

# **Warrington Safeguarding Adults Procedures – Section 5: Making decisions about safeguarding concerns**

**22<sup>nd</sup> March 2016 V7**

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## 5 Making Decisions about Safeguarding Concerns

Responses to safeguarding adults should be person led and outcome, not process focussed.

However there are key issues that the local authority and their partners should always consider if they suspect or are made aware of possible abuse or neglect.

This section describes the actions and decision making from receipt of a safeguarding concern until the point at which a decision is taken regarding a Section 42 enquiry.

### Safeguarding Concern

- Abuse or Neglect are identified
- Immediate needs for safety and protection are met
- Safeguarding Concern is referred to the Local Authority



### Safeguarding Assessment

- Check immediate needs for safety and protection
- Gather additional information
- Provide Information and Advice
- Decision made as to whether s42 duty to make an Enquiry is met

#### 5.1 Starting the Safeguarding Assessment

The Care Act states that local authorities must make enquiries, or cause others to do so, whenever abuse or neglect are suspected in relation to an adult and the local authority thinks it necessary to enable it to decide what (if any) action is needed to help and protect the adult.

Upon receipt of the safeguarding concern the Access to Social Care team (ASC) will create a safeguarding assessment document and assign this to the most appropriate adult social care team. The team manager will allocate the safeguarding assessment to a social worker for further consideration and completion.

The primary purpose of the safeguarding assessment is to help determine whether there is *reasonable cause to suspect* that abuse or neglect is taking place and to make the appropriate decisions regarding the undertaking of a section 42 enquiry.

The safeguarding assessment should be personalised and focused on securing a swift and proportionate response and improved outcomes for the adult(s) involved. The adult's involvement in this assessment process is a central consideration.

The social workers role will include checking and adding to the information provided, taking any immediate actions required to secure the reduction and removal of

safeguarding risks; and any immediate support necessary to help the adult recover.

The Care Act guidance reflects that the nature of Section 42 enquiries can encompass a wide range of responses; introducing the concept of 'formal' and 'initial' enquiries. For less complex situations, it may be that an enquiry can be made and concluded within a completed safeguarding assessment. Usually, this will be by completing simple tasks, such as providing information and advice to the adult or others which will help to protect them in the future.

This would not preclude further or ongoing support, which might include an offer of representation or advocacy if this is determined to be the most appropriate response to the situation.

From the outset to the conclusion of the safeguarding activities; there is an ongoing need to return to and reconsider the adult's involvement and views, monitor the adequacy of actions and evaluate and review risk.

**REMEMBER: Safeguarding at its best and most successful is something that empowers the adult, ensures their concerns are responded to in a way that enhances their involvement, choice and control as well as improving their quality of life, wellbeing and safety. It is about seeing people as experts in their own lives and working alongside them.**

## 5.2 Completing the Safeguarding Assessment

The immediate protection of the adult at risk and any others is the first priority. Until full details are known about the circumstances - which are usually not available or apparent until sometime later – there is a duty of care to consider whether immediate protective measures are in place and adequate in the context of the available information and assessed risks.

Any conversation with the adult, although critical to the safeguarding situation, has to be placed within the context of knowing that they and others are safe and will remain safe to allow those conversations to take place safely and without duress to enable their proper wishes and views to be heard.

For example, the presence and impact of any control or coercion has to be considered, and in simply taking the adults views 'on face value' without an open and enquiring approach would not allow an accurate picture of the situation to develop. Respecting the adult's wishes for no action to be taken in abusive or neglectful situations would not be appropriate unless it is evident that there are no contrary legal or public interest concerns.

There are important questions to ask at this point; what does the adult at risk wish to happen? Do I need to contact the police? Does the adult remain at risk? Is anyone else at risk?

Wherever possible the adult at risk and any relevant others should be involved at an early stage and help decide what protective measures, if any, are needed. However, not knowing the adult's views should never prevent essential action to ensure their safety.

The adult's availability, past wishes and mental capacity, as well as the seriousness and likelihood of any risk will be critical factors in determining whether any delay is possible or tolerable.

The adult at risk should be at the centre of this process, be empowered by it and treated with dignity and respect. Their views and wishes on subsequent actions are crucially important to how the concern is managed or resolved. Assessed risks and actions taken in response should be informed by an understanding of any mental capacity issues relating to the adult at risk, and it may be necessary for a capacity assessment to be completed alongside a safeguarding assessment or during the course of any safeguarding enquiry.

Reference should be made to the Mental Capacity Act and Deprivation of Liberty Safeguards for guidance regarding mental capacity assessment and best interest decisions. See the multi-agency practice guidance for more information.

The safeguarding assessment considers the following factors in assessing the safeguarding concern:

- The adults needs (looking at cognitive, physical, emotional financial, communication and social indicators)
- The nature, extent, duration and seriousness of the alleged abuse or neglect
- The impact on the adult
- The wishes of the adult
- Public or vital interest considerations
- The risk to the adult of repeated or increasingly serious acts
- The risk to other adults or children, including adults in need of care and support
- Expert opinion and advice from the relevant professionals who have expertise in a given area

The assessment will also be influenced by many factors such as the availability and quality of any intelligence or evidence, how it fits with other relevant information, the intent of the perpetrator, whether there is a history of abuse or domestic abuse or whether the situation can be monitored or supportive measures put in place.

In terms of understanding and evaluating risk, risk would always 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
- The incidents are increasing in severity
- The behaviour is persistent and/or deliberate
- There is intelligence to suggest that despite being aware of evident risks the adult is still being placed at risk

There needs to be consideration of whether Police involvement is required if any criminal activity has occurred, or if the Police are already involved what action they are taking.

There needs to be some thought as to who needs to be involved in next steps, such as the Police, Care Quality Commission, housing agencies, health services and the provider.

### **5.3 Timescales or responding to safeguarding concerns**

Possession of good evidence or intelligence informed by appropriate engagement is necessary to inform decisions about safeguarding concerns and undertake safeguarding enquiries.

However, it is of obvious importance in any safeguarding work that responses should be timely. Some safeguarding concerns will require an immediate response to safeguard the adult as a result of needing to manage presenting risks to the adult or others.

Although a framework of target timescales are indicated for each element of the safeguarding process (see Appendix B), this is not absolute or definitive as timescales should reflect personalised approaches to safeguarding the adult.

Unless it is not safe or will increase the risk to the adult, it is important to respond at the pace that is right for the adult, and puts them in greatest control of what happens in their life.

It is best practice to speak to the adult involved at as early a stage as possible to get their views and wishes on the concerns. This should help to guide what next steps should be taken and whether the concern should be reported as an adult safeguarding concern or should be dealt with by another means.

Protective measures should be confirmed and put in place within 24 hours from receipt of a safeguarding concern, and recorded within the safeguarding assessment on the local authority's information system. This will enable social workers unfamiliar with the safeguarding situation, such as out of hours social workers, to respond to any emerging events or requests for information.

Measures should be put in place by the most appropriate person or agency that are sufficiently robust in providing protection in order for the safeguarding assessment to be completed and monitored whilst the assessment is undertaken .

The safeguarding assessment should be completed as soon as practicable by the local authority and within 5 working days from receipt of the safeguarding concern. This timescale recognises that overly process-driven safeguarding responses can result in the adult and relevant others views being not sought, or minimised, resulting in poor safeguarding outcomes.

Progressing next steps with, and not despite the adult, may result in timescales being not the most important consideration. However, whether there are delays can depend on other factors which sit outside of the adults wishes such as a range of public or vital interest's considerations.

This procedure does not outline any specified target timescale to complete enquiries. However, as with all adult safeguarding work, responses should be timely and there should be ongoing monitoring of the adults views, the risks and protective measures during that time.

In almost every situation where there are safeguarding concerns, it is likely to be necessary to physically see and talk to the adult in order to be able to make a decision about a safeguarding concern.

It may not always be appropriate or possible for the local authority to act in certain situations and the Care Act Statutory Guidance is clear that who knows the adult best and/or who have the necessary skills and knowledge may be the most appropriate individual or profession to respond.

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

There is a balance between the person talking to the adult being someone who knows them best (which may well allow the adult to feel more relaxed and comfortable), and an adult with the relevant skills and knowledge.

This means that a social worker may need to visit and assure themselves that protective measures are in place and talk to the adult directly, even though other staff members or professionals are with the adult.

## **5.4 Police involvement**

The Police have considerable experience and skill in investigating and interviewing. It will clearly be essential that services for adults at risk work in partnership with the police and that the police are invited to safeguarding meetings when required.

Early sharing of a concern, allegation or complaint with the Police could prevent the adult at risk having to be interviewed twice, if a referral to the police is later considered to be necessary

Early consultation will allow the Police to decide whether a criminal act has been committed and attendance at the strategy meeting will allow the Police the opportunity of determining if and at what stage they need to become involved. For example, it is good practice that in the event of an unexpected death, health professionals and the Police have early discussions to ensure that the Police investigation process and other NHS investigation processes seamlessly join up.

Police consultation must be made if:

- Injuries to an adult at risk are apparent or suspected, which appear to be non-accidental or unexplained
- There appears to be wilful neglect of an adult who lacks capacity
- Sexual offences are believed to have taken place
- Financial abuse by theft or misappropriation of funds is suspected
- The adult wishes the matter to be referred to the Police

**REMEMBER: The Police have a duty to the adult to assist, support and obtain evidence of offences and have a responsibility to investigate and interview an identified suspect. This process may not result in prosecution. The best interests of the adult, as well as their wishes, should be paramount considerations in making this decision.**

## 5.5 Vulnerable witnesses/special measures

The Youth Justice and Criminal Evidence Act (1999) was introduced to enhance the evidence available from vulnerable individuals during criminal trials. It attempts to ensure that the victims and witnesses eligible for special measures have the opportunity to give their best evidence through support and/or an application for a Special Measures Direction.

The Police can also refer for an 'Intermediary' from the intermediary service. This is a professional assessor, such as a social worker, or a speech and language therapist, who is trained in assessing the most appropriate way to interview or communicate with any individuals who have disabilities that affect communication and comprehension.

## 5.6 Advocacy

**REMEMBER: Under The Care Act Statutory Guidance the local authority must arrange, where appropriate, for an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry, where the adult has 'substantial difficulty' in being involved in contributing to the process and where there is no other appropriate adult to assist.**

A person who is engaged professionally to provide care or treatment for the adult in question cannot be an advocate. The adult must also consent to being represented and supported by the advocate (or where the adult lacks capacity, the local authority must consider it in that adult's best interests to be represented and supported by the advocate).

However, if an enquiry needs to start urgently, then it can begin before an advocate is appointed but one must be appointed as soon as possible. Information on Advocacy Services is provided at the end of this document.

The use of an appropriately trained advocate or interpreter should be discussed where the adult at risk might have communication or memory difficulties. If the adult at risk lacks capacity to be involved in any safeguarding decisions the use of an Independent Mental Capacity Advocate (IMCA) should also be considered.

An IMCA may be instructed to support someone who lacks capacity to make decisions concerning safeguarding issues, whether or not family, friends or others are involved. The IMCA has Mental Capacity Act statutory duties and discretionary powers to guide and support their role in helping to assess 'best interest' decisions.

## 5.7 Outcome of the Safeguarding Assessment

Once all relevant information has been gathered the local authority should be in a position to make a decision about whether the safeguarding concern meets the criteria for a statutory enquiry under s42. This will be where the Local Authority has **reasonable cause to suspect** that an adult aged 18 or over in its area:

- Has **needs for care & support** (whether or not the authority is meeting any of those needs)
- Is **experiencing, or is at risk of, abuse or neglect**, and



- As a result of those needs **is unable to protect himself or herself** against the abuse or neglect or the risk of it

Where the above criteria are met, the safeguarding concern will progress to the Safeguarding Enquiry stage of this procedure.

Where the above criteria for statutory enquiry are not met, for example in circumstances where:

- The adult is not reasonably suspected to be experiencing, or at risk of, abuse or neglect
- The adult is at risk of abuse or neglect but does not have care & support needs (whether or not the authority is meeting any of those needs)
- The adult has care & support needs, may have experienced abuse or neglect in the past, but is no longer experiencing or is at risk of abuse or neglect
- The adult has care & support needs, is at risk of abuse or neglect, but is able to protect themselves from abuse or neglect should they choose to
- The adult has experienced poor quality care or acts of omission that require responses but do not meet the threshold of neglect. Responses will be dependent on the context and seriousness of the situation

The local authority will consider what other action, or provision of advice or information, is required to respond to the concern.

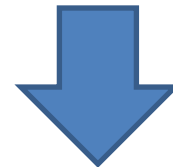
## Safeguarding Concern

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## Safeguarding Assessment

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## Safeguarding Enquiry

- Obtain Views, Consent and Desired Outcomes from the adult
- Consider Representation or Advocacy
- Agree what enquiries are needed and who will do them
- Complete Enquiries
- Decide what action is to be taken

## Other Responses

- Care Quality Concern
- No further action for safeguarding
- Care and Support assessment and/or other services
- Complaint
- Action by other agencies or regulatory body

Safeguarding in its widest sense means protecting an adult's right to live in safety, free from abuse and neglect, with people and organisations working together to prevent and stop both abuse and the risk of abuse at the same time as making sure the adult's wellbeing and rights are promoted.

Where the criteria for a safeguarding enquiry under s42 is not met, there are a range of responses which will contribute to supporting adults to live safely: good quality assessment and planning; provision of safe, quality care services; making complaints; sharing information with regulators or commissioners of services; Police interventions; victim or court support services; patient safety; clinical governance or other incident management processes.

Once all available and relevant information has been obtained, the safeguarding assessment is completed by the social worker's manager authorising the assessment document. The safeguarding assessment has five possible outcomes:

- An enquiry under s42 conducted and concluded within the safeguarding assessment
- An enquiry under s42 to be conducted via the safeguarding referral route
- An enquiry under s42 to be conducted via the care management route
- A care quality concern
- No further action for safeguarding (but other actions may need to be taken, for example, via assessments, complaints or regulatory action)

An enquiry under section 42 of the Care Act will take place where, as a result of the outcome of the safeguarding assessment, if the local authority reasonably suspects that the adult is experiencing, or is at risk of, abuse or neglect.

The objective of an enquiry is to:

- Establish facts;
- Ascertain the adult's views and wishes;
- Assess the needs of the adult for protection, support and redress and how they might be met;
- Protect from the abuse and neglect, in accordance with the wishes of the adult;
- Make decisions as to what follow-up action should be taken with regard to the person or organisation responsible for the abuse or neglect; and
- Enable the adult to achieve resolution and recover

**REMEMBER: Given the importance of what the adult's views and wishes are in respect of the suspected concerns, the nature of any enquiry can range from a conversation with the adult at risk, to a more formal multi-agency meeting. Sometimes, depending on vital or public interests, there will be a difference between what it appears the adult wants to happen, and what agencies are required to do, but wherever possible efforts should be made to follow the adult's wishes.**

There is likely to be a consensus in respect of more serious incidents, such as those requiring a Police response as to what the safeguarding response should be, but safeguarding responses should reflect the adult's wishes wherever possible. Some adult's wishes may be unrealistic, for example, because they want either more, or less, done that is legally possible, in such circumstances they should be provided with information and advice with which to make an informed decision, and to challenge as appropriate.

Enquiries conducted via the **safeguarding referral route** will usually be in response to serious or a potentially serious situation, and therefore will usually require a degree of planning and a multi-agency response.

The most efficient and effective way to make this happen is usually to hold a safeguarding meeting or safeguarding discussion. This may be required in order to gather relevant people together to discuss information and evidence that has been obtained and gain people's views on what actions are required in the adult's case.

However, the meeting should not be used as a pretext to exclude the adult or relevant

others, it should be held because it is the most effective way of responding to the adults wishes and views. Meetings should be organised and planned carefully to promote meaningful involvement of the adult.

**REMEMBER: Professionals will need to be creative and person-centred if adults and their representatives are to be effectively involved in safeguarding meetings.**

A safeguarding meeting or discussion is usually held where there are vital or public interests, and in this respect, the adult's views and wishes although important, may not be the only factor to be considered.

However, where and how the meeting happens, who attends and what is agreed will require significant thought, particularly where the adults wishes are significantly different to what is believed to be the most appropriate way forward.

Safeguarding concerns being responded to via the safeguarding referral route will be coordinated and any meetings chaired by safeguarding strategy managers.

Enquiries conducted via the **care management route**, are still conducted in response to suspected abuse or neglect, but will usually reflect a range of situations typically where there are either no evident public or vital interests, the adult has particular views or wishes about the safeguarding response, and/or the nature or type of the suspected abuse or neglect is of a degree where a more proportionate response is agreed.

Safeguarding concerns being responded to via the care management route will be coordinated by the social work team who has completed the safeguarding assessment.

Enquiries into suspected abuse or neglect in care settings should be reflective of situations where there is reasonable cause to suspect that deliberate or unreasonable acts or omissions have taken place.

In care and health settings, harm can occur as a result of a genuine oversight, by accident, in response to a life threatening situation, or because the capacitated adult themselves insisted on a particular course of action.

The **Care quality concern** pathway is appropriate to circumstances where abuse or neglect is not suspected, but there is evidence that the quality of care provided is, or has not been of a reasonable standard.

Care quality concerns can reflect a range of circumstances, from a medication error that did not result in any harm, to serious injury of an adult within a care setting as a result of an accident. Investigations may still need to be conducted, and the consequences for individuals or agencies may be significant, but such investigations should not take place within a safeguarding context. Concerns about care quality may be held by both the NHS and/or local authority. Equally, complaints may require NHS and/or local authority responses.

In situations where there may have been harm, but a safeguarding enquiry is not to take place, for example, in situations where neglect is not reasonably suspected, there should be a timely conversation with the adult and/or their representative as to the rationale for the decision and the nature of any likely subsequent action.

It is important to respond to any concerns, anxieties or expectations that the adult or their family may have, at the same time as offering reassurance that proportionate investigation

and actions will take place.

**No further action** will be the outcome in situations where there is not a reasonable suspicion that the adult is at risk of, or is experiencing, abuse or neglect, and that there is no evidence of care quality concerns. There may be information and advice provided to the referrer, adult or relevant others in the course of completing the safeguarding risk assessment.

## 5.8 Care Quality Route

The care quality route will be followed in situations where at the conclusion of a safeguarding risk assessment the threshold of 'reasonable suspicion' has not been met in respect of possible abuse or neglect, but there is evidence or intelligence that suggests there are concerns about the safe and effective delivery of care.

Care quality concerns can reflect a wide range of circumstances, and dependant on factors such as the adult's views and wishes, the seriousness of the incident, whether it forms part of a pattern or trend and whether there is a public interest element should determine the focus, scope and depth of any investigation.

The active involvement of the commissioner and regulator can be important in many care quality situations, and in particular within registered settings where the local authority does not commission or monitor care quality, the role of the regulator and commissioner is essential in ensuring good quality care and treatment.

There is an expectation that regulated providers will co-operate with all such investigations, and may be required to produce or contribute to any reports or investigations. Investigation reports should detail the process, methodology and its findings. They must also conclude what measures have been put in place or are currently being arranged following the findings of the investigations, not just in terms of policy and practice but regarding any staff or managers involved and the workforce as a whole.

Where an investigation is required there should be communication with the adult and/or relevant others as it is important to respond to any concerns or expectations as well as offering reassurance that proportionate investigation and actions will take place.

However, in some circumstances where the adult refuses to engage in any safeguarding responses may also include them not wishing to be informed or involved in any subsequent decisions or actions.

Care quality concerns are collated and monitored by the Council's Care Quality Monitoring Team; with wider agencies participating by providing soft intelligence whereby information can be triangulated and can be responded to by a range of people depending on the circumstances. This can include council or NHS quality monitoring officers, safeguarding managers, social workers, CQC, care commissioners and the care provider themselves.

Commissioners from the local authority, NHS and CCGs are all vital to promoting adult safeguarding. Commissioners have a responsibility to assure themselves of the quality and safety of the organisations they place contracts with and ensure that those contracts have explicit clauses that holds the providers to account for preventing and dealing promptly and appropriately with any example of abuse and neglect.