

Consultation Response

Reporting and acting on child abuse and neglect: Home Office and Department for Education

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About this consultation

This consultation seeks views on the possible introduction of mandatory reporting of child abuse and neglect or a duty to act in relation to child abuse or neglect. It also seeks views on whether the scope of these possible changes should extend to vulnerable adults.

Key points and recommendations

- Older people are at particular risk of experiencing abuse and neglect.
- New laws have created legal frameworks to enable prosecution of, and enquiry into, safeguarding concerns, and this needs to be matched with the effective identification of concerns and person centred responses to them.
- A mandatory duty to report adult safeguarding concerns may be incompatible with rights based approaches to adult safeguarding.
- It may lead to less engagement in adult safeguarding from organisations and individuals outside of the local authority.
- Age UK believes that a 'duty to act' would do more to support promising and developing approaches to adult safeguarding than a 'duty to report'.
- To be successful, this would require common standards for training, and robust systems for ensuring compliance.

1. Introduction

Age UK is the country's largest charity dedicated to helping everyone make the most of later life. We believe in a world where everyone can love later life and we work every day to achieve this. We help more than 5m people every year providing support, companionship and advice for older people who need it most.

Age UK welcomes the government's decision to include mandatory reporting of adult safeguarding concerns as part of this consultation. Recent figures from the Health & Social Care Information centre demonstrate that older people are at particular risk of abuse and neglect, both of which can have a devastating impact on physical and mental health.

Disturbing examples of the abuse and neglect of adults who need care and support are all too common. In some cases the abuse has led directly or indirectly to the deaths of adults, in others it has caused harm which may never be overcome, and which can affect whole families as well as the wider community. The stories of the older people living at Orchid View, Hillcroft, Purbeck, Beacon Edge and The Old Deanery (amongst many others) show the appalling abuse that adults have experienced. However, abuse is not confined to care services, with the majority of issues arising from the actions or inactions of family, neighbours and acquaintances¹.

¹ Abuse and Neglect of Older People: Secondary analysis of prevalence study (2013) – Kings College London & National Centre for Social Research

At Age UK we hear regularly from older adults, neighbours, friends and family who have concerns about abuse and neglect taking place within care services and older people's own homes. We are also aware that some older people may be less likely to raise complaints or disclose concerns, wherever they may arise.

It is widely acknowledged that there is a significant mismatch in figures around the abuse of older people, with prevalence surveys indicating higher levels of abuse and neglect than those collected via local authority reporting. Against this background the need to ensure that concerns are identified is clear, however we believe that a mandatory duty to report may be incompatible with rights based approaches to adult safeguarding and the Mental Capacity Act, and we favour instead a duty to act.

2. If you believe new statutory measures should extend to adults, please provide further information, taking into account the existing wilful neglect offence.

- The serious nature of adult safeguarding concerns is reflected in the recent introduction of a statutory framework for adult safeguarding in the Care Act, new offences of ill-treatment or wilful neglect in the Criminal Justice and Courts Act 2015 as well as offences of controlling and coercive behaviour in the Serious Crime Act 2015.
- Whilst these laws enable improved criminal justice responses, it is important that equal consideration is given to how concerns are identified and preventative approaches are implemented.
- It is critical that any such consideration takes into account the need for rights based approaches to adult safeguarding which work with adults to achieve the outcomes that they want.
- No adult should experience abuse and neglect, and we believe that this outcome is most likely to be achieved where organisations and individuals fully understand the part they play in preventing and ending abuse.
- The principles of the Mental Capacity Act are designed, amongst other things, to ensure that the mental capacity of adults in regard to specific decisions is assumed, and to clarify that adults can make unwise decisions. Squaring this with a mandatory duty to report any and all concerns regarding abuse and neglect (for example a person who remains in an abusive relationship) would be a significant issue in practice.
- General Medical Council confidentiality guidance, for example, states that "...Doctors should usually abide by a competent adult patient's refusal to consent (to onward disclosure of abuse), even if their decision leaves them, but nobody else, at risk of serious harm"².

² http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality_elder_abuse.asp

3. A 'Duty to Act'

The consultation outlines a duty to act, which would require certain practitioners or organisations to take appropriate action (which could include reporting) in relation to abuse or neglect if they knew or had reasonable cause to suspect it was taking place. Age UK believes that this is a more compelling proposal in relation to the safeguarding of adults.

- A duty to act would be more closely aligned with the developing, and promising, approaches of 'Making Safeguarding Personal'. These put the adult at the centre of decision making or, where the adult lacks the mental capacity to engage with the safeguarding process, promote action under principles of the Mental Capacity Act.
- A duty to act would avoid the risk of organisations and individuals outside of the local authority taking a very limited view of their wider role in adult safeguarding. A duty to act would require a more developed understanding of the principles of adult safeguarding, in accordance with the law and local policy and procedures.
- Some practitioners may feel, particularly in cases involving a capacitous person who self-neglects, that the most effective way to support the person to resolve any concerns is to continue to engage over the longer term. They may be concerned that if the adult becomes aware that they have reported this concern they may cease to engage with them, or feel that their trust has been violated. A duty to act could mean that an appropriate professional works with the person, calling on additional support in accordance with local procedures.
- A duty to act may be of particular benefit to older people who lack the mental capacity to make decisions about how to protect themselves from abuse and neglect, ensuring that appropriate and swift action is taken, with proper regard to the Mental Capacity Act.
- A duty to act, rather than solely report, could enable better early support to be identified for family carers, to enable them to carry on their caring role effectively and prevent situations from becoming abusive.
- In some situations of abuse the duty to act *must* take the form of a duty to report, and this should be clearly set out in any law and highlighted in local guidance.

4. Responses to possible risks and issues identified in the consultation:

"A mandatory reporting system... could...result in an increase in unsubstantiated referrals. Unsubstantiated referrals may unnecessarily increase state intrusion into family life and make it harder to distinguish real cases of abuse and neglect. Appropriate action may not be taken in every case as a result"

The introduction of a duty to act would avoid these risks, as it would simply strengthen and clarify existing regulatory and guidance approaches around expected responses to adult safeguarding concerns. It would ensure that all those professionals under a duty to act would be fully aware of the need to balance autonomy and protection in the actions that they take with, or on behalf of, adults at risk. Issues of confidentiality would also be covered, in most cases, by existing adult safeguarding policy and procedures.

The role of local Safeguarding Adults Boards would be strengthened as they will need to ensure high standards for training, and review compliance, with all those mandated to act.

Currently adult safeguarding training, across all sectors, lacks common standards and accreditation. Ensuring that high quality training is available to all those under a duty to act will increase the identification of concerns and enable better outcomes.

5. Who would the new duty apply to?

Previously we have referred to the crucial roles of health and social care workers in identifying abuse. However not all abuse takes place in regulated settings, and not all abuse is carried out by health or social care staff.

The duty to act should therefore apply to:

- Social workers (in both adult and children's settings)
- Social care workers in residential and community settings
- Health workers in hospital and community settings, including doctors, nurses and healthcare assistants
- Care Quality Commission Inspectors, Assistant Inspectors , Inspection Managers and Enforcement Inspectors
- Police officers
- Instructors in adult education settings
- All other statutory and non-statutory members of local Safeguarding Adults Boards

Serious consideration should also be given as to whether it should apply to:

- Frontline bank staff
- Financial advisors
- Solicitors
- Instructors in adult education settings
- Faith leaders

(As a minimum local Safeguarding Adults Boards should have clear plans in place to engage with and train key individuals in these sectors).

6. Conclusion

- Good adult safeguarding outcomes are most likely to be achieved from the effective application of the principles of empowerment, prevention, proportionality, protection, partnership and accountability. Age UK concludes that, on balance, a duty to act will enable greater adherence to these principles than a duty to report.
- In addition there should be continuing efforts and investment in raising awareness, supporting inter-agency working and developing person centred adult safeguarding responses.
- This would need to be supported by common training standards, with sufficient resources made available to ensure that all those with a duty are clear about what acts they can and should undertake.

- It is often said that safeguarding is everybody's business, and that no-one should stand by. The duty to act would support this, enabling a greater range of relevant people to develop skills in adult safeguarding which would, in turn, raise awareness and help to prevent abuse across our wider society.