

Warrington Safeguarding Adults Practice Guidance Reviewed March 2015

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1 Introduction

With the introduction of the Care Act (2014), there is now discrete statute law in respect of safeguarding adults. However there also remains an extensive legal and statutory framework surrounding adult safeguarding. This practice guidance is intended to provide advice and support to individuals who may work with, or have contact with adults at risk.

This guide is not exhaustive and given that the law and its interpretation can change over time, this document should not be considered to be a substitute for taking legal and practice advice as appropriate.

Often there will be avenues and options only available to the adult at risk and/or their family which may be appropriate to safeguard the person. The role of a professional or an advocate could be to assist and support the person in accessing their own legal advice.

The Police and the Citizen's Advice Bureau may hold a list of solicitors who specialise in civil law and funding may be available via the Legal Aid Agency but is often means-tested. This should not deter individuals or their families from seeking appropriate legal advice and some solicitors offer an initial free advice session.

2 Types and indicators of abuse

This section considers the different types and patterns of abuse and neglect and the different circumstances in which they may take place. This is not intended to be an exhaustive list but an illustrative guide as to the sort of behaviour which could give rise to a safeguarding concern.

Workers across a wide range of organisations need to be vigilant about adult safeguarding concerns in all walks of life including, amongst others in health and social care, welfare, policing, banking, fire and rescue services and trading standards; leisure services, faith groups, and housing. GPs, in particular, are often well-placed to notice changes in an adult that may indicate they are being abused or neglected.

We should not limit our view of what constitutes abuse or neglect, as they can take many forms and the circumstances of the individual case should always be considered. Types of abuse or neglect include:

- **Physical abuse** – including assault, hitting, slapping, pushing, misuse of medication, restraint or inappropriate physical sanctions
- **Domestic abuse** – including psychological, physical, sexual, financial, emotional abuse; so called ‘honour’ based violence
- **Sexual abuse** – including rape, indecent exposure, sexual harassment, inappropriate looking or touching, sexual teasing or innuendo, sexual photography, subjection to pornography or witnessing sexual acts, indecent exposure and sexual assault or sexual acts to which the adult has not consented or was pressured into consenting
- **Psychological abuse** – including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, cyber bullying, isolation or unreasonable and unjustified withdrawal of services or supportive networks
- **Financial or material abuse** – including theft, fraud, internet scamming, coercion in relation to an adult’s financial affairs or arrangements, including in connection with wills, property, inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits
- **Modern slavery** – encompasses slavery, human trafficking, forced labour and domestic servitude. Traffickers and slave masters use whatever means they have at their disposal to coerce, deceive and force individuals into a life of abuse, servitude and inhumane treatment
- **Discriminatory abuse** – including forms of hate crime or hate incidents, harassment, slurs or similar treatment because of race, gender and gender identity, age, disability, sexual orientation or religion

- **Organisational abuse** – including neglect and poor care practice within an institution or specific care setting such as a hospital or care home, for example, or in relation to care provided in one's own home. This may range from one off incidents to on-going ill-treatment. It can be through neglect or poor professional practice as a result of the structure, policies, processes and practices within an organisation
- **Neglect and acts of omission** – including ignoring medical, emotional or physical care needs, failure to provide access to appropriate health, care and support or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating
- **Self-neglect** – this covers a wide range of behaviour neglecting to care for one's personal hygiene, health or surroundings and includes behaviour such as hoarding. It should be noted that self-neglect may not prompt a section 42 enquiry. An assessment should be made on a case by case basis. A decision on whether a response is required under safeguarding will depend on the adult's ability to protect themselves by controlling their own behaviour. There may come a point when they are no longer able to do this without external support.

Incidents of abuse may be one-off or multiple, and affect one person or more. Professionals and others should look beyond single incidents or individuals to identify patterns of harm, just as the Care Quality Commission, as the regulator of service quality, does when it looks at the quality of care in health and care services.

Repeated instances of poor care may be an indication of more serious problems and of what we now describe as organisational abuse. In order to see these patterns it is important that information is recorded and appropriately shared.

Abuse can take place in any context. It may occur in a public place; it may occur when an adult at risk lives alone or with a relative; it may occur within nursing, residential or day care settings, in hospitals, custodial situations, support services in people's own homes and other places previously assumed safe.

3 Eligibility

The Care Act (section 1) introduces the concept of 'wellbeing' for adults who are in need of care and support. The Act also states that abuse and neglect negatively impact on adults wellbeing, and as such those agencies who are obliged to respond to safeguarding concerns do so because the adult's wellbeing may be affected.

The eligibility threshold for adults with care and support needs is set out in the Care and Support (Eligibility Criteria) Regulations 2014 (the 'Eligibility Regulations'). The threshold is based on identifying how a person's needs affect their ability to achieve relevant outcomes, and how this impacts on their wellbeing.

In considering whether an adult has eligible needs for care and support, local authorities must consider whether:

- The adult's needs arise from or are related to a physical or mental impairment or illness
- As a result of the adult's needs the adult is unable to achieve two or more of the specified outcomes (which are described in the Care Act Statutory Guidance paragraphs 6.105 to 6.112)
- As a consequence of being unable to achieve these outcomes there is, or there is likely to be, a significant impact on the adult's wellbeing

Significant impact is not defined and should be understood to have its everyday meaning. An adult's needs are only eligible where they meet all three of these conditions.

Section 42 of the Care Act states that safeguarding duties apply to an adult who:

- Has needs for care and support (whether or not the local authority is meeting any of those needs) and;
- Is experiencing, or at risk of, abuse or neglect; and
- As a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect

Under paragraph 14.63 of the Statutory Guidance, local authorities must make enquiries, or cause others to do so, if they reasonably suspect an adult who meets the criteria above is, or is at risk of, being abused or neglected.

Local authority statutory adult safeguarding duties apply equally to those adults with care and support needs regardless of:

- Whether those needs are being met
- Whether the adult lacks mental capacity or not
- Setting (other than prisons and approved premises)

4 The Care Act (2014), Statutory Guidance and Regulations

From 1st April 2015 the Care Act and associated statutory guidance and regulations introduce a range of duties and powers, as well as outlining eligibility for safeguarding services. The safeguarding duties have a legal affect in relation to organisations other than the local authority, for example the NHS and the Police.

Under paragraph 14.51 of the Care Act guidance, local authorities must cooperate with each of their relevant partners, as described in section 6(7) of the Care Act, and those partners must also cooperate with the local authority, in the exercise of their functions relevant to care and support including those to protect adults.

Where a local authority requests the co-operation of a relevant partner, or of a local authority which is not one of its relevant partners (or vice versa), in the exercise of a function in the case of an individual with needs for care and support or in the case of a carer, a carer of a child or a young carer, the partner or authority must comply with the request unless it considers that doing so:

- Would be incompatible with its own duties, or
- Would otherwise have an adverse effect on the exercise of its functions

A person who decides not to comply with a request under subsection must give the person who made the request written reasons for the decision.

The Care Act Statutory Guidance defines safeguarding as protecting an adult's right to live in safety, free from abuse and neglect, and promoting the adult's wellbeing in safeguarding arrangements.

It states that safeguarding is about people and organisations working together to prevent and stop both the risks and experience of abuse or neglect, while at the same time making sure that the adult's wellbeing is promoted including, where appropriate, having regard to their views, wishes, feelings and beliefs in deciding on any action.

The Statutory Guidance stresses that we must recognise that adults sometimes have complex interpersonal relationships and may be ambivalent, unclear or unrealistic about their personal circumstances. People have complex lives and being safe is only one of the things they want for themselves.

Professionals should work with the adult to establish what being safe means to them and how that can be best achieved. Professionals and other staff should not be advocating 'safety' measures that do not take account of individual well-being.

4.1 Responding to abuse and neglect

Under section 42 of the Care Act, local authorities must make enquiries, or cause others to do so, if they reasonably suspect an adult who meets the criteria is, or is at risk of, being abused or neglected. An enquiry is the action taken or instigated by the local authority in response to a concern that abuse or neglect may be taking place.

An enquiry could range from a conversation with the adult right through to a much more formal multi-agency plan or course of action. Whatever the course of

subsequent action, the professional concerned should record the concern, the adult's views and wishes, any immediate action has taken and the reasons for those actions.

The circumstances of any actual or suspected case of abuse or neglect will inform the response. For example, sometimes abuse or neglect may be unintentional and may arise because a family carer is struggling to care for another person. This makes the need to take action no less important and the primary focus must still be on how to safeguard the adult, but in such circumstances, an appropriate response could be a support package for the carer and monitoring.

In other circumstances where the safeguarding concerns arise from abuse or neglect deliberately intended to cause harm, then it would not only be necessary to immediately consider what steps are needed to protect the adult but also whether to refer the matter to the police to consider whether a criminal investigation would be required or appropriate.

The nature and timing of the intervention and who is best placed to lead will be, in part, determined by the circumstances. For example, where there is poor, neglectful care or practice, resulting in pressure sores, then an employer-led response may be more appropriate; but this situation will need additional responses such as clinical intervention to improve the care given immediately and a clinical audit of practice. Commissioning or regulatory enforcement action may also be appropriate.

The purpose of the enquiry is to decide whether or not the local authority or another organisation, or person, should do something to help and protect the adult. If the local authority decides that another organisation should make the enquiry, for example a care provider, then the local authority should be clear about timescales, the need to know the outcomes of the enquiry and what action will follow if this is not done.

What happens as a result of an enquiry should reflect the adult's wishes wherever possible, as stated by them or by their representative or advocate. If they lack capacity it should be in their best interests if they are not able to make the decision, and be proportionate to the level of concern.

The adult should always be involved from the beginning of the enquiry unless there are exceptional circumstances that would increase the risk of abuse. If the adult has substantial difficulty in being involved, and where there is no one appropriate to support them, then the local authority must arrange for an independent advocate to represent them for the purpose of facilitating their involvement.

Professionals and other staff need to handle enquiries in a sensitive and skilled way to ensure distress to the adult is minimised. It is likely that many enquiries will require the input and supervision of a social worker, particularly the more complex situations and to support the adult to realise the outcomes they want and to reach a resolution or recovery. For example, where abuse or neglect is suspected within a family or informal relationship it is likely that a social worker will be the most appropriate lead.

Personal and family relationships within community settings can prove both difficult and complex to assess and intervene in. The dynamics of personal relationships can be extremely difficult to judge and rebalance.

For example, an adult may make a choice to be in a relationship that causes them emotional distress which outweighs, for them, the unhappiness of not maintaining the relationship.

Case Study A

Mr A is in his 40s, and lives in a housing association flat with little family contact. His mental health is relatively stable, after a previous period of hospitalisation, and he has visits from a mental health support worker. He rarely goes out, but he lets people into his accommodation because of his loneliness.

The police were alerted by Mr A's neighbours to several domestic disturbances. His accommodation had been targeted by a number of local people and he had become subjected to verbal, financial and sometime physical abuse.

Although Mr A initially insisted they were his friends, he did indicate he was frightened; he attended a case conference with representatives from adult social care, mental health services and the police, from which emerged a plan to strengthen his own self-protective ability as well as to deal with the present abuse.

Mr A has made different arrangements for managing his money so that he does not accumulate large sums at home. A community-based visiting service has been engaged to keep him company through visits to his home, and with time his support worker aims to help get involved in social activities that will bring more positive contacts to allay the loneliness that Mr A sees as his main challenge.

Whilst work with the adult may frequently require the input of a social worker, other aspects of enquiries may be best undertaken by others with more appropriate skills and knowledge. For example, health professionals should undertake enquiries and treatment plans relating to medicines management or pressure sores.

4.2 Criminal offences and adult safeguarding

Everyone is entitled to the protection of the law and access to justice. Behaviour which amounts to abuse and neglect, for example physical or sexual assault or rape, psychological abuse or hate crime, wilful neglect, unlawful imprisonment, theft and fraud and certain forms of discrimination also often constitute specific criminal offences under various pieces of legislation.

Although the local authority has the lead role in making enquiries, where criminal activity is suspected, then the early involvement of the police is likely to have benefits in many cases.

A criminal investigation by the police takes priority over all other enquiries, although a multi-agency approach should be agreed to ensure that the interests and personal wishes of the adult will be considered throughout, even if they do not wish to provide any evidence or support a prosecution.

The welfare of the adult and others, including children, is paramount and requires continued risk assessment to ensure the outcome is in their interests and enhances their wellbeing.

Case Study B

Two brothers with mild learning disabilities lived in their family home, where they had remained following the death of their parents some time previously. Large amounts of rubbish had accumulated both in the garden and inside the house, with cleanliness and self-neglect also an issue.

They had been targeted by fraudsters, resulting in criminal investigation and conviction of those responsible, but the brothers had refused subsequent services from adult social care and their case had been closed.

They had, however, had a good relationship with their social worker, and as concerns about their health and wellbeing continued it was decided that the social worker would maintain contact, calling in every couple of weeks to see how they were, and offer any help needed, on their terms.

After almost a year, through the gradual building of trust and understanding, the brothers asked to be considered for supported housing; with the social worker's help they improved the state of their house enough to sell it, and moved to a living environment in which practical support could be provided.

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

The standard of proof for prosecution is 'beyond reasonable doubt'. The standard of proof for internal disciplinary procedures and for discretionary barring consideration by the Disclosure and Barring Service (DBS) and the Vetting and Barring Board is usually the civil standard of 'on the balance of probabilities'.

This means that when criminal procedures are concluded without action being taken this does not automatically mean that regulatory or disciplinary procedures should cease or not be considered. In any event there is a legal duty to make a

safeguarding referral to DBS if a person is dismissed or removed from their role due to harm to a child or a vulnerable adult.

4.3 Access to the Adult at Risk

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 an enquiry.

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.

People must be assumed to have capacity to make their own decisions and be given all practicable help before anyone treats them as not being able to make their own decisions. If the adult has substantial difficulty in being involved, and where there is no one appropriate to support them, such as family, then the local authority must arrange for an independent advocate to represent them for the purpose of facilitating their involvement.

Case Study C

Miss P's mental health social worker became concerned when she had received reports that two of Marissa's associates were visiting more regularly and sometimes staying over at her flat. Miss P was being coerced into prostitution and reportedly being physically assaulted by one of the men visiting her flat. There was also concern that she was being financially exploited.

Miss P's vulnerability was exacerbated by her mental health needs and consequent inability to set safe boundaries with the people she was associating with. The social worker recognised that the most appropriate way to enable Miss P to manage the risk of harm was to involve Miss P's family, to which she agreed to, and other professionals to develop and coordinate a plan which would enable her to continue living independently but provide a safety net for when the risk of harm became heightened.

Guided initially by Miss P's wish for the two men to stay away from her, the social worker initiated a planning meeting between supportive family members and other professionals such as the police, domestic violence workers, support workers and housing officers.

Although Miss P herself felt unable to attend the planning meeting, her social worker ensured that her views were included and helped guide the plan.

The meeting allowed family and professionals to work in partnership, to openly share information about the risks and to plan what support Miss P needed to safely maintain her independence.

Tasks were divided between the police, family members and specialist support workers. The social worker had a role in ensuring that the plan was coordinated properly and that Miss P was fully aware of everyone's role.

Miss P's family were crucial to the success of the plan as they had always supported her and were able to advocate for her needs. They also had a trusting relationship with her and were able to notify the police and other professionals if they thought that the risk to Miss P was increasing.

The police played an active role in monitoring and preventing criminal activity towards Miss P and ensured that they kept all of the other professionals and family up to date with what was happening. Miss P is working with a domestic violence specialist to help her develop personal strategies to keep safer and her support worker is helping her to build resilience through community support and activities.

This duty to make or to cause adult safeguarding enquiries to be made does not provide for an express legal power of entry or right of unimpeded access to the adult who is subject to such an enquiry. Instead, there are a range of existing legal powers which are available to gain access should this be necessary.

The powers which may be relevant to adult safeguarding situations derive from a variety of sources including the Mental Capacity Act, Mental Health Act and the Police and Criminal Evidence Act, along with the common law including the inherent jurisdiction of the High Court and common law powers of the police to prevent or deal with a breach of the peace.

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

All attempts to resolve the situation should begin with negotiation, persuasion and the building of trust. Denial of access may not necessarily be a sign of wrong-doing or risk; it may be an indication of lack of trust of authority, guilt about their inability to care or fear that they or the adult will be removed from the home.

It is vital that until the facts are established the practitioner adopts an open-minded, non-judgmental approach. If all attempts fail then the local authority must consider whether the refusal to give access is unreasonable and whether the circumstances justify intervention.

There will need to be a local authority-led discussion about what the perceived risks are, the likelihood of risk or neglect occurring and the potential outcomes of both intervening and not intervening. As in any other situation, any decisions and the

reasons for them should be clearly and fully recorded and shared with others as necessary and lawful.

If the conclusion is that the use of legal powers is necessary and justifiable, the next step is to consider what powers would be most appropriate. Therefore local authority managers and practitioners involved in safeguarding need to be aware of existing legal powers which can be used if necessary.

Recourse to the courts and legal powers should be considered carefully and only as a last resort and legal advice should be taken at the earliest opportunity.

Local authorities must satisfy themselves that there are grounds to seek access and that the use of such powers will not be unlawful or leave an adult in a worse position. Clearly any unlawful intervention could lead not only to judicial criticism but also to liability (whether as a result of a breach of human rights or otherwise).

4.4 Proportionality

Any interference by the state (meaning public bodies, or sometimes private bodies carrying out functions of a public nature) must be lawful and necessary. The stipulation of necessity encompasses a requirement of proportionality – that is, not ‘taking a sledgehammer to crack a nut’.

Case Study D

A resident at a local care home told the district nurse that staff members spoke disrespectfully to her and that there were episodes of her waiting a long time for the call bell to be answered when wanting to use the commode.

The resident wished to leave the home as she was very unhappy with the treatment she was receiving, and was regularly distressed and tearful.

The resident was reluctant for a formal safeguarding enquiry to take place, but did agree that the issues could be discussed with the manager. The district nurse negotiated some actions with the manager to promote good practice and address the issues that had been raised.

When the district nurse reviewed the situation; the manager at the care home had dealt with the issues appropriately and devised an action plan. The resident stated that she was now happy at the care home – staff ‘couldn’t be more helpful’ and she no longer wanted to move.

Where the use of any power of entry is thought necessary, it should be exercised proportionately, in relation to the risk and the apparent gravity of the situation.

If powers of intervention are to be exercised lawfully and proportionately, it follows that practitioners involved in safeguarding require a basic knowledge of what powers

are available; in particular, when and how they can be used – and, just as importantly, when they cannot be – and whom to consult in cases of uncertainty.

Of course an emergency situation involving significant risk may justify the use of coercive powers – such as police entry to save life and limb – if there is clearly no time to attempt a negotiated, non-coercive approach. The principle of the least restrictive option helps to ensure that interventions are necessary and proportionate.

Section 1 of the Mental Capacity Act requires that, in respect of an act or decision done for a person who lacks capacity, consideration must be given to achieving the person's best interests in a manner which is least restrictive of the person's rights and freedom of action.

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

4.5 Outcomes

Once enquiries are completed, the outcome should be notified to the local authority which should then determine with the adult what, if any, further action is necessary and acceptable.

It is for the local authority to determine the appropriateness of the outcome of the enquiry. One outcome of the enquiry may be the formulation of agreed action for the adult which should be recorded on their care plan. This will be the responsibility of the relevant agencies to implement. In relation to the adult this should set out:

- What steps are to be taken to assure their safety in future
- The provision of any support, treatment or therapy including on-going advocacy
- Any modifications needed in the way services are provided
- How best to support the adult through any action they take to seek justice or redress
- Any on-going risk management strategy as appropriate
- Any action to be taken in relation to the person or organisation that has caused the concern

Case Study E

Mr A is 24 and has autism and a mild learning disability. He is a very friendly and sociable young man who is prone to waving and talking to most people he comes across, seeing everyone as a potential friend.

However, due to his disabilities, he struggles to read the intentions of others and is easily led astray and manipulated.

He lives next door to a pub, where he knows the staff and the regulars. He also lives close to his GP, and is able to access his most frequently visited places. He does, however, like to walk into town to talk to people he meets out and about.

On such occasions he has been repeatedly tricked into stealing items from a newsagent by a group of teenagers and given large amounts of money away to strangers he strikes up conversations with.

Due to his previous experiences, Mr A was identified during a needs assessment as being at risk of abuse and neglect. A safeguarding enquiry was triggered.

The council found that, although Mr A was not currently experiencing abuse or neglect, he remained highly vulnerable to abuse due to his disabilities. To assure his safety in the future, a safeguarding plan was agreed between Mr A and a social worker. This focused on developing his social skills and understanding of relationships and boundaries and the social worker worked with Mr A to consider various support options such as having a buddy or circle of support.

The social worker put Mr A in touch with an autism social group which provided sessions on skills for staying safe. As the group was based in town, Mr A's plan also included a support worker to accompany him.

After the first 5 sessions Mr A was able to attend himself but continued to meet with his support worker on a monthly basis as part of the risk management strategy set out in his safeguarding plan.

4.6 Safeguarding Adults Boards

Under The Care Act, each local authority must set up a Safeguarding Adults Board (SAB). The main objective of a SAB is to assure itself that local safeguarding arrangements and partners act to help and protect adults in its area who meet the criteria set out in section 1 of The Care Act.

The SAB has a strategic role and oversees and leads adult safeguarding across the locality and will be interested in a range of matters that contribute to the prevention of abuse and neglect. These will include the safety of patients in its local health services, quality of local care and support services, effectiveness of prisons and approved premises in safeguarding offenders and awareness and responsiveness of further education services.

It is important that the SAB has effective links with other key partnerships in the locality and share relevant information and work plans. They should consciously cooperate to reduce any duplication and maximise any efficiency, particularly as objectives and membership is likely to overlap.

The lead agency with responsibility for coordinating adult safeguarding arrangements is the local authority, but all the members of the SAB should designate a lead officer. Other agencies should also consider the benefits of having a lead for adult safeguarding.

Strategies for the prevention of abuse and neglect is a core responsibility of a SAB and it should have an overview of how this is taking place in the area and how this work ties in with the Health and Wellbeing Board's, Quality Surveillance Group's (QSG), Community Safety Partnership's and CQC's stated approach and practice.

A SAB has three core duties:

- It must publish a strategic plan for each financial year that sets how it will meet its main objective and what the members will do to achieve this. The plan must be developed with local community involvement, and the SAB must consult the local Healthwatch organisation
- It must publish an annual report detailing what the SAB has done during the year to achieve its main objective and implement its strategic plan, and what each member has done to implement the strategy as well as detailing the findings of any Safeguarding Adults Reviews and subsequent action
- It must conduct any Safeguarding Adults Review (SAR) in accordance with Section 44 of The Care Act

SABs must arrange a SAR when an adult in its area dies as a result of abuse or neglect, whether known or suspected, and there is concern that partner agencies could have worked more effectively to protect the adult.

SABs must also arrange a SAR if an adult in its area has not died, but the SAB knows or suspects that the adult has experienced serious abuse or neglect. In the context of SARs, something can be considered serious abuse or neglect where, for example the individual would have been likely to have died but for an intervention, or has suffered permanent harm or has reduced capacity or quality of life as a result of the abuse or neglect. SABs are free to arrange for a SAR in any other situations involving an adult in its area with needs for care and support.

Case Study F

At the age of 72 years old, although registered disabled, Ms W was an active member in her community often seen helping at community events and visiting the local shops and swimming pool. Ms W had a fall in her home which left her lacking in confidence and fearful that she would fall again.

As the winter approached, Ms W spent more time alone at home only venturing to the corner shop to buy groceries.

As time passed her house came in disrepair and unhygienic as local youths began throw rubbish, including dog faeces into her front garden.

Within a five month period Ms W made seven complaints to the police about anti-social behaviour in her local area, and on two occasions was the victim of criminal damage to the front of her house, where her wheelchair accessibility ramp has been painted by graffiti. The police made a referral to social services. As a result, Ms W was placed on a waiting list for a support service. Four weeks after she was last seen Ms W committed suicide.

A Safeguarding Adults Review (SAR) was convened according to the local policy which stated that the purpose of an SAR is not to reinvestigate or to apportion blame, but 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 vulnerable adults.

The published report and recommendations which followed demonstrated the lessons from this case. The resultant action plan included:

- Strengthened relationships and information sharing between police officers, health and the local authority
- Clear lines of reporting and joint working arrangements with the Community Safety Partnerships
- A robust multi-agency training plan
- A targeted community programme to address anti-social behaviour
- The development of a 'People's Panel' as a sub group to the Safeguarding Adults Board which includes people who access services, carers and voluntary groups
- The development of a 'stay safe' programme involving local shops where adults at risk of abuse may report their concerns to a trusted member of their community.

The SAB should be primarily concerned with weighing up what type of 'review' process will promote effective learning and improvement action to prevent future deaths or serious harm occurring again. This may be where a case can provide useful insights into the way organisations are working together to prevent and reduce abuse and neglect of adults.

SARs may also be used to explore examples of good practice where this is likely to identify lessons that can be applied to future cases.

It is vital, if individuals and organisations are to be able to learn lessons from the past, that reviews are trusted and safe experiences that encourage honesty, transparency and sharing of information to obtain maximum benefit from them. If individuals and their organisations are fearful of SARs their response will be defensive and their participation guarded and partial.

The process for undertaking SARs should be determined locally according to the specific circumstances of individual circumstances. No one model will be applicable for all cases. The recommendations and action plans from a SAR need to be followed through by the SAB.

The SAB should ensure that there is appropriate involvement in the review process of professionals and organisations who were involved with the adult. Through the process of the SAR the adult and, or, their family should be communicated with and involved as appropriate. In some cases it may be helpful to communicate with the person who caused the abuse or neglect.

The SAB should aim for completion of a SAR within a reasonable period of time and in any event within six months of initiating it, unless there are good reasons for a longer period being required.

In setting up a SAR the SAB should also consider how the process can dovetail with any other relevant investigations that are running parallel, such as a child SCR or DHR, a criminal investigation, or an inquest.

In Warrington, there is a document describing the SAB's approach to SAR's and other opportunities for learning. Click [HERE](#) to view.

4.7 Allegations against People in positions of trust (PiPoT)

Under the 2014 Care Act, all agencies working with adults with care and support needs, must have in place a clear policy for responding to allegations against people in positions of trust. WSAB has responsibility to ensure there is an overarching framework and process for how allegations are responded to, with effective coordination and oversight.

Subsequently, all organisations are expected to have the following in place:

- A policy that outlines their response to allegations in relation to actions by staff (paid or unpaid) volunteers and students, which includes an assessment to
- assess potential risk to adults with care and support needs
- A clear process, including timescales, for the investigation of allegations
- Systems to record adult safeguarding concerns in accordance with Data Protection and confidentiality requirements
- Processes to ensure timely and appropriate referral of employees to the DBS and/or Regulatory Bodies
- Systems to provide employees with support and updates in respect of adult safeguarding investigations, having regard to the employee's rights under the Human Rights Act 1998.

Concerns that should lead to the implementation of the policy include allegations that relate to a person who works with adults with care and support needs who has:

- Behaved in a way that may have, or has, harmed an adult or child
- Been suspected of or committed a criminal offence which may or may not be related to a vulnerable adult or child; but may be considered as presenting a risk to an adult in their care.
- Behaved towards an adult or child in a way that indicates they may pose a risk of harm to adults with care and support needs.

Individual agencies have the responsibility to investigate concerns and to ascertain suitability to continue working with Adults at Risk using the steps identified in the PiPoT flow chart (page 21). Children's Safeguarding Procedures must be followed where there are risks relating to children with a referral to the Local Authority Designated Officer (LADO).

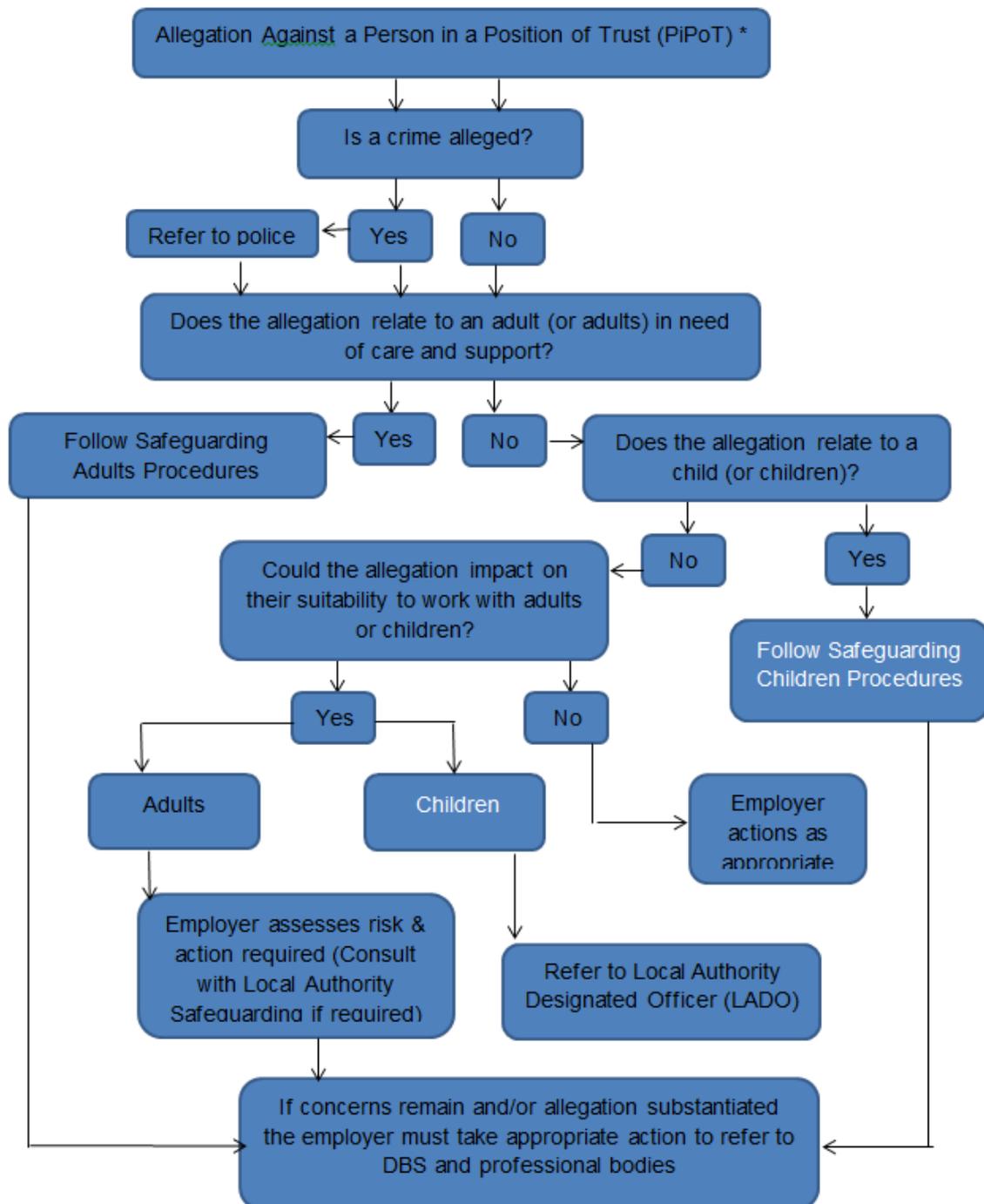
Each case must be assessed individually. Unless it puts the adult at risk or child in danger, the individual should be informed regarding the allegation against them and should be offered a right to reply. Agencies should have access to appropriate HR and legal advice in reaching decisions about what needs to be known and decisions should be made within agency policies and the constraints of the legal framework. Decisions on information sharing must be justifiable and proportionate in relation to the potential for, or actual harm and the rationale should always be recorded

When sharing information between agencies about adults, children and young people at risk, it should only be shared:

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

Factors that are likely to need to be considered include the nature and reliability of the allegation; the perceived risks to individuals and the wider public interest; the nature of the persons work and their contact with children or adults; other intelligence that is relevant or mitigating factors (mitigating factors will not be considered an excuse for behaviour but nevertheless may need to be addressed). At any stage the Local Authority Safeguarding team can be contacted for advice.

PiPoT Flow Chart



You must inform the WSAB if you fail at any point to follow this outlined process

In reaching a decision as to whether to share information; or in assessing appropriate actions in relation to an allegation against a person in a position of trust, the following legislation will be relevant:

- **Care Act (2014)** The Care Act Statutory Guidance provides an overview of expectations on agencies in relation to people in positions of trust. This guidance can be found at 14.116 – 14.132 within the guidance which can be accessed [here](#). The guidance is clear that employers must have in place processes to respond to concerns about an individual's conduct alongside robust employment practices.
- **Protection of Freedoms Act (2012) & Safeguarding Vulnerable Groups Act (2006)** The Protection of Freedoms Act was used to update the processes brought in by the Safeguarding Vulnerable Groups Act (2006) (SVGA). It essentially combined a number of provisions for responding to incidents of abuse. The SVGA established the Independent Safeguarding Authority and Criminal Records Bureau, which have now been merged to create the Disclosure and Barring Service (DBS). It is now the DBS that takes referrals in relation to all existing barred lists; List 99, PoCA and PoVA. The SVGA sets out 'Relevant Conduct' for notification to DBS in relation to vulnerable adults as:
 - Conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult
 - Conduct, which if repeated against or in relation to a vulnerable adult or would be likely to endanger him or her
 - Conduct involving sexual material relating to children (including possession of such material)
 - Conduct involving sexually explicit images depicting violence against human beings (including possession of such images - if it appears that the conduct is inappropriate)
 - Conduct of a sexual nature involving a vulnerable adult, if it appears that the conduct is inappropriate

A person's conduct endangers a vulnerable adult if they:

- harm a vulnerable adult
- cause a vulnerable adult to be harmed
- put a vulnerable adult at risk of harm
- attempt to harm a vulnerable adult
- incite another to harm a vulnerable adult

Further information in relation to referrals to DBS can be found [here](#)

- **The Human Rights Act (2000)** outlines the right to fairness and respect for private and family life.
- **The Data Protection Act (1998)** and related Guidance issued by Department of Health particularly Guidance to Social Services in March 2000 concerning data protection, Caldicott guardian manual 2010 and the Ministry of Justice in November 2003 relating to the sharing of personal data in the public sector.

Information that can help to inform decisions

The following list is a framework of the information that may assist with decision making. This is not a check list or a definitive list of the information that may be needed. This process will need to be assessed on a case by case basis and less or additional information may be required in each case.

1. The allegation

- What is the allegation
- The validity of the source of the allegation
- The status of the person making the allegation
- Risk to individuals
- Wider public interest issues

2. The person's work

- What is the nature of their work
- Do they have supervised or unsupervised contact with adults or children (this may need to be explored in detail)
- Does the person work alone for some periods

3. Existing intelligence and mitigating factors

- Have there been any safeguarding children or safeguarding adult's conferences/meetings in relation to the person?
- Are their children subject to a care plan?
- Do they work for other organisations i.e. agencies?
- What is their employment history?
- Any other complaints against them?
- Any previous concerns, if so when?
- Sickness record and the reason for absence?
- Any disciplinary issues?
- Are there any health issues?
- Are there any mental health issues?
- Are there any alcohol or substance misuse issues?
- Are there any police charges or bail conditions?
- Is there any intelligence from MARAC?
- Has there been a family crisis?
- A bereavement?

Any factors considered that may provide mitigation will not be considered as an excuse for a person's behaviour; however, it is necessary to take them into account.

Checklist for investigation, decision making and recording:

1. Detail of the allegations
2. How this is relevant to their employment

3. Wider public interest issues
4. Evidence to support decisions
5. Proportionality in relation to the person's rights and the impact of disclosure
6. Risk assessment
7. Disclosure plan

For further guidance around making DBS referrals can be found [here](#)

5 The Human Rights Act (1998)

As abuse and neglect are a violation of an individual's human and civil rights, the Human Rights Act may be relevant in safeguarding situations.

The European Convention on Human Rights (ECHR) was incorporated into UK law via the Human Rights Act. Such rights are fundamental to protecting people from both being directly harmed by the state or not being sufficiently protected by the state.

The Act under Article 13 sets out the principle that all the freedoms and rights should be enjoyed without discrimination on the grounds of race, sex, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

5.1 Article 2

Article 2 states that 'everyone's right to life shall be protected by law'. This means that the state must take reasonable steps positively to safeguard people's rights to life, as well as not take people's lives intentionally and unlawfully. It can mean setting up adequate enquiries in certain circumstances when people have died in connection with the acts or omissions of public bodies.

5.2 Article 3

Article 3 states that people have a right not to be subjected to torture or to inhuman or degrading treatment or punishment. This is an absolute right, which is not subject to any provisos or conditions.

The European Court of Human Rights (ECtHR) has stated that inhuman or degrading treatment means that the ill treatment in question must reach a minimum level of severity, and involve actual bodily injury or intense physical or mental suffering.

Degrading treatment could occur if it 'humiliates or debases an individual showing a lack of respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance'.

5.3 Article 4

Article 4 prohibits slavery and forced labour, and stresses that no-one shall be held to slavery or servitude, and no-one shall be required to perform forced or compulsory labour.

5.4 Article 5

Article 5 states that everyone has a right to liberty and security and that nobody should be deprived of them – unless he or she falls into a particular category of person, and only then in accordance with procedures prescribed by law.

5.5 Article 6

Article 6 states that in the determination of a person's civil rights and obligations or of any criminal charge against him, he or she is entitled to a fair and public hearing within a reasonable time, held by an independent and impartial tribunal established by law.

5.6 Article 8

Article 8 creates a right to respect for a person's home, private and family life. The courts have held that private life includes physical and psychological integrity.

Article 8 is not an absolute right, so the right it contains can be interfered with under certain conditions. In safeguarding, decisions about intervention have to balance the desirability of not interfering unduly *and* the justification in terms of risk to the person involved or other people. The conditions allowing interference are that it is:

- In accordance with the law
- Necessary in a democratic society
- For a specified purpose, including for the protection of health or morals, for the protection of the rights of other people, for the economic wellbeing of the country, for the prevention of crime.

5.7 Article 9

Article 9 enshrines the concept of freedom of thought, conscience and religion. This right includes the individual's freedom to change their religion or belief, be it alone or in community with others and in public or private.

This right is subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety.

5.8 Article 10

Article 10 states that everyone has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without inference from the state.

The exercise of this freedom since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety for the prevention of disorder or crime.

6 The Mental Capacity Act (2005)

The Mental Capacity Act provides a statutory and legal framework to empower and protect people who are not able to make their own decisions. It makes it clear who can take decisions, in which situations and how they should go about this. It enables people to plan ahead for a time when they may lose mental capacity to make certain decisions.

The Mental Capacity Act is an important piece of legislation in terms of safeguarding, as it places the person at the heart of decision making and places a strong emphasis on supporting and enabling the person to make their own decisions.

It also stresses that if the person is unable to make certain decisions they should still be involved in the decision making process as far as possible.

6.1 Assessing Capacity

The Act establishes five 'statutory principles' which are the values that underpin the legal requirements and apply to any act done or decision made under the Act.

- A person must be assumed to have capacity unless it is established that they lack capacity. (section 1(2))
- 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. (section 1 (3))
- A person is not to be treated as unable to make a decision merely because he/she makes an unwise decision.' (section 1(4))
- An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his/her best interests. (section 1 (5))
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in way that is less restrictive of the person's rights and freedom of action (section 1(6))

In assessing mental capacity the starting point is always to assume that a person has the capacity to make a specific decision, although they may require help and support to make or communicate the decision. There must be no assumptions made about anyone lacking capacity on the basis of their age, appearance or disability.

There is a 2 stage test set out by the Act to help determine if a person lacks capacity to make a particular decision.

- Stage 1: Establishing whether a person has an impairment of, or disturbance in the functioning of, their mind or brain. Without proof that a person has an impairment or disturbance of the mind or brain, they will not lack capacity under the Act
- Stage 2: Establish whether the impairment or disturbance means that the person cannot make a specific decision at that time.

The Mental Capacity Act's Code of Practice states that nobody can be forced to undergo an assessment of capacity and were there serious concerns about a person's mental health it may be possible to obtain a warrant under section 135 of the Mental Health Act.

If there is a serious question about a person's mental capacity, the Court of Protection can be applied to, for a declaration (decision) about this under section 15 of the Act.

Where there is doubt about a person's capacity the court can make an interim order under section 48 if the court is convinced that there is 'reason to believe that a person may lack capacity'. It does not require that lack of capacity be established on the balance of probability (a higher test), which is required for the court to make an ordinary (rather than an interim) order.

An interim order from the court could cover matters such as taking immediate safeguarding steps, or giving directions to resolve the issue of capacity quickly.

The Mental Capacity Act applies to everyone, but especially to those who work in health and social care and are involved in the care, treatment or support of people over 16 years of age who may lack capacity to make decisions for themselves.

No assumptions should be made about anyone lacking capacity on the basis of their age, appearance or disability. The person assessing capacity should undertake all practical steps to help someone make the decision if this has not been done then the individual cannot be treated as lacking capacity.

In respect of decisions in safeguarding situations it is essential that all the necessary information is provided in the most accessible form, and additional support provided if required to ensure a thorough understanding of the issues is achieved.

Failure to provide information to support the individual to understand or make informed choices could result in a potentially breach their rights to fairness (article 6) under the Human Rights Act.

6.2 Coercion and Unwise Decisions

One of the most challenging areas of practice in safeguarding relates to unwise decisions, coercion and mental capacity. For example, making a decision to remain in a relationship where you may be abused by someone does not in itself indicate mental incapacity. It may be that the relationship is more important to you than the harm that is being done, perhaps more so if the harm is not life-threatening.

However, it is important to recognise that where a person is at high risk of harm this may limit their capacity to safeguard themselves due to fear, coercion or understandable psychological responses designed to limit the extent of the harm. The person may identify with, absolve or rationalise the perpetrators actions, leading to them not acknowledging the level of risk they face.

If a person repeatedly makes unwise decisions that put them at significant risk of harm, or makes a particular unwise decision that is obviously irrational or out of

character there may need to be further investigation taking into account the person's past decisions, choices and patterns of behaviour.

6.3 Court of Protection and Advocacy

The Mental Capacity Act created the role of the Independent Mental Capacity Advocate. The purpose of this role is to help people who lack the capacity to make important decisions.

If there are safeguarding concerns then an Independent Mental Capacity Advocate (and/or an advocate as described by the Care Act) can be instructed by the local authority whether or not the person has family, friends or others involved in their care.

The Independent Mental Capacity Advocate can be instructed to support and represent a person lacking the relevant mental capacity where safeguarding measures are being put in place in order to protect them from abuse. People who lack capacity and have friends and family can still have an advocate to support them through the process.

The Mental Capacity Act gives the right to concerned parties to apply to the Court of Protection for a declaration of best interests, dealing with both financial and/or welfare issues for those lacking mental capacity.

An application can only be made if there is a serious issue that requires judicial resolution and it would be for the court to consider and decide what is in the best interests of the person without capacity.

Court of Protection involvement is intended to be a last resort for welfare issues, and it is expected that use of advocacy, second opinions, case conferences, mediation or complaints procedures may mean that the court's involvement is not called for.

However, the court's involvement may be necessary in cases of entrenched disagreements and difficult decisions, as may arise in safeguarding situations, and the courts declaration (decision) can cover matters such as:

- Where the person should live
- Whose company the person should have (and under what circumstances)
- Arrangements for care and support

The declaration can cover restraint, and in extreme circumstances, detention of the individual for their own safety, at least for a short period, pending, for instance, completion of an investigation into the conduct of the person's carers if there is an allegation of neglect.

Communication and compromise should be sought in cases of dispute, where there may be the likelihood of an application to the court as:

- There is a cost to the application and any subsequent hearings
- There is a risk that the court will find against the claimant and favour the other parties proposals

- The declaration usually only relates to single issues so usually does not give ongoing or absolute care or control
- It is not available in a situation of physical incapacity or illness unless accompanied by mental incapacity

The courts have taken the view that the 'further capacity is reduced, the lighter autonomy weighs'. So the nearer to capacity a person is, so the greater weight should be placed on the person's wishes in determining their best interests. So, if the wishes of a person lacking capacity are not irrational, impracticable or irresponsible, then the weight to be given to them will be all the greater. Factors to be considered are:

- The degree of capacity
- Strength and consistency of wishes
- Impact on the person if wishes are not given effect to
- Extent to which wishes are rational, sensible, responsible and pragmatic
- The extent to which the wishes fit overall into a judgement about best interests

So because a person would have made an unwise decision, had they still retained capacity, does not mean that a third party should therefore also make an unwise decision. A consciously unwise decision should rarely, if ever, be made, and characterised as being in a person's best interests.

There are some decisions that are so serious anyway, that the court's involvement will be required in circumstances such as artificial nutrition and hydration for patients in a persistent vegetative state, bone marrow donation and non-therapeutic sterilisation.

6.4 Court of Protection – Property and Affairs

For property and affairs, the court's involvement will usually be necessary unless the only income involved is from state benefits or an enduring or lasting power of attorney already exists.

On application, the Court may make a Deputy Order which sets out the extent of your powers. It can apply to any area in which the person could have acted or made decisions for themselves if they had the capacity to do so.

The powers might relate to finances or personal welfare, such as giving or withholding consent to medical treatment or social care interventions. A Lasting Power of Attorney (LPA) is a legal document that someone (the donor) makes using a special form. It allows that person to choose someone now (the attorney) that they trust to make decisions on their behalf at a time in the future when they either lack the mental capacity or no longer wish to make those decisions themselves. The decisions could be about the donor's property and financial affairs and/or about their health and welfare.

Making an LPA is the only way for a person to make plans for a time in the future when they may lack the capacity to make certain decisions. An LPA can only be used after it is registered with the Office of the Public Guardian. There are two types of LPA, one for property and financial affairs and one for health and welfare.

Since October 2007, Enduring Powers of Attorney (EPA's) were replaced by LPA's. The Enduring Power of Attorney was a legal document by which a person could give control to another person to decide what is done with their financial affairs and property only. However if an EPA was made before October 2007, it can still be registered and used accordingly.

The Department of Works and Pensions (DWP) can appoint someone else (the Appointee) to receive the adult's benefits and to use the money to pay expenses such as household bills, food and personal items. An appointee should be a close relative, friend or someone who is regularly in contact with the adult (the local authority can also take on this role as a last resort).

The adult, who is willing to act as the appointee, must contact the local DWP office who will arrange to interview the adult to decide whether they are mentally or physically incapable of acting on their own behalf. The appointee can give one month's notice of their intention to cease the arrangement and the DWP can end the arrangement at any time if it is not working satisfactorily.

7 Inherent Jurisdiction of the High Court

The Mental Capacity Act created something of a 'hard line' as to whether a person has or has not got the mental capacity to take a particular decision.

Sometimes, even if a person does have the relevant mental capacity, they may still be in a very vulnerable position because of constraint or coercion, or for some other reason deprived of free choice, or unable to give or express real or genuine consent.

The High Court may use its 'inherent jurisdiction' (or powers) to make a declaration as to whether an action which is proposed to be taken is in the best interests of a person. The courts inherent jurisdiction enables them to intervene legally in certain circumstances in respect of an adult, even when there is no legislation sanctioning it.

Such an avenue could be very important in safeguarding situations, where practitioners are attempting to assist an adult at significant risk of harm, but are unable to do this under the Mental Capacity Act. However, the court would consider in each case whether intervention by the state was necessary and proportionate to the presenting risk, and they apply an extremely high threshold.

This is a scarcely used provision which the High Court is reluctant to apply other than in the most exceptional circumstances and the evidential burden on the party making the application is, therefore, very high.

8 Deprivation of Liberty Safeguards

The Deprivation of Liberty Safeguards were introduced into the Mental Capacity Act by the Mental Health Act 2007.

The Deprivation of Liberty Safeguards provide a legal framework for approving the deprivation of liberty for people who lack the capacity to consent to treatment or care that, in their own best interests, can only be provided in circumstances that amount to a deprivation of liberty.

This safeguarding legislation contains detailed requirements about when and how a deprivation of liberty may be authorised. It provides for an assessment process that must be undertaken before deprivation of liberty may be authorised and detailed arrangements for renewing and challenging the authorisation of deprivation of liberty.

The purpose of the legislation is to make sure that people who do not have the mental capacity to consent to the care or treatment they need, should be cared for in a way that minimises any limitations of their rights or freedom of action. In some cases people may need to be deprived of their liberty for treatment or care because this is necessary in their best interests to protect them from harm.

The Mental Capacity Act describes restraint as:

- The use of force – or threat to use force – to make someone do something that they are resisting, or
- Restrict a person's freedom of movement, whether they are resisting or not

Restraint is appropriate when it is used to prevent harm to the person who lacks capacity and it is a proportionate response to the likelihood of serious harm.

9 Mental Health Act (1983)

Compulsory intervention under the MHA may be an essential way of safeguarding an adult at risk if less formal attempts have either failed or are not possible for some other reason.

In relation to safeguarding, such interventions will constitute a measure of last resort but may be essential.

There are good reasons why use of the MHA should prevail where it applies in safeguarding situations as it is:

- A process with inbuilt checks and balances
- Well understood by most professionals
- Cheaper than the Court of Protection

Under sections 7 and 8 of the Act an application for guardianship may be an appropriate way of safeguarding an adult at risk, but particular conditions must be satisfied.

The person must be at least 16 years old and be suffering from a mental disorder. The mental disorder must be of a nature or degree that warrants his or her reception into guardianship and this must be necessary in the interests of the welfare of the patient, or for the protection of other people.

The person subject to guardianship can be both taken and conveyed to the place of residence and also returned if they leave that place of residence.

Broadly courts agreed that, up to a point, given that the guardian can promote the welfare of the person, and this could also extend to limiting a person's contact with certain others, but this does not amount to the guardian acting outside the law, such as the Human Rights Act. More serious steps may require a separate court order.

The MHA code of practice states that requiring a person under guardianship to live somewhere does not extend to depriving that person of his or her liberty. It states that this would only be possible in the case of a person lacking capacity, and only then if authorisation was obtained under the Mental Capacity Act.

Guardianship for last up to a period of 6 months, and the person can be received into guardianship by the local authority if they are suffering from a mental disorder of a nature or degree which warrants their reception into guardianship.

The guardianship must also be necessary in the interests of the welfare of the patient or for the protection of others. The welfare of the patient is interpreted broadly.

Guardianship gives the guardian three basic powers:

- To say where someone is to live
- To require the patient to attend somewhere for the purpose of medical treatment, occupation, education or housing
- To gain access to the patient at a place in which someone is living.

It is necessary to consult the nearest relative if the local authority is considering guardianship. If the nearest relative appears to be the perpetrator of mistreatment, then the local authority may consider an application to a County Court to displace the nearest relative under section 29 of the Mental Health Act.

The County Court may, upon application, direct that the functions of the nearest relative of the patient be exercised by the applicant who may be a local authority or by any other person specified in the application.

The application may be made on the following grounds:

- That the patient has no nearest relative under the meaning of this Act or that it is not reasonably practicable to ascertain whether he has such a relative
- That the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness
- That the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment or guardianship application in respect of the patient
- That the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient, or is likely to do so
- That the nearest relative of the patient is otherwise not a suitable person to act as such

Under section 115 of the Act, an Approved Mental Health Professional (AMHP) has the power to enter and inspect premises (other than a hospital) if they have reasonable cause to believe that a mentally disordered person is living there and is not 'under proper care'. There is no power of removal attached, but if the AMHP is obstructed, then an offence may be committed under section 139.

Section 117 provides for after-care responsibility by health and social care services for persons detained under certain sections of the Mental Health Act.

Under section 125(a) an application may be made for a detained patient to be supervised after they leave hospital.

Section 127 creates an offence for an officer on the staff or otherwise an employee or manager of a mental nursing home or hospital to 'ill-treat or wilfully neglect' a patient who is either currently receiving treatment for mental disorder as an inpatient in that hospital or home, or a patient receiving treatment as an outpatient.

Under section 135 of the Act a police constable can enter premises, using force if necessary, to remove a person to a place of safety, however a warrant from a magistrate or JP must be obtained first. The purpose must be with a view to making an application to detain under the Act or making other arrangements for care and treatment.

For the warrant to be issued it must appear that there is reasonable cause to suspect that a person has been, or is being, ill-treated, neglected or not kept under proper control and that they are unable to care for themselves and are living alone.

Under section 136 of the Act a police constable has the power to remove from a public place – and take to a place of safety – a person who appears to be suffering from mental disorder. Two conditions must be satisfied; that the person appears to be in immediate need of care and control; and that the police constable thinks it is necessary in the interests of the person or other people.

Under section 2 of the Act a person may be admitted to hospital and detained there for a period not exceeding 28 days on the grounds that:

- They are suffering from mental disorder of a nature or degree which warrants his/her detention in hospital for assessment (or for assessment followed by treatment) for at least a limited period; and
- They ought to be so detained in the interests of their own health or safety or with a view to the protection of other persons.

Under section 3 of the Act a person may be admitted to hospital and detained for a period of treatment. An application for treatment is based on the written recommendations in the prescribed form of two registered medical practitioners.

This section applies for up to six months and can be renewed initially for a further six months then yearly. An application can be made in respect of a person on the grounds that:

- They are suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment and their mental disorder is of a nature or degree which makes it appropriate for them to receive medical treatment in a hospital; and
- In the case of psychopathic disorder or mental impairment, such treatment is likely to alleviate or prevent a deterioration of their condition
- It is necessary for the health or safety of the patient or for the protection of other persons that they should receive such treatment and it cannot be provided unless they are detained under this section.

Under section 4 of the Act a person may be detained on the recommendation of one medical practitioner for a period of up to 3 days, but only in response to emergency situations where, for example, a section 2 cannot be completed.

For further guidance please see the [Mental Health Act Code of Practice](#)

10 Community Care Law

The Care Act (2014) now provides the primary legal basis for community care assessment and provision. Although the following Acts are repealed by the Care Act, they remain in force until 2016 to permit the provision of services pending the transition or review of existing eligible adults.

- The Health Service and Public Health Act (1968)
- The National Health Service and Community Care Act (1990)
- The National Assistance Act (1948)
- The Chronically Sick and Disabled Persons Act (1970)
- The Disabled Persons Services, Consultation and Representation Act (1986)
- The National Health Services Act (1977)
- The Disabled Persons (Services, Consultation & Representation) Act (1986)

Amendment Regulations will be required to allow the application of the Nationality, Immigration and Asylum Act (2002) to the Care Act.

This Act relates to asylum seekers and others subject to immigration control and the Home Office has issued guidance to local authorities and housing authorities.

Schedule 3 has the effect of preventing Local Authorities from giving support under certain provisions.

However, the local authority must give assistance under Section 117 of the Mental Health Act 1983 where a patient has been placed under Section 3 of that Act and is then discharged from hospital.

Professionals working with adults at risk or in need of care and support who are also asylum seekers or whose immigration status is unknown or unusual, should seek advice from their manager and the local authority as appropriate.

11 Criminal Justice System

Case Study G

Mr P has mild learning disabilities. The safeguarding concern was financial and other abuse and neglect by his brother, with whom he lived.

His support worker had noticed that Mr P had begun to appear agitated and anxious, that he looked increasingly unkempt and that he was often without money; then he suddenly stopped attending his day centre.

When the support worker and the safeguarding officer followed up, Mr P told them that at times he was not allowed out at all by his brother and was confined to his bedroom.

He was only allowed to use the bathroom when his brother said he could, and often didn't get enough to eat. He was also very worried because his bank card no longer worked, and he had no money, so couldn't buy food for himself.

Mr P consented to move to temporary accommodation, and a case conference was held, which he attended with an advocate. At his request a move to a supported living flat was arranged and his belongings were retrieved from his brother's property.

His bank account had been emptied by his brother, so he has made new arrangements for his money. The police are investigating both the financial abuse and the harm Mr P suffered at his brother's hands. He has begun to talk about his experiences and is gradually regaining his confidence.

11.1 Police Investigations and arrests

Under the Police and Criminal Evidence (PACE) Act (1984), the police have a number of powers relevant to safeguarding adults.

Under section 17 the police have a power to enter and search premises without a warrant, in order to save life or limb or prevent serious damage to property. Also, the police can enter and search premises without a warrant to effect arrest for an indictable offence, or for recapturing somebody who is unlawfully at large and whom they are pursuing.

Under section 24, the police can arrest, without a warrant, somebody who is or is about to commit or an offence, or where there are reasonable grounds for suspecting this is about to happen.

However, this 'summary' power of arrest is dependent on the police believing that certain conditions are made out, which necessitate the arrest.

11.2 Crown Prosecution Service: prosecution policies

The Crown Prosecution Service (CPS) is responsible (in most cases) for taking the decision to prosecute; it is then responsible for conducting the prosecution. In deciding whether to prosecute, the CPS has to apply a two-stage test.

The first, the evidential stage, is whether there is enough evidence to provide a realistic prospect of conviction. The evidence has to be capable of being used in court and to be reliable. If there is enough evidence, the second, the public interest stage, is about whether it is in the public interest to prosecute.

Certain groups of individuals, who may be more vulnerable, may be eligible for special measures under the Youth Justice and Criminal Evidence Act (1999).

The Code for Crown Prosecutors emphasises that before taking such a decision, the victim's views, and the consequences for the victim, will be taken into account.

However, the CPS will consider prosecution contrary to a victim's wishes (assuming there is sufficient evidence) due to the public interest test being not just about the victim's wishes, but about the wider public issue of protecting the victim (and other people) from serious harm.

11.3 Assault and Battery

Technically, assault means that a person intentionally or recklessly causes somebody else to apprehend or anticipate any immediate and unlawful violence or touching.

Assault is often wrongly associated with the subsequent violence or touching (battery).

However, assault need not be associated with violence - an assault could stop at the threat. For example, were a person to threaten, with a raised hand – the person being cared for, this could constitute an assault.

Types of assault that have involved staff working with adults at risk have included, bending back the fingers of care home residents, a nurse stuffing deodorant into the mouth of an older person, a nurse slapping nursing home residents across the face, a care worker throwing a cup of tea at a care home resident for not standing up or rough manual massage for constipation.

Section 47 of The Offences against the Person Act (1861), deals with the offence of an assault which leaves physical injury, such as grazes, scratches, abrasions, minor bruising, swelling, reddening of the skin, superficial cuts or a black eye.

Where physical injury is more serious, the offences of actual bodily harm or wounding with intent to do grievous bodily harm (sections 18 and 20) may apply.

Battery may apply where a person intentionally or recklessly applies unlawful force to somebody else, in the form of intentional touching of another person without the consent of that person and without lawful excuse. It need not necessarily be hostile, rude or aggressive.

11.4 Actual bodily harm

The type of injury typically associated with such an offence includes loss or breaking of a tooth or teeth, temporary loss of sensory functions including consciousness, extensive or multiple bruising, displaced or broken nose, minor fractures, minor but not superficial cuts or psychiatric injury (that is more than just fear, distress or panic).

11.5 Unlawful wounding or infliction of grievous bodily harm

Wounding is typically associated with more serious cuts or lacerations, as opposed to more minor ones.

Grievous bodily harm is typically associated with serious bodily harm including, injury resulting in permanent disability or permanent loss of sensory function, permanent, visible disfigurement, broken bones, compound fractures, substantial loss of blood, injuries resulting in lengthy treatment or incapacity or psychiatric injury.

11.6 Common law offence of false imprisonment

False imprisonment is a common law offence involving the unlawful, intentional or reckless detention (restraint of freedom of movement of a person).

11.7 Manslaughter

Manslaughter is an offence that comes in different forms, some in common law and some in legislation. It can arise in respect of the actions of professionals and other practitioners treating or caring for vulnerable people; the actions of family relatives, friends or acquaintances; or the corporate, institutional actions of organisations involved in caring or treating people.

The offence often contains gross negligence, as opposed to ordinary negligence, as ordinary negligence - even if death had resulted, would give rise to a civil case only. For example, in a case where an adult in need of care and support person drowns in the bath at a care home, the court might accept that there might have been negligence, but not criminality (wilful neglect) that would be required for the threshold of manslaughter to be met.

Involuntary manslaughter occurs if the accused person intentionally did an act that was unlawful and dangerous and that that act inadvertently caused death.

It is unnecessary to prove that the accused knew that the act was unlawful or dangerous. The test is an objective one – whether a reasonable person would recognise that the act was dangerous.

11.8 Sexual offences

The Sexual Offences Act (2003) sets out a number of general offences involving issues of consent. They can be used to prosecute, whether or not the victim has a mental disorder and whether or not the victim had the ability to consent.

The Act includes measures to help juries make fair and balanced decisions on the question of consent whilst also introducing new offences to improve protection for children and vulnerable adults, such as:

- Abuse of position of trust - designed to protect young people who are potentially vulnerable to sexual abuse from people in positions of trust
- Offences against persons with mental disorder – includes offences against people who cannot legally consent to sexual activity because of a mental disorder (sections 30-33) and offences against people who may or may not be able to consent to sexual activity but who are vulnerable to inducements, threats or deceptions because of a mental disorder. (sections 34-37)

A further set of offences relates to victims with a mental disorder and care workers (sections 38–41). Conviction for offences under this Act may mean that the offender is placed on the Sex Offenders Register.

A Sexual Offences Prevention Order (SOPO) can be made either at the time of conviction, or on application by the police, after conviction, if it is necessary to protect the public from serious sexual harm by the offender (section 104).

The order can be wide-ranging in terms of prohibitions placed on the person.

Case Study H

Miss Y is a young woman with a learning disability with limited support from her family and was not engaged with health and social care services.

Miss Y was befriended by an individual who took her to parties where she was given drugs and alcohol and forced to have sex with different men. Sometimes she would be given money or gifts in return for having sex with the men.

Miss Y disclosed this to a social worker and it was discovered that there were a number of young people and vulnerable adults who were being sexually exploited by multiple perpetrators. Miss Y lacked mental capacity in order to be able to consent to having sex, as well as in relation to her accommodation, finances or personal safety.

The perpetrators sought out Miss Y and others because of their vulnerability – whether that was because of their age, disability, mental illness, or their previous history as a victim of abuse.

The process to safeguard Miss Y involved a coordinated response between the police, social care, health and voluntary and community sector organisations. This included the police investigating the perpetrators for rape, sexual assault, trafficking and drug offences.

The Court of Protection and Deprivation of Liberty Safeguards were also used initially to safeguard Miss Y.

11.9 Finance and Property

Section 1 of the Theft Act (1968) states that a person is guilty of theft if they dishonestly appropriate property belonging to somebody else. The intent must be to permanently deprive the other person of the property.

It will not be dishonest if the person believes they have a right in law to deprive the other person of it. It will also not be dishonest if the person believed that the other person would have consented, if the other person knew of both the appropriation and the circumstances.

There seems often to be an assumption that if a person makes a gift to somebody else, but is judged probably to have the mental capacity to make that gift, then it could never be regarded as theft. This view often seems to prevail even if the making of the gift is associated with what appears to be serious exploitation or coercion.

Sections 1-3 of The Fraud Act (2006) established a general offence of fraud, which can be committed by false representation, by failing to disclose information, or by abuse of position. The behaviour must be dishonest and aimed at making a gain or causing a loss.

Explanatory notes to the Act specifically envisage that fraud due to an abuse of position may be committed, for example, where a person employed to care for a person has access to that person's bank account and transfers funds to invest in a business venture of their own.

False accounting entails dishonesty, with a view to gain or to cause loss to somebody else. It includes destruction, defacing, concealing or falsifying accounts, records or documents, or making use of them, when the person knows they may be misleading, false or deceptive (section 17 Theft Act).

Under section 1 of the Forgery and Counterfeiting Act (1981), forgery occurs when a person makes a false document, intending that it be used to induce somebody else to accept it as genuine, and prejudicially to act or not act in respect of that other person or somebody else.

For example, a professional regularly opens and reads the mail of an adult in need of care and support, and using this position of trust, forges the adult's signature on a letter to the building society and withdraws money.

A person is guilty of robbery if they steal and, immediately before or at the time of doing so and in order to do so, they use force on any person or puts or seeks to put any person in fear of being subjected to force (section 8 of the Theft Act).

Case Study I

Mrs B is an 88 year old woman with dementia who was admitted to a care home from hospital following a fall. Mrs B appointed her only daughter G, to act for her under a Lasting Power of Attorney in relation to her property and financial affairs.

Mrs B's former home was sold and she became liable to pay the full fees of her care

home.

Mrs B's daughter failed to pay the fees and arrears built up, until the home made a referral to the local authority, who in turn alerted the Office of the Public Guardian (OPG).

The OPG carried out an investigation and discovered that G was not providing her mother with any money for clothing or toiletries, which were being provided by the home from their own stocks.

A visit and discussion with Mrs B revealed that she was unable to participate in any activities or outings arranged by the home, which she dearly wished to do. Her room was bare of any personal effects, and she had limited stocks of underwear and nightwear.

The Police were alerted and interviewed G, who admitted using the proceeds of the mother's house for her own benefit. The OPG applied to the Court of Protection for suspension of the power of attorney and the appointment of a deputy, who was able to seek recovery of funds and ensure Mrs B's needs were met.

12 Information and Confidentiality

12.1 Freedom of Information Act (2000)

The Freedom of Information Act (2000) governs information held by health and social care services and confirms that all such information can be disclosed on request, subject to the restrictions of the Data Protection Act (1998).

12.2 The Data Protection Act (1998)

Local authorities and all agencies should have guidance available to staff in respect of the Data Protection Act.

When access is requested, then the individual who the subject of the information (the data subject) should have the opportunity of having the information disclosed to them, subject to non-disclosure of third party information (information concerning another person who is not the data subject) and whether the disclosure of the information on the file would result in significant harm to either the data subject or other person or worker involved.

12.3 The Care Act (2014)

The Care Act Statutory Guidance requires that all agencies should keep clear and accurate records and each agency should identify procedures for incorporating, on receipt of a complaint or allegation, all relevant records into a file to record all action taken.

When abuse or neglect is raised managers need to look for past incidents, concerns, risks and patterns. We know that in many situations, abuse and neglect arise from a range of incidents over a period of time. In the case of providers registered with CQC, records of these should be available to service commissioners and the CQC so they can take the necessary action.

In the past, there have been instances where the withholding of information has prevented organisations being fully able to understand what “went wrong” and so has hindered them identifying, to the best of their ability, the lessons to be applied to prevent or reduce the risks of such cases reoccurring.

A Safeguarding Adults Board may request a person to supply information to it or to another person. The person who receives the request must provide the information provided to the SAB if:

- The request is made in order to enable or assist the SAB to do its job
- The request is made of a person who is likely to have relevant information and then either (i) the information requested relates to the person to whom the request is made and their functions or activities or (ii) the information requested has already been supplied to another person subject to an SAB request for information

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

Where an adult has refused to consent to information being disclosed for these purposes, it should be considered whether there is an overriding public interest that would justify information sharing.

Decisions about who needs to know and what needs to be known should be taken on a case by case basis, within agency policies and the constraints of the legal framework.

In certain circumstances, it will be necessary to exchange or disclose personal information which will need to be in accordance with relevant law and guidance.

13 Employment

13.1 The Disclosure and Barring Service

The Disclosure and Barring Service (DBS) was created by the Protection of Freedoms Act (2012) and helps to prevent unsuitable people from working with children and adults.

The DBS assesses the risk of harm that an individual would pose if they were to work with vulnerable groups, based on information held about that individual.

They will use information from a number of sources including the Police, Local Authorities and employers. The DBS consists of trained case workers, who will decide on a case-by-case basis whether a person poses a potential ongoing risk.

The Care Act Statutory Guidance (sections 14.62 and 14.203) states that if someone is removed by being either dismissed or redeployed to a non-regulated activity, from their role providing regulated activity following a safeguarding incident, or a person leaves their role (resignation or retirement) to avoid a disciplinary hearing following a safeguarding incident and the employer/volunteer organisation feels they would have dismissed the person based on the information they hold, the regulated activity provider has a legal duty to refer to the Disclosure and Barring Service.

If an agency or personnel supplier has provided the person, then the legal duty sits with that agency. In circumstances where these actions are not undertaken then the local authority can make such a referral.

There are three levels of a Disclosure and Barring Service (DBS) check. Each contains different information and the eligibility for each check is set out in law. They are:

- Standard check: This allows employers to access the criminal record history of people working, or seeking to work, in certain positions, especially those that involve working with children or adults in specific situations. A standard check discloses details of an individual's convictions, cautions, reprimands and warnings recorded on police systems and includes both 'spent' and 'unspent' convictions
- Enhanced checks: This discloses the same information provided on a Standard certificate, together with any local police information that the police believe is relevant and ought to be disclosed
- Enhanced with barred list checks: This check includes the same level of disclosure as the enhanced check, plus a check of the appropriate barred lists. An individual may only be checked against the children's and adults' barred lists if their job falls within the definition of 'regulated activity' with children and/or adults under the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012.

It should be noted that in 'signing off' or agreeing a personal budget or personal health budget a local authority may add conditions such as a DBS check as part of its risk assessment of safeguarding in specific cases.

Skills for Care have produced a recruitment and retention toolkit for the adult care and support sector. ['Finders Keepers' 2013](#) is designed to help care providers, particularly smaller organisations, to improve the ways they recruit staff and retain them.

13.2 Whistleblowing

The *Public Interest Disclosure Act (1998)* provides whistle-blowers with statutory protection against dismissal and victimisation, and applies to people at work raising genuine concerns about crime, civil offences, miscarriage of justice, and danger to health and safety or the environment.

It is legitimate and important that employees should have another channel to raise concerns, so long as it is not motivated by malice, 'whistle blowing' is viewed as a vital and responsible safety valve.

Anyone making a complaint, allegation or expressing concern, whether they be staff adults at risk or in need of care and support services, carers or members of the general public, should be reassured that:

- They will be taken seriously
- Their comments will be treated confidentially as far as is possible
- They will be given support
- They will be dealt with in a fair and equitable manner
- They will be kept informed of action that has been taken

Good outcomes for organisations where there are safeguarding concerns raised often hinge upon there being an environment where all parties feel able to disclose information without fear of negative consequences. Without this, the risk of future and further abuse or neglect going unreported will remain.

13.3 Corporate Manslaughter and Corporate Homicide Act 2007

Under the Act, an organisation commits the offence of corporate manslaughter where (a) it owes a duty of care, (b) it grossly breaches that duty because of how its activities are managed or organised, and (c) a person's death results.

13.4 The Care Standards Act (2000) and Health and Social Care Act (2008)

These two Acts:

- Established the regulatory regime for Social Care and Health Care Services including Mental Health namely the Care Quality Commission (CQC)
- The CQC regulates, registers and inspects services to ensure that the quality of services meet National Standards

Section 62 Health and Social Care Act 2008 permits an authorised person to enter and inspect any regulated premises.

The Acts 'Inspection of Homes' provisions empower authorised staff from the Care Quality Commission to enter and inspect premises that are used for the purposes of residential care. If care is thought to be failing, a number of measures are available including:

- Prosecution of individuals
- Cancellation of registration
- Immediate closure of home, by order of a magistrate
- Restrictions on new admissions

Additionally, providers of health and social care are subject to registration and regulation in relation to the services that they provide under the Health and Social Care Act (2008).

Such regulation is intended to ensure that standards in health and social care are such as to avoid organisational and institutional problems that can seriously harm adults at risk. The CQC can issue statutory warning notices, impose, vary or remove registration conditions, issue financial penalty notices, suspend or cancel registration, prosecute specified offences and issue simple cautions.

A number of specific offences are set out within the Act. These include failing to comply without reasonable excuse with conditions set by the Commission, carrying on regulated activity after registration has been suspended or been cancelled, contravening specific regulations and giving a false description of a concern or premises (sections 33–37).

13.5 Wilful neglect and/or ill treatment

Offences of wilful neglect or ill treatment are referenced in both the Mental Capacity Act and Mental Health Act. The offences of ill treatment (generally more deliberate) and wilful neglect (tending toward omission, albeit with intent or recklessness) cover a wide range of behaviour perpetrated on vulnerable adults.

It is not necessary under the MHA that the person be detained or subject to compulsion under that Act, it is enough that the person, for example, be in a nursing home for treatment for mental disorder, or is simply in the care of anybody at all.

If there is no lack of mental capacity and no mental disorder, then – no matter how ill, vulnerable and helpless a person is – there is in English law no offence of wilful neglect or ill treatment.

However, if a person does not lack capacity, but the perpetrator believed that he or she did lack capacity, then under s.44 of MCA a prosecution can still take place.

The Criminal Justice and Courts Act (2015) section 20 creates an offence of 'ill-treatment or wilful neglect by an individual who has the care of another individual by virtue of being a care worker'.

An individual guilty of an offence under this section is liable to up to 5 years imprisonment or a fine (or both). 'Care worker' means an individual who, as paid work, provides health care for an adult or child, other than excluded health care, or social care for an adult, including an individual who, as paid work, supervises or manages individuals providing such care or is a director or similar officer of an organisation which provides such care.

Under the Medication Act (1968) it is an offence to administer drugs that have been prescribed to someone else.

13.6 Causing or allowing the death of a vulnerable adult

Under the Domestic Violence, Crime and Victims Act (2004), it is an offence to cause or to allow the death of a vulnerable adult.

This Act applies when a vulnerable adult dies when a member of the household had either caused or allowed the death. To be a member of the household, the person does not have to have lived there, if he or she visited frequently for such periods of time that it would be reasonable to consider him or her a member of that household.

The defendant must either have directly caused the death of the victim, or at least was, or should have been, aware of the risk, and failed to take reasonable steps to protect the victim and the act occurred in circumstances that the defendant foresaw or should have foreseen.

13.7 Duty to non-employees under health and safety at work legislation

Under s.3 of the Health and Safety at Work Act 1974, there is a duty on the employer to conduct its undertaking in such a way as to ensure, so far as is reasonably practicable, that non-employees who may be affected are not exposed to risks to their health and safety.

Sometimes a prosecution under s.3 of the Act might be more directly connected with what is sometimes called 'abuse', rather than simply neglect or omission.

For instance, in 2006, a couple who ran a private residential home in Great Yarmouth were reportedly not only convicted of ill treatment and wilful neglect (under s.127 of the Mental Health Act) but also of breach of the Health and Safety Work Act 1974.

14 Personalisation

The Care Act places personal budgets into law for the first time, making them the norm for people with care and support needs.

Chapter 11 of the Statutory Guidance outlines personal budgets and stresses that they are a key part of the Government's aspirations for person-centred care and support. Independent research shows that where implemented well, personal budgets can improve outcomes and deliver better value for money.

The personal budget is the mechanism that, in conjunction with the care and support plan, or support plan, enables the person and their advocate if they have one, to exercise greater choice and take control over how their care and support needs are met.

Many individuals will choose to take control of the care plan, and in effect, become responsible for commissioning their own packages of Health and Social Care. This allows the person to have control of their care and support and exercise choice about how their care is delivered. In doing this the person has as much independence as is possible, but could also leave them vulnerable to abuse.

Personal budgets can range from simple single services to very diverse packages and therefore can sometimes be complex to arrange in areas relating to employer liability and recruitment of staff.

People employed directly by service users through direct payments/individual budgets are not subject to regulation by the Care Quality Commission (CQC); however the local authority may require personal budget holders using Direct Payments to specify whom they are employing to the local authority.

Local authorities can place reasonable conditions on any agreement to make personal budgets, and conditions might be introduced to protect and safeguard any particular individual. Such conditions need to be proportionate to the risk involved and must not defeat the principal purpose of a personal budget, which is to give people more choice and control over their care and support plans.

In cases where the care and support plan is delivered in full by a Care Quality Commission registered provider or agency, it will be the responsibility of that agency involved to undertake pre-employment checks, including DBS checks. Individuals in receipt of a personal budget can have access to Disclosure and Barring Service checks (previously CRB checks) through the local authority.

Staff directly employed should have awareness aware of safeguarding issues and that any safeguarding concerns should be reported to the local authority or Police.

15 Cross Border Arrangements

Chapter 19 of the Care Act Statutory Guidance outlines ordinary residence and resolution of disagreements, and this practice guidance is consistent with the Statutory Guidance.

The local authority where the abuse or neglect is alleged to have occurred (host authority) will have overall responsibility for coordinating the response to the safeguarding concern.

The local authority or statutory agency with funding or commissioning responsibilities (placing authority) will have a continuing duty of care to the adult and will maintain their responsibility for the longer-term care needs of that individual.

The host authority should always take the initial lead on responding and consider what steps are needed to protect the adult but also whether to refer the matter to the police to consider whether a criminal investigation would be required or appropriate.

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 co-ordinate any enquiry or investigation into concerns which may affect groups of individuals, such as organisational 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.

A range of considerations can determine whether the host or placing authority should investigate the safeguarding concern, but who knows the adult best and who has the necessary skills and experience will be critical factors.

The placing authority should assure itself that the commissioned provider has arrangements in place for protecting the adult (and others) and for managing additional concerns.

In the event that the host authority will investigate, the placing authority will provide any necessary support and information to ensure that a prompt and thorough enquiry or investigation can take place. The host authority will make provision in service contracts, which refer to this protocol, outlining the responsibilities of the provider to notify the host and placing authorities of any safeguarding concerns.

The placing authority will be responsible for providing support to the vulnerable adult 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 Vulnerable Adults Strategy Meeting and/ or may be required to submit a written report.

The Care Quality Commission should always be included in enquiries or investigations involving regulated care providers.

16 Safeguarding Children

In some safeguarding situations, an adult at risk may be living as part of the same family or household unit as children, or have significant contact with children because of parental or family responsibilities.

Persons of interest (alleged perpetrators) may also have significant contact with children which may be of concern.

Safeguarding and promoting the welfare of children is a shared responsibility which requires effective joint working and partnerships between all agencies, professionals, children and young people, parents and carers who may be vulnerable adults.

It is vital that all staff that work with or have contact with children and families undertake relevant and proportionate child safeguarding training and understand their responsibilities in protecting children from harm.

In [Warrington the Children's Safeguarding Board \(WSCB\)](#) exists to enable all the key organisations to co-operate to safeguard children and promote their welfare. The Board does not deliver the direct work from agencies, but it does ensure that services work together to make sure children and young people get the support they need when they need it.

17 Housing and Public Health

The Housing Act (1996) places a duty on Local Authorities to give priority and provide accommodation for certain groups of (unintentionally) homeless people.

Several of these categories refer to groups of people who may be adults at risk, including people who are vulnerable as a result of old age, mental illness, learning disability, physical disability or for some other special reason.

It also includes people who are ceasing to occupy accommodation because of violence or threats of violence from another person which are likely to be carried out. Section 147 states that it is not reasonable to continue to occupy accommodation if it is probable that this will lead to domestic violence. Domestic Violence means “violence or threats of violence which are likely to be carried out” from an associated person.

Here an “associated person” is similar to the definition in the Family Law Act 1996 and includes the relatives, present and former spouses, cohabitants and people who live or have lived in the same household and the parents of a child.

Section 145 and 149 provide grounds for the granting of a Possession Order on the application of the Local Authority or Housing Association where a partner has left the dwelling house because of violence or threats of violence by the other partner and the court is satisfied that the partner who has left is likely to return.

A tenancy granted by a private landlord does not qualify.

In respect of domestic abuse, the government has stated that the guidance should not be interpreted restrictively. It should be understood to include threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between persons who are, or have been, intimate partners, family members or members of the same household, regardless of gender or sexuality.

A wide range of safeguarding issues in the home could come within this definition.

Under section 166A Local Authorities must have a housing allocation scheme. They must operate the scheme so that ‘reasonable preference’ is given to certain groups of people. These include homeless people and also people who need to move on ‘medical or welfare’ grounds. Housing providers have access to a range of measures including injunctions and court action to enforce tenancy conditions.

Under section 153A certain landlords may seek Anti-Social Behaviour Injunctions from the courts on the basis that there was conduct capable of causing nuisance to somebody else (who does not necessarily have to be identified), and which directly or indirectly relates to the housing management functions of the landlord.

Additionally, the court can attach a power of arrest to an injunction if the conduct involves the use or threat of violence, or if there is a significant risk of harm to the person in need of protection (section 153c). In some circumstances, a power of arrest can be attached to even a ‘without notice’ application, that is, where the perpetrator is not informed about the application (section 154).

Local authorities have a preventative duty under the Housing Act (1985) to take reasonable steps to ensure that accommodation does not cease to become available for applicants threatened with homelessness.

The Code of Guidance stresses that much can be done to prevent homelessness. It mentions special reasons for considering adults as a priority. One is 'men and women without children who have suffered violence at home or who are at risk of further violence if they return home'.

The Anti-social Behaviour, Crime and Policing Act (2014) aims to provide more effective powers to tackle anti-social behaviour to provide better protection for victims and communities.

The new community trigger and community remedy aims to empower victims and communities, giving them a greater say in how agencies respond to complaints of anti-social behaviour and in out-of-court sanctions for offenders.

The Act also strengthens the protection afforded to the victims of forced marriage and those at risk of sexual harm.

17.1 Public Health Act (1936) and Public Health Act (1961)

These acts give local authorities duties to give notice to the owner or occupier of a dwelling to take certain steps to clean and disinfect a dwelling, and destroy vermin.

The duty is triggered if the local authority believes the filthy and unwholesome state of the premises is prejudicial to health, or if the premises are verminous.

If the person does not do what the notice requires, the local authority has the power to carry out the work itself and make a reasonable charge. The person is also liable to a fine.

If a person, or their clothing, is verminous, the local authority can remove them – with their consent or with a court order – for cleansing. As a last resort the council has a power of entry to premises, using force if necessary. An order can be obtained from a magistrates' court (section 287 of the 1936 Act).

17.2 Environmental Protection Act (1990)

Under the Environmental Protection Act, the local authority has powers of entry applying to statutory nuisances and can take action to deal with them. In the case of residential property, 24 hours' notice is required, unless it is an emergency or there is danger to life and health (Schedule 3).

18 High Risk & Domestic Abuse

In 2013, the Home Office announced changes to the definition of domestic abuse to:

- Incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse... by someone who is or has been an intimate partner or family member regardless of gender or sexuality
- Includes: psychological, physical, sexual, financial, emotional abuse; so called 'honour' based violence; Female Genital Mutilation; forced marriage
- Age range extended down to 16

Many people think that domestic abuse is about intimate partners, but it is clear that other family members are included and that much safeguarding work that occurs at home is, in fact is concerned with domestic abuse. This confirms that domestic abuse approaches and legislation can be considered safeguarding responses in appropriate cases.

18.1 Multi-Agency Risk Assessment Conference (MARAC)

The Multi Agency Risk Assessment Conference is aimed primarily at protecting individuals who are at risk of domestic abuse where there is evidence to suggest there is a high risk of serious harm.

A MARAC is a meeting combining up to date risk information with a comprehensive assessment of an individual's needs and links those directly to the provision of appropriate services for all those involved in a case: victim, children and perpetrator.

The aim of a MARAC is to:

- Share information to increase the safety, health and well-being of the adults and their children
- Determine whether the perpetrator poses a significant risk to any particular individual or to the general community
- Jointly construct and implement a risk management plan that provides professional support to all those at risk and that reduces the risk of harm
- Reduce repeat victimisation
- Improve agency accountability
- Improve support for staff involved in high-risk cases

The MARAC process aims to move some of the responsibility for addressing the domestic abuse from the victim and to a broader group of agencies. The role of the MARAC is to facilitate, monitor and evaluate effective information sharing to enable appropriate actions to be taken to increase public safety. The responsibility to take appropriate actions rests with individual agencies.

18.2 Multi-Agency Public Protection Arrangements (MAPPA)

Multi-Agency Public Protection Arrangements (MAPPA) formed under the Criminal Justice & Court Services Act (2000) requires Probation Services and Chief Officers of Police to:

- Establish arrangements to assess and manage the risks posed by sexual and violent offenders
- Monitor those arrangements and make necessary changes
- Prepare and publish an annual report on MAPPA

Multi-Agency Public Protection Panels contain skilled professionals from a number of agencies (including Health and Social Care and Housing) who pool information to build a profile of each offender and complete an assessment of the level of dangerousness and risk of causing harm the individual may present, and by planning, actions and monitoring of the offender so as to protect the public

The MAPPA guidance sets out three levels of risk management.

- Level 1 Ordinary Risk Management: This is the level used in cases in which the risk posed by the offenders can be managed by a single agency, usually the Probation Service
- Level 2 Local Inter-Agency Risk Management: Referral to this level is made when a case involves local inter-agency risk management. Where active involvement of more than one agency is required but the level of risk or the complexity of managing it is not so great as to require referral to the multi-agency protection panel
- Level 3 Multi-Agency Public Protection Panels: This level is for the 'critical few' who are assessed as being of high, or very high, risk of causing serious harm and presenting a risk that can only be managed by a plan requiring close co-operation at a senior level. Emergency meetings will often be necessary at short notice.

18.3 Forced Marriage

The Multi agency guidance 'The Right to Choose' issued by the Home Office addresses approaches in response to forced marriage and honour based violence.

It is important to make the distinction between an arranged marriage and a forced marriage. In an arranged marriage the families of both spouses take a leading role in arranging the marriage but the choice whether or not to accept the arrangement remains with the individual. Forced marriage is a term used to describe a marriage in which one or both of the parties are married without their consent or against their will. Duress may be used and can include physical, psychological, financial, sexual and emotional pressure.

In a situation where there is concern that an adult at risk is being forced into a marriage they do not or cannot consent to, action should be carefully co-ordinated

with the police and other relevant organisations as there will be an overlap between actions forced marriage provisions and safeguarding processes.

18.4 Honour-Based Violence

Honour-based violence can occur when families feel that dishonour has been brought to them. Women are predominantly the victims, often with the violence committed with a degree of collusion from family members and/or the community.

Features that may indicate honour-based violence include domestic abuse, concerns about forced marriage, enforced house arrest and missing person's reports. As these can be crimes, referral to the police should always be considered, however there is recognition that although some victims will seek support, many others are so isolated and controlled that they are unable to seek help.

If there is a concern that an adult at risk is the victim of honour-based violence which results in a safeguarding concern, referring to the police must always be considered as they have the necessary expertise to manage the risk.

The Forced Marriage (Civil Protection) Act (2007) provides for three types of applicant who may apply for a forced marriage protection order. They are the victim, anyone on their behalf with the permission of the court and a relevant third party.

A relevant third party may apply on behalf of a victim and does not require the leave of a court.

18.5 Female Genital Mutilation

The Serious Crime Act (2015) brings in new provisions to tackle Female Genital Mutilation (FGM) by:

- Extending the extra-territorial reach of the offences in the Female Genital Mutilation Act (2003) so that they apply to habitual as well as permanent UK residents
- Introducing a new offence of failing to protect a girl from risk of FGM
- Granting lifelong anonymity to victims
- Bringing in a civil order ('FGM protection orders') to protect potential victims
- Introducing a duty on healthcare professionals, teachers and social care workers, to notify the police of known cases of FGM carried out on a girl under the age of 18

18.6 Radicalisation

Individuals may be susceptible to recruitment into violent extremism by radicalisers. Violent extremists often use a persuasive rationale and charismatic individuals to attract people to their cause.

The aim is to attract people to their reasoning, inspire new recruits, embed their extreme views and persuade vulnerable individuals of the legitimacy of their cause. The Home Office leads on the anti-terrorism strategy.

18.7 Human Trafficking

Human trafficking involves an act of recruiting, transporting, transferring, harbouring or receiving a person through a use of force, coercion or other means, for the purpose of exploiting them.

The police are the lead agency in managing responses to adults who are the victims of human trafficking, however, if a victim of human trafficking is also an adult at risk, the response should be co-coordinated within safeguarding adults processes. The National Referral Mechanism exists to assist in the formal identification and help to coordinate the referral of victims to appropriate services.

18.8 Modern Slavery

The Modern Slavery Act (2015) makes provisions in respect of slavery, servitude and forced or compulsory labour and about human trafficking, including provision for the protection of victims. In determining whether offences have taken place, Courts may have regard to all the victims' circumstances, such as them being a child, their family relationships, and any mental or physical illness which may make the person more vulnerable than other persons.

The consent of a person to any of the acts alleged to constitute offences does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour.

In an emergency situation the Police should be contacted on 999 (or 101 if not an emergency), and anyone can report a suspected incident of modern slavery via the website modernslavery.co.uk or the Modern Slavery Helpline on 0800 0121 700.

18.9 Family Law Act (1996)

A non-molestation order under section 42 can prohibit a person (the accused) molesting another person (the complainant). In order to be able to use this legislation the complainant must be 'associated' with the complainant.

An associated person is defined widely and includes married couples, cohabitants, those living in the same household, relatives and engaged couples (as long as there is an agreement to marry).

The complainant is the only person who can start proceedings. In deciding whether or not to make an order, the court shall have regard to all circumstances including the need to secure the health, safety and well-being of the complainant. The complainant can start proceedings in respect of particular acts of molestation or general ones. In other words, it is possible for a complaint to be made even though the behaviour has only happened once.

There is no definition of molestation within the Act, but the Law Commission (Family Law, Domestic Violence and Occupation of the Matrimonial Home (1992)) defines

molestation as an umbrella term which covers a wide range of behaviour, including any form of serious pestering or harassment. The degree of severity depends less upon its intrinsic nature than upon it being part of a pattern and upon its effect on the victim’.

The Act also allows for occupation orders and in the context of safeguarding adults at risk, such an order could serve to protect a person, at the same time enabling them to remain in their own home.

Such an order can enable a person to remain in occupation of a dwelling, forbid the other person to occupy all or some of the dwelling, specify that the other person should take reasonable care of the dwelling, or regulate how the dwelling is occupied.

Types of order that can be made by the court could include; enforcing the applicant’s entitlement to remain in occupation as against the other person; for the applicant to enter and remain in the dwelling or part of the dwelling; regulating the occupation of the dwelling by either or both parties; an order requiring the respondent to leave the dwelling or part of the dwelling; and an order excluding the respondent from a defined area in which the dwelling is included.

In coming to a decision the court must have regard to all of the circumstances of the case including:

- The housing needs and housing resources of the parties
- The financial resources of each of the parties
- The likely effect of any order, or of any decision by the court not to exercise its powers on the health, safety and well-being of the party
- The conduct of the parties in relation to each other and otherwise.

In addition, the court must consider the ‘balance of harm test’ which imposes an overriding requirement for the court to make an order if it appears that the applicant or child is likely to suffer significant harm if an order is not made which is greater than the harm that the respondent is likely to suffer if the order is made.

An order under this section may be for a specified period, until the occurrence of a specified event or until further order.

As with Non-Molestation Orders, Occupation Orders may be made on an ex-parte (in the absence of the respondent). In determining whether an order should be made in the absence of the respondent, the court will have regard to all of the circumstances including:

- Any risk of significant harm to the applicant, attributable to the conduct of the respondent, even if the order is not made immediately
- Whether it is likely that the applicant will be deterred or prevented from pursuing the application if any order is not made immediately
- Whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicants will be seriously prejudiced by the delay involved.

If the court makes an ex-parte order it must afford the respondent an opportunity to make representations relating to the order as soon as is just and convenient at a full hearing.

Under section 63 of the Act a court can grant orders protecting people from being forced into marriage, known as 'Forced Marriage Protection Orders'.

Such orders may be particularly relevant to adults at risk, for instance, where an incapacitated adult is subject to an arranged marriage, or where an adult with capacity, but unable to give free and informed consent is being married. The application can be made by the person who needs protecting, or by a specified party including a local authority.

18.10 Protection from Harassment Act (1997)

Under this Act there are criminal and civil remedies for protecting victims of harassment. This means that either the person being harassed can seek a civil order (from a County Court or High Court), or the matter can be reported to the Police with a view to criminal proceedings. The Act provides a civil remedy which enables a victim of harassment to seek an injunction against a person who is harassing them or may be likely to do so.

There is no need for a person to have been convicted of harassment in order for an injunction to be granted against them. If a court is satisfied that harassment has taken place or is apprehended, then they may grant the injunction (section 3).

So if the evidence was insufficient to result in a criminal prosecution and conviction beyond reasonable doubt, a civil injunction may be available on the balance of probabilities.

Under this Act a person must not pursue a course of conduct, which amounts to the harassment of another and which that person knows, or ought to know, amounts to harassment of the other. The alleged harasser ought to know that their behaviour amounts to harassment if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment.

Whereas non-molestation orders under the Family Law Act 1996 (see above) could be granted for one act of harassment, this Act can only be used if there has been more than one act ('a course of conduct').

The Act also creates a criminal offence of harassment, punishable by a fine or up to six months' imprisonment (s.2). There is a further criminal offence in the Act, defined as the perpetrator pursuing a course of conduct that causes somebody else (on at least two occasions) that violence will be used against him or her.

The perpetrator has to know, or ought to have known, that the course of conduct would cause the other person to fear this (s.4).

In addition to sentencing for the criminal offence of harassment or putting a person in fear of violence, a court may also make a restraining order prohibiting the defendant from doing anything specified in the order, with a view to protecting the victim from harassment or fear of violence (s.5). Even if the defendant is acquitted in any

criminal proceedings, the court can still make a restraining order to protect the victim from harassment (s.5A).

If the complainant decides to start civil proceedings, they may ask for an injunction to prevent further occurrences of the harassment and damages for the mental distress already caused.

The victim may apply to a Judge for an arrest warrant where the defendant is in breach of the terms of the injunction. Breach of the injunction is also a separate criminal offence punishable by a term of imprisonment or a fine. It is open to the court to award longer terms of imprisonment or higher fines for breach of an injunction than those which are available for the offence itself.

These orders are made by the court to protect the victim and are intended to prevent the defendant committing any further conduct which would amount to harassment or putting the person in fear of violence. Breach of a restraining order is punishable, upon conviction, by way of a fine or a term of imprisonment.

18.11 Serious Crime Act (2015)

The Act also criminalises patterns of repeated or continuous coercive or controlling behaviour where perpetrated against an intimate partner or family member.

Case Study J

Mrs D lives with her husband, B. B has a long term brain injury which affects his mood, behaviour and his ability to manage close family relationships.

This has often led to him shouting and hitting out at his wife, who is also his main informal carer. Mrs D told a professional who was involved in supporting her that she was becoming increasingly frightened by B's physical and verbal outbursts and at times feared for her personal safety.

Other family members were unaware of the extent of the harm and Mrs D was exhausted and considering leaving the situation. The local authority became involved. The situation presented significant personal risk to Mrs D but there was also a risk of fragmenting relationships if the local authority staff were not sensitive to the needs of the whole family.

The practitioner, under supervision from her social work manager invested time in meeting with Mrs D to explore her preferences around managing her safety and how information about the situation would be communicated with the wider family and with B. This presented dilemmas around balancing the local authority's duty of care towards Mrs D with her wishes to remain in the situation with B.

Placing emphasis on the latter inevitably meant that Mrs D would not be entirely free from the risk of harm but allowed the practitioner to explore help and support options which would enable Mrs D to manage and sustain her safety at a level which was acceptable to her. The practitioner received regular supervision to allow time to

reflect on the support being offered and to ensure that it was 'person centred'.

The outcome for Mrs D was that she was able to continue to care for B by working in partnership with the local authority. The practitioner offered advice about how to safely access help in an emergency and helped her to develop strategies to manage her own safety – this included staff building rapport with B, building on his strengths and desire to participate in social activities outside the family home.

The effect of this was that some of the trigger points of him being at home with his wife for sustained periods during the day were reduced because he was there less.

Mrs D also had a number of pre-existing support avenues, including counselling and a good relationship with her son and her friends.

The situation will be reviewed regularly with Mrs D but for the time being she feels much more able to manage.

19 Injunctions

Torts in common law jurisdiction are civil wrongs which unfairly cause someone else to suffer loss or harm resulting in legal liability for the person who commits the act.

Injunctions may be available in respect of the torts of assault, battery, nuisance, false imprisonment or trespass. These may be useful in cases involving people who are not covered by legislation, although their scope is more limited. Injunctions may not restrain conduct which is classified as harassment and a person may not be excluded from a home which they have a right to occupy.

Injunctions under the Law of Tort for trespass may be the only appropriate remedy where the abuser is not the spouse/cohabitee, but possibly another member of the family.

The county courts can issue common law injunctions to stop a person being on another person's property or to stop them assaulting the person. In some circumstances local authorities can seek injunctions (or conduct other legal proceedings) under the Local Government Act (1972) where it thinks it expedient for the promotion or protection of the interests of the inhabitants of their area (section 222).

Common law allows for the intervention - without the consent of the adult - to save 'life and limb', based upon the principle that the action was necessary and proportionate in the circumstances. Not to act under the most serious circumstances could be deemed negligent.

In high risk situations, where both physical and mental health needs may both be a critical factor, physical health needs should be given priority.

The resulting action - for example, removing the individual to a casualty department - would then be via a common law intervention. When it is physically safe to do so, the adult's mental health needs should then be assessed, for example via the Mental Health Act.

20 Civil Law Remedies for financial and property harm

Apart from criminal law, there are also civil legal remedies relevant to finance and property harm suffered by vulnerable people. One of these involves a concept known as 'undue influence'. It applies to gifts and wills. This is where a person has mental capacity to conduct the transaction – the will or the gift – but has had their will overborne not just by the influence, but by the *undue* influence, of somebody else.

When there is evidence of coercion or undue pressure, this is called 'express' undue influence. However, often there is no such evidence, but instead, there might have been 'presumed' undue influence. In addition to undue influence, the courts can simply set aside gifts or wills on the grounds that the person lacked capacity at the relevant time. Legal cases about wills and gifts are heard in the Chancery Division of the High Court that covers an area of law called 'equity'.

In appropriate circumstances, if there are sufficient concerns about what they believe is likely to be undue influence, it may be appropriate to suggest to the person that they seek independent advice. It is also possible in some circumstances that undue influence could be associated with a criminal offence, in which case it might be a police matter.

Although undue influence is a concept in civil law – not criminal law – nonetheless it may in substance be relevant to a criminal conviction.

If gifts or wills are made by a person lacking capacity to do so at the relevant time, they can be set aside by the courts. Such cases are not decided by the Court of Protection but by the High Court. Although there is now a general legal definition of mental capacity within the MCA, there are also 'common law' definitions of what capacity means in relation to the making of wills or gifts.

A further legal, equitable principle exists, called 'proprietary estoppel'. The key principle involved is that a person has acted to his or her own detriment by providing services to a second person, on the basis of – and relying on – assurances made by that second person.

21 Other Civil Law Remedies

Various civil legal proceedings can be taken against public bodies, including providers of services. These include 'judicial review' and also what are called 'torts', that is, civil wrongs such as negligence, trespass to the person and false imprisonment. People use these remedies to sue for financial compensation for the wrong.

These civil wrongs can be directly relevant to safeguarding and may constitute an alternative or additional remedy to any criminal case. Civil law operates on the balance of probability, whereas criminal law demands a more searching standard of proof – beyond reasonable doubt. Furthermore, these civil remedies have the potential to provide financial compensation for harm suffered.

Civil negligence cases are brought in respect of physical harm; sometimes psychological or financial harm might underpin the case. The key elements that have to be shown are (a) the existence of a duty of care, (b) breach of that duty of care because of an action, omission or decision that falls beneath the reasonable standard, and (c) harm flowing from that breach of duty.

Consumer Protection from Unfair Trading Regulations contains a number of offences, for instance, relating to misleading actions or omissions, aggressive practices and unfair practices (SI 2008/1277). Also the Cancellation of Contracts Made in Consumer's Home or Place of Work Regulations 2008 creates certain rights (SI 2008/1816). There is other legislation that can be brought to bear, such as the Theft Act 1968, the Forgery and Counterfeiting Act 1981 and the Consumer Protection Act 1987.

22 Equality and Discrimination: The Equality Act (2006)

This Act makes discrimination unlawful on the grounds of religion or belief in the provision of goods, facilities and services, the disposal and management of premises, education, and the exercise of public functions and places a duty on public authorities to promote equality of opportunity between men and women, and to prohibit sex discrimination in the exercise of public functions.

23 Self-Neglect

The Care Act (2014) supports the rights of those who may be at risk who have the relevant mental capacity to make informed choices about their lifestyle and risks associated to them. The Care Act Statutory Guidance recognises self-neglect as a form of neglect that covers a wide range of behaviours such as neglecting one's personal hygiene, health and surroundings including hoarding behaviour.

Self-neglect means failing to take reasonable care of your own health and environment, failing to take reasonable steps to meet your own care needs, and where failure to do so puts your well-being and/or health (or the well-being or health of others) at risk.

However, The Care Act Statutory Guidance makes clear that although self-neglect in some circumstances may be raised as a safeguarding concern, it is usually likely to be dealt with as an intervention under the elements of the Care Act dealing with assessment, planning, information and advice, and prevention.

It is vital to establish whether the adult has capacity to make decisions about their own wellbeing, and whether or not they are able or willing to care for themselves. An adult who is able to make choices may make decisions that others think of as self-neglect.

If the adult does not want any safeguarding action to be taken, it may be reasonable not to intervene further, as long as:

- No-one else is at risk
- Their 'vital interests' are not compromised – that is, there is no immediate risk of death or major harm
- All decisions are fully explained and recorded
- Other agencies have been informed and involved as necessary.

Risk and capacity assessments are likely to be useful. The legislation makes clear that adult safeguarding responses should be guided by the adult themselves, to achieve the outcomes that they want to achieve.

Carrying out an assessment may be difficult, if the adult is reluctant. The Care Act [Statutory Guidance](#) advises that adult social care departments should record all the steps they have taken to complete an assessment of the things that an adult wants to achieve and the care and support that they need. [Research](#) indicates that intervening successfully depends on practitioners taking time to gain the adults trust and build a relationship, and going at their own pace.

A safeguarding meeting should be held for an adult who self neglects, engages in hoarding behaviour, or is a frequent caller of services where:

- They have the relevant mental capacity; and
- They have needs for care and support; and
- They are refusing services to meet their needs for care and support; and
- Others are at risk; and/or, they are at immediate risk of death or major harm

A multi-agency meeting can be arranged by any agency that has concerns about an adult who self neglects, hoards or is a frequent high risk user of services where the criteria for holding a safeguarding meeting has not been met. A multi-agency meeting can be arranged in any of the following circumstances:

- Following consultation with other agencies when it is found that they may be able to offer assistance, or direct towards services to meet the need, or help to reduce the concerns
- Telephone and e-mailing sharing of information is not enough
- Agencies are concerned about the adults circumstances and require a multiagency response to assist in managing risks

Case Study

Mr M, in his 70s, lives in an upper-floor council flat, and had hoarded over many years: his own possessions, items inherited from his family home, and materials he had collected from skips and building sites in case they came in useful. The material was piled from floor to ceiling in every room, and Mr M lived in a burrow tunnelled through the middle, with no lighting or heating, apart from a gas stove.

Finally, after years of hiding in privacy, Mr M had realised that work being carried out on the building would lead to his living conditions being discovered.

Mr M himself recounted how hard it had been for him to invite access to his home, how ashamed and scared he was, and how important his hoard was to him, having learnt as a child of the war never to waste anything.

Through working closely together, Mr M, his support worker and experienced contractors have been able gradually to remove from his flat a very large volume of hoarded material and bring improvements to his home environment. It has taken time and patience, courage and faith, and a strong relationship based on trust.

The worker has not judged Mr M, and has worked at his pace, positively affirming his progress.

Both Mr M and his support worker acknowledge his low self-esteem, and have connected with his doctor and mental health services. The worker has recognised the need to replace what Mr M is giving up, and has encouraged activities that reflect his interests. Mr M has valued the worker's honesty, kindness and sensitivity, his ability to listen, and the respect and reciprocity within their relationship.