Consultation response

Department of Health consultation on ‘Safeguarding Adults’; a review of the ‘No Secrets’ guidance

February 2009

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Age Concern England and Help the Aged are joining together to form a single new charity dedicated to improving the lives of older people
In this consultation, the Department of Health set out the questions it is grappling with in considering the renewal of arrangements surrounding the safeguarding of vulnerable adults. In recent times there have been frequent reports of abuse against adults taking place in situations where the protection in place has not been adequate and where there have been failings in the systems in place. Calls for changes to be made to ensure future abuse has been prevented have been as frequent as the cases of abuse.

As a result, the Department of Health opened up for discussion the current procedures used for safeguarding, as set out in *No Secrets*. This is guidance issued by the Department of Health for Local Authorities, setting out their responsibilities for safeguarding. It has been criticised by some people as not being suitable for the task of safeguarding, and for not being mandatory so that action has to happen to prevent abuse.

The Department of Health has asked for comments about how this guidance operates in practice, what can be done to prevent abuse occurring, what levers can be used to ensure the cooperation of other organisations like the Police, health services, housing and community safety services so that no older people are at risk of abuse, who should lead the work, and how to define what abuse is. Whilst the consultation is about the future of ‘No Secrets’ guidance the Department has also invited comments on whether legislation is also needed.

1. Who contributed to this response?

Safeguarding issues are relevant to almost every policy area, and consequently this response draws on Age Concern and Help the Aged work in a range of policy areas including work on health and social care, financial services and crime reduction.

Age Concern has consulted widely within the Age Concern movement. Age Concerns at a local level provide a wide range of services which contribute to preventing or responding to abuse. Some of these are specifically badged as being intended to combat abuse, though most are not.

Help the Aged held a focus group which seven Experts by Experience attended. These are members of the public who are involved in CSCI inspections of care homes as ‘lay’ inspectors, they have a good knowledge and experience in care issues, and issues relating to older people, but varied in their knowledge of adult protection procedures currently. The majority were, however, able to speak from personal experience about a member of their family, and were honest about the standards of safeguarding that they would wish for relatives. One member of the group was previously a local councillor with responsibility for oversight of domestic violence policy and procedures.
Help the Aged also met with the Chair and Secretary of Swaffham and District (Norfolk) Pensioners Association which held strong views on adult protection and elder abuse.

Help the Aged also received feedback from Regional Development Officers who work around the country on policy and local support for groups of older people. Many are involved in Adult Protection Committees in their local area.

2. Overview

Safeguarding adults who are experiencing, or who are at risk of, abuse or neglect, should not just be about responding to individual allegations. There should also be a strong emphasis on prevention. Prevention requires understanding of situations which create the risk of abuse. Risk might arise from an individual’s particular circumstances or from more generalised factors such as being in a care home or otherwise isolated from the wider community. Safeguarding should therefore be built into all strategies that are aimed at shaping local communities, including the development of local health and social care provision, policing and crime reduction, and the creation of safer and more inclusive communities. Safeguarding should not be regarded as simply a ‘social services’ issue.

A response to abuse should not just be about ending the abuse. The victim might need further support to recover from the effects of abuse, to rebuild confidence or to renew family or other relationships.

It is in many cases misleading to assume that people are automatically vulnerable. Indeed such an assumption can result in unjustifiable interference with a person’s freedom. We therefore refer to adults who are at risk of abuse rather than to ‘vulnerable adults’. This term does not just refer to people who use social services or have disabilities.

Recognition of these issues – especially in relation to older people- requires a profound cultural change on the part of all public bodies, and on the part of private and voluntary organisations that are likely to encounter abuse or neglect.

Age Concern and Help the Aged are strongly convinced that legislation is needed to bring about these changes. Stronger powers are needed to end ‘buck passing’ between agencies and to require that suspected abuse is investigated. Guidance issued under the Local Government Act carries some legal weight with local authorities but not with other agencies, so should be replaced by legislation. The need for ‘joined up’ working is not encouraged by the current plethora of legislation which could be used to assist in safeguarding. This is so diverse that no single professional – whether a social worker, a nurse or a
policeman – could be expected to be aware of all the legislation which is available. Ultimately over arching ‘framework’ legislation is needed.

Key points and recommendations

Leadership

• Whilst in the short term the Department of Health should retain a leadership role in safeguarding adults, in the longer term this must be a cross governmental responsibility. The Office of Disability Issues should play a role in developing a cross governmental approach;
• However the concept of leadership should not result in other agencies thinking that safeguarding is someone else’s responsibility;
• The health and social care regulator, the Care Quality Commission, should place safeguarding at the heart of its methodology – specifically with regard to registration criteria, risk assessment and enforcement action. This is as important with regard to NHS care as it is in respect of social care;
• The Director of Adult Social Services (DASS) currently has a statutory leadership role in safeguarding adults, and local authorities have a statutory duty to furnish the resources required to discharge this function. Statutory guidance setting out what the DASS should do if the local authority is failing in the latter duty is needed;
• Statutory guidance is needed to ensure that local authority contracts require proper safeguarding procedures;
• A national framework setting out entitlements to social care should ensure that personal budgets should not be set at such a low level that people feel pressurised into taking risks – for example employing unregulated staff;
• Local Safeguarding Boards should be accountable to the local PCT and the DASS, but a wider governance structure with independent involvement is needed. There should also be requirements for Safeguarding Boards to produce public reports on their activities;

Prevention

• Preventative work should not be restricted to preventing an abusive situation arising for an individual – there should also be a strategic approach to eliminating situations – such as isolation or being in an institution – that render people vulnerable to abuse;
• Risk assessment – and help for people to self identify risk – should be a key part of social care assessment. Current Fair Access to Care Services guidance actually supports this approach but has been undermined by inadequate resources;
• There needs to be better understanding of how professionals who encounter abuse or neglect of someone without capacity should link to the Office of the Public Guardian;
• Banks and financial institutions should be more pro-active in preventing financial abuse;

Workforce

• The Care Quality Commission and Local Authority Commissioners should ensure that social care providers comply with the GSCC code of practice for employers, including procedures to encourage staff reporting and to respond to reports of dangerous, discriminatory or exploitative behaviour;
• Training is important for all staff that are likely to encounter abuse. The medium term local area workforce strategy which the DASS is required to co-ordinate should specifically consider this need;
• Professional regulation should include a focus on safeguarding;

The NHS

• Older people who use the NHS are most likely to use service specific services, where staff fare less likely to be trained in spotting and responding to abuse than in specialist older people’s services;
• Safeguarding should form a central element of ‘quality accounts’ which NHS organisations will be required to produce;
• Outcomes measures are needed to gauge both the effectiveness of safeguarding systems and the effectiveness of responses for individuals. The latter is important to ensure that interventions are not restricted to stopping the abuse but also look at needs for help to recover from abuse or in some cases to resolve and restore relationships. Any guidance to replace No Secrets should include guidance on how and when interventions should be concluded;

Access to the criminal justice system;

• The Crown Prosecution Service policy on crimes which involve targeting of older people is very welcome;
• Measures to combat hate crime against disabled people must be inclusive of older disabled people;

Financial abuse

• There should be a financial abuse taskforce to pull together key organisations, including the Financial Services Authority, the Office of Fair Trading, Police, the British Banking Association, the Equality and Human Rights Commission, the Criminal Records Bureau, Trading
Standards, the Office of the Public Guardian, the legal profession, voluntary sector and government departments;

- There should be better supervision and support of people with Lasting Power of Attorney and Deputies appointed by the Office of the Public Guardian;
- Where an Attorney or Deputy receives a direct cash payment on behalf of a personal budget user who does not have capacity local authorities should be required to inform the Office of the Public Guardian;
- Greater use of section 4 of the 2005 Fraud Act should be made in responding to financial abuse – this section deals with a person who abuses ‘a position in which he is expected to safeguard, and not to act against, the financial interests of another person;’

Legislation;

- Legislation is needed in order to mandate all agencies that are likely to be involved in preventing and responding to abuse. Current No Secrets guidance only mandates local authorities.
- The Adult Support and Protection (Scotland) Act places duties on all public authorities to make referrals to the local authority if they suspect abuse, and to co-operate with local authority investigations, and the local authority has a duty to investigate if it aware of circumstances that might result in risk to a vulnerable adult. Similar requirements should be introduced in England.
- There is a considerable body of current legislation that could play a role in safeguarding, but it is very diverse and it unlikely that professionals working in any single field would be aware of all of it. There is therefore a case for consolidating legislation to bring existing legislation together. This should include principles, definitions, a duty to investigate, clarification of powers of entry, powers to remove the perpetrator of abuse, and a duty of co-operation;
- A single over arching framework bill would inevitably take many years to introduce. In the shorter term there should be legislation to replace current No Secrets guidance, and a Bill aimed at promoting awareness of adult abuse;
- Increased powers of entry, based on a human rights framework, would be justified for use in a situation where a third party refuses access to a person who might be being abused;
- Powers of entry where a person lacks capacity should otherwise remain unchanged and should only be used subject to Mental Capacity Act principles. However we would be open to these powers being extended to persons who fall within the scope of s. 74 of the Sexual Offences Act by being unable to refuse consent. This would give some flexibility to deal with situations where a person is subject to coercion or undue influence;
- We do not for the present support increased powers to over rule the wishes of a person who does have capacity to refuse consent. However
there needs to be greater clarity about existing powers, and we recommend a review of how existing powers under s. 47 of the 1948 National Assistance Act and under s. 135 of the 2007 Mental Health Act are being used in practice;

• Where a person is removed from their home, the decision to remove them and the process of removing them should be subject to a strong legal framework based on human rights principles;
• Where a person is removed from their home there should be an urgent and immediate assessment to ensure that the person’s needs are met, including during the interim period whilst a long term solution is sought;

Definitions;

• The term ‘vulnerable adult’ should be dispensed with and replaced with the term ‘adults at risk of abuse’ used in the Scottish Adult Support and Protection Act.
• Other possible approaches would be to base a definition on the perpetrator’s perception of the person as being vulnerable rather than on the person’s own characteristics. This would be similar to the Crown Prosecution service definition of crimes where targeting an older person is an aggravating factor or the Disability Discrimination Act definition of a hate crime against a person whom the perpetrator believes to have a disability;

3. The Consultation questions; our responses

The consultation consists of a series of questions set out in table format. The questions, along with our responses, are attached.
Leadership

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<th>Q1a. Where should leadership for safeguarding adults lie nationally, and how should the various national organisations work together?</th>
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<td>At the level of national government it is essential to bring together strategies for both responding to abuse and for reducing risk of abuse. The latter should include measures to build stronger and more supportive communities and safer neighbourhoods, crime reduction strategies, the equalities agenda and measures to promote the independence and social inclusion of disabled people of all ages.</td>
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Ultimately the aim of a co-ordinated approach should be to produce a cultural change throughout government, so that safeguarding is seen as an issue for all Departments rather than as a social care issue. However in the short term leadership within central government must reflect and support the lead role that local authority social care services have in co-ordinating policy and practice in safeguarding. There also needs to be a clear departmental lead to ensure that there is no room for doubt about where lead responsibility lies.

Age Concern and Help the Aged therefore recommend that this leadership should initially lie within the Department of Health social care directorate. It should be the responsibility of this department to issue strict and clear guidance for local organisations, care providers and responsible people to implement.

This leadership should be supported by involvement and active promotion by other national Government departments: the Home Office, Communities and Local Government, Department of Work and Pensions, Ministry of Justice., with the Office of Disability Issues playing a strong role in promoting this involvement.

We recommend that the Office of Disability Issues could play a lead role in co-ordinating inter department work. The advantage of giving a strong role to the
ODI is that it is strongly focused on a social model of disability, and therefore on bringing about social changes that will enable disabled people of all ages to maximise choice control and freedom. This approach would underpin the development of policies aimed at preventing abuse, by seeking to remove factors that render people vulnerable to abuse such as isolation, exclusion and institutionalisation. It is vital that there is cross-Government sign up from all agencies that deal with safeguarding issues so that agencies that aren’t simply health and social care related are involved.

Statutory guidance from Government should set out;
- exactly what is expected from local agencies, including the protection mechanisms that should be in place,
- investigation procedures and timescales and learning from cases where abuse has occurred
- What joint working must take place with other organisations and clarify lines of responsibility locally.
- Which agency locally carries the overall responsibility for safeguarding, as well as the circumstances in which this responsibility is devolved, for example, when someone is in the care of another care provider under a contract, or when a criminal investigation is needed.

The guidance must be as clear and explicit as possible, so that all local agencies know what it expected of them. Much of the current difficulty with safeguarding procedures has been the difficulty of identifying the responsible agency and the procedures to follow, leading to a vacuum and a lack of timely action in many cases.

The Care Quality Commission (CQC) must also play an important role. Several aspects of the CQC’s work are important;
- standards and regulations for registered services must ensure that providers have systems for preventing and responding to abuse;
• inspection and enforcement must command public confidence in the effectiveness of standards and regulations;
• CQC methodology for ‘risk based’ inspection and enforcement must take account of the need to safeguard service users against all forms of abuse, and not just abuse which results in risk to physical safety. Psychological abuse, treatment or neglect which would lead to psychological distress or social exclusion, deprivation of liberty and financial abuse should all figure prominently in the CQC’s risk assessment methodology;
• Proposed enforcement action policies are based on escalating use of powers depending on the seriousness of failings by providers. Such policies must explicitly take account of whether failings are likely to increase risk of abuse, neglect, infringement of users’ human rights or of specific rights such as deprivation of liberty.
• CQC reviews of the activities of statutory authorities must also place a strong emphasis in safeguarding service users against risks. In particular the extent to which statutory agencies:
  o ensure that services provided under contract safeguard service users against abuse;
  o take responsibility for and monitor the welfare of service users who receive services contracted by the authority;
  o take active steps to ensure respect for the human rights of service users;

Every registered care provider must be able to show that they have knowledge and understanding of the procedures for safeguarding in order to be registered for practice initially, and must continue to show compliance with the procedures through their inspections and the compliance criteria set out by CQC.
Q1b. Where should it lie locally? If within local government, then where in local government?

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<th>Responsible individuals should be positioned with Local Authorities (LAs) ideally in a new department looking specifically at safeguarding issues, but set within the health and social care services section. This post must be mirrored by a counterpart in the local Primary Care Trust (PCT), or ideally, should work across both organisations as a shared member of staff.</th>
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<td>Current Statutory Guidance (May 2006) on the role of the Director of Adult Services provides an excellent foundation for ensuring clear accountability within the Local Authority. Paragraph 23 of the guidance says;</td>
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<td>‘Local authorities shall ensure that the DASS has responsibility and authority for ensuring that the local authority maintains a clear organisational and operational focus on safeguarding vulnerable adults and that relevant statutory requirements and other national standards are met, including Protection of Vulnerable Adult (POVA) requirements. The local authority shall take steps to ensure that the DASS has the powers/resources necessary to encourage a culture of vigilance against the possibility of adult abuse’.</td>
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<td>The last sentence is particularly important in placing clear responsibilities on local authorities to ensure that the DASS has powers and resources to carry out their role, and in focussing not just on responding to abuse but on creating a ‘culture of vigilance’. Our only criticism of this guidance is that local authorities have now had three years to ‘take steps’ to ensure that the DASS has essential powers and resources so by now they should be required to have achieved this outcome. We also recommend that this guidance should be supplemented by guidance on what the DASS should do if he or she believes they are not being provided with adequate powers and resources as required by statutory guidance. This would help to prevent situations where catastrophic failings in safeguarding are followed by inconclusive recriminations about whether the main cause was poor policies and practice or lack of resources.</td>
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The Statutory guidance on the role of the DASS also states that;

‘The local authority shall take steps to ensure that the postholder is enabled/given the necessary resources to provide professional leadership (including delivering workforce planning) in social care and deliver the cultural change necessary to implement person-centred services and to promote partnership working, and such other responsibilities as the Authority determines’.

Again, this provides a clear focus on cultural change, and we recommend that there should be further guidance setting out what steps local authorities should take to ensure that they comply with this guidance.

Every organisation which locally may become involved in an elder abuse investigation should be required by duty to be part of a local group to set in place policies and analyse the local effectiveness of these policies for safeguarding. ‘No Secrets’ is inadequate in securing such co-operation because, as ‘section 7’ guidance it is carries no statutory weight outside of local authorities. New legislation which requires local participation and joint working, rather than relying on softer instructions given through guidance only, is needed. The local agencies which should be involved include the Local Authority, (including departments other than social services, particularly housing) PCT, Police, Crown Prosecution Service, benefits service, CQC.

| Q1c. Do we need a template for ‘a local safeguarding job description’ and national procedures for use locally? | Yes. There should be adequate resources available to them, including team members to investigate and coordinate investigations across organisational boundaries. There should be a clear set of responsibilities that a local lead should control. The local lead should report directly to the Director of Adult Social Services, and should be more than a coordinator – as part of their role they would have a legal responsibility to carry out certain actions, to coordinate the work of all of the responsible local agencies, and to ensure that there were |
effective working practices in place. Monitoring outcomes and evaluating the effectiveness of the safeguarding procedures in place is a crucial element of their role.

It is essential that national procedures include aspects which are mandatory, such as having all of the local agencies on a Safeguarding Board, timescales for investigations, reporting requirements, listening to comments from individuals who had been the focus of or involved in a safeguarding case. The level of safeguarding that local areas should achieve should not be locally variable but should be defined in national legislation. Local flexibilities should not make any difference to people’s entitlement to be safeguarded from abuse.

The recent CSCI report on safeguarding pointed to the key role of local commissioners in ensuring that services that they purchase are contractually required to have, and to use, proper safeguarding procedures. We recommend that statutory guidance should include requirements for commissioning of services to take safeguarding into account. This should be supported by CQC setting definite requirements from providers as part of their registration requirements.

The implementation of Personal Budgets should also be underpinned by national requirements. Personal Budgets must not be set at a level so low that it forces a direct payment user to purchase unregulated care even if they do not want to. The direct payment user should not be forced to accept a lower level of safety as a result of their choice of service.

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<th>Q1d. How do we know if a safeguarding board is working effectively? To whom should it be accountable?</th>
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<td>The Local Safeguarding Board should be responsible to both the PCT and the Local Authority Director’s independent governance structure?</td>
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<td>The key characteristics of a Safeguarding Board should include:</td>
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<td>1. Regular and comprehensive reports to the supervising organisations.</td>
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2. Public reporting and accountability on the outcome of cases.
3. Keeping records on the number of allegations and cases which remain unresolved after the intervention of safeguarding teams.
4. Keeping records about the progress and quality of individual organisations.
5. Keeping an ongoing record of agreed actions to take as a result of investigations.

The PCT and LA should between them report publically on the investigations reviewed by the safeguarding board, as well as critiquing the remedial action or changes made to services. There should be mechanisms built into the new system which promote changes to services where failings have been found.

Q1e. Where should leadership for NHS safeguarding issues lie? Do we want national procedures for the NHS?

| The leadership should lie within the national Department of Health on safeguarding procedures, specifying what action should be taken by PCTs, other healthcare organisations and non-healthcare agencies like the CPS. SHAs should oversee the actions taken by the PCT. |
| It is not necessary to have separate action procedures for the NHS – in line with the health and social care complaints process aligning, there is no reason why health and social care services shouldn’t use the same safeguarding procedures. It reduces complexity and increases clarity if health and social care organisations use the same procedures. Other organisations will need different procedures to follow as non-service providers. And the role of the Care Quality Commission in preventing and responding to abuse is equally as important in respect of NHS care as it is for social care and standards will naturally cover both areas. |

Q1f. Where should leadership for safeguarding in the care home sector lie? What can be done to strengthen this?

| It might be counter productive to identify one agency as having leadership responsibility in this area as a number of stakeholders have distinct roles and should not be encouraged to think that someone else has the main responsibility. |


• The care home sector itself needs to develop an increased awareness of factors that increase the risk of abuse. This should include, for example being more proactive in creating links with their local communities so that homes do not become isolated, so that dysfunctional behaviour and practices can be seen and challenged. There are already many examples of excellent practice in care homes in this respect which need to be better publicised [anything from my home life to support this?]
• Local Authority commissioners should require evidence of sound safeguarding procedures in their contracts with providers and should monitor the extent to which such requirements are complied with.
• The Care Quality Commission should take appropriate action if, in the course of its work, it encounters or suspects abuse. Action might entail making a referral to another agency – e.g. the Police if there is reason to believe a crime might have been committed and/or a local authority safeguarding coordinator. We note specifically our concerns about local authorities restricting the scope of No Secrets investigations to their own clients, despite No Secrets currently not setting this restriction. There must be no safeguarding concerns or allegations which are allowed to fall between the CQC and the local authority.
• Social Care staff should comply with requirements of the General Social Care Council Code of Practice, and medical staff with their relevant professional Council Code of Practice.

The Human Rights Act is also a crucial lever to ensure that care homes take safeguarding on board. The Human Rights Acts has recently been extended to include within its remit those residents in private care homes funded by a local authority. This is a crucial step forward, and leadership on this issue should again lie with CQC. Local authorities also have a role in ensuring that they are making contracts with care homes they can be sure are upholding people’s human rights.
Q1g. Given that there are multiple ‘chains of command’, how do we ensure that formal leadership roles are accompanied by appropriate authority levels?

All chains of command should lead to the level of Director at the Department of Health. Directors of Adult Social Services, Directors of PCTs, and Directors within CQC should all have equal authority to take action in cases where there are allegations of abuse. Directors should work closely with the Police where there are more serious investigations to undertake. Given the low priority currently afforded to this aspect of police work, it is essential that Chief Constables have a responsibility to ensure both effective policing in this area and the active participation of a suitably senior officer in Safeguarding Boards.

Q2a. Should we be doing more work on prevention? If so, where should we concentrate our efforts? If you are doing effective preventive work, please tell us what it involves.

Yes, work on prevention is critical as part of an approach which tackles the issue of abuse from all angles.

There should be a distinction made between measures to prevent an abusive situation arising – which would be in response to concerns about particular individuals, and measures to reduce situations which increases the risk of abuse.

The latter entails a more strategic approach, for example, through adopting commissioning practices that ensure that people who need care and support are not isolated from contacts and social interaction. Referring to ‘people who are in situations that create risk of abuse’ rather than to ‘vulnerable adults’ would help to create a focus on a strategic approach. Very often there are warning signs that abuse might be a risk. There are different ways of targeting people who are at risk of abuse or educating the general public and staff about elder abuse.

Measures to ensure that concerns about potential risks to individuals are minimised are also important. Social services assessment is crucial in this respect in that, particularly with the introduction of personal budgets and increased self directed care, individuals should be supported in realistically...
assessing any risks involved in their care and support and in devising ways to reduce that risk. Assessment must identify risks and should be an integral part of the RAS and self assessment system. We currently have concerns that the RAS being developed by local authorities concentrate solely on someone’s need for services, not needs that are met by carers, family or carers support but which may be accompanied by their own risks. The rolling out of the personalisation agenda must be accompanied by specific guidance on the protection of people who lack the mental capacity to make a decision to take on risks. It is of critical importance that professionals understand the relevance of the principles enshrined in the Mental Capacity Act, especially the duty to act in the best interests of an incapacitated adult in the context of self-directed support.

The current Fair Access to Care Services guidance, which sets out a statutory national framework that local authorities must use to consider eligibility, would, if applied equitably in a non ageist manner, be extremely helpful in assessing risks. This is because it explores ‘risk to’ a number of ‘domains’ of independence rather than ‘risk of’ negative outcomes such as abuse. This means that decisions based on the FACS framework should be focused on enabling a person to minimise the risks involved in living a life, rather than on protecting them from life. In practice, however, the constraints on budgets in social care services for adults mean that only those people with the highest needs are eligible for services, and their needs are so acute that maintaining the basics of living are the priority. The wider aspects of living life cannot be taken into account, because there are no resources, and in some cases, no services available which could meet these needs.

Data shows that by far the majority of abuse to older people happens in their own home (67 per cent) and is perpetrated by family members (45 per cent). It follows that the most effective way to begin preventative work is in these two
areas. Perversely, they are probably the hardest to reach. Reaching out to the care home sector would touch around 27 per cent of cases and is equally a priority. Dementia has also been found to be a risk factor and there needs to be specific targeting of prevention work with people who are in situation where there may be a higher risk of abuse.

In order for prevention to be successful, professionals and individuals in contact with older people need to understand what abuse is, know what to do if they are concerned that they or someone they know is being abused, have support throughout a process of investigation into suspected abuse, and know that effective criminal action will be taken. This is important in identifying where abuse is happening, and what people should do in such a situation. They should also understand the role of the Office of the Public Guardian and be aware of circumstances where they should be making links with the OPG.

This awareness should extend to members of the public, as well as staff in care homes, hospitals and domiciliary care staff. Employers should consider training for all members of staff who have contact with the public in addition to this – including staff in banks, doctor’s receptionists and care and health auxiliary staff.

More prevention can also be put in place in financial situations, with banks and financial institutions coming together to work on tackling fraud. There should also be a better money management system in place that older people can use to get more information about how to use their money best in older age. This would help those people who have been bereaved and are not used to managing their money themselves. Money Management programmes have proven successful in the United States, supporting people to make better decisions about money, paying routine bills on time and keeping track of finances.
Age Concern Norfolk’s Money Matters project provides specially trained and vetted volunteers to help with money management for people referred by Norfolk County Council. This may be a one-off task, such as sorting out a backlog of paperwork for people who have had a lengthy stay in hospital, or ongoing help, for example help for people with short-term memory loss. The project coordinator reports a continuing increase in cases of abuse, with three cases recently being reported on the same day. In one case, this involved the same individual, suspected of stealing from two victims. Cases are reported to the Adult Protection Unit, and to the police, but action is rarely taken.

There is a great deal of literature guiding professionals and ‘concerned others’ about how to spot and respond to elder abuse, but there is nothing yet aimed at older people who may be at risk of abuse. Help the Aged is developing a leaflet which encourages older people to look at how they might be at risk of abuse (called mistreatment for much of the leaflet since it is thought that the word ‘abuse’ is a barrier), and to adopt some prudent steps which may reduce risk. In addition, Help the Aged has commissioned pilot projects to extend specialist advocacy services to older people suffering from or at risk of abuse. These pilots have yet to report although initial signs are encouraging and the trial will extend into the second quarter of 2009. Help the Aged is also developing training materials for non-specialists, including telephone help-line staff, on how to detect potential signs of abuse and how to respond.

Prevention issues could effectively be addressed at critical points in the care pathway of an older person – e.g. at discharge from hospital where the risk assessment should consider the risk or threat of abuse. Likewise at care package reviews, or after new services have been put in place, withdrawn or altered. Similarly, the risk of abuse should be actively considered in the original needs assessment and during a carer’s assessment.

| Q2b. Should we develop a national | Yes. |
prevention strategy for adult safeguarding which includes, for example, links with neighbourhood policing, with a human rights agenda, and with Health and Well-Being?

Safeguarding must be built comprehensively into the personalisation agenda which is the main driver of change in social care currently. No work stream can ever be taken in isolation with each other, but there is a danger of misalignment or confusion about which priority is more important.

Concerns have been expressed that the route into personalisation of social care services makes the risk to service users higher than it needs to be. Age Concern and Help the Aged believe that the two priorities of safeguarding adults and personalisation can be set up to work alongside each other. We think that effective communication with older people employing their own assistants will mean that they will be able to weigh up the risks of employing someone who has not been checked against a register of authorised workers. Older people are used to making decisions, and have done throughout their life. The question about the most vulnerable and frail older people using individual budgets also needs to take into account the older person’s ability to recognise risks, and to choose to take them. Care management should support people to assess the risk that they are taking as a result of their decision. It should take into account that no decision is entirely risk-free, but that this is normal and can be managed to reduce the likelihood of any abuse or harm occurring. It is useful to think about this in terms of giving a service user the ‘freedom to’ make a decision or take a risk, and should ensure that they have ‘freedom from’ abuse and harm. The assessment and review process should use these concepts to evaluate a care package and the individual decisions about care and support that the service user makes.

It would be interesting to see the same level of interest in a case of failure of adult safeguarding procedures as there has been in recent times with child abuse cases. Whilst no tragedy is ever desired, if more cases received a raised profile this would benefit the cause and highlight the nature of elder abuse. Awareness that more abuse occurs than people can imagine would
raise consciousness of it, and may prevent more events occurring.  

Whilst we have, elsewhere in this consultation, set out our strong support for framework legislation, we recognise that it might take several years for an Act to be introduced. It might, however, be possible to make more limited changes more rapidly, and we would support a bill aimed at raising consciousness and strengthening the current No Secrets guidance. This might be an appropriate subject for a Private Members Bill.

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<tr>
<th>Q2c. Are whistle-blowing policies effective? What can we do to strengthen them?</th>
<th>No, whistle blowing policies are not always effective at the working level. Too often management tiers become self-protective and act not in the interests of the issue but of maintaining the structures they have built and thought they understood. This requires a paradigm shift in attitudes of senior managers and a tolerance to protect whistle blowers who rarely invoke the procedures without good cause. This is a cultural issue which spreads far beyond the No Secrets consultation. There is a need to raise the profile of professional standards and ethics, and ensure that staff who are members of medical or social care Councils are brought to account by their regulatory body. Clause 4.2 of the General Social Care Council Code of Practice for Employers should be monitored by both the Commission for Quality in Care and Local Authority Commissioners. This says; 'As a social care employer, you must put into place and implement written policies and procedures to deal with dangerous, discriminatory or exploitative behaviour and practice...This includes establishing and promoting procedures for social care workers to report dangerous, discriminatory, abusive or exploitative behaviour and practice and dealing with these reports promptly, effectively and openly'</th>
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<tr>
<td>Q3a. Would an outcomes framework for safeguarding adults be useful? If so, which indicators should we use within the wider</td>
<td>Yes. Outcomes are a crucial way of measuring the effect of procedures, rather than measuring the procedure itself as a measure of success. In line with the personalisation of social care services and the changes in measurement of</td>
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| responsibilities of local government, the NHS and the police force? | quality through the CQC inspection procedure, outcomes are being reinforced as the way that quality services are assessed. There would be a need to have two sets of outcomes measures – one which focused on the safeguarding system itself, which would look at how a case of abuse was resolved or dealt with, the management and discipline of staff, the risk assessments carried out, the rigour of the investigation and the speed at which the system operates. The other set of outcomes should be those for the individual themselves, so that following a case of alleged abuse, or after abuse has been found to occur, the wishes and needs of the individual are still taken into account. The outcomes for the individual may be for the abuse to be stopped, but they could also include ensuring that good alternative care is found, reconciliation, or therapy. An outcomes framework should take all of these elements into account.

One of the main failings of current safeguarding arrangements is lack of clarity about what a response is supposed to achieve, what outcomes it should produce for the individual, and when it has been completed. We believe, on the basis of anecdotal evidence, that this lack of clarity might be particularly problematic for older people, as the aim of interventions are in practice more likely to be restricted to simply stopping the abuse rather than addressing wider issues in the caring situation, or working to resolve and restore relationships, particularly when those involved are family members. Where a younger adult is abused there is more likely to be a focus on addressing, and helping the victim to recover from, the effects of abuse.

Age Concern and Action on Elder Abuse are currently developing a joint project, funded by Comic Relief, to develop support for older people who have survived abuse. The experience of this project might be useful in showing what support older people need after experiencing abuse and what outcomes that support should aim to achieve. |
Abuse takes place on a continuum, and even the perception of what constitutes abuse varies from community to community, including minority communities. Setting markers in stone may be difficult but an outcomes framework would help navigate a difficult area.

| Q3b. Should we encourage local annual reports to be more evaluative? | Yes. Lessons learned from experience ought to be shown in an evaluative framework. Annual reports should reflect on the previous year’s report and identify where lessons have been learned, and how they have been implemented. |
| Q3c. How can we learn from people’s experiences of harm and their experiences of the safeguarding process in order to improve safeguarding? | Data sharing is crucial and shared learning can only benefit all practitioners and managers in the field. How to share that information, as a library or database of anonymised cases would need study. Alternatively, IDEA could be commissioned to develop a Beacon Area which would focus on prevention and how councils are achieving the best practice. |
| Q3d. Should we review current arrangements for delivery of safeguarding adults training? Should we have national occupational training standards across all agencies? | Yes. Training would have to be tiered to staff needs – front line staff would be more likely to witness abuse, managers need to know how to determine the level of threat and risk and crucially, when and when not to refer. Issues of mental capacity will have to be thought through carefully and incorporated into a training package. National Occupational Standards ought to provide a safety net of minimum provision across the country and eliminate what is still currently a post code lottery. We recommend that staff needs for training to prevent and respond to abuse should be explicitly incorporated into the medium term workforce strategy that the Director of Adult Social Services is required to develop. The Skills for Care ‘Care Qualification Framework’ setting the new structure for social care qualifications should have a core training module of safeguarding procedures and responsibilities. It should also form part of the Common Induction Standards for care home and domiciliary care workers. |

Office of the Public Guardian staff should also receive training in how to respond to abuse, and should through their monitoring processes be aware of
the potential for financial abuse to occur.

Police and CPS should both receive training to improve their awareness in this area and reduce stereotyping of vulnerable older people, but also be involved in delivering training on issues such as retention of evidence, the range of possible criminal offences etc.

| Q3e. Should we have a national database of recommendations from serious case reviews at a national level? Should we review the effectiveness of serious case reviews as learning tools? What should trigger a serious case review, and how should the conclusions be disseminated? | Yes. Case reviews are an excellent learning tool (see 3c above). A serious case review should be held after any abusive event that has, or should have, generated a police investigation and referral to the CPS with a view to prosecution, generally after Crown Prosecution Service review. Sadly the conviction rate is so low that only investigating those events would be of limited value. Too many older people who have experienced abuse cannot cope with the strain of a court case and many that do make it collapse before or during trial.

As an open Court, the Court of Protection should also contribute anonymised reports on examples of abuse that they have encountered. This would also assist in raising the profile of abuse cases, as well as discouraging potential perpetrators because they understand that such cases are brought to justice. |

| Q3f. Should we develop joint inspections to look at safeguarding systems as a whole? Should this include the police (Her Majesty’s Inspectorate of Constabulary) – as for inspecting local children’s services? | |

| Q3g. What are the desired outcomes of safeguarding work? | Age Concern and Help the Aged are committed to free vulnerable older people from poverty, isolation, fear and neglect. It follows from our perspective that safeguarding work should protect people when they encounter abuse and to prevent such abuse from occurring. In this way abused older people would be freed from poverty, fear, neglect and isolation resulting from abusive relationships. |
We recommend that any guidance issued to replace No Secrets should include guidance on how an intervention should be concluded. This should include outcomes that an investigation aim to achieve, which should include:

- taking account of the outcomes that the victim wishes to achieve;
- ensuring that support to enable the person to recover from the effects of abuse is in place;

This should also recognise outcomes that individuals want to achieve which may include continuing a relationship with the abuser. Wider outcomes for crime reduction/community safety strategies?

| Q3h. Should there be national safeguarding adults guidance that incorporates training, outcomes and multi-agency procedures? How would this be integrated into the personalisation agenda discussed in chapter 4? | Yes, but this is not a substitute for legislation. In recognition that primary legislation will take time to draft and implement, we would support reinforced guidance to local agencies reminding them of their responsibilities and setting out more clearly the need for multi-agency procedures. |
| Q3i. How much does adult protection currently cost? How is it funded? What evidence is there, if any, that increased funding would lead to better outcomes? | We strongly believe that safeguarding needs to be adequately funded if systems are to be effective. However, because of the complexity of people’s lives and their place within other systems, such as health or social care, it is not enough simply to fund the straightforward safeguarding process itself. There are three elements which should be taken into account:

- the costs of failing to safeguard people who are at risk of abuse, and the cost of emergency support in situations where abuse has occurred;
- expenditure which should, if used effectively, contribute to safeguarding, even though it is not specifically identified as safeguarding expenditure, for example, resourcing care packages adequately to reduce the pressure on existing carers, resourcing care homes and domiciliary care agencies adequately through their contracts with local authorities so that they are able to buy more staff and afford additional training; and |
- Additional expenditure that is incurred specifically as a result of safeguarding responsibilities. There is a wide range of potential costs to individuals and to the state that are likely to arise from failing to prevent or respond to abuse.

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<th>Managing risks</th>
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<td>Q4. In an environment where an increasing number of people will be taking responsibility for arranging their own support, we need to have a debate on how their interests can be safeguarded. What aspects of safeguarding do we need to build into personalisation? What training, risk assessment and risk management should we use? Please tell us what you are doing locally and what more needs to be done.</td>
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<tr>
<td>Good risk assessment means that safeguarding and supporting risk taking are not conflicting agendas but are complimentary. It also supports the professionals who are helping the older people who are using the personal budgets or making their own care decisions. It takes away the fear that some professionals have reported in the repercussions on themselves if harm occurs to the older person. There is a balance to be struck between the right of older people to take risks inherent in the personalisation agenda and the duty on society to safeguard them from harm. The fundamental right of an older person to make their own decisions is paramount but it should be done from a position akin to ‘informed consent’, that is with appropriate support and or training to recognise the risks and how to weigh them against the advantages. For those people who lack the capacity to give informed consent, the best interests duty applies, and an understanding of the provisions of the Mental Capacity Act is vital. Older people are not automatically vulnerable, neither do they automatically lack capacity and sensitive training and awareness raising is essential. Offering training in communities, funded by social services departments, but delivered by the voluntary sector would be more acceptable than those run through statutory services for whom many older people have some (mis-placed) suspicion. Certain issues can be straightened out quickly, such as older people having access to free Criminal Record Bureau checks before they employ a Personal Assistant.</td>
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<th>Managing choice</th>
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<td>Q5. What aspects of personalisation – Where a person who lacks capacity to direct their own care receives a direct</td>
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greater independence, choice and control – can we build into safeguarding? How do we better reflect service users’ informed choices? How do we facilitate informed self-determination in risky situations and in the safeguarding process? How can we move forward on this agenda

payment paid via an agent it is particularly important that the local authority is active in monitoring the person’s wellbeing and ensuring that they are not being abused. There should be regular reviews of the care package.

Where an older person accepts direct payments or a personal budget then there should be a tiered system of monitoring - perhaps based on the Office of the Public Guardian’s scheme running upwards from light touch, so the more care someone receives and the higher their needs, the more they are safeguarded to ensure the care is being provided well. This could reduce once a care package was known to be stable.

We have commented further on safeguarding direct payment users against financial abuse in the section on financial abuse below.

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<th>Question</th>
<th>Answer</th>
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<td><strong>Q6a.</strong> How is the No Secrets guidance being implemented and applied to ensure that it enables staff in the NHS to recognise, investigate and act on abuse? Are local arrangements effective? What more should be done?</td>
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<td><strong>Q6b.</strong> Are health organisations able to work with and adopt multi-agency guidance, or is it essential to develop operational guidance that adapts procedures into language, culture and structures appropriate to healthcare?</td>
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<td><strong>Q6c.</strong> What are the responsibilities of the NHS safeguarding leads – are they champions, professional leaders, awareness-raisers, data collectors and reporters? Can one person fulfil all these roles? If not, how</td>
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<td>Question</td>
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<td>Q6d. Is there a need for regional safeguarding forums where health organisations can share good practice and learning? If so, what would they look like?</td>
<td>Not if there are effective local safeguarding boards in place. As far as possible there should be joint agency working throughout – the lessons learnt in social care services, for example, are likely to be just as relevant to health services. Duplication of efforts in sharing good practice should be removed as far as possible.</td>
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<td>Q6e. How do procedures for investigating serious untoward incidents (SUIs) fit into the multi-agency context of safeguarding?</td>
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<td>Q6f. Are adult safeguarding systems within the NHS effective? If not, what are the specific challenges that need to be addressed?</td>
<td>Older people’s services more likely to be engaged on this issue. However, because the majority of older people are seen by condition-specific health services, it is likely that many fall through gaps in safeguarding. All staff in hospitals should be aware that there are procedures for reporting and responding to allegations of abuse, or for raising concerns if they have their own suspicions. Training on safeguarding and how to spot potential abuse should form part of induction standards for all staff, including clerical and auxiliary staff.</td>
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<tr>
<td>Q6g. Are any parts of the NHS or healthcare sector less engaged and more in need of assistance to get on board with safeguarding?</td>
<td>Yes. GPs and primary health care teams (including practice nurses, community nurses, pharmacists etc) are crucial since 90% of older people’s contact with the NHS is in primary care services. Some of these professionals are more likely to visit people in their own homes and/or have a continuing relationship with them and therefore be able to spot particular behaviour or changes in circumstance.</td>
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<tr>
<td>Q6h. Is the role of GPs a crucial role for safeguarding in the NHS? Where is the existing good practice and what can be learnt from it?</td>
<td>Yes. GPs and primary health care teams (including practice nurses, community nurses, pharmacists etc) are crucial since 90% of older people’s contact with the NHS is in primary care services. Some of these professionals are more likely to visit people in their own homes and/or have a continuing relationship with them and therefore be able to spot particular behaviour or changes in circumstance.</td>
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GPs are also known to people who are not aware that social care services exist. They are therefore often the trusted first port of call for many of their patients.

| Q6i. Are there particular issues in relation to safeguarding and mental health? If so, how should these be addressed? | Central leadership would be ideally placed within the CQC. The knowledge and expertise developed by the inspectors should be used within health services as well. Strategic Health Authorities will have an important role to play in ensuring that healthcare organisations have the correct procedures, policies, skills, partnerships and monitoring arrangements established to deal with safeguarding issues. This should clearly link very closely to the authority that Local Authorities and Directors of Adult Social Services have in overseeing safeguarding arrangements. PCTs who are commissioning services from providers must report to their SHA on their progress with safeguarding, the checks they have in place, and the outcomes they achieve. This should also form part of the safeguarding report for the local area. There are also roles for the professional regulators, especially as for many front-line staff they do not come into direct contact with healthcare regulators. Professional regulators should ensure that safeguarding forms part of pre-registration education and ongoing development training. There are additional organisations who have a potential role within safeguarding, but which would probably not lead the Work. These include the National Patient Safety Agency, Court of Protection Visitors and NICE. |
| Q6j. What central leadership role should there be (if any), and what function should it have (Healthcare Commission, Monitor, Department of Health, General Medical Council, Nursing and Midwifery Council, strategic health authorities)? | |
| Q6k. What are the main drivers for standards in the NHS that safeguarding should be | There are several drivers that will ensure that this work is carried out to a high standard. CQC holds a central responsibility for the inspection and monitoring |
of services, and their compliance criteria will ensure that organisations must be accountable for safeguarding and the standards that they reach. The registration standards for organisations will also be crucial. They should be clear in not allowing the registration of an organisation to take place unless they can show that their safeguarding will be adequate. Organisations will also be required to produce Quality Accounts for their services as a way of being accountable for their performance. Safeguarding should form a central element of these reports.

The existing NHS Operating Framework makes reference to safeguarding and role of the CQC in monitoring progress of healthcare organisations. Future Operating Frameworks should make future reference to this.

The NHS Next Stage Review has also placed significant emphasis on patient safety, and high standards of care. Safeguarding is clear a major part of this – in preventing harm before it occurs by ensuring that there are high standards in place. Patient safety should not focus solely on the reduction on healthcare associated infections but look more widely at harm in an emotional, psychological and physical sense.

As mentioned in Q6j, there are ongoing roles for professional regulators to ensure that their professionals remain highly trained and competent in this area.

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<th>Safeguarding, Housing and Community Empowerment</th>
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<tr>
<td><strong>Q7a. Do we need stronger policy links between safeguarding and community development and empowerment? How can this be achieved at the national and the local levels?</strong></td>
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<tr>
<td><strong>Q7b. How can housing providers contribute</strong></td>
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to safeguarding? What could housing departments, housing associations and supported housing/living providers do to enable their tenants and residents to live safer lives?

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<tr>
<th><strong>Access to the criminal justice system</strong></th>
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<td>As a general point, access to the criminal justice system as such is not a great barrier. The barrier is that too few cases of elder abuse are taken forward by the police or CPS because of perceived (or imagined) difficulties of the quality and reliability of evidence in chief. The CPS have moved on with the use of emerging technologies and advocacy support at or around trial (for the few cases that make it that far) but this needs much better publicity to encourage other victims to go ‘all the way’. Police officers and prosecutors also support more cases to be tried using ‘special measures’ to support vulnerable witnesses.</td>
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<tr>
<th>Q8a. How can safeguarding vulnerable adults be better integrated into the mainstream criminal justice arena?</th>
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<td>There is a need for a much better response from criminal justice agencies in cases of elder abuse. Police and prosecutors need to be much more aware about elder abuse, what it is, and how to effectively deal with the very sensitive situations that are raised. It is also important for the Police to understand the workings of the social care system, for instance, so as to be able to make appropriate referrals. This is similar to their expertise and sensitivity when investigate cases of domestic violence, and have specially trained police officers to deal with such cases. It would be helpful to see officers trained with a specific knowledge of community care, and the best ways of helping older people and their household if there are suspicions of abuse in the domestic environment. This needs to be supported by a mandatory structure to ensure that police work effectively with safeguarding boards and that each policing area is required to appoint a trained officer with appropriate seniority to oversee safeguarding vulnerable adults and ensure this work receives the priority it deserves and needs. If there are specialist police officers located in local areas, it will be possible for a closer working relationship to exist between care homes and care agencies, so that care organisations know how best they should deal with cases where</td>
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there are allegations of abuse. This would reduce the difficulties care providers often face in not knowing which procedure to follow, and the action they are obliged to take.

Age Concern and Help the Aged welcomed the CPS policy on elder abuse published in 2008. The policy clearly set out the intention of the CPS to take elder abuse crimes, including financial abuse, seriously. We wait to see whether the guidance improves the number of prosecutions which take place following allegations of elder abuse.

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<th>Q8b. Are police units adequately staffed to respond to the increased reporting of adult protection issues? If not, what changes are needed?</th>
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<tr>
<td>Yes. There is a need to put in place adequate institutional structures to combat the marginalisation of abuse of vulnerable adults. There is no principled reason why MAPPA should not cover this area of criminal activity already. The introduction of MARACs have significantly improved inter-agency work, both among statutory bodies and between the statutory and voluntary sectors, as well as giving a more effective voice to those at risk of domestic violence. The extension of the MARAC structure to cover work with vulnerable adults would potentially benefit both individuals and institutional responses. For this to happen effectively it will be necessary to clarify the interface between safeguarding vulnerable adults and MARAC as this is currently causing confusion in practice; protocols for cross-referrals would need to be clearly identified.</td>
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<th>Q8c. Is there a need to develop a more formal system, as in MAPPA and MARAC, with regular police-led safeguarding meetings for serious cases?</th>
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<td>There appears to be poor co-ordination, in some areas, between police and health and social care agencies. As well as affecting morale and increasing the risk of abuse not being identified and dealt with, there are particular risks in terms of access to the criminal justice system. These cases are inherently</td>
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<tr>
<td>Q8e. Police officers have considerable experience of risk assessment and risk management. Has that been sufficiently integrated into adult protection work and shared with the multi-agency partners, or should that be further developed? How should this be taken further?</td>
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<tr>
<td>Q8f. Should information about the safety of a person be passed between health and social care organisations, the ambulance service, GPs, the CSCI and the police? If so, can it happen now or does it need legislation? Should such information include incidents not amounting to abuse, but which may provide early indicators of the likelihood of abuse?</td>
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<tr>
<td>Q8g. Should we have guidance on if and when information should be shared, even when the victim expresses a wish that it is</td>
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not shared?  
should be respected unless there is an over-riding public interest in disclosure – see above.

Q8h. Should we look at ways of making it easier for people who may be vulnerable to report abuse?  
Yes, especially older people who may be very reticent and frightened. In care homes there are often very few links to the outside world, unless the residents have family and friends who visit, and it would be useful if there was an easily accessible way for them to report concerns. This could be through a closer involvement of a local police officer within the home, to raise the profile of the police within organisations.

There is a particular need to support older people after they have reported abuse. For instance older people who report domestic abuse are not traditionally well served by available emergency accommodation.

Evidence gathered from Seniorline at Help the Aged shows that people who work in care settings are often very concerned that if they report their suspicions of abuse they will themselves be victimised. Whistle-blowing policies need to be in place within all organisations, and staff should be encouraged to use them by managers at both a senior level and a local managerial level if they have suspicions. Care homes and care agencies should be encouraged to develop a working culture in which abuse is not tolerated, and where it is recognised what abuse is.

Q8i. Would the proposal to have an annual analysis/review of all information held on each care/nursing home by all relevant agencies be likely to gain support from agencies, the public and the independent sector providers?  
CQC are likely to support this, as it would support their general assessment of the care home or health care institution that they are visiting. However, it must be taken into account that the frequency of the CQC inspection visits to some institutions could be as far apart as three years, and so the record kept about the institutions may not be up to date.
Q8j. Financial abuse appears to have increased steadily and to have diversified. Is there a need to explore the most common types and most effective responses? Should this include preventive strategies in consultation with the Financial Services Authority and the British Bankers’ Association? Should banks, building societies and the Financial Services Authority be encouraged to share information that suggests financial abuse of vulnerable adults?

There is a clear need for a much greater focus not just on prevention but also on effective strategies to deal with abuse. Many people are reluctant to make formal complaints of abuse, and this reluctance will continue unless the authorities concerned are seen to take effective action. In some cases, it is clear that dealing with financial abuse is simply not given the level of priority it deserves.

In 2008 Help the Aged published a literature review on financial abuse (The Financial abuse of Older People) which addresses this issue in detail. In the UK between 0.5 per cent and 2.5 per cent of all older people living at home admit to experiencing some form of financial abuse or exploitation.

The NatCen/King’s College study published in June 2007 found that financial abuse was the second most common form of mistreatment for those living at home, nearly twice as common as psychological or physical abuse. The study estimated that 57,000 people aged 66 and over in the UK (0.7 per cent) had experienced financial abuse by a friend, relative or care worker, in the past year and 105,000 (1.2 per cent) had experienced financial abuse since reaching the age of 65.

In the UK, studies generally show that about 20 per cent of abuse is financial, but some studies have found financial abuse in over 80 per cent of cases. Indications are that 60-80 per cent of financial abuse takes place in the home and 15-20 per cent in residential care. Any prevalence estimates of financial abuse are likely to be underestimates as a result of under-reporting.

Much better multi-agency working at a national level is needed. Age Concern and Help the Aged believe there is a need for a financial abuse taskforce, which would pull together the key organisations, including the Financial Services Authority, the Office of Fair Trading, the police, the legal professions,
the British Banking Association, the Equality and Human Rights Commission, the Criminal Records Bureau, Trading Standards, the Commission for Social Care Inspection, the Office of the Public Guardian, the Department for Work and Pensions, the Department of Health and key voluntary sector organisations. The Taskforce would set out and monitor a framework for tackling abuse.

There are also practical daily issues with money management which can be resolved by better management of Lasting Powers of Attorney which can protect people from financial abuse. The Office of the Public Guardian has admitted that it has not been as effective in its first year of operation as it would have liked to have been. Delays to authorising LPAs and problems with the checks carried out on Attorneys can contribute to the possibility that abuse might occur. Age Concern and Help the Aged support increased supervision for deputies and would like to see more supervision and support for Attorneys.

There should also be better monitoring of appointeeship by the DWP.

Other effective action is likely to include:

- Specific training on the identification and investigation into financial abuse should be mandatory for all those who would bear the responsibility for following up allegations of abuse. Evidence of financial abuse is clearly specific and different to any other type of abuse. This training should also be extended to staff in care homes and domiciliary care agencies.

- Advice, information and education are central to developing preventative strategies for financial abuse. Education is required to improve the financial capability of older people and people of all ages who may be managing the assets of older people. The FSA, the
government and the banks must ensure there is adequate education and advice to reduce the risk of abuse.

- The FSA already has a statutory objective to reduce the extent to which it is possible for a financial business to be used for a purpose connected with financial crime (which includes any offence involving fraud or dishonesty). The FSA should actively engage in issues relating to financial abuse and publish its own plans for prevention.
- Action by the Post Office, internet providers and other distribution channels used by fraudsters. For example, the Post Office should be doing more to stop known victims of abuse from being deluged with fraudulent offers. The redirection service could also be used to allow people acting for victims (with proper authorisation) to ‘sift out’ fraudulent mail.
- Allowing individuals to set themselves ‘cooling-off’ periods before the bank or other financial institution releases funds above a certain amount. We understand that in the US it is possible for individuals who have been victims of ID theft to set up a delay before lenders will agree to a loan, to deter fraudsters who want to use their identity to apply for a loan.

The recent IBSEN and PSSRU evaluation of Individual Budgets expressed concern about the possibly of abuse of the money. This policy direction is something which needs to be considered in more detail by Local Authorities and explicit guidance given by the Department of Health, or the lead body with responsibility for elder abuse. This is something that banks, the government and the FSA should develop a position on.

It should also be part of the role of the Office of Public Guardian to ensure that, where direct payments made to people without mental capacity to direct their own care are made to an Attorney or Deputy acting on behalf of the person,
they are used appropriately. The OPG therefore needs to be made aware that this is happening. We therefore recommend that the Local Authority should therefore be required to notify the OPG where an Attorney or Deputy is carrying out this role.

We would like to see greater use made of section 4 of the 2006 Fraud Act – which deals with ‘fraud by abuse of position’ - to respond to cases of financial abuse. This would entail professionals who are likely to encounter financial abuse being aware of the provisions of this section, which are that;

(1) A person is in breach of this section if he—
(a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
(b) dishonestly abuses that position, and
(c) intends, by means of the abuse of that position—
(i) to make a gain for himself or another, or
(ii) to cause loss to another or to expose another to a risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act

The consultation paper raises the issue of data-sharing. However, this discussion takes place after some major breaches of data protection, and it is essential to balance public trust with the potential benefits. Age Concern has recently undertaken deliberative research on older people’s attitudes to data sharing which we would be happy to send DH when published.
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<tr>
<th>Q8k. What strategic links should there be between homicide reduction strategies, crime reduction partnerships, children’s safeguarding boards, adult safeguarding boards, domestic violence forums and disability hate crime?</th>
<th>Measures to combat hate crime against disabled people should be inclusive of older disabled people. There is not always a clear boundary between hate crime and opportunistic crime which exploits a person’s perceived vulnerability. So older people may be victimised simply because they are seen as unable to fight back due to physical or mental disability. We believe that such crimes should be regarded as hate crimes. However it is likely to be a fruitless and unnecessary exercise to try and establish whether the motivation should be classified as disability related or age related. As part of a crime reduction strategy it is important that evidence of crimes where older people have been targeted is collected. The threshold for recording such a crime should be the possibility (and not necessarily the likelihood) that age was a factor in the victim being singled out.</th>
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<tr>
<td>Q8l. What else is needed to increase the ability of the police to participate fully in adult protection/safeguarding?</td>
<td>Please see our response above in relation both to multi-disciplinary work and the wider use of MARAC</td>
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<td>Q8m. What can be done to improve identification of vulnerable adults by criminal justice practitioners? For example, could local arrangements be made to provide the police with local groups who might be able to offer advice?</td>
<td>Please see our response above in relation both to multi-disciplinary work and the wider use of MARAC</td>
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<td>Q8n. What more can be done to raise awareness in local areas of the availability of intermediaries to assist vulnerable adults with communication difficulties in criminal investigations and trials?</td>
<td>Please see our response above in relation both to multi-disciplinary work and the wider use of MARAC</td>
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<td>Q8o. What else do you think would make a difference?</td>
<td>Relevant agencies should be encouraged to follow the lead of the CPS in developing equality schemes that include all of the discrimination strands. That will go some way to ensuring better consideration of the needs of older vulnerable people.</td>
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**Guidance and legislation**

| Q9a. Do we need an updated and refreshed No secrets guidance? If so, should it be one document for all multi-agency partners, or should there be separate documents for: the criminal justice system; the health sector; and local authorities, to include social care, housing and community safety? | Yes – there needs to be a single source to promote and support inter-agency working. The infrastructures of health and social care; police and criminal justice; fire and rescue; and financial regulation all bear on the protection of individual older people at risk of or suffering from abuse. They must share (and own) a common base.

The main problems with the current guidance that we have identified are that:

- The definition of a ‘vulnerable adult’ is sometimes interpreted by local authorities as being restricted to people who receive social care services;
- There is no requirement for agencies other than local authorities to comply with it or to co-operate with local authorities;

Guidance should be published and not just available as an e-document in order to ensure that it is accessible to victims of abuse and their relatives. It is important that people are able to find out what actions statutory agencies are supposed to take to prevent and respond to abuse, and that they are able to hold statutory agencies to account.

However our view is that although revised guidance to replace No Secrets is urgently needed this should only be seen as an interim measure pending legislation – though more detailed underpinning guidance would also be needed. |
| Q9b. Is new legislation necessary and how would it help? | The main problem with the status of No Secrets as ‘section 7’ guidance is that it has no mandatory force except in relation to local authorities. Legislation would mandate all relevant agencies.

We do not believe that this problem could be effectively solved by different guidance for different sectors. Indeed in our view one of the problems with existing framework of legislation and guidance is that it is very diverse and very |
few people are likely to have a grasp of all relevant areas of law, which could include a wide range of criminal offences, law relating to domestic violence, mental capacity, human rights, common law duty of care and social care legislation. So on the contrary we believe that a consolidating statute is needed to bring all relevant legislation together in one place. This would be a long term goal, but we recommend that as a matter of urgency the possibility of such legislation should be considered as a subject for a review by the Law Commission.

Another difficulty with trying to provide different guidance to different sectors would be covering everyone who might be involved in responding to allegations of abuse. This could include virtually any public agency that is in contact with adults who are at risk of abuse in the course of its work and which might therefore encounter suspected abuse.

Legislation could also be used to clarify the extent to which a public authority has duties to take action where it is believed that a vulnerable person is at risk or needs to be protected from harm. Such obligations might exist either as part of a duty of care or under the Human Rights Act. This was to an extent recognised in the ADASS ‘Safeguarding Adults’ guidelines, which fully accept that local authorities have responsibilities to take action if they suspect a vulnerable adult is being abused. However it says nothing about what those responsibilities entail in practice, so the extent of these responsibilities is not currently clear. The X & Y v Hounslow LBC judgment might be helpful in this respect.

Where there is a strong case for legislation is to place a duty on local authorities, health, police, fire and rescue and other key statutory services to investigate instances of reported abuse, to examine and report on preventative measures that might be put in place. Scottish legislation – the Adult Support and Protection (Scotland) Act - does include duties on public authorities to take
action under these circumstances, including a duty on all public authorities to make referrals to the local authority and to co-operate with local authority investigations, a duty on the council to make enquiries if it is aware of circumstances that might result in risk to a vulnerable adult. We recommend that legislation there should be a similar requirement in England. This could be included in legislation to replace No Secrets guidance.

Older people, who are the subject of abuse should be given a right to access appropriate advocacy services, funded by but not delivered by SSD. In the case of serious abuse threatening the physical or mental safety of an older person then give consideration to empowering local Safeguarding Committees to apply for a court order to protect that person from further harm by excluding the abuser by an enforceable order, change door locks and to put in place emergency care support if necessary. In the last resort then removal to a safe place – not a care home – should be considered.

A problem with the current legislative measures that are available to combat abuse is that they are contained in diverse statutes so social care staff and others cannot be expected to be aware of them all. We attach a review by Help the Aged of the current criminal provisions that may arise in the context of elder abuse. The difficulty seems to be not that there is no legislation but that it is either not widely known or that there is a lack of willingness to use what there is. The current prosecution rate for cases of offences relating to abuse against older people is very low but making it a crime to abuse an older person is of questionable added value. Adding another piece of primary legislation to the statute has mixed benefits, particularly when there is already a battery of criminal legislation that the police can use. It could have the benefit of enshrining definitions and compelling unwilling statutory authorities to cooperate in a ‘joined up’ safeguarding adults framework. Such a Bill would have the effect of identifying vulnerable older people and give rights of...
appropriate authorities the ability to take action to prevent further abuse or safeguard the older person in conjunction with their own wishes insofar as they are able to make decisions. Features of adult legislation could include: principles, definitions, duty to investigate, power of entry, short term powers (assess, remove, exclude the perpetrator), representation / advocacy, adult safeguarding boards and the vital duty of co-operation.

Legislation also has an important role to play in promoting change in organisational culture. In the past some legislation, notably the Human Rights Act, has been introduced with just this aim in mind. Legislation designed to promote a change in attitudes could be introduced much more quickly and might be an appropriate subject for a Private Members Bill. We therefore recommend that the Government should consider initiating or supporting legislation with this aim in mind. Such an Act might include:

- Publicity in order to raise the profile of abuse as an issue;
- Requirements for staff training, particularly in order to promote an increased focus on how to respond to abuse and on abuse as a human rights issue;

Our recommendations in respect of legislation are therefore not for a single act following the Scottish model but three separate approaches;

- Legislation to replace No Secrets, to provide a framework for multi agency work to prevent and respond to abuse;
- A review of relevant legislation by the Law Society, with a view to consolidating legislation to bring together existing duties and powers;
- Legislation aimed at raising the profile of abuse as an issue and at promoting a change in attitudes and organisational cultures.

Q9c. Should legislation placing safeguarding adults boards on a statutory footing be introduced? Should it include a duty to

Yes, as part of an overarching Bill. Serious case reviews only appear to come about after catastrophic events – and all too often find that “the system broke down”. If the systems (and they are different in every case) keep breaking...
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<th>Question</th>
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<td>Q9d. Should we introduce a wider duty to cooperate in relation to safeguarding? Who would this apply to, how would it improve outcomes and how would it be enforced?</td>
<td>The duty should apply to any statutory or voluntary sector organisation which has contact with (older) people who have been subjected to abuse or who are at significant risk of being subject to abuse. Providers should also be expected to co-operate with investigations following allegations of abuse. This expectation should be referred to in local authority contracts and in regulations for registered services.</td>
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<td>Q9e. Should there be a power to enter premises where it is suspected that a vulnerable adult is being abused? Should this power apply to: the police only; or social workers and other professionals as well?</td>
<td>A general principle which underpins our response to these questions and others, is that people do not have the right to consent to criminal acts against themselves. Unless criminal acts are treated as an offence against the state rather than as a private matter between individuals it is difficult to see how there can be a satisfactory response to situations where an individual is pressurised into giving consent to an act. Such situations do not just arise in relation to ‘vulnerable adults’ – however defined – but may arise in respect of issues such as domestic violence or commercial exploitation of individuals. At the level of broad principle it is therefore easier to take up a clear policy position with regard to abuse that involves a criminal act. Our view is that the consent of the victim is not needed in order to take action to prevent criminal acts. We recognise that subsequent prosecution is likely to be difficult if the victim refuses to testify. There are three main circumstances where entry might be refused;</td>
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<td></td>
<td>• Where a person without capacity refuses entry. In this case Mental Capacity Act principles should be observed. In establishing whether</td>
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someone has capacity to decide whether or not to refuse entry there should be a presumption of capacity. The person must be given all practicable help. An act done or decision made under the Act for or on behalf of a person who lacks capacity must be done in their best interests, and any action done for or on behalf of a person without capacity should be the least restrictive of their basic rights and freedoms. We would support similar powers of entry where someone falls within the definition used in the Sexual Offences Act. 2003 s. 74 which refers to a person who is unable to refuse consent rather than someone who lacks mental capacity to consent. This would give some scope to consider circumstances where a person is subject to coercion or undue influence.

- A person with mental capacity to do so refuses entry. There are already powers of entry under s.47 of the 1948 National Assistance Act and section 135 of the 2007 Mental Health Act which we discuss further below. Greater clarity about existing powers of entry is needed. Police, for example may have powers of entry without consent under the Police and Criminal Evidence Act if they suspect that a serious crime is being committed; wider powers of entry would be available subject to a warrant. We would be very cautious about adding further powers to over rule the wishes of people with capacity, but we do recommend that there should be a review of whether existing powers are being properly and effectively used.

- A third party refuses entry or access to the person, whether they have capacity or not; it should be assumed that a third party would not normally have a right to deny access to a person. Infringements of other rights of the third party might be involved – for example entry to private property owned by the third party. In this case a human rights framework is useful as it would require that the rights of the person who is a suspected victim of abuse would have to be balance against the
third person’s right to respect for private and family life. We believe that, drawing on a human rights framework, it should be relatively straightforward to legislate to ensure that third parties are not able to deny access to suspected victims of abuse, and we recommend that such legislation should be introduced.

The work of the Crown Prosecution Service in developing guidance on prosecuting crimes that are regarded as enhanced because they involve targeting vulnerable older people. This work has been underpinned by an understanding that the consent of the victim is not needed to prosecute a criminal offence – though this might pose practical problems – and that at the same time interventions must take account of the outcomes that the victim wishes to achieve. These principles should be applied more widely to interventions that are aimed at preventing criminal abuse, whether the victim is a so called ‘vulnerable adult’ or not.

Were such a power to be granted then it must be tightly and sensitively controlled, at least by a magistrate with suitable training and experience.

| Q9f. Should such a power apply when an adult has mental capacity and may be self-neglecting or self-harming? | There is a conflict with the personalisation agenda – if self neglect is the positive choice of an individual at what point does it turn into an issue for intervention. See comments on the current use of section 47 of the 1948 National Assistance Act in response to section 9i below. |
| Q9g. If a power of entry is supported, which means to obtain entry should be introduced (e.g. authorisation by a senior police officer or magistrate or other means)? | See Q9e. |
| Q9h. Should an offence of ill-treating or neglecting a vulnerable adult with capacity be introduced? | In principle yes, but the issue arises of when an adult should be considered vulnerable. We have discussed this issue in more detail in response to question 10 below. |
Q9i. Should there be a power to remove an adult who does have capacity and who does not consent, but who is thought to be being subjected to harm?

In cases where the person is being abused by someone living in the same household the presumption should be that abuser should be removed rather than the victim.

The European Convention on Human Rights would seem to place a number of parameters within which a decision to remove someone would have to take place;

- It should not infringe absolute rights, such as the right not to be subjected to inhuman or degrading treatment;
- It should only infringe qualified rights such as the right to respect for private and family life, home and confidentiality if it can be demonstrated that the impact on these rights has been fully considered, that the infringement is proportionate under the circumstances, and that the person has been given the opportunity to make representations which have been properly considered.
- People should not be unlawfully detained, so there would have to be a clear legislative basis to remove them.

These considerations should apply to any circumstances where someone is removed from their home without their informed consent, including if they are unable to give consent. It is therefore essential that no one should be removed by force unless the whole process of decision making and taking action takes place within a strong legal framework.

There are already powers under s.47 of the 1948 National Assistance Act to remove someone who is ‘living in unsanitary conditions’ or who is ‘unable to devote to himself and is not receiving from other persons proper care and attention’. There are several problems with this section;

- It is doubtful whether it complies with the right to a fair hearing in the determination of a civil right under article 6(i) of the European
Convention on Human Rights;
- It is little used, and there are wide variations between local authorities in how much use of this power is made. There seems to have been no research into the reasons for these variations. Local Authorities who make greater use of s.47 may be failing to provide support that would make use of the section unnecessary, or they might actually be models of good practice in that they are going through correct procedures whereas others are simply removing people without using any formal powers. It is likely that the same issues would arise if further powers of intervention were introduced.

There are also powers under section 135 of the 2007 Mental Health Act to search for and remove patients. Powers under section 135(1) can be used by the Police, after obtaining a warrant, to enter premises by force and to remove a person to a place of safety if it is thought that a person ‘suffering from a mental disorder…has been, or is being, ill treated, neglected or kept otherwise than under proper control’. Again, there has not yet been any evaluation of how these powers are working in practice.

We therefore recommend that further investigation of how powers under s.47 of the 1948 National Assistance Act, and under s. 135 of the 2007 Mental Health Act are being used in practice should precede any decision about introducing new powers.

| Q9j. Should force be used to remove a person who is self-neglecting or self-harming? | Removing someone by force should be seen as an extreme measure. In many cases it would be a substantial breach of the person’s human rights. In our view this should not be done if the person has the relevant capacity unless grounds for Mental Health Act compulsory powers exist. Where a person lacks the relevant capacity, this is likely to constitute a deprivation of liberty and the relevant law under the Mental Capacity Act (as amended) would apply. |
| Q9k. If a person is removed, where should they be taken, for what purpose and for how long? | Removing a frail older person from their home should be a last resort. To comply with human rights considerations, the purpose and length of time of the placement should be carefully considered. |
removal would need to be explicit. Consideration should be given to making provision for an emergency care support package to be put in place for a limited period to enable a proper needs assessment.

Any process of removal should be accompanied by an urgent and immediate assessment. This should be used to establish what the goals and outcomes of the intervention are, and to ensure that the person’s needs are met, including in the interim period whilst a longer term solution is being sought.

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<th>Q9l. Is current care standards legislation sufficient for closing down poorly performing care homes in a timely and effective manner?</th>
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<td>Closing a home might not always be the most appropriate response to abuse or neglect. In some cases the home might be as concerned to prevent poor practice by staff as other agencies are in which case co-operation, rather than the assumption of an adversarial relationship, is important.</td>
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**Definitions**

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<th>Q10a. Should the No secrets definition of vulnerable adult be revised? If so, should the revised definition do the following, and if so, how? Should it:</th>
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<td>Yes, the definition of vulnerable adult should be removed.</td>
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| **•** enable practitioners to decide which groups of people they believe require special support?  
**•** provide clarity on what ‘wrongs’ we want the new No secrets guidance to put right?  
**•** clarify how bad the ‘wrong’ has to be to warrant a response, i.e. define the threshold needed to justify a response?  
**•** take into account those vulnerable by reason of a temporary physical or mental condition?  
**•** distinguish between abuses carried out by |
| There are several problems with the current definition:  
- Any assumption that age or disability automatically renders someone vulnerable distracts attention from the need to address and minimise other risk factors. It is also resented by many disabled people and older people as undermining independence and freedom to make decisions. It is now commonly accepted that age and infirmity alone do not make someone vulnerable – their environment does.  
- Some local authorities have interpreted it as enabling them to restrict ‘No Secrets’ interventions to adults who are actually in receipt of social services. The current definition, which refers to people who ‘may be in need of community care services’ reflects the definition of statutory entitlement to assessment, which case law (R. V. Bristol CC Ex P. Penfold) has established should be interpreted very broadly. However tightening eligibility criteria has meant that many people who are entitled |
a person in a position of trust or power in relation to the victim and those committed by a stranger?
• make reference to an adult being unlikely to be able to protect himself or herself from harm or exploitation?

to assessment do not receive services. This means there is a considerable gap between the intentions of the ‘No Secrets’ definition and an approach that restricts its scope to people who use services. It also introduces unacceptable local variation into who is considered ‘vulnerable’. In at least one case a local authority which proposed limiting service provision to people with ‘critical’ needs accepted that people who did not meet this high threshold should still come within the scope of No Secrets guidance. However this is still more restricted than a definition based on entitlement to assessment.

We recommend that a definition should recognise that risk of abuse arises from a number of factors, such as isolation or being in a care home, and not simply from the individual’s own characteristics. We therefore favour the definition used in the Scottish Adult Support and Protection Act which refers to ‘adults at risk of abuse’.

One approach might be that adopted in the DDA where the person does not have to show they are disabled in order to claim they have been discriminated against, they just have to show that the discriminator believed they had a disability and discriminated against them on this basis. There could, similarly, be an offence of targeting a person whom the perpetrator believed to be vulnerable – this would not require a definition of vulnerability.

The definition of adults at risk of abuse might have to be wider for the purposes of risk prevention strategies, such as a crime reduction programme, than it is for the purposes of individual interventions.

There is also a need to define abuse – Action on Elder Abuse have defined abuse 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” The problem with this definition is the definition of a ‘relationship of trust’. AEA interpret it fairly narrowly so would not, for example, include distraction burglary. Age Concern and Help the Aged, by contrast, have taken the view that people who seek to target older people, particularly for financial gain, may seek to befriend potential victims and thereby seek to create a ‘relationship of trust’.

The Crown Prosecution Service Policy Statement on ‘Crimes against the Older Person’ includes a definition of crimes where targeting of an older person could be treated as an aggravating factor. These are;

- Abuse or neglect where there is a relationship or expectation of trust;
- Abuse or neglect in an institution;
- Crimes which target older people because they are perceived as vulnerable or easy to steal from;
- Crimes which are not initially related to older age but may later become so (for example where a burglar exploits the situation on discovering that he householder is an older person);
- Crimes which are in part or wholly motivated by hostility based on age, or perceived age (for example harassment, assault or threats by neighbours).

An important point to note about this definition is that it nowhere refers to the victim being ‘a vulnerable person’. It instead refers to the perceptions of the perpetrator and to circumstances which render the individual vulnerable. This definition could be adapted for guidance or legislation on safeguarding adults, with references to ‘crimes’ being replaced by references to ‘abuse’.

Q10b. What language should we use? Is ‘abuse’ always useful or should we change to ‘harm’ and ‘crime’? Is ‘perpetrator’ always

The concept of harm is unhelpful unless defined. Age Concern has encountered examples of local authorities refusing to respond to financial abuse of a person with dementia as the person is unaware of the abuse, so it
| **useful (i.e. for neglect within families)?** | is assumed not to have resulted in harm. Harm might also, if not defined, be interpreted using a medical model, with the emphasis being on physical harm. This approach would fail to take account of, for example, harm to a person’s social networks or relationships. This is an important issue as in our view it is essential that people receive post abuse support to recover from such harm and to remake their lives.

Crime should be treated as such and not regarded as being merely poor professional practice or excused as the result of a stressed caring situation. However not all abuse involves a criminal offence.

The word ‘perpetrator’ implies a deliberate act, but it is not necessarily the case that neglect amounting to abuse is deliberate. Greater clarity about where it should be a necessary to prove intention to cause harm is needed.

We also have concerns about the concept of ‘harm’ in the context of decisions about whether someone is unsuitable to work with adult who are at risk of abuse. Actions – or lack of action – that has resulted in harm or risk of harm but which is not intentional has resulted in a string of court cases, most recently the RCN-backed Judicial Review of a case where carers were given a provisional POVA listing as a result of poor practice in administering medication. It was argued that this was due to poor training. This case has resulted in provisional listing on the POVA list prior to a having been seen as a breach of human rights and in current legislation being declared incompatible with the European Convention on Human Rights. In our view it is unsurprising that the Law Lords see delays of almost a year in confirming or removing a person’s provisional listing as a breach of human rights. |
We recommend that much greater clarity is needed on how dangerous poor practice should be categorised. In responding to the Law Lords decision it is important that revised procedures or legislation take account of the Article 8 and Article 6 rights of workers, but that they do not go to the other extreme and ignore the rights of victims of neglect or abuse. These are in some cases, where Articles 2 or 3 ECHR are engaged, absolute, unlike Article 8 rights. It is therefore not a case of balancing conflicting rights, but one of ensuring a more satisfactory decision making process that secures the absolute rights of people who use services to be protected, whilst making every effort to minimise infringements of workers’ Article 8 and Article 6 rights.

| Q10c. How do we enshrine within safeguarding the principles contained within the Mental Capacity Act 2005 and the Human Rights Act 1998? | This question has been answered in the context of other responses above. In essence, the principles of both Acts must be built into the core of any new legislation on elder abuse, and indeed into any subsequent or reissued guidance. These Acts are designed to set down principles which lay out fundamentals about the treatment of people and what their rights are. In addition, the right not to be abused is built into the core of these Acts. |