA) incorporates the European Convention on Human Rights into all UK Law. This means that public bodies must apply UK law in a way which is compatible with the HRA. This means that it will be potentially unlawful for any public authority to infringe convention rights, even when it has discretion under existing legislation to act differently. A victim of an unlawful act may bring a claim in any UK Court for any breach of Convention Rights by any public body, as well as in the European Court of Human Rights.

Public bodies include local authorities, the police, the Home Office, the courts, NHS, education, probation and public utilities. Independent care providers and organisations carrying out public functions such as the provision of residential accommodation under Section 21 of the National Assistance Act 1948 are also covered.

### **The Convention Rights**

Not all of the Convention Rights listed below are absolute rights. Some are qualified which means that, subject to conditions, a public body may lawfully justify interference.

#### ***Article 2: Everyone's Right to Life Shall be Protected by Law***

This means that the State must not only refrain from intentionally and unlawfully taking a life but that it is also under a positive obligation to safeguard it by having adequate systems in place to provide care and prevent harm. For example, an authority looking after a detained person such as a prisoner or person subject to the Mental Health Act 1983, or a prisoner) is under a positive obligation to take such necessary steps to protect the person when it knew or ought reasonably to have known that there was a real and immediate risk of suicide. (*Savage v South Essex Partnership NHS Foundation Trust* [2008] UKHL)

#### ***Article 3: No One Shall be Subjected to Torture or to Inhuman or Degrading Treatment or Punishment***

This includes subjecting a person to serious assault, failing to provide medical care and attention, subjecting a person to inhuman restraint and detention conditions and carrying out acts of a serious nature aimed at interfering with a person's dignity.

In the case of *R v Secretary of State for the Home Office, ex parte Limbuela, Tesema & Adam* [2005] the UK was considered to have violated the Article 3 right of a failed asylum seeker who was left destitute, sleeping rough, without funds to provide meet his basic needs, of shelter, food and basic necessities for life because the law prevented him from working and accessing accommodation.

***Article 5: Right to Liberty and Security of Person***

This is a qualified right as a person may not be deprived of their liberty unless done in accordance with a procedure prescribed by law, for example the imposition of a prison sentence following a criminal trial.

Section 5(4) also provides that where a person's liberty is deprived there must be a review procedure in place

The UK was considered to have fallen foul of Article 5 and the requirement for a review procedure in *HL v United Kingdom* [2004] (the *Bournewood* case). This case concerned Mr L who was autistic and considered to lack capacity. He was detained in *Bournewood* hospital under the common law doctrines of necessity and best interests. The European Court held that this was insufficient authority to comply with Article 5 and he was being unlawfully deprived of his liberty. In April 2009 the Deprivation of Liberty Safeguards were implemented to address this situation.

***Article 6: Right to a Fair Trial***

In the determination of a person's civil rights and obligations, or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

***Article 8: Right to Respect for Private and Family Life***

Everyone has the right to respect for his private and family life, his home and his correspondence. This is a qualified right meaning that there may be no interference with this right except in accordance with the law and it is necessary in a democratic society being in the interests of national security, public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

***Article 9: Freedom of Thought, Conscience and Religion***

***Article 10: Freedom of Expression***

***Article 11: Freedom of Peaceful Assembly and to Freedom of Association with Others***

***Article 12: Right to Marry and to Found a Family***

***Article 14: Anti-Discrimination***

The enjoyment of the Convention rights and freedoms shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**The Mental Capacity Act 2005**

The Mental Capacity Act 2005 (MCA) is about making decisions and reinforcing a person's personal autonomy by respecting their right to make a decision including unwise ones. Decisions include welfare, as well as financial matters.

The Mental Capacity Act provides a framework for decisions to be made on behalf of a person lacking capacity. This includes:

- whilst a person still has capacity making future arrangements for decision-making such as lasting powers of attorney for financial and welfare issues and advance decisions, for example, whether to have life saving treatment or not;
- decision-making in a person's best interests;
- decisions by the Court of Protection including the appointment of a Deputy to manage a person's financial and welfare matters;

### **The Mental Capacity Act Principles - Section 1**

provide that the following principles should always be applied for the purposes of the Act:

- (2) A person must be assumed to have capacity unless it is established that he lacks capacity.
- (3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- (4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision
- (5) An act done, or decision made, under this Act for or on behalf of a person lacking capacity must be done or made in his best interests
- (6) Before the act is done or decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of actions.

When working with adults in need of safeguarding the starting point is whether the person has the capacity to make the decision in question, or not.

Whether a person has capacity is 'issue and time specific'. What this means is that in order to make the decision the person must have the level of capacity necessary to make that particular decision at the time the decision is being made.

This recognizes that a person may have capacity for some things, but not others and promotes a person's autonomy.

### **Capacity - Section 2**

provides that a person lacks capacity to make a decision on a particular matter:

- If 'he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of the mind or brain'
- The impairment or disturbance may be permanent or temporary

The Act warns against making assumptions that a person lacks capacity by reason of their age, or appearance, a condition of his, or behaviour.

### **Legal Test for Capacity - Section 3**

A person is to be treated as unable to make a decision for himself if he is unable:

- (a) to understand the information relevant to the decision including information about the reasonably foreseeable consequences of deciding one way or another or failing to make the decision,
- (b) to retain that information for as long is necessary to make the decision,
- (c) to use or weigh that information as part of the process of making the decision, or
- (d) to communicate his decision (whether by talking, using sign language or any other means).

In accordance with the Act's principles of assisting a person to make a decision:

'(2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means)'.

### **Best Interests - Section 4**

There is no statutory definition of 'Best Interests' instead the Act offers a checklist of matters to be taken into account including:

- not making unjustified assumptions about best interests on the basis of a persons age, appearance, condition or behaviour;
- considering whether the person is likely to regain capacity in the future;
- taking into account the person's past and present wishes, values and beliefs including any written statements or advance decisions made when the person had capacity;
- consulting with relevant persons such as carers and persons appointed to look after the persons financial or welfare concerns about what would be in the persons best interests;

### **Acts in Connection with Care or Treatment - Section 5**

protects a person from liability for an act done in connection with the care or treatment of a person lacking capacity ('P') so long as:

- reasonable steps have been taken to establish whether P has the relevant capacity before providing the care or treatment; and
- when doing the act the person reasonably believes that P lacks the relevant capacity and the act is in P's best interests;

## **Deprivation of Liberty Safeguards**

The detention of a person against their will, without legal justification, may be unlawful in a number of ways for example:

- breach of Article 5 of the Human Rights act which forbids the deprivation of a person's liberty without lawful process including review and right of appeal to a court against the deprivation of liberty;
- false imprisonment;

The Deprivation of Liberty Safeguards (DoLS) were introduced into the Mental Capacity Act 2005 by the Mental Health Act 2007 following the Bournemouth case. The DoLS are designed to protect adults who lack mental capacity against arbitrary decisions depriving them of their liberty by providing a proper legal process and protection in situations where deprivation of liberty is considered to be in that person's best interests and is the least restrictive option for providing care and treatment.

The DoLS apply to care homes registered under the Care Standards Act 2000 and hospitals. A deprivation of a person's liberty may be authorised only through the DoLS or otherwise by order of the Court of Protection. The DoLS do not apply to persons detained under the Mental Health Act 1983.

Although the term 'deprivation of liberty' may give the impression of something negative and to be avoided the proper application of the safeguards affords a protective framework, not only for the person subject to an authorisation, but also for care and hospital staff providing care and treatment.

### ***What is a Deprivation of Liberty?***

The Deprivation of Liberty Safeguards Code of Practice states:

*"There is no simple definition of deprivation of liberty. The question of whether the steps taken by staff or institutions in relation to a person amount to a deprivation of that person's liberty is ultimately a legal question, and only the courts can determine the law" p16*

The European Court of Human Rights makes a distinction between the deprivation of an individual's liberty which is unlawful unless authorised and restriction of liberty and restrictions of the liberty of movement of an individual (2.1 DoLS Code of Practice).

Examples of restriction of movement, or restraint include using baffle locks, electronic tagging, and physical restraint. The difference between a deprivation of liberty and a restriction of liberty is one of degree and intensity. What this means is that the question of whether a person is being deprived of their liberty or not, depends on the particular circumstances of the case and *'account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question.'* *HL v United Kingdom [2004].*

Although there is no legal definition of what might indicate a deprivation of liberty previous case law offers some guidance:

- Health and/or social care professionals have exercised complete and effective
- control over the person's care and movement for a significant period of time;
- The person would be prevented from leaving the hospital or care home if they attempted to do so;
- The hospital or care home refuses a request by carers to discharge the person to their care;
- The person's autonomy or freedom of association with others whether within the hospital/care home or wider community is being denied or severely restricted by reason of the care regime imposed;
- Force including sedation and threats, has been used to:
  - Take a resisting patient to a hospital or care home;
  - prevent the person from leaving the hospital or care home;
- The journey to the hospital or care home is exceptionally long or onerous for the patient;

New cases are being decided all the time and this is not an exhaustive list. Further guidance can be found in the Deprivation of Liberty Safeguards Code of Practice.

### ***Deprivation of Liberty Process***

The Managing Authority, namely the care home or hospital looking after a person lacking mental capacity is responsible for ensuring that the care regime they propose does not amount to an unlawful deprivation, i.e., a deprivation of liberty that has not been authorised as being in the best interests of the person.

The Managing Authority is responsible for making an application to the relevant Supervisory Body for authorisation of a deprivation of liberty. The supervisory body may be the local authority or primary care trust depending on whether the Managing Authority is a care home or a hospital.

A Standard Authorisation will be granted subject to 'qualifying requirements' being met as follows:

- (a) Age requirement: the person must be aged 18 or over
- (b) Mental health requirement: the person must be suffering from a mental disorder. This includes learning disability regardless of whether the disability is associated with abnormally aggressive or seriously irresponsible conduct.
- (c) Mental Capacity requirement: the person must lack the mental capacity required to make a decision whether or not he should stay in the hospital or care home for the purpose of receiving the relevant care or treatment.

(d) Best Interests requirement: this requires an assessment of whether there is in fact a deprivation of liberty and if so, whether the deprivation is in the person's best interests, is necessary to prevent harm to the person, and is a proportionate response to the likelihood and seriousness of that harm

(e) Eligibility requirement: a person may not be deprived of their liberty under the Act if he is, or might be subject to the Mental Health Act 1983

(f) No refusals requirement: this is to establish whether there is any other existing authority that might prevent DoLS being authorised. This could include decisions by a donee of an enduring or lasting power of attorney, or an advance decision not to have a particular treatment in circumstances where the application is for the purposes of enabling that treatment

The DoLS process also provides for urgent authorisations to be given as well as review of the authorisation. Persons subject to an authorisation may also appeal directly to the Court of Protection.

If authorisation is refused or cannot be given because the qualifying criteria has not been met the matter may need to be referred to the Court of Protection.

### ***Appointment of an IMCA***

The Safeguards require the appointment of an Independent Mental Capacity Advocate (IMCA) in the following circumstances:

(a) Where the person is likely to become subject to the Deprivation of Liberty Safeguards and has no one other than a professional or paid carer to be consulted with during the best interests assessment, the managing authority must notify the supervisory body who must instruct an IMCA to represent the person. (section 39A)

(b) Where the person has an unpaid representative (section 39D) and where there is a gap in the appointment of a representative, e.g., the appointment of the person's representative has ended and there is no other person to consult.

An IMCA may also be appointed if the supervisory body thinks it would be appropriate or the appointment is requested by the person or their representative.

### **The Data Protection Act**

provides a framework for handling personal data and a right to individuals (referred to in the Act as 'data subjects') for access to information held about them. This includes computer records and most paper records. Personal data means personal, biographical and private information about a living individual who can be identified from the data alone or when the data is supplemented by other information.

The right of access to their data may be subject to certain exemptions, e.g., non-disclosure if the disclosure would cause serious harm to the person's mental or physical health. Disclosure is requested in writing together with payment of a fee currently £10. Once a request is received and/or the fee is paid a data controller has 40 days to comply.

Data controllers such as local authorities and other bodies who hold personal data are obliged to comply with a number of principles and conditions about how the receiving, sharing and holding of such information is to be managed. Generally though data controllers must process personal data fairly, lawfully and usually with the consent of the person to whom the data relates.

Requests may be made on behalf of mentally incapacitated adults either under authority of an Enduring, or Lasting Power of Attorney or the Court of Protection. In such cases proof of authority should be sought and enquiry made as to whether the person on whose behalf the information is being sought has expressly refused disclosure to the person who is making the request.

Where there are concerns that the person acting under a power of attorney or a court appointed deputy is not acting in the persons best interests it may be appropriate to make representations to the Court of Protection about the person's suitability to act.

Where a data subject considers that there has been an unlawful disclosure or withholding of information or other breach of the Data Protection Act a complaint may be made to the Information Commissioner or through the courts.

### **Sharing Information with Third Parties under the Data Protection Act**

The Data Protection Act requires that information shared with third parties must be fair and lawful and comply with certain conditions. Generally this means that the data controller must either have the data subject's consent to disclosure, or satisfy one of the other conditions prescribed by the Act including:

- disclosure ordered by a court or to comply with a legal obligation to which the data controller is subject;
- disclosure necessary to protect the vital interests of the data subject;
- disclosure necessary for the purposes of complying with a legal obligation including under a contract;
- disclosure necessary for the exercise of any statutory function or the administration of justice;

Where information is being shared with a third party the data subject should be informed. Exceptions to this general principle include circumstances where the providing the information would involve disproportionate effort, disclosure involving health and safety concerns and disclosure necessary to comply with a statutory function.

### **'Whistleblowing' (S.47B Employment Rights Act 1996):**

Where there are concerns about care practices, and the possible or actual abuse of adults in need of safeguarding people have a responsibility to report that concern to their manager.

Section 47(b) of the Employment Rights Act 1996 provides that a worker has the right not to be subjected to a detriment by any act, or any deliberate failure to act, by his/her employer which is done on the grounds that the worker has made a protected disclosure.

This provision protects a worker who discloses in good faith and without malice information which, in his/her reasonable belief, tends to show that:

- a criminal offence has been or is likely to be committed;
- a person has failed to comply with their legal obligations;
- the health or safety of any individual has been, is being, or is likely to be endangered;
- the information relating to the above is being deliberately concealed;

The Public Interest Disclosure Act 1998 requires organisations to have procedures enabling staff to may raise concerns in confidence.

Public Concern at Work is an independent charity that can offer confidential support and advice to individuals about whistleblowing concerns. Their website is: <http://www.pcaaw.co.uk>

### **Mental Health Act 1983**

Duty of approved mental health professionals to make applications for admission, or guardianship (Section 13):

This places a duty on a local social services authority to make arrangements for an approved mental health professional (AMHP) to consider a patient's case where the authority has reason to think that an application for admission or guardianship may need to be made in respect of that patient. If the AMHP is:

- (a) satisfied that such an application ought to be made in respect of the patient; and
- (b) of the opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him, he shall make the application. (Section 13 1(A))

#### **Admission to Hospital for Assessment:**

Section 2(2) provides that "An application for admission for assessment may be made in respect of a patient on the grounds that:

- (a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment ( or for assessment followed by medical treatment) for at least a limited period; and
- (b) He ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons."

#### **Admission to Hospital for Treatment for Mental Disorder:**

Section 3(2) provides that "an application for admission for treatment may be made in respect of a patient on the grounds that -

- (a) He is suffering from [mental disorder' of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
- (b) [...]
- (c) It is necessary for the health or safety of the patient or for the protection of

other persons that he should receive such treatment and it cannot be provided unless he is detained under this section [; and

(d) Appropriate medical treatment is available for him]"

Admission for assessment in cases of emergency (Section 4):

- provides for a person to be admitted to hospital for assessment where it is of urgent necessity for the patient to be admitted under section 2 and that complying with the provisions relating to applications under the Act would involve undesirable delay;

These sections give power to an approved mental health professional (AMHP) to apply for hospital admission of a mentally disordered adult, if he/she is satisfied the criteria for compulsory admission are met.

#### **Consent to Treatment Provisions- Part IV**

The Mental Health Act provides for a number of provisions regulating treatment for mental disorder including ECT.

Treatment not falling under Part IV will either be covered by consent, or where a person lacks capacity under the Mental Capacity Act 2005. The interface between the Mental Capacity Act and the Mental Health Act is not always easy to interpret and workers are advised to seek legal advice.

#### **Community Treatment Orders (Section 17(A)):**

provide for a patient detained under the Mental Health Act 1983 for treatment to be discharged from hospital subject to recall if the patient requires medical treatment in hospital for his mental disorder and there is a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled to hospital for that purpose. (section 17(E))

A community treatment order will contain conditions to which a patient is to be subject whilst the order remains in force. Conditions include ensuring that the patient receives appropriate medical treatment.

#### **Guardianship (Section 7):**

An adult in need of safeguarding can be received into guardianship by the local authority if s/he has a mental illness, severe mental impairment or mental impairment associated with "abnormally aggressive or seriously irresponsible conduct" or a psychopathic disorder, which results in "abnormally aggressive or seriously irresponsible conduct". The guardianship must also be "necessary in the interests of the welfare of the adult or the protection of other persons".

Guardianship gives the guardian three basic powers:

4. to direct where the adult is to live;
5. to require the adult to attend somewhere for the purpose of medical treatment, occupation, education or housing (this power only relates to attendance and not the actual treatment);
6. to gain access to the adult at any place where s/he is living.

Adults subject to guardianship are not required to consent to guardianship.

The nearest relative must be consulted when considering guardianship, however if they are the perpetrator of mistreatment consideration should be given to whether there are grounds for an application to be made to a County Court to displace the nearest relative (s.29 MHA 1983) e.g., unreasonably withholding their consent.

### **Guardianship and Dols**

The law on whether guardianship in itself is sufficient to authorise the deprivation of a person's liberty, say, by requiring that person to live in a particular care home, is not clear cut and workers are advised to seek legal advice.

### **Guardianship and Section 5 Mental Capacity Act 2005**

Section 5 of the Mental Capacity Act 2005 provides a defence against civil and criminal liability for persons providing care and treatment for a mentally incapacitated adult where it is in their best interests to do so. The Code of Practice to the Mental Capacity Act 2005 offers social care professionals examples of where a guardianship application may be appropriate:

- "They think it important that one person or authority should be in charge of making decisions about where the person should live (for example, where there have been long-running or difficult disagreements about where the person should live);
- They think the person will probably respond well to the authority and attention of a guardian and so be more prepared to accept treatment for the mental disorder ( whether they are able to consent to it or it is being provided for them under the Mental Capacity Act); or
- They need authority to return the person to the place they are to live (for example, a care home) if they were to go absent;" (para 12;20)

### **Care Standards Act 2000**

This act governs minimum standards of care, deals with the registration and inspection of care homes and regulates the employment of care workers.

Registration and Inspection of care homes (sections 11 &31 Care Standards Act 2000):

Currently care providers must be registered with the Care Quality Commission under this Act. This will continue until October 2010 when registration will move to a single system of registration for NHS and social care providers under the Health and Social Care Act 2008.

The Commission's primary responsibility is dealing with registration of health and social care services and ensuring compliance with registration requirements and quality standards; it may enter and inspect registered premises to do so.

The Commission has also replaced the Mental Health Act Commission and has responsibility for patients detained under the Mental Health Act 1983

### **Enforcement Powers**

The Care Standards Act provides for a number of offences for example, failure to comply with registration requirements or conditions of registration.

The Care Quality Commission has power to cancel or suspend registration and in cases where there is "serious risk to the life, health or well being" of residents or patients, then they may obtain an order for the immediate closure of the home (s.20 Care Standards Act 2000).

The Commission can also issue fines and public warnings and impose conditions to deal with serious risks

The Care Standards Act is supported by regulations and specific National Minimum Standards apply in respect of Care Homes for Older People, Adults 18-65, Adult Placements, Domiciliary Care and Nurses Agencies.

### **Forced Marriages Act 2007**

came into force on 25th November 2008. It gives the family courts a wide range of powers to prevent a forced marriage taking place or to offer protective measures if the marriage has gone ahead.

### **Courts Powers**

The Court has available a wide range of powers and examples of the kind or orders it may make include:

- to prevent a forced marriage from occurring;
- to hand over all passports (where there is dual nationality) and birth certificates and not to apply for a new passport;
- to stop intimidation and violence;
- to reveal the whereabouts of a person;
- to stop someone from being taken abroad; and
- to facilitate or enable a person to return to the UK within a given time period;

Breach of a court order is not a criminal offence but may result in arrest by the police if they believe there is reasonable cause to suspect there has been a breach. Breach will be treated as contempt of court and legal sanction may include imprisonment.

The court can make orders against respondents named in the application but also against other people who have not been named as respondents. This recognises that forced marriage situations are complex and may involve members of the wider community.

The court may add a power of arrest where violence is threatened, or used, or where there is a risk of significant harm, either to the intended victim or to someone else in connection with the intended marriage and the court considers that there will be inadequate protection without it.

### **Persons Who May Apply for a Forced Marriage Protection Order**

An application for a Forced Marriage Protection order may be made by

- a victim;
- anyone can apply for an order on behalf of a victim, as long as they obtain the court's permission to make an application; and
- a relevant third party such as a local authority, who can make an application on behalf of a victim but does not need to seek leave of the court;

The Court may also make a forced marriage protection order of its own volition and in the course of other proceedings.

Forcing someone to marry is not a criminal offence however the circumstances may indicate criminal activity for example, kidnap, threatening behaviour and threats to kill, assault, theft of passports imprisonment and murder. There may also be other issues that need to be dealt with such as access to property, and child protection concerns.

Where a worker considers that they may be dealing with a forced marriage issue they must seek legal advice immediately. Care must also be taken with regard to sharing information with family/community members as to do so may seriously compromise the safety of the person at risk of forced marriage or in a forced marriage.

## **The Legal Context Part 4: Types of Abuse and Relevant Law**

This part of the guidance looks at the different types of abuse identified in 'No Secrets'. It will be seen that many forms of abuse such as physical, financial, and sexual abuse are potentially criminal matters. Where criminal activity is suspected referral must be made to the police for investigation.

### **Physical Abuse**

#### **Common Assault S39 Criminal Justice Act 1988**

Common Assault, as defined under this Act is committed when a person either assaults another person or commits a battery:

- Assault: a person is guilty of an assault if s/he intentionally or recklessly causes another person to apprehend the application of immediate, unlawful force to his/her body;
- Battery: a person is guilty of battery if s/he intentionally or recklessly applies unlawful force to the body of another person;

A battery generally includes an assault, but not necessarily; a battery may be committed without any apprehension of unlawful force by the victim, e.g. where the victim is asleep.

An assault or battery may leave no physical evidence and, unless there are witnesses, prosecution may be unlikely, as it is the perpetrator's word against the victim's. Carers and professionals should bear in mind, however, that an assault covers a wide range of language and behaviour. Any act or words involving the use or threat of immediate violence towards someone can constitute an assault.

#### **Offences Against the Person Act 1861**

There are separate and more serious offences if the assault or battery results in injury:

- Assault occasioning Actual Bodily Harm - 'ABH' - Section 47
- Assault occasioning Grievous Bodily Harm - 'GBH' - Sections 18 and 20

is committed where a person unlawfully and maliciously wounds or inflicts serious bodily harm upon a victim. Wounding means breaking the skin and also includes broken bones, internal injury as well as psychiatric harm. The offender does not need to intend to cause serious harm, the offence may be committed if the offender was reckless.

Assault occasioning grievous bodily harm may include recklessly or intentionally transmitting a sexual infection likely to have serious, or potentially life threatening consequences for the victim.

## **Public Order Act 1986**

### **Affray - Section 3**

A person is guilty of affray if he uses or threatens unlawful violence towards another and his/her conduct is such as would cause a person of reasonable firmness present at the scene to fear for his/her personal safety.

### **Fear or Provocation of Violence - Section 4**

A person is guilty of an offence if s/he:

(a) uses towards another person threatening, abusive or insulting words or behaviour; or

(b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting, with intent to cause that person to believe that immediate unlawful violence will be used against him/her or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

The offence cannot be committed where person using the words or behaviour and the victim are both in a private dwelling.

### **III-Treatment and Wilful Neglect**

Offences of ill-treatment and wilful neglect are provided for in the Mental Health Act 1983 and the Mental Capacity Act 2005. (See section on Institutional Abuse).

### **Restraint**

The common law doctrine of necessity provides that restraint may be lawful in certain circumstances, for example, the restraint is necessary, appropriate and proportionate. However restraint that uses excessive physical force or is otherwise inappropriate may amount to an assault or battery as can any practice involving physical compulsion such as force feeding. Excessive restraint may also amount to an unlawful deprivation of liberty. (See deprivation of liberty safeguards).

Section 5 of the Mental Capacity Act 2005 provides a defence for acts done in connection with the care and treatment of a person lacking capacity. This may also include restraint only if:

- the person using restraint reasonably believes it is necessary to prevent harm to the person lacking capacity;
- the restraint is a proportionate response to the likelihood of the person suffering harm and the seriousness of that harm;

## **Sexual Abuse**

### **Sexual Offences Act 2003:**

This Act repeals previous legislation on sexual offences and consent is a key issue.

The Act covers non-consensual offences of rape which includes penile penetration of the mouth, anus or vagina, assault by penetration, and sexual assault and causing a person to engage in sexual activity without consent. Whether a person is a victim of any of these offences depends on whether they consented, and the perpetrator reasonably believed that they had consented. Consent is defined in the Act and there are a number of evidential and conclusive presumptions that must be applied in deciding whether a person had consented or not.

The Act includes offences in respect of mentally disordered persons where choice (that is the ability to give consent) is impeded. The Act also provides for offences where there is abuse of a position of trust so that it is an offence for someone in a relationship of care to have a sexual relationship with the mentally disordered person.

Also covered are child sex offences, incest as well as preparatory offences such as grooming.

The Act also provides for public protection from sexual harm with new preventative orders including a sexual offences prevention order and a risk of sexual harm order.

### **Sexual Offences Against Persons with a Mental Disorder**

These offences aim to protect vulnerable persons with a mental disorder or learning disability from sexual abuse in situations where they are unable to refuse because of a lack of understanding, offered inducements, subjected to threats or deceived, and where there is a breach of a relationship of care by care workers

### **Offences Against Persons with a Mental Disorder Impeding Choice (Sections 30 To 33)**

- sexual activity with a person with a mental disorder impeding choice;
- causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity;
- engaging in sexual activity in the presence of a person with a mental disorder impeding choice;
- causing a person with a mental disorder impeding choice, to watch a sexual act;

These offences concern the involvement of a person with a mental disorder in sexual activity, and because of that mental disorder or for reasons connected to it the victim is unable to refuse consent and the perpetrator knows or could reasonably be expected to know that the victim has a mental disorder and that because of it, or reasons related to it, the victim is likely to be unable to refuse.

Being unable to refuse means that:

(a) the person lacks the capacity to choose whether or not to agree to the sexual activity ((whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason), or

(b) he is unable to communicate such a choice to A.

Mental disorder includes learning disability.

### **Sexual Offences Against Persons with Mental Disorder by Reason of Inducements, Threat or Deception (Sections 34- 37)**

- inducement, threat or deception to procure sexual activity with a person with a mental disorder - (Section 34)
- causing a person with a mental disorder to engage in or to agree to engage in sexual activity by inducement, threat or deception - (Section 35)
- engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder - (Section 36)
- causing a person with a mental disorder to watch a sexual act by inducement, threat or deception - (Section 37)

These offences apply where a perpetrator uses inducements, threats or deception to engage a person with mental disorder in sexual activity, however the offences do not require proof that the mentally disordered person is unable to refuse.

### **Sexual Offences by Care Workers**

Sexual offences that can be committed by a care worker against a person with a mental disorder or learning disability regardless of whether the person has the capacity to consent or willingly participated in the activity are found in Sections 38- 44.

A care worker is:

- a person who, in the course of his employment in a care home, community home, voluntary home or children's home in which the victim is accommodated and cared for has functions to perform which have brought him/her, or are likely to bring him/her into regular face to face contact with the victim;
- a person who in the course of his employment, has functions to perform for an NHS body, independent medical agency, clinic or hospital where the victim is a patient for whom services are provided and those functions have brought him/her, or are likely to bring him/her into regular face to face contact with the victim;
- a person who whether or not in the course of employment is a provider of care, assistance or services to the victim in connection with the victim's mental disorder and as such, has had or is likely to have regular face to face contact;

Care worker sex offences are:

- sexual activity with a person with a mental disorder (Section 38)
- causing or inciting sexual activity (Section 39)
- sexual activity in the presence of a person with a mental disorder (Section 40)
- causing a person with a person with a mental disorder to watch a sexual act (Section 41)

Care Workers will only be guilty of these offences if they know, or could reasonably be expected to know that the victim has a mental disorder. An offence will be committed regardless of whether the victim had consented or not.

There are two exceptions to these offences and that is where the care worker and person with the mental disorder are spouses or civil partners, or are in sexual relationship which predates the care relationship. Where these exceptions apply an offence is committed only if the mentally disordered person lacks the capacity to consent or communicate their consent effectively, or if the mentally disordered person had capacity to consent but did not do so.

## **Public Protection Measures**

### ***Registration Requirements***

The Sex Offenders Act 1996 provides for relevant sex offenders to be registered and to provide personal details to the police.

### ***Sex Offences Prevention Order***

This is an order made by a Magistrate on the application of the police for the purpose of protecting the public or any particular member of the public from serious sexual harm by the offender.

The orders may prohibit an offender doing anything specified in the order e.g., preventing an offender from contacting his victims or taking part in activities that may put him in contact with children.

### ***Risk Of Sexual Harm Order***

This is an order made by a Magistrate on the application of the police where it is necessary to protect a child, or children generally, from risks posed by persons aged 18 or over who may not necessarily have a previous conviction for a sexual or violent offence but who have on at least two occasions engaged in sexually explicit conduct or communication with a child or children and who therefore pose a risk of further harm.

The orders may prohibit an offender doing anything specified in the order.

### ***Multi-Agency Public Protection Arrangements (Mappa)***

The police, probation and prison services (MAPPAs Responsible Authority) are required to ensure that there is a risk management plan in place for the most serious offenders. The NHS, social services, education and housing are under a duty to co-operate with the MAPPAs Responsible Authority.

### **Police referral:**

The physical evidence in cases of physical and sexual abuse may well be problematic as it may prove capable of supporting accidental as well as non-accidental scenarios.

Sexual abuse in particular may leave little or no forensic evidence and it is rare for clinical evidence alone to identify the perpetrator. For these and other reasons, prompt referral to the police and collection/preservation of evidence are likely to be crucial to a successful prosecution. Equally, an awareness on the part of the police of when, and how to involve other agencies in the gathering of evidence is necessary.

Referrals in relation to the abuse or suspected abuse of an adult in need of safeguarding should be made in line with the procedure detailed in this document.

In emergencies, it may be necessary to contact the police before contacting Social Services. What constitutes an 'emergency' should normally be decided by the appropriate Line Manager but would include any delay that might result in:

- significant harm; or
- loss of evidence;
- Referrals to the police should have the agreement of the victim unless:
- they lack capacity and the ability to give informed consent;
- a third party, who has witnessed possible abuse is prepared to report the matter to the police or consents to others contacting the police on their behalf; or
- it is a matter of public interest which overrides the need for consent;

Referrals must be made at the earliest opportunity. Investigations, such as disciplinary hearings, should not be commenced without first discussing matters with the police. Interviewing suspected perpetrators prior to a police involvement could prevent a successful prosecution.

### **Psychological Abuse**

Psychological abuse could include threats of violence, harassment, as well as ill-treatment or wilful neglect.

Threats of violence can constitute an assault or affray (see above - Physical Abuse).

### **Protection from Harassment Act 1997**

#### **Harassment (Section 1)**

A person must not pursue a course of conduct which amounts to harassment of another and which the perpetrator knows or ought to know amounts to harassment of the other person.

'Harassment' includes alarming another person or causing him/her distress.

If the perpetrator can show that the course of conduct was reasonable in the

circumstances, no offence is committed.

For a criminal prosecution to be brought, a 'course of conduct' must involve conduct on at least 2 occasions, and 'conduct' includes verbal abuse. However, a civil remedy such as an injunction against harassment can be obtained whether or not previous harassment has taken place, and whether or not a prosecution is brought.

#### **Putting People in Fear of Violence (Section 4)**

This is a similar offence which applies to a course of conduct that causes another to fear, on at least two occasions, that violence will be used against him/her, provided that the perpetrator knows or ought to know that the course of conduct would cause such a fear.

A court has the power to issue a restraining order or injunction to provide protection from further harassment. Damages may also be claimed by the victim for (e.g.) anxiety and financial loss caused by the harassment.

#### **Public Order Act 1986**

This is set out above and includes offences relating to harassment, alarm or distress:

#### **Intentional Harassment, Alarm or Distress (S.4A)**

A person commits an offence if, with intent to cause a person harassment, alarm or distress, s/he:

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

thereby causing that or another person harassment, alarm or distress.

[This offence may take place in a public or private place but not a dwelling as in a person's living accommodate therefore it is a defence for the perpetrator to prove either: that s/he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign etc., would be heard or seen by the person against whom it is directed inside that or any other dwelling]

#### **Harassment, Alarm or Distress (Section.5)**

A similar offence is committed (without the requirement of intent) where the words, behaviour, writing or sign referred to above are used or displayed within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. The same defences apply, plus another defence that the perpetrator had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress.

## **Racial and Religious Hatred Act 2006**

creates new offences of stirring up hatred against persons on religious grounds.

Religious hatred is defined as hatred against a group of persons defined by reference to religious belief or lack of it. Religion and religious belief would include Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, Baha'ism, Zoroastrianism and Jainism, sects within a religion, as well as atheists and humanists.

The offence may be caused by the use of words or behaviour that is threatening and intended to cause racial hatred. Offences also include the communication of racial hatred by means of written material, public performance and broadcast a programme containing offensive material.

See also section on [Discriminatory Abuse](#).

## **Anti-Social Behaviour Order (Crime and Disorder Act 1998)**

this is a community based order which can be applied for by the police or local authority in consultation with each other. The order will be applied against an individual or several individuals (perhaps a family) whose behaviour is anti-social (i.e. it causes alarm, distress or harassment to one or more people not in the same household).

## **Financial/Material Abuse**

### **Theft Act 1968**

#### **Theft (Section.2)**

is the dishonest appropriation of property belonging to another, with the intention of permanently depriving the owner of it.

Theft does not necessarily involve physically taking or moving something; any assumption of the rights of the owner can constitute an appropriation. Property means anything that can be owned, including pets and money. Dishonesty has to be proved, and it is a defence for the alleged perpetrator to show that s/he held the reasonable belief that the owner would have consented had s/he known.

#### **Robbery (Section.8)**

is theft aggravated by the use or threat of force.

#### **Burglary (Section.9)**

a person is guilty of burglary if s/he enters any building as a trespasser and with intent to commit theft, to inflict grievous bodily harm on, or rape, someone therein, or to do unlawful damage to the building or anything therein.

#### **Blackmail (Section 21)**

a person is guilty of blackmail if, with a view to gain for him/herself or another or with intent to cause loss to another, s/he makes any unwarranted demand with menaces.

For the purposes of this offence, a demand with menaces is unwarranted unless the person making it does so in the belief that s/he has reasonable grounds for making the demand, and that the use of the menaces is a proper means of reinforcing the demand.

### **Fraud Act 2006**

Adults in need of safeguarding may also be induced by deception give away money or possessions, or to enter into contractual arrangements that are plainly prejudicial. The deception will normally invalidate the contract, and the other party may be guilty of an offence under the Fraud Act 2006. Examples of possible frauds under the Act include the person's attorney or carer using the person's funds for their own benefit.

The Fraud Act 2006 repeals all the deception offences in the Theft Act and replaces them with a single offence of fraud which may be committed in the following ways:

- False representation (section 2)
- Failure to disclose information when there is a legal duty to do so (Section 3)
- Abuse of position such as acting under a lasting power of attorney or as trustee (Section 4);

In each case the perpetrator must dishonestly intend to make a gain or cause a loss, or risk of a loss to another, no loss or gain needs to have been incurred.

### **Investigation and Prosecution**

Dependent adults may be reluctant to make a complaint that will enable the police to investigate a possible offence and the informality of care arrangements may make a prosecution for financial abuse difficult. However, successful prosecutions do occur and the fact that an investigation is undertaken can itself offer some protection. Perceived difficulties in proving financial abuse should not deter agencies from making appropriate referrals to the police.

One or more of the following remedies may be available to protect the adult in need of safeguarding:

- Deputyship (Court of Protection)
- Lasting Power of Attorney
- Creating a Trust
- Third Party Mandate
- Appointeeship
- Direct Payments which may now be made to a suitable person on behalf of a person lacking capacity

The statutory agencies are unable to give direct financial/legal advice and assistance on issues concerning financial abuse to the adult concerned, but will endeavour to enable and assist them to exercise their legal rights via an advocate and/or solicitor.

Social services authorities have a duty to provide temporary protection for movable property of people in hospital or residential/nursing care (National Assistance Act 1948 section 48). It applies where it appears to the council that there is danger of loss of, or damage to, the patient/resident's movable property by reason of that person's inability to protect or deal with the property. In some cases this duty may assist in protecting a vulnerable adult's property from theft or exploitation in their absence.

## **Neglect/Omission**

### **Breach of Duty of Care**

The law of tort imposes a duty of care on a person who looks after someone else whether paid professionals or unpaid, informal carers. This means that they must perform to a reasonable standard those tasks which they undertake. The relevant standard depends on what would reasonably be expected of the person concerned. This means a higher standard of care is expected of professional persons than those acting in an informal role, however, serious deficiencies might constitute negligence.

Assault, battery and false imprisonment may also provide a basis for one person to sue another in a civil action.

Acts in connection with care and treatment under the Mental Capacity Act 2005 Section 5 affords a defence against civil or criminal liability for acts done in connection with the care or treatment of a person lacking capacity so long as the person has complied with section 5.

Section 5 does not exclude a person's civil liability for loss or damage or criminal liability arising out of his/her negligence.

### **Preventing Access to an Adult in Need of Safeguarding**

social services and health authorities have no general powers to gain access to a private dwelling, whether for the purposes of assessment or the delivery of services, except for specific powers in the Mental Health Act 1983. If a criminal offence is suspected, and access is required as a matter of urgency, the police should be contacted.

### **Powers of Entry and Inspection (Mental Health Act 1983 Section 115)**

an approved mental health professional may at all reasonable times enter and inspect any premises (other than a hospital) in which a mentally disordered adult is living, if s/he has reasonable cause to believe that the patient is not under proper care. Forcible entry is not permitted (a warrant will be required for this), but obstruction of an inspection is an offence under section 129.

### **Warrant to Search For and Remove Patients (Section 135 Mental Health Act 1983):**

an application may be made to the magistrates court for a warrant authorising the police to enter (forcibly, if necessary) any premises specified in the warrant and to remove a person suffering from mental disorder to a place of safety. The grounds for an application are that there is reasonable cause to suspect that such a person:

- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the court's jurisdiction; or
- (b) being unable to care for him/herself, is living alone in any such place.

The purpose of such removal is with a view to making a further application under the Mental Health Act 1983 or other arrangements for the person's treatment or care. The place of safety may be a hospital, care home, a police station or another suitable place that is willing to receive the person.

The guardian of a mentally disordered person (section 7 MHA 1983) has the power to require access to be given to the person under his/her guardianship at any place where s/he is living, and to require their attendance at for example, outpatient appointments. This may assist where a third party is preventing access to an adult in need of safeguarding.

Mentally disordered persons found in public places (section 136 MHA 1983):

if a constable finds in a public place a person who appears to him/her to be suffering from mental disorder and to be in immediate need of care and control, the constable may, if s/he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety.

A person removed to a place of safety under this section may be detained there for up to 72 hours for the purpose of enabling him/her to be examined by a doctor and interviewed by an approved mental health professional and for the purpose of making any necessary arrangements for his/her treatment or care.

### **Discriminatory Abuse**

The Human Rights Act prohibits discrimination in respect of convention rights and freedoms on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

UK law also provides for specific anti-discriminatory legislation with regard to disability, sex, gender, religion and race.

Anti-social behaviour, harassment, offences against the person may indicate discriminatory abuse.

**Disability Discrimination (Disability Discrimination Act 1995 & 2005):**

places a duty on public bodies to promote equality of opportunity for disabled people.

It also makes it unlawful to discriminate against a disabled person in respect of the provision of goods, facilities and services (including provision by local authorities, NHS Trusts, education and other public bodies), and requires employers to make reasonable adjustments to arrangements or premises to avoid placing a disabled person at a substantial disadvantage in comparison to persons who are not disabled.

**Racial Discrimination (Race Relations Act 1976):**

makes it unlawful for a person to discriminate against another on racial grounds across a range of areas, including employment, education, goods, facilities, services and premises.

The law also places a general duty on public authorities to have due regard to the need to eliminate unlawful discrimination, and to promote equality of opportunity and good relations between persons of different racial groups, in carrying out their functions.

**Sexual Discrimination (Sex Discrimination Act 1975):**

makes it unlawful for a person to discriminate against a man or woman on the ground of his or her sex across similar areas, including goods, facilities and services.

**Sexual Orientation Discrimination (Equality Act (Sexual Orientation) Regulations 2007**

make it unlawful to discriminate on grounds of sexual orientation in the provision of goods and services, education, management and disposal of premises and the exercise of public functions. Discrimination in relation to employment and training is also prevented.

**Religion or Belief Discrimination**

The law prohibits discrimination on the grounds of religion or belief (Equality Act 2006) in a similar way to prohibition of discrimination on grounds of sexual orientation.

**Age Discrimination**

Although there are regulations prohibiting discrimination on grounds of age these are currently limited to the areas of employment, training and adult education.

## **Institutional Abuse**

Institutional abuse may result in the ill-treatment or wilful neglect of adults and the relevant offences are provided for in the Mental Health Act 1983 and Mental Capacity Act 2005. Institutional abuse is not limited to offences under these Acts and may include negligence. Depending on the circumstances other offences may be indicated for example, offences against the person and dishonesty offences such as under the Fraud Act 2006.

### **Ill-Treatment or Wilful Neglect of Mentally Disordered Patients (Section 127) Mental Health Act 1983**

makes it an offence for any person who is an officer on the staff of, or otherwise employed in, or who is one of the managers of, a hospital [, independent hospital or care home] -

- (a) to ill-treat or wilfully to neglect a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or home; or
- (b) to ill-treat or wilfully to neglect, on the premises of which the hospital or home forms part, a patient for the time being receiving such treatment there as an out-patient.

This section also makes it an offence to ill-treat or wilfully neglect a person subject to guardianship or supervised discharge or otherwise in a person's custody or care.

### **Ill-Treatment or Wilful Neglect of a Person Who Lacks Mental Capacity (Section 44) Mental Capacity Act 2005**

provides a similar offence of ill-treatment or wilful neglect by either lay or professional carers, a person authorised to act under a lasting or enduring power of attorney or appointment by the Court of Protection, to ill-treat or wilfully neglect a person who lacks, or is believed to lack mental capacity.

### **Corporate Manslaughter and Corporate Homicide Act 2007**

Section 1 provides that the NHS, local authorities, police, the Home Office and other government departments and public, private and voluntary sector organisations are guilty of an offence if the way in which its activities are managed or organised:

- (a) causes a person's death, and
- (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

A substantial part of the breach must have been in the way activities were managed by senior management.

Relevant duty of care includes duties as an employer and owner/occupier of premises, duties connected with the supply of goods and services, commercial enterprise, construction and maintenance work. Section 2 also makes the duty of care owed by a custody provider to a detained person (including under the Mental Health Act 1983 a relevant duty. This is not currently in force although the government has committed to its implementation by 2011.

## **Legal Issues - Other General Provisions**

### **Civil Claims**

#### **County Court/High Court**

these courts deal with personal injury claims caused by negligence, debt claims, contract and property disputes

#### **Court of Protection**

deals with best interests decisions on behalf of people lacking capacity in respect of finance and welfare matters, together with appeals against deprivation of liberty authorisation.

#### **Criminal Injuries Compensation Authority**

compensates people who have been physically injured or suffered psychological trauma as a result of a crime of violence. The incident must have been reported to the police as soon as the victim was able to do so, and an application must be made within 2 years of the date of the incident which caused the injury. Compensation is assessed on a tariff according to the severity of the injury or trauma. Legal advice should be sought if it appears that a client may be entitled under the Criminal Injuries Compensation Scheme.

Where this is not available, victims of physical and financial abuse may find compensation through a civil claim. The criminal courts may award compensation if they find the defendant guilty, but if there is no successful prosecution, a civil remedy may still be available, and the burden of proof is less strict in civil claims. A victim of an assault might be able to claim compensation for pain, discomfort and "loss of amenity" resulting from an injury, or compensation for being deprived of assets or property.

#### **Injunctions in Family Law (Family Law Act 1996 Part IV):**

Part IV of the Family Law Act 1996 deals with rights to occupy the matrimonial home, occupation orders and non-molestation orders. It repeals previous legislation on injunctions and provides one set of remedies available in all courts with family jurisdiction. These orders can be applied for at any stage through the divorce process or unconnected to any divorce.

## **Safeguarding Vulnerable Groups**

### **Criminal Records Bureau and Disclosure Checks**

is part of the Home Office and checks police information, and where required, information held by the Independent Safeguarding Authority for all agencies, businesses and organisations employing staff, working with vulnerable adults and other vulnerable people. It provides two types of disclosure check:

- Standard Disclosure- available for persons working in controlled activities and certain other occupations; Standard CRB checks show current and spent convictions, cautions, reprimands and warnings held on the Police National Computer
- Enhanced Disclosure - available for persons working in regulated activity with children and adults in need of safeguarding Disclosure includes:
  - the information available under standard disclosure;
  - relevant and proportionate information held by local police forces;
  - a check of the Children and Vulnerable Adults Barred lists under the Safeguarding Vulnerable Groups Act

Controlled and regulated activities are defined below.

### **Safeguarding Vulnerable Groups Act 2006**

Currently persons barred from working with children and vulnerable adults are entered onto one of three lists List 99 (Education), the Protection of Children Act List (POCA) and the Protection of Vulnerable Adults List (POVA) and disqualification orders issued by the courts.

The Act replaces these regimes with two barred lists one in respect of persons who are barred from engaging in regulated activity with children and the other in respect of persons barred from engaging in regulated activity with adults.

The lists will be maintained and kept up to date by the Independent Safeguarding Authority (ISA) who will decide whether a person should be entered onto one, or both lists. The decision will use information gathered from other agencies including the Criminal Records Bureau. It is a criminal offence for persons who have been barred to work, or seek work in the regulated activity from which they have been barred.

Persons wishing to work or working with children or vulnerable adults in regulated activities will be required to register. The registration requirements are being phased as follows:

- July 2010 - voluntary registration with the ISA of new entrants to work with vulnerable groups;
- November 2010 - compulsory registration with the ISA of new entrants before starting work;
- April 2011 - existing workers can start to ISA-register; Details of when compulsory registration is required for existing workers will be published on the ISA's website;

As from 12th October 2009 employers:

- must not knowingly employ in a regulated activity, or use as a volunteer a barred person;
- must make a referral to the ISA where they have dismissed a person, or ceased using a person in a regulated (or controlled activity) because it is thought that the person either harmed or posed a risk of harm to children or vulnerable adults;

Employers may also be committing criminal offences if they take on an individual in a regulated activity if they fail to check the person's status, or allow a barred individual, or person not registered with the ISA for any length of time in a regulated activity.

Domestic employers are not obliged to check an individual under the scheme but may do so with the individual's consent.

### **Regulated Activity**

means:

- any activity of a specified nature that provides an opportunity for, frequent, close contact with children or vulnerable adults including overnight; Activities include teaching, training, providing care, supervision, advice, treatment and transportation;
- Any activity allowing contact with children or vulnerable adults that is in a specified place frequently or intensively- this could include schools and care homes;
- Fostering and childcare;
- Any activity that involves people in certain defined positions of responsibility such as school governor, director of social services and trustee of certain charities;

### **Controlled Activity**

means:

- Frequent or intensive support work in general health settings, the NHS and further education; This includes cleaners, caretakers, shop workers, catering staff, car park attendants and receptionists;
- Individuals working for specified organisations (e.g; local authority) who have frequent access to sensitive records about children and vulnerable adults
- Support work in adult social care settings; This includes day centre cleaners and those with access to social care records;

Employers will risk committing a criminal offence if they take on an individual in a controlled activity without first checking that person's status. An employer may allow a barred individual to work in a controlled activity only if sufficient safeguards are put in place.

## **Practice Guidance 4: Safeguarding Risk Assessment Tool and Guidance**

This risk assessment tool and associated guidance are intended to support the investigating worker in gathering information, and to inform their discussions with their managers. It is intended for use following the initial strategy discussion. It is therefore assumed that the steps up to that point will have already been taken, such as consideration of immediate risk, whether a crime may have been committed and resulting police alert and agreement on who is the lead agency. If the police are involved nothing must be done which could compromise a criminal investigation. Agreement should be sought from the police before taking any further actions within the investigation.

As this is an initial tool for gathering information and assessing risk, the investigating worker should complete the form on the first day of the investigation, and discuss with their manager. It does not negate the need for more detailed assessments and protection plans being completed pending a case conference, as detailed in the following sections. The corresponding guidance should be consulted when completing each section of the assessment.

The terms 'alleged abuse', 'alleged victim' and 'alleged perpetrator' have been used. This is to give emphasis to the fact that any concerns regarding potential abuse to people in need of safeguarding needs to be considered and where appropriate investigated under the safeguarding procedures, regardless of what evidence is initially available. Some investigations will conclude that abuse did not occur, and therefore careful consideration also needs to be given in using the label 'perpetrator', without evidence that this is the case.

### **Wishes and Views of the Alleged Victim**

Every effort should be made to obtain the views of the alleged victim, unless the level of distress is too high. Consideration should be given to issues such as whether an interpreter is required, is there anyone who the person would wish to be present for support (excluding any alleged perpetrators), and is there an environment where the person feels more comfortable?

N.B.: As previously stated it is assumed that a decision would already have been taken regarding whether the alleged abuse has been reported to the police. If there is a police investigation, the alleged victim should not be spoken to without the agreement of the police.

## Safeguarding Adults Risk Assessment

### Strictly Confidential

Date:

### Alleged Victim

Name:	Date of Birth:	Sex: M/F
Current Address:		
Telephone Number:		
Relevant ID Number (SSIS, CareFirst, Raise / NHS No.):		

### The alleged abuse

What is the nature of the alleged abuse?

•What risks have been identified? •How was the risk identified, when was it identified and by whom? •What supporting evidence is there?

What is the extent of the alleged abuse?

•What is the actual or potential harm caused by the alleged abuse or risk or abuse? •What is the worst possible outcome from this abuse or risk of abuse?

Assessment of the seriousness of the alleged abuse

•The length of time over which the abuse has been occurring •Whether there have been previous concerns (This should be considered in a wider sense. It does not just mean previous safeguarding referrals, but also whether the person has been a victim of Anti-Social Behaviour, or Hate Crime incidents.) Also Consider: •The impact on the individual. •The impact on others. •The extent to which the situation can be monitored. •Are there also any Child Protection issues

## Risk Assessment

Are there factors which may mean the alleged victim is more vulnerable to abuse?

•Level of mental capacity (initial assessment). •Physical disability. •Level of emotional dependency. •Level of financial dependency. •Communication needs. •Social or cultural isolation. •Deprivation of Liberty implications. •High levels of carer stress.

### Assessment of the risk of abuse recurring

#### The risk should be considered high if:

•There is reason to believe that someone's life may be in danger. •There is reason to believe that major injury or serious physical or mental ill health could result. •The incidents are increasing in frequency and/or severity. •The abusive behaviour is persistent and /or deliberate.

•Is there a history of abuse or domestic violence? •Does the alleged perpetrator still have access to the victim? •What was the intent of the perpetrator-was this a deliberate act or a lack of awareness? •What is the attitude of the alleged perpetrator now regarding the incident? •Are there existing predisposing factors or triggers? •Are supportive and monitoring measures in place, or can they be put in place?

### Wishes of the Alleged Victim

•Is the person aware of the alleged abuse? If so what is their view of what has happened? •Does the person understand the risks around the situation they are in? •Does the person want to remain in their current environment? •Is the person a carer for anyone else? •Are the views of family members or carers also needed? •Does the person wish to involve the police/other agencies? •Does the person consent to information being shared with others (see guidance regarding confidentiality/Information Exchange Agreement)?

### Are there issues which mitigate the risk (protective factors)?

•Support services in place. •Relationships with family, friends, neighbours which do not present a risk. •Access to social/support groups. •Awareness of personal safety/security within the home. •Access to mainstream and specialist services. •Awareness of how to raise concerns. •Awareness of what constitutes abuse

### Wishes of the Alleged Victim

•Is the person aware of the alleged abuse? If so what is their view of what has happened? •Does the person understand the risks around the situation they are in? •Does the person want to remain in their current environment? •Is the person a carer for anyone else? •Are the views of family members or carers also needed? •Does the person wish to involve the police/other agencies? •Does the person consent to information being shared with others (see guidance regarding confidentiality/Information Exchange Agreement)?

### What is the immediate protection plan (to be agreed with managers)?

Does the person need to move from their current environment in order to safeguard them? If so what kind of alternative accommodation and support will meet their needs? •Are there any other people who may also need to be safeguarded in this environment? •Does the alleged perpetrator also have support needs? Are these being addressed? •Do monitoring and supportive measures need to be put in place in the current environment? •In the case of a Direct Payment this could include immediate consideration of commissioning of alternative services. •Do family member/carers need to be informed? Do they need support? •Do any other referrals need to be made, e.g.: to Health professionals to support the alleged victim/s, Community Safety Team etc? •In what timescale do any agreed actions need to happen?

### What is the ongoing plan?

•Completion of full Community Care Assessment, risk assessment, protection plan and MCA Assessment where appropriate •Is a case conference needed? •How often will the situation be reviewed? •How often will the people involved in the investigation meet? •How will the alleged victim and carer/family (where appropriate) be kept informed and involved in the investigation? •Is a Serious Case Review needed (refer to senior managers)?

## **Adults in Need of Safeguarding who Remain in Situations of Risk**

In some circumstances despite the outcome of the risk assessment being that the potential risk is too high for the alleged victim to remain in their current situation, the worker may be unable to intervene.

### **There are likely to be two main reasons for this**

1. That the alleged victim meets the Safeguarding criteria, but appears to have capacity and does not agree to intervention.

In this situation, the fact that the person is refusing intervention does not negate the need for a protection plan to be put in place, as far as is possible and practicable within the situation. The following issues should be considered within this process:

- An assessment of mental capacity to make a decision about the issue in question; This should be a multi-agency process as far as possible;
- Involvement of independent advocacy support where possible and appropriate, including referral to the Independent Mental Capacity Advocate (IMCA) Service
- Assessment of whether the person is being subjected to undue influence, intimidation including physical threat or assault from others (including the alleged perpetrator)
- Identification of any other factors influencing the person's decision, such as mental health difficulties, financial difficulties, etc;
- Consultation with the police whether there is any indication a crime has been committed
- Assessment of anyone else who could be at risk, involving Care Quality Commission (CQC) for registered settings, Contracts services for contracted providers, and the relevant Directs Payment team where appropriate;
- Consultation with Legal Services as appropriate and agreed by a manager;
- A risk assessment and protection plan of how the person and any others can be supported to minimise risks within their situation as far as possible;
- Monitoring systems agreed and put in place;
- Ensure that information is given to the alleged victim regarding support systems, their options and contact numbers they can access now and in the future if their decision changes;
- All information, decisions and actions should be clearly recorded, signed and dated; Where appropriate decisions should be countersigned by a manager; Where ESCR are in place, the manager can add a case recording that they are in agreement with the protection plan;

**2. That the worker has no legal powers to gain access, investigate or remove an adult in need of safeguarding from a situation of risk.**

Social services and health authorities have no general powers to gain access to a private property owned or occupied by an adult whether for the purposes of assessment or provision of services, Generally, the person's consent will be required. For a person to give their consent they must have the capacity to do so.

There are some legal provisions that may apply as follows:

**S115 of the Mental Health Act. 1983**

Section 115 states:

'(1) An approved mental health professional may at all reasonable times enter and inspect any premises (other than a hospital) in which a mentally disordered patient is living, if he has reasonable cause to believe that the patient is not under proper care.

(2) the power under subsection (1) above shall be exercisable only after the professional has produced if asked to do so, some duly authenticated document showing that his is an approved mental health professional'

Approved mental health professional (AMHP) may include social workers, clinical psychologists, nurses and other professionals approved to act.

Section 115 does not permit forced entry or the refusal of the owner/occupier of the premises to entry.

Refusal is a criminal offence under Section 129 of the Mental Health Act. Where entry is refused the AMHP will need to consider whether an application should be made to the Magistrates for a warrant for a police officer to enter the premises under Section 135 of the Act.

**Section 135 Mental Health Act 1983**

S115 does not give the AMHP a right to remove a person, however Section 135 enables an AMHP to apply to the Magistrates for a warrant authorising a police officer to enter premises for the purpose of removing a mentally disordered person to a place of safety.

**Section 47 National Assistance Act 1948**

This section permits local authorities to apply to a Magistrates Court for an order permitting the removal of an elderly, chronically sick or disabled person from their home to more suitable accommodation. The Act is aimed at people in the above categories unable to look after themselves and is not receiving care and attention from any other person and usually living in conditions that are unsanitary.

## **The Mental Capacity Act 2005**

### **Sections 15 & 16 Court Powers**

Under the Mental Capacity Act the Court has powers to authorise the removal of a mentally incapable adult from their home if it is considered in that person's best interests to do so.

In urgent cases where there appears to be a situation of high risk to a vulnerable adult, but the worker has been unable to access to complete a capacity assessment, an emergency court order could be obtained from the Court of Protection to remove the vulnerable adult/s from their current accommodation to a safe environment in order to assess capacity. However, even if it has not been possible to complete a full capacity assessment about where the person should live the Court will require some evidence indicating that, on the face of it, the person appears to lack capacity and it would be in their best interests for the Court to make an order.

Clearly there are very serious 'deprivation of liberty' issues to be considered in this situation, and the risk of the abuse would need to be serious enough to satisfy the Court that this action was necessary. If the alleged victim is not in a residential or health care setting, and is not subject to detention under the Mental Health Act 1983, s/he may not be deprived of their liberty other than by way of an order of the Court of Protection. The capacity assessments would also need to be completed as quickly as possible in line with least restrictive practice.

Senior managers and Legal Services must be involved at the earliest opportunity if an application to remove someone from their home is being considered. Failing to comply with the law may result in a claim for breach of the person's human rights against unwarranted interference with their home and private life. Legal issues around safeguarding are also discussed in more detail in further sections.

### **Deprivation of Liberty Safeguards**

Deprivation of Liberty Safeguards (DOLS) should also be considered if the alleged victim is currently in a Health care or residential setting. Where deprivation of liberty is authorised it will require the person to remain in the care home/hospital seeking the authorisation and not return to their home for a period of time. For example if someone was in residential respite care and there was a suspicion they were being abused at home, the alleged victim could potentially be prevented from returning to the abusive situation whilst this was investigated providing that:

- This is referred to the DOLS team, by the Managing Authority (the Health or residential service)
- That the alleged victim has been assessed as not having capacity to recognise or protect themselves from the risk
- Where appropriate an Independent Mental Capacity Advocate (IMCA) has been appointed

- There has been a Best Interests decision that the alleged victim should not return home at that time
- This decision has been authorised by the Supervisory Body (Local Authority or Health Authority);

**In the second situation, as well as considering the MCA and DOLS, the worker should also take the following steps:**

- Consult Legal Services in consultation with managers, to ensure all legal routes of safeguarding have been considered;
- Ensure every effort is made, working collaboratively with all appropriate agencies to safeguard the alleged victim;
- Risk assessment of actual and potential risks to be completed; This would include considering the alleged victim and anyone else who may be affected, including support staff;
- A protection plan to be completed as to how best risks can be minimised within the given situation;
- A monitoring system agreed and put in place; Also timescales agreed of when this should be reviewed;
- All information, decisions and actions to be clearly recorded; Where appropriate decisions should be countersigned by a manager (where ESCR are in place, a manager can make an entry below the proposed protection plan/action plan to state they are in agreement)

## **Confidentiality**

Workers cannot promise that any information regarding a safeguarding situation will remain confidential. If this is asked of them by the alleged victim or anyone else, workers need to advise that confidentiality will be respected as far as possible, but that as there may be occasions when information needs to be shared. This could include:

- A need to share such information as is necessary to work effectively with other people involved in the team such as occupational therapists, district nurses for example
- Where there are concerns that the person or others may be at serious risk or harm or a crime has or may have been committed
- Where the law requires a local authority to disclose information for example by order of a Court;

It may be possible to consult other agencies involved in safeguarding about the situation without divulging identifying information; however this should not be promised to the victim, as this may change as the investigation continues.

In all cases the worker should:

- Inform their manager who should consider what support staff require when working with adults in need of safeguarding who remain in situations of risk
- Where appropriate and agreed by a manager, consult with Legal Services

- If it appears that a crime may have been committed the police should be informed
- Where other people may be at risk, then CQC/Contracts Department should be informed
- Where the allegation involves a paid or volunteer worker then their employing organisation should be informed; That organisation should keep the investigating worker informed of their own investigation, what they are doing to safeguard the alleged victim in the interim and any actions taken regarding the worker;

## **Practice Guidance 5: Preventing Abuse of Adults in Need of Safeguarding**

### **Who Is This Guidance For?**

This guidance is for all staff and volunteers working in Leicester, Leicestershire and Rutland who come into contact with adults in need of safeguarding.

### **Three Levels of Protection**

Primary Prevention - empowerment of the individual, good practice and high standards of care and support.

Identification and intervention - prompt and appropriate action taken in a timely and sensitive manner.

Support and on going protection following an abusive incident.

The aim of all agencies and individuals who have contact with adults in need of safeguarding should be that of primary prevention.

All citizens face risks in their everyday lives from experiences such as:

- Domestic Violence
- Harassment
- Exploitation
- Bullying
- Crimes against property and the person

### **Adults in Need of Safeguarding - Increased Risk**

Adults in Need of Safeguarding may be at increased risk due to the following factors:

- They may be unaware of their rights as a citizen and as a person using a service;
- They may be socially isolated;
- They may not know how to make a complaint or raise a concern;
- They may have communication difficulties;
- They may have difficulty understanding certain decisions or transactions;
- They may have low self esteem, so lack power in relationships;
- They may be victims of discrimination because of age or disability;
- They may have limited access to health care;
- They may have limited access to sex education;
- They may struggle to access the criminal justice system;
- They are more likely to have to share living accommodation with people they have not chosen to live with;

- They may need help with personal care;
- They may be dependent on others for their support needs;
- They may receive support from many different carers, either paid, voluntary or informal;
- They may lack capacity to understand risk in certain situations or to protect themselves in those situations;

## **Factors Raising the Risk**

Other contributory factors which may heighten the risk of abuse are:

### **Increased Dependency:**

- The level of care required by adults in need of safeguarding may be beyond the capacity of their carer to provide;
- Role reversal between carer and adult in need of safeguarding, especially where the carer/s had previously been abused by the adult in need of safeguarding;
- Family or informal carer has been forced to substantially change their lifestyle;

### **Financial Problems:**

- Low income;
- Debt;
- Family or informal carer unable to work due to caring role;

### **Environmental Problems:**

- Poor housing;
- Over-crowding;
- Inappropriate housing for needs i.e.: no aids or adaptations, inaccessible bathroom, stairs;
- Group living;
- Victim of hate crime or anti-social behaviour

### **Psychological and Emotional Problems:**

- Poor relationship between adult in need of safeguarding and the carer;
- Lack of insight or understanding by adults in need of safeguarding / carer into the other person's situation;
- Relationship of unequal power;
- History of violent behaviour, abuse of others, drug or alcohol misuse or mental illness;
- Family or informal carer has personal difficulties or may be vulnerable to abuse himself or herself;
- Family or informal carer is emotionally and socially isolated;

## **Patterns of Abuse**

### **Serial Abuse**

The perpetrator seeks out adults in need of safeguarding. Sexual abuse and financial abuse often fall into this pattern, but not exclusively.

### **Long Term Abuse**

May be part of on-going family dynamics, such as domestic violence.

### **Opportunist Abuse**

Such as theft of money that has been left lying around.

May have been a victim of anti-social behaviour on a long-term basis

### **Situational Abuse**

Often due to a build up of stress or pressure within the situation. Previous victims of abuse now responsible for providing care for the perpetrator.

### **Institutional Abuse**

Abuse within an organisation due to poor care standards, rigid routines, inadequate staffing / training of staff, poor knowledge or value base of service manager / staff.

### **Unacceptable Interventions**

Use of sanctions / punishment, misuse of medication, deprivation of liberty (unauthorised), misuse of physical intervention / restraint.

### **Neglect**

Paid or informal / family carer unable to meet the person's needs either deliberately, or through negligence or ignorance.

### **Cultural Abuse**

Female Genital Mutilation or 'Honour' based violence, forced marriage. Abuse of this nature is often justified by the perpetrator as a 'cultural issue', but such abuse constitutes criminal activity.

### **Discriminatory Abuse**

Abuse within an organization or relationship due to values held by perpetrator/s.

## **Preventing Abuse**

### **For the Adult in Need of Safeguarding**

- Awareness of living and support options - including day care opportunities, short breaks, direct payments etc;
- If it is thought that the victim is or may be an Adult in Need of Safeguarding then the Safeguarding Adults procedure should always take priority;
- Development of social networks;
  - Keeping in contact and building relationships with family, friends and neighbours;
  - Access to social groups;
  - Access to support groups;
- Personal and property safety awareness;
- Awareness of security for home and possessions;
- Access to mainstream and / or specialist services:
  - Health and social care, including aids and adaptations;
  - Support and advice;
  - Criminal justice system;
  - Community safety initiatives;
  - Lifelong learning;
  - Welfare and benefits rights;
  - Housing options;
  - Transport;
  - Leisure opportunities;
  - Social inclusion;
  - Safety and security;
  - Health and social care needs;
- Awareness of what constitutes abuse and crime and access to complaints procedures;
- Awareness of safe practice when using the internet;

### **For the Carer**

- Carers assessment;
- Awareness of living and support options - including community opportunities, short breaks, self directed support etc;
- Access to carers' workers and support groups;
- Financial assessment / welfare and benefits rights advice;

### **For Service Providers**

- Rigorous recruitment practices that include ISA vetting and barring scheme and reference checking;
- Thorough induction process including adult safeguarding issues; Mandatory where appropriate;
- Staff awareness of the Multi-Agency Policy and Procedures for Protecting Adults in Need of Safeguarding from Abuse, and relevant internal procedures;
- Staff and volunteers must be vigilant and report all concerns to the relevant person/s;
- Organisations to ensure that a culture of openness and transparency is developed and maintained;
- Open dialogue between staff and volunteers, managers and people who use services and their family, friends and informal carers as appropriate;
- Clear service standards, ensuring all services, mainstream and specialist, are inclusive to all citizens such as those listed above;
- Staff aware of standards and expectations;
- Staff training;
- Person centred approach to care and support;
- Clear complaints procedure accessible to people who use services, relatives, staff and public;
- Staff and volunteers aware of anti discriminatory practice;
- Regular, recorded, formal staff supervision, appraisal and Personal Development Plans;
- Ensuring staff are aware of their employment rights support systems such as:
  - Occupational health advisers;
  - Internal or external counselling schemes;
  - Trade union membership;
  - Entitlement to rights and flexible working;
  - Entitlement to paid or unpaid sick leave including casual staff;
  - Entitlement to special leave / carers leave;
  - Entitlement to paid or unpaid holidays;
  - Maternity, Paternity or Adoption leave;
  - European Working Time Directive;
  - Professional registration bodies such as GSCC, RCN and NMC;
- Risk assessments are completed for:
  - Assessment of risk of abuse;
  - Moving and handling;

- Assault, harassment or abuse by people who use services or members of the public against staff, volunteers, family, public or others who use services;
- Managing stress;
- DoLs;
- Comprehensive policies, procedures and staff training on:
  - Behaviour that challenges;
  - Providing personal and intimate care;
  - Physical intervention - and restraint;
  - Sexuality and relationships;
  - Medication;
  - Whistle-blowing procedures and financial management;
  - Financial accountability;
  - Risk assessment and management;
  - Cultural awareness;
  - Disability awareness;
  - Moving and handling;
  - Support planning;
- Effective monitoring and auditing to ensure quality;
- The integration of adult safeguarding into all aspects of care and support;

#### **For Contracting Commissioners and Procurement Departments**

- All documents (e.g; service specifications, invitations to tender) reflect the policy for the safeguarding of Adults;
- Specify expectations of providers to meet the requirements of the policy;
- Contracts should specify recruitment practices that are rigorous and meet the usual requirements for both paid staff and volunteers;
- Contracts should ensure that there is provision for adequate staffing levels to meet the needs of the people using the services including their safeguarding needs;
- Contracts should specify training requirements necessary to ensure staff and volunteers have appropriate knowledge of competencies in relation to safeguarding adults;
- Monitoring arrangements should include contract terms and conditions that reflect adult safeguarding issues;
- Notification of concerns should be logged by the contracting or commissioning department/s and monitored for patterns;

### **For Strategic Bodies and Planning**

- Mainstream and specialist boards, bodies and partnerships should ensure the needs of adults in need of safeguarding are recognized in any plans, strategies, initiatives or activities;
- Contracts should specify training requirements necessary to ensure staff and volunteers have appropriate knowledge of competencies in relation to safeguarding adults;

### **For Practitioners**

- Awareness of the Multi-Agency Policy and Procedures for the protection of Adults in Need of Safeguarding from abuse and their role and responsibilities within that process;
- Training to achieve necessary competencies to implement policy and procedures;
- An assessment of vulnerability and risk of abuse is integrated into assessment practice;
- Support plans to include safeguarding adult issues;
- Appropriate use of the recent mental capacity guidance (and legislation when enacted);
- The integration of adult protection into all aspects of care and support;

### **Lessons Learnt and Reviewing Practice**

It is important that lessons are learned from each Safeguarding Adults Investigation, Case Audit and Serious Case Review. As part of the evaluation the following points should be considered:

- What have we learnt and what would we do differently next time?
- Could this incident have been avoided? If so, what actions could be taken to minimize the risk of this happening again?

## **Practice Guidance 6: Safeguarding and Domestic Violence.**

### **Domestic Violence**

There is significant overlap between Domestic Violence, Safeguarding Children and Safeguarding Adults (see [Practice Guidance 7: Safeguarding Children](#)). Where there is Domestic Violence workers should consider if there are Safeguarding Children concerns.

It may be harder to identify Domestic Violence occurring within families

There are many definitions of Domestic Violence (Abuse) but, for the purpose of this policy, the following definition has been adopted by the Safeguarding Adults Working Group.

“Domestic violence includes any physical, emotional, sexual, psychological, social or economic abuse of an individual by a partner, ex partner, informal carer or one or more family members, in an existing or previous domestic relationship.”<sup>4</sup>

Where an Adult in Need of Safeguarding is being abused by a partner, ex-partner or family member(s), there is an overlap with Domestic Violence.

Agencies may have their own definitions of Domestic Violence, which may influence what they record as Domestic Violence.

The key factor in any situation is however, determining how best to support the victim and whether to follow the Safeguarding Adults procedure or the Domestic Violence route.

As a basic principle:

- If it is thought that the victim is or maybe an Adult in Need of Safeguarding then the Safeguarding Adults procedure or should always take priority;
- If it subsequently becomes apparent that the victim is not an adult in need of safeguarding then support should be sought via domestic Violence policies and guidance; Referral or signposting to specialist domestic Violence services should be offered and relevant and appropriate records kept;
- Where the Safeguarding Adults procedures are followed in situations of Domestic Violence then both Safeguarding Adults and Domestic Violence records / flags (where these are in use) should be completed;

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<sup>4</sup> Adapted from Leicester Domestic Violence Forum Information Sharing Agreement

Further information about Domestic Violence services can be obtained from:

- Domestic Violence Reduction Co-ordinator  
Leicestershire County Council  
0116 265 6017  
[www.leicester.gov.uk](http://www.leicester.gov.uk)
- Domestic Violence Reduction Co-ordinator  
Leicester City Council / Safer Leicester Partnership  
0116 252 8565  
[www.saferleicester.org](http://www.saferleicester.org)
- Police Domestic Abuse Incident Officer  
0116 222 22 22  
North Area: 0116 248 4196  
City Area: 0116 248 4383  
South Area: 0116 248 5570

## **Forced Marriage**

### **How Forced Marriage Happens**

People can be forced in to marriage by:

- harassment
- trickery
- assault
- kidnapping
- blackmail
- lack of capacity to consent

### **Why do Forced Marriages Happen?**

- Controlling unwanted behaviour and sexuality, particularly that of women, and preventing 'unsuitable' relationships;
- Peer group or family pressure;
- Protecting perceived cultural or religious ideals which can often be misguided;
- Attempting to strengthen family links;
- Family honour or long-standing family commitments;
- Ensuring land remains within the family;
- Assisting claims for residence and citizenship;
- Providing a carer for a disabled family member / reducing the 'stigma' of disability;

## **Consequences of Forced Marriage**

### **Sexual Assault and Rape**

There may be an expectation that the marriage will be consummated and result in children. This can mean that people forced into marriage may be subjected to sexual assault and rape.

### **Domestic Violence and Abuse**

A spouse may have little understanding of learning disability or mental ill health and how they might support the person they have married. Feelings of resentment and confusion may lead to domestic violence and abuse.

### **Issues of Consent**

If a spouse has not been informed that their partner has learning disabilities or mental health difficulties, it is questionable whether they have given informed consent to the marriage. Questions about informed consent also arise if the spouse is unaware that they are being married into the role of full-time carer. The spouse may also be vulnerable to abuse from the family

### **Abandonment**

A person with learning disabilities or mental health issues who is forced into marriage may be abandoned by their spouse. This can create feelings of rejection, stigmatise the person and possibly lead to the loss of a primary carer. This abandonment could be because (a) the spouse was unaware of all of the circumstances of the marriage and / or (b) they simply used the marriage to facilitate improving their immigration status.

For further information contact Forced Marriage Unit  
020 7008 0151

[www.fco.gov.uk](http://www.fco.gov.uk) or email [fmufco.gov.uk](mailto:fmufco.gov.uk)

For information on Forced Marriage Legislation please refer to [Practice Guidance 3: The Legal Context](#)

## **Practice Guidance 7: Safeguarding Children**

There are similarities between Safeguarding Children and Safeguarding Adults. Both involve a multi- agency approach to minimize risk by appropriate sharing of information and through coordinated action.

The main differences are:

- Safeguarded Adults have the rights and responsibilities of adults
- The issue of capacity
- Suspected child abuse can be measured against the child's development
- There is no single piece of legislation relating to Safeguarding Adults
- The inclusion of financial, institutional and discriminatory abuse for adults

### **Children at Risk**

Consideration should be given during all stages of the Safeguarded Adults' procedure as to whether any children may be in need, including have needs for protection.

Any concerns about the contact that an alleged perpetrator may have with children should be discussed with the manager overseeing the investigation.

If there is concern about any child (under 18) then a referral should be made immediately to the relevant geographic Children's' Services access team or to the Police Child Abuse Investigation Unit (C A I U.). On Leicester 222222

### **Transition between Children's and Adult Services**

Where there are ongoing protection issues for a young person and it is anticipated that on reaching 18 years of age the young person will be likely to meet the definition of an 'adult in need of safeguarding' the following should be considered as part of the transition arrangements:

Formal handover of protection plan arrangements

- Clarify who is responsible for the completion of capacity assessments before and after the persons 18th birthday;
- Where the young person has a current Child Protection Plan their final conference should be a joint child safeguarding and adult safeguarding conference;
- Clarification on legal issues should be sought from the Local Authority Solicitor;
- Where the young person does not have a current Child Protection Plan, but concerns exist, a Safeguarding Adult referral should be made in a timely manner;
- Where a Child or Young Person has been identified as posing a risk to themselves and others, Adult Services should be informed through the transition process and/or Safeguarding Adult Referral

## **Children as Perpetrators**

If a child (under 18) is alleged to have perpetrated abuse against an adult in need of safeguarding, contact should be made with the local Children's Services Access Team / Duty and Assessment Service in order to ensure that the needs of the child are considered.

An early strategy meeting / discussion involving both adult and child services should then identify how the investigation should proceed

A Child Protection Plan or Children in Need Services Support Plan, as appropriate, with arrangements for joint monitoring should be identified and agreed following the conclusion of the investigation.

## **Legislation**

### **Children Act 1989**

- Under Section 47 of the Children Act 1989, local authorities have a duty to enquire into the welfare of any child suffering or likely to suffer 'significant harm', and to decide whether they should take action to safeguard the child's welfare;
- Under Section 17;1(a) of the Children Act 1989, local authorities have a duty to 'safeguard and promote the welfare of children within their area who are in need'; Local authorities can provide a range of services for children who are 'in need'; Such services are intended to provide support and help to families, including families of children with disabilities and other needs;

### **Every Child Matters and the Children Act 2004**

The Children Act 2004 provides the legal underpinning for Every Child Matters: Change for Children. A series of documents have been published which provide guidance under the Act, to support local authorities and their partners in implementing new statutory duties.

Multi-agency guidance on '[Working Together to Safeguard Children](#)' published in April 2006 supports these developments.

This national programme takes this approach a stage further to introduce a new long-term approach to promoting and safeguarding the well-being of children and young people from birth to age 19. The Government's aim is for every child, whatever their background or their circumstances, to have the support they need to:

- Be healthy;
- Stay safe;
- Enjoy and achieve;
- Make a positive contribution;
- Achieve economic well-being;

### **Resource: From the Local Safeguarding Children Board**

[Guidelines for Parents & Responsible Adults](#) & [Safeguarding Children Guidance](#)

## **Practice Guidance 8: Safeguarding in the Community.**

People have a right to live their lives free from abuse therefore it is important that we recognise the risk to adults in need of safeguarding within their own community.

Victimisation can take many forms and continue over a long period of time so we need to be alert to the signs and take appropriate action to prevent, support and protect.

Adults in need of safeguarding may need help to disclose the concerns they have. It is important that workers ascertain the nature and level of abuse being experienced.

Although Multi-Agency work is an integral part of all Safeguarding work, in instances involving potential hate crime, anti-social behaviour and bullying, it is vital that all agencies involved communicate effectively. A variety of agencies may hold different information, and it is only by joining this up that the adult in need of safeguarding, and potentially others in the wider community can be more effectively safeguarded.

Information shared will inform, where appropriate:

- Safeguarding Investigations;
- Protection Plans;
- Advice & support;

### **Hate Crime**

A hate crime is defined as:

'Any incident which constitutes a criminal offence which is perceived by the victim or any other person as being motivated by prejudice or hate.'

Source: Home Office Definition, 2007

### **What is Hate Crime?**

Hate crime can be any crime based on what makes us different, whether that is our race, culture, faith, colour of skin, age, gender, sexual orientation or disability.

A hate crime can include:

- Physical assault and violence - including sexual violence
- Harassment
- Threats of violence
- Damage to property
- Neighbour disputes

- Verbal abuse
- People doing things that frighten, intimidate or distress
- Bullying at school, college or place of work
- Arson
- Spitting or making insulting gestures

## **Anti Social Behaviour**

What is anti-social behaviour?

Anti-social behaviour is

"...acting in a manner that caused or is likely to cause harassment, alarm or distress to one or more people not of the same household", and "...behaviour that unreasonably interferes with other people's rights to use their home and community."

## **Bullying**

What is Bullying?

Bullying is the act of intentionally causing harm to others, through verbal harassment or physical assault. Bullying can be defined in many different ways and it is usually done to intimidate others by fear or threat.

Bullying could occur in any setting where people interact with each other. This includes schools, the workplace, at home and in the local community.

It includes:

- Name calling,
- Verbal, written or text abuse
- Exclusion from activities
- Exclusion from social situations
- Physical abuse;

## **The Effects of Hate Crime, Anti Social Behaviour and Bullying**

The effects can be significantly harmful and even fatal!

Such treatment could fall within the categories of physical, emotional, discriminatory and financial abuse.

Victims of bullying can suffer from:

- Long term emotional problems
- Loneliness
- Depression

- Anxiety
- Low self-esteem
- Increased susceptibility to illness

### **Why Report It?**

It is important because it doesn't just affect the victim, it can have an impact on the victim's family, neighbours indeed on entire communities.

If you do not report a crime or incident, offenders may commit similar offences again. Your report may stop someone else becoming a victim.

People in need of Safeguarding may need additional support in reporting these incidents.

Reporting incidents provides valuable information which may contribute to the arrest and/or prosecution of the offender/s. Reporting enables agencies to build up patterns of behaviour and this information can be used to help inform and identify actions needed to combat issues in the local area.

Referrals should be made in the usual way through the Police and Adult Social Care services.

### **What Action Can Be Taken?**

Working in partnership with local agencies together we can take action against perpetrators as well as supporting victims/witnesses.

Types of actions that can be taken include:

- Invoking Safeguarding Adults Procedures and putting Protection Plans in place;
- Providing extra home security for victims
- Increasing regular police patrols in areas
- Advice and support for victims
- Early intervention work with perpetrators to prevent their behaviour escalating or becoming more serious
- Enforcement of tenancy agreements with perpetrators
- Prosecution of serious offenders
- Enforcement of Anti Social Behaviour orders

### **Rogue Traders**

If you are aware that someone is being exploited by a trader please speak to the Police for advice.

For further information regarding these issues please contact the Police and Local Authority/ Borough Council Community Safety Officers.

## Practice Guidance 9: Human Resources Procedure

### Whistleblowing

Most services working with vulnerable people pride themselves on having high standards of conduct and providing quality services to the community, however, sometimes there may be a lapse (or the suspicion of a lapse) in these standards.

In most circumstances, staff should feel able to report concerns, for example, regarding potential abuse of an Adult in Need of Safeguarding, to their manager. However, in certain circumstances, staff may feel unable to do this, for example if the situation involves their manager. With this in mind, under the Public Interest Disclosure Act 1998, employers are recommended to develop a clear and accessible 'Whistleblowing' Policy to provide staff with an alternative mechanism for raising concerns. Managers must ensure that all staff are aware of this Policy and work to foster a culture that encourages and supports staff to raise their concerns.

The independent charity Public Concern at Work (PCaW) provides advice to individuals on whistleblowing in the public interest on a strictly confidential basis (<http://www.pcaw.co.uk> / 020 7404 6609).

### Staff Support

Agencies must ensure that procedures are in place to support staff involved in all aspects of work with Adults in Need of Safeguarding, particularly those who:

- raise concerns/allegations, including "whistleblowing";
- are alleged perpetrators;
- support service users who make persistent allegations which prove unfounded;
- witness abuse or support a service user who is the alleged victim of abuse;
- are colleagues of staff who are alleged perpetrators;
- are involved in investigating concerns or allegations;
- are involved in managing situations where a Adult in Need of Safeguarding remains in a situation where they are at risk;
- are Managers of staff involved in the adult protection process;

Support may include, as appropriate:

- Additional training;
- Provision to manage the workload of staff involved in dealing with a concern / allegation;
- Debriefing sessions following incidents;
- Reinforcing that staff members who raise concerns have done the right thing and that they are not responsible for any subsequent consequences faced by the perpetrator;

- Offering a Counselling service and/or contact with advice and support groups, including Trade Unions (the latter particularly for the alleged perpetrator);
- Increased frequency of supervision sessions, and through supervision looking at any pressures arising from reporting the alleged abuse and identifying practical steps to reduce those pressures; Keep this as an ongoing item on the supervision agenda where applicable;
- In addition, if an alleged perpetrator is suspended, regular contact with the staff member should be maintained; This should focus on ensuring that the staff member understands the procedures and is kept up to date with any other pertinent organisational information, rather than the details of the allegations;

## **Guidance for Managers**

### **Steps to be taken on Receipt of an Allegation or Suspicion of abuse perpetrated by a staff member to an Adult in Need of Safeguarding.**

1. Check that the Adult in Need of Safeguarding is safe
2. Arrange any immediate medical attention if required
3. Ensure nothing is done to destroy any potential evidence
4. If allegation is dated check rotas - was staff member on duty? Could they have had contact with the alleged victim?
5. Check logbooks / write-ups - has anything been recorded to suggest incident may have occurred? Was any unusual behaviour noted around that time?
6. Inform line manager.
7. Make referral following Safeguarding Adults Procedure
8. Liaise with Human Resources / Professional advisers. Consider whether suspension from duty is required. Suspension is a neutral act and should not be seen as an indication of guilt, but can act as a protection for both the alleged victim and perpetrator pending further investigations. A decision not to suspend must be fully documented and endorsed separately by an independent senior officer from within the investigating agency. The reasons for the decision should be made available to the Police, Adult in Need of Safeguarding investigator and CQC if required. Where possible ensure staff member has access to union or other representation. Ensure internal guidelines / procedures are followed.
9. None of the above should involve contacting the alleged perpetrator or questioning the alleged victim in any depth.
10. Senior manager to appoint investigating officer for disciplinary investigation.
11. Consideration should also be given as to whether the alleged perpetrator is governed by codes of professional conduct and/or employment contracts which will determine the action that can be taken against them. Where appropriate, employers should report workers to the statutory and other bodies responsible for professional regulation.

12. Where appropriate, a referral to The Independent Safeguarding Authority (ISA) should be made.

A referral must be made to the ISA when an employer:

- withdraws permission for an individual to engage in 'regulated' or 'controlled' activity, or would have done so had that individual not resigned, retired been made redundant or transferred to a position which is not classed as regulated or controlled activity;

Because:

- they think that the individual has engaged in 'relevant conduct', satisfied the 'harm' test or received a caution or conviction for a relevant offence;

The referral should be made to the ISA when the employer has gathered sufficient evidence as part of their investigations to support their reasons for withdrawing permission to engage in regulated or controlled activity. Referral at this point will help to ensure the ISA has sufficient evidence to commence its decision-making process while providing adequate safeguarding to vulnerable groups.

## **The Independent Safeguarding Authority**

The Independent Safeguarding Authority (ISA) has been created to help prevent unsuitable people from working with children and vulnerable adults by working in partnership with the Criminal Records Bureau (CRB) and other delivery partners.

The Safeguarding Vulnerable Groups Act 2006 sets out the scope of the Vetting and Barring Scheme and the role of the Independent Safeguarding Authority (ISA).

Increased safeguards have now been introduced under the Vetting and Barring Scheme, from October 12<sup>th</sup> 2009:

- It is now a criminal offence for individuals barred by the ISA to work or apply to work with children or vulnerable adults in a wide range of posts - including most NHS jobs, Prison Service, education and childcare; Employers also face criminal sanctions for knowingly employing a barred individual across a wider range of work;
- The three former barred lists (POCA, POVA and List 99) are being replaced by two new ISA-barred lists;
- Employers, local authorities, professional regulators and other bodies have a duty to refer to the ISA, information about individuals working with children or vulnerable adults where they consider them to have caused harm or pose a risk of harm;

Guidance, [Referral forms](#) and [referral guidance](#) are available on <http://www.isa.gov.org.uk/>. [VBS Guidance](#) is available on the increased safeguards and duties to refer introduced from October 12<sup>th</sup> 2009

**Please note: ISA-registration for the Vetting and Barring Scheme does not start for new workers or those moving jobs until July 2010 and ISA-registration does not become mandatory for these workers until November 2010. All other staff will be phased into the scheme from 2011.**

## **Practice Guidance 10: Inter-Authority Investigation of Abuse of Adults in Need of Safeguarding**

These arrangements recognise the increased risk to adults in need of safeguarding whose care arrangements are complicated by cross boundary / authority considerations. These may arise, for instance, where funding / commissioning responsibility lies with one authority and where concerns about potential abuse and / or exploitation subsequently arise in another. This would apply where the individual lives or otherwise receives services in another local authority area.

Leicester City Adults and Communities, Leicestershire Adult Social Care and Rutland Adult Social Services and Housing are all separate Local Authorities.

This protocol is in line with the [National ADASS \(Association of Directors of Adult Social Services\) guidance](#).

The Protocol states that:

- The authority where the abuse occurs (the host) will have overall responsibility for coordinating the adult safeguarding arrangements;
- The placing authority will have a continuing duty of care to the safeguarded adult;

If, for example, a service user is placed by Leicestershire Adult Social Care in a residential home in Leicester - Leicestershire would be the placing authority and Leicester the host.

In all cases, it is of utmost importance that, when a referral is received, there is open dialogue between the funding and host authorities to ensure that:-

- Any immediate risks are identified and acted on;
- The 'referrer' is not passed from authority to authority;
- Strategy discussions are commenced without delay to co-ordinate the investigation;
- The person's on-going case management needs are addressed.

### **Responsibilities of Host Authorities**

The authority where the abuse occurs will have overall responsibility for coordinating the adult safeguarding arrangements.

The authority where the abuse occurs should always take the initial lead on responding to the referral. This may include taking immediate action to protect the adult, if appropriate, and arranging an early discussion with the police if a criminal offence may have been committed.

The host authority will also co-ordinate initial information gathering, background checks and ensure a prompt notification to the placing authority and other relevant agencies.

It is the responsibility of the host authority to identify all residents within the care setting who may have been victims of the alleged perpetrator and to notify placing authorities

It is the responsibility of the host authority to co-ordinate any investigation of institutional abuse. If the alleged abuse takes place in a residential or nursing home, other people could potentially be at risk and enquiries should be carried out with this in mind.

The CQC should always be included in investigations involving regulated care providers and enquiries should make reference to national guidance regarding arrangements for the safeguarding of adults.

There will be instances where allegations relate to one individual only and in these cases it may be appropriate to negotiate with the placing authority their undertaking certain aspects of the investigation. However, the host authority should retain the overall co-ordinating role throughout the investigation.

## **Responsibilities of Placing Authorities**

Prior to placing ensure you contact the Local Authority Contracting Department and consult the latest CQC Inspection Report, to establish whether there are any ongoing Safeguarding Concerns and suspensions

The placing authority will be responsible for providing support to the adult in need of safeguarding and planning their future care needs.

The placing authority should nominate a link person for liaison purposes during the investigation. They will be invited to attend any Safeguarding Adult strategy meeting and / or may be required to submit a written report.

The placing authority will have a continuing duty of care to the safeguarded adult.

## **Responsibilities of Provider Agencies**

Provider agencies should have in place suitable safeguarding adult procedures to prevent and respond to abuse which link with the local inter-agency policy and procedures set out by the host authority.

Providers should ensure that any allegation or complaint about abuse is brought promptly to the attention of Adult Social Care, the Police, and / or the CQC in accordance with local inter-agency policy and procedures

Provider agencies will have responsibilities under the Care Standards Act 2000 (Regulation 37) to notify their local CQC area office of any allegations of abuse or any other significant incidents.

Provider agencies who have services registered in more than one local authority area will defer to the CQC area office relevant to the area in which the abuse took place.

## **Practice Guidance 11: Boundaries with Other Policy/Procedures including Internal Guidance**

Provider agencies should produce for their staff a set of internal guidelines which relate clearly to the multi-agency policy and which set out the responsibilities of all staff to operate within it. These will include guidance on:

- Assurances of protection for whistle blowers;
- Working within agreed operational guidelines to maintain best practice in relation to:
  - challenging behaviour
  - personal and intimate care
  - moving and handling
  - physical intervention
  - sexuality
  - medication
  - handling of user's money
  - risk assessment and management;

Internal guidelines should also cover the rights of staff and how employers will respond where abuse is alleged against them within either a criminal or disciplinary context. See [Practice Guidance 14](#).

### **Boundaries with Other Policies, Procedures and Practices.**

For the Safeguarding Adults: Multi-Agency Policy and Procedure to be effective it cannot be taken in isolation. It is certain that the policy will have points of crossover and similarity with many other policies, procedures and practices across the various agencies that have contact with adults in need of safeguarding.

It is important that staff distinguish between procedures. Part of the co-ordination role, detailed in Safeguarding Adults: Multi-Agency Procedure, is to ensure that what each agency does in what sequence is clear to all concerned.

This includes clarity about which procedures are being used. Clear communication is vital; in particular the alleged victim should not be overwhelmed with parallel procedures.

It is recognised there may be an overlap between the Safeguarding Adult procedures and any or some of the following:

- Legislation applicable to Adult Social Services Departments, Health Services, Housing and Partner Agencies;
- Police practice and the criminal law;
- CQC Adult Protection Protocol;

- Arrangements for the protection of witnesses and victims;
- Existing guidance on joint working between agencies;
- Equal opportunities, equal access policies and culturally sensitive practice
- Safeguarding Children procedures;
- Domestic Violence procedures;
- Harassment policies and procedures;
- Incident Procedures
- Recording and Information Management Guidance;
- Grievance and Discipline procedures;
- Recruitment procedures;
- Staff welfare and supervision procedures;
- Raising issues of concern / Notification of concern;
- Whistle blowing procedures;
- Complaints procedures;
- Moving and Handling procedures;
- Physical Intervention procedures;
- Administration of medication procedures;
- Financial regulations and audits;
- Contractual and commissioning arrangements with independent and voluntary sector providers;
- Policies in the learning disability field around sexuality;
- Risk assessment and management processes;
- Multi-Agency Public Protection Arrangements (M;A;P;P A;)
- Health and safety policy and law;
- Care Programme Approach;
- An assessment under the Mental Health Act 1983;
- Tenancy issues in the housing sector;
- NHS funded nursing care;
- NHS funded continuing care;
- Intermediate care services;
- Social Care Register - Code of Conduct;
- Health Care Register;

## **Practice Guidance 12: Safeguarding & Personalisation**

The move towards Personalisation of services and Self-Directed Support (SDS), although a positive step in improving choice and control for service users, does not replace, or reduce the local authority's duty of care towards the people it serves. However, with such a fundamental change in how support is provided and received, safeguarding procedures need to be reviewed. This is to ensure that the procedures continue to meet the needs of those they are designed to protect, and also so that people working with adults in need of safeguarding, often now in different ways and in different settings, are clear about their responsibilities.

Currently, there is no evidence that the increasing number of service users choosing to have the support they need provided through SDS has led to a disproportionate increase in safeguarding referrals. In fact, there is argument to suggest that when properly planned and formulated, personalisation makes people safer (Duffy and Gillespie, 2009). What it can mean, particularly for people choosing to receive Direct Payments, is that there may not be the same safeguards in place of checking and monitoring mechanisms such as those in current contracting arrangements within local authorities. Therefore robust risk assessments need to be undertaken by assessing workers, and clear guidelines in place for employers, employees, and associated supporting agencies.

### **Responsibility of Assessing Workers**

#### **Assessments of Eligibility for Services**

In order to qualify for social care services, whether provided by the local authority, or through individual budgets including direct payments, service users must be eligible for services under FACS. Assessing eligibility for services is currently by way of a Community Care Assessment. This remains a local authority responsibility.

When carrying out a community care assessment workers must ensure that any risks to, or from, the person being assessed are identified, and where appropriate, a clear protection plan is formulated.

#### **Eligibility for Direct Payments**

Prior to 9th November 2009, Direct Payments were only available for people who could consent to having a direct payment and who would be able to manage direct payments with support if necessary. Access to direct payments has now been extended by regulations issued under the Health and Social Care Act 2008<sup>5</sup> so that local authorities are under a duty to offer direct payments to

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<sup>5</sup> Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 S. 1

people who lack capacity to consent. This means that where a person lacks capacity and it is considered to be in their best interests to use direct payments then the local authority may make direct payments to a suitable person who is willing and able to manage the payments on behalf of the person who lacks capacity. This could include someone appointed under an Enduring, or Lasting Power of Attorney, or by the Court of Protection, as well as a family member or friend who fits the statutory criteria of a 'suitable person'. Persons who are likely to benefit from this change in the law include severely disabled children who previously lost their right to Direct Payments at 18 years, adults with head injuries and some people with dementia.

Where a person lacks capacity and direct payments are being considered as a means of providing support, workers must establish that the person lacks capacity by carrying out an appropriate mental capacity test and 'best interests' evaluation in accordance with the Mental Capacity Act 2005.

Further guidance on direct payments to suitable persons on behalf of persons lacking capacity is set out in 'Guidance on Direct Payments 2009 issued by the Department of Health on 3<sup>rd</sup> September 2009<sup>6</sup>. Workers should be familiar with this guidance document.

People subject to mental health legislation (save some exceptions) also benefit by this change in the law. In the following cases the local authority has a power to offer direct payments not a duty:

- Where the person is on a conditional discharge from hospital;
- In respect of services provided by reason of conditions imposed by the mental health legislation such as conditions attached to guardianship, Section 17 leave of absence from hospital, and community treatment orders;
- In respect of services provided under certain criminal justice legislation that includes a requirement to accept treatment for a mental health condition;

Not everyone can be offered a direct payment and workers should be aware that certain people are excluded from receiving direct payments. Generally this applies to persons who have been placed under certain conditions or requirements by the courts in relation to drug and alcohol dependency.

Further detail about eligibility for direct payments can be found in the Appendices to the above guidance.

## **Access to Support Services**

For direct payments to be an effective means of providing services workers should ensure that the service user is aware of third-party support available for Direct Payments, for example Enham for the City, and Disability Direct in the County. This will support service users in their role as an employer, and is also an additional monitoring mechanism in identifying risks.

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Number 1887. The Department of Health has also issued updated guidance

<sup>6</sup> [Guidance on direct payments for community care, services for carers and children's services: England 2009](#)

People should also be made aware that they can use a support provider already contracted with a local authority, this would ensure that CRB checks have been carried out. If a person chooses to employ a Personal Assistant, then they should be advised of the benefits of carrying out CRB checks on them, and the fact that often the local authority will pay for this as part of the Direct Payment arrangements.

## **Safeguarding Concerns**

If a safeguarding concern is reported regarding someone who is in receipt of an Individual Budget, including a Direct Payment, this should of course be investigated following the Safeguarding procedure.

Where there are safeguarding concerns, depending on the circumstances, the Local Authority may consider withdrawing funding for a support package if agreed outcomes are no longer being met, and/or there is an unacceptable level of risk. In such a situation the local authority should carry out a risk assessment and will work with the person in receipt of direct payments to look at whether alternative provision should be made and how that can be achieved. This will require very careful risk assessment, as if the service user refuses alternative services this could leave them without any support, and therefore at increased levels of risk.

Where the service user has employed a personal assistant, then the employment relationship is directly between these two parties. The service user will have separate legal responsibilities and obligations that will need to be managed by the service user as employer. This does not prevent the service user being supported to seek independent legal advice, or detract from the Local Authorities' duty to Safeguard, however, it may raise issues that may need to be considered when deciding how concerns should be managed. Any concerns should be discussed initially with a manager and Legal Services, if necessary.

## **Risk Assessment and Recording**

The aim of Personalisation is to increase choices for service users, and as with all choices there is an element of risk. Wherever possible service users and their carers, where appropriate, should be involved in identifying risks to themselves, and potential risk management strategies, this will help identify what are reasonable risks, that is ensuring balance and proportionality are vital considerations in encouraging responsible decision making. This can help support to achieve a balance in empowering service users to make choices, whilst ensuring the person has all the information they need in an appropriate form to make their best choices. Keeping clear accurate records of how choices are made, and risks are identified and managed, are vital within this process. To support workers working through this process, please find a decision support tool from the paper [Independence, Choice and Risk: A guide to best practice in supported decision making \(DoH 2007\)](#).

### **Checklist for Workers when Considering Individual Budgets**

- What is the Mental Capacity of the person? Remember this has to be established in respect of **each decision** for which consent is required;
- Where the person lacks capacity, has a 'suitable person' been identified who has agreed to manage direct payments for the person
- Are there existing Safeguarding concerns?
- Does the person wish to receive Direct Payments as part/all of their Individual Budget?
- Does the person wish to use direct payments to employ a personal assistant? If so who do they wish to employ?
- Is the proposed employee within the group of persons who may be employed under direct payments or does the close relative restriction apply?
- Are there known risks around the proposed employee?
- Will the service user agree to CRB checks for employees?
- Does the service user have any other monitoring mechanisms around their support package, e;g; family, friends, college tutors?

If there are any risks identified regarding the above issues, or in any other areas, the worker should discuss with their line manager before proceeding any further.

## **Practice Guidance 13: The Care Quality Commission**

To contact the Care Quality Commission for the East Midlands call:

0300 061 6161 and ask for 'East Midlands region'

Or email: [enquiries.eastmidlands@cqc.org.uk](mailto:enquiries.eastmidlands@cqc.org.uk)

### **Historical Context**

CQC regulate health and adult social care services in England, whether they're provided by the NHS, local authorities, private companies or voluntary organisations. And, CQC protect the rights of people detained under the Mental Health Act.

CQC make sure that essential common quality standards are being met where care is provided and CQC work towards the improvement of care services. CQC promote the rights and interests of people who use services and CQC have a wide range of enforcement powers to take action on their behalf if services are unacceptably poor.

CQ bring together independent regulation of health, mental health and adult social care

### **Main Activities**

- Registration of health and social care providers to ensure they are meeting essential common quality standards
- Monitoring and inspection of all health and adult social care
- Using enforcement powers, such as fines and public warnings or closures, if standards are not being met
- Improving health and social care services by undertaking regular reviews of how well those who arrange and provide services locally are performing and special reviews on particular care services, pathways of care or themes where there are particular concerns about quality
- Reporting the outcomes of CQC work so that people who use services have information about the quality of their local health and adult social care services; It helps those who arrange and provide services to see where improvement is needed and learn from each other about what works best;

### **Reporting Health & Social Care Information**

CQC provide information on the quality of care services to help people who use those services and their carers to make informed decisions about their care.

The information provided to the public is fair, accurate, easy to get hold of and can be trusted. It helps people using health and adult social care services to find quality care. If you are looking for a care home for example you can see how one compares to another and how well it might meet your needs or the needs of someone you care for.

CQC try to give as much detail as possible so that you know how they came to a judgement about a service. Sometimes this means presenting technical information in an easier-to-read format or grouping information in a way which research and testing say is important to the people who use those services.

Findings are reported fairly and truthfully and communicated with everyone concerned, from service providers to policymakers and the public.

CQC information helps commissioners and providers of services to compare their performance with others, to see where improvement is needed, and to learn from each other about what works best.

## **Activities Regulated by the Care Quality Commission**

CQC regulate the following health and social care activities:

- Personal care
- Accommodation for people who require nursing or personal care
- Accommodation for people who require treatment for drug and alcohol misuse
- Accommodation and nursing or personal care in the further education sector
- Surgical procedures
- Diagnostic procedures
- Treatment of disease, disorder or injury
- Services in slimming clinics
- Transport services, triage and medical advice provided remotely
- Maternity and midwifery services
- Termination of pregnancy
- Assessment or medical treatment for persons detained under the Mental Health Act 1983
- Nursing care
- Management and supply of blood and blood derived products

## **Safeguarding Adults with the Care Quality Commission**

Safeguarding adults helps people to live a life that is free from abuse and neglect. It also helps to maintain good health and well being. It includes, but is not limited to, arrangements for responding to allegations of abuse.

Local councils have a responsibility to set up multi-agency procedures by following the Department of Health guidance No secrets. CQC have an important role to play in these arrangements for the social care services that are regulated.

CQC have agreed a protocol with the Association of Chief Police Officers and the Association of Directors of Adult Services.

The protocol sets out how CQC work with other agencies to make sure people who use care services are safeguarded from abuse.

You can download the [CQC protocol guidance and the two forms here](#):

## **Practice Guidance 14: Framework for Agencies to Develop Internal Safeguarding Adults Procedure**

### **Introduction and Summary**

This document is for any organisation that is part of the Multi-Agency partnership across Leicester Leicestershire and Rutland that provides social care services for adults and particularly those in need of safeguarding and the phrase “staff and volunteers” is used to mean anyone who is carrying out any activity on behalf of an agency, including paid staff, volunteers, session workers etc.

Internal procedures must be developed and used in conjunction with the Multi-Agency Policy & Procedure.

This framework is intended to help you draw up your own internal procedures to make sure:

- As far as possible, that all staff and volunteers representing the agency are fit to be in contact with adults who may be in need of safeguarding
- AND
- That all staff and volunteers know what to do when they are concerned about the abuse or potential abuse

To help you draw up a [‘Selection and Deployment of Staff Procedure’](#) see the section below which covers:

- roles and job descriptions
- recruitment and selection of staff
- criminal convictions
- Vetting & Barring Scheme/Independent Safeguarding Authority
- staff development

To help you draw up a Safeguarding Adults procedure go to the Multi-Agency Policy for information re:

- identification of abuse
- responding to an allegation
- support for people who report abuse

You will need to adapt the administrative and management arrangements to fit your own circumstances, including any regulations which apply to you and the requirements of your regulatory body if regulated.

## **Why You Need to Have an In-House Safeguarding Adults Procedure**

### **“No Secrets: Guidance on Developing and Implementing Multi-Agency Policies and Procedures to Protect Vulnerable Adults From Abuse” (Department Of Health, 2000)**

“No Secrets” is mandatory guidance issued by the Department of Health in 2000. In section 7 it says that:

“Provider agencies will produce for their staff a set of internal guidelines which relate clearly to the multi-agency policy and which set out the responsibilities of all staff to operate within it. These will include guidance on:

- identifying those who are particularly at risk;
- recognising risk from different sources and in different situations and recognising abusive behaviour from other service users, colleagues and family members;
- routes for making a referral and channels of communication within and beyond the agency;
- assurances of protection for whistle blowers;
- working within best practice as specified in contracts;
- working within and co-operating with regulatory mechanisms; and
- working within agreed operational guidelines to maintain best practice in relation to:
  - challenging behaviour
  - personal and intimate care
  - control and restraint
  - sexuality
  - medication
  - handling of user’s money
  - risk assessment and risk management

Internal guidelines should also cover the rights of staff and how employees will respond where abuse is alleged against them within either a criminal or disciplinary context.”

## **Care Standards Act 2000 and the National Minimum Standards**

Regulations issued under the Care Standards Act 2000 and the National Minimum Standards contain many references to the protection of adults in need of safeguarding, including:

- a requirement that providers have robust procedures for responding to suspicion or evidence of abuse or neglect;
- a requirement that relevant procedures regarding action taken against those staff found to have harmed or placed at risk of harm an adult in need of safeguarding are followed, and that the checking of potential employees for inclusion on any barred lists takes place; See [Independent Safeguarding Authority](#) section for further details;
- a requirement that allegations and incidents of abuse are clearly recorded;
- a requirement that there are clear policies around involvement with service users' finances;
- a requirement that physical and verbal aggression by service users is responded to appropriately;

There are also requirements within the regulations to prevent harm and abuse and to notify the National Care Standards Commission of "death, illness or other events." The latter would include incidents of actual or suspected abuse. The standards also require staff to be trained in the prevention and management of abuse.

## **Contractual Requirements**

If you have a formal contract to provide a service on behalf of the Local Authorities or another statutory agency, it may be a requirement of the contract that you have Safeguarding Adults procedures and that you give the purchaser a copy.

## **Your In-House Procedures**

Provider agencies therefore need to have comprehensive guidance for all staff. You must clearly set out staff roles and responsibilities and the action to take when an incident of abuse is suspected or alleged.

Your in-house procedure must relate to, and include the requirements of, this manual (A multi-agency document is a requirement of "No Secrets"). Agencies should refer to this manual for the action to take when a situation of abuse occurs.

## **Definitions to Assist in the Identification of Abuse**

For definitions of abuse, see [Practice Guidance 1: Recognising Abuse](#)

## **Selection and Deployment of Staff and Volunteers**

### **Roles and Job Descriptions**

The abuse of adults in need of safeguarding can be concealed where there is confusion about roles, responsibilities and accountability. Your paid staff should be given a job description and volunteers should have a written outline of what is expected from them.

Job descriptions and the volunteers' written outlines should contain a description of the work the person is expected to do and the policy guidelines they must follow. This should include, amongst other things:

- A description of the work they will undertake, with reference to any relevant guidelines produced by the agency for safeguarding the welfare of those adults;
- A clear statement that they will abide by the agency's policies and procedures;
- A statement of their duty to protect adults in contact with the agency from abuse, and reference to the action to be taken if abuse is suspected;
- The person to whom they will be accountable for their work - their line manager or supervisor; and
- The person(s) whose work they will supervise (if any);

There is still a need for clear roles and accountability where an agency chooses to work non-hierarchically, such as in workers' co-operatives, neighbourhood groups or carers' groups.

The job descriptions of paid staff must observe employment law, but the outline of volunteers' work need not be complicated. A short list of tasks and responsibilities and the information in paragraph 1.2 above will be enough.

Review job descriptions and volunteers' written outlines regularly and whenever the tasks change significantly. The staff member/volunteer, the person to whom they are accountable, and the agency should each have a copy.

### **Recruitment and Selection**

In your recruitment and selection procedures for staff and volunteers, you should recognise that some applicants may already have shown themselves to be unfit to care. Such people may be very plausible in the way that they present themselves.

In the process of recruiting and selecting staff and volunteers, you should:

- Require the applicant to give all previous names used, and details of all addresses in the last 5 years;

- Require the applicant to provide the names of at least two referees:
  - If the applicant is currently working with adults who may be in need of safeguarding in a paid capacity, or has previously done so, one of the referees should be the current or most recent employer and the other should also be a person who can comment on their work;
  - If the applicant is seeking to volunteer, or seeking paid work for the first time, both references should be from people who can provide information which is relevant to their character, attitudes, behaviour etc; towards adults who may need safeguarding;
- No one should be accepted onto your staff or as a volunteer unless satisfactory references have been received; When previous references relating to similar organisations are not available, the selection criteria and the induction process must take account of this;
- Ask for evidence of any qualifications which the applicant claims to hold;
- Ask for evidence of identity and address;
- Interview the applicant in person; At the interview you should:
  - Discuss with the applicant the details of the job/task that they have applied for - what is to be done, where and when;
  - Identify what relevant experience the applicant has, how long ago this was and what were the circumstances, including the circumstances in which they left any relevant employment;
  - Seek information about what the applicant has been doing for the last two years;
  - Seek an explanation of any gaps in the applicant's employment history;
  - Seek information about the level of contact between the applicant and their referees; If the referees are not suitable, it may be appropriate to invite the applicant to nominate different referees; and
  - Consider whether other items should be added to this list, relevant to the specific focus of the agency's work;

## **Criminal Records Bureau**

Enquiries into an applicant's background should include a check with the Criminal Records Bureau:

- Applications to the Criminal Records Bureau must be countersigned by a person who is registered with the Bureau; Voluntary and independent organisations may register themselves or may apply through an umbrella body; An umbrella body registers with the Criminal Records Bureau on the basis that it will countersign applications on behalf of organisations which are not themselves registered; Further information is available on <http://www.crb.homeoffice.gov.uk/>

Where an agency accepts students on placements, it is important to confirm with the training establishment that an appropriate criminal records check has taken place;

## **The Independent Safeguarding Authority (ISA)**

The ISA has been created to help prevent unsuitable people from working with children and adults in need of safeguarding.

It works in partnership with the Criminal Records Bureau (CRB) and other delivery partners. Increased safeguards have now been introduced under the Vetting and Barring Scheme, from October 12th 2009:

- It is now a criminal offence for individuals barred by the ISA to work or apply to work with children or adults in need of safeguarding in a wide range of posts - including most NHS jobs, Prison Service, education and childcare; Employers also face criminal sanctions for knowingly employing a barred individual across a wider range of work;
- The three former barred lists (POCA, POVA and List 99) are being replaced by two new ISA-banned lists;
- Employers, local authorities, professional regulators and other bodies have a duty to refer to the ISA, information about individuals working with children or adults in need of safeguarding where they consider them to have caused harm or pose a risk of harm; Referral forms and referral guidance are available;

VBS Guidance is also available covering the increased safeguards and the duties to refer, introduced from the 12th October 2009.

**Please note: ISA-registration for the Vetting and Barring Scheme does not start for new workers or those moving jobs until July 2010 and ISA registration does not become mandatory for these workers until November 2010.**

**All other staff will be phased into the scheme from 2011.**

**Further information on how to apply for registration will be provided in due course**

## **Staff Development**

All staff and volunteers should serve a probationary period in which the person's performance is closely monitored. Continuation as a staff member or volunteer should be dependent on successful completion of the probationary period.

All staff and volunteers should have regular supervision through observation and discussion of their work. This is a valuable way of encouraging good staff and deterring potential abusers.

## **Safeguarding Adults Training.**

See [Appendix 5: Staff Training and Development](#)

Basic safeguarding adults training should be provided - all staff and volunteers should:

- Be aware that abuse can be found in any community;
- Be aware that abuse does not always occur in the person's home - it may take place at in care home, in a day service, in the homes of friends, in places of entertainment and in public places;
- Know about the basic types of adult abuse;
- Know how to respond if, while representing the agency, they find evidence that a Safeguarded Adult may have been abused;

Agencies should provide regular refresher and update training for staff and volunteers to ensure that they remain aware of these issues.

## **Safeguarding Adults Procedure**

Your in-house procedure should, at a minimum, cover the issues addressed in this section. Your procedure should stress that Safeguarding Adults is not only about responding to specific allegations or incidents but that it is also about the suitability of persons working in your organisation. The agency should respond to any concern that a staff member or volunteer may not be a suitable person.

### **A Designated Officer for Safeguarding Adults**

You may find it useful to identify a specific named member of staff who will be available for consultation if an issue should arise. This designated officer might also be responsible for writing and maintaining the agency's Safeguarding Adults procedures and for ensuring that appropriate training is available

### **Responding to a Safeguarding Issue**

An issue may come to the notice of a staff member or volunteer in many ways:

- An adult may make a direct allegation or make a comment which seems to suggest abuse; or
- An adult may have injuries, bruises or marks; or
- Their behaviour may suggest the possibility of abuse; or
- Something about an staff member or volunteer's behaviour may suggest that they are not a suitable person;

Your procedure should clearly set out what the staff member or volunteer should do in these situations.

## **What Your Procedure Needs to Cover**

### **Main principles: In all cases your procedure should state clearly that:**

- Staff and volunteers must not promise to keep allegations secret; When an abusive or exploitative relationship exists or a criminal act appears to have occurred, the agency cannot agree to keep this secret;
- The focus of any action must be kept on the welfare of the adult as a possible victim of abuse;
- If a person makes a serious allegation about another adult there is a reason and they should always be taken seriously;
- If the person makes an allegation about a specific person or staff or volunteers have suspicions, do not question that person;
- If the staff member or volunteer believes that the adult is at immediate risk of significant harm they should contact the emergency services;
- Your staff and volunteers should not try to investigate whether or not the adult has been abused; this responsibility lies with the Adult Social Care Services and the police;
- Staff or volunteers must tell their line manager about their concerns straight away; The procedure should say who they should go to if the line manager is implicated in the abuse;
- All Safeguarding Adults concerns must be passed on to the local Adult Social Care office, or the Police, on the same day; The procedure should state clearly who is responsible for making this contact; If the line manager does not feel that there is cause for concern but the staff member or volunteer disagrees they have an individual responsibility to pass on their concerns; It is the responsibility of Adult Social Care to decide whether or not to carry out a Safeguarding Adults investigation;
- If abuse occurs in a fully staffed and funded health setting then it is the relevant Health Authority who will conduct the investigation in consultation with the Local Authority & Police;

### **Recording: The staff member or volunteer who first became aware of possible concerns should as soon as possible:**

- Write down what the adult said or the incident they witnessed or details of any significant marks or behaviour which were observed, noting any names, dates and times;
- The details of any witnesses - did anyone else hear what the person said, see the marks or notice the behaviour?
- Record exactly what the person said, not what the staff member or volunteer thinks was meant; Of course you may want to record this as well, but you must start with what the person said;
- The outcome of the discussion with your line manager and/or Adult Social Care Services;
- File this detailed record in your agency's recording system;

## **Co-Operating with Safeguarding Adults Enquiries**

Safeguarding Adults enquiries are carried out by Adult Social Care Services and the Police, often acting together. The staff and volunteers of external agencies are expected to co-operate with enquiries, as far as is reasonable within the role of the agency and of the staff member or volunteer. Your procedures should state the agency's view about how far this is. You may wish to point out that Adult Social Care Services and the Police may not be clear about the agency's role and purpose and that staff and volunteers can and should question any request which seems inappropriate.

## **If Suspicion Falls on Agency Staff or a Volunteer**

See [Practice Guidance 9: Human Resources Procedure](#)

## **Whistle Blowing and Staff Support**

See [Practice Guidance 9: Human Resources Procedure](#)

## **Who to Refer/Report Concerns To**

- The Local Authority Adult Social Care Services for the area where the person lives has the lead responsibility for coordinating all investigations;
- If abuse occurs in a fully staffed and funded health setting then it is the relevant Health Authority who will conduct the investigation in consultation with the Local Authority & Police;
- Refer to the CQC where there are issues relating to standards and regulations in care homes, domiciliary care agencies and adult placement schemes; Such registered providers are specifically required by Regulations to report certain events which adversely affect the well-being or safety of any service user;
- Refer to the Police if a crime is alleged and then contact the Local Authority

## **Practice Guidance 15: Advocacy & Support for Adults in Need of Safeguarding**

Consideration should always be given at an early stage for the provision of support for both the alleged victim and perpetrator where applicable. This support could include legal advice or advocacy. The onus should not be on the adults to seek this support and special consideration should be given where the service user is learning disabled, has mental health difficulties or may be confused. Special expertise may be required and a list of organisations that may be able to help is given in [Appendix7: Useful Contacts](#).

There are various types of advocacy available:

- Self-advocacy - this enables individuals to speak up for themselves; It supports individuals to express their feelings and can support them to disclose and to understand risk, make informed decisions and take steps to protect themselves; Self-advocacy tends to be long-term and is not necessarily issue- or time-specific;
- Issue / time specific advocacy - this supports individuals through certain experiences and / or decisions; Independent Mental Capacity Advocates (IMCAs) and Independent Domestic Violence Advocates (IDVAs) are examples of this;
- General advocacy - this may be long or short term, and may or may not be issue specific; An advocate will seek to represent a person's views and wishes on any number of topics;

Adults whose first language is other than English should have access to the services of an appropriate independent interpreter/sign language interpreter with relevant knowledge.

Adults who have specific communication needs should have access to the appropriate speech and language service.

Adults who have a sensory impairment or dual sensory impairment (deaf and blind) should have access to communication support, loop system and written language in other formats as appropriate

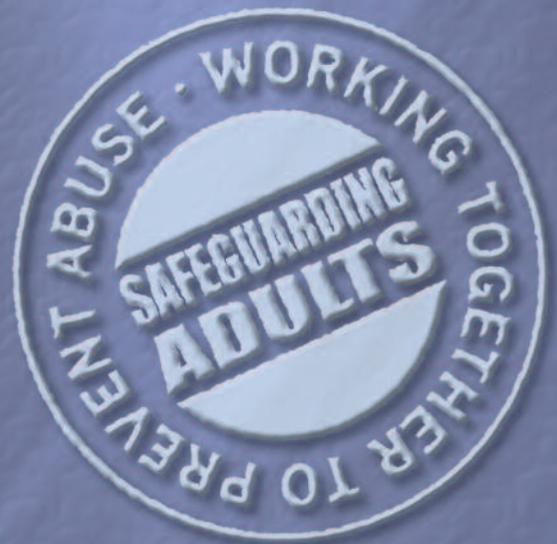
### **Appropriate Adult**

Where an alleged perpetrator is an adult in need of safeguarding the police may require that an appropriate adult is present when the person is interviewed. An appropriate adult in this case can be a relative, guardian or other person responsible for the care of the adult in need of safeguarding; someone experienced in dealing with the adult in need of safeguarding who is not a police officer or employed by the police or, failing these a responsible person over 18 who is not employed by the police.

An Appropriate Adult in this case cannot be any person that has witnessed the alleged offence(s); who may have colluded with the perpetrator or an alleged perpetrator themselves.

# **Safeguarding Adults: Multi-Agency Policy & Procedure Appendices**

Continuous Professional Development,  
Useful Contacts, Glossary, Research Resources  
MAPPA, SCR, IEA



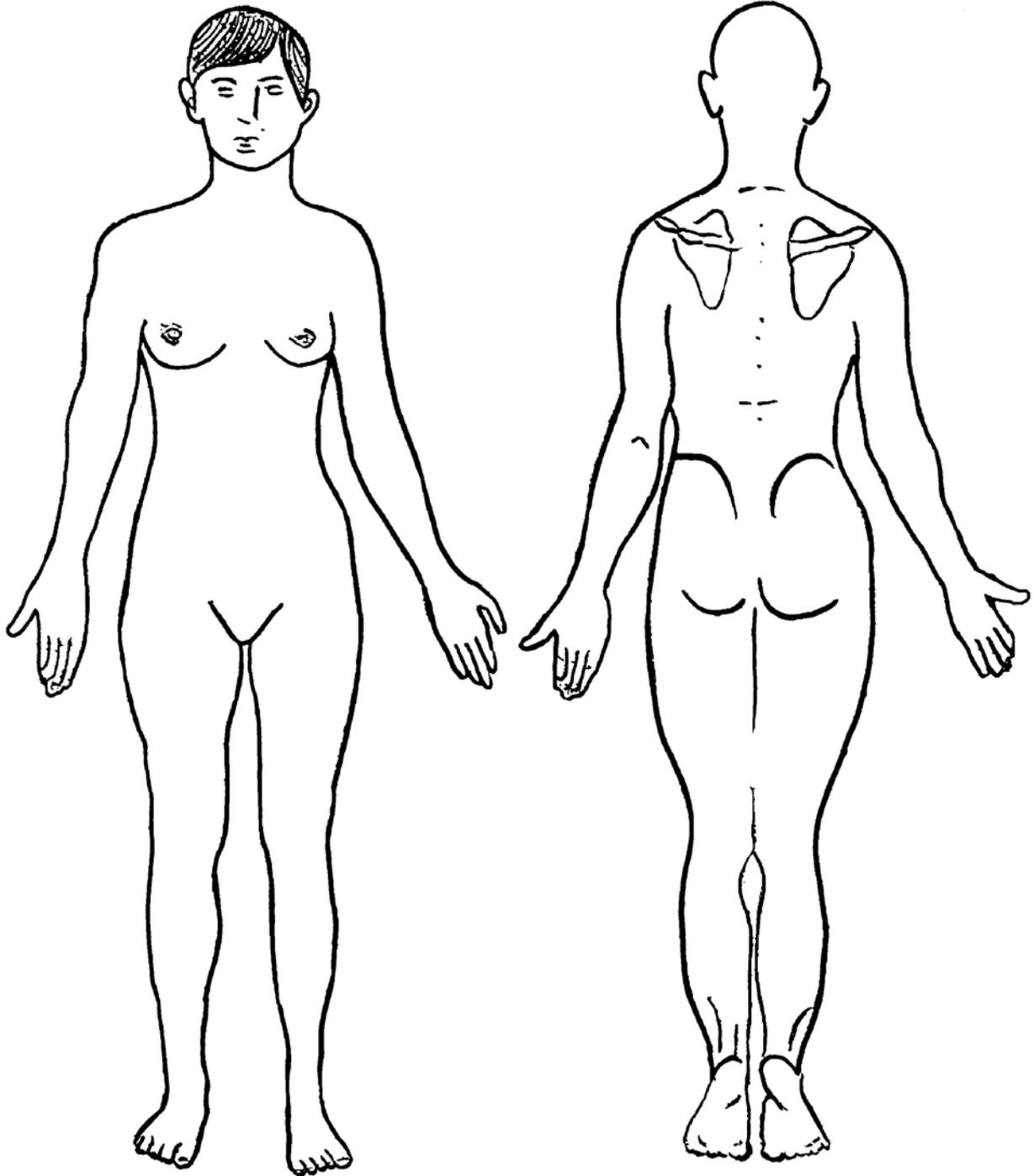
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## **Appendix 1: Body Maps & Forms**

## Body Maps: Female



Name of Service User:

Name of Worker(s):

DoB or ID Code:

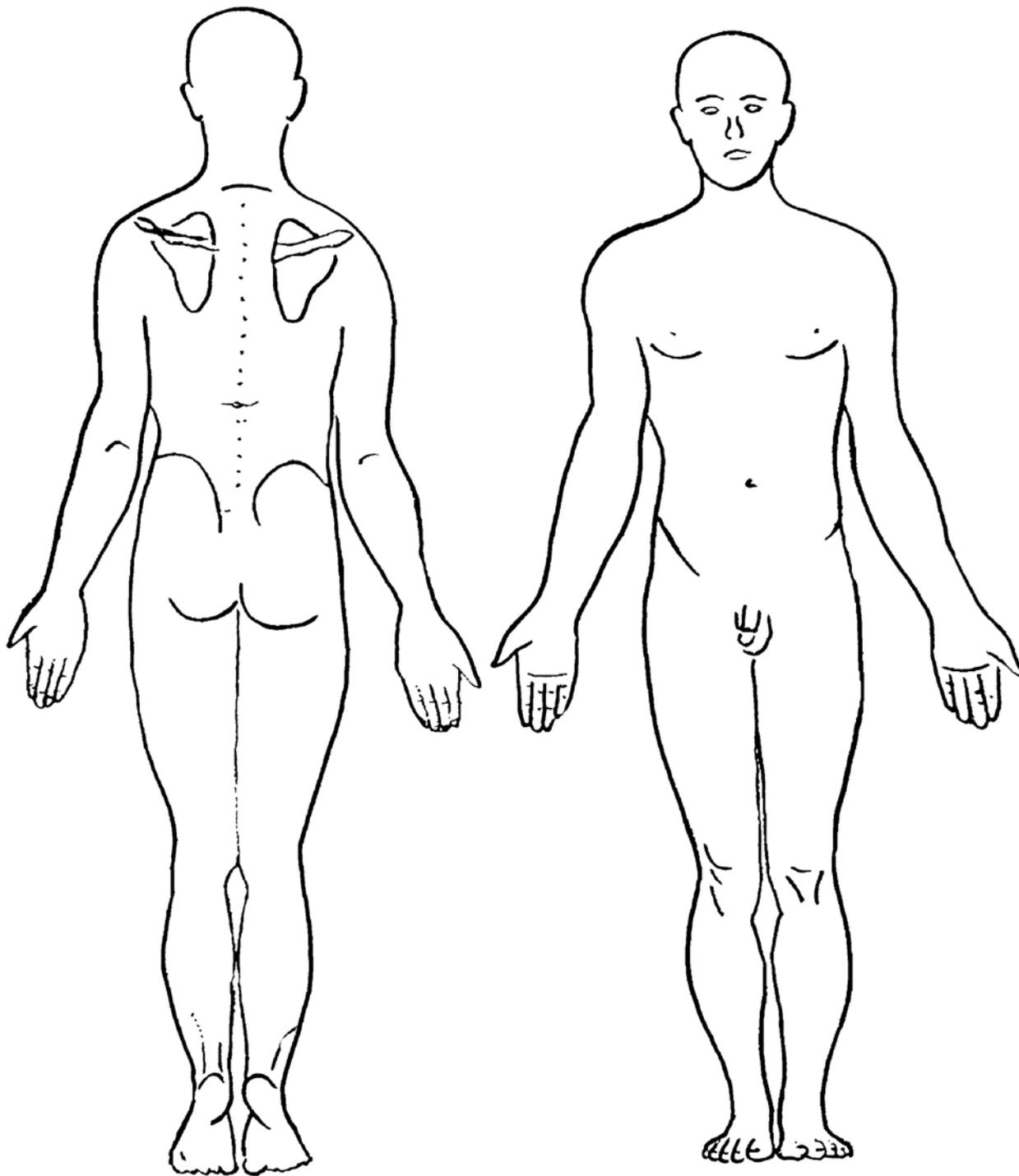
Job Title(s):

Date & Time Injury Witnessed:

Date & Time Form Completed:

Signature(s):

## Body Maps: Male



Name of Service User:

Name of Worker(s):

DoB or ID Code:

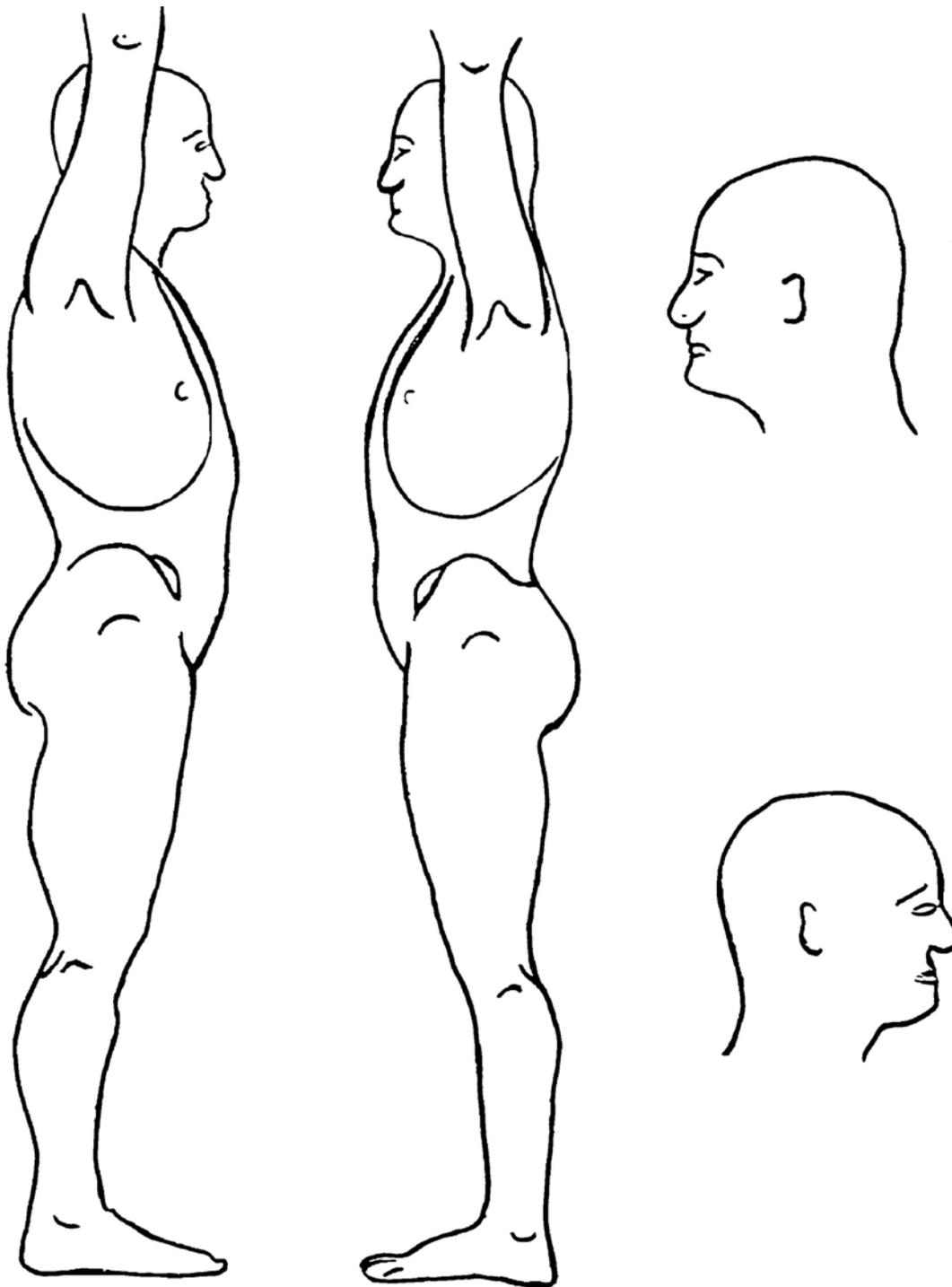
Job Title(s):

Date & Time Injury Witnessed:

Date & Time Form Completed:

Signature(s):

## Body Maps: Profile



Name of Service User:

Name of Worker(s):

DoB or ID Code:

Job Title(s):

Date & Time Injury Witnessed:

Date & Time Form Completed:

Signature(s):

## Form SA1: Record of Strategy Meeting / Discussion

To be commenced within 24 hours of Safeguarding Adults referral being received .

Date:                      Time:                      Venue:

Method of Strategy Meeting / Discussion:

### Professional(s) Involved

Name	Position	Contact details

### Alleged Victim

Name:	Date of Birth:	Sex: M/F
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Current Address:

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Telephone Number:

---

Location of Alleged Incident if different from Address:

---

---

Relevant ID Number (SSIS, CareFirst, Raise / NHS No.):

---

### Significant Others: (Professional, Family, Carers)

Name	Relationship to Victim	Contact details



Are there any issues relating to the alleged victim that should be considered (e.g. communication needs, factors from the alleged victim's cultural and/ or religious background which may have relevance, health and disability needs)?

Is a specialist required to facilitate the investigation (e.g. tissue viability nurse, occupational therapist)?

Preliminary assessment of risk/ unmet needs linked to significant harm.

**Action Plan for Investigation**

Action	Person Responsible	Time Scale

Has a decision been made to interview the alleged victim? YES / NO / N.A.

Reason for decision:

---



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**Method of interview, if applicable:**

Video	Statement	Other
By Whom	By Whom	By Whom

---

Has a decision been made to Refer for Medical Assessment? Y / N / Pending

Reason for decision:

---



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## Form SA2: Consultation Form for Safeguarding Adults Conference

To be completed by the alleged victim  
(Assistance to be offered as appropriate)

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

\_\_\_\_\_

Date of Conference: \_\_\_\_\_

Do you know why the conference is being held?      YES / NO

Please explain as best you can: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Have you seen any relevant reports?      YES / NO

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Is there anyone you would like to come to the meeting?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Is there anyone who should not be there?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## Form SA3: Professional Report for Safeguarding Adults Conference

**Strictly Confidential - The contents of this report are intended for the purpose of the conference only and should not be reproduced, copied or divulged without the consent of the author.**

Date:                      Time:                      Venue:

### Author of the report

Name:	Job role:
Signature:	Contact No.:

### Alleged Victim

Name:	Date of Birth:	Sex: M/F
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Current Address:

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Telephone Number:

---

Location of Alleged Incident if different from Address:

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Relevant ID Number (SSIS, CareFirst, Raise / NHS No.):

---

Attending Case Conference? Y / N / N.A.	If No, or N.A, Why?
---	---------------------

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---

### Others Consulted: (Professional, Family, Carers)

Name	Relationship to Victim	Contact details







## **Form SA4: Safeguarding Adults Conference Agenda**

### **Agenda**

1. Introduction / Apologies
2. Circulation of Reports
3. Purpose of Safeguarding Adult Conference
4. Details of the allegation / suspicion
  - Referral
  - Investigation
  - Outcome(Including assessment of capacity / legal issues)
5. Relevant Background Information
6. Views of alleged victim / advocate / carer
7. Risk Analysis
  - Further action / assessment required
  - Indicators / triggers for further concern
8. Conclusions
  - Establish category of abuse
  - Use outcome categories as detailed in 'Conference' section of this procedure
9. Protection Plan
10. Decide who / how to inform alleged victim of outcome if not present
11. Decide who / how to inform alleged perpetrator/ agency if not present
12. Set date for review / close

### **Further Action**



System for Monitoring:

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Indicators / triggers for further concern

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Contingency Plan in the event of any further / ongoing concerns

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**Review Date:**

**Further Action:**

Following the conference, this Form should be:

- Circulated to those who attended the conference and / or are detailed as having a role within this plan
- Shared with the alleged victim, family / advocate / carers as appropriate





**Appendix 2: Information Exchange Agreement  
for Adult Safeguarding within Leicestershire,  
Leicester City & Rutland**

## **1: Policy Statements & Purpose of this Information Exchange Agreement**

The purpose of this agreement is:

- To set out the principles and practices involved in the exchange of information between the agencies making this agreement in order to co-ordinate the protection of adults in need of safeguarding;
- To emphasise the importance of sharing information promptly and appropriately where it is agreed that an adult in need of safeguarding is in need of protection;
- To agree on procedures for maintaining a central, anonymised database of safeguarding investigations for statistical, monitoring and reporting purposes;
- To make it clear how subject access requests will be handled;
- To establish standards for recordkeeping and records retention;

In 2000 the Department of Health published "No Secrets", which stresses the importance of Multi-Agency working to protect adults in need of safeguarding, a process that is facilitated by partner agencies' willingness to exchange information.

## **2: Legal Basis for Information Exchange**

The appropriate sharing of personally identifiable information is always legal with the informed consent of the data subject. Anyone collecting data as part of an adult safeguarding investigation should always seek to gain the explicit consent of the subject of the investigation to share their data. The data subject's consent to sharing, or their refusal to share, should always be noted prominently on the investigation file.

Whenever it is possible to do so without creating increased risk to the subject of the investigation or prejudicing the outcome of the investigation, alleged perpetrators should be notified of the allegations made against them and the fact that an investigation is taking place. Anyone recording information about an alleged perpetrator should bear in mind that they may subsequently have the right to request access to the information held about them.

The Data Protection Act 1998 provides for information to be shared without the data subject's consent but the circumstances in which this is permissible are specific and there may be many circumstances in which data about the subject of a safeguarding investigation can not be shared. If the data subject refuses permission to share their data the person collecting the data should obtain guidance from their organisation's Data Protection or Information Governance Lead for Adult Safeguarding before proceeding.

On the other hand the Common Law imposes a duty of confidentiality in some circumstances, such as that between patient and clinician. This can be overridden in certain conditions. In cases where it may be necessary to break the Common Law duty of confidentiality staff should seek guidance from their organisation's Data Protection or Information Governance Lead for Adult Safeguarding before proceeding.

There is no general statutory power to share information, just as there is no general power to obtain, hold or process data. Some Acts of Parliament give public bodies mandatory statutory powers to share information. These are often referred to as 'statutory gateways' and are enacted to provide for the sharing of information for particular purposes. These gateways may be permissive or mandatory.

An example of a 'permissive statutory gateway' is section 115 of the Crime and Disorder Act 1998, this permits any person to disclose information to a relevant authority where the disclosure is necessary to address crime and disorder issues.

Where practitioners have concerns about the appropriateness or legality of sharing information they should contact their employing organisation's Data Protection or Information Governance Lead. Any decisions regarding the sharing of information should always be recorded, along with a full justification, on the Investigation file or Serious Case Review file.

Where consent is given by the data subject to share data any subsequent sharing should always be guided by the Data Protection Act principles and the Caldicott Guidelines. These are included below for reference

### **The Data Protection Principles**

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under this Act.

7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

### **The Caldicott Principles**

1. Justify the purpose(s) for using confidential information
2. Only use it when absolutely necessary
3. Use the minimum amount that is required
4. Access should be on a strict need-to-know basis
5. Everyone must understand his or her responsibilities
6. Understand and comply with the law

The Multi-Agency Safeguarding Team will draw up a Fair Processing Notices to be used by all agencies as part of Safeguarding Investigations. This will be incorporated into this ISA in due course

## **3: Data**

### **3.1: What Data is it Necessary to Exchange?**

Information will be exchanged in 3 circumstances:

- Personal and sensitive information will be shared as part of safeguarding investigations, subject to consent or appropriate reasons for sharing without consent;
- Anonymised information (i.e; information identified by a system reference) will be shared for reporting and monitoring purposes;
- Additional information may be shared in the event of a serious case review; A Serious Case review will not normally create a need to share additional personal information; However should it do so then the guidance in this Information Exchange Agreement will be as applicable to the Review as it was to the Investigation

### **Personal and Sensitive Information**

Personal and sensitive information will be exchanged to protect the vital interests of adults in need of safeguarding. The information that will be shared will vary from case to case and can not be prescribed in this document. The data could be held in a range of different types and formats but will consist mainly of documents.

Sharing of personal information to protect the vital interests of adults will always take place within the processes defined in the Safeguarding Adults: Multi-Agency Policy & Procedures (the Multi-Agency Policy) agreed between the partners.

Agencies involved in an investigation will share data to support:

- The referral process
- Strategy discussions and meetings
- Investigations, which will always be co-ordinated by a Lead Agency
- Adult Protection Conferences

### **Anonymised Statistical Information**

Anonymised statistical information will be used to inform practice, to identify training needs and for monitoring and reporting. The information held for this purpose will be that data collected through the SA6 and SA7 forms.

Each partner will agree with the Multi-Agency Safeguarding Team how they will provide their data and how regularly they will provide it. If a partner chooses not to complete SA6 and SA7 forms then they must provide all of the data that would have appeared on the form.

Cases will be identified by the investigation reference number and a case file reference number.

### **Serious Case Review**

Additional information may be shared in the event of a Serious Case Review

The information shared between partner agencies should be the minimum amount necessary to ensure a co-ordinated response to the protection of an adult in need of safeguarding.

Decisions concerning whether or not to share information should be documented at every stage of the Multi Policy & Procedures. Where such decisions are made at Strategy Meetings or Safeguarding Adult Conferences they will be noted in the minutes.

Where there is uncertainty about what information is to be shared it is entirely appropriate for individual workers to seek further clarification from their organisation's Data Protection or Information Governance Lead. HOWEVER, this process must be undertaken expeditiously so as not to seriously hamper the need to protect the adults in need of safeguarding and progress the investigation.

## **3.2: Record Keeping Procedures**

### **Investigations**

- The lead agency for the investigation will maintain the investigation file; Where the investigating agency is the Commission for Social Care Inspection (CSCI) they will follow their own procedures and will not be subject to this agreement;
- No records will be maintained by another agency other than the records that they would retain as part of their normal business;
- The lead agency will be Data Controller of the investigation file;

- The lead agency will handle Subject Access Requests relating to the investigation; They will seek written permission before releasing any information forming part of the investigation file which has been obtained from other agencies, including information obtained from other signatories of this ISA;
- Where an agency has refused permission to the lead agency to share information provided to the investigation the lead agency will advise the data subject to make a Subject Access Request to that other agency;
- An agency receiving a Subject Access Request in respect of an investigation from a client for whom they contributed information, but were not the lead agency, will forward the request to the lead agency (the Data Controller) and that agency will comply with the request; The requestor will be informed accordingly;
- If an investigation is about a third party (for example a service provider) then the third party will not have an automatic right to see the investigation file; In all cases where such access requests are received the lead agency will refer the request to their Data Protection or Information Governance Lead for guidance;
- If the person leading an investigation is having difficulty obtaining information from staff in partner organisations then they will escalate the request to the person's line manager; They will continue to escalate the request through the line management structure as necessary; In extreme cases they will refer the case to the Adult Safeguarding Lead within their employing organisation;

### **Statistical Information**

- The lead agency in a safeguarding incident will collect all the information formerly collected on the SA6 and SA7 form in all cases; They will transfer this information to the Multi-Agency Team as a paper form or in an electronic format; An organisation will only use electronic transfer if they have the ability to transfer the data collected electronically in the format prescribed by the Multi-Agency Team;
- If the Multi-Agency Safeguarding Team feels that it can meet its reporting requirements without reference to individual cases then it may request information from the partners in summary format; In no circumstances should the data provided to the Multi-Agency Safeguarding Team include data that is not included on the SA6 and SA7 form;
- The transfer of forms will take place as soon as practical; Data will be transferred on a regular basis, and at least monthly;
- Data transferred will be anonymous and will not include client names or addresses;
- The lead agency will remain the Data Controller for the information transferred; The Multi-Agency Safeguarding Team will be Data Processors;

- The Multi-Agency Safeguarding Team are authorised to input the information transferred to them onto a computer system for reporting purposes;
- The information in the Safeguarding Database will only be available to the staff in the Multi-Agency Safeguarding Team, other than when presented in agreed reporting formats to the partner agencies;
- The Multi-Agency Safeguarding Team will not accept subject access requests for information held in the Safeguarding Database; In the event of a request being received it will be forwarded to the agency leading the safeguarding investigation (the Data Controller) and that agency will be asked to comply with the request; The client will be informed accordingly;
- If the Multi-Agency Safeguarding Team receives a request for data about an individual from an agency not party to this agreement they will forward the request to the agency leading the safeguarding incident (the Data Controller) and that agency will be asked to comply with the request; The requestor will be informed accordingly;
- If the information transferred is not complete or correct then the Multi-Agency Safeguarding Team will notify the person providing the data and request that it is re-submitted; If the person providing the data does not comply then they will escalate the request to that person's line manager; They will continue to escalate the request through the line management structure as necessary; In extreme cases they will refer the case to the Adult Safeguarding Lead within their employing organisation;

### **Serious Case Reviews**

- All Serious Case Reviews will be undertaken by the Safeguarding Adult Co-ordinator;
- The Safeguarding Adult Co-ordinator's employing organisation will be the Data Controller for the Serious Case Review file; The responsibility for closed Serious Case Review files will remain with the Safeguarding Adult Co-ordinator's employing organisation in the event of the Safeguarding Adult Co-ordinator role moving to another organisation;
- The Safeguarding Adult Co-ordinator or their employing organisation will handle Subject Access Requests, or Freedom of Information requests, relating to the review; They will seek written permission before releasing any information forming part of the review file which has been obtained from other agencies, including information obtained from other signatories of this ISA;
- If a Serious Case Review accesses information from a previous Safeguarding Investigation and this information forms part of the Serious Case Review file this information can not be released as part of a Serious Case Review Subject Access Request; The requestor should be informed that information from the Safeguarding Investigation was used and asked to make a written request to the Safeguarding Investigation lead agency

### **3.3: Who will be Responsible for Exchanging this Data and Ensuring Data is Accurate?**

The lead agency in any Safeguarding Investigation will nominate a named person, normally the investigator, to be responsible for data exchange, the investigation file and record keeping. The nominated person will be responsible for ensuring that the data in the SA6 & SA7 are available for transfer to the Multi-Agency Safeguarding Team

### **3.4: How Will You Keep a Record of What Information Has Been Exchanged?**

As sharing of information to support an investigation may be ad hoc and not of a regular nature recording of individual exchanges of information is not practicable. The nominated person responsible for the investigation file should ensure that the source of all material in the file is clear either from the nature of the document or by marking it appropriately.

The source of all statistical data will be evident from its contents.

The Safeguarding Adult Co-ordinator should ensure that the source of any information shared as part of a Serious Case Review is clear either from the nature of the document or by marking it appropriately.

### **3.5: How is this Information Going to be Exchanged?**

Partners will only use methods which are classified as secure by their own organisation to exchange adult safeguarding documents and information.

E-mail will not be considered as secure by default. No safeguarding information should be sent over the Internet using unencrypted e-mails, even if the personally identifiable information is included in password protected attachments.

When sending personally identifiable information by e-mail everyone involved in safeguarding must at all times comply with the policies and procedures of their own employing organisation. In addition they must be sensitive to the requirements of their correspondent's employer as some methods or links considered acceptable and secure by one agency are not considered secure by others.

Detailed guidance on secure transfer methods is given in [IEA: Appendix C - Security Standards](#). Partners will adhere to this guidance when exchanging information.

A list of secure e-mail communication methods, listed by agency is attached as [IEA Appendix A: Secure Email Links](#)

### **3.6: Who Will Have Access to this Data and What May They Use it For?**

Investigation files should only be available to members of the lead agency's staff who are engaged in the investigation. The person nominated to manage record keeping will ensure that access to the investigation file is properly controlled and only those with a valid reason to see the file will have access to it. The data may only be used for the purpose of supporting and progressing the particular safeguarding investigation.

When the investigation is complete the file will be stored securely using the storage methods in use within the investigator's organisation. This may include electronic storage.

Statistical information will only be accessible to the Multi-Agency Safeguarding Team. The Multi-Agency Safeguarding Team will be responsible for ensuring that access to the database is secure and that the database is properly backed up and capable of being restored in the event of a disaster.

The Multi-Agency Safeguarding Team can use the data in the Safeguarding database to report to the Department of Health when requested

Where they consider it appropriate the Multi-Agency Safeguarding Team can report on, or extract, data from the Safeguarding Database for agencies not party to this agreement providing that the reported or extracted data is fully anonymised before it is passed to the other agency.

Organisations should be aware that holding health information in their records imposes particular duties and obligations with regards to confidentiality. Health information provided to a safeguarding investigation should only be used for safeguarding purposes and not stored, used or processed for any other purpose.

### **3.7: Timescales**

All staff engaged in safeguarding work should provide information as promptly as possible.

### **3.8: How Securely Does the Data Need to be Stored?**

Nothing in this agreement dictates how an agency will maintain its records. They will be maintained in line with the agency's normal policies and may be in physical or electronic format.

If your organisation does not have a security classification scheme which includes handling rules, the following points should be considered:

- Ensure that unauthorised staff and other individuals are prevented from gaining access to personal data;
- Ensure visitors are received and supervised at all times in areas where personal data is stored;

- Ensure that all computer systems that contain personal data be password-protected; The level of security should depend on the type of data held, but ensure that only those who need to use the data have access;
- Do not leave your workstation/PC signed on when you are not using it;
- Lock away disks, tapes or printouts when not in use;
- Ensure all new software is virus-checked prior to loading onto an Authority machine; Do the same for disks;
- Exercise caution in what is sent via email and to whom it is sent, do not transmit personal data by email;
- Check that the intended recipient of a fax containing personal data is aware that it is being sent and can ensure security on delivery;
- Ensure your paper files are stored in secure locations and only accessed by those who need to use them;
- Do not disclose personal data to anyone other than the Data Subject unless you have the Data Subject's consent, or it is a registered disclosure, required by law, or permitted by a Data Protection Act 1998 exemption;
- Do not leave information on public display in any form; Clear your desk at the end of each day and lock sensitive material away safely;

### **3.9: How Long are You Going to Keep the Data?**

Investigation files will be retained for a minimum of 7 years in line with the Limitations Act 1980. Where the lead agency is subject to different legislative or other retention requirements, or a particular file falls into a category for which the Investigation Lead Agency has retention rules that exceed 7 years (for example if the data subject had been sectioned under the Mental Health Act) then the file will be maintained in line with such guidance or requirements.

Serious Case Review files will be maintained for a minimum of 7 years. The Safeguarding Adult Co-ordinator will assign a retention period to each individual case based on the circumstances of that case.

All files will contain details of their retention period and the reason for selecting that period.

### **3.10: Further Use of Data**

Adult Safeguarding data should not be used for any purpose other than those specified in this agreement.

## **4: Breach of Confidentiality**

The objective of reporting security incidents and weaknesses is to minimise damage from security incidents and, by learning from such incidents, reduce the risk that they will happen again.

All breaches of security (including any breach of confidentiality) will be reported to the Safeguarding Adult Co-ordinator. The Safeguarding Adult Co-ordinator who will report the issue to the Caldicott Guardian, or Information Security

Lead, of the breaching organisation and the organisation whose data has been compromised. The breaching organisation must carry out a full investigation, with the assistance of an independent agency if required.

Any breach of confidentiality involving Health data, wherever it occurs, will be reported to the appropriate Caldicott Guardian by the Safeguarding Adult Co-ordinator as soon as they are aware of the breach.

If breach of confidentiality or a "near miss" involves staff employed by the NHS then they should follow the procedures set out in [IEA Appendix D: Checklist for Reporting, Managing and Investigating Information Governance Standards](#).

The checklist defines an Information Governance Serious Untoward Incident as:

Any incident involving the actual or potential loss of personal information that could lead to identity theft or have other significant impact on individuals should be considered as serious.

Staff from all partner agencies will co-operate with the investigation classed as a Serious Untoward Incident by Health.

Disciplinary action may be taken against any member of staff found to have been responsible for a breach in line with the policies and procedures of the organisation that employs the person responsible for the breach.

The Information Commissioner will be notified of the action taken if the breach is serious. The Safeguarding Adult Co-ordinator will decide what represents a serious breach of security.

If an illegal act has been committed the police will be notified by the Safeguarding Adult Co-ordinator in every case.

## **5: Indemnity**

Each partner will keep each of the other partners fully indemnified against any and all costs, expenses and claims arising out of any breach of this agreement and in particular, but without limitation, the unauthorised or unlawful access, loss, theft, use, destruction or disclosure by the offending partner or its sub-contractors, employees, agents or any other person within the control of the offending partner of any data obtained in connection with this agreement.

## **6: Individuals who Cannot be Covered by the Indemnity**

The parties to this IEA understand that in keeping with Government initiatives to invite a wider spectrum of society to assist the relevant authorities to implement the Crime and Disorder Act 2000, it is likely that there will be individuals present at certain meetings who are not employed by an organisation and therefore are not in a position to sign this IEA due to the liability of the indemnity.

In order to ensure that the data controllers who are supplying personal information to the meeting fulfil their duties under Data Protection Act 1998 and that the principles are complied with, it is recommended that the first time

any individual attends a meeting covered by a IEA is required to sign a confidentiality agreement as at [IEA Appendix B: Confidentiality Statement](#). The responsibility for ensuring that this takes place and for ensuring that the relevant document is stored on the Investigation File lies with the Chair of the meeting.

## **7: Review of Information Exchange Agreements**

This agreement will be reviewed one year after signature and annually thereafter. This review is the responsibility of the Safeguarding Adult Coordinator who will contact the signatories of the agreement to initiate the review. Guidance on how to carry out the review is available in the Information Sharing Protocol.

## **8: Closure/Termination of Agreement**

Any partner organisation can suspend this IEA for 45 days if security has been seriously breached. This should be in writing and be evidenced.

Any suspension will be subject to a Risk Assessment and Resolution meeting chaired by the Safeguarding Adult Co-ordinator, the panel of which will be made up of the signatories of this agreement, or their nominated representative. This meeting must take place within 14 days of any suspension.

Termination of this Information Exchange Agreement should be in writing to all other Partner Organisations giving at least 30 days notice.

## **9: Freedom of Information Act 2000 (FOIA)**

Each Partner Organisation (PO) shall publish this IEA on its website and refer to it within its Publication Scheme. If a PO wishes to withhold all or part of the IEA from publication it shall inform the other PO's as soon as reasonably possible. Partner Organisations shall then endeavour to reach a collective decision as to whether information is to be withheld from publication or not. Information shall only be withheld where, should an application for that information be made under FOIA 2000 it is likely that the information would be exempt from disclosure and the public interest lie in favour of withholding. However, nothing in this paragraph shall prevent the individual Partner Organisations from exercising its obligations and responsibilities under FOIA 2000 as it sees fit.

## **10: Requests for Disclosure of Information Received Under this IEA**

All recorded information held by public sector agencies is subject to the provisions of the Freedom of Information Act 2000 and the Data Protection Act 1998. While there is no requirement to consult with third parties under FOIA, the parties to this IEA will consult the party from whom the information originated and will consider their views to inform the decision making process.

## **11: Appropriate Signatories**

Each Partner should identify who is the most appropriate post holder within their agency to sign the IEA having taken account of their organisational policy and the fact that the signatory must have delegated responsibility to commit their organisation to the indemnity. It is the responsibility of these same individuals to ensure that copies of the IEA are made available as necessary to ensure adherence to the IEA.

### **IEA Appendix A: Secure E-Mail Links**

- All e-mail sent between Leicestershire County Council and Leicester City Council are considered to be secure;
- E-mail sent between the Police and Probation services using the secure criminal justice and GSI link;
- Other secure links need to be added by signatories;

## IEA Appendix B: Confidentiality Statement

To enable the exchange of information between attendees at this meeting to be carried out in accordance with the Data Protection Act 1998, the Human Rights Act 1998 and the common law duty of confidentiality, all attendees are asked to agree to the following. This agreement will be recorded in the minutes.

1. Information can be exchanged within this meeting for the purpose of identifying any action that can be taken by any of the agencies or departments attending this meeting to resolve the problem under discussion.
2. A disclosure of information outside the meeting, beyond that agreed at the meeting, will be considered a breach of the subjects' confidentiality and a breach of the confidentiality of the agencies involved.
3. All documents exchanged should be marked 'Restricted - not to be disclosed without consent'. All minutes, documents and notes of disclosed information should be kept in a secure location to prevent unauthorised access.
4. If further action is identified, the agency(ies) who will proceed with this action(s) should then make formal requests to any other agencies holding such personal information as may be required to progress this action quoting their legal basis for requesting such information. Information exchanged during the course of this meeting must not be used for such action.
5. If the consent to disclose is felt to be urgent, permission should be sought from the Chair of the meeting and a decision will be made on the lawfulness of the disclosure such as the prevention or detection of crime, apprehension or prosecution of offenders, or where it is required to prevent injury or damage to the health of any person.

This confidentiality agreement is in relation to the


meeting(s)

Signature:	Date:
Name:	
Representing (Name & organisation):	

Copies of this signed agreement are to be held by the Chair.

## **IEA Appendix C: Security Standards**

### **Transfer of Information by Email**

Transfer of personal information by email should be avoided unless the information is encrypted or unless it is sent via the links listed in Appendix A.

### **Transfer of Information by Fax**

1. If using fax, send information to a "Safe Haven" fax where possible. A Safe Haven fax is one that is managed in such a way that its security is enhanced. These safeguards should include that:
  - (a) The fax is sited in a secure room or cupboard
  - (b) The recipient organisation has a written policy for handling faxes which staff have been informed about and understand
  - (c) Identified staff are responsible for waiting by the machine until the fax is sent and for collecting and delivering the faxed information to the appropriate person.
2. Where possible, minimise the amount of information included in the fax. The "two fax" approach can be useful where personal details without identification details are sent through on one fax, with the identifier sent on a separate fax. If the first fax went astray for any reason the second would not be sent. This is particularly suitable if the fax is not going to a safe haven fax machine.
3. Telephone the recipient to ensure that they are aware a confidential fax is about to be sent and to confirm that an identified individual will collect and deliver it and that safe receipt will be confirmed.
4. Ensure that the fax is sent with a cover sheet stating that it is strictly confidential. The cover sheet should also state that the fax is for the intended recipient only and in the event of error the sender should be notified immediately.
5. Use pre-installed numbers wherever possible to minimise the risk of misdialling. Double-check the fax number before sending.
6. There are some types of personal information which should never be transmitted by fax. These include details relating to HIV status, venereal disease, drug abuse, psychiatric history or incriminating evidence.
7. A log should be kept of confidential faxes sent, giving details of sender and recipient, date and time of transmission and a copy of the printout from the fax confirming transmission success.

## **Transfer of Information by Post**

1. Written communications containing personal information should be transferred in a sealed envelope and addressed by name to the designated person within each organisation. They should be clearly marked "Private and Confidential - to be opened by the recipient only".
2. Written communications containing personal and sensitive information should be transferred as above but the envelope when sent by royal mail must be sent by special delivery.
3. The designated person should be informed that the information has been sent and should make arrangements within their own organisation to ensure that the envelope is delivered to them unopened and that it is received within the expected timescale.
4. If an organisation has a policy that all mail is to be opened at a central point this policy must be made clear to all partners. An alternative means of transfer should be arranged where it is essential that the information is restricted to those who have a need to know.
5. The personal information contained in written transfers should be limited to those details necessary in order for the recipient to carry out their role.

## **Transfer of Information Verbally**

1. A considerable amount of information sharing takes place verbally, often on an informal basis. Difficulties can arise because of this informality particularly in modern open - plan locations. Care should be taken to ensure that confidentiality is maintained in such discussions.
2. If information is to be shared by phone, then steps need to be taken to ensure the recipient is properly identified. This can be done by taking the relevant phone number, double checking that it is the correct number for the relevant individual / organisation and then calling the recipient back.
3. Where information is transferred by phone, or face to face, care should be taken to ensure that personal details are not overheard by other staff who do not have a "need to know". Such discussions should take place in private locations and not in public areas, common staff areas, lifts etc. If this is not possible then, with the exception of emergencies, transfers of information should be carried out by alternative, more secure means.

## **IEA Appendix D: Checklist for Reporting, Managing and Investigating Information Governance Serious Untoward Incidents**

### **1: Introduction**

1.1 Following the data loss by Her Majesty's Revenue and Customs (HMRC) in December 2007; David Nicholson (NHS CEO) initiated the Information Governance Assurance Programme (IGAP) in February 2008 in response to the Cabinet Office Data Handling Review (DHR).

1.2 Through IGAP, the existing Serious Untoward Incident (SUI) process in respect of data loss and confidentiality breaches was found to be ill defined and not used in a consistent manner.

1.3 Guidance was issued by Matthew Swindell in a letter of 29 February 2008 (Gateway 9571) on the process for reporting Information Governance (IG) Serious Untoward Incidents and assessing their severity. This is included in [IEA Appendix D: Annex A](#).

1.4 The definition of an IG SUI is given in the letter as:

Any incident involving the actual or potential loss of personal information that could lead to identity theft or have other significant impact on individuals should be considered as serious.

The above definition applies irrespective of the media involved and includes both the loss of electronic media and paper records.

### **2: Purpose of This Checklist**

2.1 This checklist should be used in conjunction with the NHS Leicestershire and Rutland (LCR) Policy for Managing, Reporting and Investigating Incidents and Serious Untoward Incidents - NQ006. The intention is to ensure that:

- the management of IG SUIs conforms to the processes and procedures set out for managing all Serious Untoward Incidents
- there is a consistent approach to evaluating IG SUIs
- early reports of IG SUIs are sufficient to decide appropriate escalation, notification and communication to all relevant parties
- appropriate action is taken to prevent damage to patients, staff and the reputation of the organisation
- all aspects of an SUI are fully explored and 'lessons learned' are identified and communicated
- appropriate corrective action is taken to prevent recurrence

2.2 The checklist should be used by all staff involved in managing IG SUIs

2.3 It is important to note that much of this checklist will be applicable to 'near misses'. Staff are encouraged to report IG SUI "near misses" and the opportunity taken to identify and disseminate the 'lessons learnt'

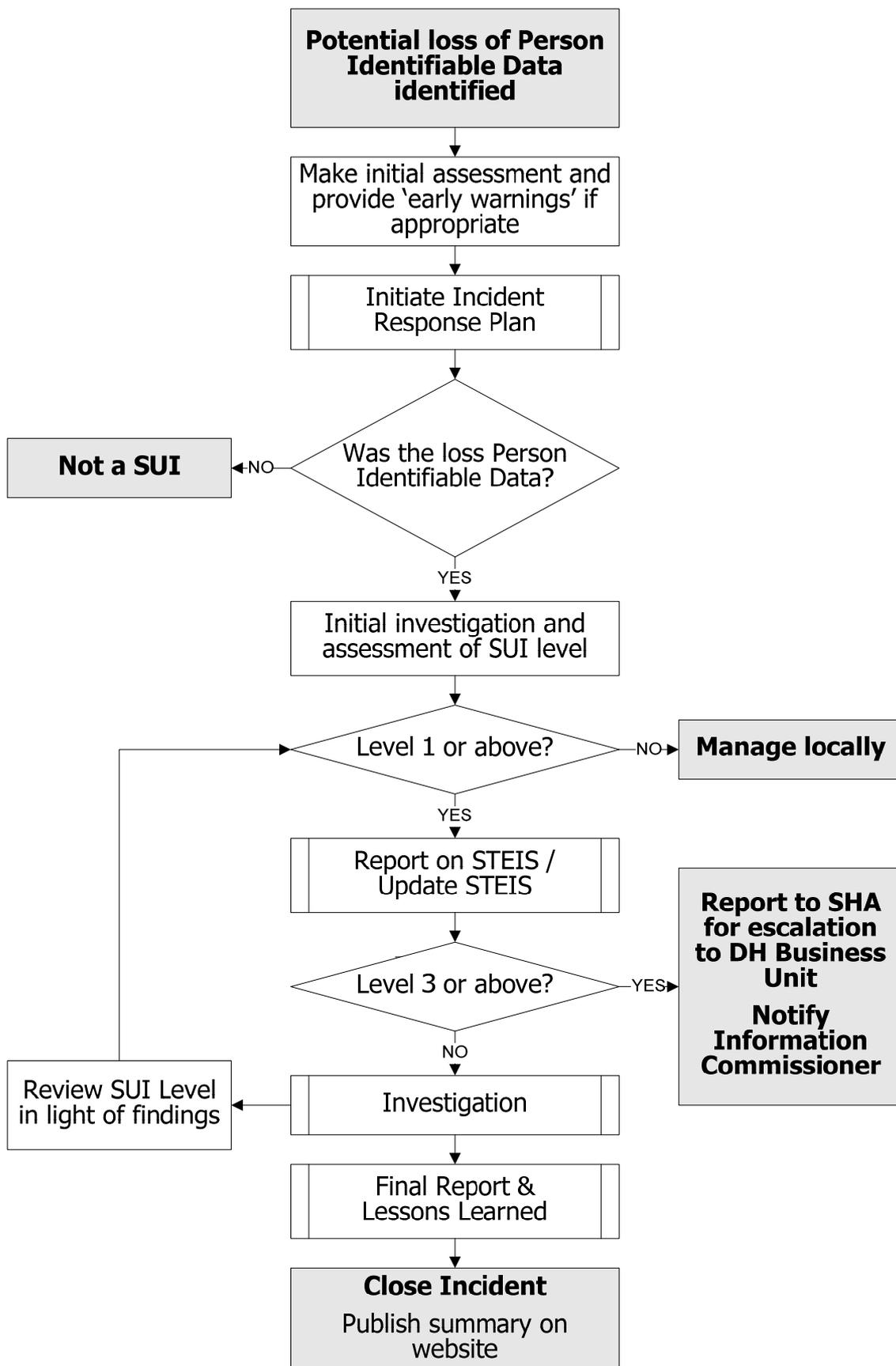
2.4 All staff should know to whom they should report and escalate suspected or actual IG SUIs

2.5 NHS Leicestershire and Rutland are responsible for performance managing the investigations of SUIs in their main providers, which includes . Where the SUI takes place within NHS Leicestershire and Rutland, the SHA performance lead will manage the investigation.

2.6 The main parts of the process are:

- Initial reporting;
- Managing the incident;
- Investigating;
- Final Reporting

## Appendix 2 IEA: Flowchart 1 - IG SUI Management Process



### **3: Initial Reporting of Serious Untoward Incidents**

3.1 Suspected incidents: Initial information is often sparse and it may be uncertain whether an SUI has actually taken place. Suspected incidents and 'near misses' should be reported as SUIs as lessons can often be learnt from them and they can be closed when the full facts are known.

3.2 Early notification: Where it is suspected that an IG SUI has taken place, it is good practice to informally notify key staff (IG Manager, CHS Caldicott Guardian, other Associate Directors) as an 'early warning' to ensure that they are in a position to respond to enquiries from third parties and to avoid 'surprises'. Other notification steps are as per the NHS Leicestershire and Rutland (LCR) Policy for Managing, Reporting and Investigating Incidents and Serious Untoward Incidents - NQ006.

3.3 Reporting incidents: STEIS will be used for reporting all SUIs and an initial report should be made as soon as possible and no later than 24 hours of the incident or first becoming aware of the incident. Further information will become available as the investigation takes place and STEIS will be regularly updated as appropriate.

3.4 The SHA monitors STEIS and will therefore be aware of all IG SUIs.

3.5 The Patient Safety Co-ordinator will complete the information required for STEIS.

The following information will need to be included in the report:

- Date, time and location of the incident;
- Type of Incident: "Confidential Information Leak" (NB this may be subject to change as improvements to STEIS data incident reporting are being pursued);
- Contact details for local incident manager;
- Confirmation that appropriate and documented incident management procedures are being followed and that disciplinary action will be invoked where appropriate following the investigation;
- Description of what happened
  - Theft, accidental loss, inappropriate disclosure, procedural failure etc;
  - The number of patients/staff (individual data subjects) involved
  - The number of records involved
  - The media (paper, electronic) of the records
  - If electronic media, whether encrypted or not
  - The type of record or data involved and sensitivity
  - Whether the SUI is in the public domain
  - Whether the media (press etc) are involved or there is a potential for media interest
  - Whether the SUI could damage the reputation of an individual, a work team, or the organisation

- Whether there are legal implications
- Initial assessment of the level of SUI (see table at Annex A and 4;2 'Assessing the Incident level')
- Whether the following have been notified (formally or informally):
  - Data Subjects
  - Caldicott Guardian
  - Information Governance Manager
  - Senior Information Risk Manager
  - Information Commissioner for SUI level 3 and above
  - Police, Counter Fraud Branch etc
  - SHA
- Immediate action taken, including whether any staff have been suspended pending the results of the investigation;
- Whether the incident is externally reportable: for IG SUIs level 3 and above, the Information Commissioner should be informed once the initial facts are known; The SHA are responsible for escalating to the Department of Health NHS Business Unit and Media Handling teams;

#### **4: Managing the Incident**

- Identify who is responsible for managing the incident and coordinating separate but related incidents;
- Identify who is responsible for the investigation and performance management;
- Identify expected outcomes;
- Identify stakeholders;
- Develop and implement an appropriate communications plan;
- Preserve evidence;
- Investigate the incident (below);
- Use formal documentation - this must incorporate version control;
- Maintain an audit trail of events and evidence supporting decisions taken during the incident;
- Where appropriate inform the Information Commissioner (SUI level 3 and above);
- Escalate as appropriate;
- Inform data subjects (as appropriate);
- Identify and manage consequent risks of the incident (these may be IG related or involve risks to patient safety or continuity of treatment etc);
- Institute recovery actions;

- Invoke disciplinary procedures as appropriate and document the reasons where it is decided not to take action where such action may be viewed as relevant by external parties;
- Institute appropriate counter-measures to prevent recurrence;
- Identify risks and issues that, whilst not 'in scope' of the incident, are appropriate for separate follow-up action;

## **5: Investigating the Incident**

5.1 Note that national guidance / requirements are expected on forensic preservation of evidence relating to IG incidents

- Appoint an investigating officer;
- Engage appropriate specialist help (IG, IT, Security, Records Management);
- Where there are cross organisational boundaries, ensure that investigations are coordinated;
- Investigate - carry out Root Cause Analysis as per the NPSA's template using the Incident Decision Tree (see NHS Leicestershire and Rutland (LCR) Policy for Managing, Reporting and Investigating Incidents and Serious Untoward Incidents - NQ006;
- Staff should be aware of the rules of evidence, interviews, preservation of evidence, suspending staff, etc;
- Document investigation and findings;
- Ensure that content is reviewed with sources for accuracy;
- Identify lessons learnt;

### **Assessing the Incident Level**

5.2 Although the primary factors for assessing the severity level are the numbers of individual data subjects affected, the potential for media interest, and the potential for reputation damage; other factors indicate that a higher rating is warranted, for example the potential for litigation or significant distress or damage to the data subject(s). As more information becomes available, the SUI level should be re-assessed.

5.3 Where the numbers of individuals that are potentially impacted by an incident are unknown, a sensible view of the likely worst case should inform the assessment of the SUI level. When more accurate information is determined the level should be revised as quickly as possible and all key bodies notified.

5.4 Where the level of likely media interest is initially assessed as minor but this assessment changes due to circumstances (e.g. a relevant FOI request or specific journalistic interest) the SUI level should be revised as quickly as possible and all key people/ bodies notified.

Note: Informing data subjects is likely to put an incident in the public/media domain

## **6: Final Reporting and Closure of the Incident**

- Set timescales for completing investigation and finalising report;
- Produce report as per NPSA template;
- Report reviewed by appropriate persons;
- Sign off of report via Records and Information Governance Group (RIGG);
- Send to the relevant persons and/or committee (this shall be advised by RIGG);
- Identify who is responsible for disseminating lessons learnt;
- Closure of SUI - only when all aspects, including any disciplinary action taken against staff, are settled;
- Patient Safety Coordinator update STEIS;
- Information Governance Manager will log SUI details for incorporation in end of year reports;
- Publish on website;

## **IEA Appendix D: Annex A - Department of Health Guidance 20th Feb 2008 Gateway 9571**

### **1: Purpose of This Document**

It is essential that all serious untoward incidents that occur in Trusts are reported appropriately and handled effectively. This document covers the reporting arrangements and describes the actions that need to be taken in terms of communication and follow up when a serious untoward incident occurs. Trusts should ensure that any existing policies for dealing with Serious Untoward Incidents are updated to reflect these arrangements.

### **2: Definition of a Serious Untoward Incident in Relation to Personal Identifiable Data**

There is no simple definition of a serious incident. What may at first appear to be of minor importance, on further investigation, be found to be serious and vice versa. As a guide...

...any incident involving the actual or potential loss of personal information that could lead to identity fraud or have other significant impact on individuals should be considered as serious.

The above definition applies irrespective of the media involved and includes both loss of electronic media and paper records.

### **3: Immediate Response to Serious Untoward Incident**

Trusts should have robust policies in place to ensure that appropriate senior staff are notified immediately of all incidents involving data loss or breaches of confidentiality.

Where incidents occur out of hours, Trusts should have arrangements in place to ensure on-call Directors or other nominated individuals are informed of the incident and take action to inform the appropriate contacts.

### **4: Assessing the Severity of the Incident**

The immediate response to the incident and the escalation process for reporting and investigating this will vary according to the severity of the incident.

Risk assessment methods commonly categorise incidents according to the likely consequences, with the most serious being categorised as a 5, e.g. an incident should be categorised at the highest level that applies when considering the characteristics and risks of the incident.

0	1	2	3	4	
No significant reflection on any individual or body. Media interest very unlikely	Damage to an individuals reputation. Possible media interest, e.g. celebrity involved	Damage to a team's reputation. Some local media interest that may not go public	Damage to a services reputation / Low key local media coverage.	Damage to an organisation's reputation / Low media coverage	Damage to NHS reputation / National media coverage
Minor breach of confidentiality. Only a single individual affected	Potentially serious breach. Less than 5 people affected or risk assessed as low, e.g. files were encrypted	Serious potential breach & risk assessed high e.g. unencrypted clinical records lost. Up to 20 people affected	Serious breach of confidentiality e.g. up to 100 people affected	Serious breach with either particular sensitivity e.g. sexual health, or up to 1000 people affected	Serious breach with potential for ID theft or over 1000 people affected

### 5: Reporting to the SHA

The Trust should report the SUI, i.e. all incidents as 1-5, to the SHA through the usual SUI process. The following information should be provided in each case:

- A short description of what happened, including the actions taken and whether the incident has been resolved;
- Details of how the information was held: paper, memory stick, disk, laptop etc;
- Details of any safeguards such as encryption that would mitigate risk;
- Details of the number of individuals whose information is at risk;
- Details of the type of information: demographic, clinical, bank details etc;
- Whether
  - the individuals concerned have been informed,
  - a decision has been taken not to inform or,
  - this has not yet been decided
- Whether
  - the Information Commissioner has been informed,
  - a decision has been taken not to inform or,
  - this has not been decided
- Whether the SUI is in the public domain and the extent of any media interest and/or publication

Reporting to the SHA should be undertaken as soon as practically possible (and no later than within 24 hours of the incident, during the working week).

If there is any doubt as to whether or not an incident meets the SUI reporting criteria, the Trusts' Risks Manager or the SHA should be contacted by telephone for advice. Early information, no matter how brief, is better than full information that is too late.

The Trust should keep the SHA informed of any significant developments in internal/external investigations, as appropriate. The SHA should continue to keep a watching brief on developments including following up further details/outcomes of the incident.

The Trust's communications team should contact the SHA's Communications team immediately if there is the possibility of adverse media coverage in order to agree a media handling strategy. Where necessary, the SHA Communications team will brief the Department of Health Media Centre.

## **6: Reporting to the Department of Health**

The SHA will be responsible for notifying the DH of any category 3-5 incident reported by forwarding details to the appropriate dedicated mailbox established within the DH. Incidents should be notified to DH Communications only if only the lighter shaded risk areas in the top two rows in the table apply, and to both DH Communications and the NHS Business Unit if the significant risks in the darker shaded area at the bottom right of the table apply. This latter, most serious category, is the one that should be referenced as a nationally reported SUI. Those reported to DH Communications alone should be referred to as a communications alert derived from a local SUI. Once an incident has been reported to DH any subsequent details that emerge relating to the investigation and resolution of the incident should be supplied.

## **7: Reporting to the Information Commissioner or Other Bodies**

The Information Commissioner should be informed of all Category 3-5 incidents. The decision to inform any other bodies will also be taken, dependent upon the circumstances of the incident, e.g. where this involves risks to the personal safety of patients, the National Patient Safety Agency (NPSA) may also need to be informed.

## **8: Informing Patients**

Consideration should always be given to informing patients when person identifiable information about them has been lost or inappropriately placed in the public domain. Where there is any risk of identity theft it is strongly recommended that this is done.

**IEA Appendix D: Annex B - Information Required by  
Department of Health for Category 3+ SUIs:**

1. Unique SUI reference:
2. Initial assessment of level of SUI (1-5):
3. SHA Responsible:
4. Local organisation(s) involved:
5. Date, time and location of the incident:
6. Confirmation that DH guidelines for incident management are being followed and that disciplinary action will be invoked if appropriate.
7. Description of what happened: Theft, accidental loss, inappropriate disclosure, procedural failure etc.
8. The number of patients/ staff (individual data subjects) or data involved; and/or the number of records.
9. The type of record or data involved and sensitivity
10. The media (paper, electronic, tape) of the records
11. If electronic media, whether encrypted or not
12. Whether the SUI is in the public domain and whether the media (press etc) are involved or there is a potential media interest
13. Whether the reputation of an individual, team, an organisation or the NHS as a whole is at risk and whether there are legal implications
14. Whether the Information Commissioner has been or will be notified and if not, why not.
15. Whether the data subjects have been or will be notified and if not, why not.
16. Whether the police have been involved.
17. Immediate action taken, including whether any staff have been Suspended pending the results of the investigation.
18. Whether there are any consequent risks of the incident (e.g. patient safety, continuity of care etc.) and how these will be managed.
19. What steps have been or will be taken to recover records/data (if applicable)
20. What lessons have been learned from the incident and how will recurrence be prevented
21. Whether, and to what degree, any member of staff has been disciplined - if not appropriate why?
22. Closure of SUI - only when all aspects, including any disciplinary action taken against staff, are settled.
23. Any Further Notes

## **IEA Appendix D: Annex C - Publishing Details of SUIs in Annual Reports and Statements of Internal Control**

### **Principles**

The reporting of personal data related incidents in the Annual Report should observe the principles listed below. The principles support consistency in reporting standards across the Organisations while allowing for existing commitments in individual cases.

1. You must ensure that information provided on personal data related incidents is complete, reliable and accurate.
2. You should review all public statements you have made, particularly in response to requests under the Freedom of Information Act 2000, to ensure that coverage of personal data related incidents in your reports is consistent with any assurances.
3. You should consider whether the exemptions in the Freedom of Information Act 2000 or any other UK information legislation apply to any details of a reported incident or whether the incident is unsuitable for inclusion in the report for any other reason (for example, the incident is *sub judice* and therefore cannot be reported publicly pending the outcome of legal proceedings).
4. Please note that the loss or theft of removable media (including laptops, removable discs, CDs, USB memory sticks, PDAs and media card formats) upon which data has been encrypted to the approved standard, is not a Serious Untoward Incident unless you have reason to believe that the protections have been broken or were improperly applied.

### **Content to be Included in Annual Reports**

Incidents classified at a severity rating of 3-5 (see [IEA Appendix D: Annex A - Department of Health Guidance](#)) are those that should be captured as Serious Untoward Incidents and should be reported to SHAs and to the Information Commissioner. These incidents need to be detailed individually in the annual report in the format outlined below in [Table 1](#). All reported incidents relating to the period in question should be reported, not just those that have been closed.

## **IEA Table 1: Summary of SUIs Involving Personal Data as Reported to Information Commissioner's Office**

**Year (e.g.: 2009/10):**

Date of Notification	Nature of incident	Nature of data involved	Number of people potentially affected
<b>For example</b>			
<i>Jan</i>	<i>Loss of inadequately protected electronic storage device</i>	<i>Name; Address; NHS No</i>	<i>1,500 Individuals notified by post</i>

Further Action on Information Risk

*The (organisation) will continue to monitor and assess its information risks, in light of the events noted above, in order to identify and address any weaknesses and ensure continuous improvements of its systems.*

*The member of staff responsible for this incident has been dismissed*

### **Notes to Producing Table 1**

#### **Nature of the incident:**

Select one of:

- Loss of (insert from category list below) from secured NHS premises
- Theft of (insert from category list below) from secured NHS premises
- Loss of (insert from category list below) from outside secured NHS premises (including, for example, post, courier, loss by a contractor or third party supplier)
- Theft of (insert from category list below) from outside secured NHS premises (including, for example, theft from employee home or car)
- Insecure disposal of (insert from category list below) (including, for example, sale of computers with un-wiped hard drives, disposal of un-shredded paper documents)
- Unauthorised disclosure (including, for example, criminal, negligent or inappropriate use of information system or information asset by a staff member, contractor or third party supplier, resulting in disclosure; disclosure as a result of software or systems failure)
- Other

### **Category List**

- Inadequately protected PC(s) and remote device(s) (including, for example, PDAs, mobile telephones, 'Blackberry's)
- Inadequately protected electronic storage device(s) (including, for example, USB devices, discs, CD ROM, microfilm)
- Inadequately protected electronic back-up device(s) (including, for example, tapes)
- Paper document(s)

### **Nature of data involved**

A list of data elements (e.g. name, address, NHS number)

### **Number of people potentially affected**

An estimate should be provided if no precise figure can be given

### **Notification steps**

Individuals notified by post\*/email\*/telephone\* (\*delete as appropriate)

Police\*/ law enforcement agencies\* notified (\*delete as appropriate)

Media release

### **Further action on information risk**

A summary of any disciplinary action taken as a result of the incidents should also be included.

### **Incidents Classified at Lower Severity Ratings**

Incidents classified at a severity of 1-2 should be aggregated and reported in the annual report in the format below reproduced as Table 2.

Incidents rated at a severity of 0 need not be reflected in annual reports.

**IEA Table 2: Summary of Other Personal Data Related Incidents  
Year (e.g.: 2009/10):**

Category	Nature of incident	Total
I	Loss/theft of inadequately protected electronic equipment, devices or paper documents from secured NHS premises	
II	Loss/theft of inadequately protected electronic equipment, devices or paper documents from outside secured NHS premises	
III	Insecure disposal of inadequately protected electronic equipment, devices or paper documents	
IV	Unauthorised disclosure	
V	Other	

**Statement of Internal Control (SIC) Guidance**

It is important to remember that an organisation's assets include information as well as more tangible parts of the estate. Information may have limited financial value on the balance sheet but it must be managed appropriately and securely. All information used for operational purposes and financial reporting purposes needs to be encompassed and evidence maintained of effective information governance processes and procedures with risk based and proportionate safeguards.

Personal and other sensitive information clearly require particularly strong safeguards. The Accountable Officer and the board need comprehensive and reliable assurance from managers, internal audit and other assurance providers that appropriate controls are in place and that risks, including information and reporting risks, are being managed effectively.

The SIC should, in the description of the risk and control framework, explicitly include how risks to information are being managed and controlled as part of this process. This can be done for example by referencing specific work undertaken by the organisation and by reference to the organisation's use of the Information Governance Toolkit. The SIC will then be reflected formally within the Annual Report.

Any incidence of a Serious Untoward Incident (as described in [Annex A](#)) should be reported in the SIC as a significant control issue. For the avoidance of doubt these are those incidents with a severity rating of 3-5.

**Signatories to the Agreement**

*This agreement is signed on behalf of the Partner Organisations as follows:*

***Leicestershire County Council***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***Leicester City Council***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***Rutland County Council***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***Leicestershire & Rutland PCT***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***Leicester City PCT***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***NHS Leicestershire & Rutland Community Health Services***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***Leicestershire Partnership Trust***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***University Hospital Leicester***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***Leicestershire Police***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***Leicestershire Fire & Rescue Service***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***Charnwood Borough Council***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***Melton Borough Council***

<b>Name:</b>	
Title:	
Date:	
Signature:	

***North West Leicestershire District Council***

<b>Name:</b>	
Title:	
Date:	
Signature:	

## **Appendix 3: Serious Case Review Protocol**

### **1: Introduction**

1.1 The purpose of this document is:

- To ensure that local practice is in line with ADASS guidance on Safeguarding Adult Serious Case Reviews;
- To support the view that the public interest is best served by the presence of an effective serious case review process
- To facilitate a consistent approach to the process and practice in undertaking a serious case review
- To acknowledge that there is no statutory requirement for agencies to cooperate with such reviews, however, voluntary involvement does lead to good practice development

1.2 The document 'No Secrets' (March 2000) issued by The Department of Health and Home Office under section 7 of the Local Authority Social Services Act 1970, issued guidance on developing and implementing multi-agency policies and procedures to protect adults in need of safeguarding from abuse.

1.3 The document Safeguarding Adults published by the Association of Directors for Social Services (ADASS) October 2005, provides a National Framework of Standards for good practice and outcomes in adult protection work. One of the standards in this document states that, as good practice Safeguarding Adults Boards should have in place a serious case review protocol.

### **2: Relevant Standards:**

It is recommended in "Safeguarding Adults" (ADASS 2005) that:

There is a 'Safeguarding Adults' serious case review protocol. This is agreed, on a multi-agency basis and endorsed by the Coroner's Office, and details the circumstances in which a serious case review will be undertaken. For example: when an adult experiencing abuse or neglect dies, or when there has been a serious incident, or in circumstances involving the abuse or neglect of one or more adults. The links between this protocol and a domestic violence homicide review should be clear.

There is a clear process for commissioning and carrying out of a Serious Case Review by the partnership.

### **3: Purpose**

The purpose of having a serious case review is not to reinvestigate or to apportion blame, it is:

- 3.1 To establish whether there are lessons to be learnt from the circumstances of the case about the way in which local professionals and agencies work together to safeguard adults at risk of abuse
- 3.2 To review the effectiveness of procedures (Both multi-agency and those of individual organisations)
- 3.3 To inform and improve local inter-agency practice
- 3.4 To improve practice by acting on learning (developing best practice)
- 3.5 To prepare or commission an overview report which brings together and analyses the findings of the various reports from agencies in order to make recommendations for future action

It is acknowledged that all agencies will have their own internal /statutory review procedures to investigate serious incidents; e.g. an Untoward Incident . This protocol is not intended to duplicate or replace these. Agencies may also have their own mechanisms for reflective practice.

Serious Case Reviews (SCRs) are not inquiries into how an adult died or was seriously harmed, or into who is culpable. That is a matter for Coroners and criminal courts, respectively, to determine as appropriate.

Serious Case Reviews are also not a part of any disciplinary enquiry or process. Where information emerges in the course of a Serious Case Review indicating that disciplinary action should be initiated under established procedures, the relevant processes should be undertaken separately to the Serious Case Review process. Alternatively, some Serious Case Reviews may be conducted concurrently with (but separate to) disciplinary action. In some cases it may be necessary to initiate disciplinary action as a matter of urgency to safeguard and promote the welfare of others.

Where there are possible grounds for a Serious Case Review, a Domestic Violence Homicide Review (not yet implemented), Safeguarding Children Serious Case Review, Multi-Agency Public Protection Review, Mental Health Service Review or other such formal review process then a decision should be made at the outset by the decision makers involved as to which process is to lead and who is to chair with a final joint report being taken to the necessary commissioning bodies. (see [SCR Appendix A: Links with other Review Processes](#))

## **4: Criteria for Serious Case Review**

The Safeguarding Adults Board has the lead responsibility for initiating a serious case review.

A Serious Case Review should be considered when:

4.1 An adult in need of safeguarding dies (including death by suicide) and abuse or neglect is known or suspected to be a factor in their death. In such circumstances the Safeguarding Adults Board should always conduct a review into the involvement of agencies and professionals associated with the adult in need of safeguarding.

4.2 An adult in need of safeguarding has sustained a potentially life-threatening injury through abuse or neglect, serious sexual abuse, or sustained serious and permanent impairment of health or development through abuse or neglect, and the case gives rise to concerns about the way in which local professionals and services work together to safeguard adults at risk of abuse (See [Next Page](#) for commissioning guidance).

4.3 Serious abuse takes place in an institution or when multiple abusers are involved, the same principles of review apply. Such reviews are, however, likely to be more complex, on a larger scale, and may require more time. Terms of reference need to be carefully constructed to explore the issues relevant to each specific case.

4.4 A review should be considered where death or serious harm results from alleged harassment, bullying, anti social behaviour or Hate Crime.

4.5 The following questions may help in deciding whether or not a case should be the subject of a Serious Case Review. The answer 'yes' to one or more of these questions is likely to indicate that a Serious Case Review could yield useful lessons.

- Was there clear evidence of a risk of significant harm:
  - not recognised by organisations or individuals in contact with the victim or perpetrator or
  - not shared with others or
  - not acted on appropriately?
- Was the person abused or neglected in an institutional setting?
- Did the adult commit suicide?
- Did the adult die while absent from or having run away from home or other care setting?
- Does one or more agency or professional consider that its concerns were not taken sufficiently seriously, or acted on appropriately, by another?
- Does the case indicate that there may be failings in one or more aspects of the local operation of formal safeguarding adult procedures, which go beyond the handling of this case?

- Was the adult the subject of an adult protection plan, or had she or he previously been the subject of a plan including child protection plan?
- Does the case appear to have implications for a range of agencies and/or professionals?
- Does the case suggest that the Safeguarding Adults Board may need to change its local protocols or procedures, or that protocols and procedures are not being adequately promulgated, understood or acted on?
- Are there any indications that the circumstances of the case may have national implications for systems, processes or in the public interest?

## **5: Process for Commissioning and Carrying Out of a Serious Case Review**

5.1 The Safeguarding Adults Board will be the only body which commissions any serious case reviews. The Board will publicise the terms of reference for each serious case review via its members and the members of the Safeguarding Adults Working Group.

5.2 Requests for a serious case review may come from any of the safeguarding adult's partner agencies, the Coroner, MPs, Elected Members or other interested parties.

5.3 Where there are possible grounds for other formal review process e.g. Local Safeguarding Children's Board (LSCB) then a decision should be made at the outset as to which process is to lead and who is to chair with a final joint report being taken to the necessary commissioning bodies

## **6: Initiating a Serious Case Review**

Any request for a Serious Case Review will be passed to the Chair of the Safeguarding Adults Board to initiate a discussion / decision by the Serious Case Review Sub Group, which will be made up from members of the Safeguarding Adults Board. The discussion should take place at the earliest opportunity. If it is agreed that it is appropriate to hold a Serious Case Review, The Serious case Review Sub Group will identify the agencies who are/were involved in the case, and request an Individual Management Report from these agencies via the agency's representative on the Safeguarding Adults Board. The person identified by each agency to write the report should be someone who has not had direct involvement with/line management of the case, and with capacity to attend Serious Case Review Panel meetings. When the appropriate person to write the report has been identified, their name should be passed to the Serious Case Review Sub Group. The Individual Management Report writers will generally form part of the Serious Case Review Panel (see next section for further guidance). It is also assumed that unless agreed otherwise, the Chair of the Safeguarding Adults Board and the Multi-Agency Co-ordinator will be members of the Serious Case Review Sub Group.

### 6.1 The Responsibilities of the Serious Case Review Sub Group

- To agree on and appoint a Panel Chair and independent report writer (see the next section for further guidance), both of who will be part of the Serious Case Review Panel
- To agree the appointment of the other members of the Serious Case Review Panel, following identification of the representatives who will be writing the Independent Management Report for each of the involved agencies
- To ensure the Serious Case Review Panel Chair receives adequate support;
- To ensure necessary budgetary requirements for undertaking a Serious Case Review are met;
- To ensure support from all partner agencies in sharing appropriate information;
- To agree arrangements for debriefing / emotional support for panel chair and members as required;
- To agree Terms of Reference and timescales for the Serious Case Review
- Inform the Care Quality Commission (CQC) of any Serious Case Review taking place
- In the event of an application being turned down, to record the reasons in writing and share with the applicant;

## **7: Membership of the Serious Case Review Panel**

7.1: The Chair of the Serious Case Review Panel should be a person experienced in Safeguarding work, and who is not an employee of any of the agencies involved in the case.

7.2: The report writer should be an independent person with expertise in this area commissioned by the Serious Case Review Sub Group.

7.3: Membership of the Serious Case Review Panel will comprise of appropriate representatives of the agencies, who have capacity to attend panel meetings. Members of agencies who have responsibilities for completing individual management reviews should generally be members of the Panel but the Panel should not consist solely of such people.

## **8: Conduct of Serious Case Review**

8.1 The Initial Meeting in a Serious Case Review will agree:

- the "evidence" required from each participant;
- the support and other resources needed (any perceived deficits to be referred to the Serious Case Review Sub Group);
- the process for sharing confidential information;
- dates, times and venues of meetings;
- whether individual workers involved in the case may need to be interviewed as part of the process and alert the relevant agencies;

- the nature and extent of legal advice required, in particular:
  - Data Protection
  - Freedom of Information and Human Rights Act
  - And where this advice is to be sought from
- whether the review process needs to take account of a coroner's inquiry, and (if relevant) any criminal investigations related to the case? How will it be best to liaise with the coroner and/or the Crown Prosecution Service and to ensure that relevant information can be shared without incurring significant delay in the review process?
- how any family, public and media interest be managed before, during and after the review? In particular, how should family members be informed of the process and findings of the Serious Case Review if appropriate?

## 9: Timing

9.1 Reviews vary widely in their breadth and complexity but, in all cases, where lessons are able to be drawn out requests for a Serious Case Review should be acted upon as quickly as possible and within one month of a case coming to the attention of the Safeguarding Adults Chair.

9.2 Reviews should be completed within a further six months, from the date of the decision to proceed, unless an alternative timescale is formally agreed at the outset. Sometimes the complexity of a case does not become apparent until the review is in progress. As soon as it emerges that a Serious Case Review cannot be completed within this time scale (perhaps because of judicial proceedings), there should be a discussion between the Serious Case Review Panel and Sub Group to renegotiate the timescale for completion.

9.3 Where an extension has been agreed, an update on progress and a revised project plan should be produced quickly for the relevant agencies. This update should include recommendations for action where these are not dependent on the Serious Case Review being concluded until after other proceedings have ended. The update should also include actions taken to date and an explanation for the extension to timescales, including the revised completion date.

9.4 In some cases, criminal proceedings may follow the death or serious injury. The Chair of the Serious Case Review Panel should discuss with the relevant criminal justice agencies, at an early stage, how the review process should take account of such proceedings. For example, how does this affect timing, the way in which the review is conducted (including interviews of relevant personnel), its potential impact on criminal investigations, and who should contribute at what stage? Serious Case Reviews should not be delayed as a matter of course because of criminal proceedings, or an outstanding decision on whether or not to prosecute. These decisions will need to be made on a case by case basis. Much useful work to understand and learn from the features of the case can often proceed without risk of contamination of witnesses in criminal proceedings. In some cases, it may not be possible to finalise the Individual Management Reports and the overview report or to publish an executive summary until after the coroner's or criminal proceedings have been concluded,

but this should not prevent early lessons learnt from being implemented. The final Individual Management Reports and executive summaries should take full account of salient, new information which becomes available during the course of these proceedings and revise the facts, conclusions and recommendations accordingly.

9.5 The Serious Case Review Sub Group will be responsible for establishing individual terms of reference and setting time scales for the review in agreement with the Safeguarding Adults Board. They will also be responsible for ensuring administrative arrangements are completed and that the review process is conducted according to the terms of reference.

9.6 The Chair of the Panel will be responsible for identifying whether there are any other review processes ongoing or planned concerning the case and notifying any relevant individuals/bodies of plans to initiate a Safeguarding Adults Serious Case Review. ([SCR Appendix B: Letter Requesting a Serious Case Review](#))

## **10: Receipt of Evidence - Individual Management Reports**

Those conducting Individual Management Reviews of individual services should not have been directly concerned with the adult/s concerned or have been the immediate line manager of the practitioner(s) involved.

10.1 Each agency involved will be asked to:

- Present and examine the chronology of events, highlighting any discrepancies
- Present a comprehensive report of the actions by their agencies
- Ensure any other management reports and other relevant information are made available (see [SCR Appendix C: Leicester, Leicestershire & Rutland Serious Case Review Chronology](#))

10.2 Management reports to be shared in full with panel members prior to the formal meeting

10.3 This stage of the process is a formal "information sharing" session where Serious Case Review Panel members will be encouraged to query and comment on the reports presented.

## **11: Serious Case Review - Discussion of Evidence / "Adjudication"**

This stage is where the assessment of alternative courses of action takes place.

The review panel will:

- Cross-reference all agency management reports and reports commissioned from any other source
- Examine and identify relevant action points
- Form a view on practice and procedural issues
- Agree the key points to be included in the report and the proposals for action

11.1 Issues Arising - If at any stage whilst undertaking the procedure contained in 8.3, information is received which requires notification to a statutory body, e.g. GSCC, DfES, regarding significant omission by individual/s or organisations follow up actions should be undertaken by the Serious Case Review Panel without delay.

The Chair of the review panel should report back to the Serious Case Review Sub Group and a decision made as to whether the Serious Case Review process should be suspended pending the outcome of such notification.

Should any issues requiring urgent action be identified the Chair of the review panel will raise these issues with the Serious Case Review Sub Group at the earliest opportunity who will then report to the Panel on the outcomes.

11.2 Report Stage - The Serious Case Review panel will complete the review of Individual Management Reports and those commissioned from any other source which will inform the production of an Overview Report which will bring together information, analyse it and make recommendations. The overview report writing should be commissioned from a person who is independent of all the local agencies/professionals involved.

The report should specify those recommendations that are single agencies and those that are multi-agency.

It may be necessary to produce a number of draft reports to test the panel's analysis and provide a forum for agencies to reflect jointly on their policies and practice in relation to the case concerned.

The Chair will ensure that the Report and Executive Summary are written and delivered within agreed timescales.

11.3 Acting on the recommendations of the Serious Case Review - On completion, the Overview Report will be presented to the Safeguarding Adults Board, which will agree responsibility for the following actions (this may be delegated to the Serious Case Review Sub Group):

- To ensure contributing agencies are satisfied that their information is fully and fairly represented in the Overview Report
- To ensure that the Overview Report contains an Executive Summary that can be made public
- To translate recommendations from the overview into an action plan, which should be endorsed at senior level by each agency
- To ensure that all planned action are put into effect and request updates from agencies
- For the action plan to remain on the Safeguarding Adults Board Agenda until such time that all recommendations have been implemented

The action plan will direct:

- Responsibilities for various actions including inter agency coordination and liaison
- Time-scales for completion of actions
- The intended outcome of the various actions and recommendations
- Mechanisms for monitoring and reviewing intended improvements in practice and/or systems
- Action plan to be reviewed 6 months following publication of the report
- To whom the report or parts of the report should be made available, and indicate the means by which this will be carried out
- The processes for dissemination of the report and/or key findings to interested parties, for the receipt of feedback and for any debriefing to staff, family members and, where appropriate, the media;
- Dissemination of the report and media strategy needs to consider in the context of the Coroners Office process;

## **12: Annual Report**

All Serious Case Reviews conducted within the year should be referenced within the annual report along with relevant service improvements.

## **13: Learning Lessons Nationally**

Taken together, Serious Case Reviews should be an important source of information to inform national policy and practice.

## **14: Role of Safeguarding Adults Coordinator**

The Safeguarding Adults Coordinator will:

- Notify the Chair of the Safeguarding Adults Board at the earliest opportunity of any requests for a Serious Case Review;
- Will be a member of the Serious Case Review Sub Group;
- Be a point of contact for individuals / agencies requesting a serious case review;
- Be a point of contact for individuals / agencies involved in other types of reviews who need to link to the Safeguarding Adults Partnership;
- Be part of the Serious Case Review panel in an advisory capacity;
- Support the panel chair and play a major role in the review as directed by the chair e.g; contacting family members, liaising with the coroner's office, chasing agencies on agreed actions etc; and assembling all the case review documentation;
- Ensure that lessons learnt are disseminated through the Safeguarding Adults partnership to practitioners / managers / staff as appropriate;
- Ensure reference is made in the Annual Report to any Serious Case Reviews undertaken;

## **15: Information Sharing**

- Arrangements to obtain or secure records through statutory agencies should be utilised whenever appropriate, e.g; Police, CQC (please be aware that although CQC are able to share information they have obtained for their own purposes, they are unable to gather information on behalf of other agencies); CQC's powers to seize evidence are found in the Care Standards Act 2000 (from October 2010, retrospectively named the Health & Social Care Act 2008); This power to seize evidence can only be exercised when CQC has reasonable grounds to believe it may show a failure to comply with a condition in force or a failure to comply with any requirement imposed under Part II of the Act; CQC has no legal powers to seize evidence on behalf of other agencies;
- The right under the Freedom of Information Act and the Environmental Information Regulations to request information held by public authorities, known as the 'right to know', came into force in January 2005
- There are 'absolute' and 'qualified' exemptions under the Act; Where information falls under 'absolute exemption', the harm to the public interest that would result from its disclosure is already established
- If a public authority believes that the information is covered by a 'qualified exemption' or 'exception' it must apply the 'public interest test'

- The public interest test favours disclosure where a qualified exemption or an exception applies; In such cases, the information may be withheld only if the public authority considers that the public interest in withholding the information is greater than the public interest in disclosing it:
  - The Data Protection Act 1998
  - Children Act 1989
  - Children Act 2004
  - The Mental Capacity Act 2005
- There may be need for the completion and implementation of media and communication strategies;
- Some agencies within the Multi-Agency Safeguarding arrangements have 'secure' email links between them whilst others do not; There need to be a clear understanding of this, and agreements about how information will be shared in a secure way;

## **SCR Appendix A: Links with Other Review Processes & Points of Contact**

Members of the Safeguarding Adults Board will advise if there is to be any internal review process within their individual organisation.

### **MAPPA**

Bob Petrie, MAPPA Co-ordinator,  
Leicestershire Constabulary Head Quarters, Enderby.  
Tel: 0116 222 2222 ex 5293  
Email: [bob.petrie@leicestershire.probation.gsi.gov.uk](mailto:bob.petrie@leicestershire.probation.gsi.gov.uk)

### **Safeguarding Children Serious Case Review**

Bob Parker, Service Manager, Children and Young People Services. County Hall  
Tel: 0116 2323232  
Email: [bob.parker@leics.gov.uk](mailto:bob.parker@leics.gov.uk)

### **Mental Health Service Review**

Rachel Seagrave, Service Manager, County Wide Services, OSL House  
Leicester  
Email: [rachel.seagrave@leicspart.nhs.uk](mailto:rachel.seagrave@leicspart.nhs.uk)

### **MARAC**

Detective Inspector Pete Williams  
Domestic Abuse and Safeguarding Adults Coordinator  
Leicestershire Constabulary  
Tel: 0116 2485109  
Email: [peter.williams@leicestershire.pnn.police.uk](mailto:peter.williams@leicestershire.pnn.police.uk)

## **SCR Appendix B: Letter Requesting a Serious Case Review**

Date:

F.A.O The Chair of The Safeguarding Adults Board  
c/o The Safeguarding Adults Co-ordinator  
Leicester, Leicestershire & Rutland

Room S6  
1 Grey Friars  
Leicester  
LE1 5PH

Dear

I am writing to request that you consider the need for a Serious Case Review under Leicestershire, Leicester and Rutland's Safeguarding Adult Serious Case Review Protocol. I have given brief details of the case on the attached form.

I look forward to hearing from you,

Yours sincerely

**Request for a Safeguarding Adult Serious Case Review under  
Leicestershire, Leicester and Rutland's Safeguarding Adults  
Serious Case Review Protocol**

Person requesting Serious Case Review:

Job Title:

Organisation:

Workplace:

Address:

Contact No:

E mail:

Other named contact:

Job Title:

Contact No:

Brief details of incident. Please include how you feel incident meets the criteria for a Serious Case Review (see over page)

Date:	Details:

Continue on separate sheet if necessary

Agencies known to be involved in case:

Any other information you feel is relevant:

Signed:

Print Name:

Date:

For all requests within Leicestershire, Leicester and Rutland, the form should be sent with covering letter to:

The Chair of The Safeguarding Adults Board, C/O The Adult Protection  
Co-ordinator,  
Safeguarding Adults Co-ordinator, Leicester, Leicestershire & Rutland,  
Room S6,  
1 Grey Friars,  
Leicester,  
LE1 5PH

You may be contacted for further information if required.

Your request will be considered by the Board as soon as possible.

You will be notified in writing of the decision made.

If you have any queries about the process please contact the Safeguarding Adults Co-ordinator on 0116 2565266.

#### **Criteria for Serious Case Review**

A serious case review should be considered when:

- An adult in need of safeguarding dies (including death by suicide) and abuse or neglect is known or suspected to be a factor in their death; In such circumstances the Safeguarding Adults Board should always conduct a review into the involvement of agencies and professionals associated with the adult in need of safeguarding including alleged harassment and bullying within the community
- An adult in need of safeguarding has sustained a potentially life-threatening injury through abuse or neglect, serious sexual abuse, or sustained serious and permanent impairment of health or development through abuse or neglect, and the case gives rise to concerns about the way in which local professionals and services work together to safeguard adults (See [Section 5](#) for commissioning guidance);
- Serious abuse takes place in an institution or when multiple abusers are involved, the same principles of review apply; Such reviews are, however, likely to be more complex, on a larger scale, and may require more time; Terms of reference need to be carefully constructed to explore the issues relevant to each specific case;
- A review should be considered where death or serious harm results from alleged harassment and bullying within the community;



## Individual Management Report

Report of:  
(Name of Agency & Location)

On  
( Initials)

Date of Birth:

Date of Death:

Ethnicity:

Report by:  
(Individual Management  
Reviewer Name)

(Job Title)

Date:

Version Number:  
(or FINAL)

### **STRICTLY CONFIDENTIAL**

#### **Further Action**

- Please return this report to:-  
Helen Pearson Safeguarding Adults Co-ordinator  
[helen.pearson@leics.gov.uk](mailto:helen.pearson@leics.gov.uk) (check security) or  
Room S6, 1 Grey Friars Leicester LE1 5PH

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Contextual Information	Page
Methodology	Page
Summary of Facts	Page
Analysis of Involvement	Page
What do we learn from this case?	Page
Recommendations	Page
Signatures required	Page

**Leicester, Leicestershire and Rutland Safeguarding Adults Board**  
**REPORT of the INDIVIDUAL MANAGEMENT REVIEW (IMR):**

Name of agency:

SERIOUS CASE REVIEW concerning:

Name:

Date of Birth:

Ethnicity:

Date IMR requested:

Date IMR report submitted:

Date IMR report revised: *if required give dates of any revisions*

Individual management reviewer: *name*

Designation: *post title*

**Number all paragraphs within each section**

**1: Terms of Reference**

To be added when agreed by Serious Case Review Subgroup

## **2: Contextual Information**

The reviewer should consider whether the context in which the case was conducted impacted on decisions made and, if so, how.

Such information need only be included insofar as it is relevant to the actions of the organisations concerned.

In addition to the outcome of interviews with staff and examination of agency files, the Serious Case Review Panel will examine the contextual information in Individual Management Reviews to fully understand the circumstances of the case in order to make the appropriate recommendations for change.

The author should be able to evidence any assertions made, for example, through policies, operational practice at the time, professional/management judgment or research.

Most weight should be given to primary information, although secondary and anecdotal information can be considered, but clearly identified as such and given less weight.

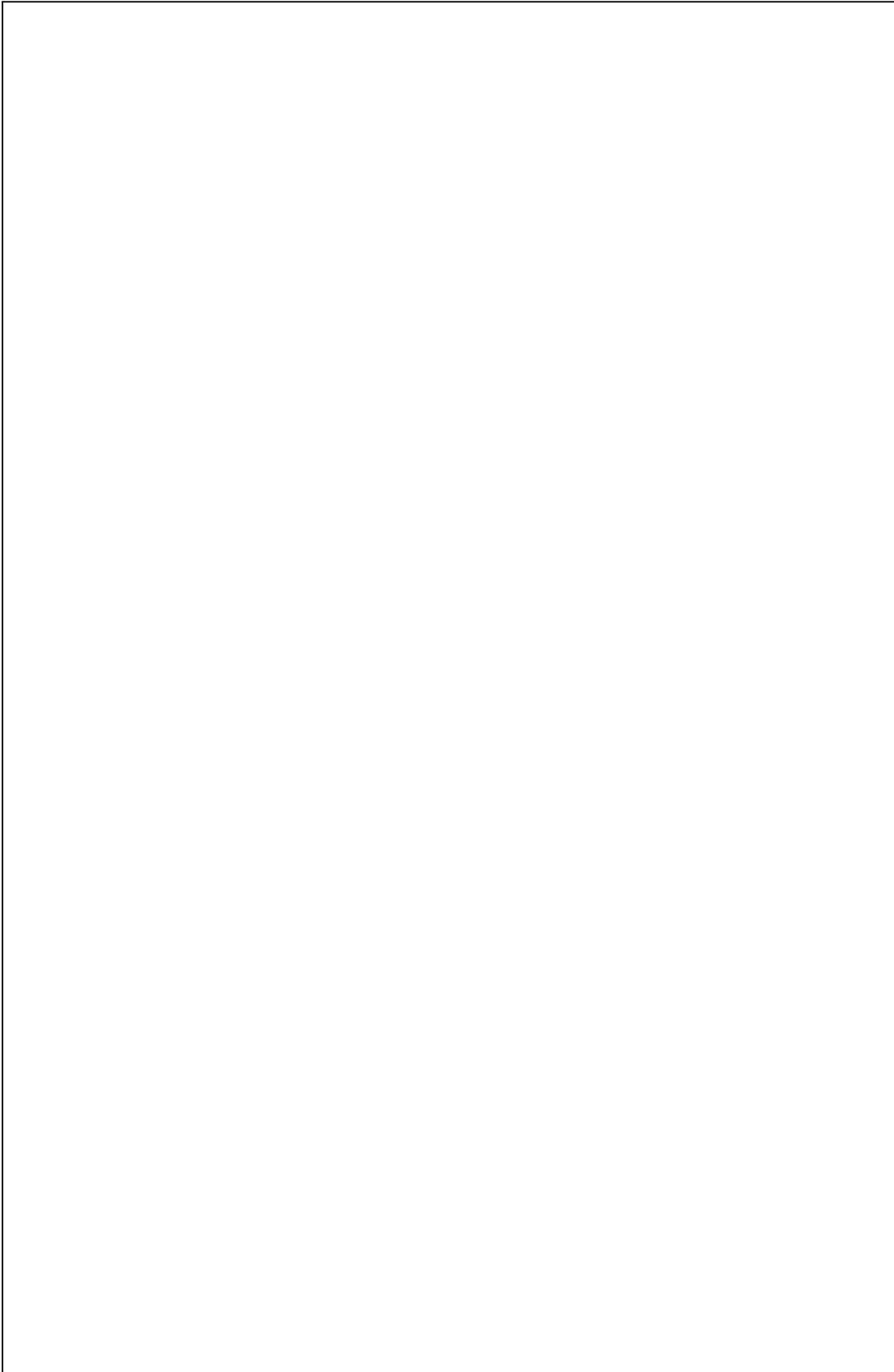
*The following areas should be considered in the analysis:*

*Volume of work*

*Staff turnover, sickness and leave cover*

- Administrative support
- Organisational change
- Unallocated cases
- The social and community context
- Management and supervision
- Safeguarding audit practices
- Risk management and support policies
- Services and support available to family
- Budgetary constraints and allocation of resources
- Training
- Legal Advice

This is not an exhaustive list and there may be other contextual factors that reviewers would wish to include.



### **3: Methodology**

It is expected that reviewers will interview key members of staff, in order to gain their perspective of the circumstances in which actions were taken and decisions made.

A bullet point list to identify:

- Documents seen;
- Details of staff involved by name and job title; IMR reports and the overview report will be completely anonymised before submission;
- Interviews and dates;
- Information not available/not considered (with reasons);

The detailed factual chronology completed in accordance with the specified format should accompany this report.

#### **4: Summary of Facts**

Summarise, in narrative form, the key information from the chronology which could have a bearing on the case over the time frame under review.

Summarise: decisions reached, the services offered and/or provided and other action taken.

This is not intended to be a repeat of the chronology, but will provide a summary of the information to add a context to the analysis contained within the next section of this report.

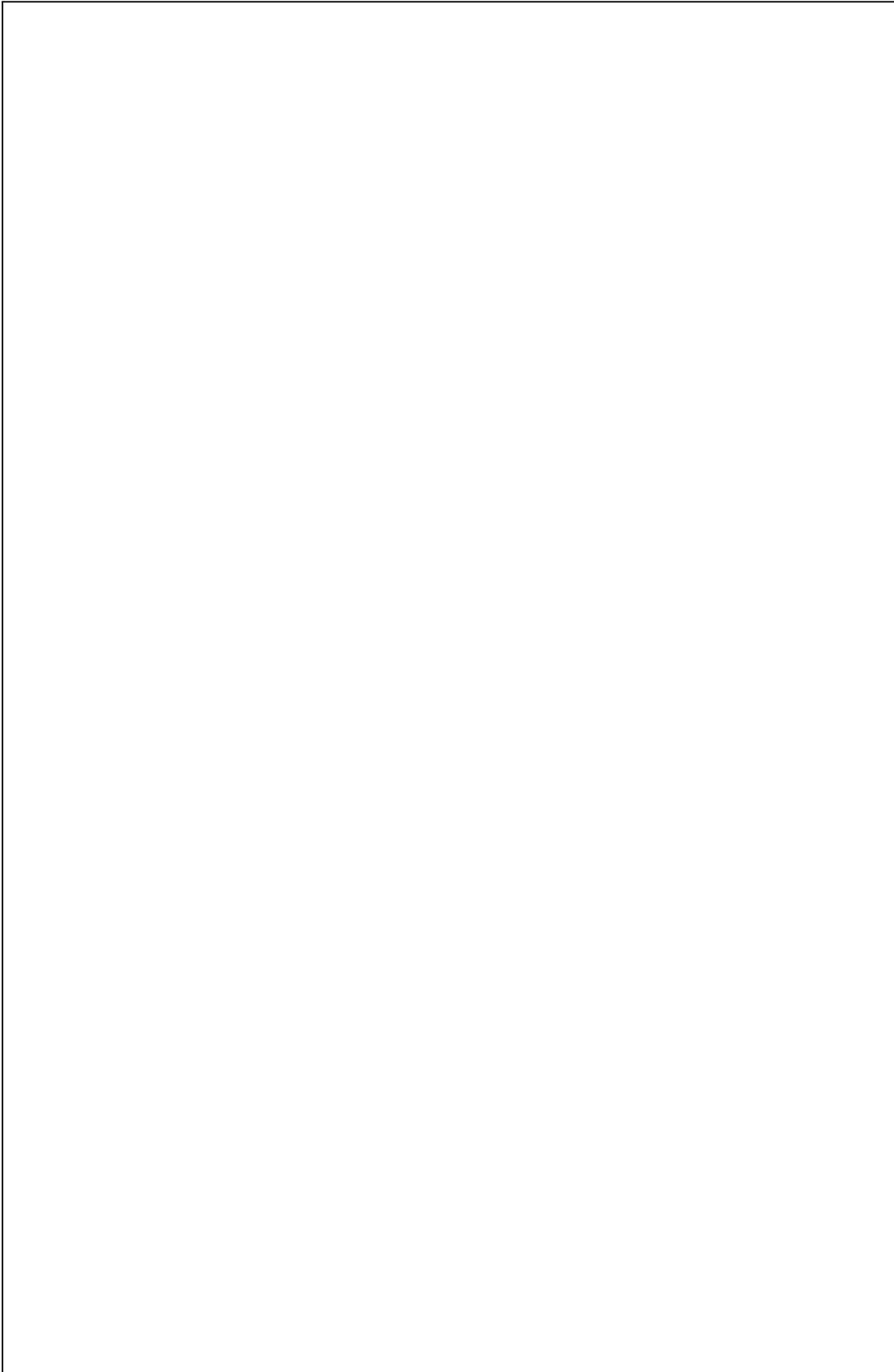
## **5: Analysis of Involvement**

Critically analyse and evaluate the events that occurred, the decisions made, and the actions taken or not.

Where judgments were made, or actions taken which indicate that practice or management could be improved, try to get an understanding not only of what happened, but why.

Critically appraise specifically:

- Were practitioners sensitive to the needs of the adults in their work, knowledgeable about potential indicators of abuse or neglect, and about what to do if they had concerns about an adult?
- Did the organization have in place policies and procedures for safeguarding and promoting welfare and acting on concerns about welfare?
- What were the key relevant points/opportunities for assessment and decision making in this case?
- Consider with the benefit of hindsight whether alternative courses of action would have made a difference
- Do assessments and decisions appear to have been reached in an informed and professional way?
- Did actions accord with assessments and decisions made?
- Were appropriate services offered/provided or relevant enquiries made, in the light of assessments?
- Where relevant, were appropriate adult protection or care plans in place, and reviewing processes complied with?
- When, and in what way, were the service users or carers wishes and feelings ascertained and taken account of when making revisions to services? Was this information recorded?
- Was practice sensitive to the racial, cultural, linguistic and religious identity of those concerned?
- Were more senior managers, or other organisations and professionals involved at points where they should have been?
- Was the work in this case consistent with each organisation's and the Multi-Agency policy and procedures for safeguarding and wider professional standards?
- Were Contractual and Registration standards operational?
- Were Contracting and Registration Process's followed ?



## **6: What Do We Learn From This Case?**

Using the analysis of the information gathered from all sources draw conclusions about the following:

- Are there lessons from this case for the way in which this organization works to safeguard and promote the welfare of adults?
- Is there good practice to highlight as well as ways in which practice can be improved?
- Are there links with other SCRs locally/nationally or research evidence?
- Are there links with the wider Safeguarding Agenda ( Children, Community Safety)
- Are there implications for ways of working:
  - training (single and inter-agency)
  - management and supervision
  - working in partnership with other organisations
  - resources?

## 7: Recommendations

These should include:

- Agency Considerations
  - What changes (if any) could be made to the agency's safeguarding procedures?
  - What action within the agency should be taken in the light of its findings?
  - Any actions to expand areas of good practice
  - What action should be taken by whom and by when?
  - What outcomes will these actions bring about?
  - How will the agency measure whether they have been achieved?
- Inter-Agency Considerations;
  - What changes (if any) could be made in inter-agency working in the light of this case?

## **8: Signatures Required on Completed Report**

Neither the reviewer nor senior sign off person has had any direct involvement with this case prior to the Serious Case Review panel.

Individual Management Reviewer:

Date:

The reports of all reviews must be signed by the relevant senior officer, indicating that the review has been,

- carried out to the required standard
- and that,
- the conclusions are accepted by the organisation
  - the recommendations will be implemented;

### **The Senior Officer accepts that:**

- The review has been carried out to the required standard;
- The conclusions reached in the review are accurate;
- The recommendations will be implemented;

Senior Officer:

Job Title:

Date:

## **SCR Appendix D: Agencies Signed Up to the Safeguarding Adults Serious Case Review Protocol**

### **Mr Mick Connell**

Director of Adult Social Care and Health  
Leicestershire County Council Adult Social Care  
Date:

### **Ms Kim Curry**

Corporate Director of Adult and Housing Department  
Leicester City Council Adults and Housing  
Date:

### **Mr Colin Foster**

Director of Adult Social Services Health and Housing  
Rutland County Council Adult Social Services and Housing  
Date:

### **Professor Antony Sheehan**

Chief Executive  
Leicestershire Partnership Trust  
Date:

### **Mr Malcolm Lowe-Lauri**

Chief Executive  
University Hospitals of Leicester  
Date:

### **Mr Tim Rideout**

Chief Executive  
Leicester City Primary Care Trust  
Date:

### **Ms Catherine Griffiths**

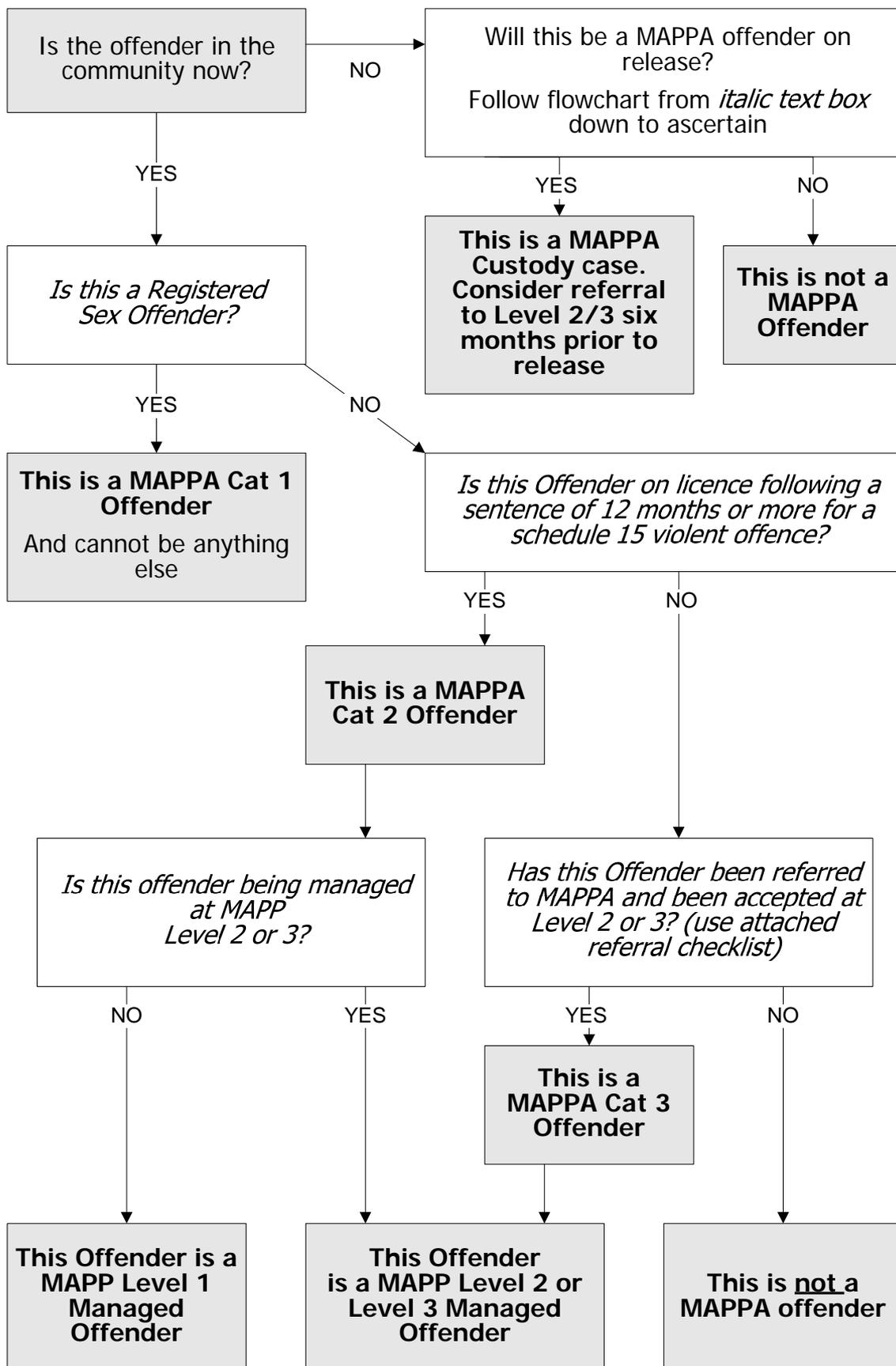
Chief Executive  
Leicestershire County and Rutland Primary Care Trust  
Date:

### **Mr Chris Eyre**

Temporary Chief Constable  
Leicestershire Constabulary  
Date:

## **Appendix 4: MAPPA Levels and Categories**

## Appendix 4 MAPPA: Flowchart 1 - Defining MAPPA Offender



## **Checklist for Referral for MAPPA Level 2 or Level 3 Management**

### **Step One**

Which MAPPA Category is the offender currently assessed as? (Tick)

If the offender does not fall into one of these categories, they cannot be registered under MAPPA. Consider Information Sharing/Tactical Meeting outside of MAPPA Procedures. These meetings should be recorded.

If one of the above categories does apply, proceed to step two.

### **Step Two**

Do two or more agencies need to meet to agree the Interagency Risk Management Plan? (NB If Police and Probation involved, then three or more agencies)

- Yes - move to step three
- No - does not meet criteria for level 2 or 3 management; Continue to manage at Level 1 (apart from Cat 3 offenders who would be managed outside of MAPPA)

### **Step Three**

Does the offender pose a current, active risk of harm to others?

- Yes - move to step four
- No - does not meet criteria for level 2 or 3 management; Continue to manage at Level 1 (apart from Cat 3 offenders who would be managed outside of MAPPA)

### **Step Four**

Will MAPP Management at Level 2 or 3 'add value' to the management of the offender that otherwise would be missing?

- Added value may include all or some of the following:
- More effective coordination and management
- Priority access to scarce or innovative resources
- Fast track referral to another agency that can assist in the risk management of the offender
- Senior Management oversight
- The brokering of proportionate engagement with relevant agencies
- Resolving disputes regarding level of risk or risk management plan between involved agencies
- Any other issues specific to this case which would seem to merit MAPP management

- Any other issues specific to this case which would seem to merit MAPP management
- Yes - move to step five
- No - does not meet criteria for level 2 or 3 management; Continue to manage at Level 1 (apart from Cat 3 offenders who would be managed outside of MAPP)

### **Step Five**

Is there a likelihood of media scrutiny and/or is public interest in the case very high, indicating a heightened need to maintain public confidence?

- Yes - Suggest referral to Level 3
- No - Answer next question

Does the likely seriousness and imminence of risk require special resources or higher level resources that can only be committed by senior staff in attendance at Level 3 meetings?

- Yes - Suggest referral to Level 3
- No - Suggest Referral to Level 2

E-Mail completed MAPP Referral Form (Attached) to:

[mappa@leicestershire.pnn.police.uk](mailto:mappa@leicestershire.pnn.police.uk)

Attach a copy of the updated risk assessment and an outline Risk Management Plan.

## Referral to MAPP Level 2 / 3

Only complete a referral if all the following criteria have been met:

- The offender is a MAPP offender (refer to category 1, 2 & 3 criteria)
- There are two or more agencies actively involved in the risk management of the offender (three or more if probation & Police actively involved)
- The offender poses an active, on-going risk of serious harm

If one or more of these criteria is / are not met, consider the need for an Information Sharing Meeting instead.

### Referral Details

Referred By:						
Team:					Date:	
Email:					Phone:	
Your Agency (mark x in box)	Probation	Police	YOS City	YOS County	Mental Health	Other (Name0

### Offender Details

Name:	
Alias:	Date of Birth:
Current/Last Known Release Address or Address in Community:	
Ethnicity:	Disability?
MAPP Category (1, 2, 3?)	VISOR Number:
If in Custody, Which Prison?	
Prison Number	PNC Number:
Is the Offender aware of this Referral:	

### Offending History

Current/Most recent offence:		
Other relevant previous offences:		
Custody Length:	Release Date:	LED:
Community Order Type:		
Start Date:	Finish Date:	
Other (Cat 3):	Date of Sentence:	

Risk of Serious Harm (mark x)

Very High		Imminent (Sooner rather than later)
High		Happen at any time (Sooner or later)
Medium		Unlikely (Unless circumstances change)
Low		No significant current indicators

Risk Assessment Tool used & date of most recent assessment

Tool		Date of Last Assessment
OASys		
RM 2000		
ASSET		
Other		

Which MAPP Level are you referring to?

1

2

**Panel to decide**

Reason for referral

What is the nature of the risk?

How will Level 2/3 MAPP Management add value to this case?

Describe the nature of multi-agency involvement so far:

Any other relevant information:

### **Line Manager Approval**

Has your Line Manager approved this Referral:

Line Manager's Name:

Line Manager's Job Title:

---

### **Invitees**

Please provide details of who should be invited to the Level 2/3 meeting, should the referral be approved.

Failure to provide full details, including a contact name, email address and fax number could significantly delay the co-ordination of meetings. If any information in this section is missing, the referral will be returned for completion.

Signature:	Date:
Name:	
Job Title:	
Address:	
Email:	
Phone No.:	Fax No.:

Signature:	Date:
Name:	
Job Title:	
Address:	
Email:	
Phone No.:	Fax No.:

Signature:	Date:
Name:	
Job Title:	
Address:	
Email:	
Phone No.:	Fax No.:

Signature:	Date:
Name:	
Job Title:	
Address:	
Email:	
Phone No.:	Fax No.:

Signature:	Date:
Name:	
Job Title:	
Address:	
Email:	
Phone No.:	Fax No.:

**Further Action:**

- Please use SECURE email (preferred option) and send completed form to:  
[mappa@leicestershire.pnn.police.uk](mailto:mappa@leicestershire.pnn.police.uk)  
or fax to 0116 2485297  
Include copy of latest Risk Management Plan and any other relevant documents (PSR, PAR, Psychiatric Report etc) if available.

## **Appendix 5: Staff Training and Development**

In line with "No Secrets" guidance, multi-agency Safeguarding Adults training will:

- Deliver consistent, effective training to staff in all agencies;
- Develop links and networks between staff in different agencies, promote good communication and closer joint working;
- Challenge presumptions and misconceptions about the different agencies;
- Facilitate sharing of training resources and expertise;

## **Training Standards**

All staff require an appropriate level of training in Safeguarding Adults. Each job role will require specific competencies which will be covered on different levels of multi-agency training.

The training standards have been produced to support and ensure good quality single and multi-agency adult protection training. They draw upon current best practice and promote the role of training in the delivery of quality services.

## **The Standards**

- The Safeguarding Adults Board will resource a multi-agency training programme through its constituent agencies;
- The Safeguarding Adults Working Group will make recommendations regarding safeguarding adults training;
- Accountability for coordinating multi-agency training will lie with the Training Subgroup, which will have multi-agency representation
- Through the training subgroup, each agency will be guided to identify numbers of staff and the level of training they require
- The multi-agency training subgroup has accountability for coordinating multi-agency training across all organisations
- Safeguarding Adults training will be clearly linked to need, identified at national and local levels;
- Partner organizations will be guided by the competency framework in assessing the skills and training needs of their staff and volunteers
- The training subgroup will develop a training plan on an annual basis to ensure that colleagues in all agencies have the necessary competencies to carry out their safeguarding adults roles; This plan will be widely available on relevant websites and intranet sites;
- A Safeguarding Adults Training Co-ordinator will be employed to co-ordinate a multi-agency training programme;
- Each agency will identify numbers of staff and the levels of training they require;
- Equal opportunities will be addressed at all stages of the training cycle;
- A process will exist which gives equal consideration to each constituent agency's training needs;

- Information is provided in a form that ensures equality of access and takes account of different agency structures;
- Venues will be accessible and conducive to adult learning;
- Safeguarding Adults training will make optimum use of local, national and international resources and networks;
- The content of Adult Protection training will be reviewed at regular intervals and updated at least annually to take account of relevant research, practice and policy development;
- Links will be established with relevant accreditation bodies;
- Networks will be established with training providers and representative bodies;
- Multi-agency Safeguarding Adults training will be delivered by trainers pool members who are working to an agreed level of competence, appropriate to their role and contribution;
- All Safeguarding Adults trainers will hold a recognised training qualification and / or have substantial relevant experience;
- Those involved in providing Safeguarding Adults training will have access to development opportunities;
- Presentation and facilitation skills of trainers will be evaluated;
- A variety of training methods will be used in all training events based on adult learning theories;
- All resources / materials used will be clear, accurate and relevant;
- The effectiveness of Safeguarding Adults training will be evaluated;
- Records and summaries of evaluation for both single and multi-agency training will be provided on an annual basis to the Safeguarding Adults Board and used by the Training Subgroup to inform the ongoing review of the training process;

**Excerpt from “No Secrets”: Training for staff and volunteers**

Agencies should provide training for staff and volunteers on the policy, procedures and professional practices that are in place locally, commensurate with their responsibilities in the adult protection process. This should include:

- Basic induction training with respect to awareness that abuse can take place and duty to report;
- More detailed awareness training, including training on recognition of abuse and responsibilities with respect to the procedures in their particular agency;
- specialist training for investigators; and
- specialist training for managers.

Training should take place at all levels in an organisation and within specified time scales. To ensure that procedures are carried out consistently no staff group should be excluded. Training should include issues relating to staff safety within a Health and Safety framework. Training is a continuing responsibility and should be provided as a rolling programme. (Unit Z1 of the NVQ Training Programme is specifically aimed at care workers in the community.)

**Multi-Agency Safeguarding Adults Competencies Framework**

These competencies have been prepared in accordance with ‘No Secrets’ (DoH, 2000), 5.2-5.3, ‘Safeguarding Adults’ (ADASS, 2005), especially standard 5, and National Occupational Standards (NOS) for Health and Social Care and resulting NVQs at Levels 2-4.

## **All Staff**

Having attended multi-agency or in-house Safeguarding Adults training, staff at all levels, both paid and voluntary, should be able to:

1. Understand the definition of an adult who may be vulnerable to abuse, as defined by 'No Secrets' (DoH 2000).
2. Understand the definition of abuse and its different types, as defined by 'No Secrets' (DoH 2000)
3. Recognise the signs of abuse
4. Understand how to access the Leicester, Leicestershire and Rutland Safeguarding Adults: Multi-Agency Policy and Procedure.
5. Understand the importance of whistle-blowing procedures
6. Understand the importance of creating a safe environment in order to minimise the risk of abuse
7. Understand their role as an alerter as defined within the local policy and procedures, including how to report concerns of abuse using appropriate systems.
8. Understand related legislation

**Competencies 1 - 8 are covered in the following courses:**

### **Alerters Part A (In-House)**

This is any form of safeguarding adults training delivered within an organization that covers competencies 1-8. This training should focus upon internal Safeguarding Adults procedures.

### **Alerters Part B (Multi-Agency)**

A three hour course that covers competencies 1-8. It will focus upon the Multi-Agency Policy and Procedures for the Safeguarding of Adults and the importance of multi-agency working.

The 'Training for Alerters Training (TAT)' course is designed to equip individuals who wish to deliver in-house training with necessary training resources and skills

This should be delivered by the Adult Protection Training Co-ordinator or a member of the multi-agency Safeguarding Adults Trainers Pool.

## **Target Groups for Competencies 1 - 8:**

<b>Staff Group</b>	<b>Competency Level Required</b>
All staff and volunteers	1 - 8 (in-house delivery)
All staff who have direct contact with adults covered by Safeguarding Adults, including but not limited to:	1 - 8 (multi-agency AND in-house delivery)
<ul style="list-style-type: none"><li>• Care / support staff</li><li>• Nursing staff</li><li>• Police officers</li><li>• Health and social care professionals</li><li>• Bus drivers / escorts</li><li>• Day service staff</li></ul>	
All staff in health care settings, e.g. OTs, physiotherapists, GPs etc.	

## **Staff Making Referrals**

In addition to competencies 1 - 8, having attended multi-agency training, staff responsible for making Safeguarding Adults referrals under the multi-agency policy and procedures, will be able to:

9. Understand what action to take when an allegation of abuse is reported to them, according to local policy and procedures
10. Know how to support staff and people who use services who report concerns of abuse
11. Know how to support staff or people who use services who are alleged to have committed abuse
12. Explain the relationship between the local policy and procedure and internal disciplinary procedures
13. Understand the importance of recording and documenting all information appropriate to any allegation and investigation in accordance with the local policy and procedure and relevant internal guidance.
14. Understand and use relevant recruitment processes as appropriate
15. Identify and minimise potential risks following a disclosure or allegation of abuse
16. Understand the principles of information sharing in accordance with the local policy and procedure, relevant legislation and relevant internal guidance.

**Competencies 9 - 16 are covered in the following course:**

### **Referrers Training**

A one day course that covers competencies 9-16 and a brief recap of competencies 1-8.

## **Target Group for Competencies 9 - 16:**

### **Staff Group**

All staff with responsibility for making referrals under the Safeguarding Adults: Multi-Agency Policy and Procedure, including but not limited to:

- Residential home managers
- Project managers
- Day service managers
- Home care managers

Some staff in health care settings, e.g. OTs, physiotherapists, GPs, CPNs, etc.

### **Competency Level Required**

1 - 8 (in-house AND multi-agency)

**and**

9 - 16

## **Staff Receiving Referrals**

In addition to competencies 1 - 8, having attended multi-agency training, colleagues who receive referrals under the Multi-Agency Policy and Procedure for Safeguarding Adults will be able to:

17. Understand and use the referral-receiving process contained within the local policy and procedure
18. Know how to gather information from referrers in order to assess potential risks in any Safeguarding Adults referral
19. Understand the importance of recording and documenting all information appropriate to any allegation and investigation in accordance with the local policy and procedure and relevant internal guidance
20. Understand the principles of information sharing in accordance with the local policy and procedure, relevant legislation and relevant internal guidance.
21. Know what action to take in response to a referral being received in accordance with local policy and procedure
22. Engage in a positive multi-agency approach to Safeguarding Adults.

**Competencies 17 - 22 are covered in the following course:**

### **Referral-Takers Training**

A one day course that covers competencies 17-22 and a brief recap of competencies 1-8.

## **Target Groups for Competencies 17 - 22:**

### **Staff Group**

All staff who receive referrals under the Multi-Agency Policy and Procedure for Safeguarding Adults, including but not limited to:

- Access Workers
- Community Care Workers
- Senior Nursing staff

Newly qualified health and social care staff, e.g. Social Workers, OTs, Physiotherapists, nurses, etc.

### **Competency Level Required**

1 - 8 (in-house AND multi-agency)

**and**

17 - 22

Competencies 8 -16 can also be achieved, but are not required.

## **Coordinators & Investigators**

In addition to competencies 1 - 8, having attended multi-agency training, staff with a responsibility for co-ordinating or having significant involvement in the investigative process contained within the Safeguarding Adults: Multi-Agency Policy and Procedure, staff will be able to:

23. Understand and use all aspects of the local policy and procedures
24. Understand the legal context of Safeguarding Adults, measures available to protect adults who may be at risk of abuse and how the local policy and procedures relate to other policy, guidance and legislation
25. Understand the roles and responsibilities of all agencies involved in the investigative process
26. Understand the importance of recording and documenting all information appropriate to any allegation and investigation in accordance with the local policy and procedure and relevant internal guidance
27. Understand the principles of information sharing in accordance with the local policy and procedure, relevant legislation and relevant internal guidance.
28. Conduct investigative / assessment activities in accordance with local policy and procedure, including identifying and managing risk factors.
29. Engage in a positive multi-agency approach to Safeguarding Adults.

**Competencies 23 - 29 are covered in the following course:**

### **Investigators Training**

A two day course that covers competencies 23-29.

Participants should also have achieved competencies 1-8.

## **Target Group for Competencies 23 - 29:**

### **Staff Group**

All staff responsible for co-ordinating multi-agency investigations under the Safeguarding Adults: Multi-Agency Policy and Procedure, including:

- Social Workers
- Team Managers
- Head of Nursing
- Health and Social Care Service Managers

Police Officers

### **Competency Level Required**

1 - 8 (in-house AND multi-agency)

**and**

23 - 29

Competencies 8 - 16 and 17 - 22 can also be achieved, but are not required.

## **Managers**

In addition to competencies 1 - 8 and 17 - 29, having attended multi-agency training, managers with responsibility for overseeing the multi-agency Safeguarding Adults process, will be able to:

- 30. Know how to convene and chair an Adult Protection Conference
- 31. Understand the roles and responsibilities of all agencies involved in the multi-agency Safeguarding Adults process, with a focus upon the role of the Local Authority and Team Manager
- 32. Make sound and consistent decisions as part of implementing the local policy and procedure.

**Competencies 30 - 32 are covered in the following course:**

### **Managing the Process Training**

A one day course that covers competencies 30-32.

Participants should also have achieved competencies 1-8 and 23-29.

### **Target Group for Competencies 30 - 32:**

#### **Staff Group**

All staff who manage / supervise staff with responsibility for co-ordinating multi-agency investigations under the Safeguarding Adults: Multi-Agency Policy and Procedure, including:

- Social Care Team Managers
- LPT Team Managers

Health and Social Care Service Managers

#### **Competency Level Required**

1 - 8 (in-house AND multi-agency)

**and**

17 - 22

**and**

23 - 29

**and**

30 - 32

Competencies 9 - 16 can also be achieved, but are not required.

## **Safeguarding Adults Alerters Training for Trainers (TAT)**

In addition to competencies 1 - 8, having attended multi-agency training, staff with responsibility for delivering basic awareness of safeguarding adults in-house will be able to:

Display the necessary skills and knowledge to deliver Alerters Part A to in-house staff.

Participants should also have achieved competencies 1-8.

## **Target Group for TAT:**

### **Staff Group:**

Staff who wish to deliver training within their own organisation to staff who require competencies 1 - 8, including, but not limited to:

- Managers and Supervisors
- Training officers
- Staff and Workforce Development Officers

### **Competency Level Required**

1 - 8 (in-house AND multi-agency)

**and**

Safeguarding Adults Alerters Training for Trainers

## **Appendix 6: Research Resources**

If you wish to carry out further research into Safeguarding Adults, then the links below may be useful to you.

Some organisations carry out their own research or surveys into Social Care issues, so will be able to help you with:

- Latest statistics
- Study results, conclusions and reports
- Policy recommendations arising from their results and conclusions
- Datasets
- Research methodologies, for example questionnaire design and data analysis

These institutions may be useful for your Continuing Professional Development or if you decide to do extra academic study.

Brunel University Institute for Ageing Studies

<http://www.brunel.ac.uk/about/acad/health/healthres/researchareas/bbias>

De Montfort University Centre for Social Action

<http://www.dmu.ac.uk/faculties/hls/research/centreforsocialaction/index.jsp>

East Midlands Regional Observatory provides data on all aspects of life in the region

<http://www.intelligenceeastmidlands.org.uk/>

Universities of Strathclyde and Glasgow Database of Good Practice in Community Care

<http://www.interactiveccw.com>

Local Authorities Research and Intelligence Association

<http://www.laria.gov.uk/laria/core/page.do?pageId=1>

National Centre for Social Research

<http://www.natcen.ac.uk/home>

NeSS - Neighbourhood Statistics Service, provided by Office for National Statistics. Good for sociological / demographic information at Ward level

<http://www.neighbourhood.statistics.gov.uk/dissemination/>

Research and Development Support Unit for Health research in the Trent area of the midlands, covering Leicester and Leicestershire  
<http://www.rds-eastmidlands.org.uk>

Research in Practice for Adults  
[www.ripfa.org.uk/](http://www.ripfa.org.uk/)

Social Care Institute for Excellence  
<http://www.scie-socialcareonline.org.uk/default.asp>

UK National Statistics Portal  
<http://www.statistics.gov.uk/hub/index.html>

The Social Research Association  
<http://www.the-sra.org.uk>

Social Policy Research Unit at University of York  
<http://www.york.ac.uk/inst/spru>

Other organisations act as informants to research. This might be because they inform Public Policy already or because they represent charitably a cohort of service users with similar needs. They might be useful to you if you need to canvass opinion on policy and developments to policy or need to obtain other useful contacts for networking.

Centre for Policy on Ageing  
<http://www.cpa.org.uk>

Association of senior and experienced Social Workers available for consultancy in all areas of service strategy, improvement and delivery.  
<http://www.cpea.co.uk/index.html>

Department of Health policy, practical guidance and standards for the social care sector  
<http://www.dh.gov.uk/en/SocialCare/index.htm>

Leicester based Charity delivering training on BME Domestic Violence issues.  
<http://www.hopetraining.org>

The Joseph Rowntree Foundation  
<http://www.jrf.org.uk>

Safeguarding Adults forum, collating news and information in the field  
<http://www.safeguardingadultsforum.co.uk/default.asp>

## **Appendix 7: Useful Contacts**

## **Leicestershire Constabulary**

### **Covers Leicester, Leicestershire and Rutland areas**

Before contacting the police you must consider the purpose of your call. Are you:

- Requesting police action?
- Reporting an incident just for police information?
- Seeking advice?

**This will determine the police response - Be clear**

**If EMERGENCY police action is required you should RING 999**

**If urgent response is required make this clear (i.e. Has the victim sustained serious / life threatening injuries; has the incident just happened; is the person responsible still there?)**

**Leicestershire Constabulary grades its response to all calls for assistance in order to prioritise use of resources - calls are unlikely to be treated as urgent unless lives are in danger or incident is happening now.**

**To report all other incidents you should ring 0116 222 2222**

**Tell the call handler you wish to report an incident of suspected abuse under the Safeguarding Adults Multi- Agency Policy and Procedures.**

**Give your name, agency, contact details and availability. If you are not going to be available leave the contact details of a colleague who is aware of the situation if it is possible to do so. Make sure you record any crime / incident reference numbers you are given.**

**Can matter be dealt with by appointment? If it can be clear about your availability and availability of any witnesses:**

The Force is divided into three Basic Command Units (BCU) or Police Areas to cover Leicester, Leicestershire and Rutland.

A 'Diary Car' is available between 9-00am to 9-00pm where staff and members of the public can pre-book an appointment for a police officer in uniform to attend a location at the pre agreed time.

The Diary Car can be accessed by calling 0116 222222 and requesting an appointment for the Diary Car covering City, South or North, whichever is applicable. The officer allocated the diary car is committed to attending these appointments and will not be routed to other incidents unless an absolute emergency

- Give any known details of the victim - name, D;O;B;, current location, vulnerability and appropriate adult requirements / availability
- Give any known details of the allegation - location, dates (immediately prior to call / over last few weeks/months/years etc )
- Give any known details of witnesses - to the incident and / or first disclosure;
- Ask the call handler for the O;I;S or Incident number - this can be quoted in reference should you make subsequent calls
- Ask what will happen with your report now;
- If you require someone to ring back, say so - say how long you will be available for; Never leave details of an initial referral on an answer phone or voice mail;

If you wish to contact the police for advice on general issues relating to the abuse of adults in need of safeguarding or to clarify whether a particular incident constitutes a crime you can speak to the Safeguarding Adults Officers who are based in the Community Units in each area of the force. They can be contacted via 0116 222 2222 or direct to the local offices on the numbers shown below:

- North Area: 0116 248 4196
- City Area: 0116 248 4383
- South Area: 0116 248 5570

The Detective Inspector with responsibility for Safeguarding Adults within the Crime Support Department can be contacted on:

**Force Area: 0116 248 5109**

Early consultation with the Police will:

- Establish whether a criminal act has been committed / agree police involvement
- Prevent the victim being interviewed unnecessarily on subsequent occasions
- Ensure that forensic (criminal) evidence is not lost or 'contaminated';
- Ensure action taken if witnesses may need protection;

## **Contact Points for Key Agencies**

### **Adult Social Care Teams**

#### **Leicester City Council Social Care**

1 Grey Friars, Leicester LE1 5PH  
Tel: 0116 253 1191

#### **Leicestershire County Council Adult Social Care Services**

County Hall, Glenfield, Leicester LE3 8RL  
Tel: 0116 232 3232

#### **North West Leicestershire Adult Social Care Services**

3 High Street, Coalville Leicestershire LE67 3EA  
Tel: 01530 275200

#### **Blaby, Oadby & Wigston Adult Social Care Services**

Bassett Street, South Wigston LE18 4PE  
Tel: 0116 278 7111

#### **Charnwood Adult Social Care Services**

Pennine House, Lemyngton Street, Loughborough LE11 1UH  
Tel: 01509 266641

#### **Harborough Adult Social Care Services**

Brooklands, Northampton Road, Market Harborough LE16 9HN  
Tel: 01858 465331

#### **Hinckley Adult Social Care Services**

27 Upper Bond Street, Hinckley LE10 1RH  
Tel: 01455 636964

#### **Melton Adult Social Care Services**

County Buildings, Leicester Road Melton Mowbray LE13 0DA  
Tel: 01664 564698

#### **Rutland County Council Adult Duty Team**

Catmose, Oakham, Rutland, LE15 6HP  
Tel: 01572 758341

### **Hospital Social Work Teams**

#### **Glenfield Hospital**

Adult Services Team  
Tel: 0116 256 3605/3369

#### **Leicester General Hospital**

Adult Services Team  
Tel: 0116 258 4952

#### **Leicester Royal Infirmary**

Adult Services Team  
Tel: 0116 258 5141/6986

**Emergency Team (Out of Hours) for  
Leicester, Leicestershire and Rutland Social Care**  
Tel: 0116 255 1606

## **Leicestershire Partnership Nhs Trust**

### **Mental Health Service**

#### **Mental Health Services for Older People**

Clinical Leader, Evington Centre  
Tel: 0116 225 3692

#### **Adult Services**

Service Manager, Bradgate Unit  
Tel: 0116 225 2606

#### **Treatment and Recovery Service**

Sandringham Suite  
Tel: 0116 258 6850

#### **Learning Disability Service**

#### **Leicester Frith Hospital**

Tel: 0116 258 5297

### **Community Services**

#### **Team Leader for Ashby and Coalville**

Ashby Hospital  
Tel: 01530 414222

#### **Hospital Manager**

Ashby Hospital  
Tel: 01530 414222

#### **Hospital Manager**

Coalville Hospital  
Tel: 01530 414222

#### **Hospital Manager**

Hinckley Hospital  
Tel: 01455 441815

#### **Team Leader for Hinckley and Bosworth**

Hinckley Hospital  
Tel: 01455 441882

#### **Team Leader for Blaby, Wigston and Oadby**

South Wigston Health Centre  
Tel: 0116 278 5022 / 0116 277 4333

## **University Hospitals Leicester NHS Trust**

### **University Hospital of Leicester NHS Trust**

C/O Leicester Royal Infirmary

Tel: 0116 258 6311

### **Glenfield Hospital Adult Services**

0116 256 3605

### **Leicester General Hospital Adult Services**

0116 258 4952

### **Leicester Royal Infirmary Adult Services**

0116 258 5141

## **NHS Leicester City**

### **NHS Leicester City**

St John's House, 30 East Street, Leicester, LE1 6NB

Tel: 0116 2951 400

## **Leicestershire County & Rutland Community Health Services**

### **Leicestershire County & Rutland Community Health Services**

Fosse House, 4 Smith Way, Grove Park, Enderby, Leicester, LE19 1SS

0116 2950030

## **NHS Leicestershire County And Rutland**

### **NHS Leicestershire County and Rutland**

Lakeside House, 6 Smith Way, Grove Park. Enderby, Leicester, LE19 1RS

0116 295 7500

## **Other Agencies**

### **Public Concern at Work**

020 7404 6609

Support and advice for staff about raising concerns of abuse or malpractice in their working environment.

### **Care Quality Commission (CQC)**

Care Quality Commission National Correspondence

Citygate

Gallowgate

Newcastle upon Tyne

NE1 4PA

03000 616161

### **Forced Marriage**

Forced Marriage Unit

020 7008 0151

<http://www.fco.gov.uk> or email [fmf@fco.gov.uk](mailto:fmf@fco.gov.uk)

## **Voluntary Councils**

### **Blaby District CVS**

The Parish Rooms, The Old School, Enderby, Leics. LE9 5AP  
Tel 0116 275 1918

### **Charnwood Community Council**

John Storer House, Ward's End, Loughborough, Leics. LE11 3HA  
Tel 01509 230 131

### **CVS for Melton Borough**

Windsor House, Windsor Street, Melton Mowbray, Leics. LE13 1BU  
Tel 01664 410 007

### **South Leicester CVS**

The Settling Rooms, St. Mary's Place,  
Springfield, Market Harborough Leics. LE16 7DR  
Tel 01858 433 232

### **Hinckley & Bosworth CVS**

14a Rugby Road, Hinckley Leics. LE10 1QD  
Tel/Fax 01455 633 002

### **North West Leicestershire CVS**

Marlene Reid Centre, Belvoir Road, Coalville, Leicestershire. LE67 3PH

### **Voluntary Action for Oadby & Wigston**

132a Station Road, Wigston, Leicester, LE16 2DR  
Tel 0116 281 0026

### **CVS Partnerships**

Beaumont Enterprise Centre, Boston Road, Leicester, LE4 1HB  
Tel 0116 234 1577

### **Voluntary Action LeicesterShire (VAL)**

4th Floor Market Centre Offices, 11 Market Place, The Jetty, Leicester, LE1 5GG  
Tel 0116 251 3999

### **Voluntary Action Rutland**

The Rutland Centre, Barleythorpe Road, Oakham LE15 6AH  
Tel 01572 722622

## **Language Services**

Use of an interpreter can be critical. Police and Social Services have arrangements to provide interpreters in most languages including British Sign Language (BSL). Contact these agencies for further details.

## **Speech and Language Therapy Support for People with Learning Disabilities**

The role of the Speech and Language Therapist is:-

- To assess the communication abilities and needs of people with learning disabilities;
- To describe the nature and extent of their communication abilities and needs;
- To advise on how to enable people to communicate to their maximum potential;

Appendix 8: Glossary of Terms

## **Appendix 8: Glossary of Terms**

### **Safeguarding Adults Conference**

A multi-agency meeting that evaluations the investigation and draws together a protection plan.

### **Advocate**

A person who helps support someone by representing his or her views. An advocate may be paid or voluntary.

### **Association of Directors of Adult Social Services (ADASS)**

An organisation that represents all the directors of adult social services in England and Northern Ireland.

### **Alerting**

Passing on concern that someone may be being abused to an appropriate person.

### **Approved Mental Health Professional (AMHP)**

A worker appointed to undertake assessments of people under the Mental Health Act 2007. This is often a social worker or community psychiatric nurse (CPN).

### **Appropriate Adult**

A suitable person who represents the interests of an adult in need of safeguarding who is being interviewed by the police.

### **Capacity**

Being able to make a decision or take a particular action. Assessments of capacity are covered by the Mental Capacity Act 2005.

### **Care Quality Commission (CQC)**

The CQC was formed from the Commission for Social Care Inspection (CSCI), the Mental Health Commission and the Healthcare Commission in April 2007. It is the independent regulator of all health and adult social care in England.

### **CMHT**

Community Mental Health Team. Multi-disciplinary team that support adults, who have been assessed as having ongoing mental health needs and who live in the community. There are teams for adults under and over 65 years old.

### **Community Safety Bureau (CSB)**

Department within Leicestershire Police that contains Domestic Abuse Investigation Officers (DVIOs) and Safeguarding Adults Officers.

### **Consent**

The voluntary agreement of an adult or competent child, based on adequate knowledge and understanding of the relevant information, to participate in a safeguarding action. Consent is often recorded by a signature on a consent form. Explicit or express consent refers to a clear and voluntary indication of preference or choice, usually oral or in writing and freely given in circumstances where the available options and their consequences have been made clear. Implied consent refers to agreement signalled by the behaviour of an informed

individual. It is essential that people with higher support and communication needs are given the time and assistance they need to give their consent on issues that involve them. The Mental Capacity Act 2005 gives further guidance regarding consent and assessing an individual's ability to give informed consent.

### **Contracts Department**

The Contracts Department is responsible for ensuring that every contract signed between the service provider (the customer, the Local Authority) and their suppliers (e.g. residential care home or domiciliary care agency) adequately protects the delivery of goods and service to the adult services provider, and provides routes of legal recourse. The Service Level Agreement between the Authority or care provider and the supplier also forms part of the contract. If a contract is consistently unfulfilled or executed wrongly by the contractor or supplier, contact the Contracts Department for advice.

### **Crime & Disorder Reduction Partnerships**

Established by the 1998 Crime and Disorder Act, CDRPs are partnerships between the police, local authorities and other agencies. These statutory partnerships are also known as Community Safety Partnerships.

They work to develop and implement strategies to tackle crime and disorder and misuse of drugs in their area.

### **Data Protection Act**

The Data Protection Act 1984 sets out the legal basis for handling and protecting private information and data in the UK. It was updated in the Data Protection Act 1998 to reflect the electronic acquisition, storage and transmission of personal data. The Data Protection Acts give individuals the right to know what information is held about them, and set out rules to make sure that this information is handled properly.

### **Deprivation of Liberty Safeguards (DoLS)**

The Mental Capacity Act Deprivation of Liberty safeguards (formerly known as the Bournemouth safeguards) were introduced into the Mental Capacity Act 2005 through the Mental Health Act 2007 (which received Royal Assent in July 2007).

The safeguards cover patients in hospitals, and people in care homes registered under the Care Standards Act 2000, whether placed under public or private arrangements and apply to any adult:

- who suffers from a mental disorder or disability of the mind - such as dementia or a profound learning disability
- who lacks the capacity to give informed consent to the arrangements made for their care and / or treatment and
- for whom deprivation of liberty (within the meaning of Article 5 of the ECHR) is considered after an independent assessment to be necessary in their best interests to protect them from harm;

The safeguards are designed to ensure people can be given the care they need in the least restrictive regimes, prevent arbitrary decisions that deprive people of their liberty, and provide them with rights of challenge against unlawful detention.

### **Direct Payments**

Cash payments to people who use services to enable them to arrange and purchase their own care services in accordance with a community care assessment and an agreed care plan.

### **The Disability Discrimination Act (DDA) 1995**

The DDA gives disabled people new rights to employment, education, goods, facilities, services and premises. Under the Act, employers with 15 or more employees, and service providers, providing service to the public, have a duty not to treat disabled people less favourably for a reason which relates to their disability.

An employer or service provider which has been seen to have treated a disabled applicant or employee less favourably, for a reason which relates to their disability, or has refused or deliberately not provided a 'reasonable adjustment', can be taken to an Employment Tribunal or the County Court:

For compensation, including compensation for injury to feelings; To ensure appropriate action such that the less favourable treatment is not repeated.

### **Disclosure**

Someone communicating to someone else that they have been abused.

### **Duty of Care**

Under common law, reasonable care must be taken to safeguard someone you have responsibility (in a paid or unpaid capacity) for from acts or omission which could cause harm.

### **Emergency Duty Team (EDT)**

Social Care Services out of hours team who operate at weekends and in the evenings. There is one EDT to cover Leicester, Leicestershire and Rutland.

### **Human Rights Act**

The Human Rights Act 1998 introduces into UK law the rights and freedoms set out in the European Convention on Human Rights. The Act applies to all public authorities, such as central and local government bodies, the police, hospitals and prisons.

### **Host Authority**

The term 'host authority' refers to the authority where a service user may be found, is visiting for a short break or is in receipt of specified services (e.g. education or residential / nursing care).

### **Independent Domestic Violence Advisor (IDVA)**

IDVAs partner the victim of domestic abuse through the Criminal Justice process, providing one point of contact for the duration of a case and are key to gaining and sustaining victim confidence. Independent Domestic Violence Advisors provide advice, information and support to survivors of intimate partner or familial violence and help to identify ways to improve their safety and that of their children. This advice is based on a thorough understanding and assessment of risk and its management.

IDVAs typically provide short to medium term crisis intervention work, focusing on safety advice covering physical security as well as remedies available from the civil and criminal justice systems.

### **Independent Mental Capacity Advocate (IMCA)**

An advocate instructed under the Mental Capacity Act 2005 to represent an individual's best interests if they lack capacity to make a specific decision. They are generally instructed to assist with decisions regarding accommodation, medical treatment, safeguarding adults concerns and care reviews.

### **Independent Safeguarding Authority (ISA)**

Independent body introduced under the Safeguarding Vulnerable Groups Act 2007 to operate a vetting and barring scheme to ensure that individuals working with children or adults in need of safeguarding are suitable to do so, and make barring decisions about individuals that may pose a risk to children and adults in need of safeguarding.

### **Individual Budgets**

Funding from different service areas amalgamated into an individual budget, held by the local authority, but controlled by the service user.

An Individual Budget can include funds from a variety of sources, like Supporting People Funding, or the Independent Living Fund (ILF). It is intended that other funding may eventually be included in the budget. Using an Individual Budget, people who use services can make decisions about how they receive their care and support.

### **Intermediary**

A trained specialist (often a Speech and Language Therapist) who will support a vulnerable witness or victim through a criminal investigation and court proceedings.

### **Intermediate Care Team / HART Team**

Intermediate Care Teams aim to preserve the independence of patients living in their own homes, where they would otherwise face a stay in a hospital or care home.

### **Investigation**

Process of gathering information to determine what has happened and what needs to happen.

### **Investigating Officer**

Employee designated to carry out investigation.

### **Lasting Power of Attorney (LPA)**

A donor can appoint someone to manage either finance and property affairs and / or health and welfare affairs when the donor loses capacity.

### **Leicester City Community Health Services (LCCHS)**

Responsible for providing community health nurses (for example, district nurses) in Leicester.

**Leicestershire County and Rutland Community Health Services (LCRCHS)**

Responsible for providing community health nurses (for example, district nurses and community hospitals) in Leicestershire and Rutland.

**Leicestershire NHS Partnership Trust (LPT)**

Health trust providing mental health and learning disability services in Leicester, Leicestershire and Rutland.

**Local Safeguarding Children Board (LSCB)**

The board is an inter-agency forum for agreeing how different services and professional groups should co-operate to safeguard children in their local area, and for making sure that arrangements work effectively for bringing about good outcomes for children. There are two LSCBs; one for Leicester and another for Leicestershire and Rutland.

**MARAC (Multi-Agency Risk Assessment Conference)**

Multi-agency forum to assess and manage risk in high risk domestic violence situations.

**MAPPA (Multi-Agency Public Protection Arrangements)**

MAPPA brings together the Police, Probation and Prison Services to support the assessment and management of the most serious sexual and violent offenders by drawing up a risk management plan.

**Mental Capacity Act 2005 (MCA)**

Legislation that covers assessments of capacity and best interest decisions.

**'No Secrets' - Department of Health 2000**

National Department of Health guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse, released in 2000.

**Perpetrator / Alleged Perpetrator**

Person who carried out or is alleged to have carried out abuse.

**Placing Authority**

The placing authority is the authority with funding/commissioning responsibility for the care of the service user.

**Planning and Commissioning (P & C)**

Leicestershire County Council Adult Social Care Service department with responsibility for overseeing contracts with service providers

**Protection Plan**

Plan put together following outcome of investigation to ensure the on going protection of the adults in need of safeguarding.

**Provider**

An agency that provides services. It could be in the statutory, independent or voluntary sector.

### **Regulation 37**

Documentation that must be completed and returned to the Care Quality Commission following any serious or untoward incident in any registered care setting.

### **Risk Assessment**

An assessment which identifies and quantifies the personal, social or environmental hazards to a person in any given situation. A risk management plan can then be put together detailing how to reduce those risks.

### **'Safeguarding Adults' - ADASS 2005**

A National Framework of Standards for good practice and outcomes in adult protection work, released by ADASS (Association for Directors of Adults Social Services) in 2005.

### **Self Directed Support**

A philosophy of service delivery that aims to place the service user at the heart of the delivery process. Beginning with Direct Payments and Individual Budgets, the service user can then direct all aspects of the care or support they need.

### **Serious Case Reviews**

A Serious Case Review must be initiated when an adult in need of safeguarding dies as a result of abuse or neglect, or sustains a potentially life-threatening injury or serious and permanent impairment to health and development through abuse or neglect. The purpose of a Serious Case Review is to:

- establish whether there are any lessons to be learned from the circumstances of the case about the way in which local professionals and agencies work together to safeguard adults at risk of abuse;
- review the effectiveness of procedures (both multi-agency and those of individual organisations);
- inform and improve local inter-agency practice;
- improve practice by acting on learning (developing best practice);
- prepare or commission an overview report which brings together and analyses the findings of the various reports from agencies in order to make recommendations for future action;

### **Serious Untoward Incident (SUI) and Near Misses**

The principle definition of a SUI is something out of the ordinary or unexpected, with the potential to cause serious harm, and/or likely to attract public and media interest that occurs in a Healthcare or Social Care setting or in the provision of a commissioned service. This may be because it involves a large number of service users, there is a question of poor clinical or management judgement, a service has failed, a person has died under unusual circumstances, or there is the perception that any of these has occurred. SUIs are not exclusively care issues, for example an electrical failure may have consequences that make it an SUI.

In deciding whether or not the incident being dealt with constitutes an SUI, the possible impact the incident could have, including in the media, should be considered. If it could be damaging to the Authority, it should be reported as an

SUI. Further guidance is available in an individual organisation's own SUI / Near Misses procedures.

### **Service Contracts and Procurement Unit (SCPU)**

Leicester City Adults and Communities department with responsibility for overseeing contracts with service providers

### **Special Educational Needs and Disability Act (SENDA) 2001**

SENDA amends the Disability Discrimination Act 1995 and introduces new legal duties for education providers relating to all students or prospective students with disabilities. SENDA, since 2003, forms part 4 of the DDA.

Education providers have a duty to take reasonable steps to avoid discrimination against disabled students in the provision of education and associated services. This duty refers primarily to the policies, procedures and practices of the school. It does not require adjustments to physical features or require providers to use 'auxiliary aids and services' such as sign language interpreters or to give information in formats such as Braille or audiotape. These are addressed by the new Planning Duties and the special educational needs framework respectively.

### **Statutory**

Required by law

### **Strategic Health Authorities**

Strategic Health Authorities are responsible for developing strategies for the local health services and ensuring high-quality performance. They manage the NHS locally and are a key link between the Department of Health and the NHS.

### **Strategy Discussion / Meeting**

Meeting or telephone conversation to plan a safeguarding adults investigation.

### **University Hospitals of Leicester NHS Trust (UHL)**

UHL comprises of three acute hospitals based in Leicester: Glenfield Hospital, Leicester General Hospital and Leicester Royal Infirmary. The three hospitals joined together to form the Trust in April 2000.

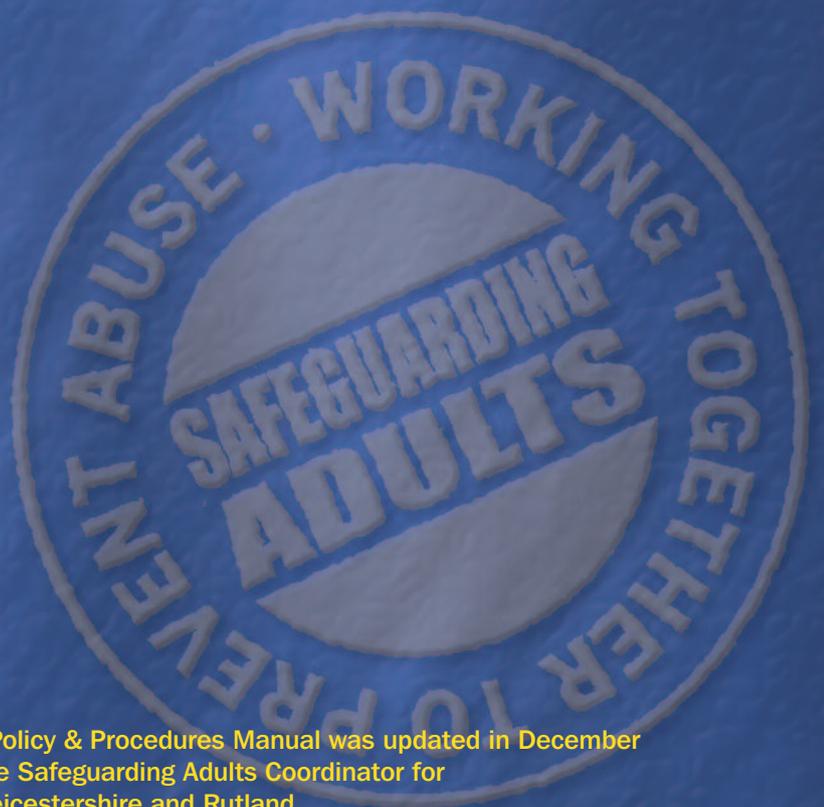
### **Vetting and Barring**

The Vetting & Barring scheme grew out of the findings of the Bichard Report. The report gave rise to legislation; the Safeguarding Vulnerable Groups Act 2006. The aim of the Vetting and Barring scheme is to reduce the incidence of harm to adults in need of safeguarding by helping to ensure that employers benefit from an improved vetting service for those who work with adults and that those who are known to be unsuitable are barred from working with service users at the earliest possible opportunity. Further guidance can be found in the HR section of this procedure.

### **Whistle blowing**

An employee raising concerns about bad practice from within their employing organisation.

Many organisations have a whistle blowing policy which outlines how such concerns should be raised with and support for the person who raises concern.



This Safeguarding Adults: Multi-Agency Policy & Procedures Manual was updated in December 2009 by the office of the Safeguarding Adults Coordinator for Leicester, Leicestershire and Rutland.

For comments, queries, recommendations and information or reproduction requests please contact the office at [safeguardingadults@leics.gov.uk](mailto:safeguardingadults@leics.gov.uk)