

## Factsheet 78

# Safeguarding older people from abuse and neglect

January 2019

### About this factsheet

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

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

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

Any form of abuse or neglect is unacceptable, no matter what justification or reason may be given for it. It is very important that older people are aware of this and they know support is available.

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

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

# Contents

|          |  |           |
|----------|--|-----------|
| <b>1</b> | <b>Background and legal framework</b>                            | <b>4</b>  |
| 1.1      | The aims of adult safeguarding                                   | 4         |
| 1.2      | 'Safeguarding is everybody's business'                           | 5         |
| 1.3      | 'Safeguarding is personal'                                       | 5         |
| <b>2</b> | <b>Types of abuse or neglect</b>                                 | <b>6</b>  |
| 2.1      | Particular issues for older people                               | 8         |
| 2.2      | Who does the safeguarding law seek to protect?                   | 8         |
| <b>3</b> | <b>What should I do if I suspect abuse or neglect?</b>           | <b>9</b>  |
| <b>4</b> | <b>How to raise concerns about abuse or neglect</b>              | <b>10</b> |
| 4.1      | The local authority duty to make enquiries                       | 11        |
| 4.2      | Who should carry out the enquiry?                                | 12        |
| 4.3      | The involvement of the person in an enquiry                      | 12        |
| 4.4      | If the person lacks mental capacity                              | 13        |
| 4.5      | What is the likely outcome of an enquiry?                        | 14        |
| <b>5</b> | <b>Local authority safeguarding duties</b>                       | <b>14</b> |
| 5.1      | Role and duties of Safeguarding Adults Board                     | 15        |
| 5.2      | Safeguarding Adults Reviews                                      | 15        |
| <b>6</b> | <b>What happens if a crime has been committed?</b>               | <b>16</b> |
| 6.1      | Issues affecting criminal investigations                         | 16        |
| <b>7</b> | <b>What other legal powers exist?</b>                            | <b>18</b> |
| 7.1      | Police powers – entry, arrest and custody                        | 18        |
| 7.2      | Domestic violence and controlling/coercive behaviour             | 18        |
| 7.3      | Can a person be removed from their own home?                     | 19        |
| 7.4      | <i>Mental Health Act 1983</i>                                    | 20        |
| 7.5      | <i>Mental Capacity Act 2005</i>                                  | 20        |
| 7.6      | Deprivation of Liberty Safeguards (DoLS)                         | 21        |
| 7.7      | The inherent jurisdiction of the High Court                      | 22        |
| <b>8</b> | <b>Court of Protection and the Office of the Public Guardian</b> | <b>22</b> |

|  |           |
|--|-----------|
| <b>9 The Care Quality Commission's standards</b> | <b>23</b> |
| 9.1 Notification duties                          | 24        |
| <b>10 The Disclosure and Barring Service</b>     | <b>24</b> |
| Useful organisations                             | 25        |
| Age UK   | 27        |
| Support our work                                 | 27        |

# 1 Background and legal framework

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

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

## The human rights basis of safeguarding

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

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

## 1.1 The aims of adult safeguarding

Statutory guidance establishes the aims of adult safeguarding are to:

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

## Who is adult safeguarding for?

Safeguarding duties seek to protect all adults who:

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

## 1.2 'Safeguarding is everybody's business'

This refers to the importance of everyone being alert to possible signs of abuse or neglect and acting on their concerns. It includes friends and family, health and social care professionals and other public sector staff, for example in the housing sector or social security. It also applies to the police, as abusive or neglectful behaviour can be a criminal offence (see section 6).

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

### Cooperation

Cooperation duties between relevant agencies and a multi-agency approach to safeguarding is emphasised in guidance. Every local authority must have a *Safeguarding Adults Board* that includes a range of local organisations.

Sometimes this approach is formalised in a '*multi-agency safeguarding hub*' or MASH. The early sharing of information can be the key to an effective safeguarding response. All concerned should be signed up to agreed procedures (see section 5).

## 1.3 'Safeguarding is personal'

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

The extent of an enquiry where suspicions of abuse or neglect arise depends on the circumstances of the individual case and the views of the person at the heart of it.

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

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

This can mean respecting an older person's choice even though this puts them at risk of harm. Social care professionals have to work within the legal and policy framework and powers to intervene may at times be limited.

## 2 Types of abuse or neglect

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

### Financial abuse

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

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

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

### Physical abuse

Includes assault, hitting, slapping, pushing, misuse of medication, restraint, or the use of physical sanctions.

### Psychological abuse

Includes emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, and harassment. Also includes verbal abuse, cyber bullying, isolation, unreasonable and unjustified withdrawal of services or support networks.

### Sexual abuse

Includes rape, inappropriate touching, indecent exposure and sexual acts to which the adult has not consented or was pressured into consenting to.

### Discriminatory abuse

Includes harassment, slurs or similar treatment because of: race, gender and gender identity, age, disability, sexual orientation, religion. These are 'protected characteristics' under the *Equality Act 2010*.

### Modern slavery

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

## **Organisational abuse**

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

## **Neglect and acts of omission**

Includes ignoring medical, emotional or physical care needs; failing to provide access to appropriate health or care and support; or withholding the necessities of life, such as medication, nutrition and heating.

Withholding access to assistive equipment like hearing aids, walking aids, or dentures may be neglect but can indicate coercive control.

## **Domestic abuse**

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

## **Self-neglect**

Most forms of neglect or abuse are perpetrated by another person and the law generally presumes there is a perpetrator as well as a victim. An exception is self-neglect, which is included as an example of abuse and neglect in statutory guidance.

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

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

The decision on whether a safeguarding response is required depends on the adult's ability to protect themselves by controlling their own behaviour. There may come a point when they can no longer do this without external support.

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

## 2.1 Particular issues for older people

Perpetrators of abuse or neglect are often people who are trusted and relied on by an older person, such as family members or care staff. Safeguarding is not limited to situations where there is a breach of trust as it includes situations such as risk of exposure to scams. It is important to be aware that anyone can commit abuse or neglect.

Official reports show that, compared to other age groups, people aged 85 and above are much more likely to be the subject of a safeguarding enquiry. Action on Elder Abuse has found a prevalence of psychological abuse, usually through intimidation or coercion linked to financial abuse.

Home care agencies providing personal care must be registered with the Care Quality Commission but directly employed personal assistants do not have to register. A local authority funding such services through direct payments should not neglect its safeguarding duties and provision of information on how to seek support and assistance if abuse occurs.

## 2.2 Who does the safeguarding law seek to protect?

Those who may need safeguarding are defined as adults who:

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

### The requirement to have care and support needs

It does not matter whether the local authority actually provides services or support to the person concerned or whether the person's needs meet the eligibility criteria for social care services. The point is they are experiencing, or at risk of, abuse or neglect and cannot protect themselves because they have health or social care needs.

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

Anyone meeting this definition, for whatever reason and for however long they have lived in the area, is entitled to safeguarding protection from the local authority. However, if the response includes directly providing care services, the local authority may carry out a needs assessment to find out whether the person meets the social care eligibility criteria.

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



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

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

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

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

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

#### **Where someone lacks mental capacity**

If the person does not have the mental capacity to give consent to a concern being raised, you can discuss this with the local authority or possibly the police.

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

#### **Where there is a risk to the person or others**

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

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

#### **Has a crime been committed?**

If you think a crime may have been committed the police need to be involved immediately. Contact them to report a crime. If you report concerns to the local authority and they agree it may be a criminal matter, they can report it to the police. In an emergency, dial 999.

Fraud and scams can be reported to Action Fraud, who also offer information and advice if you have a concern.

## Abuse in a professional care context

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

If you are a professional in this situation, it is advisable to discuss the situation with your manager before deciding what to do, so the issue can be addressed as soon as possible. The statutory guidance states:

*No professional should assume that someone else will pass on information which they think may be critical to the safety and wellbeing of the adult. If a professional has concerns about the adult's welfare and believes they are suffering or likely to suffer abuse or neglect, then they should share the information with the local authority and, or, the police if they believe or suspect that a crime has been committed.*

You should receive appropriate training based on agreed safeguarding procedures so you know how to act in these types of situations. This is a requirement of service provider registration with the Care Quality Commission.

## NHS Safeguarding

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

## 4 How to raise concerns about abuse or neglect

You can raise concerns by contacting the local authority. Their website should have a section telling you who to contact to report possible abuse and neglect. Alternatively, call the general local authority number in the phone book and explain that you want to raise concerns.

If you have problems getting through to speak to someone, ask your local Age UK if they can help you.

Once you notify the local authority of your concerns, it has a duty to respond appropriately. It might initiate a safeguarding enquiry, provide social care services, or just provide information and advice to help resolve the issue.

They can require partner organisations to take action or provide further information. They may have to respond urgently, notify the police who could then become the lead agency for the case or liaise with another responsible body such as the Care Quality Commission.

## 4.1 The local authority duty to make enquiries

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

A range of possibilities for pursuing an enquiry are given in the statutory guidance. Enquiries can be a conversation with the adult or, if they lack capacity or have substantial difficulty understanding the enquiry, their representative or advocate prior to initiating a formal section 42 enquiry. It can involve a formal multi-agency plan or course of action.

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

### Enquiry objectives

The objectives of a safeguarding enquiry are to:

- establish facts
- ascertain the adult's views and wishes
- assess the needs of the adult for protection, support and redress and how they might be met
- protect from abuse and neglect, in accordance with the adult's wishes
- make decisions as to what follow-up action should be taken with regard to the person or organisation responsible for the abuse or neglect
- enable the adult to achieve resolution and recovery.

### Factors that must be considered

The following factors also need to be considered:

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

## 4.2 Who should carry out the enquiry?

The local authority is responsible for making enquiries, but it may involve other agencies, depending on the facts of the case and the seriousness of the allegations. It has the power to require cooperation. Usually a social worker is the most appropriate person to lead an enquiry, although it could involve someone else.

For instance, another professional such as a healthcare worker who already knows the adult might be best placed. They should try to ensure distress to the adult at risk is minimised.

If the local authority decides an employer such as a home care agency is capable of carrying out its own enquiry, they must be certain it will act appropriately and there are no conflicts of interest. The local authority should be clear about timescales, the need to know the outcomes of the enquiry and what action will follow if this is not done. They may need to appoint someone external to conduct a fair enquiry in this context.

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

Relevant partners can include NHS England, clinical commissioning groups, NHS Trusts and Foundation Trusts, Department for Work and Pensions, the police, prisons and probation services. GPs, housing services, and health and care providers can also be important partners in safeguarding adults.

## 4.3 The involvement of the person in an enquiry

There are six key safeguarding principles in the statutory guidance:

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

## Empowering and supportive

The first priority of an enquiry should be to ensure the safety and wellbeing of the adult at risk. Their wishes are very important. The local authority has a duty to provide an independent advocate to support and represent the adult if they have difficulty being involved with the enquiry and have no one to assist them. They should experience the safeguarding process as empowering and supportive.

In practice, these two elements may be difficult to balance. For example, if an older person has mental capacity to make their own decisions about relationships with other people and does not consent to a proposed action, it may not be possible to take a safeguarding enquiry any further. Consent is needed for data protection issues in investigations.

## Wider public interest exception

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

## Rights to protection and to autonomy

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

### 4.4 If the person lacks mental capacity

The person you are concerned about may lack mental capacity to consent to a safeguarding enquiry or proposed arrangements made as a result.

If so, their views are still important and must be taken into account but the decision about whether and how to proceed must be made by the local authority on the basis of what is in their '*best interests*' as defined by the *Mental Capacity Act 2005*.

The views of an Independent Mental Capacity Advocate must also be taken into account if the person is entitled to have one because they have no one else to support them.

For more information, see factsheet 22, *Arranging for someone to make decisions on your behalf*.

## 4.5 What is the likely outcome of an enquiry?

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

It should set out:

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

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

## 5 Local authority safeguarding duties

There are three specific legal duties in the Act:

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

### Note

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

## Wellbeing and prevention

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

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

### 5.1 Role and duties of Safeguarding Adults Board

Local authorities must establish a Safeguarding Adult Board (SAB) to co-ordinate and ensure effectiveness in helping and protecting adults at risk. SABs have wide powers to do anything that appears necessary or desirable for the purpose of achieving its objectives. A range of organisations, including voluntary sector organisations and user groups, may be invited to join, but core statutory members are:

- local authority
- local clinical commissioning group
- chief officer of police.

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

### 5.2 Safeguarding Adults Reviews

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

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

## 6 What happens if a crime has been committed?

### The role of the police

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

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

### Has a criminal offence been committed?

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

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

### 6.1 Issues affecting criminal investigations

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

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

The CPS makes the final decision. There is a two-stage test to decide whether or not to bring a criminal charge against someone. The first stage is the '*evidential test*' and the second the '*public interest test*'.



## The evidential test

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

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

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

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

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

## The public interest test

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

Sometimes older people do not want to see the perpetrator of a crime prosecuted. For example, the abuser may be a close family member who they love or a trusted neighbour who they rely on. In that case, the CPS balance the person's views against wider public interest principles, such as the seriousness of the crime and the likelihood of the perpetrator reoffending, and whether other members of the public are at risk.

For a vulnerable older person, even if they agree to a prosecution, the impact on them of going through a criminal court case may be more detrimental than taking steps to ensure they are safe in future, for example by changing care arrangements or appointing a court deputy to look after their finances. In this type of situation all necessary support and assistance must be offered to ensure the person can pursue the criminal route if they wish.

## 7 What other legal powers exist?

### 7.1 Police powers – entry, arrest and custody

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

If the perpetrator of abuse is charged with a criminal offence, a Magistrates Court decides whether the person should be remanded in custody or granted bail. This is to deal with any continuing risk they might pose between arrest/charge and the final court hearing/trial.

The Court can impose conditions on bail, such as forbidding a perpetrator from contacting the victim, living in the victim's house, or from going within a certain distance of it.

### 7.2 Domestic violence and controlling/coercive behaviour

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

The order a court makes depends on the circumstances of the case. It may issue a '*non-molestation order*' preventing a perpetrator from:

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

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

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

#### **Controlling or coercive behaviour in an intimate or familial situation**

An offence of controlling or coercive behaviour in an intimate or family relationship was created under section 76 of the *Serious Crime Act 2015*. The offence is established by behaviour on the part of the perpetrator which takes place repeatedly or continuously.

The victim and alleged perpetrator must be personally connected at the time the behaviour takes place.

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

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

### 7.3 Can a person be removed from their own home?

If a local authority thinks someone living in a family home is being subjected to abuse, they do not have any powers to come and remove the person.

If the person is able to agree to leave and does, they can be taken to a safe place, such as respite care, while a safeguarding enquiry takes place.

If they lack mental capacity to agree to leave, a local authority has limited powers. In this situation, a local authority can and should do three things:

- carry out an enquiry under safeguarding procedures
- put a care plan in place to manage the risk if that seems a viable and appropriate response to the situation
- apply to the Court of Protection if the person needs to be removed from the home for their own safety.

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

In some cases, there has been no substance to an allegation of abuse or neglect, but family members have been forcibly kept apart for long periods of time. Court of Protection judges have been critical of this behaviour and have reminded authorities that the deprivation of liberty procedure is intended to protect vulnerable people.

It is not to be used as a means of a local authority '*getting its own way*' against the wishes of a family. This comment was made by the judge in *LB Hillingdon v Steven Neary ((2011) EWHC 1377 (COP))*, in which a man was removed from the care of his father for a respite break and detained for almost a year.

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

## 7.4 **Mental Health Act 1983**

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

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

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

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

The section 115 power does not allow for forced entry, though refusal of entry can constitute an offence under section 129 of the MHA. Neither power applies to people who do not have a mental disorder, as defined by section 1 of the MHA.

## 7.5 **Mental Capacity Act 2005**

A local authority generally has no legal powers to protect someone or provide them with services against their will, even if that person chooses to stay in an abusive relationship.

An exception is if the person lacks mental capacity to make a decision to stay in their situation or where the person is subject to such a high level of coercion, undue influence or duress they cannot make a decision.

### **Where someone lacks mental capacity to consent**

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

There is a legal presumption in favour of mental capacity. This means people are presumed to have the capacity to make their own decisions and be helped to do so by all reasonable means.

If they appear unable to make a particular decision, for instance about care arrangements, the local authority should assess their mental capacity.

After an assessment, if the local authority finds a person does not have sufficient mental capacity to decide on an issue, the decision must be made for them in their '*best interests*'.

Factors to take account of with a best interests decision include:

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

See section 8 for more information on the Court of Protection.

For more information, see factsheet 22, *Arranging for someone to make decisions on your behalf*.

## 7.6 Deprivation of Liberty Safeguards (DoLS)

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

A typical example is where someone with dementia in a care home is prevented from wandering off by the use of a key pad on the door which they are unable to operate. In these situations, a local authority must carry out an assessment, called a '*deprivation of liberty safeguards*' assessment to decide if it is right to authorise the deprivation of liberty.

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

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

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

See factsheet 62, *Deprivation of liberty safeguards*, for more information.

## 7.7 The inherent jurisdiction of the High Court

Under inherent jurisdiction, the High Court has powers to hear any case which comes before it unless a statute or rule limits this power or grants jurisdiction to another court, as is the case with the *Mental Capacity Act 2005* and the Court of Protection. As the Court of Protection can decide mental capacity-related issues, there is no general requirement for another court, such as the High Court, to be involved.

In *DL v A Local Authority & Others [2012]*, the Court of Appeal held the High Court can make orders to protect vulnerable adults with capacity under the MCA, if their ability to make decisions has been undermined through being under constraint, subject to coercion or undue influence, or otherwise prevented from making a free choice or giving real or genuine consent.

This means local authorities can apply to the High Court for an order to grant access to a vulnerable adult with mental capacity, if they have no other options available.

## 8 Court of Protection and the Office of the Public Guardian

This is an overview of the Court of Protection and the Office of the Public Guardian in the context of safeguarding, particularly in relation to abuse by people appointed to look after the finances or welfare of someone without mental capacity to do it themselves.

### The Court of Protection

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

### The Office of the Public Guardian

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

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

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

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

The OPG can investigate allegations of abuse against a court-appointed deputy or registered attorney. They may refer the case to a local authority or investigate themselves. If the case needs urgent action, for example to stop someone emptying a person's bank account, they can initiate court proceedings via the Court of Protection and the court can freeze the funds or order urgent action it thinks needs to be taken.

## 9 The Care Quality Commission's standards

The Care Quality Commission (CQC) is the regulator for health and social care agencies. Agencies have to register with the CQC, who check they comply with certain standards of care. The CQC has a range of enforcement powers, up to and including de-registering a care provider who fails to meet appropriate standards. The effect is the provider can no longer legally provide services to members of the public.

### The fundamental standards

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

- care and treatment must be appropriate and reflect service users' needs and preferences
- service users must be treated with dignity and respect
- care and treatment must only be provided with consent
- care and treatment must be provided in a safe way
- service users must be protected from abuse and improper treatment
- service users' nutritional and hydration needs must be met
- all premises and equipment used must be clean, secure, suitable and used properly
- complaints must be appropriately investigated and appropriate action taken in response
- systems and processes must be established to ensure compliance with the fundamental standards
- sufficient numbers of suitably qualified, competent, skilled and experienced staff must be deployed

- persons employed must be of good character, have the necessary qualifications, skills and experience, and be able to perform the work for which they are employed
- registered persons must be open and transparent with service users about their care and treatment (the duty of candour).

### **Outsourced local authority services**

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

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

## **9.1 Notification duties**

Registered health and social care service providers must inform the CQC of abuse incidents or allegations. This is required under Regulation 18 of the *Care Quality Commission (Registration) Regulations 2009 (Part 4)*. They should also inform the local authority and, if a nursing home, the clinical commissioning group.

## **10 The Disclosure and Barring Service**

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

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

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

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



## Useful organisations

### **Action on Elder Abuse (AEA)**

[www.elderabuse.org.uk](http://www.elderabuse.org.uk)

Telephone 080 8808 8141 (free phone) Mon-Fri 9am-5pm

Works to protect and prevent the abuse of vulnerable older adults. Their helpline is confidential and provides information and emotional support.

### **Action Fraud**

<https://www.actionfraud.police.uk/>

Telephone 0300 123 2040

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

### **Care Quality Commission**

[www.cqc.org.uk](http://www.cqc.org.uk)

Telephone 03000 616 161 (free call)

Independent regulator of adult health and social care services in England, covering NHS, local authorities, private companies or voluntary organisations and people detained under the *Mental Health Act*.

### **Citizens Advice**

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

In England telephone 0344 411 1444

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

### **Court of Protection**

[www.gov.uk/courts-tribunals/court-of-protection](http://www.gov.uk/courts-tribunals/court-of-protection)

Telephone 0300 456 4600

### **Equality Advisory Support Service**

[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Telephone helpline 0808 800 0082 Mon-Fri 9am-7pm, Sat 10am-2pm

Funded by the Equality and Human Rights Commission, the helpline gives information and advice about the *Equality Act 2010* and human rights.

### **Local Government and Social Care Ombudsman**

[www.lgo.org.uk](http://www.lgo.org.uk)

Telephone Advice Team 0300 061 0614

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

**National Centre for Domestic Violence**

[www.ncdv.org.uk](http://www.ncdv.org.uk)

Telephone 0207 186 8270 or 0800 970 2070

Provides a free emergency injunction service and information and advice, for example on local authorities, health centres, refuges, Women's Aid Centres, local support groups and other services.

**Office of the Public Guardian**

[www.gov.uk/government/organisations/office-of-the-public-guardian](http://www.gov.uk/government/organisations/office-of-the-public-guardian)

Telephone 0300 456 0300

**Police**

If there is a serious danger an older person may be in imminent risk of harm and the situation warrants immediate attention, the police can be called. The number of the local police station is in the telephone directory. In an emergency, call 999.

**Public Concern at Work**

[www.pcaw.co.uk](http://www.pcaw.co.uk)

Telephone 020 3117 2520

Charity promoting 'whistle-blowing' in the public interest.

**Samaritans**

[www.samaritans.org](http://www.samaritans.org)

Telephone 116 123 (24 hours)

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

**Victim Support**

[www.victimsupport.org.uk](http://www.victimsupport.org.uk)

Telephone Victim Supportline 08 08 16 89 111

Charity for victims and witnesses of crime in England and Wales. It has offices across England and Wales.

**Women's Aid**

<https://www.womensaid.org.uk/>

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

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

## Age UK

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

### Age UK Advice

[www.ageuk.org.uk](http://www.ageuk.org.uk)

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

### In Wales contact

#### Age Cymru Advice

[www.agecymru.org.uk](http://www.agecymru.org.uk)

0800 022 3444

### In Northern Ireland contact

#### Age NI

[www.ageni.org](http://www.ageni.org)

0808 808 7575

### In Scotland contact

#### Age Scotland

[www.agescotland.org.uk](http://www.agescotland.org.uk)

0800 124 4222

## Support our work

We rely on donations from our supporters to provide our guides and factsheets for free. If you would like to help us continue to provide vital services, support, information and advice, please make a donation today by visiting [www.ageuk.org.uk/donate](http://www.ageuk.org.uk/donate) or by calling 0800 169 87 87.

## Our publications are available in large print and audio formats



### Next update January 2020

The evidence sources used to create this factsheet are available on request. Contact [resources@ageuk.org.uk](mailto:resources@ageuk.org.uk)

This factsheet has been prepared by Age UK and contains general advice only, which we hope will be of use to you. Nothing in this factsheet should be construed as the giving of specific advice and it should not be relied on as a basis for any decision or action. Neither Age UK nor any of its subsidiary companies or charities accepts any liability arising from its use. We aim to ensure that the information is as up to date and accurate as possible, but please be warned that certain areas are subject to change from time to time. Please note that the inclusion of named agencies, websites, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age UK or any of its subsidiary companies or charities.

Every effort has been made to ensure that the information contained in this factsheet is correct. However, things do change, so it is always a good idea to seek expert advice on your personal situation.

Age UK is a charitable company limited by guarantee and registered in England and Wales (registered charity number 1128267 and registered company number 6825798). The registered address is Tavis House, 1–6 Tavistock Square, London WC1H 9NA. Age UK and its subsidiary companies and charities form the Age UK Group, dedicated to improving later life.