

## Section 4: Safeguarding Enquiries

As noted in Section 1, The Care Act 2014 requires the Local Authority to make enquiries, or causes enquiries to be made, in situations where the Local Authority has reasonable cause to suspect that an adult in its area:

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

The scope of the enquiry, who leads it and the nature of the enquiry, will depend on the individual circumstances of the concern. It is highlighted that everyone involved in an enquiry must focus on improving the individual's well-being and work together to meet that shared aim.

The first priority of any safeguarding enquiry should be to ensure the safety and well-being of the adult at risk. Any actions should be in line with the adult's wishes as far as possible and appropriate.

In accordance with the safeguarding principles, any enquiry should be proportionate to the concerns raised and risks identified.

### Objectives of an 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.

4.2 Fundamental to any safeguarding enquiry is a spirit of *professional curiosity* whereby there must be a genuine interest in the narratives that are presented and also the ability to question information and objectively evaluate it rather than accept accounts at face value.

## **Enquiry Process:**

### **Planning an enquiry**

- 4.3 Once it has been determined that a concern meets the threshold for further enquiry, the enquiry will need to be planned and co-ordinated. No agency should take action in respect of a safeguarding concern 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 Planning processes should be tailored to the individual circumstances of the adult, but should cover the following aspects:
- gaining the views, wishes, consent, and desired outcomes of the adult if not already obtained at the point of referral (or planning how these views and wishes will be gained).
  - deciding if an independent advocate is required (or planning how information will be gained to enable this decision to be made).
  - gathering and sharing information with relevant parties.
  - agreeing what enquiries are needed and who will do these.
  - assessing risks and formulating an interim safeguarding plan to promote safety and wellbeing while enquiries are undertaken.
- 4.5 The planning process will be led and co-ordinated by a Managing Officer from the lead Local Authority who will make a determination regarding the individuals/agencies that need to be involved.
- 4.6 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.
- 4.7 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.
- 4.8 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 only in exceptional circumstances.

- 4.9 The planning discussion constitutes part of the Section 42 enquiry. The enquiry plan will be shared with the individual(s) and/or organisation(s) who will be completing the enquiry.

### **Responsibility for co-ordination of the enquiry**

- 4.10 It is the responsibility of the Local Authority where the adult occurred to co-ordinate the enquiry process irrespective of funding arrangements or Ordinary Residence as defined in the Care Act 2014. If other authorities (social care or health) 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).

### **Information sharing**

- 4.11 Participation in planning an enquiry 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 an 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).
- 4.12 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 determined by the individual circumstances. 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.
- 4.13 In Staffordshire and Stoke-on-Trent much of the information sharing 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.

- 4.14 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.
- 4.15 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.
- 4.16 There are some key partner agencies and individuals that should always be notified in a timely way of concerns, and be involved where appropriate:

In all cases	Managing Officer – either at Multi-Agency Safeguarding Hub (MASH) or for area where alleged concern occurred.
Where it is suspected that a crime has been or might be committed	Police Officer – MASH and/or allocated officers
Where a service registered under the Health and Social Care Act 2008 is involved	Compliance Inspector – CQC safeguarding@cqc.org.uk  Integrated Care Board (ICB) Safeguarding Team and Continuing Health Care Team if there is Continuing Healthcare (CHC) contract
Incident in an NHS service or an Independent hospital.	Senior Manager – or NHS Hospital Trust  Compliance Inspector – CQC safeguarding@cqc.org.uk Senior Manager – ICB and/or NHS England
Where disciplinary issues have been identified	Manager of relevant organisation
Where there has been a sudden or suspicious death	The local Coroners Office:  E-mail: <a href="mailto:staffordshireandstokecoroners@stoke.gov.uk">staffordshireandstokecoroners@stoke.gov.uk</a>  Tel: 01782 234777

Where there is an allegation of rogue trading, scams or doorstep crime	Local Trading Standards Unit: Stoke-on-Trent - 01782 234234 Staffordshire - 0300 111 8045
Health and Safety incident involving unsafe systems of work/ equipment	Health and Safety Executive or Local Authority Health and Safety Officer (subject to protocol with CQC)
Where there are issues of domestic abuse	Police and specialist domestic abuse services. Consider MARAC.
Where there is concern about a person in a Position of Trust	Relevant agencies and employer's dependent on situation.
Modern Slavery/ human trafficking	Staffordshire Police. Multi-agency discussion will take place at the MASH.

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

- 4.17 There may be occasions where a family/household includes both a child and an adult with care and support needs, whom may be experiencing, or be at risk of, abuse or neglect. For example, there may be the same source of risk for both the child and adult with care and support needs. Such cases will require careful coordination when identified.
- 4.18 In all cases where the above criteria are identified at the point of referral, the responsible Team Managers from both adults and children's services should liaise to ensure the effective sharing of information across the services.
- 4.19 Similarly, in all cases where the above criteria is identified during the course of ongoing case management, the responsible Team Managers from both adults and children's services should liaise to ensure the effective sharing of information across the services.
- 4.20 A planning meeting with all involved professionals should be considered to determine the coordination of activity across both services.
- 4.21 The allocated worker for the adult should be invited to any strategy meetings, core groups and child protection conferences concerning the young person subject to Child Protection enquiries or interventions.

- 4.22 The allocated children's worker should be invited to all meetings held under the Staffordshire and Stoke-on-Trent Adult Safeguarding Procedures concerning the adult(s).
- 4.23 In all cases, it will be important to maintain dual planning across the services to ensure needs continue to be supported in a coordinated and coherent manner. This will be necessary even where risks have reduced and can be managed with a lower level of support and intervention.

### **Closing an enquiry following the planning stage**

- 4.24 When planning discussions have taken place and it has been agreed that there is no current risk of harm and there is no other reason why an enquiry should continue then this will be clearly recorded, and the outcome shared with the adult and other relevant parties.
- 4.25 If no further enquiry is taking place, but actions are taking place under other processes (see guidance in Section 3) then this should also be clearly recorded.

### **Continuing with an enquiry following the planning stage**

#### **Identifying who should undertake the enquiry**

- 4.26 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).
- 4.27 To determine which person/organisation is best placed to complete the enquiry the following should be considered:
- **Has a crime been completed?** If a crime is suspected, the Police will lead the investigation.
  - **Are there any employment responsibilities?** Allegations against staff may be best undertaken by the employer (unless offences are identified in which case Police will lead the enquiry).
  - **Who has the necessary skills or knowledge?** Concerns relating to specialist clinical care, for example, may be best led or will require the involvement of health professionals.
- 4.28 The Local Authority should cause service providers/employers to carry out an enquiry into any concern in relation to their service where it is appropriate and proportionate to do so.

4.29 In all cases the allocated person completing 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 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.

4.30 If the person leading the enquiry is not employed by one of the Local Authorities, then the completed enquiry report should be shared within an agreed timescale with the nominated person/team for that agency.

4.31 The Local Authority will not cause another person, agency or organisation to undertake an enquiry when:

- There is a serious conflict of interest for the employer.
- There are or have been concerns about the effectiveness of previous enquiries.
- It is not clear whether the person, provider or organisation has the necessary skills or knowledge to complete the enquiry.
- There are concerns about the person, agency, or organisations failure to act to safeguard the adult.
- A provider will not usually be caused to complete an enquiry if there is a current Large Scale Enquiry relating to the service.

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

4.32 Following the planning discussion, the Local Authority may cause others to make enquiries on its behalf. This means that the Lead Local Authority can ask a provider service or partner agency to conduct their own enquiries and report these back to the Local Authority. The information would then be used by the Local Authority to make a decision as to what, if any, further action is required in relation to the concerns raised.

4.33 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. The accountable person must give recorded confirmation that they will undertake the enquiry.

- 4.34 An organisation should not normally be caused to undertake an enquiry under Section 42 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 of the risk to other adults to determine a proportionate response. The organisation may be asked to undertake other forms of investigation if a Section 42 enquiry is not required.
- 4.35 Under Section 7 of the Care Act 2014 there is a statutory duty of co-operation. In most cases, there will be an expectation that enquiry will be made as requested. The partner agency must comply with the request unless it considers that doing so:
- a) Would be incompatible with its own duties, or
  - b) Would otherwise have an adverse effect on the exercise of its functions.
- 4.36 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.
- 4.37 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.
- 4.38 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.
- 4.39 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.
- 4.40 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.

### **disagreements**



- 4.41 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. The outcome of these discussions should be recorded in line with each agency's individual processes.
- 4.42 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.
- 4.43 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.
- 4.44 The Staffordshire and Stoke-on-Trent Adult Safeguarding Partnership Board (SSASPB) has also produced an Escalation Procedure for resolution of inter-agency difficulties [Escalation policy \(ssaspb.org.uk\)](https://ssaspb.org.uk)

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

- 4.45 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. However, 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 objection unless this is possible under other legislation.
- 4.46 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.
- 4.47 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 (where appropriate), it will be important to identify other sources of information e.g. family, friends, other professionals, that can inform judgements on risk and harm.
- 4.48 It must also 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.

### **Completing the enquiry**

- 4.49 The process of completing the safeguarding enquiry should be tailored to the individual needs and circumstances of the adult. As noted above, the enquiry should be proportionate to the concerns raised and risks identified. The Care Act Statutory Guidance makes it clear that in its most basic form an enquiry may be a conversation with the adult the concern relates to, but other enquiries may require a range of professional skills and the ability to co-ordinate a multi-agency response to a high-risk situation.
- 4.50 Some situations require multiple investigation processes to take place concurrently (refer to Appendix 3.1 for examples of parallel investigations). Where parallel investigations are proceeding it is essential that the individual/agency leading them keep in regular contact and that one investigation does not contaminate, obstruct, or interfere with any other.
- 4.51 The Local Authority has a statutory duty to complete safeguarding enquiries where the relevant criteria are met. However, the Local Authority does not have any statutory powers under Section 42 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; powers of entry; issue penalties and prosecute etc.).
- 4.52 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.
- 4.53 The focus of a safeguarding enquiry will be less on the detail of the alleged safeguarding concern than on the impact and repercussions for the adult.
- 4.54 The protection and promotion of the adult's well-being is of greater significance than the outcome of the safeguarding concern (e.g. substantiated/proven or non-substantiated/unproven).
- 4.55 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 the Adults Safeguarding contact, but the enquiry report will make clear which

concerns have been considered as part of the enquiry. The Individual 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.

- 4.56 Where there has been a new concern raised for an adult 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.

#### Standard of Proof

Adult safeguarding enquiries are only required to decide their outcome on the balance of probability. Similarly, any disciplinary panel convened following an enquiry against a member of staff is only required to decide their outcome on the balance of probability.

The standard of proof for a criminal prosecution is higher as the case has to be proved beyond all reasonable doubt.

### **Criminal Investigation**

- 4.57 If a matter is the subject of criminal investigation any interviews with a criminal suspect or witness will be undertaken by the police.
- 4.58 Nothing directly connected with the alleged offence 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.
- 4.59 Where a decision is subsequently made that there will be no further action by Police this needs to be communicated promptly to the other organisations and agencies involved.
- 4.60 If the concerns relate to a person in a position of trust 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.

- 4.61 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.
- 4.62 Where the alleged source of risk has care and support needs themselves, they should be assured of their right to the support of an "Appropriate Adult" under the Police and Criminal Evidence Act 1984.

### **No Criminal Investigation**

- 4.63 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 can be interviewed if appropriate. The interview can be completed by the Safeguarding Officer or others (as detailed below).
- 4.64 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. 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.
- 4.65 All parties must consider that the failure to engage with the alleged source of risk in an enquiry to allow them to give their account may lead to complaints of unreasonable and unfair treatment.
- 4.66 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 source of risk should not be asked to support the adult with care and support needs.

### **Speaking to the adult**

- 4.67 In accordance with the Making Safeguarding Personal Agenda, the safeguarding process should be person-led and outcome-focussed. It is vital that the adult feels they are the focus of the safeguarding process.
- 4.68 Personalised practice approaches to adult safeguarding should seek to engage the person in how best to respond to their safeguarding situation. This should involve the adult in a way that enhances their

involvement, choice and control as well as seeking to improve quality of life, well-being and safety.

4.69 In all situations where the adult has mental capacity to make decisions about their own protection the following aspects should be covered with them:

- Their account of the abuse.
- Their view of the current risk of future abuse.
- Their desired outcome for the enquiry.
- Their consent for any action that is under consideration.
- Their views on how they could best be supported.

4.70 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. Appropriate steps should be taken to ensure that the adult has every opportunity to freely give an account of their situation and wishes.

4.71 In situations where there may be coercion or undue influence workers should clearly be seeking to undertake discussions 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.

4.72 In line with the principle of empowerment, the workers involved in the enquiry should seek to meet the adult and/or their advocate at regular stages during the enquiry. These should be informal discussion clarifying desired outcomes and the effectiveness of any interim safeguarding arrangements. These discussions will be recorded on the adult's social care record and should be referred to within the enquiry report.

### **Independent Advocacy and "Substantial Difficulty"**

4.73 Section 68 of the Care Act places a duty on the Local Authority to arrange for an independent advocate to represent an adult who is involved with a safeguarding enquiry or Safeguarding Adult Review where the adult has "substantial difficulty" in understanding or participating in the process.

4.74 The Care Act sets out four areas where an adult might experience "*substantial difficulty*" in understanding or participating in a safeguarding enquiry.

**1) 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.

**2) 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.

**3) 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.

**4) 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.

- 4.75 Where an adult has “*substantial difficulty*” being involved in the 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 Deputy/Power of Attorney. The identified person will need to be willing and able to represent the adult.
- 4.76 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.
- 4.77 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.

- 4.78 Where an adult has “*substantial difficulty*” being involved in the safeguarding enquiry, and where there is no other appropriate person to represent them, the Safeguarding Officer must identify the need (and arrange where appropriate) for an independent advocate to support and represent the adult. 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.
- 4.79 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.

**Speaking to people who are believed to be a potential source of risk (no criminal investigation)**

- 4.80 In all enquiries it is essential that the principles of natural justice are applied. As far as is practically possible any person who is a potential source of risk should be given details of the allegations against them and also the opportunity to challenge them.
- 4.81 Where organisations have formal investigatory powers then interviews and legal processes will take place in accordance with Statutory Guidance.
- 4.82 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. Where people are prepared to provide a voluntary statement, this will be signed and dated.
- 4.83 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.
- 4.84 These requests can be declined by any party and no inference can be drawn from such a refusal to co-operate.
- 4.85 It should be noted that under Section 92 of the Care Act 2014 it is an offence for a care provider to supply false or misleading information.
- 4.86 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).

## **Speaking to carers and relatives**

4.87 Carers and relatives may be involved in a safeguarding issue for a number of reasons, including:

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

4.88 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.

4.89 The timing of when a relative or carer would be informed will be dependent on whether there are concerns about 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 adult (if they have mental capacity) or where the adult lacks capacity, it is felt to be in their best interests.

4.90 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 adult. If there appears to be a conflict of this nature the Safeguarding Officer or Managing Officer should consider seeking legal advice.

## **Speaking to other witnesses**

4.91 A wide range of people may have knowledge of possible abuse and it may be necessary to speak to, for example, carers, other adults, or any other involved parties.

4.92 When speaking to the alleged source of risk, relatives and carers or other witnesses, all staff should consider the need for confidentiality and refer to their agency's information sharing protocols. The Staffordshire and Stoke-on-Trent Adult Safeguarding Partnership Boards Information Sharing Guidance can be found via the following link: [Information sharing guidance \(ssaspb.org.uk\)](https://ssaspb.org.uk)

## **Documentary Evidence**



Evidence can be obtained from records and documentation including:

- Statements/accounts from the adult and/or their representative, witnesses, and the alleged source of risk
- Care Plans
- Risk assessments
- Daily records/charts – including body maps.
- Medication Administration Record (MAR chart)
- Accident/incident reports
- Internal investigations
- Staff related records – this could include timesheets, supervision & training records, disciplinary investigations, recruitment documentation
- Information from other incident management or clinical governance processes, e.g. NHS Patient Safety Incident Investigation Process
- Bank Statements
- Power of Attorney/Deputyship documentation
- Information from electronic recording systems

**Where written evidence is used in an enquiry the source and date of this material should always be recorded. If copies have been taken, the enquiry report should evidence where the copies have been saved on electronic recording systems.**

4.93 The usual requirements regarding consent to sharing of records apply. Information sharing is governed locally by the One Staffordshire Information Sharing Protocol [One Staffordshire Information Sharing Protocol and Appendices - Staffordshire County Council](#).

4.94 It is important to note 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 improvements are needed to ensure there is documentary evidence to support both critical and routine aspects of care.

4.95 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**

4.96 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**

4.97 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) covers Staffordshire and Stoke-on-Trent and provides specialist support and medical assessment for victims of sexual abuse tel: 0800 970 0372 or website <https://grangepark.org.uk/>

4.98 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 stage.

4.99 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.

4.100 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) as to the need for medical evidence. All discussions regarding medical examinations and treatment must be consistent with the guidance given in the Mental 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.

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

## **Photography**

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

4.103 The normal principles apply:

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

4.104 This guidance focuses on photographing the adult, but it may also apply to premises or rooms.

4.105 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.

4.106 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).

4.107 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.

4.108 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).

4.109 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.

4.110 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 adult and wider confidentiality.

4.111 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.

### **Safeguarding Enquiry reports**

4.112 The Managing Officer co-ordinating the enquiry will ensure that an enquiry report is 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 outline the professional findings of the Safeguarding Officer but will be subject to the final approval of the Managing Officer.

4.113 The enquiry report will give a clear and succinct account of the following:

- What was the safeguarding concern that led to the enquiry?
- What are the views of the adult and/or their advocate?
- What consideration was given to mental capacity?
- What action has been taken so far to protect the adult?
- What are the views of relatives or informal carers involved?
- What are the views of the potential source of risk?
- What is the outcome that the adult wants?
- What is the outcome that professionals want?

- Who was contacted in the course of the enquiry and how was this done?
- What are the factual findings of the enquiry?
- Is there a clear indication as to whether or not the concerns are substantiated/proven, inconclusive or non-substantiated/unproven?
- What is the risk of harm to the adult as assessed by the risk assessment tool?
- What are the protective factors that are mitigating harm?
- Is a safeguarding plan needed? If so, what measures should be included in a safeguarding plan?
- Are there any matters or issues that need to be followed up by any individual or agency?

4.114 The enquiry report(s) will be recorded on the adult's social care record. The Managing Officer will make a determination as to whether the report is shared in full or whether proportionate information is shared in accordance with information sharing protocols.

## **Evaluation and Review**

4.115 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.

4.116 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 closed. There may be actions for other agencies, but these can be managed outside of safeguarding processes.

4.117 If the Managing Officer is satisfied that the duty to make enquiry has been met but believes that the adult is at risk of ongoing 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.

4.118 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 to an alternative worker or agency.

4.119 In reviewing the enquiry report the Managing Officer will consider whether the adult's desired outcomes have been achieved and, if not, whether there is additional work required for this to occur. The outcomes of the enquiry will be recorded on the Responsible Local Authorities electronic recording system.

4.120 When the enquiry is concluded, feedback on the findings and outcomes should be shared with the following individuals/agencies as appropriate:

- The adult and/or their representative
- The person or agency that raised the safeguarding concern.
- The person or agency that was identified as the potential source of risk.
- Any relevant partner agencies
- Any other involved stakeholder agency/individuals.

4.121 The consent of the adult to share information should be gained and usual information sharing rules applied.

### **Enquiry Review meetings**

4.122 The Managing Officer will arrange 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 the progress of the enquiry and consider further action.

4.123 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.

4.124 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.

## Good Practice Guide – Involving adults in safeguarding meetings.

Effective involvement of adults and / or their representatives in safeguarding meetings requires professionals to be creative and to think in a person-centered way. Bear in mind these questions when planning the meeting:

- **How should the adult be involved?** Is it best for the adult or their representative to attend the meeting, or would they prefer to feed in their views & wishes in a different way, e.g. a written statement? Is it best to hold one big meeting, or a number of smaller meetings?
- **Where is the best place to hold the meeting?** Where might the adult feel most at their ease and able to participate?
- **How long should the meeting last?** What length of time will meet the adult's needs and make it manageable for them?
- **What is the timing of the meeting?** When should breaks be scheduled to best meet the adult's needs?
- **What time of the day would be best for the adult?** Consider the impact of a person's sleep patterns, medication, condition, dependency, care and support needs.
- **What will the agenda be?** Is the adult involved in setting the agenda?
- **What preparation needs to be undertaken with the adult?** How can they be supported to understand the purpose and expected outcome of the meeting?
- **Who is the best person to chair?** What can they do to gain the trust of the adult?
- **Will all the meeting members behave in a way that includes the adult** in the discussion? How can meeting members be encouraged to communicate and behave in an inclusive, non-jargonistic way?

Replicated from West Midlands Adult Safeguarding Policy and Procedure

4.125 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 the adult has appropriate support.

4.126 People or agencies that are subject to continuing criminal, health and safety or disciplinary investigation will not normally be invited

to the attend the Enquiry Review Meeting. However, their views may be represented if this would not compromise any continuing investigations.

4.127 An agenda for the Enquiry Review Meeting can be found at the end of this section Appendix 4.1)

4.128 The Enquiry Review will be formally recorded and will include a clear action plan. The action plan and minutes should be shared in a timely way.



## **Appendix 4.1 Safeguarding Enquiries**

### **Agenda - Enquiry Review Meeting**

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. Closure of Section 42 Enquiry and outcomes

