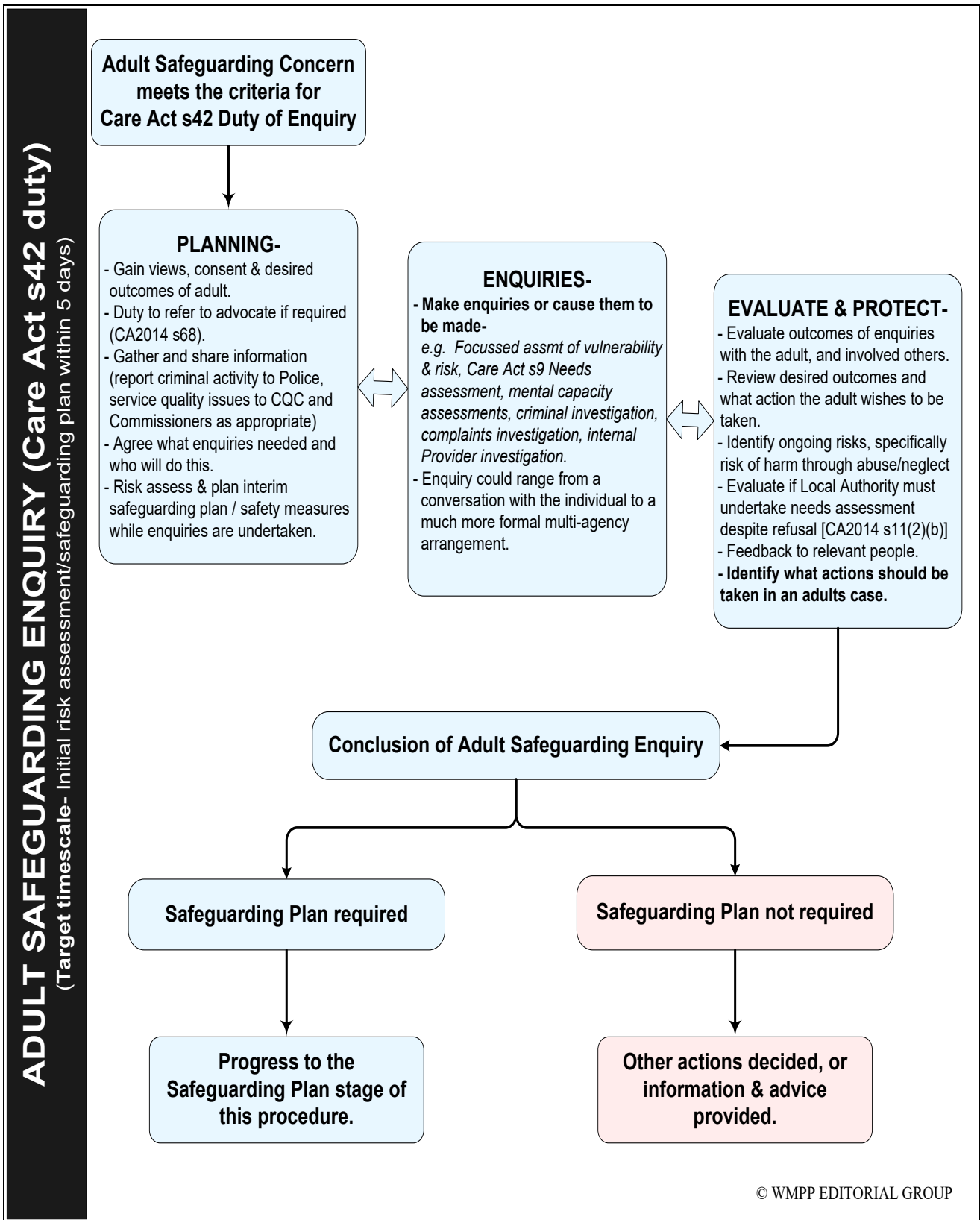


Section 4: Safeguarding enquiries (Section 42 Care Act 2014)



Overview

This section provides guidance on the planning and undertaking of Section 42 Enquiries.

This includes:

- Who should be involved in planning an Enquiry?
- Information sharing;
- Making enquiries and causing enquiries to be made;
- Identifying others at risk;
- What to do when the adult does not wish an Enquiry to take place;
- Resolving disagreements;
- Parallel investigations;
- Advocacy;
- Self neglect;
- Co-ordination of enquiries;
- Interviewing as part of an Enquiry;
- Types of evidence;
- Reviewing an Enquiry;
- Enquiry reports.

### **Objectives of a Safeguarding Enquiry**

- 4.1 The objectives of an Enquiry into abuse or neglect are to:
- Establish facts;
  - Ascertain the adult's views and wishes;
  - Assess the needs of the adult for protection, support and redress and how they might be met;
  - Protect from abuse and neglect in accordance with the wishes of the adult;
  - Make decisions as to what follow up action should be taken with regard to the person or organisation responsible for the abuse or neglect; and
  - Enable the adult to achieve resolution and recovery.
- 4.2 Fundamental to any Safeguarding Enquiry is a spirit of *professional curiosity* whereby there must be a genuine inquisitive interest in the narratives and facts that are presented and also the ability to question information and objectively evaluate it rather than optimistically accept accounts at face value.

### **Planning enquiries**

- 4.3 All enquiries into the abuse of adults need to be planned. No agency should take action in respect of an abuse referral prior to a Planning Discussion unless it is necessary and proportionate for the protection of the adult or others or unless a serious crime has taken place or is likely to.
- 4.4 The Planning Discussion constitutes part of the Section 42 Safeguarding Enquiry.
- 4.5 The principles of seeking a person-centred and outcome focused approach are of particular importance in planning enquiries as it is easy to become preoccupied with process rather than developing a personalised response.
- 4.6 A Planning Discussion should be held (normally by telephone) as soon as possible after a concern is received and, in all cases, should be completed within five working days but this must be proportionate to the presenting risks.

- 4.7 Exceptionally it will be decided that the most effective and practical method of planning the Enquiry will be through convening a meeting. In cases of self-neglect (as described at page 30) this will be the norm.
- 4.8 The Planning Discussion will not involve the source of risk in the discussion. On advice from the Police it may be necessary to restrict the involvement of other parties if there is the likelihood of a criminal investigation against them. The responsibility for clarifying who is implicated in a potential crime lies with the Police.
- 4.9 It will always be necessary to share sufficient information with provider managers to enable them to take appropriate action to protect the adult(s) in their care.
- 4.10 The Planning Discussion will be led by a Managing Officer from the Local Authority or from an agency working under partnership arrangements that include undertaking social care functions on behalf of the Local Authority (National Health Service Act 2006<sup>1</sup> Section 75) and will include relevant partners, which include:

<b>In all cases</b>	Managing Officer – either at Multi-Agency Safeguarding Hub (MASH) <sup>2</sup> or for area where alleged abuse occurred.
<b>Where it is suspected that a crime has been or might be committed</b>	Police Officer – MASH and/or allocated officers
<b>Where a service registered under the Health and Social Care Act 2008 is involved</b>	Compliance Inspector – CQC <a href="mailto:safeguarding@cqc.org.uk">safeguarding@cqc.org.uk</a> Senior Manager CCG if there is a Continuing Healthcare (CHC) contract
<b>Incident in an NHS service or an Independent hospital.</b>	Senior Manager – or NHS Hospital Trust  Compliance Inspector – CQC <a href="mailto:safeguarding@cqc.org.uk">safeguarding@cqc.org.uk</a>  Senior Manager – CCG and/or NHS England
<b>Where disciplinary issues have been identified</b>	Manager of relevant organisation
<b>Where there has been a sudden or suspicious death</b>	The local Coroner's office:  South Staffordshire - 01785 276127 <a href="mailto:sscor@staffordshire.gov.uk">sscor@staffordshire.gov.uk</a>  North Staffordshire and Stoke-on-Trent – 01782 234777 <a href="mailto:coroners@stoke.gov.uk">coroners@stoke.gov.uk</a>
<b>Where there is an allegation of rogue trading, scams or doorstep crime</b>	Local Trading Standards Unit: Stoke-on-Trent - 01782 232065 Staffordshire - 0300 111 8045
<b>Health and Safety incident involving unsafe systems of work/ equipment</b>	Health and Safety Executive or Local Authority Health and Safety Officer (subject to protocol with CQC)

<sup>1</sup> Section 75 of the National Health Service Act 2006)

<sup>2</sup> Multi-Agency Safeguarding Hub (MASH)

<b>Where there are issues of domestic abuse</b>	Police and specialist domestic abuse services. Consider MARAC.
<b>Where there is concern about a person in a Position of Trust</b>	Relevant agencies and employers dependent on situation.
<b>Modern Slavery/ human trafficking</b>	Staffordshire Police. Multi-agency discussion will take place at the MASH.

4.11 The Planning Discussion will confirm the following:

#### **Current agency information**

- What is the concern – what are we worried about?
  - a) Concern details and subsequent developments
  - b) The risk of harm to the adult
- The wishes and mental capacity of the adult, if known. The earlier the adult's views and wishes can be identified the better.
- Access to the adult including any communication issues (e.g. need for interpreter or specialist worker).
- Clarify whether there are other people at risk of harm. If there are a number of adults believed to be at risk from a network of abusers then consideration should be given to holding a single Planning Discussion, possibly as a meeting.

#### **Initial contact with the adult**

- How and when will the adult be contacted, consulted about the concerns and asked for their view on the desired outcomes of the Enquiry?
- Involve an independent advocate in any case where the adult has substantial difficulty in being involved in the Enquiry and there is no other appropriate person who can support or represent them.
- What other support might the adult require during and after the Enquiry?
- Are there any issues of gender, race or culture to be considered?

#### **Initial Safeguarding Plans**

- What is the safety outcome that is desired?
  - a) How will the safety of the adult be ensured?
  - b) How will the safety of others be ensured, adults or children at risk?
- What support or intervention is required for the potential source of risk during or after the Enquiry?
- Are there health and safety issues relating to equipment or working practices?
- What contingency plans are required?
- Is legal action required?

#### **Planning a Safeguarding Enquiry (Section 42, Care Act 2014)**

- Has a criminal offence taken place, if so, what is it?
- What form of Enquiry will take place and who will lead it?
- Who will establish the facts of the case, including undertaking interviews with key parties?
- Who will ascertain the views of the adult?
- Who will assess the need for protection, support and redress and how these might be met?

- How will protection be offered in accordance with the adult's wishes?
- How will follow-up action be decided?
- How will resolution and recovery be achieved?
- Is medical examination necessary, if so by whom?
- What timescale is required for the agreed actions?

### **Communication**

- Who will keep the adult, carers, relatives informed of the status of the Enquiry?
- Who will notify the person who raised the concern of the status of the Enquiry?
- Does a professional body need to be made aware of the issues?
- How will the employer be kept up to date on the issues?
- Should the Disclosure and Barring Service (DBS) be notified at this stage?
- How will the outcome of the Enquiry be communicated to all relevant parties?

### **Assessments**

- Is an assessment of needs for care and support required?
- Is an assessment under the Mental Health Act 1983/2007 required?
- Is an assessment of mental capacity required?
- Is an assessment of a carer's needs for support required?

### **Review**

- Does a review meeting or discussion need to be arranged, if so when?
- Who will be accountable for reviewing the Enquiry and following up on any action arising from it?

### **Information sharing**

- 4.12 Participation in planning will depend on the individual situation and will be decided by the Managing Officer / Lead Agency. As a general principle, and as long as this does not cause undue delays, all relevant agencies and individuals who have a stakeholder interest in the concerns should be involved in the process in the most appropriate way (taking into consideration issues of consent, risk, and preserving evidence).
- 4.13 Information sharing between organisations is essential to safeguard adults at risk of abuse or neglect. Decisions about what information is shared and with whom will be taken on a case-by-case basis. Whether information is shared with or without the adult's consent, the information shared should be:
- necessary for the purpose for which it is being shared;
  - shared only with those who have a need for it;
  - accurate and up to date;
  - shared in a timely fashion;
  - shared accurately;
  - shared securely.
- 4.14 In Staffordshire and Stoke-on-Trent much of the information process will take place at the Multi-Agency Safeguarding Hub (MASH), either between partners based there or in discussion with others. The MASH is not a single team but a place where various organisations are co-located and where they work together to share information and plan interventions.

- 4.15 The fact that a partner is or is not represented at the MASH must not affect the ability to apply the Safeguarding Principles and there is a general responsibility to work in partnership and share information appropriately.
- 4.16 Although the agencies in the MASH share specific Information Sharing Protocols the legal responsibilities in terms of data protection and confidentiality are the same as for other agencies.

### **Identifying the people who will undertake an Enquiry**

- 4.17 The Care Act 2014 and its supporting Guidance are not prescriptive as to who should undertake an Enquiry or how it should be conducted (although it is clear that the duty to ensure that an Enquiry takes place lies with the Local Authority). This decision will be determined by the context of the concerns and the relative complexity of the situation. The Guidance makes clear that in its most basic form an Enquiry may be a conversation but also that at other times it will require a wide range of professional skills and the ability to co-ordinate a multi-agency response to a life-threatening situation.
- 4.18 If it is decided that a joint response is required, then this must be made clear to the respective workers and they should liaise to ensure that this occurs and be clear on their respective roles and responsibilities and appoint a lead practitioner. Where it has not been possible to undertake a joint response as planned then this must be communicated to the Managing Officer for them to determine what further action to take.
- 4.19 Managing Officers will consider very carefully what the Enquiry will involve and clarify the types of skills and knowledge that those leading the Enquiry must have. In all cases the allocated person leading the Enquiry will:
- be able to understand the purpose and function of the Enquiry and its statutory nature and their own accountability;
  - have the professional skills to engage with the adult and any other parties involved to establish the facts and to obtain their account;
  - be competent to identify and respond to new concerns as they arise and to invoke protection measures if necessary;
  - be able to undertake the tasks identified in the Planning Discussion Enquiry Plan.
  - liaise and co-operate with other agencies and professionals as required in the Enquiry Plan;
  - record the detail and outcome of the Enquiry in accordance with the Local Authority's requirements although not necessarily in specified formats.

If the person leading the Enquiry is not employed by one of the Local Authorities, then the outcome and conclusions of the Enquiry must be communicated to the nominated accountable person for that agency within an agreed timescale.

### **Causing a Section 42 Enquiry to be made**

- 4.20 Where an Enquiry is to be undertaken by a person not directly employed by the Local Authority this must be clearly communicated to an accountable person in the organisation both verbally and in writing, laying out the legal context of the request and the statutory nature of the duty to enquire, and the accountable person must give recorded confirmation that they will undertake the Enquiry.

- 4.21 An organisation should not normally be caused to undertake an Enquiry if the adult is no longer in their care (e.g. NHS acute hospital Trust where a patient has been discharged). Decision making will include consideration to risk to other adults to determine proportionate response. They may be asked to undertake other forms of investigation if a section 42 enquiry is not required.
- 4.22 There is a statutory duty of co-operation and in most cases, there will be an expectation that Enquiry will be made as requested. The statutory duty does not apply if co-operation would be incompatible with its own duties or would have an adverse effect on its own functions.
- 4.23 If an organisation declines to undertake an Enquiry it must give the reasons in writing and this should then be discussed and escalated to Senior Officers in the respective organisation as appropriate. The key consideration of the safety of the adult must not be compromised in the course of any discussions or escalation and it is important to emphasise that the duty to co-operate is mutual.
- 4.24 In some cases the organisation charged with an Enquiry will be a care provider and it is essential that Managing Officers are satisfied that the provider has the skills and resources to undertake the Enquiry in a manner that will satisfy the statutory requirements in accordance with the Safeguarding Principles and in a manner that will promote the adult's wellbeing and independence.
- 4.25 When causing Enquiry to be made the Managing Officer will identify the time scale within which the Enquiry should be concluded and how the completed Enquiry report will be returned, and to whom.
- 4.26 Where an agreed time scale has not been met the Managing Officer will need to consider how to proceed and whether the risks and circumstances of the case allow the Enquiry to be extended or whether another agency will need to take over the Enquiry.
- 4.27 If it becomes clear that a registered agency has insufficient knowledge of adult safeguarding, then this may need to be communicated to their regulator and to relevant commissioners.

### **Multiple lines of Enquiry**

- 4.28 In some situations, there will be multiple lines of Enquiry and various people tasked with gathering information from a variety of sources. In these situations, it is essential that there is a single point of co-ordination. Normally, this will be the Managing Officer or a nominated deputy.

### **Other people are at risk**

- 4.29 There have been instances where the focus on the adult who is the subject of the concern has led the wider risks to others to be overlooked or ignored. It is essential that the Enquiry process does not become so narrowly focussed or lacking in general curiosity that it is unable to identify and respond to the abuse or the risk of abuse to other family members (either children or adults) or others who have care and support needs.

### **Cases Involving Adult Safeguarding and Child Protection Concerns**

- 4.30 On occasions it may be that a family/household includes both a child and an adult with care and support needs, both or either of whom may be experiencing or be at risk of abuse or neglect. For

example, an elderly or disabled adult who is deemed to be at potential or actual risk of harm resulting from the actions of a person under the age of 18 who is themselves at risk of harm as a result of abuse or care given. Whilst such cases are relatively unusual, they do require careful coordination when identified.

- 4.31 In all cases where the above criteria are identified at the point of referral, the responsible Childrens Safeguarding Team Manager or Co-ordinator should liaise with the Team Manager responsible for the adult case and ensure the sharing of information across the services.
- 4.32 In all cases where the above criteria is identified during the course of ongoing case management, the allocated team manager for the CSC Team leading any Child Protection enquiries should liaise with the Team Manager responsible for the Adult case and ensure the sharing of information across the services.
- 4.33 A professionals planning meeting should be considered to determine the coordination of activity across both services.
- 4.34 The allocated keyworker for the adult should be invited to any strategy meetings, core groups and child protection conferences concerning the young person subject to CP enquiries or interventions.
- 4.35 The allocated children's social worker should be invited to all Planning Discussions and Enquiry Review Meetings held under the Staffordshire and Stoke-on-Trent Inter-agency Adult Safeguarding Enquiry Procedures concerning the adult(s).
- 4.36 In all cases, including where cases have de-escalated to a lower level of support and intervention, it will be important to maintain dual planning across the services to ensure needs continue to be supported in a coordinated and coherent manner.

#### **Telephone discussion or formal meeting**

- 4.37 In some cases, the complexity or seriousness of the situation will require the Planning Discussion to be a formal meeting rather than a telephone discussion. This will be at the discretion of the Managing Officer, but it will be exceptional.

#### **Recording**

- 4.38 The Planning Discussion will be recorded by the Managing Officer using a Multi-agency Planning Discussion Document. The completed document will be sent to all those who have agreed actions. Information shared in confidence by participating agencies may be redacted from the document if this is likely to cause a data breach or a breach of confidentiality. Enquiry Plans will be shared in their entirety.

#### **The adult does not wish for an Enquiry to take place**

- 4.39 The duty to undertake a Section 42 Enquiry is not dependent on the consent of the adult once it has been established that they are at risk of abuse. Similarly, there is a duty to assess their needs for care and support, even if they decline this, where they lack mental capacity or are at risk of abuse.
- 4.40 It must be noted that under section 11(2) of the Care Act 2014 there is a duty to undertake an assessment of the adult's care and support needs despite their refusal in cases (a) where they lack



mental capacity to refuse the assessment and it would be in their best interests, or (b) where the adult is experiencing, or at risk of abuse or neglect.

- 4.41 Although there is a duty to undertake an Enquiry there is no legal power associated with the safeguarding duties to forcibly intervene and therefore any proposed safeguarding measures cannot be enforced in the face of an adult's rejection unless this is possible under other legislation.
- 4.42 In cases where the adult does not co-operate with an Enquiry or rejects any proposed safeguarding measures there will need to be an attempt to negotiate and seek to identify areas of possible agreement.
- 4.43 In exceptional cases it will be necessary to undertake the entire Enquiry without the agreement or participation of the adult and in such cases the known views and wishes of the adult should be fully and fairly represented, as far as they can be determined. In these situations, it will be important to identify other sources of information (where appropriate), e.g. family, friends, other professionals, that can inform judgements on risk and harm.

### **Resolving disagreements**

- 4.44 There will be instances where professionals may disagree on whether action is required or on the appropriate level of intervention. It is essential that any disagreements are resolved professionally through constructive dialogue and a willingness to consider other points of view.
- 4.45 Any disagreements which cannot be resolved should be recorded and those involved should consider whether they feel that the seriousness of the matter requires them to pursue the matter further.
- 4.46 Where a disagreement centres on a difference of view as to the adult's care and support eligibility it is important that appropriate assessment has been undertaken to support this view based on the Care Act 2014 eligibility criteria set out in the Statutory Guidance.
- 4.47 In cases where the inability to agree could potentially have serious consequences for an adult the active involvement of the respective line managers should be sought. If necessary formal communication between senior managers may be required and consideration could, in certain cases be given to using the relevant complaints procedure or notifying the appropriate regulatory body.
- 4.48 The lack of a shared view does not justify the unilateral withdrawal of any agency from a case if that would mean endangering the adult.
- 4.49 Clarification on the application of the Staffordshire and Stoke-on-Trent Adult Safeguarding Enquiry Procedures can be sought from the Adult Safeguarding Leads for the respective organisations involved. The Staffordshire and Stoke-on-Trent Adult Safeguarding Partnership Board (SSASPB) has also produced an Escalation Procedure for resolution of inter-agency difficulties which can be found on the [www.SSASPB.org.uk](http://www.SSASPB.org.uk) website.

### **Terminating an Enquiry at the Planning Discussion stage**

- 4.50 Where the Enquiry has progressed to a Planning Discussion and it has been agreed that there is no current risk of harm and that there is no other reason why an Enquiry should continue then this

will be clearly recorded, and a copy of the record will be sent to all parties involved in the discussion.

- 4.51 The Managing Officer will ensure that relevant information systems are updated to record the decision and that information is passed to the Local Authority Adult Safeguarding Leads if required by local arrangements.
- 4.52 The Managing Officer will ensure that information is shared appropriately (and within the limits permitted by confidentiality) with the adult, the referrer and any potential source of risk about the action taken and the decision that has been made.
- 4.53 If the outcome of the Planning Discussion is that alternative processes are to be followed this will be clearly recorded as well as the name of the person and/or agency who will take this forward. (See guidance on alternative processes in Section 3).

### **Enquiries and investigations**

- 4.54 The Planning Discussion will have determined the scope of the Safeguarding Enquiry and any parallel type(s) of investigation that is (are) required, e.g. criminal enquiries, disciplinary process etc.
- 4.55 Some situations require multiple investigation processes to take place concurrently. Where simultaneous investigations are proceeding it is essential that the staff leading them keep in regular contact and that one investigation does not contaminate, obstruct or interfere with any other.
- 4.56 It will be for the Managing Officer to ensure that this communication and co-ordination takes place. Managing Officers will ensure that staff that are allocated to undertake the Safeguarding Enquiry are sufficiently competent and skilled to do this.
- 4.57 Safeguarding Enquiries are undertaken in accordance with statutory duties but do not have any statutory powers to compel, enforce or sanction and where it becomes necessary this will be the responsibility of those agencies that do have relevant powers (e.g. arrest; interview under caution; issue penalties and prosecute etc.).
- 4.58 The purpose of an Enquiry is to establish the facts to an extent that decisions and plans for the adult's wellbeing and protection can be fully informed and take account of the context of the situation.
- 4.59 The focus of a Safeguarding Enquiry will be less on the detail of the alleged abusive incident than on the impact and repercussions for the adult.
- 4.60 Substantiation of an allegation of abuse is therefore of less significance in the context of a Safeguarding Enquiry than the protection and promotion of overall wellbeing of the adult.
- 4.61 Where there are multiple concerns relating to an adult these will normally be considered as a single Enquiry unless the context is quite different. Each concern will be recorded on Adults Safeguarding Contact but the Enquiry Report will make clear which concerns have been considered as part of the Enquiry. Staff undertaking the Enquiry must remember that the Enquiry is not incident specific but that it must consider the issue of possible abuse in the context of the adult's overall situation.

- 4.62 Where there has been a new concern raised on a case where a relevant Safeguarding Plan is already in place the Managing Officer will consider whether a review of the Safeguarding Plan is preferable to undertaking a new section 42 Enquiry.

### **Independent Advocacy and ‘substantial difficulty’**

- 4.63 Local Authorities have a duty to involve the adult in a Safeguarding Enquiry. Involvement requires supporting the adult to understand how they can be involved, how they can contribute and take part, and lead or direct the process. As part of the Planning process, the Lead Agency must consider and decide if the adult has “*substantial difficulty*” in participating in the Adult Safeguarding Enquiry. The Lead Agency should make all reasonable adjustments to enable the person to participate before deciding the person has “*substantial difficulty*”.

- 4.64 “*Substantial difficulty*” does not mean the person cannot make decisions for themselves, but refers to situations where the adult has “*substantial difficulty*” in doing one or more of the following:

❖ ***understanding relevant information***

Many people can be supported to understand relevant information, if it is presented appropriately and if time is taken to explain it.

❖ ***retaining that information***

If a person is unable to retain information long enough to be able to weigh up options, and make decisions, then they are likely to have substantial difficulty in participating.

❖ ***using or weighing that information as part of the process of being involved***

A person must be able to weigh up information, in order to participate fully and express preferences for or choose between options.

❖ ***communicating their views, wishes or feelings***

A person must be able to communicate their views, wishes and feelings whether by talking, writing, signing or any other means, to aid the decision process and to make priorities clear.

- 4.65 Where an adult has “*substantial difficulty*” being involved in the Adult Safeguarding Enquiry, the Safeguarding Officer must consider and decide whether there is an appropriate person to represent them. This would be a person who knows the adult well, and could be, for example, a spouse, family member, friend, informal carer, neighbour or Power of Attorney. The identified person will need to be willing and able to represent the adult.

- 4.66 An appropriate person to represent the adult cannot be a person who is involved in their care or treatment in a professional or paid capacity.

- 4.67 The person who is thought to be the source of risk to the adult will not be the most appropriate person to represent them even if the person thought to be the source of risk is a spouse, next of kin, or person closest to the adult in their social network. In such circumstances, careful thought needs to be given to whom would be appropriate to represent the adult, but it is unlikely that the Safeguarding Officer will consider that it is in the adult’s best interests to be represented by a person who may pose a risk of harm to them.

- 4.68 Where an adult has “*substantial difficulty*” being involved in the Adult Safeguarding Enquiry, and where there is no other appropriate person to represent them, the Lead Agency must arrange for an independent advocate to support and represent them. The Care and Support Statutory Guidance states that where the need for an independent advocate has been identified, the Local Authority must arrange for one to be provided.
- 4.69 If a Safeguarding Enquiry needs to start urgently then it can begin before an advocate is appointed but one must be appointed as soon as practicable.
- 4.70 Where a person lacks mental capacity and there are safeguarding concerns an Independent Mental Capacity Advocate (IMCA) can be instructed to support and represent an adult where:
- a) It is believed that they are exposed to the risk of:
    - death
    - serious physical injury or illness
    - serious deterioration in physical or mental health
    - serious emotional distress;
  - b) A life changing decision is involved, and consulting family or friends is compromised by the reasonable belief that they would not have the adult’s best interests at heart;
  - c) Where there is a conflict of views between the decision-makers regarding the best interests of the adult.
  - d) Where there is a risk of financial abuse which could have a serious impact on the adult’s welfare. For example, where the loss of money would mean that they would be unable to afford to live in their current accommodation or pay for valued opportunities.
- 4.71 The IMCA should be involved at the stage where a protective measure is planned or being considered rather than being involved in the planning process, as their role is to be consulted on specific decisions rather than a general advocacy role.
- 4.72 The IMCA will provide a report to the Managing Officer regarding their views of factors that should be considered as part of the decision-making process.

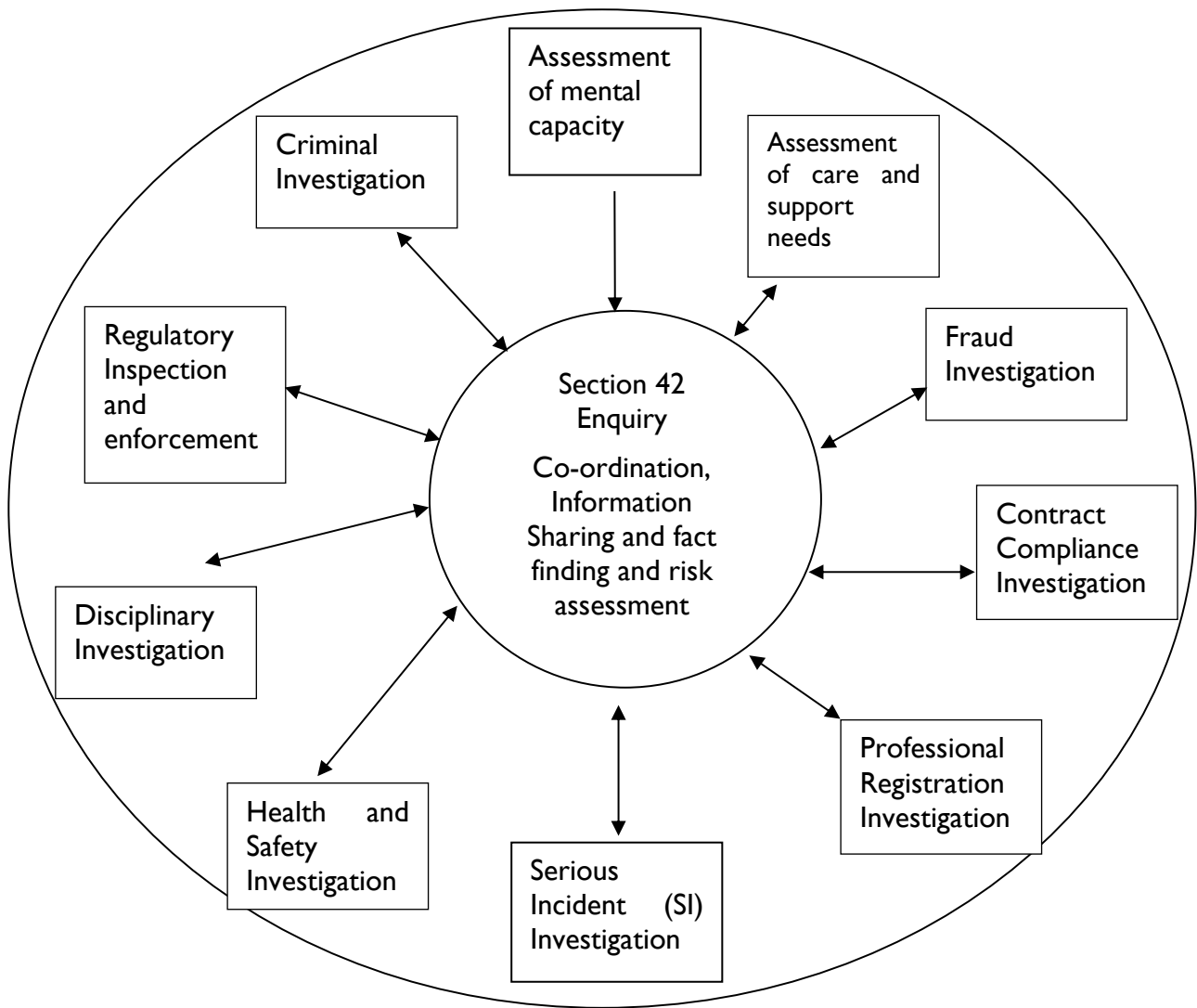
## **Self-neglect**

(see also short practice guide 5)

- 4.73 In cases of self-neglect, the Enquiry process will be different as described below:
- 4.74 Concerns will be raised in the normal way through contact with the respective Contact Centre for the Local Authority where the person is living.
- 4.75 Decision-making will be based on the considerations described in 3.10 to 3.13.
- 4.76 Information gathering will take place to identify the relevant agencies.
- 4.77 The Planning Discussion will be held as a meeting within 10 days of the concern being raised (subject to the seriousness of the risk of future harm).

- 4.78 The agenda for the Planning Meeting will be in line with the sample agenda in the Short Practice guide 5.
- 4.79 The Planning Meeting will be chaired by a Managing Officer.
- 4.80 No Enquiry Report will be required for this meeting and the record of this and subsequent meetings will constitute the evidence of the Enquiry process unless specifically requested by the Managing Officer.
- 4.81 The Planning Meeting will enable the sharing of information and will include consideration of the options for intervention and also the legal position.
- 4.82 Where intervention is required this will be recorded as a Safeguarding Plan.
- 4.83 Once the Safeguarding Plan has been agreed and implemented the Section 42 Enquiry can be concluded.
- 4.84 Safeguarding Plan Review Meetings should take place in all cases where there have been agreed safeguarding actions to ensure that there is multi-agency agreement that safeguarding measures are adequate and also to confirm that actions have taken place as agreed.
- 4.85 The need to engage with the adult and to work in a person-centred and outcome based manner is as important in cases of self neglect as in cases of other types of abuse. In many cases the adult will have mental capacity to consent to interventions and support measures and therefore their participation and agreement will be of key importance (see Short Practice guide 6 Self-neglect – What Works?).

## The Safeguarding Enquiry and parallel processes



<b>Parallel Processes</b>	<b>Relevant powers</b>	<b>Responsible Body</b>
<b>Criminal</b>	<i>Criminal law</i>	Police
<b>Regulatory</b>	<p><i>Health and Social Care Act 2008 (Regulated Activities) Regulations 2009, Care Quality Commission (Registration) Regulations 2009</i></p> <p><i>Care Act 2014</i></p> <p><i>Health and Social Care (Community Health and Standards) Act 2003</i></p> <p><i>Statutory Instruments</i></p> <p><i>Health and Safety legislation</i></p> <p><i>Safeguarding Vulnerable Groups Act 2006</i></p>	<p>CQC</p> <p>Professional Bodies (e.g. Nursing and Midwifery Council (NMC); Healthcare Professionals Council (HCPC); General Medical Council (GMC) etc.</p> <p>Stoke-on-Trent City Council, relevant District Councils or Health and Safety Executive (HSE)</p> <p>Disclosure and Barring Service (DBS)</p>
<b>Disciplinary</b>	<i>Employment law</i>	Agency Manager and or HR officer
<b>Contractual</b>	<i>Contract details and law</i>	Commissioning and Contract Monitoring Teams
<b>Care assessments</b>	<p><i>Care Act 2014</i></p> <p><i>Mental Health Act 1983</i></p> <p><i>Mental Capacity Act 2005</i></p> <p><i>Liberty Protection Safeguards (LPS)</i></p>	Social Care Teams including those delegated to NHS Trusts or other agencies.
<b>Complaints</b>	<i>Complaints Policies</i>	<p>Allocated investigating officer of agency against who complaint has been made</p> <p>Local Government Ombudsman</p>

<b>Fraud</b>	<i>Theft Act 1968</i> <i>Fraud Act 2006</i>	Police Local Counter Fraud Specialist (NHS) Department of Work and Pensions Trading Standards Office of the Public Guardian (OPG) – where allegations relate to holders of Enduring Power of Attorney (EPA), Lasting Power of Attorney (LPA) Deputyship
<b>Serious Incident (SI) Root Cause Analysis</b>	<i>NHS Clinical Governance advice</i>	Relevant NHS Provider Trust
<b>Safeguarding Adult Review (SAR)</b>	<i>Care Act 2014</i>	Local Safeguarding Adults Board (SAB)

### Responsibility for co-ordination of the Enquiry

- 4.86 It is the responsibility of the Local Authority where the adult lives to co-ordinate the Enquiry process irrespective of funding arrangements or *Ordinary Residence* as defined in the Care Act 2014. If other authorities are responsible for funding the adult(s) then the respective roles of the authorities should be negotiated and clarified during the Planning Discussion. A Local Authority cannot delegate the co-ordination role to a placing authority in these circumstances. For further information consult the ADASS Safeguarding Adults Policy Network Guidance; Out-of-Area Safeguarding Adults Arrangements - Guidance for Inter-Authority Safeguarding Adults Enquiry and Protection Arrangements (June 2016)<sup>3</sup>
- 4.87 Where adults have been interviewed in relation to serious physical or sexual abuse managers must ensure that appropriate arrangements are made to ‘debrief’ the staff involved within a reasonable period after the interview.
- 4.88 All staff must note the difference between an ‘*Appropriate Adult*’ who is required to provide assistance when an adult has been arrested and detained under the *Police and Criminal Evidence Act (1984)* and a ‘*supporter*’ who can provide assistance to a witness or victim in line with *Achieving Best Evidence* following provisions made in the *Youth Justice and Criminal Evidence Act 1999*<sup>4</sup>.
- 4.89 In all situations where the adult has mental capacity to make decisions about his or her own protection the following aspects should be covered with them:
1. Their account of the abuse.
  2. Their view of the current risk of future abuse.
  3. Their desired outcome for the Enquiry.

<sup>3</sup> ADASS <https://www.adass.org.uk/media/5414/adass-guidance-inter-authority-safeguarding-arrangements-june-2016.pdf>

<sup>4</sup> *Youth Justice and Criminal Evidence Act 1999*



4. Their consent for any action that is under consideration.
5. Their views on how he or she could best be supported.

4.90 The desired outcome will be of critical significance in evaluating the effectiveness of the Enquiry at its conclusion and therefore it is important that it is identified at the earliest stage possible.

4.91 Where the adult appears to be, or is believed to be, subject to coercion or undue influence it is important that this is treated seriously and that appropriate steps are taken to ensure that every opportunity is taken to enable them to freely give an account of their situation and wishes. Staff are reminded of the new offence of *controlling and coercive behaviour in intimate or familial relationships* contained in section 76 of the Serious Crime Act 2015.

4.92 In situations where there may be coercion or undue influence workers should clearly be seeking to undertake interviews in a way that prevents the source of risk from directly or indirectly intervening. In most cases this will require the attendance and involvement of more than one worker.

### **Interviews with people who are believed to be a potential source of risk**

4.93 In all enquiries it is essential that the principles of natural justice are applied and that as far as is practically possible any person who is a potential source of risk is given details of the allegations against him/her and also the opportunity to challenge them.

4.94 Where organisations have formal investigatory powers then interviews and legal processes will take place in accordance with Statutory Guidance. Where no formal powers exist, it is essential that Safeguarding Officers or other undertaking the Enquiry make it clear to any potential source of risk that they have no formal powers to require co-operation or to take a statement under caution under Police and Criminal Evidence Act 1984 (PACE). Where people are prepared to provide a voluntary statement, this will be signed and dated.

4.95 Safeguarding Officers have a responsibility to seek to establish the facts of an allegation of abuse of an adult, but this is restricted to the right to request information and evidence. These requests can be declined by any party and no inference can be drawn from such a refusal to co-operate. There is however an offence under Section 92 of the Care Act 2014 (breach of the duty of candour) that applies to registered providers and also a duty to co-operate that applies to statutory agencies and this should be borne in mind by all concerned.

4.96 Information given to or obtained by Safeguarding Officers or Managing Officers may be required by a court as witness testimony in criminal, civil and regulatory proceedings and this is an additional reason for the need for clear, factual and evidence-based recording. Such information can also be requested by the Disclosure and Barring Service (DBS).

### **Criminal Investigation**

4.97 If a matter is the subject of criminal investigation any interviews with a criminal suspect or witness will be undertaken by the police.

- 4.98 Nothing directly connected with the abuse incident should be discussed with the parties without prior discussion with the police, as this may affect the quality of any evidence and could adversely affect the prospects of gaining a prosecution.
- 4.99 Where a decision is subsequently taken that criminal action will not be taken this needs to be communicated promptly to the other organisations and agencies involved.
- 4.100 If the concerns relate to a paid worker, a volunteer or a Shared Lives carer it is essential that any disciplinary investigation does not interfere with any criminal inquiries. It is also important that disciplinary matters are investigated and addressed as quickly as can reasonably be achieved and that appropriate support, advice and information is available to the person against whom the allegations have been made. It is especially important that employers always make clear to staff and others that neither suspension nor disciplinary proceedings are, in themselves, proof of any guilt or malpractice.
- 4.101 If an employer is not sure whether a disciplinary process can continue due to criminal proceedings, they should contact the responsible Police Officer to clarify this.
- 4.102 If the potential source of risk also has care and support needs, consideration should be given to their needs and they should be offered any assessment or support that they may be eligible for. In the interests of independence and objectivity any worker allocated to support an alleged abuser should not be asked to support the alleged victim.

### **No Criminal Investigation**

- 4.103 If it has been agreed by the police that no criminal investigation needs to take place or that a criminal investigation has been concluded, then the potential source of risk will be interviewed as agreed at the Planning Discussion or subsequent meeting.
- 4.104 Where there is a disciplinary, regulatory or health and safety investigation the interviews should be undertaken by those with the legal powers to do this (e.g. the employer) within those frameworks and they may be asked to make reports of these interviews available to the Enquiry. Where none of these processes apply, the Safeguarding Officer should seek to interview the potential source of risk as soon as is practicable. Disciplinary sanctions such as suspension or dismissal can only be decided on and taken by the worker's employer and no other agency can insist on such sanctions being taken.
- 4.105 Safeguarding Officers must consider that the failure to engage with key parties (especially people against whom allegations have been made) in an Enquiry to allow them to give their account may lead to complaints of unreasonable and unfair treatment.
- 4.106 If the potential source of risk has care and support needs then appropriate support should be provided and if they lack mental capacity the involvement of an IMCA may be indicated, especially if there will be implications for future care arrangements.

### **Interviewing carers and relatives**

- 4.107 The Care and Support Statutory Guidance highlights that carers may be involved in a safeguarding issue for three reasons:

- They may witness or speak up about abuse or neglect;
- They may experience intentional or unintentional harm from the adult they are trying to support or from professionals and organisations they are in contact with;
- They may unintentionally or intentionally harm or neglect the adult they support on their own or with carers.

4.108 An explanation or account of the alleged abuse of the adult may need to be sought from a relative or carer. Where a criminal offence appears to have taken place and a relative or carer is believed to be responsible or a witness to a crime this interview should be conducted by the police. In such circumstances relatives/carers should not be approached first by staff from other agencies except by prior agreement with the police.

4.109 The exact timing of when a relative or carer would be informed will be dependent on whether there are suspicions of their involvement in the alleged abuse. In normal circumstances it is good practice to inform relatives and carers of incidents at the earliest opportunity subject to the agreement of the service user (if they have mental capacity) or if it is felt to be in their best interests (if they have been assessed as lacking mental capacity to make a specific decision).

4.110 Carers and relatives have various legal rights depending on their role and status; none of the rights of a relative or carer should be allowed to infringe the civil or human rights of the service user. If there appears to be a conflict of this nature the Safeguarding Officer or Managing Officer should consider seeking legal advice.

### **Interviewing other witnesses**

4.111 A wide range of people may have knowledge of possible abuse and it may be necessary to interview paid carers, other adults, other witnesses or involved parties such as health professionals, solicitors, neighbours etc.

4.112 Any such interviews should respect the confidentiality of all parties involved, as far as this is consistent with promoting the adult's safety, and the sharing of information should be governed by what has been agreed within the Planning Discussion. Safeguarding Officers cannot guarantee absolute confidentiality and must not promise to keep secrets.

4.113 The key principle remains that those undertaking enquiries and other investigations should continue to work closely and communicate to ensure the best outcome for all aspects of the Enquiry.

### **Documentary Evidence**

4.114 Evidence can be obtained from records and documentation including daily log books, accounts, bank statements, individual files, current and previous staff records, timesheets, supervision records and inspection reports. In cases of alleged financial abuse suitable detailed checks of an individual's personal banking records should be undertaken where this is possible and proportionate.

4.115 Where written evidence is used in an Enquiry the source and date of this material should always be recorded and copies taken. Safeguarding Officers will explicitly request documents that will assist the Enquiry.

- 4.116 The usual requirements regarding consent to sharing of records apply. Information sharing is governed locally by the One Staffordshire Information Sharing Protocol<sup>5</sup>.
- 4.117 Safeguarding Officers must remember that the absence of care planning or other documentation does not in itself prove that care has not been provided. It may however indicate that there is a lack of co-ordination in care and the potential for harm, especially where it relates to critical aspects of care such as medication, nutrition, hydration and pressure care. Similarly, documentary evidence that care has been provided cannot be taken as absolute proof that this has occurred although this will usually be the assumption unless there are grounds to doubt this.

### Visits to key places

- 4.118 It may be appropriate to visit the place where an alleged incident occurred to establish any corroborative evidence. This may be part of the process of evidence collection as part of investigating a criminal offence and would usually be undertaken by the Police, but it may also be appropriate for the Safeguarding Officer. It may also be necessary to examine equipment in some situations or to request a specialist to do so.

### Medical examinations

- 4.119 A medical examination may be required for two reasons:

1. Immediate medical assessment and treatment may be needed.

In cases where immediate medical assessment and treatment is required then this should be provided in the normal way through access to the usual primary and secondary health services. Information from the assessment may be used to inform an Enquiry.

2. For evidential purposes as part of a criminal investigation.

Only a Forensic Medical Examiner (FME) with specialist knowledge should undertake such medical examinations, this will be arranged by the police. An examination would not be lawful if the person has capacity to understand the process but does not give informed consent. The Sexual Assault and Rape Centre (SARC)<sup>6</sup> covers Staffordshire and Stoke-on-Trent and provides specialist support and medical assessment for victims of sexual abuse (0300 7900 166).

- 4.120 Issues such as the venue, the type of examination and who will undertake a medical examination should in most cases have been decided at the Planning Discussion.
- 4.121 If there are doubts over capacity to give informed consent, an assessment of capacity should be made by the examining clinician, in line with the principles and guidance contained in the Mental Capacity Act 2005 Code of Practice.
- 4.122 Where an adult is unable to give consent due to a lack of mental capacity a judgement must be made that the examination will be in the adult's best interests. The Police can consult with the Crown Prosecution Service (CPS)<sup>7</sup> as to the need for medical evidence. All discussions regarding medical examinations and treatment must be consistent with the guidance given in the Mental

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<sup>5</sup> One Staffordshire Information Sharing Protocol

<sup>6</sup> Sexual Assault and Rape Centre (SARC)

<sup>7</sup> Crown Prosecution Service (CPS)

Capacity Act 2005 Code of Practice and consideration should be given to whether it is appropriate to involve an Independent Mental Capacity Advocate (IMCA) in the process.

- 4.123 If there is any doubt about what the law allows then legal advice should be sought. It is ultimately the responsibility of the doctor to consult others, including relatives and carers when appropriate to determine whether an examination is in the service user's best interests.

## **Photography**

- 4.124 Photographs should only be taken in accordance with organisational policy and by an authorised person.

The normal principles apply:

- Consent should be sought from the person before any photograph is taken;
- The person's dignity must be preserved at all times;
- There must be clear evidential or clinical reasons for the use of photography.

- 4.125 This guidance focuses on photographing individuals, but it may also apply to premises or rooms.

- 4.126 Where the primary purpose of the photographs is to provide evidence for a criminal investigation the photographer will be a member of the police service and will have received appropriate training. If the photographs are being taken for clinical purposes, then they will be taken by staff that are suitably trained and experienced in this area.

- 4.127 If the adult lacks the mental capacity to consent to being photographed then the principles of the Mental Capacity Act 2005 will apply and it will only be acceptable if photography is considered to be in the adult's best interests following consultation with other people who may be able to advise (e.g. carers, relatives or professionals).

- 4.128 It is not possible for any individual to give consent on behalf of the adult (other than if there is formal authority as a Lasting Power of Attorney (LPA) or Deputy, for health and welfare in both cases) but it may be possible for others to inform a judgement as to whether photography would be in the person's best interests. In the absence of appropriate consultees, a decision will need to be made on the basis of the information available, the urgency of the situation and the anticipated effect that the act might have on the adult.

- 4.129 The physical and mental well-being of the adult will take priority over the need to gather evidence and investigating staff will always ensure that any plans to take photographs take account of the likely consequences that this will have. Any photography undertaken must take account of all medical or nursing care that is being provided and of any clinical advice provided (e.g. removal of dressings).

- 4.130 The purpose of photographic evidence will be to demonstrate the harm that has occurred to the adult with a view to presenting this to a court or for regulatory or disciplinary processes. In some cases (e.g. pressure areas) photography will be required also for clinical care reasons and such photographs may also be admissible as evidence where they indicate neglect or ill treatment. Whenever photographic evidence of injuries has been obtained it will be advisable to obtain a medical opinion to provide expert interpretation of the images.

- 4.131 It will never be acceptable for any worker to take photographs of injuries on mobile telephones or on their personal cameras. Relatives and carers should also be discouraged from doing so in the interests of the dignity of the service user and wider confidentiality.
- 4.132 Any photograph that is taken in accordance with the above guidance will be classed as confidential personal data and kept securely and subject to normal record retention procedures.

## **Review**

- 4.133 As the Enquiry proceeds there should be regular multi-agency and management evaluation and review. The appropriate review will be a matter for professional judgement and will be decided by the Managing Officer for the case.
- 4.134 The Managing Officer will hold regular and recorded case discussion with the person undertaking the Enquiry. The details of this will be recorded on the adult's social care record.
- 4.135 In line with the principle of empowerment the workers involved in the Enquiry should seek to meet with the adult and/ or their advocate or representative at regular stages during the Enquiry. These should be informal meetings with the purpose of sharing information with the adult, monitoring the success of any interim safeguarding arrangements and clarifying the desired outcomes of the case. These discussions will be briefly recorded on the adult's social care record and will be referred to in the Enquiry report.

## **Enquiry Review Meetings**

- 4.136 The Managing Officer will convene an Enquiry Review Meeting if this is felt to be necessary. This will be a formal meeting to bring together all relevant agencies and other key individuals to review progress of the Enquiry and consider further action.
- 4.137 An Enquiry Review Meeting will normally (but not exclusively) be necessary for cases where there is a high level of risk to the adult or where the issues are especially complex.
- 4.138 The Managing Officer will ensure that a minimum of 5 working days' notice is given to anyone who is to attend an Enquiry Review Meeting (ERM). If an agency representative is unable to attend the meeting, they should send a written report of their involvement.
- 4.139 The Managing Officer will ensure that any potential attendees at an Enquiry Review Meeting are advised of: the name of the adult, details of the concerns and the name of the source of risk, other attendees and the nature of the Enquiry.
- 4.140 The views of the adult must be shared and considered at the meeting; this may be through their attendance, but, if this is not possible, through an advocate or a written account of their wishes and views.
- 4.141 People or agencies that are subject to continuing criminal, health and safety or disciplinary investigation will not normally be invited to attend the review meeting although their views may be represented if this would not compromise the continuing investigations.
- 4.142 The Enquiry Review Meeting will be conducted to a set agenda that will include:

1. Introduction/Apologies
2. Confidentiality Statement – *Any information disclosed as part of these discussions should not be shared with any other person unless agreed as a specific action point.*
3. Purpose of meeting – *To review the Section 42 Enquiry; to clarify the desired outcomes of the Enquiry; to consider the risk of harm to the adult; to identify immediate safeguarding arrangements and plan further action.*
4. Details of original concerns
5. Review of planning discussion actions or minutes of previous meeting
6. Views and wishes of the adult with care and support needs
7. Section 42 Enquiry report or update
8. Other formal reports/verbal submissions
9. Communication with source of risk
10. Legal advice (where appropriate)
11. General discussion
12. Risk of harm assessment
- Action Planning:
13. Further Enquiry
14. Safeguarding Plan
15. Communication Plan
16. Timetable for future meetings
17. Termination of Section 42 Enquiry and outcomes.

4.143 The Enquiry Review Meeting will be planned and managed in such a way as to be accessible to the adult and to avoid oppressive practice. Issues such as accessibility, communication and advocacy will therefore have been considered well in advance and steps will have been taken to ensure that interpreters or supporters have been arranged.

4.144 The Enquiry Review Meeting will be formally recorded and will include a clear Action Plan; the Action Plan will be circulated within 5 working days after the meeting. The full record of the meeting will be circulated to those who have attended within 10 working days.

### **Safeguarding Enquiry Reports**

4.145 The Managing Officer co-ordinating the Enquiry will ensure that one or more Safeguarding Enquiry Reports is/are produced to record the Enquiry process and the outcomes. The Safeguarding Enquiry Reports are key documents to enable discussion and agreement of protection planning. The report will express the professional findings of the Safeguarding Officer but will be subject to the final approval of the Managing Officer.

4.146 The Safeguarding Enquiry Reports will be written in accordance with the template and will give a clear and succinct account of the following:

- What was the allegation or concern that led to the Enquiry?
- What is the outcome that the adult wants?
- What is the outcome that professionals want?
- What action has been taken so far to protect the adult?
- Who was contacted in the course of the Enquiry and how was this done?
- What are the established facts of the case?
- What consideration was given to mental capacity?
- What are the views of the adult and/or their advocate?
- What are the views of any family carers involved?
- What are the views of the potential source of risk?
- What are the protective factors that are mitigating harm?
- What conclusions or professional judgements can be reached from the above information?
- Is there a recommendation that the allegation of abuse should be substantiated?
- What is the risk of harm to the adult as assessed by the risk assessment tool?
- What measures should be included in a Safeguarding Plan?
- Is there further action that needs to take place?
- Are there any matters or issues that need to be followed up by any agency?

4.147 The Safeguarding Enquiry Report(s) will be recorded on the adult's social care record and on the records of the agencies that have contributed to it.

### **Evaluation and review**

- 4.148 The Managing Officer will be responsible for considering all Enquiry Reports and will make a judgement for each one as to whether the statutory duty of Enquiry has been met.
- 4.149 If the Managing Officer is satisfied that duty to make Enquiry has been met and that the adult is not experiencing or at risk of abuse or neglect, then the Enquiry will be terminated; there may be actions for other agencies, but this will not be covered under the Enquiry process.
- 4.150 If the Managing Officer is satisfied that the duty to make Enquiry has been met but believes that the adult is at risk of abuse or neglect, then a Safeguarding Plan will be required and the involvement of the Local Authority in connection with the safeguarding concerns will continue.
- 4.151 If the Managing Officer is not satisfied that the duty to make Enquiry has been fully met, then they will identify what further action is necessary; who this should be undertaken by and the time frame for this.
- 4.152 If the Enquiry report is not satisfactory the Managing Officer may decide:
- There needs to be further Enquiry;
  - There needs to be an Enquiry Review Meeting;
  - The Enquiry needs to be reallocated for a fresh Enquiry.
- 4.153 In the course of considering the Enquiry Report the Managing Officer will clarify whether the desired outcomes have been achieved and, if not, whether there is additional work required to enable this to occur. The outcomes of the Enquiry will be fully recorded on the social care information system.



### Short Practice guide 3 – Making Safeguarding Personal (MSP); focusing on the adult and their outcomes. Involvement, empowerment and personalisation

Practice approaches to adult safeguarding should be person-led and outcome-focused. The Care Act 2014 Statutory Guidance emphasises a personalised approach to adult safeguarding that is led by the individual, not by the process. It is vital that the adult feels that they are the focus and they have control.

This is not simply about gaining an individual's consent, although that is important, but also about hearing their views about what they want as an outcome. This means that they are supported and given an opportunity at all stages of the safeguarding process to say what they would like to be different and change; this might be about not having further contact with a person who poses risk to them, changing an aspect of their care plan, asking that someone who has hurt them apologises, or pursuing the matter through the criminal justice system.

Personalised practice approaches to adult safeguarding should seek to engage the person in a conversation about how best to respond to their safeguarding situation in a way that enhances involvement, choice and control as well as improving quality of life, well-being and safety.

Planning Adult Safeguarding Enquiries should always start with gaining the views and wishes of the adult, unless there are reasons why doing this would cause increased risk of harm. In some circumstances, gaining the views and wishes of the adult will be the only Enquiry needed to enable the Local Authority to decide what actions are required in that adult's case. In other circumstances, gaining the views and wishes of the adult will be the starting point to determine and undertake a much wider range of enquiries.

The adult's views, wishes, and desired outcomes may change throughout the course of the Enquiry process. There should be an ongoing dialogue and conversation with the adult to ensure their views and wishes are gained as the process continues, and enquiries re-planned should the adult change their views.

Sometimes, people may have unrealistic expectations of what can be achieved through the safeguarding procedures, and they should be supported to understand from the outset how their desired outcomes can be met.

The views, wishes and desired outcomes expressed by the adult are important in determining the appropriate and proportionate response to the concerns raised, and what enquiries may be needed. The person's wishes and desired outcomes, however, are not the only consideration as sometimes actions are required without a person's consent, particularly where there are overriding public interest issues, or risk to others. In these circumstances, the practitioner will need to ensure that a sensitive conversation takes place with the adult to explain how and why their wishes have to be over-ruled, listening to their feelings and the impact this action will have on them, and seeking to provide them, wherever possible, with reassurance.

The views, wishes and desired outcomes of the adult are equally important should the adult lack mental capacity to make informed decisions about their safety and protection needs, or have *substantial difficulty* in making their views known and participating in the Enquiry process. Personalised practice approaches should still be taken in such cases, including engaging with the persons representative/s, any best interest consultees, appointing an independent advocate where appropriate, using what information is known and finding out what the adult would have considered important in decisions about their life, and by following best practice as laid out in the Mental Capacity Act Code of Practice 2007.

<b>Short Practice guide 4 – Interviewing and gathering evidence</b>	
<b>Information and support</b>	<b>What this means for the adult</b>
<p>The Safeguarding Officer is responsible for leading and co-ordinating the Enquiry and for gathering the evidence on which judgements about the wellbeing of the adult and risk of abuse and neglect can be made.</p> <p>The basis of the Enquiry, its statutory function and the terms of reference should be explained to all parties involved in a way that can be easily understood.</p>	<p><i>There is a single point of contact and information that is available for the duration of the Enquiry</i></p>
<b>Initial Contact with the adult</b>	
<p>The first task will be to make early contact with the adult as quickly as is necessary (if this does not occur within 48 hours of receipt of the referral there should be an explanation recorded as to why this was the case) to explain the Enquiry process and to make an initial assessment of the risk of harm, identify any mental capacity issues and the context of the referral (a formal interview will not normally take place at this stage).</p> <p>At this stage the adult's wishes should be identified as far as this is practicable and their desired outcomes should be recorded.</p> <p>The statutory requirement to involve an independent advocate where the adult has 'substantial difficulty' in being fully involved in the process must be considered at this stage.</p>	<p><i>The adult is made aware from an early stage of the concerns and the process is clearly explained.</i></p> <p><i>The adult is supported to be assisted with involvement in the Enquiry process.</i></p>
<p>Where contact with the adult cannot be arranged in a way that is safe for the adult or for the worker then this must be recorded, and discussions held with the Managing Officer and with the Police and/or other agencies about how the risks will be managed.</p>	<p><i>The safety of the adult is considered, and risks are immediately responded to.</i></p>

<b>Criminal investigation interviews with the Adult</b>	
<p><b>The Police will always take lead responsibility for interviews in relation to criminal offences.</b></p> <p>All interviews must take account of the guidance set out in 'Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses and using special measures (Home Office, Ministry of Justice, Departments of Health and Children, Schools and Families 2007)</p>	<p><i>Special measures are in place to ensure that the adult is able to give their evidence in the easiest and least oppressive way.</i></p>
<p>Police Officers must seek an early assessment of the abilities of the adult to anticipate any difficulties that may arise in interview. Access issues should also be considered.</p>	<p><i>Any issues about communication and mental capacity are identified prior to the interview but assumptions are not made that a person will not be a competent witness.</i></p>
<p>An early planning (Special Measures) meeting may be advisable between the Police Officer and the Crown Prosecution Service to discuss the case and to agree the most appropriate type of statement.</p>	<p><i>The CPS is able to consider from the earliest stage how the adult will be supported to give evidence and also how far the supporting evidence will render this unnecessary.</i></p>
<p>Interviews must be led by a Police Officer or a Social Care Worker who has completed training on the 'Achieving Best Evidence' guidance.</p>	<p><i>The adult will be interviewed by workers who have received appropriate specialist training and who have access to specialist support.</i></p>
<p>Interviews should be jointly conducted by Police and Social Care/CMHT staff wherever beneficial in supporting the adult to be comfortable and to promote communication and an awareness of care and support needs.</p>	
<p>Where the quality of evidence can be improved by using a visually recorded interview or other special measures, this must be arranged.</p>	<p><i>The adult is enabled to give visual evidence that will give the fullest picture of the context of the interview and of their responses.</i></p>
<p>Where an adult has significant communication difficulties a suitably trained interpreter or intermediary must be provided.</p>	<p><i>All communication needs are met, and specialist support is requested when necessary.</i></p>
<p>Where the adult's first or preferred language is not English then a qualified interpreter must be used; family members or care staff must not be used as interpreters.</p>	<p><i>The adult is supported to give evidence in their preferred language</i></p>
<p><b>Conversations with an adult where no criminal investigation is taking place (see additional guidance on structured interviews)</b></p>	
<p>The Safeguarding Officer will arrange to hold a structured conversation with the adult in accordance with what has been agreed during the Planning Discussion.</p> <p>The purpose of the conversation is to:</p> <ul style="list-style-type: none"> <li>• Clarify the adult's view about the alleged abuse.</li> <li>• Obtain full details about what has occurred.</li> </ul>	<p><i>The adult is given the opportunity to give their perspective on the alleged abuse and to consider the options relating to protection.</i></p>

<ul style="list-style-type: none"> <li>• Establish any protective factors that may mitigate the risk of abuse.</li> <li>• Establish the adult's view about what action should be taken in response to the alleged abuse and to prevent further instances.</li> </ul>	
<p>All such conversations require careful planning and preparation. Consideration must always be given to:</p> <ul style="list-style-type: none"> <li>• Communication needs;</li> <li>• 'Special Measures' considerations;</li> <li>• Access issues if appropriate (e.g. level access, lifts, appropriate toilet etc.);</li> <li>• Gender issues;</li> <li>• Cultural and/or language issues;</li> <li>• Implications of any disabilities (e.g. attention span, speech impairment, memory etc.)</li> </ul>	<p><i>All possible steps are taken to ensure that the adult will only have to tell their story once and that any relevant needs are taken account of.</i></p>
<p>The conversation also enables the Safeguarding Officer to assess whether there are any additional care needs or further assessments that may be required, including assessment of mental capacity. The conversation will be recorded on the Enquiry evidence form.</p>	<p><i>Attention is paid to whether there are any further assessments required.</i> <i>Fully informed open and transparent process.</i></p>

## Short Practice guide 5 – Agenda for Planning Meeting in cases of Self Neglect

### Multi-agency Planning Meeting

#### Agenda

1. Introductions and apologies
2. Outline of concerns
3. Information sharing from each agency
3. Views of the adult with care and support needs
4. Views of relatives, carers or advocates
5. Issues relating to mental capacity or mental health
6. Consideration of the risk of harm
7. Assessment of the risk of harm
8. Legal considerations
9. Action planning:
  - a) Safeguarding Plan

- b) Advocacy
- c) Escalation
- d) Communication

## 10. Further meetings and review

### Short Practice guide 6 – Self-neglect – What works?

Anyone could find themselves encountering people who are neglecting themselves. Self-neglect that is not addressed may lead to deterioration in physical or mental health and to possible death.

The key considerations that should be applied when it is believed that a person may be neglecting him/herself are:

- a) The full range of statutory assessments should be offered. Primary among these is the duty to assess care and support needs under the Care Act 2014.
- b) Every effort should be made to engage with the person, to offer information and support and to ensure that representation through family, friends or advocates is supported. Engagement should be as continuous and assertive as the identified risks indicate.
- c) Where there is any doubt about the person's mental capacity to make decisions about consent, treatment, finances or housing, this must be assessed in line with the principles and requirements of the Mental Capacity Act 2005.
- d) Mental capacity may fluctuate or change and therefore any assessment of capacity should be reviewed as often as necessary to ensure that those involved have a valid current view. The result of self-neglect will often be the eventual loss of mental capacity and at that time (e.g. loss of consciousness; confusion) intervention may be necessary in the person's best interests.
- e) Where the person has a mental disorder and there is a risk to their health and safety, consideration should be given to undertaking an assessment under the Mental Health Act 1983.
- f) Agencies working with the person should report serious concerns relating to self-neglect or the refusal of services to a senior manager and seek advice on how matters can be taken forward.
- g) All agencies should take responsibility for escalating their concerns to partners if this is required to ensure a multi-agency response.
- h) Formal Multi-agency Planning Meetings (MAPMs) should be convened to facilitate multi-agency information-sharing, discussion and action planning. These meetings should be chaired by a suitably senior person in one of the statutory agencies. This could be a manager from a social care team.
- i) Partner agencies should ensure that those attending MAPMs are sufficiently senior to make decisions and deploy appropriate resources.
- j) Partner agencies should reach a shared assessment of the risks of the situation.
- k) Partner agencies should develop a shared action plan with clear timescales and accountability.
- l) Agencies should seek legal advice regarding the scope and range of possible legal interventions.
- m) Any action plan that is developed should be regularly reviewed.
- n) In certain circumstances the appropriate course of action may be an application to the Court of Protection (when a person lacks mental capacity to make some or all of the relevant decisions) or the High Court under its Inherent Jurisdiction (where the person has the mental capacity to make the relevant decisions but is under undue influence or is otherwise incapable of acting on the decision).

### How to balance rights and risks?

Independence and autonomy are key human rights. The Mental Capacity Act 2005 confirms the right of all people to make unwise decisions without others inferring from this that the person lacks mental capacity.

In most cases professionals and front-line carers are able to negotiate around the stated preferences of the people they support and reach resolutions that may be less than perfect, but which are both professionally defensible and also acceptable to the person they are supporting. When such negotiation and discussion fails to achieve a defensible solution management support and, in many cases, specialist advice and multi-agency co-operation should be sought. Professional staff must consider their own accountability for, and take advice on, any involvement in situations that breach their professional guidelines or general duty of care.

The involvement of other agencies and the consideration of wider options should not be seen as a breach of the person's rights to privacy or autonomy but rather as an effort to ensure that all necessary considerations are made and that the right to life itself is supported. The fact that there is wider consultation and co-operation does not mean that there will necessarily be a power to intervene nor that any action can be taken that is not directly in proportion to the assessed risk.

### **What are the key skills in working with self-neglect?**

Research shows that the key skills for staff include:

- Assessing mental capacity
- Joining and engaging with the person and with wider partners
- Working with resistance and low motivation
- Patience
- Person-centred communication
- Negotiation skills – creating change through relationships
- Decision-making that balances conflicting imperatives.

Short Practice guide 7 – Independent Advocacy

Is there a duty to provide an independent advocate?

