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## Safeguarding older people from abuse and neglect

### About this factsheet

This factsheet is designed to explain the new laws on safeguarding adults and to help you decide what to do if you know an older person who is being abused or neglected or who may be at risk of abuse or neglect. Whether you know the individual involved through your role as a professional, a carer, relative, neighbour or friend, you may have an important part to play in helping to safeguard them.

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

This factsheet describes the situation in England. There are differences in the legislation, guidance 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 – see section 15 for details.

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# 1 Introduction

**‘Safeguarding means protecting an adult’s right to live in safety, free from abuse and neglect.’<sup>1</sup>**

## 1.1 Background to the legal framework

Until the *Care Act 2014* came into force on 1<sup>st</sup> April 2015, there was no English law that dealt specifically with safeguarding adults who might be at risk of abuse or neglect.

The *Human Rights Act 1998* brought the rights set out in the European Convention on Human Rights (the Convention) into our law. These rights include an absolute right not to be subjected to torture, inhuman or degrading treatment (article 3 of the Convention) and a qualified right to enjoy private, family and home life without unjustified interference from public authorities (article 8). Serious abuse may amount to a violation of article 3. If the abuse takes place within a family or at home, then the local authority also has to think about the rights of the individual and their family to home and family life. Sometimes this means balancing conflicting rights. We will explain more about what this means in practice later in this factsheet.

When the *Human Rights Act 1998* came into force in 2000, the Department of Health issued statutory guidance, called *No Secrets*, on safeguarding adults from abuse and neglect. This led, among other things, to local authority adult social services setting up safeguarding procedures to try and protect adults from abuse and neglect, and to deal with abuse when it occurred.

*No Secrets* has now been replaced and this factsheet will explain the new law on adult safeguarding, which was introduced by the *Care Act 2014*.

If you would like more detailed information, the law is set out in sections 42 – 46 and Schedule 2 of the *Care Act 2014*. It is explained and elaborated in chapter 14 of the *Care and Support Statutory Guidance*, which has been issued under the *Care Act 2014* by the Department of Health, and is referred to in the rest of this factsheet as ‘the statutory guidance’

<sup>1</sup> From Chapter 14 of the *Care and Support Statutory Guidance*, Department of Health 2014

## 1.2 The policy context

Two of the catch phrases that are often used about safeguarding are 'safeguarding is everybody's business' and 'safeguarding is personal'.

**'Safeguarding is everybody's business'** refers to the importance of everyone being alert to possible signs of abuse or neglect and acting on their concerns. This does not apply only to health and social care professionals<sup>2</sup>, but also to other public sector staff, for instance people employed in the housing sector or in welfare benefits. It also applies particularly to police, as abusive behaviour may amount to a criminal offence (see section 6 below).

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

Chapter 14 of the statutory guidance emphasises the importance of **cooperation** between all these agencies and of a multi-agency approach to safeguarding. Sometimes this is formalised in what is known as a 'multi-agency safeguarding hub' (or MASH). The law requires every local authority to establish a 'Safeguarding Adults Board' (or SAB) with membership from a wide range of organisations. The nature and role of these boards is discussed in more detail in section 7.

The second catchphrase, **'safeguarding is personal'**, is intended to emphasise the importance of adults at risk being as involved as possible in any safeguarding process. With some exceptions, see later, safeguarding enquiries should only take place with the **consent** of the adult. The extent of any enquiry where there are suspicions of abuse or neglect should depend on the circumstances of the individual case and the views of the individual at the heart of it.

As with other aspects of the social care legal framework the wellbeing of the individual through the safeguarding process is of central importance. This includes control by individuals over their day to day lives.

<sup>2</sup> For example, it is part of the new Care Certificate for social care support workers.

Current policy on safeguarding emphasises empowering adults who may be at risk of abuse or neglect. There is a difficult balance to be struck by professionals in safeguarding cases between protecting people from harm and empowering people to make their own choices and remain in control of their own lives. Sometimes this means respecting an older person's choice even though that choice puts them at risk of harm. Social care professionals have to work within the legal and policy framework and their powers to intervene are limited. These will be explained in more detail below.

The overall policy aims of safeguarding as set out in the statutory guidance can be summarised as to:

- Stop abuse and neglect where possible.
- Prevent harm and reduce the risk of abuse and neglect.
- Safeguard adults in a way that supports them in making choices and having control about how they want to live.
- Concentrate on improving life for the adult concerned.
- Raise public awareness so that communities play a role alongside professionals.
- Provide accessible information and support about how to stay safe and how to raise a concern.
- Address the cause of the abuse and neglect.

The statutory guidance also sets out 6 key principles:

- **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.”

## 2 Who does the new law set out to protect?

People who may need safeguarding are defined under section 42 of the *Care Act 2014* 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.

### 2.1 Care and support needs

It is irrelevant whether or not the local authority is actually providing services or other support to these individuals. The point is that they are people who are suffering abuse or neglect, or at risk of either, and cannot protect themselves because they have health or social care needs.

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

Anyone who meets this definition and is in the local area, for whatever reason and for however long, is entitled to the protection available from the local authority adult social care team.

### 3 Abuse or neglect

The list of possible forms of abuse or neglect is long. The statutory guidance points out that exploitation is a common theme and identifies the following as examples:

- Physical abuse;
- Domestic violence, including honour-based violence;
- Sexual abuse;
- Psychological abuse;
- Financial/material abuse;
- Modern slavery;
- Discriminatory abuse;
- Organisational abuse;
- Neglect and acts of omission;
- Self-neglect.

#### 3.1 Particular issues for older people

The national charity, Action on Elder Abuse (AEA), defines 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’.

It is generally recognised that the perpetrators of abuse or neglect are most commonly people who are trusted and relied on by the older person, such as family members or care staff. The new law of safeguarding is not, however, limited to situations where there is a breach of trust, it includes situations such as risk of exposure to scams.

AEA's website states that woman over the age of 70 who are dependent, frail and alone are particularly vulnerable to abuse, which may take multiple forms. The most common forms of abuse are physical, psychological, financial, sexual abuse and neglect. AEA has found a prevalence of psychological abuse, usually by way of intimidation or coercion often linked to financial abuse.

Contact details for Action on Elder Abuse are set out in section 15.

## 3.2 Financial abuse

Section 42(3) of the *Care Act 2014* specifies that financial abuse includes:

- a) having money or property stolen;
- b) being defrauded;
- c) being put under pressure in relation to money or other property; and
- d) having money or other property misused.

The Office of the Public Guardian (OPG) is an agency sponsored by the Ministry of Justice to help protect and support people who lack mental capacity to make decisions concerning their care or finances. We explain more about their role in section 12. Financial abuse is the form of abuse they deal with most frequently.

The statutory guidance sets out some indicators of potential financial abuse:

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

Of course there may be other explanations for any of these indicators.

### 3.3 Self-neglect

Most forms of neglect or abuse are perpetrated by another person and the law generally presumes that there will be a perpetrator as well as a victim of abuse. The exception is self-neglect, which is included as one example of abuse and neglect in the list set out in the statutory guidance (see the beginning of this section).

Self-neglect is a difficult area as our law is based on the fundamental principle of ‘personal autonomy’, which is also part of the right to private life under article 8 of the European Convention on Human Rights. In other words, if someone chooses to live in a particular way, however worrying that is, there are only limited circumstances in which the law can intervene.

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

## 4 What are the legal duties to protect people from abuse and/or neglect?

### 4.1 Some relevant general duties

The *Care Act 2014* is based on the principle that local authorities must promote the wellbeing of adults with care and support needs. The wellbeing principle and the other general duties discussed in this section are explained in more detail in Age UK’s Factsheet 90, *Introduction to the Care Act 2014* and Age UK’s Factsheet 41, *Social care assessment, eligibility and care planning*.

Section 1 of the *Care Act 2014* explains that **wellbeing** is defined as relating to a range of important issues for people with care needs. One of these is 'protection from abuse and neglect'. That means that when adult social care staff are carrying out any of their work, for instance assessments or planning care for older people they must do their best to ensure that the older person is kept safe and protected from any risk of abuse or neglect.

There is a further general duty on the local authority, set out in section 2 of the *Care Act 2014* to take measures to try and prevent, delay or reduce people's need for care support. This would also include considerations of keeping people safe from potential abuse or neglect. It could include, for example, advice about how to go about donating a lasting power of attorney to a trusted person. For further information about lasting powers of attorney, see Age UK's Factsheet 22, *Arranging for someone to make decisions about your finance or welfare*.

## 4.2 Information to help you report a safeguarding concern

Another *Care Act 2014* duty, under section 4, is to provide advice and information to people. The duty specifically includes advice and information about how to raise safeguarding concerns. This means that each local authority must have accessible information about how to report concerns to them.

You will find information on your local authority's website, which should make it very easy for you to report any safeguarding anxieties and get a response. Alternatively if you phone your local authority and explain that you want to make a report or raise a concern you have about someone's safety you should be put straight through to the right section to deal with this.

If you do have any problems getting through to your local authority about a safeguarding issue, then your local Age UK will be able to help you.

## 4.3 Specific safeguarding duties under the *Care Act 2014*

There are three important specific legal duties set out in the *Care Act 2014*, which are outlined here and then discussed in more detail below.

- 1) Under section 42 of the *Care Act 2014* the local authority has a duty to 'make enquiries' where there is 'reasonable cause' to suspect either

that an adult with care and support needs *is* being abused or neglected or is *at risk* of being abused or neglected.

- 2) Section 43 requires local authorities to set up 'safeguarding adult boards', which are multi-agency bodies to help and protect adults in its area.
- 3) Thirdly safeguarding adult boards have a duty, under section 44 to arrange for case reviews to take place where there has been a serious incident.

## 5 The duty to make enquiries

Where there is a concern about abuse or neglect, the local authority is responsible for carrying out 'whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case .... And, if so, what and by whom' (section 42(2)).

The statutory guidance explains the range of possibilities for pursuing an enquiry:

*An enquiry could range from a conversation with the adult, or if they lack capacity, or have substantial difficulty in understanding the enquiry their representative or advocate, prior to initiating a formal enquiry under section 42, right through to a much more formal multi-agency plan or course of action. Whatever the course of subsequent action, the professional concerned should record the concern, the adult's views and wishes, any immediate action has taken and the reasons for those actions.*

It goes on to explain that the objectives of an enquiry into abuse or neglect 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 the abuse and neglect, in accordance with the wishes of the adult;*

- *make decisions as to what follow-up action should be taken with regard to the person or organisation responsible for the abuse or neglect; and*
- *enable the adult to achieve resolution and recovery.*

## 5.1 The involvement of the individual in an enquiry

The statutory guidance stresses that the first priority in any enquiry is to ensure the safety and wellbeing of the adult at risk. It also says that the wishes of the adult are very important, and that they should 'experience the safeguarding process as empowering and supportive'.

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

The exception to this general principle would be if further action is in the wider public interest, for instance 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. This is explained in more detail in section 6 below.

In family or personal relationships, the guidance recognises the need to balance the right to safety from abuse or neglect (also a right protected by Article 3 of the European Convention on Human Rights) with the rights to personal autonomy and to family life (Article 8), and also to liberty (Article 5). This means that local authorities often have to make sensitive and difficult decisions.

The statutory guidance sets out factors the local authority should consider when they are embarking on a safeguarding enquiry. These are:

- 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;
- the impact on the adult, their wishes;
- the possible impact on important relationships;

- potential of action and increasing risk to the adult;
- the risk of repeated or increasingly serious acts involving children, or another adult at risk of abuse or neglect;
- the responsibility of the person or organisation that has caused the abuse or neglect; and
- research evidence to support any intervention.

The older person you are concerned about may lack the mental capacity to consent to a safeguarding enquiry or to any proposed arrangements made as a result. In that case 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 the person's best interests. For more information about mental capacity and best interest decision-making, see Age UK's Factsheet 22, *Arranging for someone to make decisions about your finance or welfare*.

## 5.2 Who will carry out the enquiry?

The local authority is responsible for making enquiries, but it may well decide to involve other agencies, depending on the facts of the case and the seriousness of the allegations. The statutory guidance suggests that usually a social worker will be the most appropriate person to lead the enquiry and to try and ensure that distress to the adult at risk is minimised, but it may involve someone else. For instance, a professional who already knows the adult will often be the best person.

One example, given in the statutory guidance, is responding to abuse in a regulated setting, such as a care home. In that situation the employer is under a duty to inform:

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

In this situation the care home employer might be the best person to carry out the enquiry into the alleged abuse, but that wouldn't always be the case. The local authority would have to be satisfied that the employer had done a thorough job and that there was no conflict of interest. The local authority might need to appoint someone external to conduct a fair enquiry.

The *Care Act 2014* places a lot of emphasis on working together and this is likely to be particularly important in the safeguarding context. The local authority and its 'relevant partners' are under a legal duty (section 6 of the *Care Act 2014*) to cooperate with one another. These include:

- NHS England;
- Clinical Commissioning Groups (CCGs);
- NHS Trusts and Foundation Trusts;
- Department of Work and Pensions (DWP);
- The Police;
- Prisons; and
- Probation services.

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

If a crime is suspected the police must be informed and must investigate. The statutory guidance points out that the early involvement of the police is likely to have benefits in some cases, particularly in obtaining and preserving evidence (see section 6 below).

### 5.3 What will be the likely outcome of an enquiry

This will depend on what has happened and how serious it is, and what needs to happen to protect the safety of the adult at risk in the future.

If follow up is required, the statutory guidance says that an enquiry will result in an agreed plan of action, which will be recorded on the adult's care plan and will include responsibilities of the relevant agencies for implementation. It should set out:

- 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 individual through any action they take to seek justice or redress; and
- any on-going risk management strategy as appropriate.

Once these steps are put in place and recorded in a care plan, they should be kept under review. The frequency and intensity of that review will depend on the level of risk that has been identified and should be part of the agreed risk-management strategy.

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

As the statutory guidance says, everyone is entitled to the protection of the law. Perpetrators of abuse or neglect towards older people may be committing one or more criminal offences.

This is not a full list, but some examples of potential criminal acts referred to in the statutory guidance:

- Any form of deliberate physical assault;
- Sexual abuse, including rape;
- Psychological abuse or hate crime;
- Ill treatment or willful neglect<sup>3</sup> (of someone who lacks the capacity to care for themselves or of a care worker towards someone in their care);
- Unlawful imprisonment;
- Theft;
- Fraud.

<sup>3</sup> This is from the *Criminal Justice and Courts Act 2015* and it relates to care workers (section 20) and certain care providers (section 21).

## 6.1 Issues affecting criminal investigations

As we have already mentioned, the local authority should notify the police if they think a crime may have taken place. The police will carry out an investigation and work with the Criminal Prosecution Service (CPS) to decide whether or not to charge the perpetrator with any criminal offences. The CPS will make the final decision.

There is a Code of Practice, *Code for Crown Prosecutors*, which sets out 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*.

## 6.2 The evidential test

The police and CPS have to be satisfied that there is enough evidence available 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 that the CPS will look carefully at the evidence that the police have collected and decide whether it is theoretically possible for this high standard to be reached. It is one reason why early reporting to the police is important: so that they can preserve all the evidence before (for example) the perpetrator tries to get rid of it.

Another concern may be that the older person who has been 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.

The *Youth Justice and Criminal Evidence Act 1999* introduced ‘special measures’ to support vulnerable witnesses to give their evidence. Vulnerable adult witnesses are defined as people with a mental disorder, a learning disability or physical disability and judges will only agree to special measures if they think that the quality of evidence will be reduced *because of* the person’s disability or mental disorder.

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 the vulnerable witness understand the questions and give their answers accurately.

### 6.3 The public interest test

Technically criminal cases are brought to court on behalf of the Queen. The victim of the crime is usually a prosecution witness, but does not decide whether or not to bring a criminal prosecution. This means that the decision whether or not to prosecute is made by the CPS on behalf of the state, not by the individual victim of the crime. The reason for this is to protect the public at large from criminals.

If the evidential test is satisfied, the CPS will go on to decide whether it is in the public interest to prosecute. They will start from the assumption that it usually is, but there are some important exceptions. One is that they will consider what the impact will be 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 against them prosecuted. For example it may be that the abuser is a close family member or a trusted neighbour who the victim relies on and loves. In that situation the CPS will balance the views of the victim against wider public interest principles, such as the seriousness of the crime and the likelihood of the perpetrator going on to offend again and whether other members of the public are at risk. So, although the victim does not make the decision, their views will influence the CPS.

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 simply taking steps to make sure they are safe in future, for instance by changing their care arrangements or by appointing a court deputy to look after their finances (see section 11 below).

## 7 Role and duties of Safeguarding Adult Boards

Under section 43 *Care Act 2014*, local authorities must establish a safeguarding adult board (SAB) to co-ordinate and ensure effectiveness in helping and protecting adults at risk. It is given wide powers to 'do anything which appears to it to be necessary or desirable for the purpose of achieving its objective'.

Schedule 2 of the Act deals with membership, strategy, resources and reporting.

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

- (a) local authority
- (b) local clinical commissioning group (CCG)
- (c) Chief officer of police

The SAB has to produce an annual strategic plan, including what each member will do to implement the plan, and must consult with the local Healthwatch and the wider community. It must also 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 will be able to 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 to.

### 7.1 Special case reviews

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

- *Either* the adult has died, and the SAB knows or suspects that the death resulted from abuse or neglect;
- *or* the adult is still alive, and the SAB knows or suspects that the adult has experienced serious abuse or neglect.

It *may* arrange a review in any other case involving an adult in its area with care and support needs. In other words it has discretion in other cases to decide whether or not the circumstances merit a formal review.

The object of a review is not to apportion blame, but to identify lessons to be learnt and applied in the future.

## 8 **Mental capacity: the extent and limits of local authorities' powers**

As we explained in section 5 the local authority generally has no legal powers to protect someone or to provide them with services against their will, even if that person has chosen to stay in an abusive relationship.

The exception to this general rule is where the person concerned lacks the 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 that they cannot make a decision.

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

The *Mental Capacity Act 2005* and its Code of Practice have put in place a legal framework designed to support and, where necessary, to protect people with serious cognitive impairments, such as significant learning disabilities, acquired brain injuries or dementia. The details of the law referred to in this section is complicated and is set out in more detail in Age UK's Factsheet 22, *Arranging for someone else to make decisions about your finance or welfare*. See also section 12 below for information about the Court of Protection and the Office of the Public Guardian.

There is a legal presumption in favour of mental capacity. In other words people should be 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 their care arrangements, then the local authority should assess their mental capacity as defined in 2005 Act.

If, having carried out this assessment, the local authority decides that the person doesn't have the capacity to decide on this issue, then the decision must be made for them in their *best interests*. The law sets out in some detail what factors must be taken into account to reach a best interests decision, but they include:

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

## 8.2 Deprivation of liberty safeguards (DOLS)

Sometimes adults without mental capacity to protect themselves may need to have their freedom restricted to keep them safe. This requirement interacts with the safeguarding issues described in this factsheet and human rights. If this restriction amounts to constant supervision and control and prevents the person leaving and choosing to live elsewhere, then our Supreme Court<sup>4</sup> has ruled that it would amount to a deprivation of the person's liberty and, therefore, a breach of Article 5 (the right to liberty) under the European Convention on Human Rights. A typical example of this would be where someone with dementia in a care home is prevented from wandering by the use of a key pad on the door which they are unable to operate.

In those situations, the local authority (or the CCG in a hospital context) must carry out a special assessment, called a DOLS (deprivation of liberty safeguards) assessment. It must then decide whether or not it would be right to authorise the deprivation of liberty. The idea of this is to protect people and make sure that the restrictions placed on their freedom are in their best interests to keep them safe and restrict them as little as possible in the circumstances. At the moment this procedure is only available for people in hospitals and care homes.

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

<sup>4</sup> P v Cheshire West & Chester Council; P & Q v Surrey County Council [2014] UKSC 19

These arrangements are designed to keep people safe from abuse, for instance the kind of abusive regimes that have been exposed in some care homes like the 2011 Winterbourne View scandal where people with serious learning disabilities were effectively imprisoned and badly abused.

### 8.3 Can the local authority remove a person from their own home?

If the local authority thinks that someone who lives in a family home is being subjected to some form of abuse there, they do not have any powers to come and remove the person.

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

However if the person lacks the mental capacity to agree to leave, then the local authority has very limited powers. In this situation the local authority can and should do three things:

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

Unfortunately, there have been several examples of the local authority removing people lacking mental capacity from their homes and family carers, against their wishes and without making any application to the Court of Protection to authorise such a deprivation of the person's liberty. The courts have said, in these cases, that the local authorities concerned have failed to give any consideration to balancing the rights to family life against the risk of abuse to the individual.

For instance, the court in the case of *Somerset v MK* ([2014] EWCOP B25) made a number of findings against the local authority in Somerset. The judge held that the safeguarding inquiry which led to a young woman being removed from her family home for over 6 months without any legal authority was 'wholly inadequate'.

In a number of high profile cases there has been no substance to the allegation of abuse or neglect, but families members have been forcibly kept apart for quite long periods of time. The Court of Protection judges have been very critical of this cavalier behaviour by local authorities and have reminded them that the DOLS procedure is intended to protect vulnerable people, not to be a means for the local authority to 'get its own way' against the wishes of a family. This comment was made by the judge in the well-known case of *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 then detained there for almost a year.

Unfortunately, there have been several examples of the local

If you are a carer or family member and find yourself in this sort of situation, you should ask the local authority to make an application to the Court of Protection to resolve the situation. If they do not do so, you may benefit from independent legal advice from a lawyer with specialist knowledge of this area of law.

## 9 What other legal powers exist to protect older people from abuse?

### 9.1 The role of the police

If the police believe that a reasonably serious offence may have been committed, they are able to enter premises to investigate suspected crimes and/or to arrest a suspected offender. They have this power under the Police and Criminal Evidence Act Code of Practice.

They can, therefore, enter a home forcibly and remove a suspected perpetrator from the home, 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 then the Magistrates Court will decide whether or not the person should be remanded in custody or granted bail. This is to deal with any continuing risk they might pose in the period between arrest/charge and the final court hearing/trial. The Court can also impose conditions on bail, such as forbidding the perpetrator from contacting the victim, living in the victim's house or from going within a certain radius of it.

## 9.2 What if there is no criminal prosecution?

If the perpetrator is violent or threatening violence within a family context it may well be possible for the victim of the abuse to obtain an *injunction*. These procedures are set out in the *Family Law Act 1996*.

This is an order made by a court forbidding the perpetrator from harming or threatening harm to the victim. What order the court will make will depend on the circumstances of the case. It might put in place a 'non-molestation order', which usually prevents the perpetrator from:

- Using or threatening physical violence;
- Intimidating, harassing or pestering;
- Communicating with the victim (if appropriate);.
- Instructing or encouraging others.

Or an 'occupation order' which can prevent the perpetrator from living in the family home (generally only if s/he has somewhere else to go).

If you think that someone you know is being subjected to physical abuse and would like to find out more or refer the person for help there are organisations to help people with legal and other advice about how to bring a case. For instance the National Centre for Domestic Violence ([ncdv.org.uk](http://ncdv.org.uk)) provides this service.

You should also notify the local authority as soon as possible that there is a safeguarding issue.

## 10 **Role of the Disclosure and Barring Service**

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

The DBS carries out criminal record checks for anyone who is employed in a 'regulated activity'. This term is defined in the *Safeguarding Vulnerable Adults Act 2006* and covers, among other things, the provision of health and/or social care in the form of personal care or other care, such as domestic help to adults who need it because of age, illness or disability.

Employers who are 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 also make referrals.

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

## 11 **Safeguarding role of the Court of Protection and the Office of the Public Guardian**

This section provides an overview of the role of both these institutions in the context of safeguarding, particularly in relation to abuse by people who are entrusted to look after either the finances or the welfare of someone who has lost mental capacity to do it themselves. You will find more detail about lasting powers of attorney and about court-appointed deputies in Age UK's factsheet 22, *Arranging for someone to make decisions about your finance or welfare*.

The Court of Protection is a specialist court, which deals with issues that arise in relation to both the health and welfare and the financial resources of people who lack mental capacity to manage aspects of these things for themselves (see also section 8 above).

For example, as we have explained, only the Court of Protection can authorise the deprivation of liberty of someone living in their own home or in some kind of supported/sheltered living environment such as extra care housing (see section 9 above).

The Office of the Public Guardian (OPG) is a public body working closely with the Court of Protection. Its main job is to register applications for powers of attorney. These are powers granted by an adult, usually an older person, to another adult, usually a family member, to allow the relative to look after the older person's finances or to make decisions for them about health and welfare issues if they lose mental capacity to do so in the future.

Unfortunately sometimes attorneys abuse their positions and exploit the older person they are appointed to support. This is most often financial abuse, but may also involve failing to act in the older person's best interests in other ways, such as bullying or threatening behaviour towards them. Part of the role of the OPG is to investigate allegations of abuse by registered attorneys.

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

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

The OPG can investigate allegations of abuse by a court-appointed deputy, as well as a registered attorney. They may refer the case on to the local authority or investigate themselves. If the case needs urgent action, for instance, to stop someone emptying an older person's bank account, then the OPG can initiate court proceedings through the Court of Protection and the court can freeze the funds or order whatever urgent action it thinks needs to be taken.

## 12 The Care Quality Commission

The Care Quality Commission (CQC) is the regulator for all health and social care agencies. All such agencies have to register with the CQC, who will check that 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 of that is that the provider can no longer legally provide services to members of the public.

The CQC must be a member of every safeguarding adult board, see section 7. It has set out the fundamental standards that it expects from every provider organisation and it will carry out inspections to try and ensure that 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).

## 13 **So, what should I do if I suspect an older person might be abused or neglected?**

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

If the person does have mental capacity, but does not want you to tell anyone what is going on or take matters any further, then you have a difficult decision to make.

If you feel that the person has mental capacity, but is unable to make a decision about this because they are being coerced by the abuser or subject to undue influence or duress, then again it is important to think about what is really in their best interests. In this situation the courts have occasionally made orders, saying that people need to be given some breathing space and some professional support to help them get free of the pressure and make their own decision freely, so it may be appropriate to notify the local authority of your concerns and to explain the situation.

In some cases the older person will choose not to report their abuse, perhaps because they are afraid that it will damage a relationship that is very important to them. In this situation it is hard to know what to do. Sometimes it will still be right to override their wishes if, for instance, the perpetrator of the abuse may be putting other members of the public at risk too. In this situation you may want to seek advice without initially disclosing the identity of the person you are worried about. You can do this by contacting your local Age UK office. You can also call the Action on Elder Abuse helpline, free and in confidence, on 0808 808 8141.

Your local authority will have a section on its website telling you who to contact to report possible abuse. If you contact the local authority on the number provided, that should initiate a safeguarding enquiry. As we explained in section 2, the local authority will decide how best to conduct their enquiry depending on the seriousness of the case, the continuing risk to the older person etc.

If you think the issues are so serious that the police need to be involved immediately, you can contact them to report a crime. However, if you report your concerns to the local authority and they agree with you that it may be a criminal matter, then they will report it to the police. Of course, in an emergency you should dial 999.

If you are concerned about financial abuse by an attorney or a court-appointed deputy, then you can contact the safeguarding team at the OPG by phoning their helpline – see section 12.

If your concern is about an older person being abused in a care home or by domiciliary care staff, you should still contact the local authority. Even if the person is a self-funder and the local authority has not previously been involved, they still have a duty under the *Care Act 2014* to carry out a safeguarding enquiry. You may also want to contact the Care Quality Commission (CQC) – see section 12.

We have focused particularly in this factsheet on safeguarding duties of the local authority. This is because they have the legal duty to lead safeguarding enquiries. If you think an older person is being abused in an NHS facility, a hospital or specialist NHS nursing home for example, you should still raise the matter with your local authority safeguarding team. Again you can also notify the CQC, as above.

## 14 Useful organisations

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

### Action on Elder Abuse (AEA)

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

Action on Elder Abuse, PO Box 60001, Streatham, SW16 9BY

UK Helpline: 080 8808 8141 (free phone)

Email: [enquiries@elderabuse.org.uk](mailto:enquiries@elderabuse.org.uk)

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

### Alzheimer's Society

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

Devon House, 58 St Katherine's Way, London E1W 1LB

Tel: 0300 222 1122

Website: [www.alzheimers.org.uk](http://www.alzheimers.org.uk)

Email: [enquiries@alzheimers.org.uk](mailto:enquiries@alzheimers.org.uk)

### The Care Quality Commission

The independent regulator of adult health and social care services in England, whether provided by the NHS, local authorities, private companies or voluntary organisations. Also protects the rights of people detained under the Mental Health Act.

CQC National Customer Service Centre, Citygate, Gallowgate, Newcastle upon Tyne, NE1 4PA

Tel: 0300 061 6161 (free call)

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

## **Carers UK**

National charity providing information and advice about caring alongside practical and emotional support for carers. Also campaigns to make life better for carers and influences policy makers, employers and service providers, to help them improve carers' lives.

20 Great Dover Street, London, SE1 4LX

Tel: 0808 808 7777 (free call)

Email: [info@carersuk.org](mailto:info@carersuk.org)

Website: [www.carersuk.org](http://www.carersuk.org)

## **Carers Trust**

Website: [www.carers.org/scotland](http://www.carers.org/scotland)

**Carers Wales** can be contacted at:

Tel: 029 20 811370

Website: [www.carerswales.org](http://www.carerswales.org)

## **Citizens Advice Bureau (CAB)**

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

In Wales there is a national phone advice service on 0344 477 2020. It is available in some parts of England on 0344 411 1444. In Scotland, there is a national phone advice service on 0808 800 9060.

To find details of your nearest CAB check your phone book, or in:

England or Wales, go to [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Northern Ireland, go to [www.citizensadvice.co.uk](http://www.citizensadvice.co.uk)

Scotland, go to [www.cas.org.uk](http://www.cas.org.uk)

Visit [www.adviceguide.org.uk](http://www.adviceguide.org.uk) for online information

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

PO Box 16185, Birmingham, B2 2WH

Customer Service Advice Line: 0300 456 0300

Email: [customerservices@publicguardian.gsi.gov.uk](mailto:customerservices@publicguardian.gsi.gov.uk)

Website: [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

## **Carers Trust**

Has approximately 150 schemes in the UK that provide support and assistance to carers.

32-36 Loman Street, London, SE1 0EH

Tel: 0844 800 4361

Email: [info@carers.org](mailto:info@carers.org)

Website: [www.carers.org/](http://www.carers.org/)

## **Disability Rights UK**

This organisation run by and for disabled people provides a wide range of publications relating to direct payments, personal budgets and arranging personal assistance. The name was changed from the National Centre for Independent Living following a merger with RADAR and the Disability Alliance in January 2012.

Ground Floor, CAN Mezzanine, 49-51 East Road, London, N1 6AH

Tel: 020 7250 8181

Email: [enquiries@disabilityrightsuk.org](mailto:enquiries@disabilityrightsuk.org)

Website: [www.disabilityrightsuk.org/](http://www.disabilityrightsuk.org/)

## **Domestic Violence Support Groups**

There may be a domestic violence support group in the local area. The local Age UK may be able to provide contact details (see section 12 for information on contacting the local Age UK). Citizens Advice may also be aware of appropriate support groups in the area.

## **Elderly Accommodation Counsel (EAC)**

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

EAC FirstStop Advice, 3rd Floor, 89 Albert Embankment, London, SE1 7TP

Tel: 020 7820 1343

Email: [info@firststopadvice.org.uk](mailto:info@firststopadvice.org.uk)

Website: [www.housingcare.org](http://www.housingcare.org)

## **Equality and Human Rights Commission (EHRC)**

EHRC has a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality across the nine "protected" grounds - age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. It provides advice and assistance to individuals and it has issued statutory codes of practice and non-statutory guidance to explain people's rights and responsibilities under the Equality Act 2010.

Tel: 0808 800 0082

Website: [www.equalityhumanrights.com/](http://www.equalityhumanrights.com/)

## **Equality Advisory Support Service**

The Government has commissioned a new Equality Advisory Support Service (EASS) to replace the EHRC Helpline.

FREEPOST EQUALITY ADVISORY SUPPORT SERVICE FPN4431

Tel: 0808 800 0082

Textphone number: 0808 800 0084

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

## **Independent Age**

A charity that provides advice for older people, their families and professionals on community care and other issues.

6 Avonmore Road, London, W14 8RL

Tel: 020 7605 4200

Adviceline: 0800 319 6789

Email: [charity@independentage.org](mailto:charity@independentage.org)

Website: [www.independentage.org/](http://www.independentage.org/)

## **Local Government Ombudsman (LGO)**

The Local Government Ombudsman (LGO) looks at complaints about the actions and decisions of councils, usually when a complaint has not achieved a satisfactory outcome.

PO Box 4771, Coventry, CV4 0EH

Tel: 0300 061 0614

Fax: 024 7682 0001

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

## **MIND (National Association for Mental Health)**

Offers support for people in mental distress and their families.

15-19 Broadway, Stratford, London E15 4BQ

Helpline: 0300 123 3393

Tel: 020 8519 2122

Email: [contact@mind.org.uk](mailto:contact@mind.org.uk)

Website: [www.mind.org.uk](http://www.mind.org.uk)

## **NHS Direct**

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

Tel: 111

Website: [www.nhsdirect.nhs.uk](http://www.nhsdirect.nhs.uk)

## **Police**

If there is a serious danger that an older person may be in imminent risk of harm and that the situation warrants immediate attention, the police can be called. The number of the local police station will be in the telephone directory. In an emergency, it is appropriate to dial 999 or 112. This is when someone's life is in danger or a crime is in the process of being committed.

## **Public Concern at Work (PCaW)**

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

3rd Floor, Bank Chambers, 6 - 10 Borough High Street, London, SE1 9QQ

Helpline: 020 7404 6609

Email [whistle@pcaw.co.uk](mailto:whistle@pcaw.co.uk)

Website: [www.pcaw.org.uk/](http://www.pcaw.org.uk/)

## **The Relatives and Residents Association**

Gives advice and support to older people in care homes and their relatives and friends.

1 The Ivories, 6-18 Northampton Street, London, N1 2HY

Advice line: 020 7359 8136 (Mon–Fri 9.30am–4.30pm)

Email: [info@relres.org](mailto:info@relres.org)

Website: [www.relres.org](http://www.relres.org)

## **Samaritans**

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

A confidential Samaritans helpline on 08457 90 90 90 (lo-call rate) is available 24 hours a day.

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

## **Solicitors for the Elderly**

Produces a booklet for solicitors that gives details about financial abuse and actions solicitors can take if they have concerns.

Tel: 0844 567 6173

Website: [www.solicitorsfortheelderly.com](http://www.solicitorsfortheelderly.com)

## Trading Standards

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

The Trading Standards Central website has details of the location of local offices at [www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk)

Consumer Direct, a part of Trading standards, can also be contacted on 08454 040506.

## Victim Support

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

Telephone Victim Supportline on 08 08 16 89 111 for support over the phone or to get details of a local office.

Typetalk users should dial 18001 0845 30 30 900.

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

## Women's Aid

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

Women's Aid, PO Box Bristol 391, BS99 7WS

National Domestic Violence Helpline: 0808 2000 247 (free phone Mon–Sun 24 hours)

Email: [info@womensaid.org.uk](mailto:info@womensaid.org.uk)

Website: [www.womensaid.org.uk](http://www.womensaid.org.uk)

## 15 Further information from Age UK

### Age UK Information Materials

Age UK publishes a large number of free Information Guides and Factsheets on a range of subjects including money and benefits, health, social care, consumer issues, end of life, legal, employment and equality issues.

Whether you need information for yourself, a relative or a client our information guides will help you find the answers you are looking for and useful organisations who may be able to help. You can order as many copies of guides as you need and organisations can place bulk orders.

Our factsheets provide detailed information if you are an adviser or you have a specific problem.

### Age UK Advice

Visit the Age UK website, [www.ageuk.org.uk](http://www.ageuk.org.uk), or call Age UK Advice free on 0800 169 65 65 if you would like:

- further information about our full range of information products
- to order copies of any of our information materials
- to request information in large print and audio
- expert advice if you cannot find the information you need in this factsheet
- contact details for your nearest local Age UK

### Age UK

Age UK is the new force combining Age Concern and Help the Aged. We provide advice and information for people in later life through our publications, online or by calling Age UK Advice.

Age UK Advice: 0800 169 65 65

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

In Wales, contact:

Age Cymru: 0800 022 3444

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

In Scotland, contact Age Scotland  
by calling Silver Line Scotland: 0800 470 8090  
(This line is provided jointly by Silver Line Scotland and Age Scotland.)  
Website: [www.agescotland.org.uk](http://www.agescotland.org.uk)

In Northern Ireland, contact:  
Age NI: 0808 808 7575  
Website: [www.ageni.org.uk](http://www.ageni.org.uk)

### **Support our work**

Age UK is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and taking calls at Age UK Advice on 0800 169 65 65.

If you would like to support our work by making a donation please call Supporter Services on 0800 169 87 87 (8.30 am–5.30 pm) or visit [www.ageuk.org.uk/donate](http://www.ageuk.org.uk/donate)

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