

**POLICY AND PROCEDURES
FOR SAFEGUARDING
ADULTS AT RISK
IN
SWINDON AND WILTSHIRE**

March 2013

**This document replaces the Policy and Procedures for
Safeguarding Vulnerable Adults in Swindon and
Wiltshire**

Version Control

<u>Updated</u>	<u>Section</u>	<u>Comment</u>

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Using this document electronically

*Throughout this document where you see an [underlined word or phrase usually blue in colour](#), this means that there is a link to somewhere in the document or to a website.

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INTRODUCTION

1. All persons have the right to live their lives free from violence or other sorts of abuse, but in the 1980's and 90's a number of serious incidents came to light in which vulnerable adults had not received the protection and support they needed and had been subject to abuse. As a result, in 2000 the government published "No Secrets"¹ which set out clear guidance for responsible agencies in local areas to work in partnership on arrangements to prevent abuse of vulnerable adults taking place and to deal robustly with any incidents that did occur. Local authorities were given the responsibility for co-ordinating this work and the arrangements now in place, including the Safeguarding Adults Board, have developed from that guidance.
2. "[No Secrets](#)" defined a vulnerable adult as "a person aged 18 years or over who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation." Since that time, however, the thinking about keeping adults safe from abuse has changed substantially. The original concern with vulnerable adults in receipt of community care services has been broadened out to include adults in vulnerable situations arising from a whole range of causes and circumstances. The Association of Directors of Social Services (ADSS) recognised in 2005 that core safeguarding work has to be linked to a wider network of measures that enables "all citizens to live lives that are free from violence, harassment, humiliation and degradation."²
3. Most recent thinking, including that of the Law Commission that reported in May 2011, is that it would be preferable to refer to "adults at risk". This reflects the preference of people with disabilities that the emphasis should be on the circumstances adults find themselves in, rather than on the individual's disability, which may or may not in itself make them "vulnerable".
4. Early 2011 saw a number of key policy documents published, which contribute to the further development of adult safeguarding services.
 - *Statement of Government Policy on Adult Safeguarding* which sets out the principles for use by all agencies involved in safeguarding, in developing and assessing the effectiveness of local safeguarding arrangements. It also described in broad terms the expected outcomes for adult safeguarding, both for individuals and for agencies and outlined the next steps in policy development.
 - *Law Commission Report on Adult Social Care* included a number of specific references to adult safeguarding including proposals for revised definitions of adults at risk and of "harm". It also proposed that Adult Safeguarding Boards should be put on a statutory footing, and that there should be a duty to co-operate placed on all relevant agencies; both are developments that have been sought by many in the field for some time.
 - *Safeguarding Adults 2011- Advice note from ADASS to Directors of Adult Social Services* is a framework for development to support Directors of Adult Social Services in their leadership role in adult safeguarding.

¹ "No Secrets" *Department of Health and Home Office 2000*

² "Safeguarding Adults, A National Framework of Standards" *ADSS 2005*

- *Safeguarding Adults: the Role of Health Services* is a set of five related documents helpfully bringing a range of advice and guidance together, targeted to different parts of the health system and giving a strong profile to safeguarding across the NHS.
5. The government's response to these developments was published in July 2012, in the form of the White Paper "Caring for our Future – reforming care and support"³ and a draft Care and Support Bill. The latter proposes a single, modern law for adult care and support that replaces existing out-dated and complex legislation.
 6. The principles set out in the Statement of Government Policy are:
 - **Empowerment** - Presumption of person led decisions and informed consent.
 - **Protection** - Support and representation for those in greatest need.
 - **Prevention** - It is better to take action before harm occurs.
 - **Proportionality** - Proportionate and least intrusive response appropriate to the risk presented.
 - **Partnership** - Local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse.
 - **Accountability** - Accountability and transparency in delivering safeguarding.

Statement of Government Policy on Adult Safeguarding May 2011

7. The Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire applies to all residents of Swindon and Wiltshire including people who are funding their own care services, those whose service is funded by the local authority or Primary Care Trust/Clinical Commissioning Group, adults at risk who are not in receipt of care services or direct their own care and people living in Swindon and Wiltshire who are funded by local authorities and health authorities outside the area.
8. Joint training, including training for staff, Investigating Managers and Officers, will continue to support these procedures.

³ Caring for our future – reforming care and support *HM Government 2012*

Membership Agencies of the Local Safeguarding Adults Boards in Swindon and Wiltshire

SWINDON LOCAL SAFEGUARDING ADULTS BOARD

Independent Chair

[Swindon Borough Council](#)

- Adults and Children's services
- Housing, Leisure, Libraries & Culture
- Community Safety Partnership
- Cabinet Members relevant to Adult Safeguarding
- Adult Safeguarding Manager
- Head of Safeguarding Children

[Wiltshire Police](#)

[Clinical Commissioning Group Swindon](#)

[Care Quality Commission](#) (Annual Attendance)

[South Western Ambulance Service NHS Foundation Trust](#)

[Great Western Hospitals NHS Foundation Trust](#)

[Avon and Wiltshire Partnership Mental Health NHS Trust](#)

[Wiltshire Probation Trust](#)

[Wiltshire Fire and Rescue](#)

[SEQOL](#)

[Swindon Carers' Centre](#)

Swindon Care Homes Association

Chair of the Learning Disability Partnership Board

WILTSHIRE LOCAL SAFEGUARDING ADULTS BOARD

Independent Chair

[Wiltshire Council](#)

- Service Director Adult Care Commissioning
- Councillor holding portfolio for Adult Social Care & Housing
- Head of Commissioning for MH, Substance Abuse and Safeguarding

[Residential and Nursing Care Provider Representative](#)

[Wiltshire Police](#)

[Avon and Wiltshire Partnership Mental Health NHS Trust](#)

[Clinical Commissioning Group Wiltshire](#)

[Great Western Hospitals NHS Foundation Trust](#)

[Royal United Hospital, Bath](#)

[Salisbury NHS Foundation Trust](#)

[South Western Ambulance Service NHS Foundation Trust](#)

[Wiltshire Probation Trust](#)

Domiciliary Care Providers Representative

Community Safety Partnership

POLICY STATEMENT FOR SAFEGUARDING ADULTS AT RISK FROM ABUSE

This policy statement is formulated in recognition that abuse of adults at risk may be widespread, but frequently unrecognised in our society. Abuse can take place in any situation, care setting or hospital, as well as at home. Perpetration of abuse may be by someone in a position of trust, power or authority that uses his or her position to the detriment of the health, safety, or welfare and general well-being of a vulnerable person. The person alleged to have caused harm may be a relative, friend or family member, or those charged with a voluntary or professional care role, another service user or a stranger.

The prevention of abuse of adults at risk is a collective responsibility of all sections of society. However, those agencies, professionals, independent sector organisations and voluntary groups working with, or in contact with adults at risk, hold a particular responsibility to ensure safe, effective services and to facilitate the prevention and early detection of abuse from whatever quarter, thus ensuring that appropriate protective action can be taken.

Philosophy Statement

The signatories to this policy adopt the following philosophy statement in accordance with the principles contained within the European Convention on Human Rights and the Human Rights Act 1998:

- All individuals have the right to live their lives free from coercion, intimidation, oppression and physical, sexual emotional or mental harm;
- All individuals have a right to a family life and privacy;
- Individuals have a right to confidentiality in respect of personal information insofar as this does not infringe the rights of other people;
- All individuals have the right to receive full and comprehensive information to enable them to make informed choices about their own circumstances; and
- All individuals have the right to the protection of the law and access to the judicial process.

Abuse is a violation of an individual's human and civil rights by any other person or persons. The risk of being abused depends upon the situation, the environment and those who cause harm, not on the behaviour of victims. Many incidents of abuse are criminal offences.

Recognising that inequality, disadvantage and discrimination exist in society, all signatories to this policy accept the responsibility to ensure that all adults at risk regardless of their ethnic origin, religion, language, age, sexuality, gender or disability have equal opportunity to access services and information designed to protect them from harm and to promote their welfare.

The service should ensure that any necessary measures e.g. advocacy, interpreters etc. are taken or provided, to support and empower individuals to decide what action, if any, will be taken. Where an adult does not have the capacity to consent to actions taken to protect them it should be clarified who, if anyone, has the power to act on their behalf or should advocate for them.

Definitions

Under this policy Adults at Risk are those:

- Aged 18 years or over; *
- Who may be in need of community care services by reason of mental or other disability, age or illness; and
- Who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation.

[\("No Secrets" Department of Health /Home Office 2000\)](#)

*NB: From time to time it may be necessary for an adult care team to respond in a safeguarding children's case that has been highlighted by children's services where it is possible that the young person is likely to continue to be at risk beyond their 18th birthday and where they may be subsequently described as an adult at risk as defined above.

Although the terminology below relates to abuse, the principle with these procedures is to consider the significance of the harm that has resulted from the abuse alleged.

Definition of Abuse

"Any act or failure to act, which results in a significant breach of a vulnerable person's human rights, civil liberties, bodily integrity, dignity or general well-being, whether intended or inadvertent, including sexual relationships or financial transactions to which a person has not or cannot validly consent or which are deliberately exploitative"

Safeguarding Adults and Children with Disabilities against abuse: Council of Europe 2002

Abuse may include one or more of the following:

- **Discriminatory abuse**, including that based on a person's ethnic origin, religion, language, age, sexuality, gender, disability, and other forms of harassment, slurs or similar treatment;
- **Sexual abuse**, including rape and sexual assault, contact or non-contact sexual acts to which the adult at risk has not consented, or could not consent or was pressurised into consenting;
- **Psychological abuse**, including emotional abuse, threats of harm or abandonment, deprivation of contact or communication, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks;
- **Financial or material abuse**, including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits;
- **Neglect or acts of omission**, including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating; failure to report abuse or risk of abuse;

- **Physical abuse;** including hitting, slapping, pushing, kicking, misuse of medication, inappropriate restraint, or inappropriate sanctions; and
- **Institutional abuse;** indicated by repeated instances of unsatisfactory professional practice, pervasive ill treatment or gross misconduct indicating an abusive climate.

Principles

The following principles are endorsed by all agencies to this policy as fundamental to safeguarding adults at risk:

Agencies will:

- Actively work together within the agreed inter-agency framework based on the guidance contained in [‘No Secrets’ \(2000 Department of Health, Home Office\)](#);
 - To take action to prevent harm from occurring;
 - To investigate abuse and manage safeguarding adults at risk procedures within the agreed policy, guidance and protocols underpinning this framework; and
 - To provide a proportionate response and seek to ensure that the individual's life will be improved as a result of using safeguarding procedures.
- Actively promote the empowerment and well-being of adults at risk through the services they provide;
- Actively support the rights of the individual to lead an independent life based on self-determination and personal choice;
- Ensure the law is followed when assessing an individual's capacity to make particular decisions and that decisions made on their behalf are in their best interests if they are assessed as lacking capacity to do this for themselves;
- Recognise people who are unable to make their own decisions and/or protect themselves, their assets and their bodily integrity;
- Recognise that the right to self-determination can involve risk and ensure such risk is recognised and understood by all concerned, and harm is minimised whenever possible;
- Ensure the safety of adults at risk by integrating strategies, policies and services relevant to abuse within all systems and legislation created to safeguard adults ([See Appendix 1 Legal Framework](#));
- Ensure that when the right to an independent lifestyle and choice is at risk, the individual concerned receives appropriate advocacy, including advice, protection and support from relevant agencies;
- Ensure that the law and statutory requirements are known and used appropriately so that adults at risk receive the protection of the law and access to the judicial process;
- Identify others who may be at risk of harm, including children (including unborn babies), and effect immediate referral to the appropriate authority;
- Recognise the on-going duty of care to service users who cause harm and facilitate any necessary action to address abusive behaviour;
- Actively promote an organisational culture within which all those who express concern will be treated seriously and will receive a positive response from management;

- Ensure comprehensive Safe Recruitment procedures are in place to minimise the likelihood of appointing someone who would put a vulnerable person at risk;
- Ensure that all agencies and their staff working with adults at risk are familiar with this policy and the agreed procedures, guidance and protocols;
- Ensure that confidentiality and information sharing related to safeguarding adults at risk and those alleged to have caused harm in a multi-agency context are maintained with the agreed protocols; and
- Ensure that all staff responsible for managing and conducting investigations within these procedures receive the appropriate training and support.

For the purpose of this policy, the phrase “Adult Care Team” will be used to describe the team that provides care management/social work services to adults at risk and will play a lead role in the investigation and coordination of allegations of the abuse of adults at risk. This encompasses:

- Wiltshire Council Safeguarding Adults and Mental Capacity Act Team;
- Adult Social Care Teams;
- Community Teams
- Hospital Social Work Teams;
- Mental Health Trusts;
- Community Teams for People with Learning Disabilities; and
- Independent Living Service.

This includes teams managed by Avon and Wiltshire NHS Partnership Mental Health Trust and SEQOL, the social enterprise providing health and social care services in Swindon.

This policy will be made freely available to users of the services, their families and carers, and to workers and professionals within all agencies providing services for adults at risk. It will also be made available to the general public.

RECOGNITION OF ADULT ABUSE

Who may be the Abuser?

Those who cause harm (or perpetrators of abuse) are not confined to any section of society, and may be people who hold a position of trust, power or authority in relation to an adult at risk. A person who causes harm may be:

- A member of staff, proprietor or service manager;
- A member of a recognised professional group;
- A volunteer or member of a community group such as a place of worship or social club;
- A service user or adult at risk;
- A spouse, relative or member of the person's social network;
- A carer, i.e. someone who has the right to an assessment and may be eligible for services to meet their caring role independently of an adult at risk under the Carers (recognition and services) Act 1996 and the Carers and Disabled Children Act 2000;
- A neighbour, member of the public or stranger; or
- A person who deliberately targets adults at risk.

As well as their responsibility to the person who has been abused, agencies may have a responsibility in relation to those alleged to have caused harm. Their powers and duties will vary depending upon the role of the person alleged to have caused harm in relation to the agency.

NB: In some circumstance there may not be an identified alleged abuser or abusers, but the abuse may stem from organisational cultures or practices (e.g. Institutional Abuse)

Where may Abuse occur?

Abuse can take place in any situation:

- Where the person lives, either alone or with someone else;
- In supported/sheltered accommodation;
- Within nursing, residential or day care settings;
- In hospital;
- In custodial situations;
- Where support services are being provided; and
- In public places.

Patterns of Abuse / Abusing

Patterns of abuse vary and reflect very different dynamics. These include:

- Serial abusing in which a person intending to cause harm seeks out and 'grooms' individuals over a period of time. Sexual abuse can fall into this pattern as do some forms of financial abuse and psychological abuse;

- Long term abuse in the context of an on-going family relationship such as domestic violence between spouses or generations of family members (e.g. older relatives, or children where children's safeguarding procedures may be required);
- Situational abuse which arises because pressures have built up and/or because of difficult or challenging behaviour;
- Neglect of a person's needs because those around him or her are not able to be responsible for their care, e.g. the carer has difficulties attributable to debt, alcohol, mental health problems or learning disabilities or has not got the required skills to fulfil the caring role;
- Institutional abuse such as poor care standards, lack of positive responses to needs, rigid routines, inadequate staffing and insufficient knowledge base within the service;
- Restrictive care planning in a hospital care home setting with or for people who lack capacity to consent to these arrangements without appropriate reference to the legal requirements. These may be in their best interests but may deprive them of their liberty and require further action. e.g. Deprivation of Liberty Safeguards;
- Unacceptable 'treatments' or programmes which include sanctions or punishments such as withholding food and drink, seclusion, unnecessary and unauthorised use of control and restraint or over medication;
- Prevention or failure to allow access to healthcare, dentistry, prostheses;
- Misappropriation of benefits and/or use of a persons' money by other members of the household;
- Fraud or intimidation in connection with wills, property or other assets;
- Failure of agencies to address racist and discriminatory attitudes, behaviour and practice;
- Violence;
- On line and other digital risks that can include:
 - cyber bullying
 - "grooming" or harm that can result from malicious use of social networking sites by those who intend to cause harm;
 - online risks resulting in fraud and financial abuse; and
 - Misuse of other digital media that is intended to cause harm, e.g. malicious use of mobile phones, text messaging etc.
- Intimidation, coercion or exploiting the vulnerability of an adult at risk to become involved in acts of terrorism or actions that may contribute to acts of terrorism;
- Coercion of an adult at risk to carry out actions they would not otherwise undertake; and
- Being forced into a marriage the adult at risk cannot or does not consent to.

(Please note this list is not exhaustive)

INDICATORS OF POSSIBLE ABUSE or HARM

Indicators of abuse should be seen as suggestive of, not proof of, abuse as they rarely prove abuse has occurred. Any one or group of indicators could arise from other causes other than abuse. However, recognition of a number of factors or symptoms in any one individual should give rise to concern and lead to further assessment or investigation.

If a member of staff sees one or more indicators in an individual that must be discussed with a line manager/senior manager. It could be the case that several staff are seeing some of these signs and that by openly sharing their observations, staff may become aware that they have each noticed a different aspect of the abuse and that by sharing information a fuller picture may emerge. It is important to bear in mind that abuse may be perpetrated as a result of deliberate intent, negligence, or ignorance.

The following lists of indicators are not exhaustive and need to be used as a tool in the assessment of vulnerability and risk. Some of the following indicators may relate to more than one type of abuse and may also be an indicator of offending behaviour.

Indicators of Discriminatory Abuse

- Lack of respect shown to an individual;
- Failure to respect dietary needs;
- Failure to respect cultural and religious needs;
- Signs of a substandard service offered to an individual; and
- Exclusion from rights and services afforded to citizens e.g. health, education, employment, criminal justice and civic status.

Indicators of Physical Abuse

- Any injury not fully explained by the history given;
- Injuries inconsistent with the lifestyle of the adult at risk;
- Bruises and/or welts on face, lips, mouth, torso, arms, back, buttocks, thighs;
- Cluster of injuries forming regular patterns or reflecting shape of article;
- Burns, especially on soles, palms or back, immersion in hot water, friction burns, rope or electrical appliance burns;
- Multiple fractures;
- Lacerations or abrasions to mouth, lips, gums, eyes, external genitalia;
- Marks on body, including slap marks, finger marks;
- Injuries at different stages of healing;
- Medication misuse;
- Enforced misuse of illegal or legal substances; and
- Inappropriate restraint.

Indicators of Sexual Abuse

- Significant change in sexual behaviour, language or outlook;
- Pregnancy in a woman who is unable to consent to sexual intercourse;
- Wetting or soiling;

- Unexplained negative responses to personal/medical care tasks;
- Signs of withdrawal, depression and stress;
- Full or partial disclosure or hints of sexual abuse;
- Overly sexualised language;
- Unusual difficulty in walking and sitting;
- Pain or itching, bruises or bleeding in genital area;
- Sexually-transmitted disease, urinary tract/vaginal infections in someone who is unable to consent to sexual intercourse; and
- Psychosomatic disorders - stomach pains, excessive period pains.

Indicators of Psychological/Emotional Abuse

- Change in appetite;
- Low self-esteem, deference, passivity and resignation;
- Unexplained fear, defensiveness, ambivalence;
- Emotional withdrawal;
- Sudden change in behaviour;
- Person managing care uses bullying, intimidation or threats to induce desired behaviour;
- Person managing care has punitive approach to bodily functions or incontinence; and
- Person is in receipt of malicious texts, emails or harmful contact while using social networking websites.

Indicators of Financial Abuse

- Unexplained sudden inability to pay for bills or maintain lifestyle;
- Person lacks belongings or services they can clearly afford;
- Recent acquaintances expressing sudden or disproportionate affection for a person with money or property;
- Lack of records and accounting of where money spent;
- Unusual or suspicious bank account activity;
- Power of attorney obtained when person is unable to comprehend and give consent;
- Withholding money without legal reason;
- Recent change of deeds or title of property;
- Unusual interest shown by family or others in the person or the person's assets;
- Person managing financial affairs is evasive or uncooperative; and
- Selling or offering to sell possessions of an adult at risk who does not have the capacity to consent or know the full value of those possessions.

Indicators of Neglect

- Inadequate heating and/or lighting;
- Inappropriate, old or shabby clothing, or being kept in night clothes during the day;
- Sensory deprivation, not allowed to have hearing aid, glasses or other aids to daily living;
- Physical condition is poor e.g. treated or untreated pressure ulcers;

- Inadequate physical environment;
- Inadequate diet;
- Untreated injuries or medical problems;
- Inconsistent, frequently unexplained or reluctant contact with health or social care agencies;
- Failure to engage in social interaction;
- Malnutrition when not living alone;
- Failure to give/offer prescribed medication/treatment; and
- Poor personal hygiene;

Indicators of Institutional Abuse

- Inappropriate or poor care, poor care planning and inconsistent application of care plans;
- Misuse of medication;
- *Higher than average levels of mortality;
- *Higher than average levels of accidents and incidents and “near misses”;
- Inappropriate physical restraint or intervention;
- Inappropriate use of chemical restraint;
- Sensory deprivation e.g. denial of use of spectacles, hearing aid etc.;
- Lack of recording on client files;
- Lack of respect shown to person;
- Denial of visitors or phone calls;
- Restricted access to toilet or bathing facilities;
- Restricted access to appropriate medical or social care;
- Lack of privacy or failure to ensure appropriate privacy or personal dignity;
- Lack of flexibility and choice e.g. mealtimes and bedtimes, choice of food;
- Lack of personal clothing and possessions;
- Lack of response to specialists guidance;
- Lack of consideration given to an individual’s mental capacity and their best interests;
- Overly restrictive care planning & use of restrictive practice without proper authority or consent;
- Lack of adequate procedures e.g. for medication, financial management
- Controlling relationships between staff and service users;
- Poor professional practice; and
- Lack of response to complaints.

(*The source of the statistical information that may give rise to a concern maybe from CQC, the Coroner’s Office, Contracts Monitoring Visits, Health & Safety Executive etc.)

Other Indicators

Other forms of abuse (e.g. Domestic Violence, child abuse and cruelty to animals) may highlight an increased risk that adult abuse may be taking place. Self harm or self neglect may also be considered an indicator of harmful actions by someone other than the individual at risk.

PROCEDURES

To Support these Procedures

In order for these procedures to work effectively, the following measures need to be in place:

- In accordance with the Mental Capacity Act 2005 adults at risk will be given information to support them in speaking out and protect themselves from abuse knowing they will be listened to and believed;
- Training in safeguarding adults (adult protection) awareness and good care practice to staff and volunteers;
- Identifying in advance potential abusers;
- Minimising opportunities for abuse;
- Promoting 'whistle blowing';
- Gathering information on activity around the management and investigation of alerts;
- Carry out quality audits on individual cases; and
- Ensuring that the general public are aware that these procedures are in place and that steps are taken to protect adults at risk.

ALERTING, MAKING AN ALERT, REPORTING, REACTING

Alerting

Any person from any service working with adults at risk must be aware of the potential for adult abuse. Anyone who has a suspicion or a concern that abuse may have taken place, or might take place if no preventative measures are taken, is an 'Alerter'. It is essential that any allegation of abuse is taken seriously however insignificant it may seem.

Making an Alert

Where the alerter believes a serious crime has been committed, or there is a need to protect or secure evidence or the individual is in immediate danger, phone emergency services or the police control room

The alerter **must** contact one of the appropriate Adult Care Teams:

- Adult Social Care Teams;
- Learning Disability Teams;
- Hospital Social Work Teams; or
- Mental Health Teams.

Or contact:

- The Safeguarding Adults Investigation Team within Wiltshire Police: or
- Out of hours or at weekends the Emergency Duty Services (Swindon or Wiltshire), or Police Control Room.

See:
Flowcharts
for Potential
Alerters
[Swindon 2.5](#)
[Wiltshire 2.6](#)

The alerter will need to give all the information they can about their suspicions, discovery or any disclosure made to them. These need to include any views the adult at risk may have about the incident of which the alerter is aware. Whilst in general most people would wish to discuss this with their senior before 'alerting' it is not necessary to do so to comply with this policy and must not result in any unnecessary delay.

Action to be considered

- Where a person is in immediate danger or in need of medical attention the appropriate emergency services must be called;
- Wherever possible, you must act in accordance with the wishes of the adult at risk. Circumstances where their wishes may be overridden or where other considerations may apply are outlined in the Practice Guidance;
- In some situations, a safe place may be needed for the adult at risk before an investigation can begin, such as an alternative placement or where monitoring arrangements can be put in place to protect the individual;
- If the person wishes action to follow as a result of alleged abuse do not ask investigative questions, offer support and reassurance that the matter has been reported and that someone will contact them;
- Where abuse may have taken place, ensure that the person has the protection and support they need at all times;
- Record accurately and in detail what has been said to you using the person's own words, and what action you have taken in the records relevant to your service;

See:
[Section K: Capacity Consent and Best Interest](#)

- If there is any possibility that forensic evidence still exists, preserve it, do not clean it up;
- Information should only be shared on a 'need to know' basis. However, disclosures of abuse may be requested to be made 'in confidence' to a trusted member of staff. Care staff cannot agree to be bound by such a request;
- In recording what the person has said facts must be clearly separated from opinion;
- The presence of witnesses to an incident must be recorded in detail;
- Information recorded by agencies must be available to support any safeguarding adults investigation;
- Where an allegation concerns a member of staff (who may also be a colleague) it is still the clear duty of those concerned to report the matter; and
- If the alleged abuse takes place within any service registered under the Health and Social Care Act 2008 (regulated activities) regulations, it must also be reported to the Care Quality Commission.

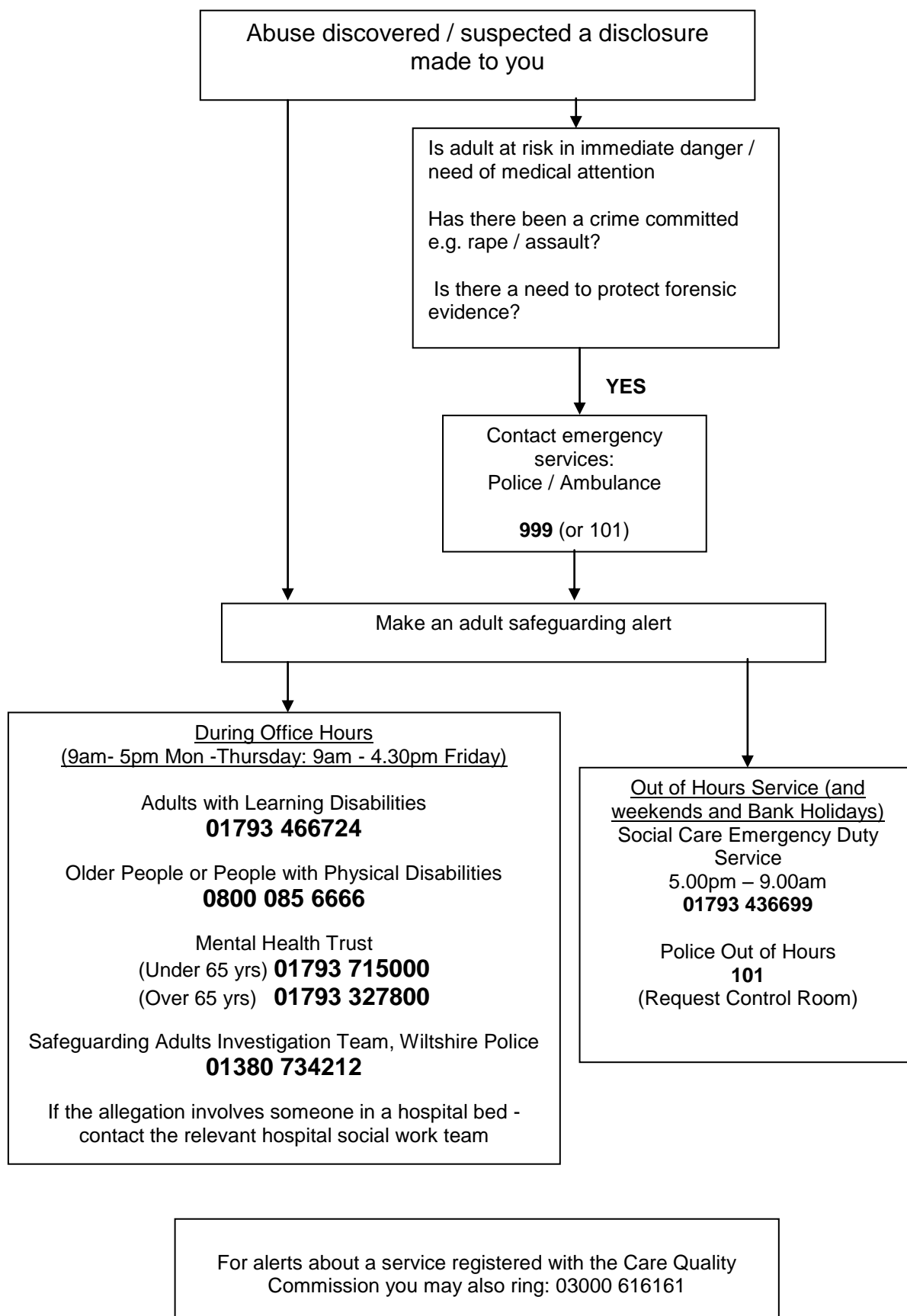
See: [Section M: Preserving Evidence](#)

See: [Section L: Information Sharing and Confidentiality](#)

See:
Flowcharts for
Potential
Alerters
[Swindon 2.5](#)
[Wiltshire 2.6](#)

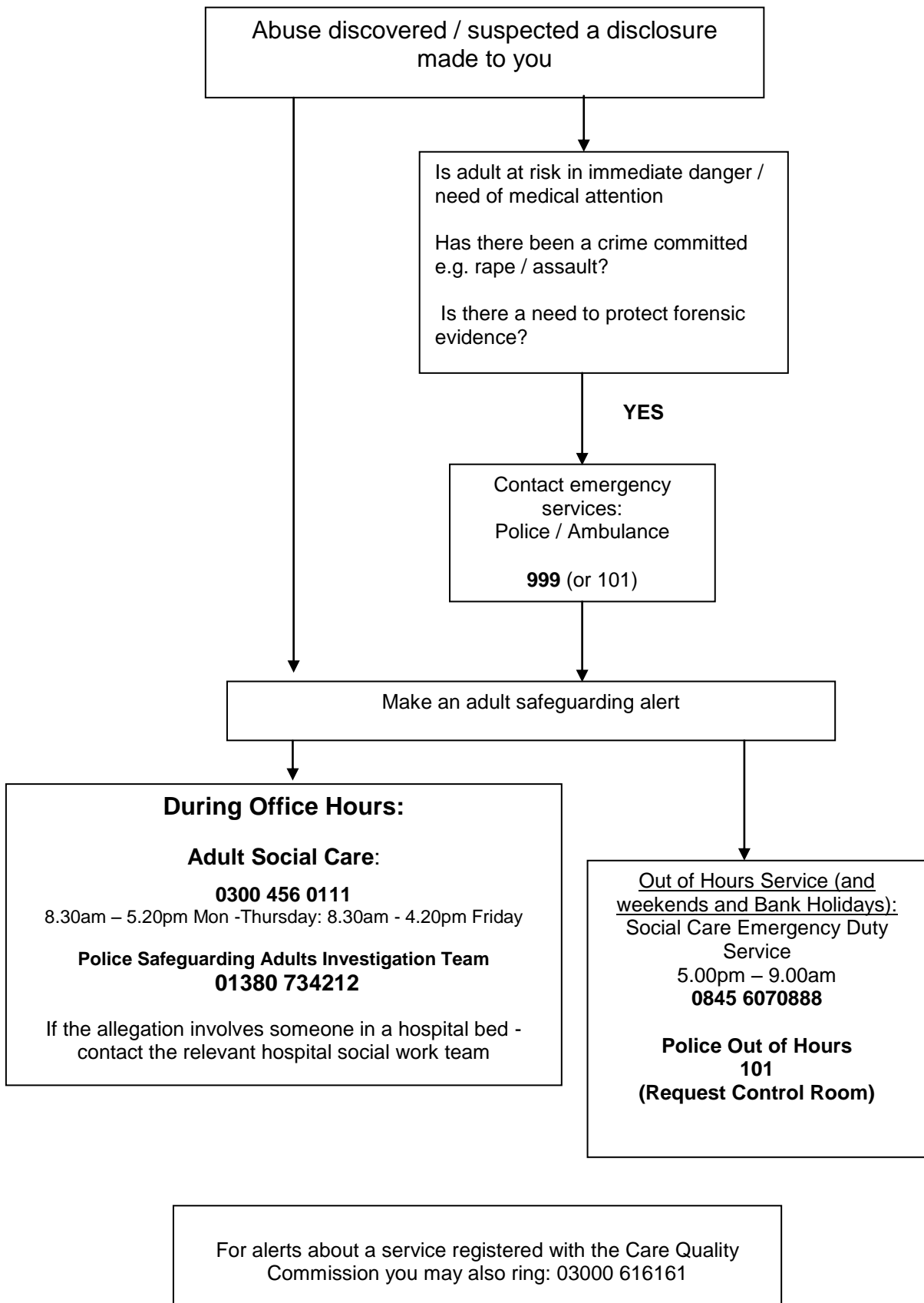
FLOW CHART FOR POTENTIAL ALERTERS

WHO TO CONTACT IN SWINDON



FLOW CHART FOR POTENTIAL ALERTERS

WHO TO CONTACT IN WILTSHIRE



MANAGING ADULT SAFEGUARDING

The Role and Responsibilities of Investigating Managers

In Swindon and Wiltshire the primary role for managing and coordinating safeguarding investigations rests with managers of relevant Adult Care Teams. (In Swindon these includes teams managed by Avon and Wiltshire NHS Partnership Mental Health Trust and SEQOL, the social enterprise providing health and social care services)

Investigating Managers are responsible for ensuring that the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire are adhered to and that all appropriate agencies are involved in the investigation. They are responsible for the overall management of the investigation as well as specific duties within it.

The Investigating Manager must be someone who has management responsibilities and accountability for their teams. This will include Deputy Team Managers and Senior Practitioners. If the investigation involves an allegation against someone who works in the same team as the Team Manager then the investigation may need to be managed by a Team Manager from another Team.

The Role and Responsibilities of Investigating Officers

The primary role for investigating officers is to apply the actions required following early strategy discussion, Adult Safeguarding Conference or Adult Safeguarding Reviews and to report directly to the Investigating Manager and report back at subsequent meetings.

See:
[Section C:](#)
[Early](#)
[Strategy](#)
[Meeting](#)

Supervision and Support

Effective supervision and on-going support are essential for the Investigating Officers. It is the responsibility of the Investigating Manager to ensure that this is provided in a way that is appropriate to the experience of the Investigating Officer and the complexity of the investigation. Supervision and/or briefing must be provided on a regular basis, and the Investigating Manager must ensure that all records are kept in accordance with the relevant agencies policies and the Data Protection Act.

Monitoring

The Investigating Manager will monitor all stages of the Adult Safeguarding Procedures. They will ensure that any statistical information required by the Local Safeguarding Adults Boards is provided. They will ensure that any case that involves active safeguarding concerns will remain 'open' irrespective of whether any services are being provided.

Training

All Managers are responsible for ensuring that they receive appropriate training to carry out their role and responsibilities in safeguarding adults at risk. This may include shadowing a manager from another team through the process and/or arranging a visit to discuss the role of the Investigating Manager more fully if more conventional training events are not available. They also need to ensure that staff for whom they are responsible have undertaken joint investigation training, similar training events or are deemed to be competent to be joint investigators. Managers may not appoint Investigating Officers who have not demonstrated their competence in this area.

Health and Safety of Staff

The Investigating Manager must take all reasonable steps to ensure the health and safety and welfare of staff involved in Investigations are maintained, by promoting good safe practices particularly when participating in interviewing those alleged to have caused harm, potential witnesses or alleged victims. They must ensure that risk assessments are undertaken where appropriate and the organisation's Health and Safety policy and procedure are followed. For example ensuring investigators are accompanied by a colleague or member of the multi-agency safeguarding group convened following an alert. Where a crime has been committed the interview will be in accordance with the Police and Criminal Evidence Act 1984 and Achieve Best Evidence in Criminal Proceedings.

Stages of an Investigation

- Assessment of the Alert;
- Decision about the most appropriate team to lead an investigation;
- Early Strategy actions;
- Early Strategy Meeting (or telephone discussion – consider use of conference call if the facilities are available);
- Joint Investigation / Single Agency Investigation;
- Adult Safeguarding Conference;
- Adult Safeguarding Plan; and
- Adult Safeguarding Review.

Potentially Dangerous Offenders

At any stage of an investigation, if there are serious concerns about a potentially dangerous offender, any agency may request a meeting of the Multi-Agency Public Protection Arrangements (MAPPA) as detailed within the High Risk Public Protection Protocol and Criminal Justice and Court Services Act 2000 (Sections 67 and 68).

Where there is a concern that would indicate Domestic Violence or abuse, a referral to a Multi-Agency Risk Assessment Conference (MARAC) may be appropriate to obtain wider support to safeguarding the adult at risk.

Complaints

At any time during an investigation, concerns may be expressed from parties on how a referral under this policy has been handled. Each of the agencies involved in this policy should have "Comments and Complaints" procedures and these should be used to address concerns and outline to the complainant how matters are to be resolved.

In handling complaints, the following factors need to be taken into account:

- Is the complaint being addressed to the correct agency? (If not, it should be forwarded as quickly as possible to the correct complaint handling department);
- Is an investigation under these procedures on-going or has it been concluded? (If it is on-going, care needs to be taken that any action taken with regards to the complaint, does not hinder the progress of any safeguarding investigation);
- Is there a possibility that the complaint investigation could impede the progress of an on-going safeguarding investigation? and
- Does the complaint meet the criteria to be referred to the LSAB to be considered for a Serious Case Review?

See: [Section S: Serious Case Review](#)

In all cases, all agencies involved in the investigation should be notified that a complaint has been received and agreement obtained to the complaint being investigated by the individual agency. Where the complaint raises concerns about the conduct of more than one of the agencies involved, consideration should be given to these agencies meeting to discuss a joint response and decide who will be responsible for sending the final response, providing an interim response to the complainant outlining the action taken or proposed.

Complaints received should be dealt with in a positive manner and the outcomes shared with the key agencies involved and if necessary, shared and discussed at the Policy, Practice and Procedure Sub Group of the LSAB to determine any learning opportunity and implications for policy review and future practice.

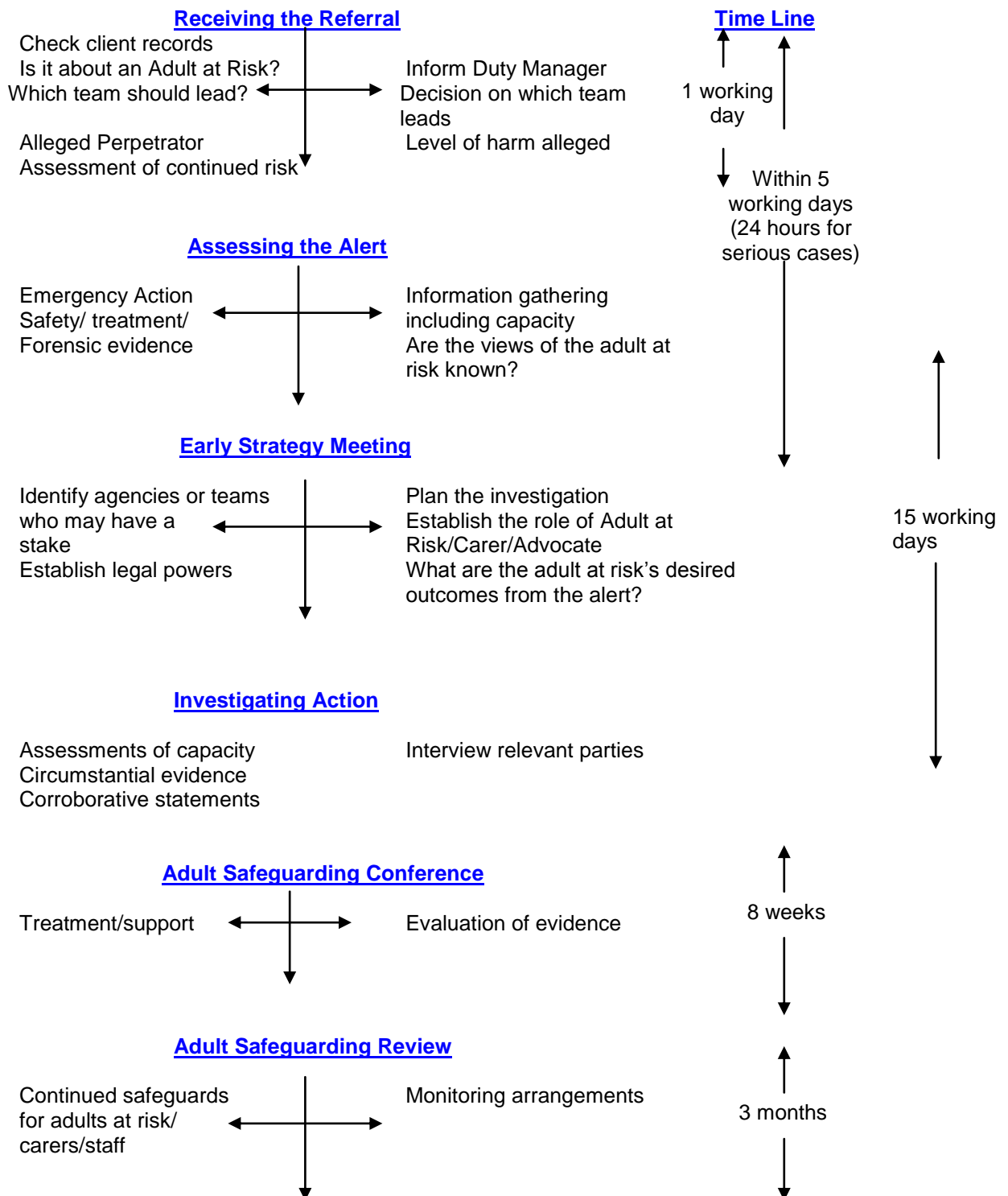
Officers with a lead role for complaints handling must be informed of this process and that they are aware that if complaints are received by them, there is a need to determine if possible, the status of the abuse investigation before action is taken that may hinder the progress of an on-going case.

Where a complaint has been received, teams must maintain a positive relationship with the complainant and ensure that actions required under these procedures continue. If there are concerns that the process may add to the complainants grievances, advice needs to be sought from the Investigating Manager or their line manager to agree a suitable approach.

Disputes

Where there is interagency dispute about a referral under this policy, it should normally be resolved by the Investigating Manager. Where this is not possible, the involvement of senior managers from the quorate agencies needs to be considered to mediate and agree a resolution. Agencies can also access individual "Comments and Complaints" processes and /or refer cases to the relevant Local Safeguarding Adults Board for consideration for a Serious Case Review.

FLOWCHART OF THE PROCESS



The process may be 'closed' at each stage depending on information gathered and quorate decision.

SAFEGUARDING PROCESS

Full details of the Safeguarding Process can be found in [GUIDANCE](#)

Investigating cases of where abuse or harm is alleged

Any investigation may involve the following aspects as agreed by the quorate agencies and as directed by the Investigating Manager:

- Safeguarding adult joint investigation;
- Single agency investigation;
- A disciplinary or capability procedure where allegations amount to misconduct or gross misconduct or poor performance on the part of staff; and
- An inquiry conducted under the Investigating Patient Safety Incident Procedure other clinical risk processes.

Community Health and Social Care Teams, Community Mental Health Teams, Community Teams for People with Learning Disabilities and Hospital Social Work Teams have the lead responsibility for co-ordinating the investigation and managing the procedures relating to abuse.

In many instances, a co-ordinated joint investigation will be required to ensure that evidence is shared and repeated interviewing is avoided.

If, following discussion with the Police, there is a probability of a crime having been committed, the investigation should always be planned in conjunction with an Early Strategy Meeting/discussion. In these cases the Police will assume lead responsibility for the joint enquiry, including the collection of forensic evidence and arranging medical examinations (if felt to be appropriate and with the consent of the alleged victim).

See: [Section P: Police](#)

See: [Section N: Medical Examinations](#)

As part of the safeguarding investigation there may also be other investigations that will need to take place alongside it e.g. those under health and safety legislation, environmental health, clinical governance. The person responsible for these should provide updates to the Investigating Manager as their investigation progresses.

Alerts & Referral

Alerts may be made by phone, letter, email, fax or in person from a variety of services, individuals or agencies.

- Clarify if alert is about abuse (if self neglect use appropriate alternative procedure e.g. Community Care Assessment);
- Comprehensive information is taken and recorded on the Multi-agency Safeguarding Adult Referral Form ([see appendix 2](#)) if not already provided by the alerter;
- Checking of available agency records to establish if the alleged victim or person alleged to have caused harm is known to services;
- Reassure the alerter that the information will be treated seriously;
- Explain the Safeguarding Adults at Risk Procedure;
- If the caller is the victim, identify and address concerns for their safety; and
- Give information on how soon they will be contacted.

Assessing the Alert

Once the alert has been taken this must be discussed with the Investigating Manager and an immediate decision must be made by the appropriate Investigating Manager. The Investigating Manager must agree all actions in assessing the alert. If out of hours the senior staff will make the immediate decisions. In some circumstances there may be a need to obtain additional information prior to completing the assessment of the alert. However, as far as possible the assessment should be completed within 1 working day of the receipt of the alert.

- The appropriateness of using the Safeguarding Adults at Risk Procedure. If a decision is made not to use the procedure the reason for this must be recorded;
- The safety and well-being of the adult at risk;
- Identification of Safeguarding Adult Investigator (this will be an interim arrangement for the out of hours service);
- Identification of any special needs;
- Identification of any issue of capacity to consent;
- If the adult at risk is aware of the alert, establish and record their views about what they would like to see as an outcome of the alert as appropriate;
- Gathering of evidence where possible (including forensic);
- Identifying risks, potential for violence;
- Identifying any Child Protection and/or Domestic Violence issues;
- Notifying other local authorities if they retain responsibility for the adult at risk or for the alleged abuser. Consider issue of ordinary residency;
- Consider whether it is necessary to notify authorities that have other people placed within a service and contact the adult safeguarding manager for advice on the best way to do this;
- Complete a report of initial enquiries for the Early Strategy process together with a copy of the referral. Out of Hours Services should fax these documents to the relevant daytime team;
- Consider if a “lighter touch approach” is required. In some circumstances a more proportionate approach not requiring a full safeguarding investigation could be more appropriate for example abuse/harm as a result of carer’s stress. Although multi-agency action is still required under these procedures, a full criminal investigation may not be appropriate or benefit the alleged victim, while a new assessment of need for the carer or the adult at risk, may be more effective in protecting the adult at risk and provide a better outcome for them. Another example could be where the person alleged to cause harm is also an adult at risk and may be in need of treatment, support or a care service. A discussion with the police will confirm the approach required on a case by case basis; and
- The alerter should receive confirmation and whether the alert will be progressing (see appendix 8 for sample templates and suggested wording of letter to be sent)

See: [Section L: Information Sharing & Confidentiality](#)

See: [Appendix 5: Child Protection Guidance](#) & [Appendix 6: Domestic Violence](#)

See: [Section R: Inter-Authority Arrangements & Ordinary Residence](#)

Early Strategy Action

Often an Early Strategy Meeting is required to plan an investigation. In certain cases it may be more appropriate for all the concerned agencies to discuss appropriate action over the telephone and decide on required actions.

Whether the Early Strategy is discussed at a meeting or in a phone conference the Investigating Manager leads this discussion and the decision must be fully recorded to include:

- Time and date of alleged incident/allegation;
- Information shared;
- Time and date of discussion;
- Persons involved in incident/allegation;
- Parties in the discussion;
- Identified risks;
- Actions agreed in managing the risk;
- Decisions made in respect of the allegation;
- Responsibility for actions;
- Action taken with regards to the alleged victim including what their views are in relation to the case or how their views will be established prior to progressing with the investigation ;
- The involvement of advocacy, carers, the victim themselves; and
- Additional access to support within the safeguarding process for the alleged victim.

Ensure all recorded entries are signed and dated and the time that the record is made is also noted. Records of any action taken also need to include the time and date that the action was taken.

A copy of this record needs to be forwarded to all the people involved in the telephone discussion.

The discussion still needs to follow the policy of quoracy.

The Early Strategy Actions need to:

- Confirm the Safeguarding Adult Investigators;
- Determine the most appropriate way to investigate the allegation or concerns detailed within the referral;
- Plan jointly how to carry out an investigation;
- Liaise with other agencies and co-ordinate the contribution and information other professionals may be asked to make or provide during the investigation; and
- Decide on how and when the adult at risk (or other relevant parties, e.g. family members) will be involved in the safeguarding process and/or how and when they will be updated on progress.

All investigations will be co-ordinated by the Investigating Manager through the Early Strategy process with the following being involved where appropriate and at the discretion of the Investigating Manager:

- Wiltshire Police;
- A representative of the relevant Regulatory Authority (e.g. CQC);
- A health care professional or NHS Safeguarding lead;
- Officers from other local authorities;
- Contracts Manager or relevant commissioner; and
- In the event of alleged abuse taking place within a provider service, a representative of the provider (as long as the Investigating Manager is satisfied the person who will be consulted or attending a strategy meeting is not involved in the alleged abuse or will compromise any investigation that may take place).

Investigatory Planning and Action

There are many points to be considered when planning an investigation. This can be a complex and time consuming task, but is vital to ensure that there is clarity about the purpose and extent of the investigation. In terms of action to be taken this will be decided at, or flow from the Early Strategy discussion and include:

- Agreement on what is to be investigated and how it is to be investigated;
- Requesting assessments e.g. capacity to consent;
- Delegation to Investigating Officer of interviews of relevant parties;
- Delegation to Investigating Officer in gathering corroborative statements; and
- Identify gathering of circumstantial evidence.

See: [Section C: Adult Safeguarding Investigations](#)

[Section E: Planning the Investigation](#)

[Section O: Agency Roles and Responsibilities](#)

If the investigation reveals that a child, unborn baby or young person is living within the household where the adult is believed to be at risk, the appropriate children's service must be informed immediately in line with the relevant multi-agency child protection procedures and guidance ([See appendix 5](#)).

Adult Safeguarding Conference and Plan

The conference is to evaluate the evidence gathered during the investigatory process in an inter-agency setting.

- To make judgements about the likelihood of the individual being at risk of significant harm and of others who may be affected; and
- To decide what action is needed to safeguard the adult at risk, how that action will be taken forward and with what intended outcomes.

Adult Safeguarding Reviews

Adult Safeguarding Reviews are to ensure the continued safeguards for the adult at risk, other service users, carers and staff. To ensure that robust monitoring arrangements are in place and to take account of the views of the adult at risk and respect their views wherever possible regarding their experience of the Safeguarding Plan. A number of Adult Safeguarding Reviews may be required to ensure continued safeguards are in place and evaluate progress until the case is concluded.

See: [Section J: Adult Safeguarding Review](#)

At any time during a case, the Investigating Manager may submit a report to the relevant Local Safeguarding Adults Board if they feel the information being shared reflects good or bad practice or an issue within a case indicates the need to review policy.

Timescales

- The Investigating Manager should give alerts immediate consideration but complete the **assessment of the initial alert** within 1 day of receipt. The Safeguarding Adult Investigator must conduct initial enquiries within 5 working days of the referral. **NB: Serious cases may need urgent action within 24 hours;**
- The Investigating Manager must hold an **Early Strategy Meeting (or complete all early strategy actions)** within 5 working days of the referral. **NB: Serious cases may need urgent action within 24 hours;**
- The **investigatory action** should take place within 15 working days of the Early Strategy Meeting, however with the agreement of other key agencies involved in the case, this timescale may be extended to an additional 15 days;
- The **Adult Safeguarding Conference** should also take place within 15 working days of the Early Strategy Meeting however with the agreement of other key agencies involved in the case, this timescale may be extended to an additional 15 days;
- **Adult Safeguarding Reviews** should take place within 8 weeks of the Adult Safeguarding Conference and as often as necessary as the case warrants; and
- The Investigating Manager needs to consider the timescales within other policies and legislation (e.g. employment).

Information Gathering

- The designated Investigator must record accurate and timed contemporaneous notes from receipt of referral together with signature of recorder;
- The Investigator must ensure that the Investigating Manager is updated regarding the current state of the enquiry;
- Comprehensive background information should be gathered from a variety of sources. This should include details about the adult at risk, the alleged abuse, support networks, family and involvement of other agencies;
- Information should be gathered in such a way that the person alleged to have caused harm does not become aware of the safeguarding investigation. In the case of workers, this may mean suspension or redeployment *while the investigation takes place. Sensitivity to the needs and wishes of the adult at risk should be maintained; and
- All decisions, supported by reasons, should be recorded and signed, dated and timed.

See: [Section T: Allegations Against Staff](#)

See: [Section L: Information Sharing and Confidentiality](#)

Recording

Records must be kept in accordance with the relevant agencies' policies and the Data Protection Act. However, beyond the Data Protection Act time limits only the Confidential Section will be retained. Safeguarding joint investigation records must be

retained in accordance with guidance within “Management of Police Information 2006” i.e. 10 years. Otherwise records need to be maintained in accordance with the agencies own records management policies.

Large Scale Investigations

In conjunction with existing agency guidelines and these procedures, a major investigation should be identified at an early stage and senior managers informed within each agency. Senior managers will need to make a decision on appropriate action.

A large scale investigation is where an investigation involves a number of adults at risk, whether in an establishment or through involvement with a particular alleged abuser or group of abusers. An investigation identified as a large-scale investigation will require special care and planning.

See: [Section U: Large Scale Investigations](#)

Careful co-ordination is essential and it is vital individuals and agencies involved are aware of their respective roles and responsibilities.

Closing the Investigation

Once the investigation has been completed, there should be clarity about whether abuse has taken place. This information will be discussed at the Early Strategy stage and/or Adult Safeguarding Conference, when a multi-agency decision regarding closure will be discussed, agreed and documented. Cases may be closed at any stage of the investigation with the agreement of the agencies involved.

See: [Section I: Closing the Investigation](#)

Out of Hours

When a referral is taken by the Out of Hours Service, between 5pm – 9am, the same procedure should be undertaken through to “Assessing the Alert” (see flow chart p3.3). The referral and report undertaken by the Out of Hours Service should be faxed to the relevant agency by the following working day. From that point the responsibility for the Early Strategy action and ensuing investigation is undertaken by the relevant daytime team. Discussion and hand-over between services should take place at the beginning of the working day for the relevant team e.g. 8.30am. Where possible the appropriate Out of Hours personnel should attend the Early Strategy Meeting or be involved in the early strategy discussion and subsequent Case Conference where they have a significant contribution to make to the case.

In cases where serious abuse has been report to the Emergency Duty Service in some circumstances it may be necessary to convene an Early Strategy Meeting and take immediate action on an evening or a weekend. The service will need to hand the case over to the appropriate daytime team that will need to take over lead responsibility for the management of the case.

Serious Case Review

Serious cases of abuse need to be reported to the Chair of the Local Safeguarding Adults Board and a “ Serious Case Review Panel” may need to be convened if the case meets the following criteria:

See: [Section S: Serious Case Reviews](#)

- The adult at risk dies (including death by suicide) *and* abuse or neglect by another is known or suspected to be a factor in the death;

- When the Coroner has expressed concerns around the death of an adult at risk;
- Where it is suspected that a serious act of omission by an agency contributed to abuse or suspected abuse or neglect;
- Where an adult at risk has sustained a potentially life-threatening injury or sustained serious and permanent impairment of health;
- Where sexual abuse has occurred resulting in a potentially life-threatening injury; and
- Where during a case there has been a serious breach of the Safeguarding Adults at Risk Policy.

GUIDANCE

A. GUIDANCE TO THE ALERTED PERSON

This is a checklist for maintaining good practice in responding, reporting and recording allegations of abuse.

Responding

- Ensure that you remain calm and do not show shock or disbelief;
- Listen carefully to what you are being told;
- Ensure a caring response is given;
- Reassure the person that you are treating the information seriously;
- Reassure the person that what has happened is not their fault;
- Ensure that any forensic evidence is preserved;
- Explain that you are required to share the information with a relevant manager and the regulating authority (as appropriate);
- Reassure the person that any further investigation will be conducted sensitively and with their full involvement wherever possible;
- Reassure the person that the service will take steps to support and where appropriate, protect them in the future;
- Do not stop someone who is freely reporting significant events;
- Make a written record of what the person has told you, taking into account that this report might be required as part of any legal action or disciplinary procedure;
- Do not promise to keep secrets or make promises you will be unable to keep;
- Do not contact the alleged “abuser” or alleged “victims” (depending on who is sharing the information);
- Do not be judgmental (e.g. why didn’t you try to stop them?);
- Do not discuss the content of the disclosure with others outside of the investigation. However, other people may need to be informed that an allegation has been made in order to ensure their safety;
- Do not “sit” on the information over the weekend until you are next on duty, etc. report the information immediately; and
- Do not interrogate the person for more details as a formal investigation may take place later. This avoids unnecessary stress and repetition for the person concerned and does not place any future criminal or other investigation at risk.

Reporting

If you see, hear about or suspect abuse:

- Take urgent action as appropriate to protect the adult at risk from any immediate danger;
- Pass on the information to a relevant manager, as appropriate;
- Act within the wishes of the adult at risk where possible;
- Avoid asking investigative questions, e.g. who, what, where, when, why?
- Avoid making comments about what has happened;
- Support and reassure the individual throughout; and

See: [Page 2.3: Alerting, Making an Alert, Reporting](#)

See: [Section K Capacity, Consent and Best Interest](#)

- If the suspected abuse has taken place in a care home or involves a domiciliary care agency or any registered service, report the allegation to the appropriate adult care team and the relevant regulatory authority.

Recording Statements

- Ensure that your writing is legible;
- Complete the Safeguarding Adult referral form;
- Highlight if the person alleged to have caused harm is a service user;
- Forward the form to the relevant Adult Care Team/Emergency Duty Service;
- Record on the service user's file that a safeguarding adults alert was raised;
- Record what was said to you in the person's own words;
- Record if anyone else was there at the time;
- Record the date, time and setting in which the allegation was made or the event was witnessed;
- Separate any factual information from any opinions expressed;
- Do not record any concerns about abuse on Person Held Records where the information might be seen by the alleged abuser;
- Date, time and sign your report;
- Only send reports using secure methods or deliver them in person immediately; and
- Ensure all information is stored in a secure place.

See:
[Appendix 2:
Multi Agency
Referral Form](#)

See:
Flowcharts for
Potential
Alerters
[Swindon 2.5](#)
[Wiltshire 2.6](#)

B. Assessing the Alert

Following the receipt of a safeguarding alert, it is necessary for the appropriate Investigating Manager to assess the alert to determine if there is a requirement to proceed to a full safeguarding Adults referral.

- Does the concern raised involve harm to an adult at risk as defined within this policy? It should also be noted that “in need of a community care service” does not mean that the person needs to be in receipt of a community care service or eligible for community care services under Criteria for services. An allegation of abuse could mean they would be eligible to receive support from community care services. This principle also needs to be applied if the adult at risk is paying for their own service, in receipt of a direct payment, or has refused services in the past.
- Does the alert impact on other adults at risk?
- What are the views of the individual who has allegedly been abused or harmed? Care needs to be taken that while attempting to ascertain this, the adult at risk is not put at further risk and in doing so an investigation is compromised. It should also be noted that other factors may need to be taken into account when deciding on whether to proceed or not. These may include:
 - Is there evidence of the person’s Mental Capacity to make a decision to participate in safeguarding procedures?
 - Has a crime been committed?
 - Is there evidence of the person’s Mental Capacity to agree with what has allegedly happened to them?
 - Are there other people at risk?
 - Is it possible that the person has been coerced into a decision not to participate in safeguarding procedures or into making decisions that has led to harm? or
 - Is there a need to proceed in the public interest?
- Would a different procedure be more appropriate or more effective? For example complaints action, disciplinary action, an alternative investigation. Feedback needs to be made available of the outcome of any alternative action and the personnel involved in this needs to be made aware that should their investigation indicate more serious harm, they must inform the Investigating Manager who may need to escalate the case using safeguarding procedures.
- Does the concern indicate that harm has taken place? Is the harm significant to the individual? In making this decision reference needs to be made to the [South West Region ADASS: Thresholds Guidance March 2011](#) which can be obtained from the lead Safeguarding Manager. Depending upon the nature of the allegation, an assessment of risk should be carried out outlining the actions being taken in place of safeguarding procedures to minimise the likelihood of further harm.
- Is the allegation concerning an adult at risk being subject to harm by a third party? Often alerts are raised where there are concerns about an individual’s welfare or a concern regarding self-neglect or self-harm. While these cases would not usually be managed under these procedures, other care management or risk management processes may need to be put in place in response to such alerts. For example, offering support, or an assessment of need, or sign posting the individual to a more appropriate agency. However

concerns such as self-neglect or self-harm maybe an indicator of abuse by another person.

- Has a crime been committed? If this is a crime or a need to protect forensic evidence, direct contact with the police is required. **This action does not negate the need to a multi-agency approach**; safeguarding procedures will still need to be instigated to obtain information of the outcome of the initial criminal investigation and to determine what other investigation may be required and social care services need to coordinate other processes. If the Investigating Manager is unsure if a crime has been committed, advice needs to be obtained from the Safeguarding Adults' Investigation Team. An indication from the Police that a crime has not taken place or the case does not require their involvement, does not mean that the safeguarding process should be automatically closed. Other intervention under the procedures may still be required.

Timing

The Investigating Manager should consider all alerts immediately. The Assessment of the Initial Alert should be completed within **1 working day** of receipt of the alert. Where it is felt that there is insufficient information or there is a need to obtain further details to progress the case, the case should then be consider as proceeding to a full safeguarding referral requiring early strategy action.

Feedback to Alerter

Often alerters are keen to learn whether the alert has been appropriate or not, or require some acknowledgement that some action is being taken to resolve their concerns. Without going into great detail and bearing in mind confidentiality, a letter should be sent thanking them for the alert, saying whether the case is progressing through the safeguarding route or not and suggesting further action they may wish to take if the safeguarding adults procedures was not appropriate. This may also assist in the accuracy of future alerts.

Threshold decisions (Extract from the SW Regional Thresholds Protocol)

Threshold decisions are made in relation to whether or not an alert concerning an adult, who meets the definition of "vulnerable adult"(or adult at risk) in "No Secrets" 2000 and who is allegedly subject to abuse by a third party, is in need of the safeguarding adults procedure.

Threshold decisions are made on the basis of a combination of the factors below, the most important of which is **harm** to the individual concerned. The power dynamic between people in a harmful situation also needs to be assessed as a contributor to significant harm as powerlessness to stop or prevent on-going abuse (i.e. being unable to protect oneself).

Consideration	Get information from	Decide
Nature of alleged abuse	Persons own account Witness account Reports to police, CQC Alerter account	Does this alleged abuse meet the definitions of abuse in " No Secrets "? Did the alleged abuse lead to actual harm? Is there a strong possibility it will lead to future harm? Is there significant harm?

Power issues		
The person needs the assistance of others to attend to their basic needs	Persons own account Alerter account Agency records	Is the person experiencing difficulties in accessing protection or ensuring their own human or civil rights are met? Is there potential for the risk to increase because the alleged perpetrator is responsible for the persons care or well-being?
The person lacks the mental capacity to assess risk or decide on protective courses of action	Mental capacity assessment	Is the person's vulnerability and likelihood of significant harm increased as a result of them being unable to assess risk or decide on a course of action increases?
The person is under duress	Persons own account (interview separately) Accounts of others, e.g. alerter, other agencies records	Are there others in control of the person's life, either by controlling access to services, delivering care, living at the same address, who are exerting duress?
The person is isolated	Persons own account /Accounts of others, e.g. alerter, other agencies Records	Is the isolation making it hard for the person to self protect or get assistance? Do they have family or friends who will speak up on their behalf if needed? Is there the likelihood of the person being targeted by people who want to exploit them?
The person has experienced previous abuse	Persons own account/accounts of others, e.g. alerter, other agencies Police records Other records	Does the person's internalised feelings of worthlessness, powerlessness, or low expectations of others people (possibly as a result of experience of either their own abuse or the abuse of others) increase their vulnerability? Has the person experienced domestic abuse? Are they still in an abusive relationship? Does the person feel powerless and unable to change their situation? If a previously abusive partner or family member is now dependent on the person they have abused (domestic abuse or child abuse) there is a possibility of retribution, or maintenance of previous power dynamics.
The person, or person allegedly harming them, is addicted to substances or	Persons own account /Accounts of others, e.g. alerter, other agencies	Is the addiction affecting the alleged abusive situation? Is it likely to prevent action being taken to resolve the safeguarding situation?

gambling	Records	<p>Is the person dependent on the alleged abuser to sustain their addiction?</p> <p>Is the alleged abuser focused on using the person to maintain their habits and not on the person's well-being?</p> <p>Is the influence of addiction leading to risky behaviour, disinhibition and poor judgments?</p>
Impact of the alleged abuse on the person		
Physical impact	<p>Documented injuries</p> <p>Accounts/reports from medical practitioners</p> <p>Persons own account /accounts of others</p>	<p>Safeguarding adults procedures are designed to protect people who are unable to protect themselves without assistance, therefore any physical injury should lead to consideration of use of safeguarding procedures</p>
Emotional impact	<p>Persons own account</p> <p>Observations of others</p>	<p>What impact is the emotional distress having on the persons' quality of life?</p> <p>Is the impact immediately obvious?</p> <p>Is there potential that it will emerge at a later date?</p> <p>Does the person appear to be having difficulty remembering the cause of the incident or event, but is showing general anxiety or fearfulness?</p> <p>Is the person having difficulty articulating their feelings?</p>
Other risks		
This has occurred in the past	<p>Records</p> <p>Persons own account/accounts of others</p>	<p>Is there a pattern of incidents suggesting this is not a "one off" event and that there is potential that the person or others are still at risk.</p>
Likelihood that the risk will occur again	<p>Risk assessment using all the above</p>	<p>Does the allegedly abusive person still have contact with the person?</p> <p>Is the person still living in circumstances that mean other incidents may occur if risk factors are not explored?</p>
Others (including children), are at risk of further harm	<p>Records</p> <p>Persons own account/accounts of others</p>	<p>Is there a need to make a referral to safeguarding children's services?</p> <p>Should information be passed to MAPPA and MARAC?</p> <p>If others are at risk safeguarding procedures will need to be used</p>
Course of action		
What is the persons preferred course of action?	<p>Persons own account</p>	<p>Has the person concerned indicated that they want no further action taken?</p>

		<p>Is there any early information on what their preferred outcomes are?</p> <p>Are they aware of what the use of the safeguarding procedures can offer to help?</p> <p>Is the person at great risk of further significant harm?</p> <p>Does the person lack mental capacity to make this decision? is a best interest decision required?</p>
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C. EARLY STRATEGY ACTION

If, following discussion with the Police, there is a possibility of a crime being committed, the investigation should always be planned within the context of a coordinated Early Strategy discussion.

Purpose

- To confirm if the initial concern requires an investigation under these procedures;
- To identify initial actions by key agencies required to keep the person safe during the period of the investigation;
- To consider if in ensuring the safety of an adult at risk there is a need to do so under a legal framework (for example Deprivation of Liberty Safeguards ([see Code of Practice - Deprivation of Liberty Safeguards](#));
- To consider any action already instigated or being considered by other agencies (e.g. criminal investigation, disciplinary action, serious incident requiring investigation etc.) and how this may impact on any investigation under this procedure;
- To assess all information held by agencies and gathered from the referral and initial investigations;
- To carry out an assessment of risk to the alleged victim and/or other adults at risk;
- To agree advocacy and maximise involvement of the adult at risk and or carers and decide on the need for an Independent Mental Capacity Advocate ([See appendix 7](#));
- To consider any views the adult at risk may have about the case, how it should proceed and their desired outcomes. To agree the method of involving the adult at risk;
- To determine the most appropriate way to investigate the allegations or concerns detailed in the referral; and
- To ensure that there is clarity about the purpose, extent and limits of the investigation being carried out by the Investigating officer or jointly with other agencies.

NB: In serious or complex cases, an Early Strategy Meeting should always be called.

The Investigating Manager is responsible for:

- Ensuring immediate consideration of the initial referral and allocation to an Investigating Officer;
- Agreeing the approach (whether face to face discussion is required or not) with relevant agencies; and
- Liaison with the police concerning the collection of relevant evidence or information.
- Identifying the key agencies to be involved in the Early Strategy process;
- Ensuring that available reports and information and evidence regarding the investigation are available as appropriate;

- Chairing the Early Strategy Meeting or leading the discussion and ensuring the decisions made are communicated to the participants at an early stage;
- To ensure the correct information management process is followed and data is provided as required by the Local Safeguarding Adults' Board; and
- To ascertain if there are or should be other public protection processes in place;

** Where the Investigating Manager has decided to manage the initial stages of the alert without holding a "face to face" meeting, the Investigating Manager would lead this discussion and the decision must be fully recorded ([See page 3.78](#)).*

Timing

Early Strategy Action should be completed within 5 working days (one working day in serious cases with a risk of imminent harm) of the initial alert being raised. Should a delay in concluding this stage of the process occur, this needs to be clearly recorded outlining the reasons and interim action taken to ensure continued safeguards for the individual.

Quorum

- Attendance at an Early Strategy Meeting is by invitation only from the Investigating Manager. Other agencies that are deemed to be able to make a significant contribution as they may have professional expertise or knowledge of the vulnerable adult and/or the alleged incident should be invited. There must be sufficient information available to make the informed choices in planning the investigation.
- To be quorate, the Early Strategy Meeting (or telephone discussion) must include the Investigating Manager and the agency representative(s) appropriate to the referral. For example, if a crime is considered to have been committed, this should include the police or it should include health staff in the event of a concern regarding a clinical service.

Agencies who consistently refuse or fail to be involved in the process when invited at any stage will be reported by the Investigating Manager to the relevant local authority lead manager.

Where it is decided that a health and social care professional working with the person alleged to have caused harm is required to attend any meetings held under this policy, this professional would not be involved in the decision making process and may only be required for part of the meeting.

Exclusion

The adult at risk and/or their carer or advocate are not normally invited to the Early Strategy Meeting, this is to enable agencies to share information. **However a decision needs to be made at an early opportunity as to how and when the adult at risk and/or their representative will be included in the process.**

Where it is felt that the participation of the adult at risk and/or their representative may be beneficial to the initial stage of the enquiry, the Investigating Manager may make arrangements for their attendance for part of the meeting. Consideration may need to be given as to whether their involvement at this stage could put them at further risk of harm.

Confidentiality

All information given at an Early Strategy stage is strictly confidential and disclosure may only occur within the interagency agreement on Information Sharing and Confidentiality. This means that information shared during Early Strategy Action by an agency is still owned by that agency but also held by other agencies participating making the decisions.

See: [Section L: Information Sharing and Confidentiality](#)

The Investigating Officer is responsible for:

- Conducting initial enquiries within 24 hours of receiving a referral;
- Visiting the vulnerable adult within the same time frame and where possible undertaking an interview ensure that in doing so further risk of harm is prevented;
- Keeping the Investigating Manager updated with verbal reports;
- Gathering background information such as information about the adult at risk, the alleged abuse, support networks, carers and the involvement of other agencies;
- Gathering information in a way that is sensitive to the needs of the vulnerable adult but that does not alert the alleged perpetrator;
- Completing reports as instructed by the Investigating Manager;
- Keeping confidentiality and accessing managerial and professional support systems; and
- Informing the adult at risk and their carer about the outcome of the initial action taken.

See: [Section F: Interviews](#)

Other Professionals attending the Early Strategy Meeting are responsible for:

- Sharing their respective agencies' knowledge about the incident and the background of the adult at risk and/ or person alleged to have caused harm;
- Contribute to the assessment of risk;
- Informing the meeting of any concerns about possible violence, intimidation or coercion; and
- Submitting a report if unable to attend.

Process and content of the Early Strategy Meeting

In a situation requiring immediate action some or all of these decisions will have taken place to ensure the safety of the vulnerable adult and/or others who are considered at risk. An Early Strategy Meeting may then be helpful as a means of formalising those actions and agreeing further planning

- To plan the investigation, assess risks and allocate tasks;
- To agree what other agencies may need to be involved or in some cases may lead the investigation (e.g. employers, commissioners of services);
- To consider the views of the adult at risk and determine any reasons why their wishes cannot be granted (for example where an individual does not want to pursue action under the safeguarding procedures, but it is felt that others could be at risk, or their decision was not capacitated or under duress);

See: [Section K: Capacity, Consent and Best Interest](#)

- To ensure that an assessment of the individual's mental capacity is arranged as required;
- To consider what action is required to minimise the risk to the adult at risk and whether any legal action may be required to secure the individual's safety (for example Application to the Court of Protection);
- To consider the potential for other adults at risk to be harmed and what action needs to be taken to secure their safety;
- To decide how carers/family members may participate in the process if appropriate;
- To agree what practical support is required for the adult at risk and/or their carer (e.g. advocacy support);
- To consider if an application to the Intermediary Service is required;
- To ensure that issues relating to equalities and diversity (race, culture, sexual orientation, age, language, communication, disability or gender) that may require special arrangements are addressed;
- To consider the needs and wishes of the alerter and ensure that appropriate action is taken to protect the alerter as necessary and provide any feedback to the alerter as appropriate and in line with "need to know" and confidentiality;
- To develop an Action Plan;
- To set the date for an Adult Safeguarding Conference;
- To close down the investigation with an Adult Safeguarding Plan if that is felt appropriate by the multi-agency group; and
- To consider if a Community Care Assessment (CCA) or Care Programme Approach (CPA) (mental health) needs reviewing.

Minutes of the Early Strategy Meeting

- The Investigating Manager should draw up an action plan and copy this for all participants at the end of the meeting;
- Full Minutes including the action will be circulated within 5 working days;
- Both must be commented on for corrections or amendments in 5 working days and returned or shredded on receipt of corrected version;
- All agencies will ensure that Minutes, which relate to Adult Safeguarding, will be kept in the confidential section of the person's file (They will not for example be attached to their medical records which may follow a person through hospital departments); and
- The Action Plan can be made available to those providing a service to the vulnerable adult as appropriate at the discretion of the Investigating Manager.

D. ADULT SAFEGUARDING INVESTIGATIONS

The purpose of any investigation is to:

- Protect the adult at risk from serious harm;
- Establish and record the facts about the circumstances giving rise to concern;
- Establish evidence for formal proceedings (e.g. criminal, regulatory or disciplinary);
- Establish with the adult at risk whether they feel their personal safety is at risk, whether they wish professional intervention to occur and what their views are on sharing information with other agencies who need to know;
- Decide if protective or other action is needed for the adult at risk or any others;
- Identify the sources and levels of risk through the completion of a risk assessment;
- Decide whether alleged or suspected abuse has taken place and record the reasons for these conclusions;
- Ensure that appropriate action is taken to protect the alerter if necessary;
- Ensure that appropriate action is taken in respect of anyone alleged to have caused harm; and
- Identify any lessons to be learnt for the future, including recommending changes to the organisation and delivery of services.

The tasks that need to be undertaken include the following:

- Carry out a comprehensive assessment of the adult at risk;
- Assess the personal safety of the adult at risk or others;
- Determine the person's mental capacity if not already established. It may be necessary to factor in the impact abuse could have on the individual's capacity to understand the harmful nature of their experience;
- Where the person lacks capacity and has an assigned IMCA, liaison with the IMCA;
- Determine the preferred outcome of the person if he or she has capacity;
- Determine the need for medical intervention relating to the physical or mental welfare of the adult at risk;
- Decide whether legal advice needs to be sought;
- Consider the different methods of gathering and presenting evidence and the different requirements with regard to standard of proof;
- Take into account the communication needs of the adult at risk and ensure that an appropriate service is offered (e.g. people with dementia, those whose first language is not English and people with sensory impairment or a learning disability);
- Ensure effective care planning takes place; and
- Consider any Human Rights issues.

See:
[Section K:
Capacity,
Consent
and Best
Interest](#)

E. PLANNING THE INVESTIGATION

Consideration of the following points is important to inform the Investigating Manager and those involved in Early Strategy Actions in the way the investigation should be planned:

- Who should be interviewed?
- Where will the interviews take place?
- The sequence of interviews;
- Who will conduct the interviews?
- The purpose of any interviews;
- The need for an examination for medical or evidential examinations; and
- The degree of risk to the adult at risk, including:
 - The risk of repeated or escalating acts including the adult at risk or other adults at risk;
 - The extent of the abuse;
 - The length of time the abuse has been occurring;
 - The impact of an investigation on the individual's well-being;
 - The adult at risk's capacity may need to be assessed by appropriately qualified professionals. In order to make decisions, the adult at risk's emotional, physical, intellectual and mental capacity in relation to their desired outcomes;
 - Their ability to assess and manage their own risks;
 - The urgency of the situation and whether an immediate visit to the adult at risk is needed;
 - The rights and wishes of those people involved;
 - The legal framework under which further enquiries could be pursued or actions taken and any Human Rights issues;
 - The needs of individuals with regards to translation, interpretation and other communication aids; and
 - To carry out an investigation in tandem with other procedures, assessments and investigations. This may include the following:
 - Criminal Investigation/Civil Proceedings;
 - Regulatory Procedures;
 - Mental Health Act Assessment;
 - Mental Capacity Act Assessment;
 - Care Programme Approach/Community Care Assessment/Care Plan Review/Review Meeting;
 - Complaints Procedures;
 - Disciplinary Procedures;
 - Contracts Monitoring Procedures;
 - Health & Safety Investigations;
 - Environmental Health processes;
 - Anti-Social Behaviour Teams' investigations; and
 - Public protection issues (for example PREVENT).
 - Other sources of evidence, including written records, statements from witnesses, forensic and medical evidence;

See:
[Section C:
Early Strategy
Meeting](#)

[Section N:
Forensic
Medical
Examinations](#)

[Section F:
Interviews](#)

- Decisions about who should be informed about the alleged abuse need to be made, in particular any agencies involved with the adult at risk need to be informed. It will be usually appropriate to inform family, or significant adults about the alleged abuse, **with the consent** of the adult at risk; and
- If the person alleged to have caused harm is an adult at risk, the investigation should ensure an assessment of their needs is undertaken independent of this investigation. It should also be considered whether the person alleged to have caused harm requires an Independent Mental Capacity Advocate ([See appendix 7](#)). A separate case conference may need to be convened to address the needs of the individual alleged to have caused harm.

See:
[Section K:](#)
[Capacity,](#)
[Consent](#)
[and Best](#)
[Interest](#)

F. INTERVIEWS

Interviews will only be conducted by persons nominated by the Investigating Manager.

The adult at risk should not be interviewed alone (unless they wish otherwise) or in the presence of the person alleged to be responsible for the abuse. A joint interview is preferable at which the adult at risk should be supported by any of the following:

- An appropriate health or social care professional;
- An independent advocate;
- A member of their family or close friend, if this is deemed appropriate and not involved in the investigation or allegation; or
- If an interview is required with the person alleged to have caused harm, consideration needs to be given if they are also an adult at risk or if they need to be accompanied by an appropriate adult.

See:
[Appendix1:
Legal
Framework](#)

Care should be taken to ensure that a premature determination of the facts does not occur. No plan of action, except in emergency circumstances, should be initiated until the facts surrounding the alleged abuse have been established. All information gathering must be recorded and shared with the Investigating Manager and ultimately those involved in Early Strategy action.

Carrying out an interview

During the interview the Investigating Officer should ensure that:

- Information about his/her designation and the agency he/she represents is stated clearly;
- How the interview is carried out is explained;
- The purpose and the reason for the interview is made clear;
- Depending upon who is being interviewed or where appropriate, the desired outcomes of the adult at risk are understood;
- The welfare of the interviewee is considered whilst conducting the interview;
- An attempt is made to establish the facts in relation to the issue being investigated;
- Any signs of injury, the explanation given for the cause of the injury, and the general condition of the adult at risk are noted and whether medical assistance has been sought or is still required;
- Support networks are in place for the adult at risk;
- Any unmanaged risks are assessed;
- Attention is paid to the indicators of abuse; and
- In all cases it will need to be made clear that the information gained may be used for another purpose (e.g. in an investigation carried out under staff disciplinary procedures).

If this is not a joint investigation with the Police, if new facts come to light that indicate a full Police investigation may be required, the interview should be terminated to allow consultation with the Police to review the investigation.

Ending the Interview

The following points should be covered:

- A clear summary of what has been said during the interview;
- Any additional information and comments from interviewee are invited;
- An outline of the next stage of the process, and who is going to be involved ;
- How the adult at risk will be involved in any outstanding actions (as appropriate); and
- Confirmation of the desired outcomes of the adult at risk following the interview and satisfaction with current support arrangements.

G. INVESTIGATOR'S REPORT

The Investigating Manager will decide the format of the Investigators Report, i.e. whether it is required in writing or verbally. Where a case is likely to be subject to criminal or civil court proceedings, is a large scale or complex case, a written report should always be made available. Where an Investigating Manager has decided that a full written report is not required from the Investigating Officer, the details of the investigation must be fully recorded within the minutes of the safeguarding meetings and care records.

A report will be presented to the Investigating Manager and will form the basis of discussion at the Adult Safeguarding Conference/Review. It may also be used as evidence in Criminal and other proceedings.

The report will need to include the following areas:

- Details of the initial alert;
- Outline of the current allegations and any previous allegations;
- An assessment of the seriousness and impact of the alleged abuse;
- Location of the abuse;
- Possible causes of the abuse;
- Background information about the adult at risk;
- The mental capacity of the adult at risk;
- Issues and opinions relating to consent;
- The desired outcomes of the adult at risk;
- Social circumstance of the adult at risk;
- Information about the person alleged to have caused harm (if applicable);
- A description of the investigation process;
- Identification of any concerns regarding the co-operation given to the investigation process;
- Identification of any concerns regarding the co-operation given to the investigator in carrying out their duties;
- Presentation and evaluation of the evidence;
- A view about future risks; and
- Recommendations about future action required.

H. ADULT SAFEGUARDING CONFERENCE

Aims

- To ensure that all professionals are working in a co-ordinated way and to assess all relevant information and plan how to safeguard the 'adult at risk' and promote his/her welfare and that of any others who may be at risk;
- To ensure the views and wishes of the adult at risk are respected as much as possible. This is to include decisions about:
 - Their desired outcome of the investigation;
 - Their agreement to attend the conference;
 - Who they want to represent their views if they choose not to attend;
 - Further involvement in the investigation and support required as the case progresses; and
 - A person to support the individual.
- To ensure the inter-agency nature of assessment, planning and review of Adult at risk;
- To record all discussions and decisions in relation to the proposed course of action; and
- To evaluate progress of other investigations taking place that had been previously agreed by the Investigating Manager – e.g. CQC, Clinical Governance, H&S executive investigations, actions by a provider.

See:
[Section K:
Capacity,
Consent
and Best
Interest](#)

The purpose of an Adult Safeguarding Conference

- To draw together and analyse in an inter-agency setting the information which has been obtained through the enquiries initiated at the Early Strategy Action;
- To make judgements about the likelihood of the adult at risk being at risk of significant harm in the future and of others who may be affected;
- To consider issues regarding mental capacity and best interests particularly when the adult at risk or the person alleged to have caused harm lack mental capacity. This may include receiving a report from the Independent Mental Capacity Advocate;
- To decide what future action is needed to safeguard the adult at risk and promote his/her welfare, how that action will be taken forward, and with what intended outcomes;
- To resolve issues when there are serious concerns that an adult at risk may not otherwise be safeguarded adequately or where there is dissatisfaction with the outcome of any Early Strategy Action;
- Review action taken to protect the alleged perpetrator(s);
- To consider additional action required following the closure of a criminal investigation;
- To agree an Adult Safeguarding Plan which will ensure the safety of the adult at risk and others who may be at risk;
- To consider if a referral to the Disclosure & Barring Service is required;
- To consider if a review of the current care plan is required;
- To agree how best to support the adult at risk through any action that is taken to seek justice or redress;

See
[Appendix
4: DBS
Guidance](#)

- To determine an on-going risk management strategy where appropriate and agree how this will be co-ordinated;
- Within the bounds of confidentiality, what information is to be fed back to the alerter and who is to be responsible for feeding back this information;
- To decide whether there are any other individuals or organisations that have a legitimate right to know about the progress or outcome of the investigation;
- To close an investigation;
- Consideration as to whether the case should be subject of a Serious Case Review or large scale investigation; and
- To set the date for the Adult Safeguarding Plan to be reviewed.

When the process is not concluded at the Adult Safeguarding Conference an Adult Safeguarding Review will be called at the discretion of the Investigating Manager but within 8 weeks of the conference

Support

- The conference will reconsider support to the adult at risk, their carers, and staff (considered while taking Early Strategy action) and plan for continued support as required. It must be recognised that there may be more than one victim in adult abuse; and
- Where the adult at risk is attending the conference the appropriate support must be planned and available.

Timing

- The Adult Safeguarding Conference must take place within **15 working days** of the Early Strategy Meeting. The timing of the conference must allow for the key professionals to attend, as well as accommodating the needs of the adult at risk and their support. The appropriate enquiries, reports and assessments must have taken place and be available to give relevance to the meeting; and
- In complex investigations, the Investigating Manager has the discretion to postpone the Adult Safeguarding Conference for a maximum of additional 15 working days with agreement of the other agencies involved. The basis of this decision needs to be clearly recorded.

Pre Conference Action

The Safeguarding Adult Investigating Manager is responsible for:

- Consulting with the relevant personnel (in addition to those involved in the Early Strategy action) to agree who else should be invited to attend the conference;
- Ensuring that invitations are sent out giving as much notice as possible;
- Ensuring that the reports and assessments (whether written or verbal) are available to the conference;
- Ensuring that sufficient information is available to enable the conference to make an informed decision regarding action needed to safeguard the adult at risk and make realistic proposals for taking that action forward;

- Ensuring there is a minute taker available and briefing them on the nature of the case as necessary;
- Ensuring the views of the adult at risk are heard and noted at the conference. This may require the presence of an interpreter, an advocate or other support as appropriate. Where it is inappropriate for the adults at risk to attend the conference or where they are unable or unwilling to attend, they should be invited to communicate their views by another means, e.g. in writing, through a representative, etc.; and
- Meeting with the adult at risk and/or their representative, prior to the conference to assist them in participating in the conference.

NB: There may be occasions when it may be advisable to seek the availability of an independent chair for the conference to demonstrate independence from the investigating team or in some case, the agency. It is the responsibility of Investigating Manager to inform other participants of any change in chairing arrangements.

The Safeguarding Adult Investigating Officer is responsible for:

- Making any arrangements required to enable the adult at risk to attend the conference should they wish. The adult at risk should be given the opportunity to attend wherever possible. If necessary access to an advocate and/or interpreter ensuring that their needs are met in relation to any disabilities including special communication needs;
- Ascertaining the wishes and feelings of the adult at risk and discussing with him/her the best ways of making these known to the conference;
- Explaining to the adult at risk the purpose of the conference, who will attend and the way it will operate; and
- When the carer or other representative of the adult at risk, is invited, explaining, who will attend the conference and the way it will operate. Ensuring the carer's needs are met in relation to interpreters or disabilities.

Other professionals attending the Adult Safeguarding Conference are responsible for:

- Ensuring that any tasks allocated to them during the Early Strategy Meeting/action have been carried out and any outcomes, progress or obstacles of the action are reported to the conference;
- Discussing with the Chair beforehand the implications of disclosing particularly sensitive information and/or third party information at the conference;
- Discussing with the Chair beforehand any concerns about possible violence, intimidation or coercion at the conference;
- Nominating a deputy to present a report or submitting a written report if unable to attend; and
- Informing the Chair beforehand of any criminal/internal proceedings that may be taking place;

Quorum and Attendance

- Attendance at an Adult Safeguarding Conference is by invitation only from the Investigating Manager. Those attending should be there because they have a significant contribution to make arising from professional expertise and/or knowledge of the abuse that has been alleged;
- The adult at risk should be invited to attend in all cases, however if the Investigating Manager decides that it would be in the person's best interests to limit their involvement, this decision needs to be clearly recorded. The views and wishes of the adult at risk and the alternative arrangements of involvement also needs to be documented (see exclusions below);
- The wishes of the adult at risk regarding their own attendance and that of their family/carer will be respected;
- To be quorate, no fewer than three people including the Investigating Manager and representatives from two agencies should attend the Adult Safeguarding Conference in addition to the adult at risk or their representative; and
- Representatives from other agencies to attend as directed by Investigating Manager.

Exclusion

There may be occasions when it will be necessary to exclude the adult at risk and/or their carer from part of the conference. The decision regarding exclusion rests with the Investigating Manager. Exclusions should be kept to a minimum and should meet one of the following criteria:

- Significant risk of violence at the conference;
- The need for disclosure of information about a third party;
- The need to share information about a criminal/disciplinary investigation;
- Where it is judged not in the best interests of the adult at risk; and
- Where a person's inclusion could result in the contamination of evidence or lead to the disruption of the progress of the investigation or required actions.

See:
[Section K:
Capacity,
Consent
and Best
Interest](#)

If the adult at risk or carer are excluded, or are unable to attend, they should be enabled to communicate their views by other means. The reason for their exclusion should be recorded.

See:
[Section L:
Information
Sharing and
Confidentiality](#)

Confidentiality

- All information given at the conference is strictly confidential and disclosure may only occur within the inter-agency agreement on Information Sharing and Confidentiality;
- All participants are required to sign a confidentiality agreement prior to the commencement any meeting ([See appendix 3](#));
- Written reports from individual agencies are the property of the agency producing them and must not be taken away or shared with a third party without the express permission of that agency; and
- Information from the conference can only be shared in the best interests of the vulnerable adult and with the agreement of the Investigating Manager/Chair.

The Process and Content of the Adult Safeguarding Conference

In some circumstances, the Investigating Manager, in discussion with other professionals, will find it necessary to hold a separate section of the conference prior to the adult at risk and or family/carers (or other relevant parties) being invited to the main part of the conference. Circumstances will include:

- The need to disclose information about a third party; or
- The need to share information about a criminal/internal investigation.

In these circumstances, the decision not to disclose this information to the adult at risk and carer will be carefully recorded, including the basis of the decision

If, during the Confidential Section, the professionals consider it to be in the best interests of the adult at risk to share some or part of this information with them and their carer, this should take place **prior** to the main part of the conference beginning

Information which is shared by professionals must be accurate and relevant to an assessment of the needs of the adult at risk and must clearly separate fact from opinion

See:
[Section K:
Capacity,
Consent
and Best
Interest](#)

The wishes, feelings and views of the adult at risk and their carer should be heard and taken account of during the conference and recorded. This to include:

- Were they able to make informed decisions about their safety during the case (if the case is to be closed at this stage)?
- Their views about the case and the process; and
- Do they feel safer at the end of the process?

Minutes of the Adult Safeguarding Conference and the Adult Safeguarding Plan

- Draft Minutes and action plans should be circulated within 10 working days (if possible, the safeguarding action plan should be available to the participants at the end of the meeting or soon after);
- Both must be returned with corrections or amendments within a further 5 working days;
- All agencies will ensure that the minutes that relate to Adult Safeguarding will be stored securely. (They will not, for example, be attached to their medical records, which may follow the person through many departments of a hospital);
- Information within the Adult Safeguarding Plan may need to be used to update parts of the adult at risk's care plans and risk assessments;
- The Adult Safeguarding Plan will be made available to all those providing care to the individual and to the adult at risk as appropriate;
- The Adult Safeguarding Plan (and other information relating to an investigation) should not be left in a *Person's Held Folder* (file retained by the adult at risk). All information needs to be retained in the individual's case files by health and social care teams; and
- The Investigating Manager will make a decision as to how minutes will be shared with the adult at risk and/or their representatives giving due consideration to the format in which they will be delivered.

I. CLOSING THE INVESTIGATION

The Safeguarding Adults Investigation can be closed at any stage during the investigation as long as this is agreed by the quorate agencies

Prior to closing an investigation, the Investigating Manager must ensure that:

- The case file contains all the necessary information, minutes, forms and reports;
- The Investigating Manager has signed off all recording relevant to the investigation on the case file;
- A decision should be made on how the information is to be shared with the adult at risk. Consideration should be given whether sharing this information could result in them being placed at further risk;
- All decisions are recorded in writing with evidence to support the decisions clearly documented;
- Agencies who are involved in the Adult Safeguarding Plan are aware of their responsibility to re-refer the adult at risk should circumstances change or risks increase significantly to the adult;
- Monitoring processes for the Local Safeguarding Adults Board are completed;
- If appropriate, information about organisations which assist victims of crime has been made available to the adult at risk and their carer i.e. Victim Support Schemes;
- Consideration be given as to whether any staff involved in the case require additional support;
- Consideration is given as to whether the alerter requires continued support; and
- Consideration is given as to whether there is a need for an alternative investigation (e.g. complaints, disciplinary) and if appropriate, requests an update following the conclusion of that investigation.

See: [Section Q: Support for Victims and Witnesses](#)

J. ADULT SAFEGUARDING REVIEW

Following an Adult at Risk Conference a review of the Adult Safeguarding Plan should be held.

Aims

- To ensure that all professionals are working in a co-ordinated way to facilitate the effective delivery of the Adult Safeguarding Plan;
- To take account of the views of the adult at risk and respect their views wherever possible regarding their experience of the Adult Safeguarding Plan; and
- The Adult Safeguarding Review represents the inter-agency nature of investigation, assessment, planning and review of adults in need of safeguarding.

Purpose

- To plan the continued support to the person to develop adequate skills to protect themselves from further harm if at all possible;
- To consider whether the adult at risk continues to be at risk of significant harm and hence continues to be in need of a formal Adult Safeguarding Plan;
- To consider any evidence arising from an on-going investigation;
- To conclude an investigation;
- Review action taken to protect the alerter(s); and
- Where there are serious concerns that the Adult Safeguarding Plan is not working and that the adult at risk is not adequately safeguarded.

Support

- The conference will reconsider support to the adult at risk, their carers, and staff and plan for continued support as required. It must be recognised that there may be more than one victim in adult abuse; and
- Where the adult at risk is attending the conference the appropriate support must be planned and available.

Timing

- The timing of the first review will be agreed at the Adult Safeguarding Conference but must take place within **8 weeks** of the conference; and
- Subsequent reviews must be held at 3 monthly intervals. Review conferences can be brought forward at the request of the adult at risk, their carers, or professionals if they consider there is a need to change the Adult Safeguarding Plan or there is a requirement to keep updated on the progress of a complex investigation.

Pre Review Action

The Investigating Manager is responsible for:

- Consulting with relevant personnel to agree the key people required to attend;
- Ensuring that invitations are sent out giving as much notice as possible;
- Ensuring the adult at risk can attend and if not, ensuring their views can be heard and noted at the conference. Adults at risk or their carers who are excluded, unwilling or unable to attend should be invited to communicate their views by another means, e.g. in writing, through a representative, advocate etc.;
- Ensuring the necessary support is available for the adult at risk;
- Meeting with the adult at risk and carer if attending, prior to the review to ensure that they have been properly prepared by the allocated care manager and assisting them to feel more comfortable about the review process;
- Ensuring that reports and assessments will be made available to the conference;
- Ensuring that sufficient information is available to enable the review meeting to make informed decisions with regard to the Adult Safeguarding Plan;
- Ensuring that there is a minute taker available; and
- Briefing him/herself as necessary about the case.

The Safeguarding Adult Investigating Officer is responsible for:

- Making any arrangements required to enable the adult at risk to attend the review should they wish. The adult at risk should be given the opportunity to attend wherever possible. If necessary access to an advocate and/or interpreter ensuring that their needs are met in relation to any disabilities including special communication needs;
- Ascertaining the wishes and feelings of the adult at risk and discussing with him/her the best ways of making these known to the review;
- Explaining to the adult at risk the purpose of the review, who will attend and the way it will operate; and
- When the carer or other representative of the adult at risk, is invited, explaining, who will attend the review and the way it will operate. Ensuring the carer's needs are met in relation to interpreters or disabilities.

Other professionals attending the Adult Safeguarding Review are responsible for:

- Ensuring that any tasks allocated to them during the Early Strategy Meeting/action or Adult Safeguarding Conference have been carried out and any outcomes, progress or obstacles of the action are reported to the review meeting;
- Discussing with the Chair beforehand the implications of disclosing particularly sensitive information and/or third party information at the review;
- Discussing with the Chair beforehand any concerns about possible violence, intimidation or coercion at the review meeting;
- Nominating a deputy to present a report or submitting a written report if unable to attend; and

- Updating the Chair beforehand of any criminal/internal proceedings that maybe taking place.

Quorum

- Attendance at an Adult Safeguarding Review is by invitation only from the Investigating Manager. Those attending should be there because they have a significant contribution to make arising from professional expertise and/or participation in the Adult Safeguarding Plan under review. The wishes of the adult at risk regarding their own attendance and that of their carer will be respected wherever possible;
- The adult at risk should be invited to attend in all cases, however if the Investigating Manager decides that it would be in the person's best interests to limit their involvement, this decision needs to be clearly recorded. The views and wishes of the adult at risk and the alternative arrangements of involvement also needs to be documented (see exclusions below);
- The wishes of the adult at risk regarding their own attendance and that of their family/carer will be respected;
- To be quorate, no fewer than three people including Investigating Manager and representatives from two agencies should attend the Adult Safeguarding Review in addition to the adult at risk (or their representative).

Exclusion

As with conferences there may be occasions when it will be necessary to exclude the adult at risk and/or their carer from all or part of the review. The decision regarding exclusion rests with the Investigating Manager. Exclusions should be kept to a minimum and should meet one of the following criteria:

- Significant risk of violence at the review;
- Risk of violence, intimidation or coercion towards the adult at risk;
- The need for disclosure of information about a third party;
- The need to share information about a criminal/disciplinary investigation; and
- Where it is judged not in the best interests of the adult at risk;

In these circumstances the decision to exclude the adult at risk/carer from the review will be recorded, including the basis for the exclusion.

See: [Section K: Capacity, Consent and Best Interest](#)

Confidentiality

- All information given at an Adult Safeguarding Review is strictly confidential and disclosure may only occur within the inter-agency agreement on Information Sharing and Confidentiality;
- Written reports are the property of the agencies producing them and must not be taken away without permission; and
- All participants are required to sign a confidentiality agreement prior to the commencement any meeting ([See appendix 3](#)).

See: [Section L: Information Sharing and Confidentiality](#)

The Process and Content of the Adult Safeguarding Review

In some circumstances, the Investigating Manager, in discussion with other professionals, will find it necessary to hold a separate section of the review meeting prior to the adult at risk and or family/carers (or other interested parties) being invited to the main part of the review. Circumstances will include:

- The need to disclose information about a third party;
- The need to share information about a criminal/internal investigation;
- In these circumstances, the decision not to disclose this information to the adult at risk and carer will be carefully recorded, including the basis of the decision;
- If, during the separate section of the review meeting, the professionals consider it to be in the best interests of the adult at risk to share some or part of this information with them and their carer, this should take place **prior** to the main part of the review beginning;
- All professionals should be sensitive to the anxiety and distress which individuals and their family/carers experience when attending Adult Safeguarding Reviews;
- In reviewing the Adult Safeguarding Plan the needs of and the risks to the adult at risk must be balanced when considering further future planning especially in integrating the Adult Safeguarding Plan with community care plans or the care programme approach;
- The wishes, feelings and views of the adult at risk and their carer should be heard and taken account of during the review and recorded. This to include:
 - Were they able to make informed decisions about their safety during the case;
 - Their views about the case and the process; and
 - Do they feel safer at the end of the process?

See:
[Section K:
Capacity,
Consent
and Best
Interest](#)

Decisions for the Adult Safeguarding Review Meeting

“In deciding what action to take, the rights of all people to make choices and take risks and their capacity to make decisions about arrangements for investigation or managing the abusive situation should be taken into account” [\(No Secrets 2000\)](#)

- Assess the effectiveness of the Adult Safeguarding Plan;
- Modify/confirm the Adult Safeguarding Plan as appropriate;
- To determine an on-going risk management strategy where appropriate and how this will be co-ordinated;
- Close down interventions where this is deemed appropriate;
- Consider integrating future reviews of the Adult Safeguarding Plan with community care reviews or the care programme approach; and
- Consideration for referral to Serious Case Review or multi-agency audit.

Minutes of the Adult Safeguarding Review

- Minutes will be circulated within 10 working days;
- Minutes must be returned with corrections or amendments within a further 5 working days; and
- All agencies will ensure that the Minutes that relate to Adult Safeguarding will be kept in a secure place and in a confidential section of the person's file.
(They will not, for example, be attached to their medical records, which may follow the person through many departments of a hospital, or the person's held files which are openly available).

K. CAPACITY, CONSENT AND BEST INTEREST

Issues of mental capacity and consent are often central to our understanding and exploration of adult abuse. Wherever possible it is essential that individuals understand the nature and effects of the alleged abuse and the choices and possible outcomes facing them.

In the context of adult abuse there are two stages at which the capacity to give consent may require consideration:

- Did the adult at risk have the mental capacity to consent to the act, relationship or situation which constitutes the allegation of adult abuse? and
- Does the adult at risk have the mental capacity to give consent to any actions that professionals wish to take to investigate the matter further and to take steps to prevent further abuse?

Although a person may not have consented to the abusive act, they may not agree to any agency intervention as a consequence.

In situations where the adult at risk is assessed as not having mental capacity in relation to particular acts and/or decisions, professionals and others are required to act in the 'best interests' of the individual concerned (see below).

See:
[Appendix 1:
Legal
Framework](#)

It is important to establish an adult at risk's mental capacity in relation to specific acts/decisions at an early stage in the investigatory procedure. This is necessary to ensure that an individual's rights are not violated under the Human Rights Act 1998.

How decisions are made will be determined on an individual, case-by-case basis. However the prime principle which underpins both current law and medical practice with regard to issues of mental capacity is that people should be:

"enabled and encouraged to take for themselves those decisions which they are able to take"

(Law Commission Report No.231 (1995), para 2.46)

See:
[Appendix 1:
Legal
Framework](#)

The Mental Capacity Act 2005: Principles underlying good practice:

The statutory principles which underpin issues around mental capacity are set out in Section 1 of The Mental Capacity Act 2005. The principles are:

- A person must be assumed to have capacity unless it is established that he lacks capacity;
- 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;
- A person is not to be treated as unable to make a decision merely because he makes an unwise or eccentric decision;
- An act done or decision made for or on behalf of a person who lacks capacity must be in his best interests; and
- Before the act is done or the decision made, regard must be had as to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action. This is the "minimum intervention principle" supporting practices that interfere least

with the individual's freedom of action and follows the spirit of Article 8 of the European Convention of Human Rights.

Mental Capacity

- All adults are presumed to have mental capacity unless there is clear evidence to the contrary. Section 2 of the Mental Capacity Act 2005 states that a person lacks capacity if at the material time:
“S/he is unable by reason of mental disability to make a decision for himself (or herself) on the matter in question because of an impairment of or a disturbance in the functioning of the mind or brain.”
- The impairment or disturbance may be permanent or temporary and may result from a range of conditions e.g. a mental disorder, including dementia, an acquired brain injury or stroke, a learning disability, temporary delirium resulting from a physical illness, the short-term effects of alcohol or drugs. Simply experiencing one of these conditions does not necessarily lead to lack of mental capacity;
- A lack of capacity cannot be established merely by reference to a person's age, disability or behaviour;
- The question of whether someone has capacity must be decided on the balance of probabilities – i.e. a reasonable belief that it is more likely than not; and
- Consideration of capacity is limited to the particular decision at the particular time. It is not a general assessment of capacity.

For example the test of capacity to give consent to medical treatment will vary from the test of the capacity to make a gift or draw up a will. It is essential that in situations where an adult at risk is thought to lack capacity, both medical and legal advice be sought at the earliest opportunity.

Ability to make a decision

Section 3 of The Mental Capacity Act 2005 states that someone is “unable to make a decision” if the person experiences an impairment of or a disturbance in the functioning of the mind or brain that makes them unable to do **any** of the following in relation to a particular decision :

- Unable to understand the information relevant to the decision i.e. to understand the reasonable foreseeable consequences of deciding or failing to make a decision;
- Unable to retain the information;
- Unable to use the information as part of the process of making the decision; and
- Unable to communicate the decision either verbally or non-verbally.

All assessments of an adult at risk's capacity should be recorded in the case file of the individual agency.

Consent

According to the 'Mental Health Act (1983): Code of Practice', consent is defined as:

"The voluntary and continuing permission of the adult to agree to a course of action or inaction, based on an adequate knowledge of the purpose, nature, likely effects and risks of the proposed action or inaction including the likelihood of its success and any alternatives to it."

Permission given under any unfair or undue pressure is not 'consent'.

It is important to note that the law states that there are some acts to which some adults are legally able to give consent and some relationships within which consent cannot be given. For example, in law, it is against the law for a "care worker" to have sexual activity with a "mentally disordered person" (Sexual Offences Act 2003).

Best Interests

Where an adult at risk is judged to lack capacity in relation to a specific decision, this decision should be made in their 'best interests' following the Statutory Checklist in the Mental Capacity Act Code of Practice.

Section 4 of The Mental Capacity Act 2005 gives guidance on particular factors to be taken into account. None of the factors carries any more weight or priority than another.

The person making the decision must first consider whether the person is likely to regain capacity at some time and if so when. This suggests that non-urgent decisions might be postponed if there is a likelihood of the person regaining capacity

There is also a requirement to permit and encourage the person to participate as fully as possible in any act or decision. The factors, which must be considered, include:

- The ascertainable past and present wishes and feelings of the person concerned (including any written statements);
- The beliefs and values (including religious and cultural beliefs) likely to influence his/her decision if he/she had capacity; and
- Other factors that the person would be likely to consider if they were able to do so (for example a sense of family obligation).

In particular, talk to others considered appropriate to consult: anyone named by the person or engaged in caring for them; close relatives or friends who take an interest in their welfare; anyone with Lasting or Enduring Power of Attorney; any Court of Protection Deputy, instructed Independent Mental Capacity Advocate or advocate.

There may be different options or choices that can be made: before the final choice is made all other less restrictive possible options should be considered and wherever possible chosen so that no unnecessary limits are placed on the person's current or future opportunities, whilst still allowing the original purpose of the decision to be achieved. Best interests are not limited to best medical interests' (Re MB [1997])

The Courts have given guidance that medical, emotional, social and welfare interests may be relevant and should be entered into the 'balance sheet'.

Acts in connection with care or treatment

The Mental Capacity Act Code of Practice provides guidance to anyone who is working with and/or caring for adults who may lack capacity to make certain decisions. It describes their responsibilities when acting or making decisions on behalf of individuals who lack capacity to make these for themselves. In particular the Code of Practice focuses on those who have a duty of care to someone who lacks the capacity to agree to the care that is being provided.

Section 5 of the Act allows carers, healthcare and social care staff to carry out certain tasks without fear of liability. These tasks involve the personal care, healthcare or treatment of people who lack the capacity to consent to them. The aim is to give legal backing for acts that need to be carried out in the best interests of the person who lacks the capacity to consent.

Under the Act where a person does an act in connection with the care or treatment of another person, he /she will not incur liability so long as he reasonably believes that:

- They have observed the Mental Capacity Act Principles;
- They can show they have assessed capacity;
- They “reasonably believe” on balance of probabilities that the person lacks capacity to make the decision;
- They can show they have used the Best Interests checklist; and
- They “reasonably believe” the action is in the best interests of the person.

It does not however authorise restraint unless:

- There is a reasonable belief that restraint is necessary to prevent harm to the person; and
- The form of restraint is proportionate to the likelihood of the person suffering harm and the seriousness of that harm, i.e. the least restrictive action for the shortest period practicable.

See Mental Capacity Code of Practice

(<http://www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf>)

Medical Treatment

In the context of determining whether or not medical treatment should be provided, or what kind of medical treatment should be provided to someone who lacks capacity, the House of Lords has defined best interest as medical treatment which is:

‘Necessary to save life or prevent a deterioration or ensure an improvement in the patient’s physical or mental health; and in accordance with a practice accepted at the time by a responsible body of medical opinion skilled in the particular form of treatment in question’
(**Code of Practice: Mental Health Act 1983**)

L. INFORMATION SHARING AND CONFIDENTIALITY

Legal Framework

The law concerning information sharing is covered by the Data Protection Act 1998, Crime and Disorder Act 1998 and principles enshrined within the European Convention of Human Rights 1998.

Any disclosure of personal data must be bound to both common and statute law, for example defamation, the common law duty of confidence, the Data Protection Act 1998, Human Rights Act 1998.

The data principles require that such information is obtained and processed fairly and lawfully; is only disclosed in appropriate circumstances; is accurate, relevant and not held longer than necessary; and is kept securely.

The Human Rights Act 1998 gives further effect in domestic law to certain Articles of the European Convention on Human Rights (ECHR). The Act requires all domestic law to read compatibility with the Convention Articles. It also places a legal obligation on all public authorities to act in a manner compatible with the Convention. Should a public authority fail to do this then it may be the subject of a legal action under Section 7 of the Convention. This obligation should not solely be seen in terms of an obligation not to violate the Convention Rights but also as a positive obligation to uphold these rights.

The sharing of information between agencies has the potential to infringe a number of Convention Rights. In particular, Article 3 (Freedom from torture or inhuman or degrading treatment), Article 8 (Right to private and family life) and Article of Protocol 1 (Protection of Property). In addition all Convention Rights must be secured without discrimination on a wide variety of grounds under Article 14.

The Convention does allow limited interference with certain Convention Rights by public authorities under broadly defined circumstances known as legitimate aims. However, more reliance on a legal power may not alone provide sufficient justification and the following principles should be considered:

- *Is there a legal basis for the action being taken?*
- *Does it pursue a legitimate aim (as outlined in the particular Convention article)?*
- *Is the action taken proportionate and the least intrusive method of achieving that aim?*

A brief summary of the Articles of the Human Rights Act 1998 is attached at Appendix 1. Issues in relation to Article 8 are covered in more detail below but other articles may apply in specific circumstances.

See:
[Appendix 1: Legal Framework](#)

Personalised/Depersonalised Information

Information about a person and the services provided to them can be divided into two categories:

- Information that is anonymised (Depersonalised Information); and
- Information where a person is identified (Personalised Information)

Individual safeguarding adult cases are concerned with sharing 'personal information', both about someone who is alleged to have experienced abuse and those who are alleged to have caused harm. Information provided in support of either Local Safeguarding Adults Board will be depersonalised. When depersonalising information, as well as removing the name of the person, other information that may act as an identifier, also needs to be removed.

Key Principles:

- Decisions to share information concerning the adult at risk with other agencies would normally be made with the explicit consent of that person;
- Although the views and wishes of the individual will normally be respected when sharing the information they give us, agencies cannot guarantee a fully confidential service. There will always be exceptional circumstances when a duty to protect the wider public interest will outweigh the responsibility to one individual;
- Written reports are the property of the agency producing them and must not be shared without the permission of that agency;
- Information given to an agency should only be used for the purposes for which it was intended;
- Adults at risk should be advised why and with whom information will be shared and any relevant written information/guidance should be offered if appropriate;
- Information must not be shared with anyone alleged to have caused harm prior to the Early Strategy Meeting;
- Following the Early Strategy Meeting (or early stage action) information may only be shared with the person alleged to have caused harm in line with the decisions made at that meeting;
- Information about individuals and people alleged to have caused harm should only be shared with an agency on a 'need to know' basis in order to support the effective delivery of services to that adult at risk. There must be a reasonable belief that any information is correct. The 'need to know' must be balanced against the individual's rights of confidentiality in reaching a decision;
- Staff have a clear duty to report any concerns they may have relating to the abuse or the suspected abuse of an adult at risk at the earliest opportunity, in compliance with the alerting procedure and their own agencies' 'Whistle Blowing Policy';
- Confidentiality should not be confused with secrecy;
- Agencies should have in place appropriate decision making mechanisms to use when the agency's duty to protect the wider public outweighs their responsibilities to protect the adult at risk's right to confidentiality. Issues of Safeguarding Adult Procedures can fall into this category, and consideration should be given to using the Multi-Agency High Risk Public Protection Protocol as well as seeking legal advice in specific circumstances;
- If information is received about possible abuse from a member of the public or a third party, it is important to clarify whether the alerter is prepared to be identified. It may be necessary to discuss with the alerter how effective the information may be if the individual is not identified; and
- When criminal proceedings are involved it may not be possible to guarantee anonymity.

Adult Care Teams, Inspection Authorities, the Health Authority and the Police can generally offer advice on these matters without the need for names or sources to be revealed.

Disclosure of Information

Personal information shared with a worker in the course of their employment is:

- Confidential to the employing agency and can be shared within that agency on a 'need to know' basis; and
- Can be shared with another agency either when:
 - Permission is given by the person about whom the information is held;
 - There is an overriding justification to share information without the person's consent; and
 - The law requires it.

It is good practice to seek the adult at risk's consent to share information about them, both within your own agency and with colleagues from other agencies.

However, if they refuse consent and abuse may be taking place, you must share the information. If you have a reasonable belief that the information is true and the need to protect the individual outweighs his or her rights of confidentiality, you must explain to the person why you are doing this and who you will pass the information on to. This may include the agencies that will be present at an Adult Safeguarding 'Early Strategy Meeting'.

Where a person does not have the capacity to make this decision, concerns of adult abuse should be reported as detailed within these Procedures.

In practice this is most likely to present problems in relation to sharing information about someone who is alleged to have caused harm.

Any agency wishing to share information about a person alleged to have caused harm beyond those agencies involved in the Early Strategy Meeting should follow the agreed multi-agency protocols:

- High Risk Public Protection –
Conferences covered by the High Risk Protocol enable important information to be shared across agencies for the purpose of managing identified risk; and
- Wiltshire and Swindon Crime and Disorder Partnerships –
This protocol facilitates exchange of both personalised and depersonalised information for strategic planning and implementation of Crime and Disorder Strategies.

Sharing information gained during regulatory activity

For guidance on the sharing of information that is gained as a result of regulatory activity by the Care Quality Commission please refer to [protocol between CQC and councils with social services responsibilities](#).

M. PRESERVING EVIDENCE

Whilst your first concern will be the immediate well-being and dignity of the adult at risk, your efforts to preserve potential forensic evidence may be vital to the investigation of the incident.

Forensic evidence (e.g. fingerprints, fibres or body fluids) can be transferred and destroyed easily. Therefore do not touch anything unless it is for the immediate well-being of the individual or the preservation of potential forensic evidence.

Do not allow the adult at risk to come into contact with the person who is alleged to have caused the harm, or any person who has had contact with that individual, as cross-contamination of evidence can occur.

Do identify the scene(s) of the incident and remove all persons from the location preventing any further entry/egress until the police attend.

Discourage the adult at risk from washing, drinking, cleaning teeth, or going to the toilet when any sexual offence is suspected, until he/she has been medically examined by a forensic physician or forensic nurse. If the complainant indicates a need to use the toilet prior to the examination attempt to obtain advice from a police officer about preservation of possible evidence.

Handling of potential evidence should be kept to an absolute minimum, with any such handling/movement being carefully carried out, recorded and police officer notified.

Preserve anything used to warm or comfort the individual e.g. a blanket.

Make a written record of any obvious injuries to the adult at risk and/or the person alleged to have caused harm. Consider a sketch/photograph/body map if easier. Do not ask the adult at risk or the person alleged to have caused harm to undress unless a more thorough examination by a healthcare professional is necessary for his/her medical wellbeing.

N. FORENSIC MEDICAL EXAMINATIONS

There are two reasons for considering the need for a forensic medical examination. The first is to ascertain the need for any immediate or on-going medical treatment; the second is to help provide forensic evidence that could be used in a criminal prosecution.

If there is a possibility that forensic evidence can be obtained, the Safeguarding Adult Investigator or Investigating Officer should seek the adult at risk's permission to involve the police in order that they can arrange for a forensic medical examination to take place. If the person is unable to give consent to involve the police the Safeguarding Adult Investigator should determine what is in the adult's best interests and should follow the guidance in Mental Capacity Act the Code of Practice 2007 in determining the best interests. Advice should be sought from a forensic physician/forensic nurse, the adult's General Practitioner or any other healthcare professional a required.

If the adult at risk attends the Swindon and Wiltshire Sexual Assault Referral Centre (SARC) an assessment of his/her capacity to consent to the examination will be made by the attending forensic physician/nurse. The forensic physician or nurse should refer to 'Guidance for staff supporting Vulnerable Adults using the Sexual Assault Referral Centre' held at the SARC.

See: [Section K: Capacity, Consent and Best Interest](#)

O. AGENCY ROLES AND RESPONSIBILITIES

This section applies to all partners and service providers including services in the statutory, voluntary and private sector.

Guiding Principles

Duty to Report

All staff who work for agencies that are contracted to provide a service, have a **duty to report any** allegations or suspicions of abuse of an adult at risk as per this policy. This places an individual responsibility on staff to report and an organisational responsibility in each agency to ensure that staff receive support and training in Safeguarding Adults.

Duty to Work Collaboratively

All agencies have a duty to collaborate, and must co-operate fully with any investigation held under this policy. Where a larger agency undertakes its own investigation this must be in full collaboration with the safeguarding investigation, keeping the Investigating Manager fully informed.

Responsibilities of service providers

It is the responsibility of all agencies that deliver services to adults at risk to:

- Report the alleged abuse to the relevant team or referral point in compliance with these procedures;
- Where applicable submit reports to the appropriate regulatory authority or professional registration body;
- Have rigorous safer recruitment practices in place;
- Seek to work in non-abusive way and actively promote empowerment;
- Promote an open organisational culture which encourages staff and service users to report concerns;
- Identify a “lead officer” ;
- Have a policy and process for confidentiality & information sharing;
- Have policies & procedures to support good practice;
- Ensure staff and volunteers know about abuse, what action to take and to whom they should report;
- Provide appropriate training and be able to demonstrate its effectiveness;
- Co-operate with investigations into allegations of abuse which are undertaken using the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire.
- Comply with local safeguarding children’s procedures; and
- Have internal policies, procedures and guidance on protecting adults at risk which clearly links to the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire This should include:
 - A statement of principle committing the service to preventing abuse;
 - An outline of the training that will be available to enable staff to be aware of abuse and how to prevent it;
 - A statement on safer recruitment practices;

See
[Appendix 5: Child Protection Guidance](#)

- The actions and behaviours that are considered to be abusive;
- The action to be taken if abuse is witnessed or suspected;
- Prevention of abuse including sharing doubts and concerns about colleagues (sometimes referred to as 'whistle-blowing');
- An outline of disciplinary procedures in the event of abuse being perpetrated by a member of staff;
- Information for residents and their supporters and staff on how to use the complaints procedure if abuse occurs or is suspected;
- Information about organisations that can provide advice and support for staff; and
- When a referral to the Disclosure and Barring Service should be made (where applicable).

Employment Practice

All agencies must ensure that disciplinary procedures are compatible with the responsibility to protect adults at risk.

All agencies including providers of services should disseminate information about the multi-agency Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire to staff.

Where relevant all agencies should draw up guidelines covering the following areas:

- Challenging Behaviour;
- Personal and Intimate Care;
- Tissue viability;
- Infection control;
- Control and Restraint;
- Sexuality;
- Medication;
- Invasive Treatments;
- Observational practice (incl. use of technology);
- Handling of service users' money and personal budgets;
- Risk Assessments and Risk Management;
- Violence at Work; and
- Whistle-Blowing.

Staff responsibilities in relation to the safeguarding of adults at risk must be clearly documented and incorporated into all individual terms and conditions and specified contracts of employment.

Staff Support

It is essential that staff working in situations involving the abuse of adults at risk are appropriately supported by management. Issues relating to personal safety must be supported through procedures such as risk assessment and where appropriate Violence at Work policies. An assessment of the risks to staff and other individuals needs to be made from the 'alert' and monitored throughout the investigation. Concerns about personal safety or the risk of violent or aggressive behaviour must

also be recorded on the case file. In some situations, confidential support or counselling may need to be offered to staff. This will always be in addition to debriefing which must be offered to staff who are alerted or who are undertaking the investigation.

Contracts

All contracts covering employment and services must reflect the importance of safeguarding adults at risk and agencies providing services must adhere to the multi-agency Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire. Contracts of employment should also address the duty of staff to report abuse and to co-operate with any adult safeguarding investigations ([See section T](#)).

Whistle-Blowing

Whistle-blowing procedures should be used if an employee suspects any member of their organisation is abusing, colluding with the alleged abuse or concerns are not being addressed adequately by the organisation. A referral under the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire may also be required.

Training

Appropriate training regarding the awareness and prevention of abuse should be provided for staff and volunteers during the induction period and on an on-going basis. Staff and volunteers should be made aware of the importance of following the service's policies in the interests of their service users and know how to report abuse. The policy and training should set out clear expectations of staff (or volunteers) behaviour, manner and attitude.

Investigations – when to involve the Contracts Compliance Team

The teams responsible for contracts compliance need to be informed when there is an allegation about the conduct or standards of the service, or where a member of staff or volunteer in a service has caused harm to a vulnerable person.

The allegation could be about an incident in any service.

The Investigating Manager should:

- Notify (e-mail) the appropriate commissioning/contracts lead when a decision is made to progress to an Early Strategy Meeting. The information should include the name of the service and a brief summary of concern;
- Consider the need to invite the relevant commissioning/contracts lead to an Early Strategy Meeting and subsequent meetings. This would always be required if there was a serious allegation of Institutional Abuse;
- Inform the commissioning/contracts lead, at any point in the investigation, of any situation that is causing serious concern and where other service users may be at serious risk (this may include those who fund their own care or have been placed by another authority); and
- Following notification from the Investigating Manager, the commissioning/contracts lead may decide to escalate the issue for a decision if additional action is required in relation to the contract in place. For example suspending new placements or referrals.

Personal Budgets

All service users and their relatives, supporters and advocates must be made aware of the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire and know how to access help and advice through the appropriate channels. Service users in receipt of Direct Payments or Individual Budgets should be informed about where to go for support if they are concerned about abuse and should be made aware of who to call if they wish to report an allegation of abuse on commencing personalised support. They may also need to be made aware of safer recruitment practice and other approaches to take in minimise personal risk.

P. POLICE

The Responsibilities of the Police

Protecting life and preventing crime are the primary tasks of the Police. Vulnerable adults are citizens who have the right to protection offered by the criminal law.

The Police have a duty and a responsibility to prevent and investigate criminal offences committed against vulnerable adults (adults at risk) and such actions should be carried out sensitively, thoroughly and professionally.

Safeguarding vulnerable adults is not, within a policing context, seen only as the role of the Safeguarding Adults Investigators, but that of all Police Officers as part of their everyday duties. Police Officers attending domestic violence incidents for example, should be aware of the effects of such violence on vulnerable adults and children (including unborn babies) within the household, whether present or not.

Wiltshire Police recognises the fundamental importance of inter-agency working in combating Adult Abuse.

Liaison with both Local Safeguarding Adults' Boards is maintained by Detective Chief Inspector Public Protection Department. All policy matters are forwarded to this officer.

Safeguarding Adults Investigation Team

Safeguarding Adults Investigation Team (SAIT) has a major role with delivering these procedures and is part of Wiltshire Police's Public Protection Department. This specialist unit acts as the conduit for all referrals originating from both police and partner agencies. These reports are scrutinised within SAIT before being forwarded to the most appropriate recipient. These will include relevant adult care services as well as other Police departments, such as Neighbourhood Policing Teams (see Three Strands of Vulnerability below).

The SAIT work in accordance with Wiltshire Police Vulnerable Victims and Witness Policy and will ensure referrals received are disseminated in line with policy and procedures for Safeguarding Adults at Risk in Swindon and Wiltshire and in relation to the "Three Strands of Vulnerability." Wiltshire Police Policy that aims to differentiate between the three identified areas of vulnerability often encountered by Police:

- Strand 1: Welfare concern. Relevant issues are passed via dedicated contact centres to the relevant local authority support service, such as social services;
- Strand 2: Victim/Witness to a crime/ASB incident. These concerns are managed locally by Neighbourhood Policing Teams through the implementation of a risk assessment process and collaborative work with partner agencies; and
- Strand 3: Safeguarding Adult investigations; i.e. those involving vulnerable adults subject to abuse from family/friend/carers in a position of trust etc. Strand 3 concerns are those which meet the criteria for SAIT intervention. These are distributed across the investigative workforce and supervised by the SAIT Detective Sergeant.

Safeguarding Adults Investigation Team (SAIT) Investigators based within Swindon, Melksham and Salisbury, are responsible for liaison with the relevant Health and Social Care Team Managers. These officers have a responsibility to establish, promote and maintain regular and effective liaison with all agencies involved in safeguarding adults and act as a referral point for all safeguarding investigations and referrals.

Safeguarding Adults Referral

Whenever a police officer receives information giving rise to concerns that a vulnerable adult is unable to take care of him/herself or unable to protect him/herself against significant harm or exploitation and have been alleged victims of: Physical abuse, Sexual abuse, Psychological abuse, Financial or material abuse, Neglect or acts of omission, Discriminatory abuse or Institutional abuse, a referral under these procedures is required.

If such concerns are raised then the information will be immediately referred to the relevant SAIT Detective Sergeant: outside normal working hours queries are to be directed towards the Duty Public Protection Detective Sergeant or Duty Inspector.

The officer will record full details of the adult abuse on a PPD (interim) form and forward the document by facsimile/e-mail to the SAIT, or outside normal working hours, the relevant Duty Inspector, having made the individual aware. In any event the PPD form must be forwarded by the end of that 'tour of duty'.

In the cases of adult abuse that fall within the guidelines contained within the Wiltshire Police Major Crime Investigation Policy, a senior Detective Officer (dependant on category A, B or C) should be notified immediately.

A representative from the Safeguarding Adults Investigation Team, or outside normal working hours the relevant Duty Inspector, will ensure that any known history of the vulnerable adult and the family is established, which will include Domestic Violence, Children's Safeguarding, Police National Computer check, ViSOR check and intelligence records held across the Force within the former and existing intelligence systems.

The SAIT representative or relevant Duty Inspector will have responsibility for consulting with the appropriate Adult Services Department and Emergency Duty Teams/Emergency Duty Service prior to any investigation being commenced.

Such consultation will take place in all cases of alleged or suspected adult abuse. However, the PPD (interim) should **not** be sent without discussion with the relevant adult care team.

After such consultation the SAIT representative or relevant Duty Inspector will endorse the PPD form with details of the discussions and any actions agreed. The form will be forwarded by facsimile to the relevant Adult Services Manager.

Investigation

Wiltshire Police is committed to sharing relevant information with other agencies, where this is necessary and proportionate to protect vulnerable adults.

See: [Section L: Information Sharing and Confidentiality](#)

Wiltshire Police has a statutory responsibility to investigate suspected criminal offences, however in respect of allegations of abuse against a vulnerable adult or

adult at risk as defined by the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire, the investigation will be jointly undertaken with Adult Services or Health or the Community Mental Health Team under these procedures.

Where it is thought a medical examination will be required, this will be undertaken by a police surgeon or relevant healthcare professional as appropriate to the individual. The SAIT Detective Sergeant or relevant Duty Inspector will identify a trained Safeguarding Adults Investigator to conduct the investigation and when required, jointly with the identified officer from the social care team.

In planning the investigation, they should ensure that there is no possibility of compromising the investigation by appointing a Safeguarding Adults Investigator who may have conflicting interests.

All Police Officers involved in the investigation and management of a Safeguarding Adults Investigation should consider carefully Section 16, Youth Justice and Criminal Evidence Act 1999 when at the planning stage of the investigation, the provision of 'Special Measures' particularly video recording of the Evidence in Chief.

All interviews of vulnerable adults, which are carried out with a view to gathering evidence for Criminal or Civil proceedings will be conducted in accordance with the 'Achieving Best Evidence in Criminal Proceedings Guidance on interviewing victims and witnesses: Guidance on using special measures'. Non-compliance will be subject to scrutiny by judicial proceedings.

Details of interviews conducted within a joint investigation should be copied and forwarded to the relevant adult social care team for inclusion on their file(s). The original copy will be retained by Police for disclosure purposes.

At the conclusion of the Adult Protection Investigation, the Adult Protection Investigator or relevant Duty Inspector will record on the NICHE system the outcome of the investigation.

One of four possible outcomes should be recorded:

- Concerns are not substantiated;
- Concerns are not substantiated and the adult is judged to be at risk of significant harm;
- Concerns substantiated but the Adult is not judged to be at risk of significant harm; and
- Concerns substantiated and the Adult is judged to be at risk of significant harm.

In addition records pertinent to the case will be endorsed with the 'crime number' and final disposal on the Police NICHE system (Wiltshire Police policy 'Recording Crime and Counting Detections').

Adult Safeguarding Conferences

Wiltshire Police is committed to the sharing of information with other agencies, where it is necessary and proportionate to protect a vulnerable adult.

The Departmental Detective Chief Inspector is responsible for ensuring that an officer with an appropriate understanding of the case attends the Adult Safeguarding

Conference. Whenever practicable, this will be the Safeguarding Adults Investigator, if this is not possible, then a supervisory officer will attend the Conference.

In appropriate circumstances a supervisory officer will accompany the Investigating Officer at the Conference. In addition those officers representing the Force at Adult Safeguarding Conferences have a responsibility to ensure that they are fully informed about the case as well as being aware of risk assessment and the decision making process.

All disclosures to the Conference will be made in accordance with the Force Disclosure Manual and Data Protection Registration.

In circumstances where there has been no investigation, but the Police are nevertheless requested to attend an Adult Safeguarding Conference, the attendance of the relevant Neighbourhood Policing Team (NPT) representative may be considered desirable, to ensure relevant information is considered in any action plan where appropriate.

Officers attending Conferences are responsible for:

- Identifying what information will be shared at the Conference and ensuring that where an Adult Safeguarding Investigation has been undertaken, this information is contained in the Investigator's report;
- Prior discussion with the Investigating Manager, in advance of the Conference, the implications of disclosing particularly sensitive and/or third party information at the Conference;
- Prior discussion with the Investigating Manager (Chair) the need for a Confidential Section to the Conference or the exclusion of parties during the Conference in order to inform professionals of:
 - Third party information; and
 - Information regarding the criminal investigation.
- Prior discussion with Investigating Manager (Chair) any concerns about violence or intimidation; and
- Submitting a report if it is not possible for them or a colleague to attend the Conference (lack of resources is no excuse for non-attendance).

On receipt of the Adult Safeguarding Conference Minutes it is the responsibility of the Officer attending the Conference to check their content for accuracy, forwarding any corrections to the Investigating Manager within 5 working days of receipt. In addition the Officer is responsible for any actions allocated to the Police within the Adult Safeguarding Plan.

The Departmental Detective Chief Inspector is responsible for ensuring the secure storage of current files and the monitoring of all actions identified within the Adult Safeguarding Plan and Adult Safeguarding investigations.

Concern for a Vulnerable Person's welfare

Where a Police officer or member of Police staff is concerned that a person is unable to look after themselves or has any other concerns for a person's welfare which could lead to significant harm, which is not abuse by a third person, then they must bring it to the attention of the appropriate agency by contacting Swindon Borough Council 'Careline' or Wiltshire Council 'Contact Advisors' or relevant mental health team direct by telephone, to report their concerns. A PPD form should **not** be sent directly

to adult services without previously discussing the matter directly with the relevant team.

Out of hours contact should be made with the Emergency Duty Services for Swindon & Wiltshire.

Where a police officer or member of police staff is concerned about a person's mental health, which does not require immediate action but could lead to significant harm in the future, the officer or member of staff should report the concern directly to the appropriate mental health team covering the area where the person resides.

Out of hours contact should be made with the Emergency Duty Services for Swindon or Wiltshire.

The police officer or member of staff should make a record in their pocket note book of the action they have taken and who they shared their concern with.

Q. SUPPORT FOR VICTIMS AND WITNESSES

Witness Care Unit

In February 2005 a dedicated Witness Care Unit was opened in the offices of the Crown Prosecution Service, Chippenham. There was an initial staged “roll out” and will be extended to other areas.

This is part of a national ‘No Witness No Justice’ project. It has been acknowledged that without victims and witnesses, offenders will not be brought to justice and neither victims nor society will receive justice.

The unit offers a single point of contact and a tailored response to the individual needs of the witness. This support may be practical e.g. childcare, transport etc. (which may be provided through but not by the Witness Care Unit) or may involve specific measures (e.g. video link/screen to avoid witness being intimidated in court).

Victim Support

Victim Support schemes are run under the auspices of the National Association of Victim Support Schemes and are local, community-based, independent charities who provide emotional support, information concerning the criminal justice system together with liaison with those agencies and on occasions practical help. The service is free and totally confidential.

Victim Support will assist victims of crime to apply for compensation to the Criminal Injuries Compensation Authority. The victim can also receive support and advocacy regarding their claim free of charge from Victim Support, if they are unable or unwilling to pay a lawyer.

The Witness Service, which is administered by Victim Support Wiltshire, operates in the Crown Courts in Swindon and Salisbury and all the Magistrates Courts throughout the county of Wiltshire. Trained volunteers provide emotional support and practical information about court proceedings.

The service is available to:

- Witnesses who are called to give evidence, including defence witnesses;
- Victims of crime and their families and friends attending court; and
- Children and adults.

The Witness Service works closely with the Court and provides pre-court visits and waiting rooms for vulnerable witnesses. If they have prior knowledge the Witness Service can assist the court in providing an appropriate level of support to fulfil the witnesses’ needs. This may include (for example) entering the court from a different entrance to avoid other parties in the case.

The Wiltshire Witness Service main office where both Crown Court and Magistrates’ Court services can be contacted is: 01793 484040.

Special Measures

See:
[Section
P:
Police](#)

Under the provision of the Youth Justice and Criminal Evidence Act 1999, adults who are considered to be incapacitated may be allowed to give their evidence with the help

of special measures. Please refer to Achieving Best Evidence in Criminal Proceedings (2001) 'Speaking Up for Justice' defines those vulnerable witnesses eligible for 'Special Measures':

- A witness who is under the age of 18 at the time of the hearing (S.21);
- A witness who suffers from a mental disorder within the meaning of the Mental Health Act 1983, or who has a significant impairment of intelligence or social functioning, or who has a physical disability or disorder. In these cases the court must be satisfied that the quality of the evidence given by the witness is likely to be diminished due to the mental disorder (S.16);
- A witness whose evidence, in the opinion of the court, is likely to be diminished by fear or distress about testifying (S.17);

The 'Special Measures' include:

- Screening witnesses from the accused (S.23);
- Evidence by live link (S.24);
- Evidence given in private i.e. clearing the court (S.25);
- Removal of wigs and gowns (S.26);
- Video recorded evidence in chief (S.27);
- Video recorded cross-examination or re-examination (S.28);
- Examination of witnesses through an intermediary (S.29); and
- Aids to communication (S.30).

The fact that a witness is eligible for 'Special Measures' will not automatically mean the measures will be made available at trial, the reason for this is:

- The court must determine if any Special Measure would likely to improve the quality of evidence and if so, which Special Measure would maximise the quality of evidence. (S.19.2).

The court must then, before making a Special Measures direction, consider all the circumstances of the case, particularly the views of the witness and whether Special Measures might tend to inhibit the effective testing of the evidence by the defendant. (S.19.3). Full details of the management of Vulnerable and Intimidated Witnesses eligible for Special Measures can be found within Chapter 1 of 'Achieving Best Evidence in Criminal Proceedings Guidance on interviewing victims and witnesses: Guidance on using special measures.'

Advocacy Services

In all cases, consideration should be given as to whether contact should be made with an appropriate advocacy service in order to support either the alleged victim or a person alleged to have caused harm, in the case where the person is an adult at risk themselves.

Independent Mental Capacity Advocate

The Mental Capacity Act 2005 includes the provision of statutory independent advocacy, called the Independent Mental Capacity Advocate (IMCA) service. This provision gives people who lack capacity and who have no family or friends that can act on their behalf, assistance with making decisions about serious medical treatment or significant changes to the care they receive. The Act also requires the local authorities to extend the provision of the IMCA service to include involvement in adult safeguarding procedures for victims and those alleged to have caused harm, if they are assessed to lack capacity. In Adult Protection cases (and no other cases), access to IMCAs is not restricted to people who have no-one else to support or represent them ([See appendix 7](#)).

The Sexual Assault Referral Centre (SARC)

The SARC provides a range of functions to adult and child victims of sexual violence meeting the forensic, therapeutic medical and psychosocial needs of those affected by sexual violence within Swindon and Wiltshire. This is a 24/7 service offered to victims who wish to either report to the Police or to self-refer without Police involvement.

Based on the wishes of the victim and whether they want to participate in providing evidence to assist in criminal prosecutions, the SARC provides access to immediate crisis support, Forensic Medical Examination, acute medical treatment, therapeutic medical services (including access to emergency contraception and HIV/HEP B Post Exposure Prophylaxis PEP) and Pregnancy testing and advice. The service can also provide access to fast tracked, sensitive sexual health screening and treatment.

As well as providing a 24 hour telephone advice and information line and Therapeutic counselling the SARC employs Independent Sexual Violence Advisors (ISVA) who can provide telephone and face to face support with housing, access to healthcare services and support through the criminal justice process and other practical support.

R. INTER-AUTHORITY ARRANGEMENTS AND ORDINARY RESIDENCE

The following is a protocol developed by the Association of the Directors of Social Services. It is intended to clarify the responsibilities of placing and host authorities when there is a concern about abuse of someone who is:

- Receiving services in Swindon or Wiltshire, but has been placed here or funded by another authority; and
- Receiving services in another authority area where Swindon or Wiltshire councils are the placing or funding authority.

If the social care teams within Swindon and Wiltshire experience difficulties with another authority not implementing appropriate Safeguarding Adult procedures, the team manager responsible for the service user should draw attention to that authority's responsibilities under the "No Secrets" guidance (Department of Health /Home Office 2000), and to the ADASS Protocol (see below). If the matter continues to be unresolved, the relevant team manager should inform the appropriate head of adult services in Swindon or Wiltshire of the difficulties, who should discuss the matter with their counterpart in the authority where the abuse has been alleged.

NB: Any disputes of this nature should not compromise the safety and well-being of any service user or delay action from taking place.

Protocol for Inter-Authority Investigation of Adult at Risk Abuse

This agreement was ratified by the ADASS on 20th February 2004 and is intended for adoption by all Local Authorities and Adult Protection Committees

Introduction

These arrangements recognise the increased risk to adults at risk whose care arrangements are complicated by cross boundary considerations. These may arise, for instance, where funding/commissioning responsibility lies with one authority and where concerns about potential abuse and/or exploitation subsequently arise in another. This would apply where the individual lives or otherwise receives services in another local authority area

Aims

This protocol aims to clarify the responsibilities and actions to be taken by local authorities with respect to people who live in one area, but for whom some responsibility remains with the area from which they originated.

This protocol should be read in conjunction with Section 3.8 of '[No Secrets](#)' (DoH 2000) and LAC (93) 7 *Ordinary Residence*- which identifies these responsibilities in terms of:

- The authority where the abuse occurred in respect of the monitoring and review of services and overall responsibility for safeguarding adults;
- The registering body in fulfilling its regulatory function with regard to regulated establishments; and
- The placing authority's continuing duty of care to the abused person.

Principles

- The authority where the abuse occurs will have overall responsibility for co-ordinating the safeguarding adult arrangements (and, for the purposes of this protocol, be referred to as the host authority);
- The placing authority (i.e. the authority with funding/commissioning responsibility) will have a continuing duty of care to the adult at risk;
- The placing authority should ensure that the provider, in service specifications, has arrangements in place for protecting adults at risk and for managing concerns, which in turn link with local policy and procedures set out by the host authority;
- The placing authority will provide any necessary support and information to the host authority in order for a prompt and thorough investigation to take place; and
- The host authority will make provision in service contracts, which refer to this protocol, outlining the responsibilities of the provider to notify the host authority of any adult safeguarding concern.

Responsibilities of Host Authorities

- The authority where the abuse occurred should always take the initial lead on referral. This may include taking immediate action to protect the adult, if appropriate, and arranging an early discussion with the police if a criminal offence may have been committed.
- The host authority will also co-ordinate initial information gathering, background checks and ensure a prompt notification to the placing authority and other relevant agencies.
- It is the responsibility of the host authority to co-ordinate any investigation of institutional abuse. If the alleged abuse took place in a residential or nursing home, other people could potentially be at risk and enquiries should be carried out with this in mind.
- The Care Quality Commission should always be included in investigations involving regulated care providers and enquiries should make reference to national guidance regarding arrangements for the safeguarding of adults at risk.
- There will be instances where allegations relate to one individual only and in these cases it may be appropriate to negotiate with the placing authority their undertaking certain aspects of the investigation. However, the host authority should retain the overall co-ordinating role throughout the investigation.

Responsibilities of Placing Authorities

- The placing authority will be responsible for providing support to the adult at risk 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 Adult Safeguarding strategy meeting and/or may be required to submit a written report.

Responsibilities of Provider Agencies

- Provider agencies should have in place suitable safeguarding adult procedures to prevent and respond to abuse which link with the local inter-agency policy and procedures set out by the host authority.
- Providers should ensure that any allegation or complaint about abuse is brought promptly to the attention of Social Services, the Police, and/or the Commission for Social Care Inspection in accordance with local inter-agency policy and procedures.
- Provider agencies will have responsibilities under the Care Standards Act 2000 to notify CQC of any allegations of abuse or any other significant incidents.

South West Safeguarding Adults Cross Boundary Information Sharing Protocol

The south west cross boundary information sharing protocol enables a host local authority to communicate concerns about poor care services to other local authorities or PCT commissioners who are also commissioning the service. Inter authority communication is essential to ensure that:

- Placing authorities are aware of permanent or temporary commissioning bans;
- Placing authorities can identify people they have placed in a setting and undertake reviews to ensure those people are well and still appropriately placed; and
- Host and placing authorities can work together from the outset to safeguard people living in settings or using services where there are safeguarding adults concerns.

Where it is believed that other local authorities need to be made aware of a concern about a whole service, the lead for safeguarding in consultation with the commissioning team will decide on the appropriate notification.

S. SERIOUS CASE REVIEWS

Introduction

This document sets out the [Wiltshire and Swindon LSAB](#) agreed framework for undertaking a systematic evaluation of inter-agency involvement in cases where an adult at risk has died, been seriously injured or subject to significant harm where abuse has taken place or suspected to have taken place.

It should be emphasised that the specific nature of individual cases requires that this framework should be adapted for different situations.

The purpose of this section is:

- To ensure that local practice is in line with ADASS guidance on Serious Case Reviews on adults at risk;
- To support the view that the public interest is best served by the presence of an effective Serious Case Review process;
- To facilitate a consistent approach to the process and practice in undertaking a Serious Case Review; and
- To acknowledge that there is no statutory requirement at this stage for agencies to cooperate with such reviews, however, voluntary involvement does lead to good practice development.

Relevant Standards and Guidance

It was recommended in "Safeguarding Adults" ADASS 2005 that:

- There is a 'Safeguarding Adults' Serious Case Review protocol. This is agreed, on a multi-agency basis and endorsed by the Coroner's Office, and details the circumstances in which a serious case review will be undertaken. For example: when an adult experiencing abuse or neglect dies, or when there has been a serious incident, or in circumstances involving the abuse or neglect of one or more adults. There is a clear process for commissioning and carrying out a Serious Case Review by the Board. Adults at risk are defined as those who receive, or would be eligible to receive, community care services;
- The document '[No Secrets](#)' (March 2000) issued by The Department of Health and Home Office under section 7 of the Local Authority Social Services Act 1970, issued guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse;
- The written Ministerial Statement, issued 19th Jan 2010 in response to the consultation on 'No Secrets' review, states that legislation will be introduced to put safeguarding adults boards on a statutory footing;
- The document Safeguarding Adults published by the Association of Directors for Adult Social Services (ADASS) October 2005 provides a National Framework of Standards for good practice and outcomes in adult protection work. One of the standards in this document states that, as good practice, Safeguarding Adult Boards should have in place a serious case review protocol; and
- The protocol has been written with reference to the statutory requirement for Domestic Homicide Reviews (see Section 17).

Purpose of Serious Case Review

The purpose of having a Serious Case Review is not to reinvestigate or to apportion blame, it is:

- To establish whether there are lessons to be learnt from the circumstances of the case about the way in which local professionals and agencies work together to safeguard adults at risk;
- To review the effectiveness of procedures (both multi-agency and those of individual organisations);
- To inform and improve local inter-agency practice;
- To improve practice by acting on the lessons from Serious Case Reviews and thereby developing best practice;
- To prepare or commission an overview report which brings together and analyses the findings of the various reports from agencies in order to make recommendations for future action; and
- It is acknowledged that all agencies will have their own internal/statutory review procedures to investigate serious incidents; e.g. an Untoward Incident. Agencies may also have their own mechanisms for reflective practice.

Criteria for Serious Case Review

The relevant Safeguarding Adults Board has the lead responsibility for conducting a Serious Case Review and should give consideration when:

- An adult at risk dies (including death by suicide) and abuse or neglect is known or suspected to be a factor in his or her death. In such circumstances the Safeguarding Adults Board should always conduct a review into the involvement of agencies and professionals associated with the adult;
- An adult at risk has sustained a potentially life-threatening injury through abuse or neglect, serious sexual abuse, or sustained serious and permanent impairment of health or development through abuse or neglect, and the case gives rise to concerns about the way in which local professionals and services work together to safeguard adults in vulnerable situations;
- Serious abuse takes place in an institution or when multiple abusers are involved. In these circumstances the same principles of review apply. Such reviews are, however, likely to be more complex, on a larger scale, and may require more time. Terms of reference need to be carefully constructed to explore the issues relevant to each specific case;
- Financial, institutional or systemic abuse where the outcome may not be life threatening but may have a long-term detrimental effect on a person's well-being and it is of a nature where there are serious negative outcomes for the individuals concerned;
- Any other circumstance which the Chair of the relevant Safeguarding Adults Board agrees should be the subject of a referral to the LSAB for a Serious Case Review or Smaller scale Audit;
- The Safeguarding Adults Board is responsible for commissioning a Serious Case Review. The Board will ensure the application meets the agreed criteria outlined above; and
- There must also be mechanisms for the consideration of requests from the Coroner, MPs, Elected Members and other interested parties.

Stage 1 – The Process for carrying out a Serious Case Review

Applications must be made in writing to the Chair of the Safeguarding Adults Board, who will decide whether to convene a small group of LSAB members to decide if the criteria for a Serious Case Review has been met.

The application should be made without delay and as soon as the applying agency believes they have sufficient information to suggest the criteria for an SCR has been met.

All Board members will be informed when a Serious Case Review is taking place. In the event of an application being turned down, the reasons need to be recorded in writing by the chair and shared with the applicant.

The LSAB will inform the relevant communication leads from relevant organisations that an application has been approved.

Stage 2 - Initiating a Serious Case Review

The LSAB, via the Chair, will appoint an Independent Chair for the Serious Case Review.

Consideration will also be given to appointing an independent author of the Serious Case Review.

The LSAB Chair will be responsible for requesting relevant agencies identify panel members, who must be very senior managers of the respective organisation.

The LSAB Chair will be responsible for drafting the terms of reference for the Serious Case Review and for drafting timescales for the process, to be completed within a six month period.

The LSAB Chair and SCR Chair will formally write to panel agencies setting out the process, reports required and draft terms of reference. Agencies will also be informed of the timescale for completion of the SCR chronology and the IMR reports which will normally be one month and six weeks respectively of notification.

Consideration will be given to informing the victim(s) and those alleged to have caused harm and their families about the Serious Case Review.

The Care Quality Commission, and any other bodies required to be, will be informed of a Serious Case Review taking place by the LSAB Chair.

Stage 3 - Conduct of Serious Case Review

Scoping Meeting – this will agree:

- The initial Terms of Reference for the Review based on the supplied Draft Terms of Reference (see more detailed guidance);
- The agencies which should complete an IMR and the level of detail required;
- The “evidence” or information required from each participant;
- The support and other resources needed;
- Time scales within which the review process should be completed;
- Dates, time and venues of meetings;

- The nature and extent of legal advice required, in particular: Data Protection, Freedom of Information and Human Rights Act and Domestic Violence Crime and Victims Act 2004; and
- This meeting will decide the point at which the merged chronologies should be undertaken.

The chronologies are expected within one month from the letter date advising of the Serious Case Review.

Stage 4 - Briefing IMR Authors

Each agency asked to complete an IMR will inform the Chair of the Serious Case Review of the name of the IMR Author.

The IMR authors will be invited to a briefing, to ensure the draft terms of reference for the SCR are clear and to identify and resolve any barriers to completing the work.

Agencies will ensure IMR authors have assistance or training if required.

IMR's are expected to be returned within six weeks or within the timescale agreed at the scoping meeting from the letter date advising of the SCR.

The IMR authors must be independent from any involvement with the victim or those alleged to have caused harm or in delivering or managing a service to either.

Stage 5 – Serious Case Review Panel – Initial Meeting

The Serious Case Review Panel will agree:

- Final Terms of Reference for the review;
- Overview Report template;
- Communications protocol and leadership during the review and following completion;
- The dates of future meetings: and
- Timescales for completion and distribution of draft and final reports.

It is the responsibility of each Serious Case Review Panel Member to ensure their Chief Executive or Chief Operating Officer is informed at all stages of the process.

Stage 6 - Serious Case Review Panel – Analysis of Information

It is expected this can be completed in a one day meeting. However, consideration will be given, depending on the complexity of case and number of organisations involved, whether a further meeting is required.

This stage of the meeting is a formal information sharing session where agencies will be encouraged to query and comment on the IMR reports presented. IMR authors will be invited to this meeting to answer any questions.

Panel members will have read and considered all IMR reports prior to this meeting.

Each agency involved, and IMR authors where appropriate, will be asked to:

- Present and examine the chronology of events, highlighting any discrepancies;
- Present a comprehensive report of the actions by their agencies; and
- Ensure any other management reports and other relevant information is made available.

The review panel will assess whether any new information has come to light that warrants an additional or alternative actions or investigation.

The review panel will:

- Cross-reference all agency management reports and reports commissioned from any other source;
- Examine and identify relevant action points/recommendations;
- Form a view on practice and procedural issues; and
- Agree the key points to be included in the report and the proposals for action.

Information Governance advice will be sought prior to completion of the Overview Report.

If, at any stage whilst undertaking the review, information is received which requires notification to a statutory body regarding significant omission by individual(s) or organisations this should be undertaken by the Chair of the Serious Case Review without delay. A decision will be made as to whether the Serious Case Review should be suspended pending the outcome of such notification.

Stage 7 – Overview Report

The LSAB will have agreed that all involved organisations will be named within the Overview Report. An Executive Summary will be developed.

The [independent] author will draft an Overview Report following the Serious Case Review Panel Meeting (Stage 6). This will be sent in advance of next agreed meeting date for Stage 8.

Communication leads and Chief Executives will be aware of the recommendations in the draft overview report.

Stage 8 – Serious Case Review Panel Meeting – Overview Report

The Serious Case Review Panel will meet to agree the final Overview Report.

Agreement should be sought from contributing agencies that they are satisfied that information is fully and fairly represented in the Overview Report.

Agreement should be sought from contributing agencies that they are satisfied that the combined chronology, fully and fairly represents their contacts with victim(s) and those alleged to have caused harm.

Communication statements will be prepared in advance of the SCR Summary Report being published.

Translate draft recommendations from the overview report into an action plan.

Stage 9 – LSAB Overview Report Approval

Agreement will be made about the communications process for:

- Dissemination within LSAB member organisations; and
- Dissemination within Serious Case Review Panel organisations.

Agree an Executive Summary.

Agree if, how and when the report and/or the Executive Summary should be published for public access purposes

Consider the need for a professional briefing paper with key learning points for organisations.

Agree the action plan which should be endorsed at executive level by each agency.

Communications statement will be in place.

Stage 10 – Action Plan

The action plan will indicate:

- Responsibilities for various actions;
- Timescales for completion of actions;
- The expected outcomes;
- Mechanisms for monitoring and reviewing intended improvements in practice and/or systems;
- To whom the report or parts of the report should be made available and indicate the means by which this will be carried out; and
- The processes for dissemination of the report and/or key findings to interested parties, for the receipt of feedback and for any debriefing to staff, family members and, where appropriate, the media.

The Safeguarding Adults Board will ensure that all recommendations are actioned and will request updates from agencies.

The Action Plan will remain on the Safeguarding Adults Board Agenda until such time as all recommendations have been implemented.

Annual Report

All Serious Case Reviews conducted within the year should be referenced within the annual report and reported to the Dept. of Health and Care Quality Commission as required.

Additional Considerations for a Serious Case Review

Consideration will be made throughout the process of how to keep the victim and those alleged to have caused harm informed.

There will be a need to address the budgetary requirements for undertaking a Serious Case Review. This will be the responsibility of the LSAB.

Timescales for the completion of a Serious Case Review will need to be put in place, within 6 months, to ensure that the process takes place within a timely and specific framework. Any alternative to this timescale will need to be formally agreed and negotiated with the relevant parties i.e. where the criminal justice system is involved and where other processes are taking place such as the Crime Prosecution Service Senior Investigation Officers role if there are criminal proceedings being investigated. Where this is the case timescales for publication of the SCR will take this into account and be flexible.

Where a death has occurred the Safeguarding Adults Board is advised to liaise with their local Coroner's Office to ensure that the arrangements for undertaking a Serious Case Review are acceptable.

Due regard for criminal/civil process should be observed at all times.

Arrangements to obtain or secure records through statutory agencies should be utilised whenever appropriate.

The right under the Freedom of Information Act and the Environmental Information Regulations to request information held by public authorities, known as the 'right to know', came into force in January 2005.

There are 'absolute' and 'qualified' exemptions under the Act. Where information falls under 'absolute exemption', the harm to the public interest that would result from its disclosure is already established.

If a public authority believes that the information is covered by a 'qualified exemption' or 'exception' it must apply the 'public interest test'.

The public interest test favours disclosure where a qualified exemption or an exception applies. In such cases, the information may be withheld only if the public authority considers that the public interest in withholding the information is greater than the public interest in disclosing it.

- The Data Protection Act 1998.
- Children Act 1989 and Children Act 2004.
- Mental Capacity Act 2005.

There must be regular briefings with agency Chief Executive Officers and Communications Leads. An agreed communication position must be agreed and reviewed regularly throughout each stage of the SCR.

Domestic Homicide Reviews

Section 9 of the Domestic Violence, Crime and Victims Act (2004) introduce a statutory basis for local bodies to establish homicide reviews for victims of domestic violence.

The guidance for the format of Domestic Homicide Reviews (August 2006) is currently subject to consultation by the Home Office. There have been cases locally where following consultation with partner agencies Domestic Homicide Reviews have been conducted.

These reviews will apply to circumstances in which the death of a person aged 16 or over has or appears to have resulted from violence, abuse or neglect by:

- A person to whom he/she was related or had been in an intimate personal relationship; and
- A member of the same household as himself or herself.

The purpose of the review is:

- To identify the lessons to be learnt from the death in particular about how local professionals and agencies work together to safeguard victims;
- To identify how those lessons will be acted upon and what is expected to change as a result; and
- To improve inter-agency working and improving protection for domestic violence victims.

NB: Domestic Homicide Reviews are not inquiries into how the victim died or who is culpable which is a matter for the coroner and criminal courts

If the death of an adult at risk meets the criteria required to set up a domestic homicide review (see above) a referral should in the first instance be made to the Chair of Swindon or Wiltshire LSAB. The Chair will then consult with the Chair of the Community Safety Partnership Swindon or Chair of the Safer Wiltshire Executive regarding the format and who will lead the review. This is pending the issue of formal guidance.

Recommendations from a Domestic Homicide Review will be fed back to agencies. If an adult at risk is involved the appropriate LSAB will also need to be informed so that they can review their actions and make any necessary recommendations for improvements to services

Smaller Scale Audits

In some cases, it may be valuable to conduct individual management reviews, or smaller scale audits of individual cases which give rise to concern but which do not meet the criteria for a full case review.

A specific Terms of Reference will be agreed in advance of any individual management reviews, or smaller scale audits of individual cases.

In such cases, arrangements should be made to share relevant findings with the LSAB, Serious Case Review Panel or Quality Assurance Sub Group.

Criminal Proceedings

In some cases, criminal proceedings may follow the death or serious injury of an adult at risk. Those co-ordinating the review should discuss with the relevant criminal justice agencies how the review process should take account of such proceedings, e.g. how does this affect timing, disclosure issues, the way in which the review is conducted (including interviews of relevant personnel), and who should contribute at what stage?

Case reviews should not be delayed as a matter of course because of outstanding criminal proceedings or an outstanding decision on whether or not to prosecute. Much useful work to understand and learn from the features of the case can often proceed without risk of contamination of witnesses in criminal proceedings.

In some cases, it may not be possible to complete or to publish a review until after Coroner or criminal proceedings have been concluded but this should not prevent early lessons learned from being implemented.

Accountability and Disclosure

The LSAB need to consider carefully who might have an interest in reviews – e.g. elected and appointed members of authorities, the Coroner, staff, members of the adult at risk's family, the public, the media – and what information should be made available to each of these parties. This must take into account the following:

- The need to maintain confidentiality in respect of personal information contained within reports on the adult at risk, family members and others;
- The accountability of public services and the importance of maintaining public confidence in the process of internal review;
- The need to secure full and open participation from the different agencies and professionals involved;
- The responsibility to provide relevant information to those with a legitimate interest;
- Constraints on sharing information when criminal proceedings or an inquest are outstanding, in that access to the contents of information may not be within the control of the LSAB. (3rd party ownership of information and Public Interest Immunity).

It is important to anticipate requests for information and plan in advance how they should be met. For example, a lead agency may take responsibility for debriefing family members, or for responding to media interest about a case, in liaison with contributing agencies and professionals.

In all cases, the LSAB overview report should contain an executive summary, which includes as a minimum, information about the review process, key issues arising from the case and the recommendations that have been made. Such publication will need to be timed in accordance with the conclusion of any related court proceedings. The content will need to be suitably anonymised in order to protect the confidentiality of relevant family members and others. The timing and extent of publishing of the executive summary will be a matter for the LSAB, who will also consider if it is to be made publically available.

Learning Lessons Locally

The LSAB recognises that Case Reviews are likely to be of minimum value unless lessons are learned from them. The following will be relevant in helping that maximum benefit is gained from the review process:

- The review should be conducted, as far as possible, in such a way that the process is a learning exercise in itself, rather than a trial or ordeal;
- Consideration should be given to what information needs to be disseminated, how and to whom, in the light of a review. Examples of both good and bad practice and areas where change is required should be communicated.
- Recommendations should focus on a small number of key areas, with specific and achievable proposals for change and intended outcomes. The role of training and staff development should be identified in all reports.
- The LSAB should carefully audit action against recommendations and intended outcomes. The Review Panel may need to reconvene to evaluate progress against the action plan. This may not be necessary in every case, and is for the Review Panel to decide.
- The LSAB will need to consider how lessons learned locally will be communicated nationally and whether there are lessons for policy and practice.
- The Review Panel may need to reconvene to evaluate progress against the action plan. This may not be necessary in every case, and is for the Review Panel to decide.

Acknowledgement

(This protocol has been written with reference to Association of Directors of Social Services guidelines and influenced by the BANES SCR Protocol)

T. Allegations Against Staff

See:
[Section O:
Agency Roles
and
Responsibility](#)

This section should be read in conjunction with Section O: Agency Roles and Responsibilities

This section relates to circumstances where an allegation(s) has been made that a member of staff or volunteer(s) has caused harm to an adult at risk. It applies to all staff, people on work experience placements, and volunteers who work with service users in any health, care, support or training services.

Services covered by this section

- All services for adults at risk that are provided by partners and all service providers. This includes services in the statutory, voluntary and private sector and service providers that are commissioned by key agency;
- Befriending and “sitting” services, clubs and leisure groups;
- Employment agencies providing staff to work with adults at risk; and
- **All** services for adults at risk whether or not they are funded by a statutory body.

This section is to be applied where:

- Abuse has been alleged or suspected as part of a current investigation in connection with the individual’s work;
- An allegation has been made about an individual outside of their particular work context;
- An allegation has been made in respect of past or present users of the service; and
- It has been discovered that an individual known to have been involved previously in adult abuse, is or has been working with vulnerable people.

Standards of conduct

All staff, paid or unpaid workers and volunteers working with adults at risk are required to maintain a high standard of conduct and work professionally in accordance with national standards of good practice (e.g. National Minimum Standards, Health Care Council Codes of Practice, standards set by Nursing and Midwifery Council).

Induction and staff training should include the risk of allegations being made and what action the employer will take should such an allegation be made. Training should also be provided on the prevention and recognition of abuse ([see Section O](#)).

This section should always be used in circumstances where there are allegations or suspicions of abuse or neglect by staff, care workers, people on work experience programmes or volunteers. They should also be used when staff, care workers or volunteers have used inappropriate sanctions against a service user including the inappropriate use of restraint (physical interventions) i.e. other than permitted by law or guidance issued by government or required as part of a care plan.

Responsibility to make a referral using the Safeguarding Adults at Risk' Procedures

It is recognised that circumstances where a member of staff has been alleged to have caused the harm is a difficult time for the individual involved, their colleagues, manager and proprietor of the service. It is also difficult for service users and carers.

However, all allegations require immediate attention and need to be investigated using the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire. It is important that employers understand their responsibilities in respect of these procedures and the process that the investigation will follow.

NB: Providers of services must not instigate actions/investigations as this may compromise a full investigation under the procedures, however all providers have a duty to ensure the safety of their service users and protect them from further harm.

It is also recognised that action taken may have a significant impact (including financial and continuity of service) on the smaller employers and self-employed care workers. Agencies involved in implementing these procedures must act promptly.

Relationship to the organisation's internal procedures

The employer's Human Resources policy and procedures should include guidance about how an allegation of abuse will be dealt with and provide clear links with Safeguarding Adults at Risk in Swindon and Wiltshire.

Following an allegation or suspicion that abuse has taken place, an investigation under the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire should be considered in the first instance **i.e. Safeguarding Adult procedures take precedence over the employers' procedures.**

All organisations providing services in Swindon and Wiltshire have a duty to apply these procedures and support safeguarding principles in their practice.

All terms and conditions covering employment and services must reflect the importance of the safeguarding adults at risk and agencies providing services must adhere to the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire.

Terms and conditions of employment should also address the duty of staff to report abuse and to co-operate with any adult safeguarding investigations ([see Section O](#)).

All providers' of services need to have an internal process on how to submit alerts once abuse is alleged or suspected. Service providers need to have a procedure in place describing how Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire will be applied within their organisation. This internal procedure should complement not replace the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire. In regulated services this is usually a requirement.

Making a Referral

If the employer has received an alert or is concerned that abuse has taken place, they are to refer the case to the relevant health and social care team or Police Safeguarding Adults Investigation Team without delay.

For regulated services, there is also a requirement to notify the regulating authority. Due regard should also be given to preserving evidence ([see Section M](#)) If service providers are unsure as to what might constitute evidence, they should contact one of the Police Safeguarding Adults Investigation Team for advice.

Following discussions with appropriate agencies, the Investigating Manager will make a decision concerning the severity of the allegation and whether it requires a multi-agency investigation.

Advice will be given to the service provider on what appropriate action is required. This could be around further safeguards to the adult at risk, or whether precautionary action is required with regards to member of staff e.g. suspension, redeployment, leave etc.

If the case is to proceed to an investigation under these procedures and the Investigating Manager is satisfied that the employer or employer's representative is not part of the abusive situation, they must be invited to participate in the investigation. In all cases, the employer should be kept informed about the progress of the case within the bounds of confidentiality.

To ensure that any criminal investigation is not compromised, the employer will also need to be given appropriate guidance on what information can be shared with the employee in question. The employer also needs to be aware that information may only be shared on a "need to know" basis and that they should make every effort to ensure that confidentiality is maintained.

Actions Taken by Employers

Although the ultimate responsibility lies with the employer, it is essential that they give due regard to the advice given by those taking action on the referral.

- **Support to Employees**

If the employee is a member of a trades union or professional association they should be advised to contact that body at the outset of the investigation. The employer should arrange to provide appropriate support to the individual while the investigation is on-going. For staff or volunteers who are themselves adults at risk, additional support may be required from advocacy or specialist support service.

The employer should keep the person who is the subject of the allegations informed of the progress of the case within the parameter of confidentiality agreed by the Investigating Manager.

If the person is suspended, the employer should also make arrangements to keep the individual informed about developments in the workplace.

- **Suspension**

There will be occasions where it is necessary to suspend an employee about whom an allegation has been made. Suspension from duty is not an indication of guilt.

Suspension must not be used as a punitive measure and should be in line with the organisation's staff disciplinary procedures and best employment practice.

Suspending a member of staff should be seen as a precautionary measure to ensure that the safety of the alleged victim and other service users is maintained.

In some cases it may be necessary in order to preserve evidence and also to protect the employee themselves from further allegations.

Suspension should not be automatic or undertaken without careful thought. Consideration could be given to other action, for example, redeploying a member of staff to another section or unit, offering leave or working under supervision.

- **Record keeping**

It is important that employers keep a clear and comprehensive record of any allegations made; details of how the allegations were followed up and resolved and of any actions taken and decisions reached, which could include "no case to answer".

These should be kept in a person's confidential personnel file and a copy given to the individual.

Such information should be retained on file, irrespective of whether the person has left the organisation.

The purpose of the record is to enable accurate information be given in response to any future request for a reference. It will also provide clarification when any future CRB Disclosure reveals information from the police that an investigation was carried out that did not lead to a prosecution or conviction. The information may also be needed if further allegations are made concerning the same individual.

- **Incident Forms**

On those services where it is a requirement or if it is a requirements to inform the Health and Safety Executive, an incident form should be completed in addition to making the appropriate referral.

Information Sharing

There are some circumstances where one agency may need to request information from another to assist with an investigation.

For example:

- Police information being used in a subsequent disciplinary hearing; or
- Information from an employer regarding a previous disciplinary investigation being made available to the Police as part of a safeguarding investigation.

See: [Section L: Information Sharing & Confidentiality](#)

In all cases information needs to be requested in writing to the appropriate agency outlining the reasons why the information is required and how the information will be used. Due regard needs to be given to the Human Rights of the individual and freedom of information and data protection.

Actions to be taken when an investigation is completed

- **Support and Training**

If it is decided at the conclusion of a case that a person who has been suspended can return to work, the employer should consider how best to facilitate that. Most people will benefit from some help and support after what will have been a very stressful experience.

The investigation may also have highlighted the need for additional training.

If the person who was the subject of the allegation is still a user of the service the employer will need to consider how contact with that person can best be managed.

Where an allegation is investigated and found to be untrue, it is likely that the member will require on-going support and supervision. It is recognised that an unfounded allegation can have a considerable impact on the member of staff and employers must give due consideration to this in deciding the support required.

- **Disciplinary Action**

At the conclusion of the investigation there may be a need for the employer to take disciplinary action. In some cases this line of action will need to be pursued even if the conclusion is that bad practice has taken place rather than abuse.

The fact that criminal proceedings are not being pursued is not in itself an indication that the alleged abuse did not take place. Disciplinary action is based on the balance of probability and does not need the same level of proof as action taken within the Criminal Justice System.

Any disciplinary action should be carried out in line with the organisation's disciplinary procedures and in line with good employment practice. If the employee chooses not to attend their investigatory interview or their disciplinary hearing, a disciplinary decision may need to be taken in their absence. As the outcome of such action could impact on them continuing to work in their chosen profession, notification of the outcome of the disciplinary hearing will need to be issued in writing.

- **Learning lessons**

At the conclusion of the investigation in which an allegation is substantiated the employer should review the circumstances of the case to determine whether there are any improvements that need to be made to the organisation's procedures or practice to help prevent similar events in the future.

- **Referral to the Disclosure and Barring Service & Professional Bodies**

Employers are required to refer individuals to the Disclosure and Barring Service for them to consider whether a member of staff should be prevented from future work with vulnerable groups. This must be done either if the safeguarding process, criminal prosecution or disciplinary process has substantiated a case against the employee. It should also be noted that a referral may be required when an employee has left the employment prior to the necessary action being taken. Further information can be found by visiting the DSA website:

<http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/services/>

See
[Appendix
4: DBS
Guidance](#)

- **Referral to Professional bodies**

Employers are also responsible for making referrals to professional bodies (e.g. Health Care Council, Nursing and Midwifery Council, General Medical Council) regarding the fitness to practice of a member of staff where this is appropriate.

Guidance for organisations engaging volunteers

Although many of the actions required for employees can apply to how volunteers are managed, agencies need to be aware of the following specific issues relating to the engagement of volunteers.

The organisation engaging volunteers needs to:

- Have clear policies in place on how volunteers are used to support vulnerable people;
- Have a policy on how to assess volunteer's suitability e.g. requesting references and carrying out CRB checks;
- Have a clear policy about the provision of references to other agencies or employers engaging a person who has previously been a volunteer with the organisation;
- Provide an induction programme that includes awareness of expectations, standards and processes. This also need to include where concerns are raised about their conduct, what action may need to be taken, and how they can raise alerts concerning other people's conduct;
- To be prepared to suspend the volunteer from contact with vulnerable people if concerns are raised;
- A volunteer agreement outlining the responsibilities of the volunteer and the agency involved; and
- To provide on-going support and training to volunteers.

Resignations and “Compromise Agreements”

(The term “compromise agreements” is used to describe the situation by which a person agrees to resign and the employer agrees not to pursue any disciplinary action and both parties agree a form of words to be used in references.)

The fact that a person tenders his/her resignation or ceases to provide their services must not prevent an allegation being investigated in accordance with these procedures.

It is important that every effort is made to reach a conclusion in all cases where an allegation has been made about the safety and well-being of an adult at risk including any in which the person concerned refuses to co-operate with the process.

Wherever possible the person should be given a full opportunity to answer the allegation and make representations about it. The fact that a person resigns is not an indicator of innocence or guilt.

Even if a person resigns and/or refuses to co-operate with the investigation, this will not prevent the matter being investigated under the 'Safeguarding Adults at Risk' Procedures. Although this may cause difficulties, it is important that the investigation is completed. It may be difficult to reach a conclusion about what has happened in these circumstances and may not be possible to then apply any disciplinary sanctions but it is important to reach and record a conclusion wherever possible.

Even if someone resigns the employer retains the duty to make a referral to the Disclosure and Barring Service where this is applicable ([see Appendix 4](#)).

NB: Where there is an allegation or suspicion that abuse has taken place “compromise agreements” must not be used.

U. Large Scale Investigations

This section is aimed to provide guidance where a large scale investigation is required under these procedures.

The circumstances that may require a case to be investigated as large scale could be where:

- It is alleged or suspected that a significant number of adults at risk have been abused in a single setting;
- It is alleged or suspected that an individual is responsible for the abuse of a significant number of adults at risk in different settings;
- There is a group of alleged perpetrators targeting a number of adults at risk in a range of settings;
- The length of time the abuse has alleged to have taken place adds to the complexity of a case; and
- Repeated incidences of poor care provided that may indicate more serious concerns about the overall conduct of a service (see ADASS South West Thresholds Protocol or local guidance).

Consideration needs to be given as to whether an existing investigation involving other vulnerable groups that may impact on adults at risk may already be underway managed by another agency (i.e. within children's services). Consideration is also required as to whether other agencies need to be involved in large scale investigations managed by adult services e.g. where a group of perpetrators works across services for children and adults.

Most cases could have implications for a larger group of vulnerable adults than an alert initially identified. It is unnecessary to instigate large scale action in all circumstances. In most case is it in order for the Investigating Manager to continue ordinary safeguarding procedures, but should notify the lead for safeguarding, if at a later stage it is felt that the scope and complexity of a case requires a large scale investigation.

See:
[Section 3:
Managing
Adult
Safeguarding](#)

Process

For all large-scale enquiries, the same processes for the management of individual cases are still required. The requirement to take protective action, assess the alert, hold an Early Strategy Meeting, Adult Safeguarding Conference and Adult Safeguarding Review still applies. However depending upon the scale of the investigation, it may be unrealistic to keep to the timescales as required for individual cases. Likely timescales need to be agreed by the multi-agency group and recorded in the minutes of the initial Early Strategy Meeting and terms of reference.

As required, it is the duty of the Investigating manager to inform the Senior Management and Chair of the LSAB of the nature of the investigation and in some cases ensure that senior Police officers are also aware of the scale of the alert and may decide as to the appropriateness of major incident procedures being instigated. Legal advice may be required prior to instigating a large-scale investigation. NHS Partners may be required to instigate an internal investigation, under the Serious Incident Requiring Investigation Policy to support the large scale investigation. Care needs to be taken to ensure that any actions within this investigation are integrated

into the safeguarding arrangements in relation to the large scale investigation. Guidance can be sought by either the Investigating Manager or safeguarding lead.

All relevant agencies are required to cooperate in assisting with the investigation and process. As appropriate there may be a need to negotiate the pooling of skills and resources particularly with regards to safeguarding action and the investigation.

Terms of reference

Unlike Early Strategy Meetings on individual cases, a key function of the ESM in large scale enquires is to determine a terms of reference defining the focus, scope, timescales and required participants (e.g. specialists) to undertake the investigation.

The terms of reference will enable the investigating officers to develop an investigation plan to be agreed by the Investigating Manager.

In managing a Large Scale Investigation it may be apparent that an allegation of abuse regarding an individual may require an individual investigation. In these circumstances, the Investigating Manager will need to decide if a separate process is required. Feedback into the wider group involved in the Large Scale Investigation is also required.

Timescale

Depending upon the scale of the investigation, consideration needs to be given as to the timescales, number and range of investigators required, the role of involved parties and whether dedicated time needs to be given to the investigation. The impact of this will need to be raised with the senior managers with regards to the possible need to take key staff away from their substantive duties.

Often a large-scale investigation will require a wider group of participants to assist in the process. There may be a requirement to involve other teams within the same service and teams in other local authority areas.

See:
[Section R: Inter-authority Arrangements and Ordinary Residence](#)

Action to Prevent further Harm

As with all safeguarding cases it is essential that any necessary action is taken to protect the adults at risk from harm. Where a number of vulnerable service users are at risk this may require the support of a number of teams and agencies to act quickly (for example) to secure alternative placements while ensuring their wishes are considered as much as possible and their needs are met. Where the responsible authority is out of the area, authorisation may be required to take appropriate action and for the local agencies to act on their behalf. In some cases clear advice and support may be required for service users who fund their own care.

Where it is necessary to relocate service users who have been assessed as lacking the capacity to consent as to where they live and associated arrangements for their care and/or treatment and where the proposed care plans contains increased restrictions, consideration needs to be given to Deprivation of Liberties Safeguards and whether it is necessary to engage an Independent Mental Capacity Advocate.

See:
[Appendix 7: Criteria for the use of IMCA in Safeguarding Adults Cases](#)

Alternative methods in addressing concerns about the performance of a specific care setting and the safety of the service users living there should be considered where relocating groups of individuals may cause a further detrimental impact on them i.e. placing a more skilled care team in the setting.

In discussion with the appropriate Manager /Director for Commissioning it may be necessary to suspend the future placement of others where a care setting is under investigation. How this is communicated to the particular service needs to be given careful consideration to avoid the potential for compromising the investigation. As part of the ADASS South West Cross Border Information Sharing Protocol other local authorities will need to be informed of any action taken about a service.

It may be necessary to alert other agencies outside of the safeguarding process if it is believed there could be an impact on the level of usage in that service. For example Sexual Assault Referral Centre, therapeutic services, victim support.

The provision of counselling and therapy services may be required for alleged victims, their carers and families. Where possible this should be facilitated.

Strategy Meetings, Safeguarding Conferences and Reviews

All investigations will be overseen by the lead for Safeguarding Adults, who may delegate the management of the case to a colleague who is deemed competent and experienced in managing safeguarding procedures, but will usually take the role of the Investigating Manager. In some circumstances, it may be appropriate to engage an independent person to oversee the process and management of the case.

Once an alert has been raised and on assessing the alert it is believed a Large Scale Investigation is required, an Early Strategy Meeting must be called. The meeting will need to involve as appropriate:

- Team Manager of the Health and Social Care Team relevant to the majority of vulnerable adults alleged to have been harmed or are at risk of harm;
- Relevant care manager(s);
- Wiltshire Police; and
- Health professional (e.g. CPN, Modern Matron, District Nurse).

Invitees may also need to include the following depending upon the circumstances of the case:

- Care Quality Commission – If the case relates to a regulated service;
- Commissioning and contracts managers/officer - if the case relates to a commissioned service (Adult Services, Care Trusts, etc.);
- GP – if the case relates to a service with an identified GP or where a GP has expressed particular concerns in relation to the case;
- Representatives from other local authorities or Health Trusts – if the case relates to a service where placements have been made by other Councils or Health Trusts or if those who are alleged to have caused harm have targeted people in more than one local authority area;
- Other regulators (e.g. Health and Safety Executive, Environmental Health);
- Representatives from other Council Departments (e.g. Children's Services, Community Services, Housing Services, Environmental Health);
- Relevant Provider's Representative – as long as the Investigating Manager is satisfied that the person is not complicit in the alleged abuse or responsible for a service where institutional abuse is alleged;
- Legal services;

- Independent Mental Capacity Advocates or Advocacy Services; and
- Press Officer.

Where attendance at this meeting is required by a specific person who is unable to attend, a report must be requested including their views of the circumstances surrounding the case.

Consideration to the above list will be required for any subsequent Adult Safeguarding Conferences and Adult Safeguarding Reviews.

Communication and Information sharing

As far as possible the following information needs to be available at the meeting:

- The identity and responsible authority of all alleged victims;
- Where possible, an overview of the alleged victims' mental capacity (in some case the mental capacity of the alleged perpetrators will also need to be considered);
- Previous knowledge/concerns about alleged perpetrators or service;
- The identity of staff working in a service that is under suspicion;
- In the case of regulated services the latest inspection report of the service; under suspicion.
- Any reports completed following contracting visits to services;
- Any communication needs of the alleged victims; and
- Any issues regarding the use of Mental Capacity Act 2005 especially in regards to Deprivation of Liberty Safeguarding.

For any information that is not available, agreement will need to be reached on the most effective way to secure the information. In some cases it may be necessary to obtain direct from the provider through contracting arrangements.

Consideration will be required on the most appropriate method to record information on the case. Whether there needs to be a central file linked to individual's case records on SWIFT/Care First giving very basic reference to a Safeguarding Case and referring to the Investigating Manager, or for there to be no recording on individual electronic case files.

During the investigation the following may require consideration:

- How to ensure families/carers/next of kin are kept informed about the investigation and consider identifying a lead to act as liaison;
- Whether past service users could have been abused;
- Rates of mortality within a care setting;
- Any requirements for medical treatment and/or forensic examinations; and
- How to deal with media interest.

It is necessary to share information about a large scale investigation with other local authorities under the Association of Directors of Adult Social Services South West Safeguarding Adults Cross boundary information sharing protocol.

Closing the Case

On closing the case it is essential that all agencies are debriefed about the investigation. As with any other safeguarding case, consideration needs to be given to the continued safeguarding of the adult (or adults) at risk and to ensure those who raised the initial concern are informed of the actions taken (as appropriate with due consideration of individual privacy and confidentiality) and whether the case needs to be referred for consideration under the Serious Case Review Protocol.

See:
[Section S:](#)
[Serious](#)
[Case](#)
[Reviews](#)

Swindon LSAB and Wiltshire LSAB need to be informed of any lessons learned from the Investigation.

LEGAL FRAMEWORK

1. Introduction

At present, the legal framework surrounding adult abuse is fragmented, but it should not be presumed that there are no legal powers to intervene in a case of suspected abuse. This section is intended to provide an overview of the legal powers that may be available in the context of Adult Protection work, but staff must always seek legal advice in pursuing remedies through the courts.

2. Legislation underpinning services

National Assistance Act 1948

Section 21 (1) – Local authorities have a duty to provide residential accommodation, including private and voluntary, for “people aged 18 or over who by reason of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them” and who are ordinarily resident in their area.

Section 29 – To promote the welfare of people with disabilities “the local authority shall make arrangements for promoting the welfare of persons blind, deaf or dumb or who suffer from mental disorder of any description or who are substantially and permanently handicapped by illness, injury or congenital deformities or other disabilities”.

Chronically Sick and Disabled Persons Act 1970

Section 2 – Places a duty on the local authority to inform themselves of the number of persons whom section 29 of the National Assistance Act 1948 applies and of the need for making by the authority of arrangements under that section for such persons.

Health Services and Public Health Act 1968

Section 45 – This act places a duty on local authorities to promote the welfare of old people “in order to prevent or postpone personal or social deterioration or breakdown”. Home meals and day care centres are examples of services provided under this section.

Housing Act 1986

Part VII – This act places a duty on local authorities to provide accommodation for homeless people with a priority need, i.e. people who are vulnerable because of old age and homelessness, mental illness or handicap or physical disability or other special reason.

National Health Service Act 1977

Schedule 8 – Places a duty on local authorities to make arrangements to prevent illness, care for people who are suffering from illness and provide aftercare for people suffering from illness, care of expectant and nursing mothers (other than the provision of residential accommodation) and home help and laundry facilities.

Disabled Persons (Services Consultation and Representation) Act 1986

States the entitlement of disabled people to a written assessment of need.

Also gives disabled people the right to have a representative present at the time of their assessment.

Care Standards Act 2000

Part I

This Act established the National Care Standards Commission as a regulatory body for social care, and private and voluntary healthcare service in England and brings local authority care homes within the regulatory scheme.

Part II

This section deals with the registration of establishments.

Section 11: makes it an offence for any person to carry on or manage an establishment without it being registered.

Section 24 makes it an offence for a person registered in respect of an establishment to fail, without reasonable excuse, to comply with any conditions of the registration.

Section 12: deals with the procedure for applications for registration.

Section 13: deals with the procedure for the granting or refusal of a registration. This section places a duty on the registration authority to register an establishment if it is satisfied that the applicant has demonstrated that all the relevant requirements are being and will continue to be complied with. The onus of satisfying the registration authority that an application should be granted does of course fall on the applicant.

Section 14 sets out the grounds upon which a registration authority may cancel a registration for an establishment.

Section 20 sets up an urgent procedure for cancellation of a registration, under which the registration authority may apply to a justice of the peace, for an Order cancelling a registration if it appears that, unless the Order is made, there will be a serious risk to a person's life, health or well-being.

Although an application under this Section may be made without notice if the Justice thinks fit, as an Order made under this Section involves the determination of the civil rights and obligations of the proprietor for the purposes of Article 6(1) of the European Convention on Human Rights, failure by the registration authority to take reasonable steps to inform either the proprietor or his or her legal representative of the pending hearing would violate the proprietor's Right to a Fair Hearing under that Article.

Section 31 sets out the various powers to inspect by persons authorised by the registration authority. These include a power to enter and inspect premises, documentation, and interviewing the manager, staff or patients in private. Further, a general practitioner or registered nurse may examine a person with

their consent if they have reasonable cause to believe that a patient or person accommodated or cared for there is not receiving proper care.

There is no power to interview a person who does not consent to be interviewed or a person who lacks the mental capacity to provide consent. A mentally incapable person may be examined by either a nurse or a doctor and his or her medical records examined if it is believed that the person is not receiving proper care.

Part VII

Part VII places a duty on the Secretary of State to establish and operate a list of persons who are considered unsuitable to work with adult at risks; requires providers of care services and registration authorities to refer individuals for inclusion on the list; provides for referrals to be made to the list as a result of the findings of certain inquiries; requires prospective employers to check that applicants for posts that involve working with adults at risk are not on the list; and provides individuals with the right of appeal against a decision to include them on the list. **See appendix 4**

The Care Homes Regulations 2001

The Care Homes Regulations 2001 were made under the Care Standards Act. Regulations 7 to 10 make provision about the fitness of the persons carrying on and managing the home. Part III makes provision about the conduct of care homes, in particular as to the health and welfare of service users, and as to the facilities and services that are to be provided.

Public Health Act 1936 and Public Health Act 1961

Sections 83-85 – Gives the power to enter and clean premises.

National Health Service and Community Care Act 1990

Section 47 – Provides a framework for all assessments of adults at risk. Allows provision for multi-agency assessment for complex situations. The lead agency for the co-ordination of assessments is the Social Services Department.

Section 48 – The Secretary of State authorises persons to enter and inspect premises in which community care services are proposed to be provided by the local authority.

The service user/resident of the premises may be interviewed in private for the purposes of investigating a complaint.

Carers (Recognition and Services) Act 1995

Under this Act a carer is entitled to request an assessment in their own right if they are providing a substantial amount of care on a regular basis. The person being cared for must have been assessed under Section 4(T) of the NHS and Community Care Act (1990), The Children Act (1989) or Section 2 of the Chronically Sick and Disabled Act (1970). The results of the assessment should be taken into account when the local authority decides that the services should be provided to the service user.

Community Care (Direct Payments) Act 1996

The Act enables local authorities to make cash payments to adults aged 18 years and over who are eligible for Community Care Services, so that they can manage their own care in lieu of receiving direct community care services organised by the Local Authority.

3. Mental Health

The Mental Health Act 1983 is a complex piece of legislation and the following 'guide' should be regarded as an index. Approved Social Workers (ASW's) in Adult Services/Community Mental Health Teams have detailed knowledge of this legislation and should be able to advise you if you feel any of these sections would be useful. Approved Social Workers are the only practitioners with the power to make applications under this Act.

Mental Health Act 1983

Section 131 (1) – This section provides that a patient can either enter hospital for treatment for mental disorder on an informal basis, or remain in hospital on an informal basis once the authority for his or her original detention has come to an end..

Section 2 - Provides for the compulsory admission for assessment for a period of up to 28 days on the grounds that he is suffering from a mental disorder and ought to be detained in the interests of his own health or safety or for the protection of others. There is no need for a formal diagnosis of mental disorder for such an application to proceed. Generally, if 28 days has elapsed and the patient is to stay in hospital he must do so either as an informal patient or under s3 for treatment.

Section 3 – Provides for the compulsory admission for treatment for a period of up to 6 months. The person must be suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment. The nature or degree must be such to make it appropriate for him to receive medical treatment in a hospital. It must be necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment."

Section 4 – Emergency admission/observation. Needs only one doctor to recommend. This section lasts for three days.

Sections 7-11- Guardianship. The use of guardianship is intended to protect and enable a person to remain in the community. It lasts six months. Includes a requirement for access for doctors or social workers. Can require the person to reside at a particular place. Can require the person to attend places for the purposes of medical treatment (no power to enforce), occupation, education and training. There is a power to return a person to the place in which they are required to reside but there are legal difficulties concerning whether there is a power to remove a person who has not been in a residential unit from their home in order to place them in a residential unit. Legal advice should be sought for these issues.

Section 13 (4)- Places a duty on Social Services to direct an Approved Social Worker to consider making an application for admission under the Act if requested to do so by the nearest relative. (This power could be used if the mentally disordered person complains of mistreatment/abuse by that person to a third party).

Section 115 – If a mentally ill person is not receiving proper care, this section allows the ASW entry and inspection. Entry by force is not permitted.

Section 117 – Provides for after care responsibility by the local authority, jointly with the health authority for persons detained under Section 3, persons admitted to hospital in pursuance of a Court Order made under Section 37 (by order of a criminal court) and persons transferred to hospital from prison.

Section 127 (2) – Provides that it is an offence for any member of staff of a hospital or mental nursing home or for any person to wilfully neglect a patient or person who is subject to his/her guardianship under this Act. It is also an offence for a guardian or other person who has the care of a mentally disordered person living in the community to ill-treat or wilfully neglect that person.

Section 129 (1) – Proceedings may be taken if a social worker is obstructed without reasonable cause.

Section 135 – After presenting the case to a Magistrate, a warrant may be given which allows for the search and removal of a person to safety for 72 hours. To be used in conjunction with Police (often a doctor also accompanies). The person should be suffering from “neglect, ill-treatment or not kept under proper control or who is living alone and unable to care for themselves”.

Section 136 – Gives the Police the power to remove to a place of safety a person suffering a mental disorder in a public place.

Mental Health (Patients in the Community) Act 1995

Section 25A – After-care under supervision. This is for patients who pose a greater risk and have higher medical needs than those subject to Guardianship. It has the same provisions as Guardianship with the addition of the power to convey. It is a health-led not a Local Authority-led process.

See also 6. Criminal Law for criminal offences under the Mental Health Act.

The Mental Capacity Act 2005

(Expected date of implementation April 1st 2007)

The Mental Capacity Act sets out single test for assessing whether a person lacks capacity. No one can be labelled “incapable” as a result of a particular medical condition or diagnosis and the assumption is made that most people will be able to make many of their own decisions even if they lack capacity in relation to some complex issues

See
[Section K:
Capacity
Consent
and Best
Interests](#)

Everything that is done for a person who lacks capacity will need to be done in that person’s best interests. The Act provides a checklist to enable people to determine what a “best interest” is.

The Act clarifies that where a person is providing care or treatment for a person who lacks capacity then the carer can provide that care without incurring legal liability

The Act provides for a system of court appointed Deputies to both replace and extend the system of receivership in the current Court of Protection

A new Court of Protection is being appointed which will have jurisdiction over the Act and will be the final arbiter for capacity matters. Deputies will be able to make decisions on welfare, healthcare and financial matters as determined by the Court. They will only be appointed however if the Court cannot make a one-off decision to resolve the issues.

The Act also provides for individuals to appoint a Lasting Power of Attorney (LPA) to act on their behalf if they should lose capacity in the future. LPAs will be able to make decisions on health and welfare as well as financial matters (see below)

The Office of Public Guardian will register LPAs and will work with the police and local authorities to respond to any concerns raised about the way in which an attorney or deputy is acting

An Independent Mental Capacity Advocacy service will be provided. The IMCA service will provide advocacy for people without capacity who have no friends or relatives to support them and the IMC Advocate will reflect the wishes, feelings, beliefs and values of the person being represented

The Act introduces a new criminal offence of ill treatment or neglect of a person who lacks capacity and a person found guilty of such an offence may be liable to imprisonment for up to five years.

4. General Neglect

National Assistance Act 1948

Section 47 – Allows for the removal or care of a person considered to be suffering from grave chronic disease or being aged, infirm or physically incapacitated, is living in unsanitary conditions and is not receiving the proper care and attention. (All three criteria need to be fulfilled).

Seven days notice is required. Application to be made to the Magistrate's Court. The agreement of the Community Physician and GP is needed.

National Assistance (Amendment) Act 1951

Section 1 – Enables a Section 47 (above) application to be made without 7 days notice and is for three weeks only, after which the Section 47 procedure must be followed. Medical Officer of Health must certify with another Medical Practitioner for removal without delay.

5. Financial Protection

Mental Health Act 1983 Court of Protection Rules 1994

Part VII – If an adult is “incapable by reason of a mental disorder of administering his property and affairs” an application can be made to the Court of Protection. This application must be supported by appropriate medical evidence. There are two types of application:

- 1) Receivership – which takes control and oversees the management of an estate (property and finances only – not welfare and care).
- 2) Short Procedure Officer – for estates of less than £5,000. The court can authorise assets to be used in a certain way.

Powers of Attorney Act 1971

The adult can, through a legal process, empower someone else to act on their behalf in relation to all their financial affairs. Unless any restrictions or conditions are placed on the Attorney this person will be able to do almost anything that the adult would have done, for example sign cheques, or withdraw money from saving accounts. The adult granting Power of Attorney must be mentally capable at the time and can appoint almost anyone who is over 18 years of age. However, the Public Trustee does not act in this capacity. A Power of Attorney must be made in the prescribed form, which can be purchased from Legal Stationers. Anyone who is thinking of granting a Power of Attorney should consider making this an Enduring Power of Attorney.

An ordinary Power of Attorney lasts only so long as the person who grants it is mentally capable. In order for a Power of Attorney to be able to continue once a person has become incapable by reason of a mental disorder, it should be an Enduring Power of Attorney and there are prescribed forms for this.

Enduring Power of Attorney Act 1985

An Enduring Power of Attorney is a Power of Attorney, which continues after the adult becomes mentally incapable of managing their own affairs. When the Attorney believes that the person is becoming mentally incapable, the Attorney must apply to register the Enduring Power of Attorney with the Court of Protection before they can act or continue to act under it.

Powers of Attorney can in themselves be instruments of financial exploitation.

Lasting Power of Attorney (LPA)

From April 2007, when the Mental Capacity Act 2005 comes in to force, there is provision for Lasting Powers of Attorney. There will be two types:

- 'property and affairs' (which will replace the current enduring power of attorney)
- 'personal welfare' which allows the donee to make health and welfare decisions in the donor's best interests once the donor lacks capacity.

However, Enduring Powers of Attorney which are already in force will continue to be valid.

Department of Social Security Benefits

Agency – The claimant nominates someone to collect their benefit. This is an understanding between a claimant and their agent.

Appointeeship - The Benefits Agency can appoint someone else to receive an adult's benefit and to use that money to pay expenses such as household bills, food and personal items. An Appointee should be a close friend or relative or someone who is regularly in contact with the adult. The person who is willing to act as the Appointee must contact the local Benefits Agency office, and when there is no one else Social Services can act in this capacity, 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 this arrangement and the Benefits Agency can end the arrangement at any time if it is not working satisfactorily. Some adults unfortunately have no one to whom they can turn when they need an Appointee. The Benefits Agency Policy Unit consider that Social Services should assist in that event. An individual within Social Services must be named to take this on. Some adults are not capable of giving an informed consent to the appointment of an Appointee. The Benefits Agency Policy Unit consider that an appointment, in appropriate circumstances, can still be made.

Social Security (Claims and Payments) Regulations 1987

Regulations 33 and 34 – Department of Social Security must be notified of the claimant's inability to manage their benefits.

6. Criminal Law

Police and Criminal Evidence Act 1984

Section 117 – Gives the Police the power to search and enter premises to save life or limb or prevent serious damage to property.

Section 24 – Police may arrest without warrant anyone suspected of having committed or is about to commit an arrestable offence.

Section 25 – Allows the Police to arrest someone to prevent them causing physical injury to another person or to protect a child or others.

Criminal Procedures and Investigation Act 1996

This Act was introduced to provide safeguards in relation to evidence gathered during the course of a criminal investigation.

It sets out procedures to document such material whether it is eventually used in a trial or not, and introduces a code of conduct as to what material is disclosed to the defence. It highlights the importance of retaining all items that could later be used in evidence until the Police 'Disclosure Officer' has assessed their relevant evidential value and advised on their retention or disposal. If these procedures are not followed the accused may be acquitted because of a breach of the Act or Code, or could be wrongly convicted.

The Crime and Disorder Act 1998

The Act places on Local Authorities and the Police a joint responsibility for the formulation of crime and disorder reduction strategies in each district, borough or unitary authority area in England and Wales. It makes clear that this duty applies equally to county councils. It also places a legal obligation on police authorities, probation committees and health authorities to co-operate fully in this work and gives the Home Secretary power to extend that obligation to any other person or body he chooses.

The Act also contains a wide range of provisions designed to tackle Youth Offending, Anti-Social Behaviour, Racially Aggravated Offences, Sex Offenders, Child Safety and other Criminal Behaviour. The Anti-Social Order will allow the local authority and police to act against an individual who acts in a manner likely

to cause harassment, alarm or distress to one or more people, not in the same household as himself.

Criminal Justice Act 1988

Section 39 – Common Assault. Assault is defined as **any** physical contact without consent. It includes acts or words involving the threat of violence. No physical evidence may be present. It includes assault and battery – which involve the threat of **immediate** violence.

Offences Against the Persons Act 1861

This covers assault which leaves a physical injury (applies to any age).

Section 47 – actual bodily harm. This is assault occasioning actual bodily harm.

Section 18 – grievous bodily harm. This is wounding with intent to do grievous bodily harm. It includes assaults causing cuts, broken bones, and damage to internal organs.

Mental Health Act 1959

Section 128 – Makes it an offence for men who are involved in hospital/nursing homes or who are guardians to have unlawful sexual intercourse with a woman who is having treatment for mental disorder or is subject to guardianship unless he does not know and has no reason to suspect her to be mentally ill.

Mental Health Act 1983

Section 127 (2) – Provides that it is an offence for any staff member of a hospital or mental nursing home or for any person to ill-treat or wilfully neglect a patient or person who is subject to his/her guardianship under this Act. It is also an offence for a guardian or person who has care of a mentally disordered person living in the community to ill-treat or neglect that person.

Medicines Act 1968

It is an offence to administer drugs that have been prescribed for someone else.

Sexual Offences Act 2003

The Sexual Offences Act 2003 is a major overhaul in the sexual offences framework and re-defines the sexual offences framework including a new definition of rape and sexual assault. The offences apply to both male and female victims and in addition there are offences to give the greatest possible protection to vulnerable people. Maximum penalties for offences have been reviewed and, where necessary, amended to reflect the seriousness of the behaviour involved.

The Act outlines definitions and measures in relation to:

- **Rape and Consent;**
- **Assault by penetration;**
- **Sexual assault;**
- **Causing a person to engage in sexual activity without consent;**
- **Administering a substance with intent;**

- **Care workers: sexual activity with a person with a mental disorder;**
- **Care workers: causing or inciting sexual activity;**
- **Care workers: sexual activity in the presence of a person with a mental disorder; and**
- **Care workers: causing a person with a mental disorder to watch a sexual act.**

(Please note that the list above is not exhaustive and is supplied for information only, reference should be made to the Sexual Offences Act 2003 for further clarification.)

Consent

It also provides a statutory definition of consent as:

- A person consents if he or she agrees by choice to the sexual activity and has the freedom and capacity to make that choice.
- All the circumstances at the time of the offence will be looked at in determining whether the defendant is reasonable in believing the complainant consented.
- People will be considered most unlikely to have agreed to sexual activity if they were subject to threats or fear of serious harm, unconscious, drugged, abducted, or unable to communicate because of a physical disability.

People with a mental disorder

The Sexual Offences Act 2003 also defines sexual offences against people with a mental disorder. It defines “mental disorder” as:

“mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of the mind”. This includes people with learning disabilities.

- The Act defines offences against people who cannot legally consent to sexual activity or who may be vulnerable to inducements, threats or deceptions because of a mental disorder.
- Under the Act, any sexual activity between a care worker (both paid and voluntary) and a person with a mental disorder is prohibited whilst that relationship of care continues. The term “care worker” is broadly defined to include anyone who provides care, assistance or services in connection with the person’s mental disorder including a family member.
- The laws in the Act relating to care workers of people with mental disorders apply whether or not the victim appears to consent, and whether or not they have the legal capacity to consent.
- Care workers may be charged with specific offences including actual sexual activity, inciting sexual activity or causing someone with a mental disorder to watch a sexual act.
- There are certain situations in which the care workers’ offences do not apply. These are where the care worker is legally married to the person with a mental disorder, or where it can be proved that the sexual relationship pre-dated the start of the relationship of care, as long as that sexual relationship was lawful

Theft Act 1968

Theft is the dishonest appropriation of property belonging to another, intending to deprive the owner permanently.

Race Relations Act 1976

Section 127 – Covers racially motivated offences.

Protection from Harassment Act 1997

This Act creates two criminal offences. First, a course of conduct amounting to harassment, that falls short of physical assault. Second, the more serious offence of putting people in fear (of violence) on at least two occasions.

Home Office Circular 60.1990 – Domestic Violence

In this circular the Home Secretary indicates that violent assault or brutal or threatening behaviour within a domestic setting is as serious as violent assault by a stranger. Accordingly, Police Force policy concerning responses to domestic violence should, as the circular indicates, contain undertakings that include:

- An overriding duty to protect victims from further attack;
- The need to treat domestic violence as seriously as other forms of violence;
- The use and value of powers to arrest;
- The danger of seeking conciliation between perpetrator and victim.

The Domestic Violence, Crime and Victims Act 2004

Causing or allowing the death of a child or a ‘vulnerable adult’

The Offence provides that members of a household will be guilty if they caused the death of a child or adult at risk or the following three conditions are met:

- They were aware or ought to have been aware that the victim was at significant risk;
- They failed to take reasonable steps to prevent harm;
- The person subsequently died from the unlawful act of a member of the household in circumstances that the defendant foresaw or ought to have.

See
[Section 5:
Serious
Case
Reviews](#)

The Act also sets up the establishment and conduct of domestic homicide reviews,

7. Civil Law

If the actions or evidence available do not support criminal proceedings, the issues may be pursued via the civil court. In criminal proceedings the evidence must meet the criminal standard of proof i.e. prove beyond all reasonable doubt. In civil proceedings evidence must prove in the balance of probabilities.

In addition compensation may be sought via the Criminal Injuries Compensation Authority, or by suing in civil proceedings.

Service users should always be advised of the right to discuss mistreatment with the Police and/or independent legal advisors.

In many cases, the vulnerable person will not be able to give instructions to a lawyer, so before the case can proceed someone must be found to act on their behalf. He/she may “sue by a next friend” under court 10 of the County Court Rules or Order 80 of the Rules of the Supreme Court.

Common Law

It situations of urgent high risk where there are no statutory powers it is acceptable in certain situations under common law to intervene to save a life without consent. Legal advice should always be sought if consideration is being given to using this power except in cases where there is insufficient time to make contact.

Declaratory Relief

It is possible for a local authority in its role as a body charged with the care of mentally incapable to seek from the High Court a declaration that the best interests of the person in question require the intervention of the Local Authority to take some action on the person’s behalf or prevent a third party from taking action (e.g. to prevent association with a particular person). Although available, it is a rarely used and expensive procedure, and can be used only if there is no alternative statutory remedy. Advice of the Borough Solicitor (Swindon) / Legal Services (Wiltshire) should always be sought in relation to Declaratory Relief.

Housing Act

Part VII – This Act places a duty on local authorities to provide accommodation for homeless people with a priority need, i.e. people who are vulnerable because of old age and homelessness, mental illness or handicap of physical disability or other special reason.

Housing Act 1996

Sections 145 and 149 – Provide a new ground for the grant of a possession order on the application of the local authority/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 unlikely to return. A tenancy granted by a private landlord does not qualify.

Family Law Act 1996

Section 33 – Refers to the occupation of the dwelling house (occupation orders) in proceedings before the Magistrates Court, County Court or High Court. The applicant must either be a person with a legal right to occupy the house, (normally because he/she is a freehold or a beneficial owner or tenant), a spouse of such a person, or a former spouse whose matrimonial home rights have been extended by a order of the court. The court may make orders to regulate the occupation of the dwelling house.

Section 42 – Non –molestation orders. The class of potential applicants is wider than Section 33 – “associated persons”. A “balance of harm” test has been established where violence has been proved. The court is obliged to attach a power of arrest where violence has been proved, unless the court is satisfied that the applicant will be protected without it. Where a power of arrest has not been attached, an order may still be enforced by the new procedure of the issue of a warrant for arrest.

Protection from Harassment Act 1997

Provides for civil remedy of an Injunction for the offence of harassment. The local authority cannot act for a private individual in pursuing remedies made the individual does not have capacity.

Law of Tort

Injunctions may be available for assault, battery, nuisance, false imprisonment, and trespass. The local authority cannot act for a private individual in pursuing remedies under the law of tort and therefore there would be difficulties in using the remedies of an Injunction or damages if the individual does not have capacity.

Public Interest and Disclosure Act 1998

This Act came into force in July 1999. The Act amends employment legislation so that employees are protected against dismissal and other adverse action if they make complaints or public disclosures about malpractice. Such matters include allegations that the employer is putting the environment at risk, breaking the law or putting customers or employees at risk. Workers do not have protection if they “go public” without first raising the matter internally with the employer, unless the worker can show that they believe raising the matter this way would be ineffective, would lead to a cover up or would result in retribution.

The Sex Discrimination Act 1976

This Act makes it unlawful to discriminate on the grounds of gender and introduces two forms of discrimination – direct and indirect discrimination.

The Race Relations Act 1976

This Act makes discrimination on the grounds of race illegal. Race is defined in terms of colour, race, nationality, or ethnic or national origins. The Act uses the terms of direct and indirect discrimination and introduces a third category – victimisation. This means treating a person less favourable because that person has made a complaint of discrimination, or has acted as a witness in this connection or intends to do so.

The Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005

This Act creates new rights for people with disabilities. It makes it unlawful to discriminate against a disabled person in employment, or in relation to access to goods, services, transport and education.

The Human Rights Act 1998

This Act came into force in October 2000.

The Act incorporates the European Convention of Human Rights into UK law and this enables claims to be brought in UK courts by individual victims against any public bodies for breach of those convention rights:

- The Convention Rights:
 - Article 2 Right to life
 - Article 3 Prohibition of torture
 - Article 4 Prohibition of slavery and forced labour
 - Article 5 Right to liberty and security
 - Article 6 Right to a fair trial
 - Article 7 No punishment without law
 - Article 8 Right to respect for private family life
 - Article 9 Freedom of thought, conscience and religion
 - Article 10 Freedom of expression
 - Article 11 Freedom of assembly and association
 - Article 12 Right to marry
 - Article 14 Prohibition of discrimination
 - Article 16 Restriction of political activity of aliens
 - Article 17 Prohibition of abuse of rights
 - Article 18 Limitation of use of restrictions on rights
- The First Protocol
 - Article 1 Protection of property
 - Article 2 Right to education
 - Article 3 Right to free elections

The Human Rights Act makes it unlawful for a public body to act (by commission or omission) in a way that is incompatible with Convention Rights.

The Act requires all legislation to be interpreted and given effect so far as possible compatibility with Convention Rights or the Law may be changed.

The Human Rights Act incorporates most, but not all, of the European Convention of Human Rights in to UK law, enabling claims to brought in the UK by individual victims against public bodies. The Act makes it unlawful for a public body to act (by commission or omission) in a way that is incompatible with Convention Rights (see below). In many respects, the Act underpins Adult Protection work, particularly in the context of the individual who is receipt of a service. It is difficult to predict the impact of the Act and it will take some time to see the types of claim being made and the way the courts are making decisions.

The following guidance is not intended to give comprehensive information about the context of the Act, but is offered simply as a means of helping to interpret the Act in relation to Adult Protection work.

The Convention Rights

Article 2 – Right to life

This convention appears most relevant in medical settings, particularly in relation to such issues as abortion, life-saving operations and end-of-life decisions, but will also cover cases of neglect and suspicious deaths of people who are in care. Delay in approving funding for care, where this is seen to have a potentially life-threatening effect on the well-being of an individual, may be considered as a breach of this article. Similarly, unexpected movement as a result of home

closures, which research indicates may have a potentially life threatening effect on life expectancy.

Article 3 – Prohibition of torture (and inhuman and degrading treatment)

Failure to take action to prevent cruelty, and the overall treatment of individuals and the conditions in which they live should be considered. It should be noted, however, that the threshold for what amounts to inhuman or degrading treatment would need to reach a minimum level of severity and would have to have occurred more than once or be a part of a pattern of abuse. Examples of such incidents may include individuals being confined to rooms or controlled in some way by the use of staff threats, verbal abuse and ridicule and leaving individuals in unsuitable clothing.

Article 5 – Right to liberty and security (There are a number of exclusions to this rule listed under Article 5)

Informal admission to a hospital of a person with a mental illness who is not considered capable of giving consent was a matter that was put before the European Court of Human Rights (known as the Bournemouth Case). Situations in which restrictions are being placed on adults at risk (for example locking doors) may be brought under Article 5 and services should be clear about any decisions that are taken to protect people or keep individuals safe.

The Department of Health has issued guidelines for procedural safeguards that will assist in avoiding a legal challenge. These include: decision-making based on medical advice, using the least restrictive option, good record-keeping, use of advocates and independent assessors, maintaining contact, communication and consultation with family and carers, regular review of care plan and best interests.

Article 6 – Right to fair trial

This covers tribunals and may well cover some internal hearings or regulatory procedures. Challenges may occur if defendants, for example people with a learning difficulty, feel that proper thought has not been given to their understanding of their rights.

Article 8 – Right to respect for private and family life, home and correspondence

It could be interpreted that local authorities have a positive duty to support family life, not just a duty to refrain from interfering with it. So if an older person, for example, indicates that they need to stay in their own home, but such support is not forthcoming until an emergency situation arises, it might be argued that their rights to respect for private and family life have been breached. It may also be deemed a breach of an individual's right when a decision is made, under Adult Protection procedures, to separate an individual from their family or carer.

The right to respect for private life includes the right to have information kept confidential unless an interference with that right can be justified and if, in the particular case the need for protection outweighs the right of confidentiality.

Multi-Agency Safeguarding Adults at Risk (Vulnerable Adults) Referral Form

This form is only to be used when abuse of a vulnerable adult has been discovered, suspected or disclosed

Please complete this form with as much factual detail as possible and include any allegations that are made.

This form might be used in future criminal or civil proceedings and accuracy is therefore vital.

Details about the Alleged Victim

Name:		
Date of Birth:	Age:	Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
Address:		
Telephone:		
If currently not at address, where can the alleged victim be contacted?		
Vulnerability: why is the person considered at risk or vulnerable?		
<input type="checkbox"/> Mental Health	<input type="checkbox"/> Learning Disability	<input type="checkbox"/> Physical Disability/Frailty Temp Illness
<input type="checkbox"/> Dementia	<input type="checkbox"/> Older Person/Frailty Temp Illness	<input type="checkbox"/> Terminal Illness
<input type="checkbox"/> Visual Impairment	<input type="checkbox"/> Hearing Impairment	<input type="checkbox"/> Dual Sensory loss
<input type="checkbox"/> Vulnerable Adult/Head Injury/Aspergers /Autistic SD	<input type="checkbox"/> Substance Misuse	
Additional information (if any): _____		
GP, Care manager, Health worker (please include telephone number(s))		

Ethnicity & Diversity:

White	<input type="checkbox"/> White British <input type="checkbox"/> White Irish <input type="checkbox"/> Any other White background <input type="checkbox"/> Traveller of Irish Heritage <input type="checkbox"/> Gypsy/Roma	Mixed	<input type="checkbox"/> White and Black Caribbean <input type="checkbox"/> White and Black African <input type="checkbox"/> White and Asian <input type="checkbox"/> Any other Mixed background
Asian or Asian British	<input type="checkbox"/> Indian <input type="checkbox"/> Pakistani <input type="checkbox"/> Bangladeshi <input type="checkbox"/> Any other Asian background _____	Black or Black British	<input type="checkbox"/> Caribbean <input type="checkbox"/> African <input type="checkbox"/> Any other Black background _____
Other Ethnic Groups	<input type="checkbox"/> Chinese <input type="checkbox"/> Any other ethnic group: _____	Not stated	<input type="checkbox"/> Refused <input type="checkbox"/> Information not yet obtained

Any other relevant diversity issues (e.g. religion, sexuality):

Who is making the alert:

Name:	Relationship to the alleged victim?
Address:	
Telephone:	
Preferred means of contact:	
Who is filling in this form?	
Is the alleged victim aware that this alert has been raised?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is their next of kin/family carer aware this alert has been raised?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Details of suspect:

Name:	Relationship to the alleged victim?
Address (if different):	

Is this person a family/main carer (if known. i.e. not care staff)? ☐ Yes ☐ No

Nature of the Allegation:

Where the alleged abuse took place:		
<input type="checkbox"/> Own Home	<input type="checkbox"/> Alleged Perpetrators Home	<input type="checkbox"/> Supported Accommodation
<input type="checkbox"/> Care Home	<input type="checkbox"/> Care Home with Nursing	<input type="checkbox"/> Respite/Short-term break Home
<input type="checkbox"/> Hospital	<input type="checkbox"/> Mental Health Inpatient Setting	<input type="checkbox"/> Other Health Setting
<input type="checkbox"/> Day Centre/Service	<input type="checkbox"/> Education/Workplace/Training Est.	<input type="checkbox"/> Custodial situation
<input type="checkbox"/> Public Place	<input type="checkbox"/> Other (Please state below:)	<input type="checkbox"/> Not Known

NAME OF ESTABLISHMENT (if applicable)

Date alleged abuse took place:	Time:
Type of abuse (tick box)	<input type="checkbox"/> Physical <input type="checkbox"/> Sexual <input type="checkbox"/> Neglect <input type="checkbox"/> Institutional <input type="checkbox"/> Financial <input type="checkbox"/> Psychological & Emotional <input type="checkbox"/> Discriminatory

Brief details of what has been alleged to have taken place:

Is domestic violence/abuse suspected?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there any child safeguarding issues?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Signature:	Print Name:
Date:	Time:

Form sent to: ☐ Adult Services ☐ Wiltshire Police ☐ Mental Health Services ☐ Hospital Social Work team

To be completed by Investigating Manager

Team receiving alert:	Organisations Case no. (E.G. SWIFT Care first):
Date Alert received:	Time alert received:
Person known to adult services:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Person receiving services prior to alert:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Person funds their own care:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Person in receipt of direct payment:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Person placed by another authority/trust:	<input type="checkbox"/> Yes Name of LA/trust: <input type="checkbox"/> No
ALERT ASSESSED OUTCOME:	
Early Strategy Meeting Date (if any):	
State reason if no ESM required:	
Information recorded on case records: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Decision made by:	
Signed:	Date: Designation

[Send to relevant team listed on pages 2.5 or 2.6 of the Policy and Procedure for Safeguarding Vulnerable Adults in Swindon & Wiltshire](#)

Confidentially Statement

To be confirmed at the start, and on the attendance list and minutes, of each meeting held under these procedures.

This meeting/conference is held under the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire.

The issues discussed are confidential to the members of the meeting/conference and the agencies they represent. They will only be shared in the best interests of the vulnerable adult and in consultation with the Investigating Manager.

Minutes of the meeting/conference are circulated on the strict understanding that they will be kept confidential and stored securely.

In certain circumstances it may be necessary to make the minutes of the meeting available to the civil and criminal courts, solicitors, psychiatrists, other local authority social workers or other professionals involved in the care of the individual (s).

NB: When you sign the attendance sheet please note that you are signing up to the above confidentiality statement.

The Disclosure and Barring Service (DBS)

From December 2012 the Criminal Records Bureau and Independent Safeguarding Authority merged to become the Disclosure and Barring Service (DBS).

For disclosure information about the DBS and services provided visit the DBS homepage: www.homeoffice.gov.uk/dbs

DBS provides a joined up service combining the criminal records checking and barring functions previously carried out by the Independent Safeguarding Authority. There are plans for further legislative changes and details of these can be found on the DBS Homepage.

The primary role of the Disclosure and Barring Service (DBS) is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups including children.

The DBS was established under the Protection of Freedoms Act 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

DBS checks

The following link [GOV.UK website](http://gov.uk) can be used to obtain information on how to carry out a DBS check (previously known as a CRB check).

DBS referrals

If an employer or representative of an organisation has concerns that an individual has caused harm or poses future risk of harm to vulnerable groups including children and adults at risk, a referral to the DBS must be made: [DBS Referral Form](#)
More information about [referrals and the referral process](#) can be found throughout by following this link.

The following groups have the *duty* to make a referral to the DBS:

- regulated activity suppliers (employers and volunteer managers); and
- personnel suppliers.

The following groups have the *power* to make a referral to the DBS:

- local authorities or organisations commissioned to provide care management role (safeguarding role);
- education and library boards;
- health and social care (HSC) trusts (NI);
- keepers of registers e.g. General Medical Council, Nursing and Midwifery Council; and
- supervisory authorities e.g. Care Quality Commission, Ofsted .

Penalties

- an employer or volunteer manager is breaking the law if they knowingly employ someone in a regulated activity with a group from which they are barred from working; and
- a barred person is breaking the law if they seek, offer or engage in regulated activity with a group from which they are barred from working, be it paid or voluntary.

Source: DBS Website



Swindon Local Safeguarding Children Board

“What to do if you are worried a child is being abused or neglected”

Member of staff has concerns about a child's welfare

Where a young person discloses abuse or neglect, they (and the alleged abuser) **should not** be questioned further, but a record made of what has been said.

Discuss concerns with line manager/ designated person for child protection.

Name: _____

You may also wish to discuss with the duty social worker (listed below) eg whether to inform parents of your welfare concern (if to do so would **not** place a child at risk).

Your designated person may also check if there are current or previous child abuse/ welfare concerns-

If you still have concerns, please contact:

Social worker
During office hours,
Monday – Friday

**Referral and
assessment team
Swindon**

01793 466903

Out of hours
Contact
emergency duty
team on

01793 436699

**Police Child Abuse
Investigation Team**
01793 507976

**Police Domestic
Abuse Investigation
Team**
01793 507801

No longer has concerns

No further child
protection action

Is this a child in
need of other
support?
- consider with
family and relevant
agencies
- consider CAF

Social worker and manager

1. acknowledge receipt of referral
2. decide on next course of action (within one working day)
3. feedback decision to referrer eg:
 1. Initial Assessment or S47 Child Protection Strategy discussion
 - Or 2. No action required

This document is intended for use as a brief guide. Please refer to the South West Child Protection Procedures at www.swcpp.org.uk or www.swindonlscb.org



SWINDON
BOROUGH COUNCIL

Jan 2010

RF1

CHILDREN'S SERVICES REFERRAL FORM FOR OTHER AGENCIES

*This form should be used to make a written referral regarding **child protection or complex child in need** concerns and to record a parent or young person's consent to a referral being made to Children's Services. Using the form will help make sure the response to the referral is as effective as possible. Urgent referrals should always be made by telephone, but this form should still be used to confirm the referral and record consent and be sent to Children's Services within 48 hours of a telephone referral.*

Please record all names child, young person have been/are known by. This is child/young person's usual or home address. If child is living away from home or where the parents have shared care, the child/young person may have 2 addresses. Please also indicate if child is in Private Fostering arrangement. All known tel no's should be given

Details of child/young person being referred		
Family name:	Given names:	
Other known as names:	DoB or EDD	Gender:
Home Address:		
Postcode	Telephone/Mobile nos.	
Current address if different from above:		
Postcode	Telephone/mobile nos:	Reason for residence at this address:

The child/young person or the child's parents should be asked which ethnic group the child belongs to.

This information on ethnicity will enable local authorities to complete statistical returns to DoH and plan appropriate services.

Child/young person's ethnicity (please tick)

Black or Black British	Asian or Asian British	White	Mixed	Other ethnic groups
Caribbean	Indian	White British	White & Black Caribbean	Chinese
African	Pakistani	White Irish	White & Black African	Any other ethnic group
Any other Black background	Bangladeshi	Any other White background	White & Asian	Not given
	Any other Asian background		Any other Mixed Background	If other, <i>please specify</i> .

Any further details regarding child/young person's ethnicity:

Child/young person's religion

EU citizens are not required to register with the Home Office.

Child/young person's nationality (if not British):

Nationality		Home Office registration number	
Immigration status	Asylum seeking <input type="checkbox"/>	Refugee status <input type="checkbox"/>	Discretionary leave to remain (DLR) <input type="checkbox"/>
	Humanitarian Protection (HP) <input type="checkbox"/>	Other immigration status, please state	

Note for Children's Services staff: impairment type should be recorded using children in need census codes.

Child/young person: Disabled

The child/young person referred is disabled	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
If yes, please record type of impairment:			
The child/young person referred is on a disability register	Yes <input type="checkbox"/>	No <input type="checkbox"/>	not known <input type="checkbox"/>
<input type="checkbox"/>			

The child/young person referred has a Statement of SEN Yes ☐ No ☐ not known

☐

Reasons for Referral:

Please include all relevant concerns including - what has happened / changed today for your concerns to reach Child Protection / Complex Child in Need level

Has a Common Assessment Form been completed ? Yes ☐ No ☐
If yes has Team around the Child meeting taken place ? Yes ☐ No ☐

Please attach copy of completed CAF and TAC minutes

Evidence for Referral - How is the current situation impacting on the child/young person:

What Strengths + Protective factors does the child/young person have?

E.g. – good school attendance, a positive role model in their life.

Please ensure all details on the Referral form are completed as fully as possible, even if already provided verbally.

Fraser Competency must be taken into account when seeking a young person's consent for Referral.

<p>Previous Concerns: Please give details of previous concerns and / or previous referrals</p>

<p>Young Person's Consent:</p>	
<p>How did the child/young person respond when advised that you needed to share information with us in order to protect them from further harm?</p>	
<p>Are they competent to and happy to give their consent?</p>	
<p>Young Person's Consent I give consent for this referral to be made to Children's Services</p> <p>I understand that Children and Families will contact me to assess my situation / needs</p> <p>I give Children and Families permission as part of the initial assessment to make contact with the agencies listed in this referral</p> <p>I would like Children and Families to contact me before contacting any other person or agency: yes <input type="checkbox"/></p> <p>no <input type="checkbox"/></p> <p>Name: _____ Signed: _____ Date: _____</p>	

Siblings of Child/Young Person, living at home address				
Family Name	Given Name	DoB	Relationship	Tick if there are concerns for siblings also **

Siblings of Child/Young Person, living at different address				
Address: _____				
Address: _____				
Address: _____				

****Note – if you have significant concerns about siblings a separate Referral should be completed for each child.****
If possible a drawn genogram (family tree) would be really helpful.

Details of Mother		Is Mother Main Carer ? Y / N	
Family name:		Given names:	
Other known as names:		DoB	Ethnicity & First Language
Home Address:			
Postcode	Telephone/Mobile nos.		Details of any disability:
Details of Father		Is Father Main Carer ? Y / N	
Family name:		Given names:	
Other known as names:		DoB	Ethnicity & First Language
Home Address:			
Postcode	Telephone/Mobile nos.	Does Father have PR?	Details of any disability:
Details of Main Carer if not Mother/Father			
Family name:		Given names:	
Other known as names:		DoB	Ethnicity & First Language
Home Address:			
Postcode	Telephone/Mobile nos.	Relationship to y/person	Details of any disability:
<p>Parenting capacity: (e.g. parent/child relationship; relationship between parent(s)/carer(s); parents' relationship with any agencies involved;</p>			
Any known or suspected concerns linked to alcohol , drug misuse, or domestic violence?			
Alcohol		Drugs Misuse	DV
Known <input type="checkbox"/> Suspected <input type="checkbox"/>	Known <input type="checkbox"/> Suspected <input type="checkbox"/>	Known <input type="checkbox"/> Suspected <input type="checkbox"/>	

Family & Environmental: (any other issues eg housing , finance)

Other Household members (including non-family members):				
Family Name	Given Name	DoB	Relationship to child	Tick if also referred to Social Services at same time as child

Child/young person & family networks			
Significant family members who are not members of the child's household			
Name		Name	
Relationship		Relationship	
Address		Address	
Postcode	Tel	Postcode	Tel

Details of other Agencies involved or previously involved with y/person and or family				
	Name	Address:	Telephone	Parental consent to share information
GP				
Health Visitor				
Community Midwife				
Community Paediatrician				
School/Nursery				
School Nurse				
Education Welfare Officer				

This section records all children/young people and adults living at the child/young person's usual or home address but not already recorded above.

If another child/young person in the household is

Educational Psychologist				
Mental Health Services				
Drug/Alcohol Services				
Housing Officer				
YOT				
Other				

For issues about consent and confidentiality, please see below.

Please ensure person with PR initials other agencies they consent to CS contacting

Parent(s)/Carer(s) consent:

I give consent for my child who is named on page 1 to be referred to Children's Services by the named person making referral.

I understand that Children's Services will contact me to further assess my child's needs.

I give Children's Services permission as part of the Initial Assessment to make contact with the agencies ticked below.

I would like Children's Services to contact me before contacting any other agency: yes ☐ no

☐

Signed:

Date:

Relationship to child/young person:

Name:

Address (if different from child's)

Telephone no.

Detail of person making Referral

Name:

Job title & Agency:

Agency Address:

Tel No

Fax No::

Referrer's Signature

Date:

If CAF/TAC in place please advise Integrated Service Manager and Lead Professional Names and Contact Details.

Are there any worker safety issues? YES ☐ NO ☐

If **yes** please give details,(this should include dangerous animals)

Issues about Consent and Confidentiality

1. Personal information about children and families held by professionals and agencies is subject to a legal duty of confidence and should not normally be disclosed without the consent of the subject. This means that you should obtain a parent's consent before passing on information or a referral to Children's Services. Verbal consent should be confirmed in writing.
2. The law permits the disclosure of confidential information between agencies if it is necessary to safeguard a child or children. Disclosure should be justifiable in each case, according to the particular facts of the case and legal advice should be sought in cases of doubt.
3. **Therefore, if there are concerns that the child is in need of safeguarding, it is still important to try to gain parental permission for personal information to be passed on by other agencies. If the parent's refusal prevents effective child protection enquires, then workers can go ahead without consent. Ensure that the reasons for this are fully recorded.**
4. **If asking for consent would put the child at further risk, then this should not be done. Again, ensure that the reasons for this are fully recorded.**
5. Young people are entitled to the same duty of confidence as adults if, as outlined in the Fraser guidelines for those under 16 years of age, they have the ability to understand the choices and the consequences of their choices.....continued page 7
6. Some young people, deemed competent under the Fraser guidelines, will not wish their parents to be informed about specific issues. While young people will be encouraged to discuss issues with the parent/carers, confidentiality needs to be maintained unless the lack of sharing of information with parents/carers will lead the young person to suffer significant harm or a crime is likely to be committed. In exceptional circumstances, it may be believed that a child seeking advice, for example on sexual matters, is being exploited or abused. In such cases, confidentiality may be breached, following discussion with the child.
7. Where parental consent has been obtained, information may be shared even if the young person does not consent.



The information you provide will be used to assess the needs of the child/young person referred to Children and Families. It will be passed on to the parent/carers of the child, and the child/young person where appropriate. The information may be shared with the professionals listed on page 4 of the form, where parent(s) or young person have given consent for this to happen, for the purposes of making a multi-agency assessment of the needs of the child/young person.

Next Step

The Referral Form should now be faxed or posted to the Children's Services team taking the referral:

- Disabled children and those with life threatening illnesses should be referred to the Disabled Children's Team, Children Services, Salt Way Centre, Pearl Road, Swindon, SN5 5TD Tel. 01793 464240 Fax. 01793 873490
- All children and young people, aged between 0 – 18 years should be referred to the Referral and Assessment Team, Children's Services, Civic Offices, Euclid Street, Swindon, SN1 2JH Tel. 01793 466903 Fax. 01793 463003

Issues about Consent and Confidentiality

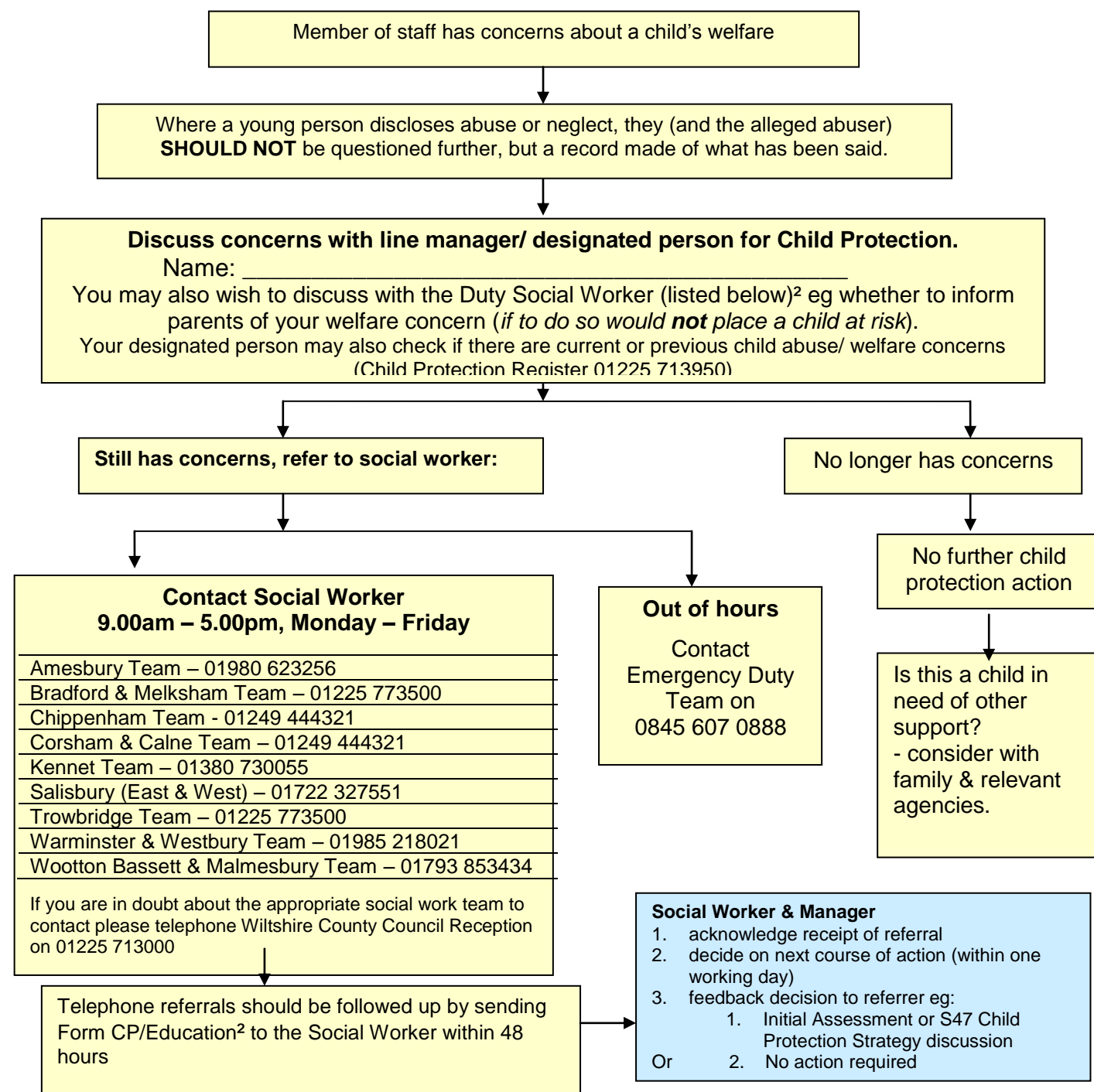
8. Personal information about children and families held by professionals and agencies is subject to a legal duty of confidence and should not normally be disclosed without the consent of the subject. This means that you should obtain a parent's consent before passing on information or a referral to Social Services. Verbal consent should be confirmed in writing.

9. The law permits the disclosure of confidential information between agencies if it is necessary to safeguard a child or children. Disclosure should be justifiable in each case, according to the particular facts of the case and legal advice should be sought in cases of doubt.
10. Therefore, if there are concerns that the child is in need of safeguarding, it is still important to try to gain parental permission for personal information to be passed on by other agencies. If the parent's refusal prevents effective child protection enquires, then workers can go ahead without consent. Ensure that the reasons for this are fully recorded.
11. If asking for consent would put the child at further risk, then this should not be done. Again, ensure that the reasons for this are fully recorded.
12. Young people are entitled to the same duty of confidence as adults if, as outlined in the Fraser guidelines for those under 16 years of age, they have the ability to understand the choices and the consequences of their choices.
13. Some young people, deemed competent under the Fraser guidelines, will not wish their parents to be informed about specific issues. While young people will be encouraged to discuss issues with the parent/carers, confidentiality needs to be maintained unless the lack of sharing of information with parents/carers will lead the young person to suffer significant harm or a crime is likely to be committed. In exceptional circumstances, it may be believed that a child seeking advice, for example on sexual matters, is being exploited or abused. In such cases, confidentiality may be breached, following discussion with the child.
14. Where parental consent has been obtained, information may be shared even if the young person does not consent.



The information you provide will be used to assess the needs of the child/young person referred to Social Services. It will be passed on to the parent/carers of the child, and the child/young person where appropriate. The information may be shared with the professionals listed on page 4 of the form, where parent(s) or young person have given consent for this to happen, for the purposes of making a multi-agency assessment of the needs of the child/young person.

“WHAT TO DO if you are worried a child is being abused or neglected”¹



This document is intended for use as a guide. Please refer to the Multi-Agency Child Protection Procedures PUT SWCp .org

Domestic Violence

The Association of Chief Police Officers defines Domestic Violence as:

“any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults aged 18 and over, who are or have been intimate partners or family members, regardless of sexuality”

One in four women and one on six men will suffer domestic violence at some point in their lives. Domestic violence occurs across society regardless of age, gender, race, sexuality, wealth and geography. Domestic violence itself can also be one of the factors contributing to a person's ill health, mental distress and physical or mental impairment.

The Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire should be used if:

- There are concerns about a victim of domestic violence who is an adult at risk (i.e. *someone who may be in need of community care services*);
- If an adult at risk is a member of a household where there is domestic violence; and
- Domestic violence is causing significant harm to someone who does not have the capacity to make decisions about their own safety or who has additional health or social care needs.

Some perpetrators of domestic violence may also be adults at risks. If a perpetrator appears to have social care needs a referral should be made to the appropriate Adult Services Team in Swindon or Wiltshire. If a Carer is the victim of Domestic Violence then it may be appropriate to offer them a Carers' Assessment.

If a victim of domestic violence is not an adult at risk (i.e. *someone who may be in need of community care services*) they should be encouraged to contact one of the services below:

- **Police Domestic Abuse Investigators**
Swindon & Wiltshire (specify which area where the victim resides): **0845 4087000 or 101**
- In an Emergency please dial **999** (your call will be recorded)
- **National Domestic Violence Helpline (24 hour)**
Telephone: **0808 2000 247**
- **Swindon & Wiltshire Rape Support Helpline**
Telephone: National Victim Support line 0845 30 30 900 (Thursday evenings)

**Swindon Local Safeguarding Adults' Board /
Wiltshire Local Safeguarding Adults' Board**

POLICY STATEMENT

CRITERIA FOR THE USE OF IMCAs IN SAFEGUARDING ADULTS CASES

This Policy Statement outlines the circumstances under which a request for an Independent Mental Capacity Advocate would be made in cases that involve the alleged abuse of an adult at risk.

This Policy Statement should be read in conjunction with the "[Mental Capacity Act Code of Practice](#)" (2007) and the "*Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire*" (2006.)

Introduction

In Investigations that are held using the "*Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire*" (2006) the Investigating Manager must consider whether a referral should be made to the IMCA service if the alleged victim or alleged abuser:

- is assessed to lack capacity to make a decision that is pertinent to the investigation and there is no one to represent and support the person in his or her decision;
- is assessed to lack capacity to make a decision that is pertinent to the investigation and although they have family or friends there is evidence to suggest that there is no one who would be capable, appropriate or willing to act in the person's best interest. This only applies in safeguarding situations; and
- a request to the IMCA service would be of particular benefit to the person assessed as lacking in capacity.

The Mental Capacity Act 2005

NB: The fundamental principle underlying the Mental Capacity Act 2005 is that a person must be assumed to have capacity and an assessment must be carried out before it is said that they lack capacity to make a time and issue specific decision.

- The Mental Capacity Act 2005 requires Local Authorities and the NHS to engage Independent Mental Capacity Advocates (IMCAs) in certain cases where service users are assessed as lacking the capacity to make a specific decision at the time that the decision needs to be made.
- The Act defines the circumstances in which a referral should be made to an Independent Mental Capacity Service.
- The role of the IMCA is to represent people who are assessed to lack capacity to make an important decision in their life in relation to serious medical treatment or changes in accommodation.
- The Mental Capacity Act Expansion Regulations extends the engagement of an IMCA to cases where someone who is assessed to lack capacity is involved in an Adult Protection / Safeguarding Adults at Risk situation and where it would be of benefit to that person to be represented by an IMCA. An

IMCA can still be engaged even if the person does have friends and family who would normally fulfil this role.

- The term “*decision maker*” is used within the Act. This is defined as the person who is proposing to take action in relation to the care or treatment of an adult who lacks capacity or who is contemplating making a decision on behalf of that person. In Safeguarding Adults’ Investigations the “*decision maker*” would be the Investigating Manager.

Assessing a Person’s Capacity

- A decision about someone’s capacity is fundamental to the process of safeguarding adults at risk. The agencies involved need to consider whether someone has the capacity to consent to what is alleged to have taken place. They also need to decide whether someone has the capacity to participate in the procedures for safeguarding adults at risk;
- Someone is said to lack capacity if they are unable to make a particular decision. This inability must be caused by an impediment or disturbance of mind or brain whether temporary or permanent; and
- To be assessed as lacking capacity to make a decision the person needs to be unable to:
 - Understand and absorb the basic information about the pros and cons of the issue in question;
 - Retain the information long enough to be able to process it;
 - Weigh up the pros and cons of the decision that is required based on their own values; and
 - Communicate their decision by any means.

The above four-point test should be applied to the **specific** decision in question. A decision to appoint an IMCA should not be based on knowledge of previous decisions that the person has made.

For further information on Consent and Capacity see **Section K; Capacity, Consent and Best Interests** in the “*Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire*” (2006)

See:
[Section K:
Capacity,
Consent
and Best
Interest](#)

Appointing an IMCA in Safeguarding situations

A request to an IMCA service should only be made if the Investigating Manager (“*the decision maker*”) is satisfied that having an IMCA will be of particular benefit to the person assessed as lacking capacity to be involved in the decision or the procedures.

Some of the issues that the Investigating Manager may wish to consider when making this decision are:

- Whether there is a serious exposure to risk of death, serious physical injury or illness, serious deterioration in physical or mental health or serious emotional distress;
- Whether a life changing decision is involved and consulting family or friends is compromised by the reasonable belief that they would not have the person’s best interests at heart;
- Whether there is a serious conflict of views and interests involving family members or conflict with or between professionals; and
- The decision that the responsible body needs to take involves a conflict of interest between the responsible body and that person.

IMCAs and the Safeguarding Adults' Process

- Consideration should be given as to the most appropriate time to make a referral to an IMCA service in Safeguarding Adults' cases. This will depend on the decision to be made and the risks to those involved;
- A referral can be made to an IMCA Services at any point in the Investigation but consideration should be given to allowing sufficient time for the IMCA to undertake their work;
- Following the receipt of a referral to a health or social care team, the agencies involved will decide whether to convene an Early Strategy Meeting (ESM);
- At the ESM a decision will be made about the assessed capacity of the adult at risk and the person alleged to have caused harm, based on the four-point test outlined above;
- An IMCA should not be engaged to fulfil the role of Approaorite Adult during the course of the investigation;
- If their mental capacity has not been assessed then a decision will need to be made to undertake an assessment based on the four-point test outlined above;
- If an assessment has been undertaken which indicates that the alleged victim or alleged abuser lacks capacity then a decision will need to be made about whether it would be of particular benefit to that person to make a referral to an IMCA Service. (see above) In some case where the alleged victim and the person alleged to have caused harm both lack capacity both requiring IMCAs, 2 individual IMCAs will need to be engaged;
- A decision will also need to be made at the ESM on how best to inform the adult at risk of the decision to involve an IMCA;
- The Investigating Manager is responsible for ensuring that a referral to the appropriate IMCA service is made and to monitor the progress of the referral;
- Prior to subsequent Adult Protection Conferences, the Investigating Manager will need to ensure that appropriate documents pertinent to the case have been forwarded to the IMCA and ascertain the progress made;
- The information that the IMCA provides must be taken into account when decisions are made in regards to what is considered to be in the best interests of the person who is assessed to lack capacity;
- Although a particular case may initially be deemed not to require the involvement of an IMCA, as an investigation progresses in some circumstances, it may be decided that it would be in the best interests of the individual for them to move to different long-term accommodation. In these cases, if the person lacks capacity with regards to making decisions about their long-term accommodation needs, a referral **must** be made to the IMCA Service if there is no one else to represent and support the person in his or her decision;
- Throughout the safeguarding process, appropriate communication needs to be maintained with the Investigating Manager. The Investigating Manager may delegate the liaison with the IMCA to the Joint Investigator or other designated officer;

Responsibilities of the IMCA in Safeguarding Cases

- To act in accordance with the Mental Capacity Act 2005 and adhere to the [Mental Capacity Act Code of Practice issued by the Department of Constitutional Affairs \(2007\)](#);

- *To familiarised themselves with and follow the Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire (2006);*
- To represent and promote the best interests of the adult at risk;
- To attend and contribute to relevant meetings (case conferences, Adult Safeguarding Conferences etc.);
- To meet the person in private if it is possible and appropriate to do so;
- To seek the views of other people involved in the life of the person and examine records pertinent to them;
- To (as far as is possible) ascertain the person's wishes, feelings, beliefs and values and determine the options open to them;
- To appropriately challenge a decision where they believe the decision being made is not in the best interests of the person in line with the Mental Capacity Act Code of Practice; and
- To ensure confidentiality by not disclosing any information to a third party involved without the permission of the decision maker and ensure absolute confidentiality of documentation in line with protocols set up by the local authority and NHS Trust.

NB: It is not the responsibility of the IMCA to undertake any investigations about any alleged incidents of abuse.

Contact information for engaging an IMCA service:

- In Swindon - Mental Capacity Act Programme Manager 01793 463239
- In Wiltshire - Mental Capacity Act Programme Lead 01225 758598

Documents which support this Policy Statement

- [*The Mental Capacity Act 2005;*](#)
- [*The Mental Capacity Act Code of Practice: Department of Constitutional Affairs \(2007\);*](#)
- [*Making Decisions: The Independent Mental Capacity Services: Booklet developed as part of the Mental Capacity Implementation programme;*](#)
- ADASS: Policy Statement: criteria for the use of IMCAs in Safeguarding Cases (Draft 2 March 2007);
- [*Adult Protection, Care Reviews and IMCAs: Guidance on interpreting the regulations extending the IMCA Role \(Department of Health\);*](#)
- Policy and Procedures for Safeguarding Adults at Risk in Swindon and Wiltshire (2013); or
- Go to www.publicguardian.gov.uk/index.htm.

Alerters Response Letter Templates

Not Reached the Threshold for Investigation

NB: This letter is for guidance purposes and may be amended as necessary.

Dear [Name]

Re: Safeguarding Adults Alert

Thank you for contacting Adult Services access point on [Date] to make an alert regarding concerns you have that an adult at risk (as defined by the 'No Secrets' local guidance), has been or may be at risk of harm, abuse or neglect.

After careful consideration of the situation based on the information provided, it has been decided on this occasion the alert will not go forward for investigation under the safeguarding adults procedures. Please be assured that the concerns you have reported and described have been taken very seriously.

If you would like to discuss this matter further, please contact [Name] on [Tel No.].

Please do not hesitate to contact us in the future if you have any concerns that a person may be at risk of harm or is being abused, or neglected, as it is vitally important that matters of this nature are reported.

Yours sincerely

Reached the Threshold for Investigation

NB: This letter is for guidance purposes and may be amended as necessary.

Dear [Name]

Re: Safeguarding Adults Alert

Thank you for contacting Adult Services access point on [Date] to make an alert regarding concerns you have that an adult at risk (as defined by the 'No Secrets' local guidance), has been or may be at risk of harm, abuse or neglect.

After careful consideration of the situation based on the information provided, it has been decided this alert will go forward for investigation under the safeguarding adults procedures.

If you would like to discuss this matter further, please contact [Name] on [Tel No.].

Please do not hesitate to contact us in the future if you have any concerns that a person may be at risk of harm or is being abused, or neglected, as it is vitally important that matters of this nature are reported.

Yours sincerely