Factsheet 78

Safeguarding older people from abuse and neglect

December 2023

About this factsheet

This factsheet explains the law on safeguarding adults to help you decide what to do if you think an older person is being abused or neglected, or may be at risk of abuse or neglect.

Safeguarding means protecting people's right to live in safety, free from abuse and neglect.

Whether you know the person through your role as a professional, a carer, relative, neighbour or friend, you have an important part to play in helping to safeguard them.

Any form of abuse or neglect is unacceptable and never justifiable, no matter what reason may be given for it. It is very important that older people are aware of this and they know support is available.

The information in this factsheet applies in England. There are differences in legislation and procedures in Northern Ireland, Scotland and Wales. Readers in these nations should contact Age NI, Age Scotland, or Age Cymru for information specific to where you live.

Contact details of any organisation mentioned in this factsheet can be found in the *Useful organisations* section.

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1 Background and legal framework

The information in this factsheet is based on sections 42-46 and Schedule 2 of the *Care Act 2014* ('*the Act*') and chapter 14 of the *Care and Support Statutory Guidance ('the guidance'*).

Section 1 of the Act requires a local authority to promote individual wellbeing in all it does, including *'protection from abuse and neglect'*. The Act holds that local authorities are the lead adult safeguarding agencies and are generally the first point of contact for raising concerns**.**

Human rights and safeguarding

The safeguarding elements in the Act complement broader human rights protections. The *Human Rights Act 1998* includes a right not to be subject to torture, inhuman or degrading treatment (article 3) and a right to enjoy private, family and home life without unjustified interference from public authorities (article 8).

Abuse and neglect can be a violation of article 3, whilst risk averse or disproportionate public authority responses can be a violation of article 8. If abuse takes place in a family or at home, a local authority must think about the rights of the individual and their family to home and family life. Sometimes this means balancing conflicting rights.

1.1 The aims of adult safeguarding

The guidance states the aims of adult safeguarding are to:

- stop abuse and neglect wherever possible
- prevent harm and reduce the risk of abuse and neglect
- safeguard people in a way that supports them in making choices and having control about how they want to live
- address the cause of the abuse and neglect
- concentrate on improving life for the person concerned
- raise public awareness so communities play a role alongside professionals
- provide accessible information, advice, and support about how to stay safe and how to raise a concern

Who is adult safeguarding for?

Safeguarding duties seek to protect all adults who:

- have needs for care and support (whether or not the local authority meets any of those needs), and
- are experiencing, or at risk of, abuse or neglect, and
- as a result of those care and support needs are unable to protect themselves from the risk of, or the experience of, abuse or neglect.

1.2 '*Safeguarding is everybody's business*'

This refers to the importance of everyone being alert to possible signs of abuse or neglect and acting on their concerns.

It includes friends and family, health and social care professionals and other public sector staff, for example in the housing sector or social security. It applies to the police, as abusive or neglectful behaviour can also be a criminal offence (see section 6).

It is relevant to some private sector agencies and not limited to those providing social and health care. For example, staff in financial institutions such as banks should be aware of the prevalence of financial abuse of older people and be alert to signs it may be taking place.

Cooperation

Cooperation duties between relevant agencies and the requirement to have a multi-agency approach to safeguarding is included in the Act. Every local authority must have a *Safeguarding Adults Board* which brings together a range of local organisations to co-ordinate safeguarding arrangements and to ensure these are effective.

Some areas may also have a '*multi-agency safeguarding hub*' or MASH, where the local authority works alongside other public agencies such as the police. Early sharing of information can be the key to an effective safeguarding response and all concerned must sign up to agreed procedures (see section 5).

1.3 '*Making safeguarding personal*'

This emphasises the importance of adults who are at risk being as involved as possible in a safeguarding process. With some exceptions, safeguarding enquiries should only take place with the consent and engagement of the person concerned.

Where concerns about abuse or neglect arise, the extent of an enquiry depends on the circumstances of the individual case and the views of the person at the heart of it.

As with other aspects of social care, the wellbeing of the person is of central importance throughout the safeguarding process. This includes control over their day-to-day life and starting with the assumption that the person is best placed to make judgements about their own wellbeing.

In safeguarding cases, there can be a difficult balance for professionals to strike between protecting people from harm and empowering people to make their own and remain in control of their lives.

This can mean respecting an older person's choice, even though this puts them at risk of harm. Social care professionals must work within the legal and policy framework and their powers to intervene may, at times, be limited if the person has mental capacity to make informed decisions.

2 Types of abuse or neglect

There is no overarching definition of abuse or neglect. The guidance notes *'local authorities should not limit their view of what constitutes abuse or neglect, as they can take many forms and the circumstances of the individual case should always be considered.'*

Financial and economic abuse

Includes having money or property stolen, being defrauded or '*scammed*', being put under pressure in relation to money or other property, or having money or other property misused.

Things to look out for include changes in living conditions, lack of heating, clothing or food, inability to pay bills or unexplained money shortages. Other indicators include unexplained withdrawals from an account, unexplained loss of or misplaced financial documents, recent addition of someone authorised to access the person's bank account, or sudden or unexpected changes in a will or other financial documents. There may, of course, be other explanations for any of these indicators.

Physical abuse

Includes assault, hitting, slapping, pushing, misuse of medication, restraint, and inappropriate physical sanctions.

Psychological abuse

Includes emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, and harassment. Also includes verbal abuse, cyber bullying, isolation, unreasonable and unjustified withdrawal of services or support networks, or withdrawing or limiting access to medication or essential assistive equipment.

Sexual abuse

Includes rape, inappropriate touching, indecent exposure, sexual teasing and innuendo, and sexual acts to which the adult has not consented or was pressured into consenting to or lacks mental capacity to consent to.

Discriminatory abuse

Includes harassment, slurs and any other type of abuse perpetrated due the person's: age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation. These are '*protected characteristics*' under the *Equality Act 2010*.

Modern slavery

Includes slavery, human trafficking, and forced labour and domestic servitude.

Organisational abuse

Includes neglect and poor care practice within an institution or specific care setting, or in relation to care provided in a person's own home. This may range from one off incidents to on-going ill-treatment. It can be through neglect or poor professional practice as a result of the structure, policies, processes and practices within an organisation.

Neglect and acts of omission

Includes ignoring medical, emotional or physical care needs; failing to provide access to appropriate health or care and support; or withholding the necessities of life, such as medication, nutrition and heating (whether intentional or not). Not enabling access to assistive equipment like hearing aids, walking aids, or dentures may be neglect and can also indicate coercive control.

Domestic abuse

Includes violence, and psychological, sexual, financial, and emotional abuse. Also patterns of coercive and controlling behaviour during a relationship between intimate partners, former partners, or family members, and honour-based violence. Threats to family pets or other family members can be a form of domestic abuse.

Self-neglect

Most forms of neglect or abuse are perpetrated by another person and the law generally presumes there is a perpetrator as well as a victim. An exception is self-neglect.

Self-neglect is a difficult area due to the human right to private life. If someone chooses to live in a particular way, however worrying that is, there are limited circumstances when the law can intervene. This consideration must be balanced with the right to safeguarding, which is also based on human rights protections.

Self-neglect covers a range of behaviour related to neglecting to care for one's personal hygiene, health, or surroundings and includes behaviour such as hoarding. Evidence of self-neglect may not prompt a formal safeguarding enquiry but may lead to other forms of social care intervention. Assessments must be on a case-by-case basis.

The decision on whether a safeguarding response is required depends on the adult's ability to protect themselves by controlling their own behaviour.

However, if someone you know is not looking after themselves, perhaps not eating or washing properly, or hoarding and living in a chaotic and dilapidated environment, the local authority adult social care team should be notified as they may be able to offer constructive help. They should attempt to engage the person and try to carry out an assessment and may be able to provide further care or support.

2.1 Particular issues for older people

Abuse and neglect do not occur in isolation and an older person may be experiencing, or be at risk of, more than one kind of abuse or neglect.

For example, financial abuse may include an element of physical abuse, or neglect may be a feature of coercive control.

Perpetrators of abuse or neglect are often people who are trusted and relied on by an older person, such as family members or care staff.

Safeguarding is not limited to situations where there is a breach of trust, as it includes situations such as risk of exposure to scams. It is important to be aware that anyone can commit abuse or neglect.

Official reports show that, compared to other age groups, people aged 85 and above are much more likely to be the subject of a safeguarding enquiry.

2.2 Who does the safeguarding law seek to protect?

Those who need a statutory safeguarding response are defined as adults who:

- have care and support needs
- are experiencing, or are at risk of, abuse or neglect, and
- because of their care and support needs cannot protect themselves against abuse or neglect, or the risk of it.

The requirement to have care and support needs

It does not matter whether the local authority actually provides services or support to the person concerned or whether the person's needs meet the eligibility criteria for care and support under the Act.

If they are experiencing, or at risk of experiencing, abuse or neglect and cannot protect themselves because they have health or social care needs, there is a duty to carry out a safeguarding enquiry.

Anyone meeting this definition, for whatever reason and for however long they have lived or have been present in the area, is entitled to safeguarding protection from the local authority.

A local authority can choose to undertake safeguarding enquiries for people where there is not a specific enquiry duty. This may be particularly relevant where action may promote the person's wellbeing and prevent poor outcomes.

If the safeguarding response includes directly providing care services, the local authority may also carry out a needs assessment to find out whether the person meets the care and support eligibility criteria.

See factsheet 41, *How to get care and support,* for more information on how local authorities assess needs for care and support.

3 What should I do if I suspect abuse or neglect?

If possible, it is always best to discuss any concerns you have with the person at risk and obtain their agreement, where feasible and safe to do so, before you report abuse or neglect. If the person has the mental capacity to make decisions about their own safety, but does not want you to tell anyone what is going on or take matters further, you have a difficult decision to make.

If you feel that the person has mental capacity, but is unable to make a decision because they are being coerced by the abuser or subject to undue influence or duress, for example in a domestic situation, think carefully about what is best for them (see section 7.2).

In some situations, the courts make orders saying people need to be given breathing space and professional support to help them get free of the pressure and make their own decision freely.

In other cases, an older person may choose not to report abuse, perhaps because they are afraid it will damage an important relationship. In this situation, it can be hard to know what to do. Call Age UK Advice if you want to discuss your options in this situation.

Where someone lacks mental capacity

If the person does not have the mental capacity to give consent to a concern being raised, you should discuss this with the local authority, or the police if a crime has been committed.

Mental capacity is time and decision-specific, meaning someone may be able to make some decisions and not others. It may also fluctuate over a period of time (see section 4.4 and 7.5).

Where there is a risk to the person or others

Sometimes it is right to seek support without the consent of the individual if they are still at risk or the perpetrator of the abuse may also be putting other people at risk.

You may want to seek advice without initially disclosing the identity of the person you are concerned about. Call Age UK Advice if you are worried about reporting safeguarding concerns.

Has a crime been committed?

If you think a crime may have been committed, the police need to be involved immediately. Contact your local police force on 101 to report a crime. In an emergency, dial 999. If you report concerns to the local authority and they agree it may be a criminal matter, they can report it to the police. Fraud and scams can be reported to Action Fraud, who can offer information and advice.

If someone is in immediate danger, call the police on 999.

Abuse and neglect in a professional care context

If you are concerned about an older person being abused or neglected in a professional care setting, for example a care home or by domiciliary (home) care staff, contact the local authority. You can also contact the Care Quality Commission (CQC) (see section 9).

If you are a professional in this situation, it is advisable to discuss the situation with your manager before deciding what to do, so the issue can be addressed as soon as possible. The guidance states that no professional should assume that someone else will pass on information which they think may be critical to the safety and wellbeing of an adult. Where a professional has concerns about abuse or neglect, they should raise this with the local authority and/or the police as appropriate.

You should receive appropriate training based on agreed safeguarding procedures, so you know how to act in these situations. This is a requirement of CQC service provider registration.

NHS Safeguarding

If you think an older person is being abused or neglected in an NHS facility, a hospital or specialist NHS nursing home, raise the matter with the safeguarding team for that service or the local authority safeguarding team. You can also notify the CQC.

Attorneys, court-appointed deputies and appointees

If you are concerned about the actions of an attorney or a deputy, contact the Office of the Public Guardian. Concerns about an appointee for benefits should be raised with the Department for Work and Pensions (DWP).

Abuse or neglect concerns should also be raised with the local authority.

4 How to raise concerns about abuse or neglect

You can raise concerns by contacting the local authority for the area where the person is currently located. The local authority website should explain how to report possible abuse and neglect or call their main phone number and say you want to raise a safeguarding concern. If you cannot get through to anyone, ask your local Age UK if they can help.

Once you notify the local authority, they have a duty to respond appropriately, taking into account the views of the person concerned. They may initiate a safeguarding enquiry or provide care services or give information and advice to help resolve the issue.

The local authority can ask a partner organisation to take action or to provide further information. They may have to respond urgently, notify the police who could then become the lead agency for the case, or liaise with another responsible body such as the CQC.

4.1 The local authority duty to make enquiries

Where there is a concern about abuse or neglect, the local authority is responsible for ensuring necessary enquiries are made. These enable it to decide whether action should be taken in the adult's case and if so, what and by whom (section 42(2) of the Act). The local authority may talk about initiating a *'section 42 enquiry'* or similar.

A range of possibilities for conducting an enquiry are given in the guidance. Enquiries can range from a conversation with the adult at risk through to a formal multi-agency plan or course of action. If the adult lacks mental capacity or has substantial difficulty understanding the enquiry, their representative or advocate should be involved.

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

Enquiry objectives

The objectives of a safeguarding enquiry 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 adult's wishes
- make decisions as to what follow-up action should be taken about the person or organisation responsible for the abuse or neglect
- enable the adult to achieve resolution and recovery.

Factors that must be considered

The following factors must also be considered:

- the adult's needs for care and support
- the adult's risk of abuse or neglect
- the adult's ability to protect themselves or the ability of their networks to increase the support they offer
- impact on the adult and their wishes
- possible impact on important relationships
- potential of action and increasing risk to the adult
- risk of repeated or increasingly serious acts involving children, or another adult, at risk of abuse or neglect
- responsibility of the person or organisation that caused abuse or neglect
- research evidence to support any intervention.

4.2 Who should carry out the enquiry?

The local authority has legal responsibility for the enquiry, but it may involve other agencies, depending on the facts of the case and the seriousness of the allegations. Usually, a social worker leads an enquiry, although it can involve someone else.

Duty to cooperate

The local authority and relevant partners have a legal duty to cooperate with one another. Relevant partners can include NHS organisations and GPs, the police, housing services, and health and care providers.

The local authority also has the power to decide that the enquiry should be conducted by another organisation or individual. For instance, it might decide that a professional such as a healthcare worker who already knows the adult is best placed to do so.

The authority must be certain the organisation or individual conducting the enquiry will act appropriately and there are no conflicts of interest. The local authority should be clear about timescales, the need to know the outcomes of the enquiry, and what action will follow if this is not done.

The local authority has legal responsibility for the enquiry, regardless of the form it takes or who conducts it. It must ensure that distress to the adult concerned is minimised as much as possible.

4.3 The involvement of the person in an enquiry

There are six key safeguarding principles set out in the guidance:

- **Empowerment**: "*I am asked what I want as the outcomes from the safeguarding process and these directly inform what happens.*"
- **Prevention**: "*I receive clear and simple information about what abuse is, how to recognise the signs and what I can do to seek help.*"
- **Proportionality**: "*I am sure that the professionals will work in my interest, as I see them and they will only get involved as much as needed.*"
- **Protection**: "*I get help and support to report abuse and neglect. I get help so that I am able to take part in the safeguarding process to the extent to which I want.*"
- **Partnership**: "*I know that staff treat any personal and sensitive information in confidence, only sharing what is helpful and necessary. I am confident that professionals will work together and with me to get the best result for me.*"
- **Accountability**: "*I understand the role of everyone involved in my life and so do they.*"

The person's wishes

The first priority of an enquiry should be to ensure the safety and wellbeing of the adult at risk. Their wishes are very important.

In practice, these two elements may be difficult to balance. For example, if an older person has mental capacity to make their own decisions and does not consent to a proposed action, the safeguarding enquiry will need to acknowledge and reflect this view.

The person's consent to action being taken

The guidance says that the consent of the adult should be sought before safeguarding action is taken, wherever possible. If the adult lacks mental capacity to give consent, any action must be in their *'best interests'*, see section 4.4.

In some cases, action may be needed even if the adult has not given consent. This might be where others will be at risk if nothing is done, or action is needed in the public interest because a crime has been committed.

Independent advocacy

The local authority has a duty to provide an independent advocate to support and represent the adult if they have substantial difficulty being involved with the enquiry and have no one appropriate to assist them.

Rights to protection and to autonomy

In family or personal relationships, there is a need to balance the right to safety from abuse or neglect (protected by Article 3 of the *Human Rights Act 1998*) with rights to personal autonomy and family life (Article 8) and to liberty (Article 5). This means local authorities must often make sensitive and difficult decisions.

4.4 If the person lacks mental capacity

If a person you are concerned about lacks mental capacity to consent to a safeguarding enquiry, or proposed arrangements made as a result, their views are still important and must be taken into account.

However, the decision about whether and how to proceed must be made on the basis of what is in their '*best interests*' under the *Mental Capacity Act 2005*. There is no set meaning of best interests because everyone is different. Their best interests may not be the same as someone else's.

If the person concerned has an Independent Mental Capacity Advocate (IMCA) appointed to assist them, their views must also be taken into account.

For more information about mental capacity, best interests, and IMCAs, see sections 3 and 8 of factsheet 22, *Arranging for someone to make decisions on your behalf*.

4.5 What is the likely outcome of an enquiry?

The outcome of an enquiry depends on what has happened, how serious a risk there is, and what needs to happen to protect the safety of the adult at risk in the future. If follow up action is required, an enquiry must result in an agreed plan of action, recorded on the person's care plan, sometimes called a '*protection plan*' that includes responsibilities of the relevant agencies for implementation.

It should set out:

- agreed action to support the adult's desired outcomes
- what steps are to be taken to ensure the adult's safety in future
- the provision of any support, treatment or therapy, including advocacy
- any modifications needed in the way services are provided (e.g. same sex care or placement)
- how best to support the person through any action they take to seek justice or redress, and
- any on-going risk management strategy as appropriate.

Once the steps are in place and recorded in a care plan, they should be taken and kept under review. The frequency and intensity of the reviews depends on the level of risk identified and should be part of the agreed risk-management strategy.

5 Local authority safeguarding duties

There are three specific legal duties in the Act:

1) A local authority has a **duty to '*make enquiries*'** where there is **'*reasonable cause*' to suspect** an adult with care and support needs is being abused or neglected or is at risk of being abused or neglected and as a result of those needs is unable to protect themselves against the abuse or neglect or the risk of it (section 42 of the Act).
2) Each local authority must set up a **'*Safeguarding Adults Board*'**, which is a multi-agency body to help and protect adults in its area (section 43 of the Act).
3) Safeguarding Adult Boards have a duty to arrange for a **Safeguarding Adults Review** in response to certain safeguarding incidents (section 44 of the Act).

Note
The local authority is the lead safeguarding body unless the police need to take the lead. It is usually your first point of contact if you need information and advice about concerns, or you want to raise a safeguarding concern.

Wellbeing and prevention

Local authorities must promote the wellbeing of adults with care and support needs. Wellbeing is defined as relating to a range of issues for people with care needs. One is protection from abuse and neglect.

This means when adult social care staff undertake assessments or plan care for older people, they must do their best to ensure the older person is kept safe and protected from any risk of abuse or neglect. A local authority has a general duty to take measures to try to prevent, delay or reduce people's need for care and support. This includes how to keep people safe from potential abuse or neglect.

5.1 Role and duties of Safeguarding Adults Board

Local authorities must establish a Safeguarding Adult Board (SAB) to co-ordinate and ensure effectiveness in helping and protecting adults at risk. SABs have wide powers to encourage and enable partnership activity to safeguard adults in the area. A range of organisations, including voluntary sector organisations and user groups, should be encouraged and supported to join, but core statutory members are:

- local authority
- local NHS integrated care board
- chief officer of police.

The SAB must produce an annual strategic plan, including what each member will do to implement the plan and must consult the local Healthwatch and wider community. It must publish an annual report to show what it has done to achieve its strategic objectives, both collectively and individually. This information is public, so you can find out what is going on in your local area to protect adults at risk and can contribute to the consultation process if you want.

5.2 Safeguarding Adults Reviews

A Safeguarding Adults Review (SAR) must be arranged by a SAB if an adult in its area dies due to abuse or neglect, whether known or suspected, and there is concern partner agencies could have worked more effectively to protect the adult. A SAR must also be arranged if an adult has not died, but the SAB knows or suspects the adult experienced serious abuse or neglect. In this context, something can be considered serious abuse or neglect if, for example the individual would have likely died but for an intervention or has suffered significant harm.

The SAB may also arrange a SAR in other cases involving an adult with care and support needs, at its own discretion. The object of a review is not to apportion blame but to identify lessons to be learnt and applied in future. Reviews may need to take account of any Coroner's inquiry or criminal investigation that are running in parallel.

6 What happens if a crime has been committed?

The role of the police

If a crime is suspected, the police must be informed and should investigate. The guidance states the early involvement of the police is likely to have benefits in many cases, particularly in obtaining and preserving evidence.

Whilst the police investigation may take priority over other enquiries, a multi-agency approach should also be agreed to ensure all the interests and views of the person are considered throughout and an appropriate plan is agreed and put in place.

Has a criminal offence been committed?

Perpetrators of abuse or neglect towards older people may be committing one or more criminal offences. Examples of potential criminal acts include:

- any form of deliberate physical assault
- sexual abuse, including rape
- psychological abuse or hate crime
- ill treatment or wilful neglect by a care worker or care provider (sections 20-25 of the *Criminal Justice and Courts Act 2015*)
- ill treatment or neglect of someone who lacks mental capacity
- unlawful imprisonment or slavery
- theft
- fraud
- domestic violence.

6.1 Issues affecting criminal investigations

The local authority should notify the police if they think a crime may have taken place and the police may then take the lead.

The police can carry out an investigation and work with the Crown Prosecution Service (CPS) to decide whether to charge the perpetrator with a criminal offence.

The CPS makes the final decision. There is a two-stage test to decide whether or not to bring a criminal charge against someone. The first stage is the '*evidential test*' and the second the '*public interest test*' (see overleaf for more) on these tests.

The evidential test and *'vulnerable witnesses'*

The police and CPS must be satisfied there is enough evidence for a court to be able to convict the perpetrator of the abuse or neglect. The '*burden of proof*' in criminal cases is high. For a conviction, the judge or jury must be satisfied beyond any reasonable doubt that an offence has been committed.

In practice, this means the CPS look carefully at evidence collected by the police and decide whether it is theoretically possible for this standard to be reached. It is one reason why early reporting to the police is important, so they can preserve all the evidence at the earliest opportunity.

The older person concerned may find it difficult to give evidence in court, for example due to a disability. If so, they may be treated as a *'vulnerable witness'* and be entitled to special measures to help them give evidence.

Vulnerable witnesses are defined as adults with a mental disorder, or a learning or physical disability. Special measures can be agreed when the quality of evidence is likely to be reduced due to the person's disorder or disability. They include the use of screens around the witness box, the use of pre-recorded evidence and the use of an intermediary to help the person understand questions and give their answers accurately.

Special measures can also be put in place for *'intimidated witnesses'*, where the quality of evidence is likely to be reduced because the person is experiencing fear or distress, for example where the older person is facing intimidation from the perpetrator.

The public interest test

If the evidential test is satisfied, the CPS goes on to decide whether it is in the public interest to prosecute. They start from an assumption that it usually is, but there are important exceptions. One is consideration of the impact on the victim of the crime and what the victim wants to do.

Sometimes older people do not want to see the perpetrator of a crime prosecuted. For example, if the abuser is a close family member who they love, or a trusted neighbour who they rely on.

If so, the CPS balance the person's views against wider public interest principles, such as the seriousness of the crime and the likelihood of the perpetrator reoffending, and whether other members of the public are at risk.

For a vulnerable older person, even if they agree to a prosecution, the impact on them of going through a criminal court case may be more detrimental than taking steps to ensure they are safe in future, for example by changing care arrangements, or the Court of Protection appointing a deputy to look after their finances.

In this type of situation, all necessary support and assistance must be offered to ensure the person can pursue the criminal route if they wish.

7 What other legal powers exist?

7.1 Police powers – entry, arrest and custody

The police have various powers that may be relevant to safeguarding cases. For example, if the police believe an offence is being, is about to be, or has been committed, they can enter premises to arrest a suspected offender, but only if they have enough evidence for this to be a reasonable step to take. They can also enter in an emergency to prevent serious bodily injury or damage to property.

If the suspected perpetrator of abuse is charged with a criminal offence, the police decide whether they should be kept in custody or granted bail. Bail means the person is released from custody until a later date. Conditions can be applied to bail such as forbidding a suspected perpetrator from contacting the victim, living in the victim's house, or from going within a certain distance of it.

The person must later appear at a Magistrates Court, which makes a new decision about granting bail. A person might be refused bail to deal with any continuing risk they might pose between arrest/charge and the final court hearing/trial, or conditions may be attached to any bail given.

7.2 Domestic abuse and controlling/coercive behaviour

In cases of domestic abuse, it may be possible for the victim to obtain an injunction. This is a court order that makes someone act or forbids them from acting in a certain way. The order a court makes depends on the circumstances of the case. It may issue a '*non-molestation order*', which usually prevents a perpetrator from:

- using or threatening physical violence
- intimidating, harassing or pestering the victim
- communicating with the victim
- instructing or encouraging others

Courts may also issue an '*occupation order*' which prevents a perpetrator from living in or visiting the family home or coming within a certain distance of it.

In an emergency situation, the police have the power to issue a domestic violence protection notice (DVPN) to protect a victim of domestic violence. The police and courts have other powers to protect a victim from the perpetrator.

If you think someone is experiencing, or at risk of, domestic abuse, it is important to seek advice from a specialist organisation like Refuge or the Mankind Initiative about the help available. You should also notify the local authority safeguarding team as soon as possible if the victim has care needs and is unable to protect themselves from harm.

Controlling or coercive behaviour in an intimate or familial situation

An offence of controlling or coercive behaviour in an intimate or family relationship was created under the *Serious Crime Act 2015*. The offence is established when this behaviour takes place repeatedly or continuously. The victim and alleged perpetrator must be *'personally connected'* at the time the behaviour takes place.

The meaning of '*personally connected*' includes where, at the time the incidents take place, they are or used to be married, or in a civil partnership, or in an intimate personal relationship, or are relatives. To be treated as *'personally connected'*, it does not matter whether the victim and the alleged perpetrator live together or not at the time the incidents take place.

The behaviour must have a serious effect on the victim, meaning it has caused them to fear violence will be used against them on at least two occasions, or it causes serious alarm or distress which had a substantial adverse effect on their day-to-day activities. It applies even if they have not experienced physical abuse.

The alleged perpetrator must have known their behaviour would have a serious effect on the victim, or ought to have known it would have that effect. The penalty is a maximum of five years imprisonment, a fine or both.

7.3 Can a person be removed from their own home?

If a local authority thinks someone living in a family home is being subjected to abuse or neglect, they generally do not have powers to come and remove the person. If the person can agree to leave and does, they can be taken to a safe place, such as respite care, while a safeguarding enquiry takes place. If they lack mental capacity to agree to leave, a local authority can and should do three things:

- carry out an enquiry under safeguarding procedures
- put a care plan in place to manage the risk if that seems a viable and appropriate response to the situation
- identify what is in the person's *'best interests'*, in line with the *Mental Capacity Act 2005*. The local authority should establish whether the person has an LPA or deputy authorised to make the decision.

  In some cases, it may be necessary for the local authority to apply to the Court of Protection (COP) before the person can be removed from their home. The local authority should also take into account the Deprivation of Liberty Safeguards if the person lacking capacity is being moved to a care home or hospital. See section 7.6.

  If there is a serious disagreement over where a person lacking mental capacity should live, and it is not possible to resolve the situation in any other way, an application should be made to the COP. It may be necessary to seek specialist legal advice in these circumstances.

7.4 *Mental Health Act 1983*

An approved mental health professional (AMHP) may, under section 115 of the *Mental Health Act 1983* (MHA), enter and inspect any premises in which a mentally disordered person lives, if they believe the person is not receiving proper care. If asked, the AMHP must produce authenticated identification of their status.

This power does not allow forced entry, though refusal of entry can constitute an offence under section 129 of the MHA. Neither power applies to people who do not have a mental disorder, as defined by section 1 of the MHA.

An AMHP can apply for a warrant for a police constable to enter premises, using force if necessary, on the basis of evidence under oath that there is reasonable cause to suspect a person with a mental disorder is unable to care for themselves, or is being ill-treated or neglected, under section 135 of the MHA. The person can be removed to a place of safety for a mental health assessment for up to 24 hours, which can be extended by a further 12 hours.

7.5 *Mental Capacity Act 2005*

A local authority has no legal powers to protect someone or provide services to them against their will, even if they choose to stay in an abusive relationship. There are exceptions if they lack mental capacity to make a decision to stay in the situation, or they are subject to such a high level of coercion, undue influence, or duress that they cannot make a decision.

Where someone lacks mental capacity to consent

The *Mental Capacity Act 2005* (MCA) is a legal framework designed to support and protect people who lack mental capacity, for example due to a learning disability, acquired brain injury, or dementia. Under the MCA, a person is assumed to have capacity for a particular decision unless evidence shows they do not.

If they appear unable to make a particular decision, for instance about care arrangements, the local authority should assess their mental capacity. If the assessment finds the person lacks mental capacity for the decision, the decision must be made for them in their '*best interests*'. The local authority should establish whether the person has an LPA or deputy with authority to make the decision. Factors to take account with a best interests decision include the person's own views and the opinions of other people, including carers, health or social care professionals, and any power of attorney or deputy.

An assessment of the person's mental capacity must be based on their ability to make a specific decision at the time it needs to be made, not their ability to make decisions in general. For more information, see factsheet 22, *Arranging for someone to make decisions on your behalf*.

7.6 Deprivation of Liberty Safeguards (DoLS)

The Deprivation of Liberty Safeguards (DoLS) procedure is designed to protect your rights if you are, or may become, deprived of your liberty in a care home or hospital in England or Wales, and you lack mental capacity to consent to those arrangements.

This might arise, for example, where a person lacking mental capacity is prevented from leaving a care home and is under constant supervision and control. In these situations, a local authority must carry out assessments under DoLS to decide if it is lawful to authorise the deprivation of liberty.

The DoLS are designed to ensure that a person lacking mental capacity is only deprived of their liberty in circumstances where this is shown to be proportionate, in their best interests and where there is no less restrictive alternative.

If the person lacking mental capacity lives in their own home or elsewhere, such as extra care housing, the DoLS procedure does not apply. Instead, any deprivation of liberty must be approved by the Court of Protection.

See factsheet 62, *Deprivation of Liberty Safeguards*, for more information.

7.7 The inherent jurisdiction of the High Court

Under inherent jurisdiction, the High Court has powers to hear any case which comes before it, unless a statute or rule limits this power or grants jurisdiction to another court, as is the case with the *Mental Capacity Act 2005* and the Court of Protection.

As the Court of Protection can decide mental capacity-related issues, there is usually no requirement for another court, such as the High Court, to be involved.

In *DL v A Local Authority & Others [2012]*, the Court of Appeal held the High Court can make orders to protect at-risk adults with capacity under the MCA.

In this case, this was if the person's ability to make decisions was undermined through being under constraint, subject to coercion or undue influence, or otherwise prevented from making a free choice or giving real or genuine consent.

This means local authorities can apply to the High Court for an order or remedy in respect of a vulnerable adult with mental capacity. This could be to grant access to the adult or to allow for action to be taken to help the adult make a decision free from undue influence, duress or coercion.

8 Court of Protection and the Office of the Public Guardian

This section is an overview of the Court of Protection and the Office of the Public Guardian in the context of safeguarding. In particular, in relation to abuse by people appointed to make financial or health and care decisions for someone lacking mental capacity to make these decisions themselves.

The Court of Protection

The Court of Protection deals with issues arising in relation to the health, care and financial resources of people lacking mental capacity to manage these things for themselves. For example, the Court of Protection can authorise the deprivation of liberty of someone living in their own home or supported/sheltered living such as extra care housing.

The Office of the Public Guardian

The Office of the Public Guardian (OPG) is a public body that works closely with the Court of Protection. Its main role is to register applications for powers of attorney. These are powers granted by an adult to another person, often a family member, to allow them to look after their finances or make decisions on health and welfare issues if they lose mental capacity in the future.

If an older person is assessed not to have capacity and has not granted a power of attorney to anyone, it may be necessary to apply to the Court of Protection to appoint a '*deputy*'. They are usually appointed to manage finances. Deputies are often family members, specialist solicitors or a local authority representative.

Deputies can be appointed to deal with health and welfare matters, but this is uncommon. Usually a deputy is not needed, as health and social care professionals working with the person and their family makes those decisions, or, if there is serious conflict, the Court of Protection decides.

Some attorneys and deputies abuse their positions and exploit the person they are appointed to support. This is often financial abuse but may involve failing to act in the older person's best interests in other ways, such as bullying or threatening behaviour.

The OPG can investigate allegations of abuse against a court-appointed deputy or registered attorney. They may refer the case to a local authority or investigate themselves.

If the case needs urgent action, for example to stop someone emptying a person's bank account, they can initiate court proceedings via the Court of Protection and the court can freeze the funds or order urgent action it thinks needs to be taken.

9 The Care Quality Commission's standards

The Care Quality Commission (CQC) is the regulator for health and social care services in England.

Health and social care service providers must register with the CQC, who check they comply with certain standards of care.

The CQC has a range of enforcement powers, up to and including de-registering a care provider who fails to meet appropriate standards. The effect is the provider can no longer legally provide services to members of the public.

CQC guidance tells all health and social care providers that they must have a *'zero tolerance'* approach to abuse and neglect.

The fundamental standards

The CQC has *'fundamental standards'* it expects from every registered health or social care service provider. It carries out inspections to ensure these standards are met.

They are:

- care and treatment must be appropriate and reflect service users' needs and preferences
- service users must be treated with dignity and respect
- care and treatment must only be provided with consent
- care and treatment must be provided in a safe way
- service users must be protected from abuse and improper treatment
- service users' nutritional and hydration needs must be met
- all premises and equipment used must be clean, secure, suitable and used properly
- complaints must be appropriately investigated and appropriate action taken in response
- systems and processes must be established to ensure compliance with the fundamental standards
- sufficient numbers of suitably qualified, competent, skilled and experienced staff must be deployed
- persons employed must be of good character, have the necessary qualifications, skills and experience, and be able to perform the work for which they are employed
- registered persons must be open and transparent with service users about their care and treatment (the duty of candour).

Outsourced local authority services

When local authorities commission services such as care homes and home care, they must ensure providers have clear arrangements in place to prevent abuse or neglect.

The contracting arrangements must ensure a service provider is able to respond appropriately to allegations of abuse or neglect, including having robust processes in place to investigate the actions of members of staff. This reflects the CQC registration requirements.

Directly employed personal assistants do not have to register with the CQC. A local authority funding such services through direct payments must not neglect its safeguarding duties.

9.1 Notification duties

Registered health and social care service providers must inform the CQC of abuse incidents or allegations.

They should also inform the local authority safeguarding team.

10 The Disclosure and Barring Service

The Disclosure and Barring Service (DBS) role is to help employers make safer recruitment decisions and prevent unsuitable people from working with at-risk groups, both adults and children. It replaced the Criminal Records Bureau and Independent Safeguarding Authority.

The DBS carries out criminal record checks on people employed in a '*regulated activity*'. This covers the provision of health and social care in the form of personal care and other care such as domestic help to adults who need it because of age, illness, or disability.

An employer may have a legal duty to refer staff to the DBS if there are abuse or neglect concerns relating to a *'regulated activity'*. Other organisations, such as CQC or local authorities, can make referrals.

The DBS has the power to bar people from working with adults at risk and children. Some criminal convictions carry an automatic bar, whereas others leave it to the discretion of the DBS as to whether a person should be barred from this work.

11 Complaints

If you are not satisfied with any aspect of the service you receive from the local authority, or you want to challenge a decision they have made, you can complain. For example, you may do this if you believe that the local authority has not dealt with safeguarding concerns appropriately. If you are not satisfied with the local authority complaint response, you can complain to the Local Government and Social Care Ombudsman. See factsheet 59, *How to resolve problems and complain about social care*.

Useful organisations

Action Fraud
www.actionfraud.police.uk
Telephone 0300 123 2040

National fraud reporting centre, providing advice and information about fraud and scams.

Care Quality Commission
www.cqc.org.uk
Telephone 03000 616 161

Independent regulator of adult health and social care services in England, covering NHS, local authorities, private companies or voluntary organisations and people detained under the *Mental Health Act*. They also assess how local authorities meet their duties under the Care Act 2014.

Court of Protection
www.gov.uk/courts-tribunals/court-of-protection
Telephone 0300 456 4600

Equality Advisory Support Service
www.equalityadvisoryservice.com
Telephone helpline 0808 800 0082 Mon-Fri 9am-7pm, Sat 10am-2pm

Provides information and advice about the *Equality Act 2010* and human rights.

Hourglass
www.wearehourglass.org
Telephone 080 8808 8141 (free phone 24 hours)

Works to protect and prevent the abuse of vulnerable older adults. Their helpline is confidential and provides information and emotional support. The Hourglass helpline number will not appear on your phone bill.

Local Government and Social Care Ombudsman
www.lgo.org.uk
Telephone 0300 061 0614

Final stage for local authority complaints. Also deals with complaints about care providers when services are privately purchased.

ManKind Initiative
https://mankind.org.uk/
Telephone helpline 01823 334244

Charity for male victims of domestic violence and abuse. Helpline provides confidential information and support.

National Centre for Domestic Violence
www.ncdv.org.uk
Telephone 0207 186 8270 or 0800 970 2070

Provides free help to get an emergency injunction. Also provides information about other services.

Office of the Public Guardian
www.gov.uk/government/organisations/office-of-the-public-guardian
Telephone 0300 456 0300

Police
If there is a serious danger an older person may be in imminent risk of harm and the situation warrants immediate attention, the police should be called. The local police force can be contacted by dialling 101. In an emergency, call 999.

Protect
www.protect-advice.org.uk
Telephone 020 3117 2520

Charity providing information and advice about '*whistle-blowing*' at work.

Refuge
www.refuge.org.uk
Telephone National Domestic Abuse Helpline 0808 2000 247 (free phone 24 hours, run by Refuge)

Charity working to end domestic violence against women and children. Refuge helpline provides confidential advice, information and support. All calls are answered by female advisors.

Samaritans
www.samaritans.org
Telephone 116 123 (free phone 24 hours)

Provides emotional support for people who are experiencing feelings of distress or despair, including those which may lead to suicide.

Victim Support
www.victimsupport.org.uk
Telephone Victim Supportline 08 08 16 89 111 (free phone 24 hours)

Charity for people affected by crime in England and Wales.

Women's Aid
www.womensaid.org.uk

Charity working to end domestic violence against women and children. Offer confidential advice, information and support by email, web chat and online forum.

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice
www.ageuk.org.uk
0800 169 65 65
Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru Advice
www.agecymru.org.uk
0300 303 4498

In Northern Ireland contact

Age NI
www.ageni.org
0808 808 7575

In Scotland contact

Age Scotland
www.agescotland.org.uk
0800 124 4222

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Next update December 2024

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