

Factsheet 78

Safeguarding older people from abuse and neglect

August 2016

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. 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.

Safeguarding means protecting people's right to live in safety, free from abuse and neglect. Any form of abuse or neglect is unacceptable, no matter what justification or reason may be given for it. It is very important that older people are aware of this and they know support is available.

This factsheet describes the situation in England. There are differences in legislation and procedures in Northern Ireland, Scotland and Wales. Readers in these nations should contact their respective national Age UK offices for information specific to where you live.

Contact details of all the organisations 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 statutory guidance'). The Act holds that local authorities are the lead safeguarding agencies and are generally the first point of contact for raising concerns. Until the Act came into force in April 2015, there was no law dealing specifically with safeguarding adults who might be at risk of abuse or neglect.

The human rights basis of safeguarding

The safeguarding elements now set down 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). Serious abuse can be a violation of article 3.

If abuse takes place within a family or at home, a local authority has to 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 the safeguarding policy

The aims of government safeguarding policy are to:

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

'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. This applies not only to health and social care professionals but to other public sector staff, for example people in the housing sector or social security. It applies to the police, as abusive behaviour may be a criminal offence (see section 7).

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 alert to signs it may be taking place.

The importance of **cooperation** between agencies and a multi-agency approach to safeguarding is emphasised in guidance. Every local authority is required to set up a Safeguarding Adults Board that includes a range of local organisations. Sometimes this is formalised in a '*multi-agency safeguarding hub*' or MASH. The early sharing of information can be the key to an effective safeguarding response. All concerned should be signed up to agreed safeguarding procedures.

'Safeguarding is personal'

This emphasises the importance of adults at risk being as involved as possible in a safeguarding process. With some exceptions, safeguarding enquiries should only take place with the **consent** of the person concerned. The extent of an enquiry where suspicions of abuse or neglect arise depends on the circumstances of the individual case and the views of the person at the heart of it.

As with other aspects of the social care, wellbeing of the person through the safeguarding process is of central importance. This includes control over their day-to-day life. Current policy on safeguarding emphasises empowering adults who may be at risk of abuse or neglect.

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 choices and remain in control of their lives. Sometimes this means respecting an older person's choice even though the choice puts them at risk of harm. Social care professionals have to work within the legal and policy framework and powers to intervene may be limited.

2 Identifying abuse or neglect

Abuse is defined as '*a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person*' by the charity Action on Elder Abuse (AEA).

Types of abuse or neglect to look out for include:

- physical abuse
- domestic violence, including honour-based violence
- sexual abuse
- psychological abuse
- financial/material abuse
- modern slavery

- discriminatory abuse
- organisational abuse
- neglect and acts of omission
- self-neglect.

2.1 Financial abuse

Financial abuse is defined in the Act as including:

- having money or property stolen
- being defrauded
- being put under pressure in relation to money or other property
- having money or other property misused.

Other indicators of potential financial abuse include:

- changes in living conditions
- lack of heating, clothing or food
- inability to pay bills/unexplained shortage of money
- unexplained withdrawals from an account
- unexplained loss/misplacement of financial documents
- recent addition of authorised signers on a client or donor's signature card
- sudden or unexpected changes in a will or other financial documents.

There may, of course, be other explanations for any of these indicators.

The Office of the Public Guardian helps protect and support people who lack mental capacity to make decisions concerning their care or finances. Financial abuse is what they deal with most frequently.

2.2 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, which is included as an example of abuse and neglect in statutory guidance.

Self-neglect is a difficult area due to the fundamental human right to private life. In other words, 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 can include behaviour such as hoarding.

However, evidence of self-neglect may not prompt a formal safeguarding enquiry. An assessment must be made 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. There may come a point when they can no longer do this without external support.

If you know someone no longer looking after themselves, perhaps not eating or washing properly, or perhaps hoarding and living in chaotic and filthy conditions, the local authority adult social care team should be notified as they may be able to offer constructive help. They should, at the very least, attempt to engage the older person and try to carry out an assessment and may be able to provide some further care or support.

2.3 Particular issues for older people

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. However, the law of safeguarding is not limited to situations where there is a breach of trust as it includes situations such as risk of exposure to scams.

AEA say women over the age of 70 who are dependent, frail and alone are particularly vulnerable to abuse, which takes multiple forms. The most common forms of abuse are physical, psychological, financial, sexual, and neglect. AEA has found a prevalence of psychological abuse, usually through intimidation or coercion linked to financial abuse.

Home care agencies providing personal care must be registered with the Care Quality Commission which monitors them. However, directly employed personal assistants do not have to register. So there is a greater responsibility on a local authority funding such services through direct payments in terms of its safeguarding duties and regarding provision of information on how to seek support and assistance if abuse occurs.

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

If possible, it is always best to discuss your worries with the older person. It is important to have their agreement, where possible, before you report abuse. If the person does not have the mental capacity to agree to this, think carefully about whether it is in their best interests to raise a safeguarding alert on their behalf.

If the person has mental capacity, 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, you should think about what is really in their best interests.

In these situations, the courts sometimes 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. It may be appropriate to notify the local authority of your concerns and to explain the situation.

In some cases an older person chooses 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. Sometimes it is right to override their wishes if, for example, the perpetrator of the abuse may be putting other members of the public at risk.

You may want to seek advice without initially disclosing the identity of the person you are worried about. You can contact your local Age UK or call the Action on Elder Abuse helpline, free and in confidence.

Your local authority will have a section on its website telling you who to contact to report possible abuse. Once aware of the situation, the local authority must decide how to respond, for example it may initiate a safeguarding enquiry. The local authority must decide how best to conduct the enquiry depending on the seriousness of the case, the continuing risk to the older person etc.

If you think the issues are so serious the police need to be involved immediately, you can contact them to report a crime. If you report concerns to the local authority and they agree it may be a criminal matter, they can report it to the police. In an emergency, dial 999.

If you are concerned about financial abuse by an attorney or a court-appointed deputy where someone lacks mental capacity, contact the safeguarding team of the Office of the Public Guardian through their helpline.

If your concern is about an older person being abused in a care home or by domiciliary care staff, you should contact the local authority. If the person is a self-funder and the local authority has not previously been involved, they still have a duty under the Act to carry out a safeguarding enquiry. You may also contact the Care Quality Commission (CQC).

If you are a professional in this situation, it would be advisable to discuss the situation with a senior manager before deciding what to do. You should receive appropriate training based on agreed safeguarding procedures so that you know how to act in these types of situations.

NHS Safeguarding

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

3.1 Information to help you report a safeguarding concern

Local authorities have duties to provide information and advice including about safeguarding. You should find information on your local authority website that makes it easy to report safeguarding concerns and get a response. Alternatively, phone your local authority and explain you want to make a report or raise a concern and you should be put through to the right section to deal with this.

If you have problems getting through to your local authority about a safeguarding issue, your local Age UK can help you.

4 Local authority safeguarding duties

4.1 Three basic legal duties

There are three specific legal duties in the *Care Act 2014*:

- 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 (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 **case reviews** where there has been a serious safeguarding incident (section 44 of the Act).

Note

Your local authority is the lead local safeguarding body. It is usually your first point of contact if you need information and advice about concerns you have or you want to raise a formal safeguarding alert.

4.2 Who does the safeguarding law seek to protect?

Those who may need safeguarding 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 actual or potential abuse or neglect.

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. The point is they are experiencing, or at risk of, abuse or neglect and cannot protect themselves because they have health or social care needs.

The level or seriousness of health or social care needs is irrelevant. For example, an older person who is frail and a bit isolated but otherwise capable of managing and living independently, may nevertheless be subject to abusive treatment, such as financial exploitation.

Anyone meeting this definition, for whatever reason and for however long they have lived in the area, is entitled to safeguarding protection from the local authority adult social care team.

5 What happens if I make a safeguarding referral?

Once you notify the local authority of your concerns, it has a duty to respond appropriately. It might: make a safeguarding enquiry, provide social care services, or just information and advice to help resolve the issue. They can require a partner organisation to take action or provide further information. They may have to respond urgently or notify the police who could then become the lead authority for the case.

5.1 The duty to make enquiries and their objectives

Where there is a concern about abuse or neglect, the local authority is responsible for carrying out any necessary enquiries. 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. There are a range of possibilities for pursuing an enquiry given in guidance. Enquiries can be a conversation with the adult or if they lack capacity, or have substantial difficulty understanding the enquiry, their representative or advocate prior to initiating a formal section 42 enquiry. It could be a more formal multi-agency plan or course of action.

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

Enquiry objectives

The objectives of an enquiry into abuse or neglect are to:

- establish facts
- ascertain the person's views and wishes

- assess their need for protection, support and redress and how they might be met
- protect them from abuse and neglect in accordance with their wishes
- make decisions about follow-up action to be taken with regard to the person or organisation responsible for the abuse or neglect and
- enable the person to achieve resolution and recovery.

5.2 Factors that should be considered in an enquiry

The factors that a local authority should consider when embarking on a safeguarding enquiry include:

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

5.3 Who should carry out the enquiry?

The local authority is responsible for making enquiries, but it may involve other agencies, depending on the facts of the case and the seriousness of the allegations. It has the power to require cooperation.

Usually a social worker is the most appropriate person to lead an enquiry, although it could involve someone else. For instance, another professional such as a healthcare worker who already knows the adult might be the best person. They should try to ensure distress to the adult at risk is minimised.

An example in the statutory guidance about abuse in a regulated care home says this type of employer is under a duty to inform:

- the local authority
- the regulator – the Care Quality Commission (CQC), and
- if a nursing home, the Clinical Commissioning Group (CCG).

In this situation the care home employer may be the best person to carry out an enquiry into alleged abuse, but that is not always the case. The local authority has to be satisfied the employer does a thorough job and there is no conflict of interest. The local authority may need to appoint someone external to conduct a fair enquiry.

The local authority and relevant partners have a legal **duty to cooperate** with one another. The Act places emphasis on working together and this is particularly important in the safeguarding context.

Relevant partners can include:

- NHS England
- Clinical Commissioning Groups
- NHS Trusts and Foundation Trusts
- Department for Work and Pensions
- the Police
- prisons
- probation services.

GPs, housing services, and health and care providers can also be important partners in protecting adults from abuse or neglect.

The purpose of the enquiry

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

5.4 What is the likely outcome of an enquiry?

This 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 is required, an enquiry must result in an agreed plan of action, recorded on the person's care plan, sometimes called a '*protection plan*'.

It 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 assure 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 gender 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 these steps are in place and recorded in a care plan, they should be 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.

5.5 Safeguarding and eligibility for social care services

The local authority duty to make a safeguarding enquiry is not dependent on eligibility for social care services and it can lead to a range of possible actions. However, if the response includes directly providing care services, eligibility may need to be confirmed via a needs assessment.

When considering service provision, it is important that a local authority does not lose sight of its general duty to protect individual human rights, nor to promote individual wellbeing, which includes '*protection from abuse and neglect*' under the Act.

5.6 The involvement of the person in an enquiry

Empowering and supportive

The first priority in an enquiry should be to ensure the safety and wellbeing of the adult at risk. Their wishes are very important and they should experience the safeguarding process as empowering and supportive.

In practice, these two elements may be difficult to balance. For example, if an older person you are worried about has the mental capacity to make their own decisions about relationships with other people and does not consent to an action a local authority proposes to take, it may not be possible to take a safeguarding enquiry any further.

Wider public interest exception

An exception to this general principle is if further action is in the wider public interest. For example, if other people could be put at risk if no further action is taken. This is more likely if the suspected abuse amounts to a possible criminal offence.

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 often have to make sensitive and difficult decisions.

If the person lacks mental capacity

The person you are concerned about may lack mental capacity to consent to a safeguarding enquiry or proposed arrangements made as a result. If so, their views are still important and must be taken into account but the decision about whether and how to proceed must be made by the local authority on the basis of what is in their best interests as defined by the *Mental Capacity Act 2005*. For more information on mental capacity and best interest decision-making, see Factsheet 22, *Arranging for someone to make decisions on your behalf*.

The 6 key safeguarding principles

There are 6 key safeguarding principles given in 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.”*

5.7 Local authority wellbeing and prevention duties

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

There is a general duty on the local authority to take measures to try to prevent, delay or reduce people’s need for care support. This includes considerations of keeping people safe from potential abuse or neglect. It can include advice about how to apply for a lasting power of attorney for a trusted person.

5.8 The role of the police

If a crime is suspected, the police must be informed and should investigate. The statutory guidance states the early involvement of the police is likely to have benefits in some cases, particularly in obtaining and preserving evidence. Whilst the police investigation takes priority over other enquiries, a multi-agency approach must also be agreed to ensure that all the interests and views of the person are considered throughout and an appropriate plan is agreed and put in place.

6 What happens if a crime has 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 (of someone who lacks the capacity to care for themselves by a care worker towards someone in their care)
- ill treatment or neglect (of someone who lacks capacity)
- unlawful imprisonment
- 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.

The evidential test

The police and CPS have to 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 the 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 before a perpetrator tries to get rid of it.

Another concern may be the older person being abused may be vulnerable to intimidation from the perpetrator and be frightened at the prospect of giving evidence in court or may be too confused to give reliable evidence. Special measures to support vulnerable witnesses to give their evidence were introduced to try to overcome such fears.

Vulnerable adult witnesses are defined as people with a mental disorder, a learning disability or physical disability. Judges can only agree to special measures if they think the quality of evidence will be reduced because of the person's impairment.

Special measures include the use of screens around the witness box, the use of pre-recorded evidence and the use of an intermediary, such as an advocate (known as a '*registered intermediary*') to help vulnerable witnesses understand questions and give their answers accurately.

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 they consider 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, the abuser may be a close family member or a trusted neighbour who they rely on and loves. In that case, 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 appointing a court 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

If the police believe a serious offence may about to be or has been committed, they can enter premises to investigate and/or arrest a suspected offender. They can also enter if they think someone is at imminent risk to their safety. This could be forcible entry to remove a suspected perpetrator, but only if they have enough evidence for this to be a reasonable step to take.

If the perpetrator of abuse is charged with a criminal offence, a Magistrates Court decides whether the person should be remanded in custody or granted bail. This is to deal with any continuing risk they might pose between arrest/charge and the final court hearing/trial. The Court can impose conditions on bail, such as forbidding a perpetrator from contacting the victim, living in the victim's house or from going within a certain distance of it.

7.2 Domestic violence and controlling or coercive behaviour

If a perpetrator is violent or threatening violence in a family setting, it may be possible for the victim of abuse to obtain an injunction. This is a court order forbidding the perpetrator from harming or threatening harm to the victim. The order that a court makes depends on the circumstances of the case.

It may issue a '*non-molestation order*', which prevents a perpetrator from:

- using or threatening physical violence
- intimidating, harassing or pestering
- communicating with the victim (if appropriate)
- instructing or encouraging others.

They may issue an '*occupation order*' which prevents a perpetrator from living in the family home, usually only if they have somewhere else to go.

If you think that someone is being subjected to physical abuse and would like to find out more or refer the person for help, refer them to an organisation such as the National Centre for Domestic Violence. You should also notify the local authority as soon as possible that there is a safeguarding issue.

Controlling or coercive behaviour in an intimate or familial situation

Section 76 of the Serious Crime Act 2015 created a new offence of controlling or coercive behaviour in an intimate or family relationship in December 2015. The offence is established by behaviour on the part of the perpetrator which takes place repeatedly or continuously.

The victim and alleged perpetrator must be personally connected at the time the behaviour takes place. The behaviour must have a serious effect on the victim, meaning it has caused the victim to fear violence will be used against them on at least two occasions or has had a substantial adverse effect on the victim's day-to-day activities.

The alleged perpetrator must have known their behaviour would have a serious effect on the victim, or the behaviour must have been such that he or she ought to have known it would have that effect. The penalty is a maximum of 5 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, they do not have any powers to come and remove the person. If the person is able to agree to leave and does, they can be taken to a safe place, such as respite care, while a safeguarding enquiry takes place.

If the person lacks mental capacity to agree to leave, a local authority has limited powers. In this situation, 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
- apply to the Court of Protection if the person needs to be removed from the home for their own safety.

There have been cases of a local authority removing people lacking mental capacity from their homes and family carers against their wishes, without making an application to the Court of Protection. The courts have said, in these cases, that the local authorities have failed to give any consideration to balancing the rights to home and family life against the risk of abuse to the individual.

In a number of cases, there has been no substance to an allegation of abuse or neglect, but family members have been forcibly kept apart for long periods of time. Court of Protection judges have been critical of this behaviour by local authorities and have reminded them the deprivation of liberty procedure is intended to protect vulnerable people, not a means for a local authority to '*get its own way*' against the wishes of a family.

This comment was made by the judge in *LB Hillingdon v Steven Neary* ((2011) EWHC 1377 (COP)), in which a man was removed from the care of his father for a respite break and detained for almost a year.

If you are a carer or family member and find yourself in this situation, you should ask the local authority to make an application to the Court of Protection to resolve the situation. If they do not, you may wish to seek advice from a community care solicitor.

7.4 The Mental Health Act 1983

People can be required to stay for a period of time in a psychiatric hospital or unit or other institution under the *Mental Health Act* (MHA) 1983. This is often called being 'sectioned' or detained. Section 7 of the MHA allows for guardianship orders to be made to require people to live at a specified place, to attend for treatment and/or to allow access to healthcare professionals.

These powers can only be used if the person has a sufficiently serious 'mental disorder', it is necessary in the interests of their welfare and a strict procedure is followed. The term 'mental disorder' is defined in the 1983 Act and is different to the definition of mental capacity in the *Mental Capacity Act 2005*.

Under section 115 of the MHA, an approved mental health professional (AMHP) may 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.

Under section 135, a magistrate may issue a warrant to a police constable to enter premises, using force if necessary, on the basis of evidence under oath from an AMHP that there is reasonable cause to suspect a person with a mental disorder is being ill-treated or neglected. The person can be removed to a place of safety for a mental health assessment for up to 72 hours.

The section 115 power does not allow for 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.

7.5 The Mental Capacity 2005

A local authority generally has no legal powers to protect someone or provide them with services against their will, even if that person chooses to stay in an abusive relationship. An exception to this rule is where the person concerned lacks mental capacity to make a decision to stay in their situation or where the person is subject to such a high level of coercion, undue influence or duress they cannot make a decision.

Where someone lacks mental capacity to consent

The *Mental Capacity Act 2005* put in place a legal framework designed to support and protect people with serious cognitive impairments, such as significant learning disabilities, acquired brain injuries or dementia.

There is a legal presumption in favour of mental capacity. This means people are presumed to have the capacity to make their own decisions and be helped to do so by all reasonable means. If they appear unable to make a particular decision, for instance about care arrangements, the local authority should assess their mental capacity.

After an assessment, if the local authority finds a person does not have sufficient mental capacity to decide on an issue, the decision must be made for them in their best interests. Factors to be taken into account to reach a best interests decision include:

- the person's own views
- the opinions of other people, including carers, professionals involved in looking after the person and anyone appointed by the Court of Protection as a deputy or who has a relevant power of attorney.

7.6 Deprivation of liberty safeguards (DoLS)

Sometimes adults without mental capacity to protect themselves may need to have their freedom restricted to keep them safe. If this restriction amounts to constant supervision and control and prevents a person leaving and choosing to live elsewhere, the Supreme Court ruled this amounts to a deprivation of the person's liberty. It is a breach of Article 5 (the right to liberty) of the *Human Rights Act 1998*.

A typical example would be where someone with dementia in a care home is prevented from wandering off by the use of a key pad on the door which they are unable to operate.

In these situations, a local authority (or a clinical commissioning group in a hospital) must carry out an assessment, called a '*deprivation of liberty safeguards*' ('DoLS') assessment. It must decide whether it is right to authorise the deprivation of liberty.

The idea is to protect people and make sure restrictions placed on their freedom are in their best interests to keep them safe and restrict them as little as possible. At the moment this procedure is only available for people in hospitals and care homes.

If someone lives in their own home or another form of supported living, such as an extra care home, they cannot be legally deprived of their liberty without authorisation from the Court of Protection.

These arrangements are designed to keep people safe from abuse and avoid abusive regimes such as were found in care homes like the Winterbourne View case in 2011 where people with serious learning disabilities were effectively imprisoned and badly abused.

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 would be the case with the *Mental Capacity Act 2005* and the Court of Protection. In these cases the Court of Protection is in place to judge on mental capacity-related issues, so there is no general requirement for another court, such as the High Court, to be involved (see section 8).

In *DL v A Local Authority & Others [2012]*, the Court of Appeal held the High Court could make orders to protect vulnerable adults who had capacity under the MCA, but whose ability to make decisions had been undermined through their 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 councils can apply to the High Court for an order to grant access to a vulnerable adult with capacity where this is barred if they have no other options available.

8 Court of Protection and the Office of the Public Guardian

This section provides an overview of the Court of Protection and the Office of the Public Guardian in the context of safeguarding, particularly in relation to abuse by people entrusted to look after the finances or welfare of someone who has lost mental capacity to do it themselves.

The Court of Protection

The Court of Protection is a court that deals with issues arising in relation to the health and care and financial resources of people who lack mental capacity to manage aspects of these things for themselves.

For example, only the Court of Protection can authorise the deprivation of liberty of someone living in their own home or supported/sheltered living environment 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.

Unfortunately some attorneys abuse their positions and exploit the older 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. Part of the OPG role is to investigate allegations of abuse by registered attorneys.

If an older person has lost 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 usually 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.

The OPG can investigate allegations of abuse by a court-appointed deputy or a 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 an older person's bank account, the OPG can initiate court proceedings through the Court of Protection and the court can freeze the funds or order whatever urgent action it thinks needs to be taken.

9 Role and duties of the 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. SAB's have wide powers to do anything that appears necessary or desirable for the purpose of achieving its objectives.

A range of organisations, including voluntary sector organisations and user groups, may be invited to join, but core statutory members are:

- local authority
- local clinical commissioning group (CCG)
- 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.

9.1 Special case reviews

If there is cause for concern about how SAB members or other health and social care staff worked together to safeguard adults at risk, the SAB must arrange a review. This duty does not apply to every safeguarding case, but to those where:

- an adult has died and the SAB knows or suspects the death resulted from abuse or neglect, or

- an adult is still alive and the SAB knows or suspects that the adult has experienced serious abuse or neglect.

It may arrange a review in other cases involving an adult in its area with care and support needs. It has discretion to decide whether the circumstances merit a formal review. The object of a review is not to apportion blame but to identify lessons to be learnt and applied in future.

10 The Disclosure and Barring Service

The Disclosure and Barring Service (DBS) has been set up by the Home Office. Its role is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, both adults and children. It replaces the Criminal Records Bureau and Independent Safeguarding Authority.

The DBS carries out criminal record checks for anyone employed in a '*regulated activity*'. This covers the provision of health and/or 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.

Employers concerned about a member of staff must refer the matter to the DBS if the person has caused harm, or poses a risk of harm to vulnerable groups. Other organisations, such as CQC or local authorities, can make referrals.

The DBS has the power to bar people from working with vulnerable adults and/or children. Some criminal convictions carry an automatic bar, whereas others leave it to the discretion of the DBS as to whether or not a person should be barred from this work.

11 The Care Quality Commission's standards

The Care Quality Commission (CQC) is the regulator for health and social care agencies. Agencies have to 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.

The fundamental standards

The CQC has fundamental standards it expects from every provider organisation and it carries out inspections to try and 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).

Useful organisations

The following national organisations may be able to offer further support and assistance:

Action on Elder Abuse (AEA)

www.elderabuse.org.uk

Telephone 080 8808 8141 (free phone)

Works to protect and prevent the abuse of vulnerable older adults. AEA offer a UK wide helpline, open every weekday from 9am to 5pm.

Alzheimer's Society

www.alzheimers.org.uk

Telephone 0300 222 11 22

Campaigns for and provides support to people affected by all types of dementia and their relatives and carers. There are local branches across the UK.

Care Quality Commission

www.cqc.org.uk

Telephone 03000 616 161 (free call)

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*.

Carers Trust

www.carers.org

Telephone 0844 800 4361

Offers practical help and assistance to carers.

Carers UK

www.carersuk.org

Telephone 0808 808 7777

Provides information and support for carers, including information about benefits.

Citizens Advice

England or Wales go to www.citizensadvice.org.uk

Northern Ireland go to www.citizensadvice.co.uk

Scotland go to www.cas.org.uk

In England telephone 0344 411 1444

In Wales telephone 0344 477 2020

In Scotland telephone 0808 800 9060

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

Court of Protection and the Office of the Public Guardian (OPG)

<https://www.gov.uk/government/organisations/office-of-the-public-guardian>

Telephone 0300 456 0300

Disability Rights UK

www.disabilityrightsuk.org/

Telephone 020 7250 8181

Organisation run by and for disabled people provides a wide range of publications relating to direct payments, personal budgets and arranging personal assistance.

Domestic Violence Support Groups

There may be a domestic violence support group in the local area. The local Age UK may be able to provide contact details. Citizens Advice may be aware of appropriate support groups in the area.

EAC FirstStop Advice

www.firststopcareadvice.org.uk

Telephone helpline 0800 377 7070 Mon 8am–7pm, Tues– Fri 8am–6pm

EAC is a national charity helping older people make informed choices about their housing, care and support.

Equality Advisory Support Service

www.equalityadvisoryservice.com

Telephone helpline 0808 800 0082 Mon-Fri 9am-8pm, Sat 10am-2pm

Funded by the Equality and Human Rights Commission, the EASS Helpline provides information and advice about the *Equality Act 2010*.

Independent Age

www.independentage.org

Telephone helpline 0800 319 6789 Mon-Fri 8am-8pm, Sat-Sun 9am-5pm

A charity providing free impartial advice on home care, care homes, NHS services, and benefits for older people, their families and professionals.

Local Government Ombudsman (LGO)

www.lgo.org.uk

Telephone Advice Team 0300 061 0614

The LGO is the final stage for local authority complaints if they can't be resolved locally. It also deals with complaints about care providers when services are being privately purchased.

MIND (National Association for Mental Health)

www.mind.org.uk

Telephone 020 8519 2122

Charity offering support for people in mental distress and their families.

NHS 111

<http://www.nhs.uk/NHSEngland/AboutNHSservices/Emergencyandurgentcareservices/Pages/NHS-111.aspx>

Telephone 111

NHS Direct has contact details for your Primary Care Trust and local services such as doctors, pharmacists, dentists and support groups. It can give information on health topics and advice on looking after your health.

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 can be called. The number of the local police station is in the telephone directory. In an emergency, call 999 or 112. This is when someone's life is in danger or a crime is in the process of being committed.

Public Concern at Work

www.pcaw.co.uk

Telephone 020 7404 6609

Public Concern at Work is an independent charity working to promote a new approach to 'whistle-blowing' in the public interest.

Relatives & Residents Association (The)

www.relres.org

Telephone 020 7359 8136

The Relatives & Residents Association gives advice and support to older people in care homes, their relatives and friends.

Samaritans

www.samaritans.org

Telephone 116 123 (24 hours)

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

Solicitors for the Elderly

www.sfe.legal/

Telephone 0844 567 6173

To find a solicitor specialising in wills and probate.

Trading Standards

www.gov.uk/find-local-trading-standards-office

If someone feels they have been charged excessive amounts of money for services provided, or pressurised into buying something they did not want by unscrupulous traders, Trading Standards may be able to help.

Victim Support

www.victimsupport.org.uk

Telephone Victim Supportline on 08 08 16 89 111

Victim Support is the independent charity for victims and witnesses of crime in England and Wales. It has offices across England and Wales, including a National Centre in London.

Women's Aid

www.womensaid.org.uk

Telephone National Domestic Violence Helpline 0808 2000 247 (free phone 24 hours)

A national charity working to end domestic violence against women and children. Supports a network of over 500 domestic and sexual violence services across the UK.

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

www.agecymru.org.uk

0800 022 3444

In Northern Ireland, contact

Age NI

www.ageni.org

0808 808 7575

In Scotland, contact Age Scotland by calling

Silver Line Scotland

www.agescotland.org.uk

0800 470 8090

(This is a partnership between The Silver Line and Age Scotland)

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Next update August 2017

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