

North Somerset

Safeguarding Adults Partnership



No Secrets

Policy and Procedures for safeguarding
vulnerable adults from abuse

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No Secrets – North Somerset’s Policy and Procedures for Safeguarding Adults at risk of abuse

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NO SECRETS

North Somerset's Policy and Procedures for Safeguarding Adults at Risk of Abuse

Multi-agency Policy for Safeguarding Adults in North Somerset

Introduction

This document has been developed in accordance with the Association of Directors of Social Services 'Safeguarding Adults; a national framework of standards for good practice outcomes in adult protection work' (2005); and consultation between North Somerset Council, Avon and Somerset Police, North Somerset Primary Care Trust and other health providers, the Commission for Social Care Inspection, Independent Care Providers and Voluntary Organisations in North Somerset. It is the framework within which all these organisations are required to work together, to provide safeguards for adults at risk of abuse.

This document is divided into two parts. Part 1 describes the North Somerset Safeguarding Adults Policy, including relevant definitions, general information about abuse and specific information for any person raising an alert about the possibility of abuse of an adult. Part 2 describes in detail the procedures which must be followed when such an alert is raised. There are also a number of Appendices giving further information on particular issues.

Each of the participating organisations is required to draw up a further document to provide Staff Guidance on Safeguarding Adults for internal use within their organisation. This document must be consistent with the multi-agency Safeguarding Adults Policy and Procedures and a copy must be lodged with the North Somerset Council's Safeguarding Adults Manager.

Part One

1. The Policy

This is Part 1 of North Somerset's multi-agency Policy and Procedures for Safeguarding Adults at Risk of Abuse. It describes the North Somerset Safeguarding Adults Policy, including relevant definitions, general information about abuse and specific information for any person raising an alert about the possibility of abuse of an adult.

The National Context

In March 2000, the Department of Health issued "No Secrets", which provided a framework for inter-agency collaboration on the development and implementation of procedures for the protection of adults vulnerable from abuse. "No Secrets" was issued under Section 7 of the Local Authority Social Services Act 1970. In October 2005, the Association of Directors of Social Services supplemented this with "Safeguarding Adults", a national framework of standards for good practice and outcomes in adult protection work.

The Local Context

North Somerset responded to "No Secrets" with the production of a multi-agency policy and procedures, "No Secrets in North Somerset". This was partially revised in June 2006 but this further revision has been made necessary due to changing legislation, in particular the Mental Capacity Act 2005.

The Safeguarding Adults Board in North Somerset is an inter-agency group which promotes inter-agency co-operation at all levels of safeguarding work. To safeguard adults at risk of abuse it is essential that all partners and stakeholders work closely together to develop policies and processes that result in timely and robust inter-agency responses. The Safeguarding Adults Board oversees this partnership working and considers strategies that improve existing practice.

The Legal Context

There are numerous and varied pieces of legislation relevant to working with adults who may be experiencing abuse or at risk of abuse. These adults may be safeguarded by relevant legal measures open to all, but in addition there are specific laws that may apply to

adults who are ill, disabled, older or lacking mental capacity. There is legislation covering:

- Legal responsibilities for taking action to stop abuse
- The legal framework for action that can be taken
- Legislation that applies to particular forms of abuse

A description of the major relevant legislation can be found in Appendix A, at the end of this document. However, this is a general overview and must not be used as a substitute for seeking specific legal advice or for taking guidance from the police in appropriate cases. If there is concern that a crime has been committed, then the police must be informed.

2. Statements and Key Principles

Adults at risk of abuse

Every person has the right to live a life free from abuse, exploitation and neglect.

Abuse occurs in all sections of society and there should be no discrimination because of assumptions about class, gender, age, disability, sexual orientation, race, religion or culture.

Some people are more vulnerable to abuse and exploitation because they are disempowered within society. People who are eligible to receive health and community care services may be additionally vulnerable to the violation of their Human Rights by reason of disability, impairment, age or illness.

Adults at risk of abuse be made aware of their rights and given information, advice and support. They should be enabled and encouraged to access the protection of the law and legal processes where they wish to do so.

Every effort must be made to promote the wellbeing, security and safety of adults at risk of abuse consistent with their rights, mental capacity and personal choices, and to prevent abuse occurring wherever possible.

In most cases, the adult at risk of abuse should be the person who decides on the chosen course of action, whilst being given all possible support. In a proportion of cases, an adult with mental capacity may choose to remain in an abusive environment or situation. In these cases it is still extremely important to consider what advice and support can be offered to reduce the risk of harm.

People raising an alert of possible abuse

Any persons making reports of allegations of abuse should be listened to and their information acted upon. Wherever possible, the person who has raised the alert will be given information about the outcome, although due regard should be given to the extent of the information that can be shared.

Organisations working with adults at risk of abuse

Each participating organisation is expected to have a clear, well-publicised policy of zero tolerance of abuse within the organisation.

All agencies providing care for adults at risk of abuse are expected to be aware of the national guidance in “No Secrets” and the local multi-agency Safeguarding Adults Policy and Procedures, as well as producing their own Staff Guidance. They must ensure that their procedures are known and understood by residents, relatives and friends as well as all staff.

All participating organisations must have safe recruitment practices to help at risk of abuse from those in a position to exploit or harm them.

Staff working with adults at risk of abuse are in a position of status and authority in relation to the users of the service they provide. Services should be provided in an environment which lessens the imbalance of power and encourages independence and self-advocacy for service users.

Working practices should minimise the risk of abuse by being sensitive to cultural, gender and individual needs.

Organisations working together to prevent abuse and safeguard adults

Effective inter-agency working is crucial for the safeguarding of adults from abuse. Effective information sharing, collaboration and understanding between agencies and professionals are key elements in safeguarding adults.

No single agency can act in isolation to ensure the welfare and protection of adults at risk of abuse. Information and decision making **must** be shared.

3. Definitions and Explanations

The North Somerset Safeguarding Adults Partnership

The North Somerset Safeguarding Adults Partnership is made up of a range of public, private and voluntary organisations who work together to minimise the risk of abuse to vulnerable adults and to safeguard vulnerable adults when abuse has taken place or may have taken place. The Partnership is committed to learning from experience and to a process of continuous improvement in its work.

A list of the current partners is contained in Appendix B.

Purpose of North Somerset's Safeguarding Adults Policy and Procedures

North Somerset's Safeguarding Adults Policy and Procedures aim to raise awareness of abuse and minimise the risk of abuse taking place. It should also ensure that if abuse, suspected abuse or potential for abuse come to the notice of staff, they know what to do.

Adults covered by the Policy and Procedures

The Policy covers all adults aged 18 and above who are or may be in need of community services by reason of mental or other disability, age or illness and who are, or may be unable to take care of themselves, or unable to protect themselves against significant harm or exploitation.

When a safeguarding concern is raised about an adult 'who is or may be eligible for community care services' the Fair Access to Care threshold for an investigation and support is met.

Safeguarding Adults [ADSS 2005] identifies a duty of care to all adults 'whose independence and well-being is at risk due to abuse or neglect'. However, it may not always be appropriate to instigate these safeguarding procedures. Where a person is not vulnerable under the definition above, redirection to other services may be more appropriate, for example the criminal justice process and/or domestic violence services.

Safeguarding Adults [ADSS 2005] also identifies a duty of care to informal carers who have been assessed for support services in their own right.

Definition of abuse

“Abuse” is a violation of an individual’s human or civil rights and includes all forms of harm, mistreatment and neglect. It can be a single or repeated act or failure to act, which usually occurs within a relationship in which there is an expectation of trust. Abuse concerns the misuse of power, control and/or authority and can be perpetrated by an individual, a group or an organisation. It may be intentional or unintentional.

Perpetrators of abuse

Abuse can take place in any setting, including people’s own homes, care homes, day centres or places of work or study. Perpetrators might be informal carers, partners or family members, people in a position of trust, people paid to offer care or services or strangers. Organisations can abuse or cause harm by the way they conduct their day to day practice.

Self Neglect

Some adults may be at risk of harm from their own self-neglect. Although this is a serious issue which must be addressed, the Safeguarding Adults procedure is not appropriate for this purpose. In this situation, a referral should be made to Adult Social Services and Housing to initiate an assessment under the Community Care Act.

Abuse of Staff

Similarly, although abuse of staff by service-users or other staff is a serious matter which requires action, the Safeguarding Adults Policy and Procedures is not appropriate to address this situation. In these circumstances, the staff member should be assisted via the organisation’s internal procedures.

The Domestic Violence Policy and Safeguarding Adults

Domestic Violence and Forced Marriage can also involve the abuse of a Vulnerable Adult.

The definition of Domestic Violence is ‘any incident of threatening behaviour, violence or abuse between adults who are, or have been

intimate partners or between family members, regardless of gender or sexuality (See Appendix A).

Forced marriage is one in which one or both of the spouses do not consent to the marriage and some element of duress is involved, including the use of physical and emotional pressure. Forced marriage is not sanctioned within any culture or religion (see Appendix A).

Some incidents of abuse under the Safeguarding Adults Policy could also be categorised as Domestic Violence, so the relevance of this policy should also be considered. In particular, a referral to the Multi-Agency Risk Assessment Conference managed by the Police may lead to a useful sharing of information to assist in the protection of the adult at risk of abuse.

In cases where there has been domestic violence involving an adult at risk of abuse, a Safeguarding Adults Strategy Meeting must still take place. It is also important to consider a Safeguarding Adults Strategy Meeting if an adult at risk of abuse is living in a household in which domestic violence is taking place, even if they are not directly involved.

Definition of 'significant harm'

Safeguarding Adults procedures must be instigated when the concern raised indicates significant harm or exploitation to the person subjected to it. 'No Secrets' refers to the definition:

"harm should be taken to include not only ill-treatment (including sexual abuse and forms of ill treatment which are not physical), but also the impairment of, or an avoidable deterioration in, physical or mental health; and the impairment of physical, intellectual, emotional, social or behavioural development". [Law Commission 1995]

The following factors should be considered when assessing significant harm:

- the impact on the individual – this should be determined by the adult at risk of abuse and the workers involved
- the individual's wishes and feelings
- the impact [actual or potential] on other vulnerable adults or carers
- evidence of physical or emotional harm
- records of previous concerns or incidents
- independent corroborative information

- the views of other professionals involved

It is important to remember that in some cases an accumulation of events as opposed to a single act may increase the severity of the concern.

4. Recognising Abuse

Some signs and indicators of abuse may seem insignificant in themselves and may have explanations or causes other than abuse. However, where they are in evidence and particularly where:

- A cluster of indicators appears
- The presence of an indicator recurs
- There is a significant change in the behaviour or presentation of the adult at risk of abuse

Then a more detailed assessment of the situation should be conducted. If there is any concern at all about the possibility of abuse, then advice should be sought. It is recognised that the adult at risk of abuse may be a person receiving or in need of care or may be the carer himself or herself.

Abuse can be viewed in terms of seven main categories:

- Physical
- Sexual
- Financial
- Neglect
- Psychological
- Discriminatory
- Organisational/Institutional

The following paragraphs give definitions of each category and a list of possible indicators. (NB these lists are not exhaustive and are only for guidance. The presence of one or more indicator does not necessarily confirm abuse.)

Definition of Physical Abuse

Physical abuse is the physical ill treatment of an adult, which may or may not cause physical injury. This includes pushing, shaking, pinching, slapping, punching and force-feeding.

Physical abuse can occur in situations where people are caused unjustifiable physical discomfort. This can be through the withholding of care, withholding of access to health care or the application of inappropriate techniques or treatments. It can include forced isolation and confinement, for example people being locked in their room, and inappropriate methods of restraint.

Indicators of physical abuse

The following may be indicators of physical abuse:

- Injuries that are not explained satisfactorily
- Person exhibiting untypical self harm
- Unexplained bruising to the face, torso, arms, back, buttocks, thighs in various stages of healing; collections of bruises that form regular patterns which correspond to the shape of an object or which may appear on several areas of the body
- Unexplained burns to unlikely areas of the body, for example, soles of feet, palms of the hands, back; immersion burns; rope burns; burns from an electrical appliance
- Unexplained or inappropriately explained fractures at various stages of healing to any part of the body
- Unexplained cuts or scratches to mouth, lips, gums, eyes or external genitalia
- Medical problems that go unattended
- Sudden or unexplained urinary and/or faecal incontinence
- Evidence of over or under-medication
- Person flinches at physical contact
- Person appears frightened or subdued in the presence of particular people
- Person may ask not to be hurt
- Person may repeat what perpetrator has said, for example, 'Shut up or I'll hit you'
- Reluctance to undress or uncover parts of the body

(This list is not exhaustive)

Definition of sexual abuse

Sexual abuse is any form of sexual activity that the adult does not want and to which they have not consented, or to which they cannot give informed consent.

Sexual abuse includes; rape; buggery; incest; and situations where the perpetrator touches the person's body, for example, breasts, buttocks, genital area, exposes his/her genitals encouraging the person to touch them, coerces the person into participating in or watching pornographic photographs or videos.

Any sexual relationship that develops between adults where one is in a position of trust, power or authority in relation to the other, for example, a day centre worker/social worker/residential worker/health worker, will be regarded as sexual abuse.

Indicators of sexual abuse

The following may be indicators of sexual abuse:

- Person discloses, either fully or partially, that sexual abuse is occurring or has occurred in the past
- Person has urinary tract infections, vaginal infections or sexually transmitted diseases that are not otherwise explained
- Person appears unusually subdued, withdrawn, or has poor concentration
- Person exhibits significant change in sexual behaviour or outlook
- Person experiences pain, itching or bleeding in the genital/anal area
- Person's underclothing is torn, stained or bloody
- A woman who lacks the mental capacity to consent to sexual intercourse becomes pregnant
- A person found having sexual activity with a person who does not have the capacity to consent to it

(This list is not exhaustive)

Definition of Financial Abuse

Financial abuse is the exploitation, inappropriate use or misappropriation of a person's financial resources, property, pension, allowances or insurance. This includes withholding money or the improper use of a person's money or property or denying the rights of an adult who may be competent to handle their own financial affairs.

Indicators of Financial Abuse

The following may be indicators of financial abuse:

- Lack of money, especially after benefit day
- Inadequately explained withdrawals from accounts
- Inadequately explained inability to pay bills
- Disparity between assets/income and the living conditions
- Lasting Power of Attorney or Trusteeship obtained when the person lacks the necessary capacity to make this decision
- Recent changes to deeds/title of house
- Recent acquaintances expressing a sudden or disproportionate interest in the person and their money
- Reluctance to pay for necessary food, clothes or items
- Staff accepting gifts (other than token gifts), bequests or benefiting from Wills

(This list is not exhaustive)

In addition there are certain factors which may increase the risk of a person being financially abused:

- Person has guaranteed high benefit income
- Person is unable to administer their own money due to lack of capacity/numeracy skills
- Person has several workers/carers managing his or her money and accessing his/her PIN numbers
- Carers becoming financially dependent on a person
- Person who is isolated or lonely being exposed to financial pressure, for instance from loan firms
- Person known as being isolated or is regarded as vulnerable within the community
- Person has no real independent advocate

Definition of Neglect

Neglect is ignoring or withholding physical or medical care needs and includes a failure to provide appropriate food, shelter, heating, clothing, medical care, hygiene, personal care, inappropriate use of medication and over medication.

Neglect also includes a failure to intervene in situations that are dangerous to the person when the person lacks the mental capacity to assess risk.

Indicators of Neglect

The following may be indicators of neglect:

- Person has inadequate heating and/or lighting
- Person's physical condition/appearance is poor, for example, ulcers, pressure ulcers, soiled or wet clothing
- Person is malnourished, has a sudden or continuous weight loss, and is dehydrated
- Person cannot access appropriate medication or medical care
- Person is not afforded appropriate privacy or dignity
- Person and/or their carer has an inconsistent or reluctant contact with health and social services
- Callers/visitors are not allowed access to the person
- Person is exposed to unacceptable risk
- Neglect of accommodation

(This list is not exhaustive)

Definition of Psychological or Emotional Abuse

Psychological abuse may be intentional or unintentional. It may involve the use of intimidation, indifference, hostility, rejection, threats, humiliation, shouting, swearing or the use of discriminatory and/or oppressive language, which results in:

- The adult's choices, opinions and wishes being neglected
- The adult becoming isolated or over-dependent
- Racial or religious harassment

Psychological abuse includes the denial of a person's human and civil rights including choice and opinion, privacy and dignity and being able to follow one's own spiritual and cultural beliefs or sexual orientation.

It includes preventing the adult from using services that would otherwise support them and enhance their lives. It includes the intentional or unintentional withholding of information, for example information not being available in different formats/languages. It includes the lack of access to dress, diet, language or specific religious observations relating to the adult's background or culture.

Indicators of Psychological or Emotional Abuse

The following may be indicators of psychological or emotional abuse:

- Untypical ambivalence, deference, resignation, becoming passive
- Person appears anxious or withdrawn, especially in the presence of the alleged perpetrator
- Person exhibits low self-esteem
- Person rejects their own cultural background and/or racial origin
- Untypical changes in behaviour, for example, continence problems, sleep disturbance, depression or fear
- Person is not allowed visitors or phone calls
- Person is locked in a room/in their home
- Person is denied access to aids or equipment, for example, glasses, hearing aid, walking aids
- Person's access to personal hygiene and toilet is restricted
- Person's freedom of movement is restricted by use of furniture or other equipment
- Person is exposed to inappropriate stimuli
- Person feels isolated

(This list is not exhaustive)

Every other category of abuse will almost inevitably involve elements of psychological abuse. Signs of psychological abuse may be indicative of other forms of abuse taking place.

Discriminatory Abuse

‘No Secrets’ suggests that the category of discriminatory abuse should also be considered. This abuse is motivated by discriminatory and oppressive attitudes towards:

- Race
- Gender
- Cultural background
- Religion
- Physical and/or sensory impairment
- Sexual orientation
- Age

Discriminatory abuse can manifest itself as:

- Physical abuse/assault
- Sexual abuse/assault
- Financial abuse/theft
- Neglect
- Psychological abuse/harassment

Definition of Organisational or Institutional Abuse

Organisational or Institutional Abuse includes any word, action or care regime which negatively affects the dignity and respect to which every person is entitled. It occurs when the individual’s wishes and needs are sacrificed for the smooth running of a home or service setting. This may include instances where people’s rights are denied to ensure perceived safety.

Indicators of Organisational or Institutional Abuse

Typical examples include:

- Service users awakened too early in the morning
- Lack of flexibility and choice in times of going to bed
- Lack of opportunity for independently accessing drinks and snacks
- Lack of choice about meals or mealtimes
- Poor handling of complaints
- Staff who expect service users to be routinely compliant

- Punitive methods adopted by staff against service users
- Poor standards of cleanliness in the home
- Lack of knowledge or confusion on the part of staff about care plans and other policies and guidelines
- Breakdown of communication between managers and staff teams
- Staff working hours and shifts to suit themselves rather than the needs of the service users
- Lack of positive communication with service users

Situations of Increased Risk

Most recent research indicates that the profile and circumstances of the alleged abuser are more significant than the profile or degree of dependence of the adult at risk of abuse. This is likely to be the same in domestic and other settings. The following factors can make abuse more likely to occur.

If carers:

- Abuse alcohol or drugs or have a higher alcohol intake than usual
- Have stopped work or have moved in with the vulnerable adult
- Have a history of mental/emotional distress
- Have a history of abuse (as a victim or perpetrator)
- Are under additional stresses such as illness, financial or marital problems
- Feel very lonely or isolated or have suffered a recent loss or bereavement
- Habitually lose their temper, or have previously admitted to, or been seen to roughly handle the adult at risk of abuse
- Are dependent financially on the person for whom they are caring
- Are dependent for accommodation on the person for whom they are caring
- Have felt they cannot cope or continue to care for the adult at risk of abuse
- Perceive the person they are caring for as being deliberately awkward
- Have a diminished communication with the person they are caring for, either through choice or through incapacity

- Are young or lack maturity and/or feel that the person they are caring for has failed to fulfil the carer's own needs for care in former years
- Do not visit the person they are caring for in hospital and/or show signs of aggression or defensiveness towards staff and are reluctant to take part in discharge planning
- Exhibit symptoms of mental or physical illness or make frequent requests for visits by the GP

The following factors in the adult being cared for **may** lead to an increased risk:

- Has recently increased dependency because of behavioural difficulties such as restless wandering, confusion and incontinence, especially faecal
- Has hit out at the carer
- Disturbs the carer at night
- Lacks purposeful activity
- Exhibits odd or embarrassing behaviours, including sexual problems
- Is not helpful or co-operative, is rejecting or ungrateful and will accept care only from a particular person
- Has difficulty in communication; for example through a visual or hearing impairment, loss of or difficulty with speech and understanding or difficulties with memory and concentration

Cultural Awareness and Safeguarding Adults

When delivering services to people from minority ethnic communities, it is important to acknowledge that the failure to recognise their cultural, religious and ethnic diversity should be interpreted as a form of abuse, since it denies the individual their own personal identity. It is also important to be aware of the institutional racism and discrimination that people from minority ethnic communities may have experienced and to work proactively to meet the individual's needs. People who are marginalised from society are discriminated against.

In supporting adults at risk of abuse who are from minority ethnic groups, it is essential that staff recognise the wider context within which the individual may be experiencing the abusive situation. Issues may include:

- Ignorance among professionals about the individual's cultural needs and norms
- Poor access to social services, health and leisure activities resulting in the individual's wider care needs not being appropriately met
- Poor housing and economic conditions placing pressure on the individual and their extended family
- Inter-generational tension within the family, with a clash of values leading to potentially difficult relationships that may become abusive
- Inappropriate stereotyping by the dominant culture that results in a lack of appropriate support when situations do arise

There is now a greater acceptance that abuse exists within minority ethnic groups and that it can be categorised in the same way as for the indigenous population. However, racism and discrimination at the institutional, personal or societal level can make identification and disclosure, referral and response difficult for the abused person, their family carers and social networks. Relevant issues here are:

- Previous experience of racism or discrimination
- Reluctance to approach public authorities about any issue, due to refugee status or self-identification as an "exile"
- Anxiety about having to deal with officials in English, which may not be their first or preferred language
- Language difficulties and lack of familiarity with local customs can result in a heavy reliance on family members to act as intermediaries in everyday life. Disclosure about a family member may therefore be all the more difficult for that individual. Good practice would promote the use of an independent interpreter or translator. Care should be taken to ensure that any interpreter used is aware of the importance of confidentiality both within the client relationship and between the client and their community
- The intricate and complex nature of extended family relationships and the need for the adult at risk of abuse to have an opportunity to talk in private

Dignity in Care

In 2007, the Department of Health initiated a campaign 'to put dignity at the heart of care services', whether care is given in a person's own home or another care setting. North Somerset's health and social care agencies are responding actively to ensure they meet the "Dignity

Challenge”, the principles of which must underpin the Safeguarding Adults Policy and Procedures.

The Dignity Challenge states that high quality services that respect people’s dignity should:

- Have a zero tolerance of all forms of abuse
- Support people with the same respect you would want for yourself or a member of your family
- Treat each person as an individual by offering a personalised service
- Enable people to maintain the maximum possible level of independence, choice and control
- Listen and support people to express their needs and wants
- Respect people’s right to privacy
- Ensure people feel able to complain without fear of retribution
- Engage with family members and carers as care partners
- Assist people to maintain confidence and a positive self-esteem
- Act to alleviate people’s loneliness and isolation

5. What to do when abuse is disclosed or suspected

General Principles

Any person from any service working with adults at risk of abuse must be aware of the potential for abuse to take place. Anyone who has a suspicion or concern that abuse may have taken place or might take place if no preventative measures are taken must raise the alert. It is essential that any allegation of abuse is taken seriously, however insignificant it may seem.

Everyone reading this document must regard himself or herself as an alerter. Alerting or raising a concern about abuse means:

- Recognising signs of abuse or on-going bad practice
- Responding to a disclosure
- Reporting a concern, allegation or disclosure

- Recording initial information
- Working strictly in accordance with anti-discriminatory practice

As an alerter, you are asked to take any possibility of abuse very seriously, log your concerns and report them to an appropriate person, for example your manager. You do not have to verify or prove that the information is true.

Alerting through the formal channels will enable a proper assessment or investigation to be carried forward. You must report any concerns, allegations or disclosures of abuse, no matter who the alleged perpetrator is. If you raise a concern about an organisation or an individual and you are acting in good faith, you will be supported whatever the outcome of the investigation.

In all cases of concern, allegation or disclosure of abuse, you **must** inform your manager as soon as possible. Failure to do so will be regarded as colluding with the abuse.

Reacting to Concern or Disclosure

If you are told about or witness abuse or potential abuse, you should:

- Decide if there is an **immediate** risk and if so, dial 999 for the police or ambulance as appropriate
- Consider if there is any other immediate protective action that should be taken
- Stay calm and try not to show shock
- Listen carefully
- Be sympathetic
- Tell the person that they did the right thing to tell you, you are treating the information seriously, it was not their fault and you will have to report the information to your manager
- Report to your manager as soon as possible
- Write down what the person said to you as soon as possible and any other things you noticed
- Expect to co-operate with an investigation at a later date

If you are told about or witness abuse or potential abuse, you should **not**:

- Question the person about the incident
- Ask the person who, what, why, where or when questions

- Promise to keep secrets
- Make promises you cannot keep
- Contact the alleged abuser or talk to them about the incident
- Make judgements
- Pass on the information to anyone who does not have a legitimate need to know
- Bathe the person
- Wash the person's clothes or bedding
- Touch or move anything in the room where the person has been abused

When in doubt, seek advice from your manager.

Preserving Evidence

It is important that any evidence is preserved carefully, in case it is needed for a criminal or other investigation. You should therefore:

- Ensure any written records are dated, signed and kept in a safe place
- In cases of physical or sexual assault, try to dissuade the person from washing, bathing or showering
- When abuse has involved oral sex, encourage the person not to drink until the police or a doctor has seen them
- Leave things as you find them – do not wash clothes or bedding or tidy up

How to raise an alert

A member of staff who becomes concerned about the possibility or risk of abuse of an adult should immediately discuss the situation with his or her manager.

All concerns about possible abuse should be notified as quickly as possible to Care Connect, the centralised point of access to North Somerset's social care services. Any person, including members of the public, may contact Care Connect, which is staffed in office hours.

Where a criminal act is suspected this should be reported to Avon and Somerset Police, Public Protection Unit. If the adult is at immediate risk then the emergency services should be called.

The telephone number for Care Connect is 01275 888 801.

The telephone number for the Public Protection Unit is 01934 638 291.

Out of office hours, contact should be made with the Emergency Duty Team. Any person may make this contact.

The telephone number for the Emergency Duty Team is 01454 615 165.

Remember, in an emergency situation, call 999 and ask for the Police or Ambulance service, as appropriate.

The Commission for Social Care Inspection may directly receive alert calls in relation to organisations for which they have regulatory responsibility, but in these circumstances the Commission will always liaise with the local Safeguarding Adults Manager.

On occasions, an alert about possible abuse may come in directly to an Adult Social Services and Housing team from a member of the public. In this situation, the caller should not be asked to call Care Connect but be allowed to give the information they wish to share. The team which is made aware of the alert should inform Care Connect as well as initiating the appropriate action. This will ensure that all referrals are carefully tracked and monitored.

Recording at the Alert Stage

Recording accurately at the Alert Stage is very important, so you should:

- Record all relevant information as soon as possible after the event, but definitely within 24 hours
- Make a note of the date, time and setting in which the allegation or disclosure was made
- Record a description of any physical signs or injuries, what you have been told and any questions you asked
- Record what was said in the person's own words, as far as possible
- Distinguish between fact, hearsay and opinion and indicate if you are quoting someone else
- If possible, note the person's full name, address, date of birth and GP

- If possible, note any factual information about the alleged perpetrator (e.g. name, date of birth, relationship with the adult at risk of abuse)
- Sign and date all written notes
- Remember that any records may be required by a court, as well as requested by those about whom they are written
- Keep any written notes in a safe place

The Alleged Perpetrator

Although anyone may be a perpetrator of abuse, most often the perpetrator is someone known to the adult at risk of abuse, such as a partner, relative, neighbour, care provider or another service user. Groups and organisations may also perpetrate abuse. An individual perpetrator might himself or herself be an adult at risk and could be a service user in his or her own right.

If the alleged perpetrator is a service user, then information about his/her involvement in a Safeguarding Adults Investigation, including the outcome of the investigation, should be included in his/her own records.

Allegations against Staff

Allegations about staff are of particular concern because other adults may be at risk. Where concerns are raised about an adult at risk of abuse due to malpractice or misconduct in the workplace, or due to the direct action of an employee, those concerns should usually be raised with the organisation concerned. However, if the alerter feels that the manager is implicated in the allegation or has previously taken no action when concern has been expressed, then the alerter should speak to another senior person in the organisation or to the Safeguarding Adults Manager.

‘Whistle blowing’

There may be circumstances where the alerter feels at risk of being victimised, dismissed or perceived as a troublemaker by their employer. The provisions of the Public Interest Act 1998 should protect the alerter in raising concerns outside the workplace, providing the disclosure is made in good faith. Each participating organisation should have its own ‘whistle-blowing’ or ‘reporting of malpractice’ policy, to encourage reporting of concerns and to protect alerters from the risk of victimisation.

6. Multi-agency issues in Safeguarding Adults

The difference between confidentiality and secrecy

Confidentiality must not be confused with secrecy. An example of secrecy would be to promise an adult at risk of abuse not to tell anyone about his or her disclosure. Another example would be for one agency to keep information about possible abuse within the organisation rather than sharing it with other organisations which might also have concerns or have information that would add to the whole picture. Confidentiality, on the other hand, means that information is shared in the best interests of the person concerned, to protect him or her from harm. Information is shared on a strictly “need to know” basis and wherever possible, informed consent to the sharing of the information is obtained from the adult at risk of abuse. If this is not possible and others may be at risk, then this requirement may sometimes be over-ridden. Assurances about absolute confidentiality should never be given, particularly when other adults may be at risk of abuse.

Sharing of Information

Sharing information is essential in protecting adults from harm and in many situations protocols are in place which covers the sharing of information between agencies. Although the Data Protection Act 1998 gives individuals the right of access to information held about them and protects them from the unnecessary sharing of identifiable information, it does not preclude the sharing of information to provide an effective service and to protect a person from abuse. The Caldicott Committee Report 1997 discusses in what circumstances it is appropriate to share confidential information and what safeguards need to be observed.

Recording

Good record keeping is essential for all agencies to ensure that information is recorded in a retrievable and useful way and this is crucial for safeguarding adults. Staff of all participating agencies are expected to keep full and accurate written records, made as soon as possible after the event they record. All records are legal documents and are admissible in civil, criminal and coroner’s courts. They may also be requested by those about whom they are written. Within each agency, the recording should be available on the person’s case record or file.

It is essential to demonstrate how an assessment of risk, responsibility, rights, autonomy and protection was undertaken. All records should be signed and dated and include the following:

- Factual information, for instance times, dates and names of people attending a meeting
- All contact, whether face to face, by telephone, e-mail or letter, with the adult concerned, carers, and alleged abuser
- All contact with other agencies
- All decisions made, actions taken and the responsibility for carrying out decisions
- Any differences of opinion in relation to possible harm/abuse
- A chronology of actions taken

Guidance on recording each stage in the Safeguarding Adults process is included in Part 2 of this document, 'Safeguarding Adults Procedures'. Each participating agency will include guidance on recording in the Staff Guidance document that they produce for their own staff.

Roles and Responsibilities of Agencies and Organisations

North Somerset Adult Social Services and Housing has the lead responsibility to co-ordinate multi-agency work to protect adults at risk of abuse, under the provision of the 'No Secrets' statutory guidance issued by the Department of Health.

The Police have the lead responsibility for carrying out an investigation of a crime and many alleged instances of abuse may be criminal acts. The Police must always be consulted about any incident of Safeguarding Adults that may involve a crime having been committed.

The Commission for Social Care Inspection (CSCI) must be informed of any issues of abuse highlighted in organisations for which they have regulatory responsibility, for instance homes providing nursing and/or social care, nursing agencies and domiciliary care providers. Staff from the Commission may attend Strategy Meetings but will only investigate under their regulatory remit once it has been decided that there will be no Police or Social Services investigation. The basis and boundaries of the CSCI role within Safeguarding Adults is set out in the CSCI Safeguarding Adults Protocol and Guidance (2007).

All Agencies providing care for adults who may be at risk of abuse must:

- Have and publicise a policy of zero tolerance of abuse within the organisation
- Be conversant with the national 'No Secrets' guidance on safeguarding adults
- Operate under North Somerset's Safeguarding Adults Policy and Procedures
- Prepare their own Staff Guidance document on Safeguarding Adults which is consistent with the multi-agency policy and procedures
- Have safe recruitment practices
- Ensure that their staff have sufficient training to be aware of adult abuse and to know what to do if they have concerns or receive a disclosure

Roles and Responsibilities of Individuals in Safeguarding Adults

'No Secrets in North Somerset' has a very wide scope. It expects that all individuals who work on a paid or unpaid basis in all organisations will work together to prevent adults being abused and to act appropriately when abuse is suspected. It is only by being clear about their roles and duties under the procedures that this can be achieved.

Front line workers and operational staff should:

- Be alert to the possibility of abuse
- Respond to suspicions and allegations
- Use the Safeguarding Adults Policy, Procedures and Staff Guidance to help them understand the process for alerting to and investigating abuse
- Take advantage of opportunities for training in relation to this policy and any other related issues

Commissioners, regulators or inspectors of services should:

- Ensure that all contracts are compliant with the 'No Secrets' Policy
- Make the links between the different policy initiatives and legislation to protect adults at risk of abuse
- Note that the national Minimum Standard for each service seeks the outcome that the service user is protected from abuse

Supervisors and Managers should:

- Take responsibility for ensuring that any allegations or suspicions of abuse are responded to within the guidelines
- Ensure that appropriate agencies are involved in any investigation
- Ensure that staff are well supported in using the guidelines
- Establish clear lines of communication between themselves and other managers or lead officers, to ensure a quick and effective response when necessary

Senior Managers should:

- Identify what needs to be done to implement 'No Secrets' in their organisation, department or section
- Monitor the progress of the implementation of "No Secrets" in their area of responsibility and be prepared to contribute views for the annual report of the Safeguarding Adults Board
- Support the work of all staff and colleagues working in this area

Chief Officers and Chief Executives should:

- Commit to raising the profile of Safeguarding Adults work
- Support the policy and guidelines in their organisations
- Conduct investigations in individual cases where appropriate
- Ensure they are adequately briefed to respond to national policy proposals in the light of "No Secrets"

Local Authority Members should:

- Be aware of the strategic issues as well as the issues for individuals or that arise from cases of institutional abuse
- Note the inclusion of performance indicators relating to adults at risk of abuse in relevant reports

Members of the Safeguarding Adults Board should:

- Undertake audits to monitor and evaluate the way in which 'No Secrets in North Somerset' is working
- Ensure that all agencies are working together to this end
- Evaluate to what extent the operational guidance remains relevant and which factors need amending
- Audit the Safeguarding Adults training available to staff in all agencies

- Actively participate in improving and enhancing the safeguarding adults work in North Somerset

Managers of provided services, whether nursing, residential, day care, sheltered or supported housing, or specific services relating to abuse, such as advice and help lines, information and counselling, should:

- Ensure that the working practices in their organisations come within the guidelines of 'No Secrets in North Somerset' and that their service has its own policy on Safeguarding Adults which links to the Multi-agency Policy and Procedures
- Clarify how the role of their services fits in with that of statutory agencies
- Ensure that all staff are suitable to work with adults at risk of abuse
- Be aware of the professional regulations relating to staff
- Ensure that all staff have the appropriate level of a Criminal Record Bureau/Protection of Vulnerable Adults disclosure certificates for the role they undertake
- Sign up to the Policy and Procedures contained in 'No Secrets in North Somerset'

Staff in Children's Services who are monitoring a child at risk of abuse who is in the transitional period between childhood and adulthood (17–18), should make a referral to Adult Social Services and Housing for a Community Care Assessment, with an alert raised about the need to also initiate the Safeguarding Adults process. The age of the transition period is different for 'looked after' children (21) but the principle is the same.

Serious Case Reviews

'Safeguarding Adults' (Association of Directors of Social Services 2005) recommended that a multi-agency Serious Case Review protocol (Appendix C), be agreed and used by all partner agencies. In 2007, the North Somerset Safeguarding Adults Board approved a protocol for this process. A Serious Case Review is held in circumstances such as the following:

- A vulnerable adult dies (including death by suicide) and abuse or neglect is considered to be a factor in their death

- A vulnerable adult sustains a life-threatening injury through abuse or neglect, or sustains serious and permanent impairment of health or development through abuse or neglect
- Serious abuse takes place in an institution or multiple abusers are involved
- Serious systemic financial abuse

The purpose of a Serious Case Review is:

- To establish whether there are lessons to be learnt about the way in which local professionals and agencies work together to safeguard adults at risk of abuse
- To review the effectiveness of multi-agency procedures and those of individual organisations
- To inform and improve local inter-agency practice
- To improve practice by acting on the lessons learnt from the various findings and make recommendations for future action

The Safeguarding Adults Board has the lead responsibility for conducting a Serious Case Review.

Training

‘Safeguarding Adults’ (Association of Directors of Social Services) recommends that the Safeguarding Adults Partnership oversees multi-agency workforce development and training. The Partnership should ensure that there is a training strategy and that it is appropriately resourced.

In North Somerset, North Somerset Council currently leads the provision of multi-agency workforce development and training for Safeguarding Adults. This training is focused at the various levels of need for training required by staff who undertake different roles in the Safeguarding Adults process.

In 2007, a new Safeguarding Adults Training Pathway was produced, which covers the following levels required:

Role	Training needed
Alerters	Raising Awareness of Safeguarding Adults
Alerters' Line Managers	Managing Adult Abuse
Social Services Investigator	Managing Adult Abuse Social Services Investigator course Safeguarding Adults Workshops (when experienced)
Social Services Investigator's Line Manager	Managing Abuse Investigations

Note: Refresher training is expected every three years by attending the course relevant to the role specified above

7. Capacity, Consent and Advocacy

The Mental Capacity Act 2005 provides a statutory framework to empower and protect vulnerable people who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they should go about this. For further details, please see Appendix A, 'The Legal Framework'.

It must be assumed that a person can make their own decisions unless it is proved they are unable to do so. That is, there is a presumption of capacity.

A person lacks capacity in relation to a specific matter if, at the material time, he/she is unable to make a decision for him/herself in relation to the matter because of an impairment of, or a disturbance in the functioning of the mind or brain. (Mental Capacity Act 2005). A person is unable to make a decision for him/herself if he/she is unable:

- To understand the information relevant to make the decision
- To retain the information
- To use or weigh that information as part of the process or making the decision, or

- To communicate his decision (whether by talking, using sign language or any other means), (Mental Capacity Act 2005)

Issues of capacity and consent are central to safeguarding adults, both in deciding whether an act was abusive and in deciding to what extent the person can take decisions about how they want the incident dealt with. It is essential that during the investigation process, the abused person fully understands the nature of the concerns and the choices facing them. It should never be assumed that because the person lacks capacity in respect of one aspect of their lives that this equates directly to another situation.

An assessment in respect of capacity should:

- Relate to the timing and nature of a particular incident
- Be undertaken by a person with relevant expertise
- Consider whether the person is able to understand or retain the information relevant to the decision to be made
- Consider whether the person is able to make a decision based on that information
- Be fully recorded in accordance with North Somerset Practice Guidance

In order for consent to be meaningful and legal, there are two criteria that need to be satisfied:

- The person must have the capacity to consent
- The consent must be their own choice and must be given freely and not through coercion, intimidation or pressure from family or professionals

There may be a situation where an adult at risk of abuse has the knowledge and understanding to make a decision, but may be subject to undue pressure or fear. The person may need to be offered distance from the situation, in order to facilitate free decision making.

If it is established that a person does not have capacity, then all actions must be taken in their best interests. The person's best interest should never be decided by one individual or agency but rather in a multi-disciplinary setting. It must also be the least restrictive intervention possible. The Mental Capacity Act 2005 makes provision for an Independent Mental Capacity Advocate to support a person who lacks capacity but has no-one to speak for them. In the Safeguarding Adults context, an Independent Mental Capacity Advocate can also be used if the family or friends of the adult at risk are not willing or able to act

in his/her best interests or are allegedly abusing the adult. In addition, an Independent Mental Capacity Advocate might also be necessary if an alleged perpetrator of significant harm is vulnerable him or herself and risks being subject to life changes. The Advocate makes representations about the person's wishes, feelings, beliefs and values, at the same time as bringing to the attention of the decision-maker all factors that are relevant to the decision. The Advocate can challenge the decision-maker on behalf of the person lacking capacity if necessary. The Local Authority and the National Health Service have a duty to decide in which cases Independent Mental Capacity Advocates would most benefit their service users.

If it is decided that a person does have capacity and has taken an informed choice to live in a situation that puts them at risk, then the person him/herself, their community support and any other relevant agency or individual should be consulted, in order to ensure that the person is offered all possible choices. He or she may still choose to stay in the situation and live with that risk. In cases where people make this choice, it is still important to undertake a Risk Assessment and put in place a Safeguarding Plan.

8. New Developments relevant to Safeguarding Adults

The Vulnerable Groups Act 2006 provides a framework for the new Independent Safeguarding Authority Scheme. The major purpose of this is to prevent those deemed unsuitable to work with vulnerable groups gaining access to them through their work. The Act does not make any distinction between paid or unpaid work. Employers will retain their responsibilities for ensuring safe recruitment practices. The current proposal is that the Independent Safeguarding Authority Scheme will start to be rolled out in autumn 2008 and will be phased in over a period of five years.

The Deprivation of Liberty safeguards will be introduced in April 2009, as an amendment to the Mental Capacity Act 2005. The purpose of these safeguards is to protect people who lack mental capacity from being deprived of their liberty. The procedure and related Code of Practice will introduce a criteria, a procedure for assessment, and a decision-making forum, as well as guidance for reviewing any deprivation of liberty that is put in place.

In February 2008 the Government has begun work on a review of No Secrets (2000), and although this is in its very early stages, it is expected to have wide ranging implications for safeguarding adults.

Part Two

This is Part 2 of North Somerset’s multi-agency Policy and Procedures for Safeguarding Adults at Risk of Abuse. It describes in details the **Procedures** which must be followed in North Somerset when an alert is raised about the abuse or potential abuse of an adult. The agency with responsibility for leading the procedures is North Somerset Council’s Adult Social Services and Housing Directorate.

(NB It should be read in conjunction with Part 1 of the document, which describes the North Somerset Safeguarding Adults **Policy**. This includes relevant definitions, general information about abuse and specific information for any person raising an alert about the abuse or possibility of abuse of an adult.)

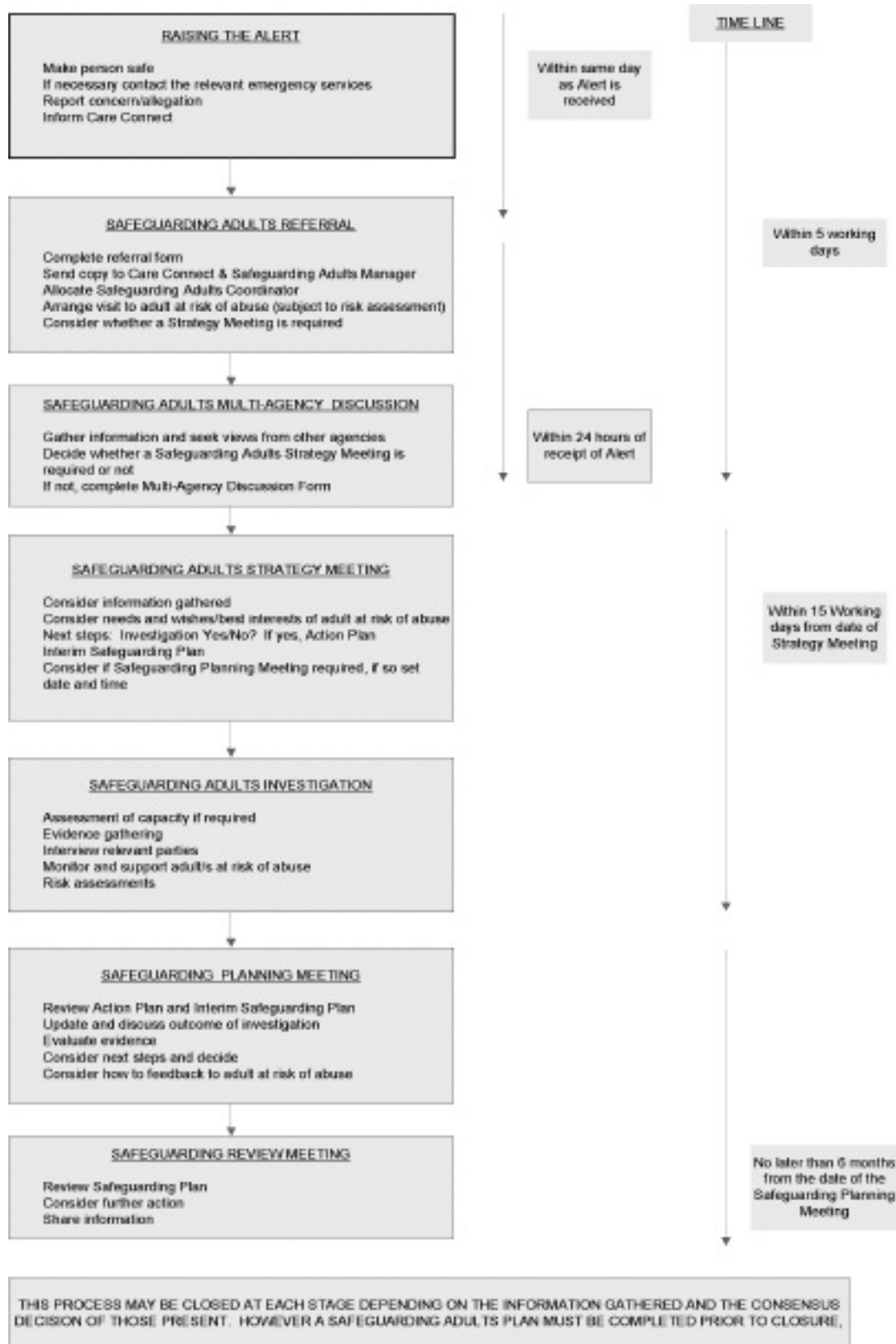
1. Safeguarding Adults Process

The following sections describe each part of the process which must be followed in North Somerset. Each section gives the name of the particular stage in the process, the purpose of that stage and the procedures which must be followed at that stage.

The flow-chart on the following page shows the entire process in diagrammatic form and gives the **maximum** timescales in which each stage should be carried out.

Staff involved in the Safeguarding Adults process should also consult the Safeguarding Adults Staff Guidance, which every participating agency has produced. These Staff Guidance documents are consistent with the multi-agency Safeguarding Adults Policy and Procedures. The documents give agency-specific instructions to clarify the agency’s expectations of its own staff, as they co-operate with the multi-agency process led by Adult Social Services.

Safeguarding adults – No secrets policy and procedures



2. Raising the Alert

Any person, regardless of whether they are a staff member or a member of the public, may raise an alert about the abuse or risk of abuse to an adult (“the Alert”). This may be because of something they have heard or seen themselves or because the abused adult has made a disclosure. Any **immediate** protection needs must be addressed at the Alert stage.

Purpose of this Stage

The purpose of the ‘Raising the Alert’ stage is to initiate a process which aims to safeguard the adult from existing or potential abuse.

Procedures at this Stage

A member of staff who becomes concerned about the possibility or risk of abuse of an adult should immediately discuss the situation with his or her manager.

All concerns about possible abuse should be notified as quickly as possible to Care Connect, the centralised point of access to North Somerset’s social care services. Any person, including members of the public, may contact Care Connect, which is staffed during office hours.

Where a criminal act is suspected this should be reported to Avon and Somerset Police, Public Protection Unit. If the adult is at immediate risk then the emergency services should be called.

The telephone number for Care Connect is **01275 888 801**

The telephone number for the Public Protection Unit is **01934 638 291**

Out of office hours, contact should be made with the Emergency Duty Team. Any person may make this contact.

The telephone number for the Emergency Duty Team is **01454 615 165**

Remember that in an emergency situation, call **999** and ask for the Police or Ambulance Service, as appropriate.

(There is further information on definitions of abuse and adults at risk of abuse in Part 1 of this document, as well as detailed information on recognising abuse.)

3. Safeguarding Adults Referral

Purpose of this Stage

The purpose of this stage is to start the process of placing into multi-agency context information on the concern about abuse or risk of abuse received at the Alert Stage.

Timescale for this Stage

The **maximum** timescale for this stage is within the same day as the alert is received.

Procedures to be followed at this Stage

The following actions need to happen:

- Care Connect passes basic details to the Team Manager of the relevant team
- The Team Manager must decide whether this Policy and Procedure is appropriate to address the concerns referred or identify alternative responses eg Does the person referred meet the definition of a vulnerable adult? Is the referral for self neglect? etc
- Where the Team Manager decides that the adult or the circumstances are not covered by this Policy, information should be given, or a referral made to an appropriate service. The Team Manager should record their decision and any actions taken within their organisation's recording policy, and a copy of this **must** be sent to the Safeguarding Adults Manager.
- If thresholds are met but the adult at risk of abuse refuses or objects to taking part in the process, this information should form part of the Strategy Meeting, and should not be used as a reason not to proceed.
- If it is the view of professionals that the best interests of an adult at risk of abuse are not being served by decisions made about their needs or situation by family or carers, and that this could result in significant harm, then Safeguarding Adults procedures should be invoked.
- If the Team Manager decides that the basic details do meet the criteria under this Policy then they must complete or arrange for the completion of the Safeguarding Adults Referral Form (SAR 1), (Appendix E).

- A copy of the SAR 1 is sent to Care Connect and the Safeguarding Adults Team for their records.
- The Team Manager decides whether or not to alert the Police at this stage, and if so, a copy of the SAR 1 is sent to the Police.
- The Team Manager allocates a Safeguarding Co-ordinator to the case. (In most cases this will be a social worker, but it could also be an OT, Health professional etc.) See below for the definition of the role of the Safeguarding Co-ordinator
- The Team Manager decides whether or not the Safeguarding Co-ordinator should visit the adult at risk of abuse, to ascertain his or her views or wishes. This should not happen if there are indications that this would put staff or the adult at risk of abuse at further risk.
- If agreed, the Safeguarding Co-ordinator will visit the adult at risk of abuse, to find out what they want to happen next and offer advice and on-going support. (NB Any detailed discussion of the abuse should be avoided, in order not to contaminate any potential evidence-gathering by the police).
- The Safeguarding Co-ordinator will inform the adult at risk of abuse what will happen next and reassure him or her that due regard will be given to their views and wishes.
- If the information available at this stage clearly indicates that significant harm has occurred, or will occur unless action is taken, then the Team Manager must proceed to arrange a Strategy Meeting immediately.

Role of the Safeguarding Adults Co-ordinator

The allocated Safeguarding Adults Co-ordinator is responsible for:

- Keeping the adult at risk of abuse and any other agreed parties informed of progress.
- Ensuring actions in the Action Plan following the Strategy Meeting are undertaken by the specified person.
- Carrying out any actions allocated to him/her as part of the Action Plan.
- Obtaining updates from other professionals involved.
- Liaising with other parties if necessary.
- Keeping the Team Manager informed.

4. Safeguarding Adults Multi-Agency Discussion

Purpose of this Stage

The purpose of this stage is to gain information from professionals in all other relevant agencies, in order to:

- Inform the decision on whether a Strategy Meeting is required to address the concern.
- Agree any immediate action needed to protect the adult at risk of abuse.
- Decide if the Police should be asked to initiate the investigation at this stage.

Multi-Agency Discussions may take place by telephone. Bearing in mind the Data Protection Act and the timescales involved, it is not appropriate to conduct these discussions via e-mail.

A Multi-Agency Discussion will usually take place when it is unclear whether significant harm has occurred or is likely to occur unless some action is taken. It allows an opportunity to gather more information and seek advice in order to assist the Team Manager in deciding how to proceed.

Timescale for this Stage

The timescale for the completion of the Safeguarding Adults Multi-Agency Discussion is within 24 hours of receipt of the Alert.

Procedures to be followed at this Stage

The following actions need to take place:

- Any immediate protective action necessary must be put into place.
- The Safeguarding Adults Co-ordinator should contact all relevant agencies to gather and share information.
- A decision is made by the Team Manager as to whether the Police need to begin an investigation immediately.
- If the information gathered suggests the need for further action under this Policy and Procedure, a Safeguarding Adults Strategy Meeting **must** be arranged.

- If the information gathered suggests no further action is needed, the Team Manager must summarise the discussion, state their decision and their reasons for it on the Safeguarding Adults Multi-Agency Discussion Form (Appendix F). This form must be signed and dated by the Team Manager, and forwarded to all parties involved in the decision and a copy sent to the Safeguarding Adults Manager.
- If the Multi-Agency Discussion reveals the possibility of significant harm but the adult at risk of abuse has mental capacity and refuses further direct intervention, a Strategy Meeting must still be called, in order to agree alternative approaches to safeguarding the adult.

5. Safeguarding Adults Strategy Meeting

Purpose of this Stage

The purpose of the Strategy Meeting is to bring together representatives of agencies with information on who will need to be involved in future safeguarding planning in order to:

- Pool all the information available to gain as complete a picture as possible of the adult at risk of abuse, the alleged perpetrator and the context in which the alleged abuse has taken place.
- Decide whether an investigation is necessary and, if so, plan which agency will lead the investigation and how it should proceed.
- Produce a Safeguarding Adults Action Plan naming the Safeguarding Adults Co-ordinator and outlining the next steps to be taken, by whom and in what timescales.
- If the matter proceeds to an investigation then a Safeguarding Adults Interim Safeguarding Plan must be completed detailing any necessary steps to safeguard the adult at risk of abuse during this period
- If the matter is closed at this stage then a Safeguarding Plan must be considered, and if necessary completed.
- Consider the legal context and any relevant legislation that will affect the process of the investigation.

- Consider what support is given to the adult at risk of abuse during the investigation and beyond. This may need to take into account organisations wider than those present at the meeting eg Victim Support, Counselling, etc

Timescale for this Stage

The Safeguarding Adults Strategy Meeting must take place within a **maximum** of five working days of the Alert being raised.

Chairing of the Safeguarding Adults Strategy Meeting

The Chair of the Strategy Meeting is normally the Team Manager of the Adult Social Services team which covers the relevant area. However, in certain circumstances, consideration should be given as to whether a Senior Manager or the North Somerset Council Safeguarding Adults Manager should take responsibility for chairing the meeting. Such circumstances might include systemic abuse in a care home, multiple adults at risk of being abused or where the issues are particularly complex. In these circumstances advice should be sought from the Safeguarding Adults Manager, North Somerset Council.

Procedures to be followed at this stage

The following actions should be taken **before** the Strategy Meeting:

- The designated Chair decides which professional workers will be invited to attend the Strategy Meeting. Attendees will include the Team Manager, the Safeguarding Co-ordinator, and any parties with relevant information and/or who can play a part in safeguarding the adult from further abuse. If a criminal investigation is underway or is likely to be required, the Police must attend.
- It is not appropriate for the adult at risk of abuse or their relatives to attend meetings at this stage. However, the wishes and views of the adult at risk of abuse must be represented and taken into account.
- The Chair informs the Safeguarding Adults Strategy Meeting Clerk of the invitees and the Clerk arranges the date, time and venue of the meeting. Wherever possible the Strategy Meeting Clerk will undertake this role, but there will be occasions when this may not be possible. On these occasions the Chair will need to make alternative arrangements.

The following actions should be taken **during** the Strategy Meeting:

- At the Strategy Meeting, the agenda will follow the approved format and the Minutes will be taken
- A decision must be made as to whether it is necessary to proceed to an Investigation
- If an Investigation is to take place, a decision must be made as to which agency will carry it out
- The Chair will need to consider the legal context and the powers available in relation to any investigation that will take place
- If the Investigation is to be led by Social Services, a decision will be made about who will carry it out (this does not necessarily have to be the allocated Safeguarding Co-ordinator) and how it will be conducted
- The Chair decides whether it is necessary to call a Safeguarding Planning Meeting to follow the Investigation. This will always be required if there is a Police investigation, employer disciplinary proceedings, or there are concerns about the extent to which the risk of significant harm to the adult at risk of abuse has been reduced.
- An Action Plan must be produced which details what actions will happen next, by whom and to what timescales.
- An Interim Safeguarding Plan for the adult at risk of abuse must be produced to cover the period of the investigation.
- If it is decided at the Strategy Meeting that there will not be an Investigation, (perhaps because the adult at risk has mental capacity and has declined direct intervention,) then the meeting should produce a Safeguarding Plan at this stage, to explore alternative ways of keeping the adult safe. (See Part 8 – Actions to be taken during the Safeguarding Adults Planning Meeting for further details on what this plan must contain.)

Note: If all the parties required to complete the Safeguarding Plan are not present at the meeting, it may be necessary to arrange a separate meeting as quickly as possible in order that it can be completed more fully.

If the Chair considers the matter can be closed at this stage they must refer to Section 10 of these procedures.

The following actions should be taken **after** the Strategy Meeting:

- The Safeguarding Co-ordinator has the responsibility for overseeing the work after the Strategy Meeting The Safeguarding

Adults Strategy Meeting Clerk will distribute the Action Plan within 72 hours of the Strategy Meeting having taken place and the draft Minutes within 5 days of the Strategy Meeting

- Participants at the Strategy Meeting will then have 5 days to notify the Strategy Meeting Clerk of any amendments to the Minutes, and the final version will be sent out the day after that
- The Safeguarding Co-ordinator should give some feedback to the original Alerter, without disclosing sensitive information, to confirm that the concern is being taken seriously and that action is being taken or not

6. The Safeguarding Adults Investigation

Purpose of this Stage

The purpose of the investigation is to:

- Safeguard the adult at risk of abuse from harm and provide them with support
- Establish and record the facts about the circumstances giving rise to the alert
- Establish evidence for formal proceedings (eg criminal, registration or disciplinary)
- Establish with the adult at risk of abuse their views about the situation and their wishes about what is to happen in the future, if this has not already been done
- Decide if protective or other action is needed for the adult or other adults at risk of abuse.
- Identify the sources and levels of risk
- Decide whether abuse has taken place or whether there is a serious potential for future abuse and record the reasons for those decisions
- Ensure that appropriate action is taken in respect of any perpetrator
- Identify any lessons to be learnt for the future, including recommending changes to existing practices or service delivery

Timescale for this Stage

The Investigation should be completed within a **maximum** of three weeks of the referral being made to the Safeguarding Adults process.

NB This can be subject to change due to the complexities of some investigations, and if this is the case the adult in need of safeguarding from abuse and other relevant parties must be kept informed.

Procedures to be followed at this stage

The procedures to be followed at the Investigation Stage will vary to some extent according to which agency is being asked to undertake the Investigation. If a crime is suspected, then the Police **must** be involved at an early stage, in order to avoid contaminating evidence.

The tasks likely to need undertaking in the course of the Investigation include the following:

- Carrying out a comprehensive assessment of the needs and situation of the adult in need of safeguarding from abuse
- Considering the communication needs of the adult in need of safeguarding from abuse and arranging any interpreting service necessary
- Assessing the mental capacity of the adult in need of safeguarding, in accordance with the provisions of the Mental Capacity Act 2005
- Arranging for the services of an Independent Mental Capacity Advocate, if appropriate
- Determining the need for medical intervention relating to the physical or mental state of the adult in need of safeguarding
- Interviewing the adult at risk of abuse about the alleged abuse
- Interviewing possible witnesses to any abuse
- Possibly interviewing the alleged perpetrator
- Deciding whether legal advice needs to be sought
- Gathering information to assist with the formation of the Safeguarding Plan at the Safeguarding Planning Meeting
- Keeping the Safeguarding Co-ordinator informed of progress and outcomes
- Considering the safety of the adult at risk of abuse throughout the investigative process

For further guidance on planning an investigation and interviewing adults at risk of abuse, please see your own organisation's Safeguarding Adults Staff Guidance document.

7. The Safeguarding Planning Meeting

Purpose of this Stage

The purpose of the Safeguarding Planning Meeting is, in a multi-agency context, to:

- Review the Action Plan made at the preceding Safeguarding Adults Strategy Meeting
- Update all parties on the outcomes of the Investigation, including the wishes and views of the adult at risk of abuse, state whether on a balance of probabilities abuse has been substantiated or not substantiated (See Section 9 for more detail)
- Consider any action necessary in respect of the alleged perpetrator (who may himself or herself be a service-user, carer, or adult at risk of abuse)
- Produce a Safeguarding Plan detailing the actions necessary to safeguard the adult at risk of abuse, who is responsible for carrying them out and by when
- To specify the arrangements for monitoring the implementation of the Safeguarding Plan

Timescale for this Stage

The Safeguarding Planning Meeting should take place within three weeks of the date of the Safeguarding Adults Strategy Meeting.

Procedures to be followed at the Stage

The following actions should be taken **before** the Safeguarding Planning Meeting:

- The Chair will need to consider if there are people to be invited in addition to those who attended the Strategy Meeting, for instance a social worker involved with the perpetrator
- Wherever possible, the adult at risk of abuse should attend the Safeguarding Planning Meeting and be included in developing the Safeguarding Plan. If this is not possible, the reason should be recorded at the meeting and their views represented in a format agreed with them beforehand
- Where an adult at risk of abuse does not have the mental capacity to be included, a person acting in their best interests should be nominated to take part in the Safeguarding Planning Meeting and Safeguarding Plan. Consideration should be given

to the involvement of an Independent Mental Capacity Advocate, should the criteria be met

- The date and venue should be fixed and the various parties invited as decided
- Representatives of organisations who attend the Safeguarding Planning Meeting must have the authority to agree to actions relating to their organisation. They must also understand that their presence as recorded on the Minutes signifies that they agreed to undertake the actions delegated to their organisation on the Safeguarding Plan

The following actions should be taken **during** the Safeguarding Planning Meeting:

- The Action Plan is reviewed
- The Investigator's report is considered, including the views and wishes of the adult at risk of abuse
- It is stated whether on a balance of probabilities abuse has been substantiated or not substantiated (See Section 9 for more detail)
- A Safeguarding Plan is drawn up in the approved format to offer on-going protection to the adult at risk of abuse. This Plan will delegate tasks to individuals/organisations
- A decision is made about any necessary action in respect of the alleged perpetrator
- The Chair will appoint a person to oversee and review the implementation of the Safeguarding Plan for the first six months and this will be recorded in the Safeguarding Plan
- A decision is made as to whether the Safeguarding Plan can be reviewed as part of the Care Management Process or whether a Safeguarding Adults Review Meeting needs to be arranged
- If the matter can be considered for closure the Chair must consider the process outlined in section 10 of this procedure

The following actions should be taken **after** the Safeguarding Planning Meeting:

- If the adult at risk of abuse was not at the meeting, then he or she must be given feedback about the outcome and the Safeguarding Plan, by the most appropriate person. Consideration must be given as to whether the person needs to be supported, and who the most appropriate person would be.

- Where the adult at risk of abuse does not have capacity to understand the information to be given, a person acting in their best interests should be identified and the information shared with them
- The Safeguarding Plan should be typed up and distributed appropriately. A copy should be given to the adult at risk of abuse, and a copy placed on their case-file. This should happen within five working days of the meeting
- The Safeguarding Plan must initially be reviewed within six months of its start date, and thereafter at no more than 12 monthly intervals

8. The Safeguarding Adults Review Meeting

Purpose of this Stage

The purpose of the Safeguarding Adults Review Meeting is to make sure the adult at risk of abuse continues to be safeguarded. It will be necessary to have a specific review like this, outside the Care Management Process, in cases of particular complexity, where investigations have not been completed earlier, or where risks have not been reduced to a satisfactory level.

Timescale for this Stage

The Safeguarding Adults Review Meeting should take place within a **maximum** of six months after the Safeguarding Planning Meeting.

Procedures to be followed at this Stage

The following actions should take place **before** the Review Meeting:

- Wherever possible, the adult at risk of abuse should attend the Safeguarding Review Meeting. If this is not possible, the reason should be recorded at the meeting and their views represented in a format agreed with them beforehand
- Where an adult at risk of abuse does not have the mental capacity to be included, a person acting in their best interests should be nominated to take part in the Safeguarding Review Meeting. Consideration should be given to the involvement of an Independent Mental Capacity Advocate, should the criteria be met

- Consideration should be given to which professionals need to be invited

The following actions should take place **during** the Review Meeting:

- Any outstanding actions should be reviewed
- Updated information should be shared
- The Safeguarding Plan must be reviewed
- Consideration should be given to any further steps which could be taken to reduce risk
- The Chair should decide if a further Review is necessary or whether the matter can now revert back to the normal Care Management process, for reviewing the Safeguarding Plan in the future
- If the Chair decides the matter can be closed they should refer to Section 10 of these Procedures

The following actions should take place **after** the Review Meeting:

- The amended Safeguarding Plan should be distributed appropriately
- If the adult in need of safeguarding from abuse was unable to attend the meeting the outcome of the meeting should be fed back to them by the most appropriate person
- If a further Review Meeting has been deemed necessary, it should be held within a six-month period

9. Closing the Safeguarding Investigation

Once the investigation has been completed, there should be clarity about whether, **on the balance of probabilities**, abuse has taken place. This will probably be discussed at the Strategy Meeting and/or the Safeguarding Planning Meeting, when a multi-agency decision regarding the closure will be agreed and documented on the paperwork.

Cases may be closed at any stage of the investigation with the agreement of the agencies involved. The decision should record the outcome and any interventions put in place in respect of both the victim and the perpetrator.

Prior to closing an investigation the Chair must have regard to the following:

- The reason for closure must be agreed and recorded on the paperwork. The table on the following page shows the possible outcomes, and these should be considered on the 'balance of probabilities':

Outcome	Meaning
Concerns not substantiated	<ul style="list-style-type: none"> ● The parties to the investigation agree that the evidence available is not sufficient to show that significant harm has taken place or is inconclusive.
Concerns not substantiated, but service user is judged to be at risk of significant harm	<ul style="list-style-type: none"> ● The parties to the investigation agree that the evidence available is not sufficient to show that significant harm has taken place or is inconclusive. However, there is evidence to suggest that the service user and/or others are at risk of significant harm. ● A Safeguarding Plan must be put in place with the aim of reducing the risk of significant harm to the adult in need of safeguarding i.e. those living in residential care.
Concerns substantiated, but service user is judged not to be at risk of significant harm.	<ul style="list-style-type: none"> ● The parties to the investigation agree that the evidence available is sufficient to show that abuse has taken place, but the person is no longer at risk of significant harm. ● In these circumstances the Team Manager will decide whether a Safeguarding Plan is required. ● If applicable the Safeguarding Plan must also reflect what action must take place to minimise the risk to other adults at risk of abuse i.e. those living in residential care.
Concerns substantiated, and service user is judged to be at risk of significant harm	<ul style="list-style-type: none"> ● A Safeguarding Plan must be put in place with the aim of reducing the risk of significant harm to the adult at risk of abuse i.e. those living in residential care.

- The case file must contain all the necessary information, minutes, forms and reports.
- A decision should be made on how the information is to be shared with the adult at risk of abuse. Consideration should be given to whether this could result in them being placed at further risk.
- All decisions should be recorded in writing with evidence to support decisions clearly documented.
- Agencies who are involved in the Safeguarding Plan must be aware of their responsibility to re-refer the adult at risk of abuse should circumstances change or the risks increase significantly to the adult.
- The reasons for closing the investigation must be recorded. This does not necessarily mean closing the case to care management.
- The adult at risk of abuse and their carer's (if appropriate) views of the process are recorded.
- If appropriate, information about organisations which assist victims of crime has been made available to the adult at risk of abuse and their carer eg Victim Support.
- Consideration must be given as to whether any staff involved in the case require additional support.
- Consideration is given as to whether the person who raised the original alert requires continued support.

Please note this list is not exhaustive and the Chair should consider any other aspects that are relevant to the case.

10. Recording and Monitoring Safeguarding Adults Data

Purpose of this stage

The purpose of Recording and Monitoring Safeguarding Adults referrals and outcomes is to ensure that the multi-agency process for protecting adults in North Somerset from abuse is working as effectively as possible.

Timing for this stage

The outcome of the investigation must be recorded by the Team Manager on the Safeguarding Adults Monitoring Form (Appendix G) and sent to the Safeguarding Adults Manager within 14 days of the closure of the investigation.

A copy of this form must be placed on the adult at risk of abuse's case-file and on the Social Services database.

Procedures to be followed at this stage

The following actions should be taken:

- All staff involved in Safeguarding Adults' procedures should follow the instructions in their own agency's Safeguarding Adults Staff Guidelines about recording for case-files and for computer data collection.
- As far as possible, alerts about suspected abuse should be made through the North Somerset Council's "Care Connect" service, which collects this data. In the event of an alert being received directly by a Social Services adult care team, it is the team's responsibility to ensure that the requisite information is fed back to Care Connect.
- The Safeguarding Adults Board has an ongoing responsibility for monitoring data received on referrals and outcomes and taking any action necessary to ensure the effectiveness of the multi-agency process.

Appendix A

The Legal Framework

1. Introduction

At present, the legal framework surrounding adult abuse is fragmented, but there are a variety of legal powers to intervene in a case of suspected abuse. This section is intended to provide an overview of the legal powers that may be available in the context of Safeguarding Adults work, but staff should always seek legal advice in pursuing remedies through the courts or when the matter is particularly complex.

2. Legislation underpinning services

National Assistance Act 1948

Section 21 (1): Local authorities have a duty to provide residential accommodation, including private and voluntary, for “people aged 18 or over who by reason of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them” and who are ordinarily resident in their area (but subject to the Asylum and Immigration exceptions). The duty is restricted to such persons who are either:

- a) ordinarily resident in the Social Services Authority’s area or.
- b) in urgent need of residential accommodation.

Section 29: To promote the welfare of people with disabilities “the local authority shall make arrangements for promoting the welfare of persons blind, deaf or dumb or who suffer from mental disorder of any description or who are substantially and permanently handicapped by illness, injury or congenital deformities or other disabilities”. NAA 1948 Section 29, places a duty on Social Services Authorities to maintain a register of people in their area, who may be entitled to its services. The purpose of such registers is to facilitate the obligation on Social Services Authorities to inform persons to whom Section 29 relates of the services available for them. The test, however, of whether a person qualifies for services under NAA 1948 Section 29 is independent of whether or not he/she is on a particular Authority’s register – i.e. registration is not a pre-requisite to obtaining assistance.

Under both these sections, Social Services Authorities have no power to make any arrangements unless and until the Secretary of State has issued a direction specifying the arrangements which may be made and those which must be made. The Secretary of State's most recent direction is found at Appendix 1 and 2 to LAC (93)10 and came into force on 1 April, 1993. The duty to provide Section 29 services applies only to persons who are ordinarily resident in the local authority's area, where a power exists to provide services for other persons. People who fall within this definition are entitled to services, not only NAA Section 29 but also under CSDPA 1970 Section 2.

Chronically Sick and Disabled Persons Act 1970

Section 2: Places a duty on the local authority to inform themselves of the number of persons whom section 29 of the National Assistance Act 1948 applies and of the need for making by the authority of arrangements under that section for such persons. Once a Social Services Authority has carried out an assessment of the needs of a disabled person and decided that the provision of services under CSDPA Section 2 is necessary in order to meet that person's needs, the Authority is under a specific duty to provide that service. The underlying purpose of Section 2 is to convert the vaguely worded, generally discretionary services under Section 29 into a set of specific services to which individual disabled people have an enforceable right.

Section 2 services are only available to persons who are ordinarily resident in the Local Authority's area. Ordinary residents has the same meaning as it does under NAA 1948 Section 24, although the statutory procedure for resolving inter-authority disputes is different.

Health Services and Public Health Act 1968

This Act places a duty on local authorities to promote the welfare of old people "in order to prevent or postpone personal or social deterioration or breakdown". Home meals and day care centres are examples of services provided under this section.

Section 45: This Section is drafted to the same pattern as NAA 1948 Section 29 in that it does not require the provision of any services but leaves to the Secretary of State power to specify in directions what services may and what services must be provided. The only directions that have been issued are contained in DHSS circular 19/71. The circular explains that the purpose of HSPHA 1968 Section 45 is to enable Authorities to make approved arrangements for the elderly who are not substantially and permanently disabled and thus to promote the welfare of the elderly generally and so far as possible to prevent or postpone personal deterioration or breakdown.

Housing Act 1996

Disabled, elderly or ill people may come within the scope of the Homelessness provisions of the Housing Act 1996, Part VII since it provides:

- a) A person is homeless for the purposes of the Act if he or she has no accommodation which it would be reasonable for him or her to occupy; and
- b) A person is considered in priority need if he or she is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or a person with whom such a person resides or might reasonably be expected to reside. Housing Authorities should bear in mind their duties under the Homelessness legislation to secure accommodation for applicant households who are unintentionally homeless and in priority need.

Homeless Emergency Accommodation

Section 177

Anyone regardless of status or tenure, who is experiencing domestic violence or who fears domestic violence, can apply for homelessness. This section specifically states that it is not reasonable to continue to occupy accommodation if it is probable that this will lead to domestic violence, or threats of violence, which are likely to be carried out, from an associated person. The term "associated person" includes relatives, present and former spouses/cohabiters/fiancées/civil partnerships, people who live or have lived in the same household and the parents of a child.

The Housing Act definition can also include employees, tenants, lodgers or boarders in the category of people provided they have lived in the same household.

National Health Services Acts 2006

Schedule 8: Most disabled people receive their domiciliary/ community based services from Social Services Authorities under CSDPA 1970 Section 2. These services, however, are only available to people who are "substantially and permanently handicapped" or who "suffer from a mental disorder of any description". Section 2 services are not therefore available to persons whose impairment is not permanent, notwithstanding that it may be substantial. Domiciliary and community based services for such persons are generally provided by Social Services pursuant to the duties under NHA 2006 Section 254 and SCAH 20 and NHS(W)A 2006 Section 192 and

SCH 15. Frequently the persons covered by these provisions are referred to as “ill people” i.e. people who have a substantial impairment as a result of an accident or severe illness but whose prognosis is that they will make a full recovery (and will not therefore be “permanently handicapped”). The Acts, however, also cover services for a wider client group including older people, expectant mothers, drug and alcohol mis-users and well as disabled people.

The NHS Acts 2006 attempt to demarcate the duties of the NHS and the Social Services Authorities. Sections 1–3 of these Acts spell out the general nature of the NHS obligation in relation to disease prevention, the care and after care of ill people. NHA 2006 Section 254 (NHS(W)A 2006 Section 192 then outlines the services which are the responsibility of the Social Services Authorities.

Disabled Persons (Services Consultation and Representation) Act 1986

Section 4 of the Act makes it clear that Local Authorities have a duty to decide whether the needs of a disabled person call for the provision of services under the Chronically Sick and Disabled Persons Act 1970 Section 2 if they are requested to do so by a disabled person (Section 4(a)) or by anyone who provides care for him or her (Section 4 (c)) in the circumstances mentioned in Section 8 of the 1986 Act i.e. someone who provides regular and substantial care for the disabled person.

Care Standards Act 2000

Part I

The regulation of care homes in England is governed by the CSA 2000. The Act is augmented by numerous regulations and national minimum standards. In April 2002, responsibility for registration and inspection of services provided by care homes became the responsibility of the National Care Standards Commission (NCSC) in England. Previously, registration and inspection had been a Local Authority responsibility (for independent residential care homes) and a Health Authority responsibility (for nursing homes). In addition, the new regulatory body assumed responsibility for the inspection and registration of Local Authority care homes and domiciliary care agencies. In April 2004, the functions of the NCSC were transferred to the Commission for Social Care Inspection (CSCI) as a result of the enactment of Health and Social Care (Community Health and Standards) Act 2003 Section 102.

Part II

This section deals with the registration of establishments.

Section 11: makes it an offence for any person to carry on or manage a domiciliary care agency without it being registered.

Section 12: deals with the procedure for applications for registration.

Section 13: deals with the procedure for the granting or refusal of a registration. This section places a duty on the registration authority to register an establishment if it is satisfied that the applicant has demonstrated that all the relevant requirements are being and will continue to be complied with. The onus of satisfying the registration authority that an application should be granted falls on the applicant.

Section 14: sets out the grounds upon which a registration authority may cancel a registration for an establishment.

Section 20: sets up an urgent procedure for cancellation of a registration, under which the registration authority may apply to a Justice of the Peace, for an order cancelling a registration if it appears that, unless the order is made, there will be a serious risk to a person's life, health or well-being. Although an application under this section may be made without notice if the Justice thinks fit, as an order made under this section involves the determination of the civil rights and obligations of the proprietor for the purposes of Article 6 of the European Convention on Human Rights, failure by the registration authority to take reasonable steps to inform either the proprietor or his or her legal representative of the pending hearing could violate the proprietor's Right to a Fair Hearing under that Article. Therefore, it is advisable for such hearings to take place giving notice of the hearing.

Section 24: makes it an offence for a person registered in respect of an establishment to fail, without reasonable excuse, to comply with any conditions of the registration.

Section 31: sets out the various powers to inspect by persons authorised by the registration authority. These include a power to enter and inspect premises and documentation, and interviewing the manager, staff or patients in private. Further, a general practitioner or registered nurse may examine a person with their consent if they have reasonable cause to believe that a patient or person accommodated or cared for there is not receiving proper care.

There is no power to interview a person who does not consent to be interviewed or a person who lacks the mental capacity to provide consent. However, a person who is incapable of giving consent may be examined by either a nurse or a doctor and his or her medical records examined if it is believed that the person is not receiving proper care.

The Care Homes Regulations 2001

The Care Homes Regulations 2001 were made under the Care Standards Act 2000 and are the principal regulation. Regulations 7 to 10 make provision about the fitness of the registered provider and manager carrying on and managing the home Regulations 12–13 provide that the Care Home is conducted so as to promote and make proper provision for the health and welfare of service users (including where appropriate their treatment, education and supervision).

Care Standards Act Protocols and Procedures

The National Minimum Standards (NMS) under the Care Standards Act 2000 have a number of standards that relate to the prevention of abuse. Standard 18 of the NMS for care homes for older people, for example, states: *The registered person ensures service users are safeguarded from physical, financial or material, physiological or sexual abuse, neglect, discriminatory abuse or self harm, inhuman or degrading treatment through deliberate intent, negligent or ignorance in accordance with written policies.* More detailed standards on the safeguarding of residents' money and financial affairs are also contained within Standard 18. Similar guidance for domiciliary care agencies is contained in Standard 14 with a separate Standard (13) for handling of service users' money, dealing with the payment of bills, collection of pensions, shopping, acceptance of gifts etc.

Part VII CSA 2000

Part VII places a duty on the Secretary of State to establish and operate a list of persons who are considered unsuitable to work with vulnerable adults (The Protection of Vulnerable Adults Scheme 2006 (POVA)). This Part requires providers of care services and registration authorities to refer individuals for inclusion on the list; provides for referrals to be made to the list as a result of the findings of certain inquiries; requires prospective employers to check that applicants for posts that involve working with vulnerable adults are not on the list; and provides individuals with the right of appeal against a decision to include them on the list. However, see Safeguarding Vulnerable Groups Act 2006 below.

Safeguarding Vulnerable Groups Act 2006

The Act introduces a new vetting and barring scheme for those who work with children and vulnerable adults in either a paid or volunteer capacity. The scheme will be phased in from Autumn 2008 and will replace the POVA and the POCA (the equivalent barring list for children) schemes. The scheme will cover health (including the NHS)

and Social Care services. Individuals will be placed on these lists (barred) either automatically (if they are convicted or cautioned for certain offences) or following a decision by the Independent Safeguarding Authority taking into account other offences or cautions or relevant information. The ISA Scheme will go live on 12 October, 2009. In relation to the Adults Barred List, appeal against inclusion is to the Care Standards Tribunal. The criteria for inclusion are (very broadly) (1) being cautioned for, or convicted of the most serious offences against vulnerable individuals; (2) engaging in behaviour which harms, attempts to harm, puts at risk or incites another to harm a vulnerable adult, involves inappropriate conduct involving violent pornography or is of an inappropriate sexual nature involving a vulnerable adult.

Public Health Act 1936

Sections 83–85: Gives the power to enter and clean premises.

National Health Service and Community Care Act 1990

Section 47: Provides a framework for all assessments of vulnerable adults, and it also provides for the multi-agency assessment of complex situations. The lead agency for the co-ordination of these assessments is the Social Services Department. The NHSCCA 1990 Section 47(1) duty is central to virtually all Social Services community care responsibilities. Section 47(1) obliges Social Services to carry out an assessment of an individual's needs for community care services, even where the individual has made no requests for an assessment. All that is required in order to trigger the assessment obligation is that:

- a) The individual's circumstances have come to the knowledge of the Authority;
- b) he or she may be in need of community care services.

Following an assessment, a decision then needs to be made to eligibility (i.e. which of the individuals presenting needs call for the provision of community care services). Each Local Authority must develop a policy to decide which of its population to whom the statutes applied could be eligible for assistance to ensure it makes consistent and sensible service provision decisions.

Section 48: Any person authorised by the Secretary of State may, at any reasonable time, enter and inspect premises in which community care services are or are proposed to be provided by the local authority. The service user/resident of the premises may be interviewed in private for the purposes of investigating a complaint.

Community Care Directions 2004

All carers have the right to have their views taken into account by Social Services when considering how best to make provision for those for whom they care. Community Care Directions 2004, Direction 2 requires that when undertaking a Community Care Assessment, Social Services must:

- Consider whether the person has any carers and if so, also consult them if the Authority thinks it appropriate; and
- Take all reasonable steps to reach agreement with the person and whether they think it appropriate, any carers of that person, on the community care services which they are considering providing to meet his or her needs.

Carers (Recognition and Services) Act 1995

While the views of all carers are relevant when Social Services or the NHS are making decisions about the needs of those for whom they care, certain carers (those who provide or intend to provide a substantial amount of care on a regular basis) are entitled to additional assistance from Social Services Departments. Under this Act a carer is entitled to request an assessment in their own right if they are providing a substantial amount of care on a regular basis. The person being cared for must have been assessed under Section 47 of the NHS and Community Care Act (1990), The Children Act (1989) or Section 2 of the Chronically Sick and Disabled Persons Act (1970). Ideally, the assessment of the carer should take place before the Local Authority makes its decision as to the needs of the subject of a Section 47 Assessment. The assessment of the ability of the carer shall be taken into account when deciding what the needs of the assessed individual may be. If an assessment of either an adult or a child is taking place and it appears to a Local Authority that a carer may be entitled to his own assessment, then the Local Authority must tell the carer that they are so entitled.

Carers and Disabled Children Act 2000

This Act applies to carers over 16 and made the following principal changes to the law:

- it gives local councils mandatory duties to support carers by providing services to carers directly
- it gives carers the right to an assessment independent of the person they care for i.e. a free standing right to a carer's assessment even if the disabled person has refused an assessment

- it empowers local authorities to make direct payments to carers
- it enables councils to support flexibility in provision of short breaks through the short break voucher scheme

Disabled Persons (Services, Consultation and Representation) Act 1986

Section 8(1) provides that where:

- a) A disabled person is living at home and receiving a substantial amount of care on a regular basis from another person (who is not a person employed to provide such care by anybody in the exercise of its functions under any enactment), and:
- b) It falls to a Local Authority to decide whether the disabled person's needs call for the provision by them of any services for him under any of the welfare enactments,

the Local Authority shall, in deciding that question, have regard to the ability of that person to continue to provide such care on a regular basis. Although the 1986 Act gives less substantial rights to carers than the C(RS)A 1995 and the CDCA 2000, it nevertheless remains of importance in certain situations, for example, the obligation it imposes (to have regard to the ability of such carers) exists in all cases and does not have to be triggered by a request from the carer.

The Carers (Equal Opportunities Act) 2004

The Act seeks to address social exclusion experienced by many carers. This Act made three main changes to the existing law around carers' services as follows:

- it places a duty on councils to inform carers, in certain circumstances, of their right to an assessment of their needs
- it provides that when assessing a carer's needs, councils must take into account whether the carer works or wishes to work, is undertaking or wishes to undertake education, training or leisure activities
- it facilitates co-operation between authorities in relation to the provision of services that are relevant to carers

Direct Payments and the Health and Social Care Act 2001

Previously, the Community Care (Direct Payments) Act 1996 enabled local authorities to make cash payments to adults aged 18 years and

over who are eligible for Community Care Services, so that they can manage their own care in lieu of receiving direct community care services organised by the Local Authority. However, the power to provide direct payments under the CC(DP)A 1996 and those deriving from the CDCA 2001 have now been superseded by the provisions of the Health and Social Care Act 2000 sub-section 57–58. The Department of Health has, since the enactment of the 2001 Reforms placed considerable pressure on Councils to increase the number of individuals receiving such support. Section 57 of the 2001 Act provides the Secretary of State in England with regulatory making powers to enable direct payments to a person for whom a Local Authority has decided to provide services as a result of an assessment under the NHSCCA 1990 Section 47 or CDCA 2000 Section 2. Section 58 amends the Children Act 1989 Section 17a and provides the Secretary of State in England with regulatory making powers to enable direct payments to be made when, as a result of an assessment under CA 1989 Section 17, the Authority has decided that services should be provided. In such a case the payment may be made either to the person with parental responsibility for a disabled child or to a disabled person with parental responsibility for a child or to a disabled child aged 16 or 17.

The 2001 Acts delegated powers have been used and regulations issued which provide that individuals can insist upon a direct payment in certain situations. The central criteria being;

- that the potential recipient appears to the Authority to be capable of managing the direct payment alone or with “such assistance as may be available to him”
- the person consents to the making of a direct payment;
- the person is entitled to services under the Community Care Legislation or the CDCA 2000 or (in the case of a parent of a child in need) the CA1989;
- the person is not a proscribed person (effectively someone who is subject to certain Court or Tribunal Orders);
- the Local Authority is satisfied that the person’s needs for the relevant service can be met by securing the provision of it by means of a direct payment (or in the case of a child in need, that his or her welfare will be safeguarded and promoted by securing the provision of it by means of the direct payment).

3. Mental Health

The Mental Health Act 1983 is a complex piece of legislation and the following 'guide' should be regarded as an index. Approved Social Workers (ASW's) in Community Mental Health Teams have detailed knowledge of this legislation and should be able to advise you if you feel any of these sections would be useful. Legal advice should always be sought if there is uncertainty or if the case is particularly complex. Approved Social Workers are the only practitioners with the power to make applications under this Act.

Mental Health Act 1983

Section 131 (1): This section provides that a patient can either enter hospital for treatment for mental disorder on an informal basis, or remain in hospital on an informal basis once the authority for his or her original detention has come to an end.

Section 2: Provides for the compulsory admission for assessment (or for assessment followed by medical treatment) for a period of up to 28 days on the grounds that he/she is suffering from a mental disorder and ought to be detained in the interests of his own health or safety or for the protection of others. Two registered medical practitioners need to provide written confirmation that the patient is suffering from a mental disorder which warrants the detention of the patient and the patient should be detained in the interests of his own health or safety or with a view to the protection of other persons. A specific diagnosis of the category of mental disorder from which the patient is suffering is not required. Generally, if 28 days has elapsed and the patient is to stay in hospital he must do so either as an informal patient or under Section 3 for treatment.

Section 3: Provides for the compulsory admission of a patient to hospital for treatment for his or her subsequent detention, which can last for an initial period of up to 6 months. The person must be suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment. The nature or degree must be such to make it appropriate for him to receive medical treatment in a hospital. In the case of psychopathic disorder or mental impairment, such treatment must be likely to alleviate or prevent a deterioration in the condition. It must be necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it can not be provided unless he is detained. The application must be supported by two registered medical practitioners.

Section 4: This section provides in a case of urgent necessity, for the compulsory admission of a person to hospital for assessment for a

period of 72 hours. Only one medical practitioner is required to make the recommendation but an appropriate second doctor should examine the patient as soon as possible after admission, to decide whether the patient should be detained under Section 2. The use of this section should be confined to cases of real emergency where the delay that would be caused by waiting for a second medical opinion, would be undesirable because of the patient's urgent need for medical treatment in a hospital.

Sections 7-11: The Mental Health Act 1987 provides for the making of a Guardianship Order in relation to mentally disordered people (age 16 or over) where 'it is necessary in the interests of the welfare of the patient or for the protection of other persons' that such an order be made. It follows that mental incapacity is not a necessary pre-requisite in the making of a Guardianship Order.

Guardianship is the name given to an Adult Protection Regime which enables the Guardian to require a person over the age of 16 to live by specific rules. The main powers of the Guardian are listed in Section 8 and cover the place where the person has to live (usually a residential care facility but not necessarily), their attendance at particular places for treatment or assessments, training or education, such as the GP surgery or the local hospital, and their non-obstruction of others whose attendance or services is thought to be good for their well-being, such as home care service providers, Doctors, care managers or social workers.

A Council can constitute itself the Guardian of someone (referred to as a patient) so long as it goes through a process laid down in statute but it can also be taken out by an ordinary person (private Guardianship – very rare). The process requires independent professional judgement as to whether statutory criteria are met by two Doctors and an approved social worker. The statutory criteria are found in Section 7 as elaborated on by Section 1 so far as the meaning of mental disorder is concerned. Mental disorder is currently defined (by MHA 1983 Section 1 as:

- Mental illness
- Psychopathic disorder
- Mental impairment
- Severe mental impairment

Mental impairment is defined as 'a state of arrested or incomplete development of mind which ... is associated with abnormally aggressive or seriously irresponsible conduct'. Therefore, where the person has a learning disability, guardianship is not available unless

the disability is associated with 'abnormally aggressive or seriously irresponsible conduct'. The typical scenarios in which circumstances arise where a Local Authority may intervene are likely to be where an elderly patient has a mental impairment caused by some form of dementia, which in turn may have compromised his ability to care for himself. This is sometimes coupled with concerns regarding vulnerability to financial and/or emotional abuse. Very frequently, the aim of the Local Authority will be to remove the patient from his own home and to place him in a setting such as a care home (of some description). However, the Act does not contain a specific power that enables a patient to be taken and conveyed under guardianship to a specified place from which he has not absconded. Guardianship should therefore not be used to take a non-compliant mentally capable person from his home into residential care.

However, the Mental Health Act 2007 will extend the ambit of guardianship to anyone who suffers from 'any disorder or disability of mind' and also (via Schedule 3, para 3(5)) 'broadens the power of the Guardian by introducing a new power to take place and convey a person to their required place of residence under Guardianship alongside the power which already exists to return a Guardianship patient who has absconded to their place of residence'.

Guardianship lasts for six months in the first instance and can be renewed for a further six months and then for periods of one year at a time.

Section 13 (4): Places a duty on Social Services to direct an Approved Social Worker to consider making an application for admission under the Act if requested to do so by the nearest relative. If the Local Social Services Authority considers that the person concerned is not 'a person suffering or appearing to be suffering from mental disorder', the provisions of this sub-section will not apply. The approved Social Worker must exercise his own judgement when considering whether to make an application.

Section 115: If an approved social worker has reasonable cause to believe that a mentally disordered person is not receiving proper care, this section allows the ASW entry and inspection of any premises (in the area of that authority) where the person is living. Entry by force is not permitted. Neither does it provide the ASW with authority to remove the patient.

Section 117: Provides for after care responsibility by the local authority, jointly with the health authority, for persons detained under Section 3; persons admitted to hospital in pursuance of a Court Order made under Section 37 (by order of a criminal court); and persons

transferred to hospital after sentencing by a Crown Court in accordance with a direction made under Section 45A or a transfer direction from prison to a hospital made under Section 47 or Section 48. The duty to provide after-care services under the MHA 1983 Section 117 crystallises when the person 'ceases to be detained'. Section 117 places no restriction upon the type of services that can be provided – all that is required is that the person concerned must need these services. 'After care' services under MHA 1983 Section 117 include all the traditional community care services such as advice, guidance and counselling; occupational, social, cultural or recreational activities as well as day centre and drop-in centre provision, domiciliary care as well as laundry and other such services, residential care, accommodation etc. Social Services Authorities are not empowered to charge for these services. The patient's individual needs should be set out in the Care Plan.

Section 127: Provides that it is an offence for any member of staff of a hospital or nursing or care home to wilfully neglect or ill-treat a mentally disordered inpatient or outpatient. Also, it is an offence for any individual to ill-treat or wilfully neglect a mentally disordered patient who is subject to Guardianship under this Act.

Section 129 (1): Any person who without reasonable cause –

- a) refuses to allow the inspection of any premises; or
- b) refuses to allow the visiting, interviewing or examination of any person by a person authorised in that behalf by or under the Act (or to give access to any person so authorised); or
- c) refuses to produce for the inspection of any person so authorised any document or record the production of which is duly required by him; or
- d) otherwise obstructs any person in the exercise of his functions,

shall be guilty of an offence.

Section 135: After presenting the case to a Magistrate that there is reasonable cause to suspect that a person is believed to be suffering from mental disorder, a warrant may be given which allows for a constable to enter and search any premises specified in the warrant and the removal of a person to safety for 72 hours. The constable should be accompanied by an ASW and by a registered medical practitioner. The entry to the premises may be by using force, if necessary. The person should be suffering from "neglect, ill-treatment or not kept under proper control or who is living alone and unable to care for themselves".

Section 136: This section gives the Police the power to remove to a place of safety a person appearing to suffer from a mental disorder and to be in immediate need of care and control in a public place, if he thinks it necessary to do so in the interests of that person or for the protection of others. This power is available whether or not the person has, or is suspected of having, committed a criminal offence. The person can be detained in a place of safety for up to 72 hours so that he or she can be examined by a doctor and interviewed by an ASW in order that suitable arrangements can be made for his or her treatment or care.

Mental Health (Patients in the Community) Act 1995

Section 25A: The 1995 Act introduced the possibility of 'after care under supervision', generally referred to as supervised discharge. Its purpose has been described in the code of practice in the following terms:

After care under supervision is an arrangement by which a patient who has been detained in hospital for treatment under the provisions of the Act may be subject to formal supervision after he or she is discharged. Its purpose is to ensure that the patient receives the after care services to be provided under Section 117 of the Act. It is available for patients suffering from any of the four forms of mental disorder in the Act, but is primarily intended for those with severe mental illness.

For such a supervised discharge to take place, it must be shown:

- a) that unless after care services under Section 117 are provided, there will be:
 - i) a substantial risk of serious harm to the health or safety of the patient or the safety of others; or
 - ii) a risk that the patient will be seriously exploited; and
- b) in any event that placing the patient under supervised discharge is likely to help ensure that he or she will receive the relevant after care services.

Guidance on the 1995 Act has been issued in the form of circular LAC (96) 8.

Mental Health Act 1983 Reform

The Mental Health Act 2007 will, when it comes into force, make important changes to the detention and treatment provisions of the MHA 1983 and the Mental Capacity Act 2005. The Act retains the obligation to provide services under Section 117 and the powers of

Guardianship (although these are amended). The impact will be wide ranging. Some provisions of the Act are already in force but the full Act is expected to come into force in the Autumn of 2008 and/or 2009. In addition, Mental Health Act 2007 Part 2 Chapter 2 will amend the Mental Capacity Act 2005 to authorise detention of people who lack capacity in certain situations. The effect of the amendment will be to create an alternative and complex detention procedure to that under the Mental Health Act 1983.

The Mental Capacity Act 2005

The Mental Capacity Act 2005 (MCA) is a complex piece of legislation and the following is a limited guide to some of the important parts of it. Guidance on the Act is provided in a statutory Code of Practice (see www.justice.gov.uk/guidance/mca-code-of-practice.htm).

Additionally, practitioners should make reference to the North Somerset Mental Capacity Staff Practice Guidance when addressing issues in relation to capacity. This contains guidance as well as the agreed paperwork for assessments.

The consideration of capacity is crucial at all stages of Safeguarding Adults procedures. For example determining the ability of a vulnerable adult to make lifestyle choices, such as choosing to remain in a situation where they risk abuse; determining whether a particular act or transaction is abusive or consensual; or determining how much a vulnerable adult can be involved in making decisions in a given situation.

The key development affecting this area of work is the implementation of the Mental Capacity Act 2005, which provides a statutory framework to empower and protect vulnerable people who may not be able to make their own decisions. It makes it clear who can take decisions, in which situations and how they should go about this. It enables people to plan ahead for a time when they may lose capacity. The Act came into force in October 2007. The whole Act is underpinned by a set of five key principles:

- **A presumption of capacity** – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;
- The right for individuals to be **supported to make their own decisions** – people must be given all appropriate help before anyone concludes that they cannot make their own decisions;
- That individuals must retain the right to make what might be seen as eccentric or **unwise decisions**;

- **Best interests** – anything done for or on behalf of people without capacity must be in their best interests; and
- **Least restrictive intervention** – anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms.

Mental Capacity Act 2005 Section 2 (1), Code of Practice 4.11–4.13

Section 2 states that a person lacks capacity in relation to a matter if at the material time s/he is unable to make a decision for himself or herself in relation to the matter because of an impairment of or a disturbance in the functioning of the mind or brain (Codes of Practice 4.3 and 4.4).

Mental Capacity Act 2005 Section 3, Code of Practice 4.49–4.54

Section 3 states that a person is unable to make a decision if s/he is unable:

- To understand the information relevant to the decision
- To retain the information
- To use or weigh that information as part of the process of making the decision
- To communicate his decision by any means.

Every assessment of capacity must be undertaken in accordance with the Act, the provisions of the Code of Practice and the North Somerset Mental Capacity Staff Practice Guidance. Anybody who claims that an individual lacks capacity should be able to show on the balance of probabilities that the individual lacks capacity to make a particular decision at the time it needs to be made. This means being able to show that it is more likely than not that the person lacks capacity to make the decision in question.

Where a decision needs to be made in respect of a person who lacks the requisite mental capacity, the law requires that the decision be based upon the concept of 'best interests'. The term 'best interests' is not actually defined in the Act. However, Section 4 of the Act explains how to work out the best interests of a person who lacks capacity to make a decision at the time it needs to be made. This section sets out a checklist of common factors that must always be considered by anyone who needs to decide what is in the best interests of a person who lacks capacity in any particular situation. The decision maker

must work through the factors when deciding what is in the best interests of the individual. The checklist is only the starting point: in any case, extra factors will need to be considered.

There are two levels to assessing capacity:

1. For acts of every day care or treatment, the care worker must have a 'reasonable belief' that the person lacks capacity to agree to the action or decision to be taken. They must have taken 'reasonable' steps to establish that the person lacks capacity to make a decision or consent to an act at the time the decision or consent is needed. They do not usually need to follow formal processes such as involving a professional to make an assessment.
2. When making a complex or major decision about a person who is believed to be lacking capacity, it is advisable for a more formal assessment to be carried out by a suitable professional e.g. psychiatrist, psychologist or social worker. It must be demonstrated on the balance of probabilities that the individual lacks capacity to make the particular decision.

The Act deals with two situations where a designated decision-maker can act on behalf of someone who lacks capacity:

- **Lasting Powers of Attorney (LPAs)**

The Act allows a person to appoint an attorney to act on their behalf if they should lose capacity in the future. This is similar to previously available Enduring Power of Attorney (EPA), but the Act also allows people to let an attorney make personal health and welfare decisions. Although no new Enduring Powers of Attorney can now be created since the LPA provisions came into force (in October 2007) this will not effect EPAs created before that date.

Financial LPAs can be used both before and after the donor loses capacity, according to the donor's wishes. However, personal welfare LPAs can only be used when the donor lacks capacity to make a particular welfare decision.

- **Court appointed deputies**

The Act provides for a system of court appointed deputies to replace the current system of receivership in the old Court of Protection. The new Court of Protection will include the power to make declarations, decisions and orders on financial and welfare matters affecting those who lack capacity and additionally be able to appoint a deputy to make substitute decisions about personal welfare matters as well as issues concerning the

property and affairs of the person lacking capacity. Section 20 sets a number of limitations on the powers of deputies. They cannot make decisions prohibiting a person from having contact with the adult lacking capacity or to direct a person for the healthcare of a person lacking capacity to allow a different person to take over the healthcare (such decisions must be made by the Court). Deputies will be able to take decisions on welfare, healthcare and financial matters as authorised by the Court but will not be able to refuse consent to life-sustaining treatment. They will only be appointed if the Court cannot make a one-off decision to resolve the issues.

The Act creates two new public bodies to support the statutory framework, both of which will be designed around the needs of those who lack capacity. These are:

- **A new Court of Protection**

The new Court has jurisdiction relating to the whole Act and will be the final arbiter for capacity matters. It has its own procedures and nominated judges. In particular, the Court of Protection has powers to:

- Decide whether a person has capacity to make a particular decision for themselves;
- Make declarations, decisions or orders on financial or welfare matters affecting people who lack capacity to make such decision;
- Appoint deputies to make decisions for people lacking capacity to make those decisions;
- Decide whether a lasting Power of Attorney or Enduring Power of Attorney is valid; and
- Remove deputies or attorneys who fail to carry out their duties.

- **The Office of the Public Guardian**

The Public Guardian and his/her staff are the registering authority for LPAs and registering Court Orders that appoint deputies. Deputies are accountable to the Court of Protection but the Office of Public Guardian is responsible for supervising and supporting deputies. They also work together with other agencies, such as the police and social services, to respond to any concerns raised about the way in which an attorney or deputy is operating. A Public Guardian Board scrutinises and reviews the way in which the Public Guardian discharges his/her functions. The Public Guardian may be requested to provide a report to the

Court of Protection.

The Act also includes further key provisions to protect vulnerable people. These are:

- **Advance decisions to refuse treatment**

Statutory rules with clear safeguards confirm that people aged 18 or over and have capacity to make the decision may make a decision in advance to refuse treatment if they should lose capacity in the future. It is made clear in the Act that an advance decision to refuse life sustaining treatment will have no application to any treatment, which a doctor considers necessary to sustain life, unless strict formalities have been complied with. These formalities are that the decision must be in writing, signed and witnessed. In addition, there must be an express statement that the decision applies even if life is at risk. Healthcare professionals must follow an advanced decision if it is valid and applies to the particular circumstances. If they do not they could face criminal prosecution or civil liability.

- **A criminal offence**

The Act introduces two new criminal offences: ill-treatment and wilful neglect of a person who lacks capacity to make a relevant decision (Section 44). The offences may apply to:

- Anyone caring for a person who lacks capacity – this includes family carers, healthcare and social care staff in hospital or care homes and those providing care in a person's home;
- An attorney appointed under an LPA or an EPA or a deputy appointed for that person by the Court.

These people may be guilty of an offence if they ill-treat or wilfully neglect the person they care for or represent. Penalties will range from a fine to a sentence of imprisonment of up to 5 years, or both.

Ill-treatment and neglect are separate offences. For a person to be found guilty of ill-treatment, they must either:

- Have deliberately ill-treated the person, or
- Be reckless in the way they were ill-treating the person or not.

It does not matter whether the behaviour was likely to cause, or actually caused, harm or damage to the victim's health.

The meaning of 'wilful neglect' varies depending on the circumstances, but it usually means that a person has deliberately failed to carry out an act they knew they had a duty to do.

- **Independent Mental Capacity Advocate (IMCA)**

The purpose of the Independent Mental Capacity Advocacy Service is to help particularly vulnerable people who lack the capacity to make important decisions about serious medical treatment and changes of accommodation, and who have no family or friends that it would be appropriate to consult about those decisions. If a person who lacks capacity has nobody to represent them or no-one who is appropriate to consult, an IMCA must be instructed in prescribed circumstances. The prescribed circumstances are:

- Providing, withholding or stopping serious medical treatment
- Moving a person into long term care into hospital or in a care home, or
- Moving a person into a different hospital or care home.

The only exception to this can be in situations where an urgent decision is needed.

The role of the Independent Mental Capacity Advocate (IMCA) is to work with and support people who lack capacity, and represent their views to those who are working out their best interests.

The Department of Health has extended the Act through Regulations to cover circumstances where a Safeguarding Adults allegation has been made. The Regulations specify that Local Authorities and the NHS have powers to instruct an IMCA if the following requirements are met:

- where safeguarding measures are being put in place in relation to the protection of vulnerable adults from abuse; and
- where the person lacks capacity.

In these circumstances the Local Authority or NHS body may instruct an IMCA to represent the person concerned, if it is satisfied that it would be of benefit for the person to do so.

In Safeguarding Adults cases access to IMCAs is not restricted to people who have no one else to support or represent them. People who lack capacity who have family and friends can still have an IMCA to support them through the safeguarding process.

The regulations equally apply to a person who may have been abused or neglected and a person who is alleged to be the perpetrator.

Where the qualifying criteria are met, it would be unlawful for the Local Authority or the NHS not to consider the exercise of their power to instruct an IMCA for Safeguarding Adults cases.

- **Restraint**

Section 5 permits the use of restraint if the person using it reasonably believes that it is necessary to prevent harm to the incapacitated person and if the restraint is proportionate to the likelihood and seriousness of harm. If restraint is necessary to prevent harm to the person who lacks capacity, it must be the minimum amount of force for the shortest time possible. But section 6(5) confirms that there is no protection under the Act for actions that result in someone being deprived of their liberty as defined by Article 5 (1) Human Rights Act 1998. Actions that amount to a deprivation of liberty will not be lawful unless formal authorisation is obtained, for example, if detained in hospital under the relevant provisions of the Mental Health Act 1983 or an order through the Court of Protection. The Mental Health Act 2007 (due to come into force in October 2008) introduces 'Bournewood' safeguards through amendments to the Mental Capacity Act 2005. New sections are inserted into the MCA which will make it lawful to deprive a person of their liberty if a standard or urgent authorisation is in force, or if it is in consequence of giving effect to an order of the Court of Protection on a personal welfare matter, in accordance with the provisions of the MCA.

Powers of Attorney Act 1971

One person (the donor) can, through a legal process, empower someone else (the attorney) to act on their behalf in relation to all their financial affairs. Unless any restrictions or conditions are placed on the Attorney this person will be able to do almost anything that the donor would have done, for example sign cheques, or withdraw money from saving accounts. The adult granting Power of Attorney must be mentally capable at the time and can appoint almost anyone who is over 18 years of age. The difficulty with ordinary Powers of Attorney is that the powers are automatically revoked by operation of law when the donor becomes mentally incapable and therefore an ordinary Power of Attorney lasts only so long as the person who grants it is mentally capable. In order for a Power of Attorney to be able to continue once a person has become incapable by reason of a mental disorder, it should be an Enduring Power of Attorney. An Enduring Power of Attorney remains in force (endures) despite the donor's mental incapacity, provided it is registered with the Court of Protection.

Although no new Enduring Powers of Attorney can now be created since the LPA provisions came into force (in October 2007), this will not effect EPAs created before that date.

4. General Neglect

National Assistance Act 1948 and National Assistance (Amendment) Act 1951

Environmental Health Departments have a power under National Assistance Act 1948 Section 47 to apply to a Magistrate's Court for an order removing chronically sick, disabled or elderly persons to more suitable accommodation. The application for removal requires that the vulnerable person or 'some person in charge of him' be given seven days notice of the intended application, unless the case is urgent, in which case an ex parte application is permitted to a single justice. The requirements for a removal order to be made are:

1. that the respondent is either suffering from grave, chronic disease, or being aged, infirm or physically incapacitated and is living in unsanitary conditions. Thus the 'unsanitary conditions' requirement does not apply to persons suffering from grave or chronic disease;
2. is unable to devote to himself and is not receiving from other persons 'proper care and attention'; and
3. the community physician has provided an appropriate certificate.

Where the Court is satisfied, it can order the removal of the person concerned to a suitable hospital or other place for a period of up to three months and the order can be renewed indefinitely.

5. Financial Protection

Mental Health Act 1983 / Court of Protection Rules 1994

Part VII: This part has been repealed by the Mental Capacity Act 2005 – please refer to that section.

Department of Social Security Benefits

Agency: The claimant nominates someone to collect their benefit. This is an understanding between a claimant and their agent.

Appointeeship: The Department for Work and Pensions (DWP) can appoint someone (an appointee) to claim and spend benefits on a person's behalf if that person:

- Gets social security benefits or pension
- Lacks the capacity to act for themselves
- Has not made a property and affairs LPA or an EPA and
- The Court has not appointed a property and affairs deputy.

The DWP checks that an appointee is trustworthy. It also investigates any allegations that an appointee is not acting appropriately or in the person's interests. It can remove an appointee who abuses their position. Concern about appointees should be raised with the relevant DWP Agency.

6. Criminal Law

Police and Criminal Evidence Act 1984

Section 17: Gives the Police the power to search and enter premises to save life or limb or prevent serious damage to property (Section 17(e)).

Section 24: A Police Officer may arrest without warrant anyone suspected of having committed an offence, anyone who is in the act of committing an offence or anyone whom he has reasonable grounds for suspecting to be about to commit an offence. One reason why it may be necessary to arrest a person is to 'protect a child or other vulnerable person from the person in question' (Section 24 (5)(d)).

Criminal Procedures and Investigation Act 1996

This Act was introduced to provide safeguards in relation to evidence gathered during the course of a criminal investigation. It sets out procedures to document such material whether it is eventually used in a trial or not, and introduces a code of conduct as to what material is disclosed to the defence. It highlights the importance of retaining all items that could later be used in evidence until the Police 'Disclosure Officer' has assessed their relevant evidential value and ensured all the rules relating to disclosure have been followed and complied with. If these procedures are not followed the accused may be acquitted because of a breach of the Act or Code, or could be wrongly convicted and subsequently appealed if the breaches came to light.

The Crime and Disorder Act 1998

The Act places on Local Authorities a responsibility for the formulation of crime and disorder reduction strategies in each district, borough or unitary authority area in England and Wales. It makes clear that this duty applies equally to county councils. It also places a legal obligation on police authorities, probation committees and health authorities to co-operate fully in this work and gives the Home Secretary power to extend that obligation to any other person or body he chooses.

The Act also contains a wide range of provisions designed to tackle Youth Offending, Anti-Social Behaviour, Racially Aggravated Offences, Sex Offenders, Child Safety and other Criminal Behaviour. The Anti-Social Behaviour Order (ASBO) will allow the local authority and police to act against an individual who acts in a manner likely to cause harassment, alarm or distress to one or more people, not in the same household as himself.

Assault and Battery

The term 'common assault' covers two separate offences, 'assault' and 'battery', which were formerly contrary to common law but are now said to be statutory offences contrary to **Section 39 Criminal Justice Act 1988**.

A person commits an assault if he intentionally or recklessly causes another person to apprehend the application to his body of immediate and unlawful force. An assault can be committed by words alone if they cause the necessary apprehension.

A person commits a battery if he intentionally or recklessly applies unlawful force to the body of another person. The slightest degree of force, even merely touching, suffices. Without the application, however, of some force there cannot be a battery. Thus causing someone psychiatric harm by a threat does not constitute a battery. Similarly, the use of force merely to pull away from another does not constitute a battery.

Although an assault is a separate, independent crime and should be treated as such, for practical purposes the term 'assault' is generally synonymous with battery and is used to mean the actual intended use of force to another person.

Offences Against the Persons Act 1861

This covers assault which leaves a physical injury (applies to any age).

Section 18: Wounding/causing grievous bodily harm with intent is contrary to Section 18. The offence is committed when a person unlawfully and maliciously with intent to do some grievous bodily harm, or with intent to resist or prevent the lawful apprehension or detention of any person, either:

- Wounds another person; or
- Causes grievous bodily harm to another person.

Wounding means the breaking of the continuity of the whole of the outer skin or the inner skin within the cheek or lip. It does not include the rupturing of internal blood vessels. The definition may encompass injuries that are relatively minor in nature, for example a small cut or laceration. An assault resulting in such minor injuries would usually be charged contrary to Section 47.

Grievous bodily harm means serious bodily harm. This is wounding with intent to do grievous bodily harm. It includes assaults causing cuts, broken bones, and damage to internal organs. Examples of what usually amounts to serious harm include: injury resulting in permanent disability or permanent loss of sensory function; injury which results in more than minor permanent, visible disfigurement (broken or displaced limbs or bones including fractured skull); compound fractures; broken cheek bone, jaws, ribs etc.; injuries which cause substantial loss of blood, usually necessitating a transfusion; injuries resulting in lengthy treatment or incapacity and psychiatric injury.

Section 47: actual bodily harm. This is assault occasioning actual bodily harm. Bodily harm has its ordinary meaning and includes any hurt calculated to interfere with the health or comfort of the victim.

Such hurt need not be permanent but must be more than transient and trifling.

Achieving Best Evidence in Criminal Proceedings (Guidance for Vulnerable or Intimidated Witnesses, including Children)

The Home Office Guidance (Achieving Best Evidence) are guidelines to identify best practise for dealing with vulnerable and intimidated witnesses, both adult and children. The document was issued as part of 'Action for Justice' and the implementation programme for the 'Speaking Up for Justice' Report. The guidance is intended to assist those conducting video recorded interviews such as witnesses as well as giving guidance to those who are tasked with preparing and supporting witnesses throughout the criminal justice process. It describes good practise in both preparing for and conducting interviews with vulnerable or intimidated witnesses, both adult and children, to enable them to give their best evidence in criminal proceedings, as well as providing guidance on supporting and preparing the witness for Court and information about the trial process itself.

Youth, Justice and Criminal Evidence Act 1999

Following the 'Speaking Up for Justice' Report, the Youth, Justice and Criminal Evidence Act 1999 was introduced and set out a range of special measures to assist vulnerable or intimidated witnesses, including children, to give their best evidence in criminal proceedings.

Not all adults with disabilities will necessarily be vulnerable as witnesses and would not wish to be treated as such. This is recognised in the definitions and criteria contained in the Act.

Those adults who are eligible for consideration for Special Measures fall into two groups, defined in Sections 16 and 17 of the 1999 Act. The first group comprises those who suffer from a mental disorder or have a significant impairment of intelligence and social functioning or have a physical disability or illness that the court considers is likely to affect the quality of their evidence. Young persons under the age of 17 also fall into this category. The second group consists of those who because of age, personal circumstance and the nature of the alleged offence, may also qualify for Special Measures if the court is satisfied that the quality of their evidence is likely to be diminished by reason of their fear or distress. This will include victims of sexual offences.

In reaching a decision on whether the Special Measures should be invoked, the courts must take account of the wishes of the individual

witness. It is imperative therefore that investigators establish at an early stage whether the vulnerable adult is likely to qualify for a Special Measures direction under the 1999 Act and if so, what particular measures, if any, will assist the witness to maximise the quality of their evidence. This will need to be discussed with the vulnerable adult to ascertain their views.

A variety of Special Measures are available, for example:

- Live TV link (automatic if DVD interviewed)
- Video recording of evidence in chief, cross examination or re-examination
- Evidence in private
- Examination by intermediary
- Communication aids
- Removal of wigs and gowns
- Clearing of the courtroom
- Use of screens to shield witnesses from the Defendant and the public
- Restrictions on evidence and questions about the complainants' sexual behaviour.

Other measures may be provided by the Courts on their own authority.

Forced Marriage (Civil Protection) Act 2007

The Act will come into force in the autumn 2008 and inserts passages into the Family Law Act 1996. The Act will allow Courts to make orders to prevent forced marriages and to order the behaviour or conduct of those responsible for forcing another into marriage to change or stop or impose requirements on them. It also provides recourse for those already forced into marriage. Failure to comply could lead to imprisonment. The Act gives the Courts a wide discretion to deal flexibly and sensitively with the circumstances of each individual case. It employs civil remedies that offer protection to victims without criminalising members of their family. The scheme is to give the civil Courts the power to make injunctive orders to protect someone who is under pressure (or will be under pressure) to enter into what is called a forced marriage. 'Forced' means 'coerced by threats or other psychological means' and the purpose of an order is contained in Section 63A. Under Section 63C: the person who is to be protected by the order or a relevant third party, may apply to the High Court or County Court and there is provision for the Lord Chancellor to extend

jurisdiction to the Magistrates Court.

Sexual Offences Act 2003

The Sexual Offences Act 2003 is a major overhaul in the sexual offences framework and re-defines the sexual offences framework including a new definition of rape and sexual assault. The offences apply to both male and female victims and in addition there are offences to give the greatest possible protection to vulnerable people. Maximum penalties for offences have been reviewed and, where necessary, amended to reflect the seriousness of the behaviour involved.

The Act outlines definitions and measures in relation to:

- Rape and Consent
- Assault by penetration
- Sexual assault
- Causing a person to engage in sexual activity without consent
- Administering a substance with intent

Section 30: provides that a person commits an offence if he sexually touches another person who is unable to refuse because of or for a reason related to a mental disorder and the perpetrator knows or could reasonably be expected to know this. The victim is unable to refuse if either (a) he lacks capacity to choose whether to agree to the touching, or (b) he is unable to communicate his choice to the perpetrator. The Act lists further offences against those with mental disorder such as causing or inciting a person with a mental disorder to engage in sexual activity (Section 31); engaging in sexual activity in the presence of a person with a mental disorder (Section 32); causing a person with a mental disorder to watch a sexual act (Section 33); inducement, threat or deception to procure sexual activity with a person with a mental disorder (Section 34).

The Sexual Offences Act 2003 also defines sexual offences against people with a mental disorder. It defines "mental disorder" as "*mental illness, arrested or incomplete development of the mind, psychopathic disorder and any other disorder or disability of the mind*". This includes people with learning disabilities.

- Under the Act, any sexual activity between a care worker (both paid and voluntary) and a person with a mental disorder (who is accommodated in a care home, community home, voluntary home or children's home) is prohibited whilst that relationship of care continues. The term "care worker" is broadly defined to include anyone who provides care, assistance or services in connection with the person's mental disorder including a family member.

- The laws in the Act relating to care workers of people with mental disorders apply whether or not the victim appears to consent, and whether or not they have the legal capacity to consent.
- There are certain situations in which the care workers' offences do not apply. These are where the care worker is legally married to the person with a mental disorder, or where it can be proved that the sexual relationship pre-dated the start of the relationship of care, as long as that sexual relationship was lawful.

Theft Act 1968

Theft is the dishonest appropriation of property belonging to another, intending to deprive the owner permanently.

Race Relations Act 1976

The Race Relations Act 1976 was established by the British Parliament to prevent discrimination on the grounds of race. Matters that are covered include discrimination on the grounds of race, colour, nationality, ethnic or national origin in the fields of employment, the provision of goods and services, education and public functions. The Act also established the Commission for Racial Equality with a view to reviewing the legislation. The Act incorporates the earlier Race Relations Act 1965 and Race Relations Act 1968 and was later amended by the Race Relations Amendment Act 2000, notably including a statutory duty on public bodies to promote race equality.

Protection from Harassment Act 1997

This Act introduces four new criminal offences:

- Offence of Harassment (Section 2). This is a course of conduct which amounts to harassment of another, which the Defendant knows or ought to know amounts to harassment of another. The course of conduct needs to have occurred on at least two occasions. Harassment is not defined but includes causing alarm or distress and conduct is defined as including speech.
- Putting People in Fear of Violence (Section 4). This is a course of conduct which causes another to fear that violence will be used against him, which the Defendant knows or ought to know will cause another to fear that violence will be used against him.
- Breach of Civil Injunction (Section 3(6) and (5)) make it an offence for the Defendant to do anything which he is prohibited from doing under an injunction issued under Section 3 or a restraining order issued under Section 5.

Breach of Restraining Order. Under Section 5 both the Magistrates and the Crown Court can make a Restraining Order on conviction, in order to protect the victim or any other person mentioned in the Order from further conduct which amounts either to harassment or causing fear of violence.

Home Office Circular on Domestic Violence 19/2000.

This circular replaced the earlier Home Office circular 60/90. It contains detailed guidance to the Police on suggested best practice in addressing domestic violence, taking into account changes in relevant legislation, findings of recent research and development in terms of policy and practice.

The Domestic Violence, Crime and Victims Act 2004

The Act aims to introduce new powers for the Police and Courts to deal with offenders, while improving support and protection that victims receive. One important new provision is the creating of a new offence of causing or allowing the death of a child or vulnerable adult. The offence establishes a new criminal responsibility for members of a household where they know that a child or vulnerable adult is at significant risk of serious harm. All members of the household (subject to age and mental capacity) will be liable for the offence (which has a maximum penalty of fourteen years) where:

- The death occurred as a result of unlawful conduct in anticipated circumstances
- A member of the household caused the death, and
- The Defendant was or should have been aware that the victim was at risk and either caused the death or did not take reasonable steps to prevent it.

The victim in this new offence must have been at risk of serious physical harm, demonstrated by history of violence towards them or another person in the household. Only those aged over 16 years may be guilty of this offence unless they are the parent of the victim. Other provisions include:

- Making common assault an arrestable offence
- New Police powers to deal with domestic violence including making it an arrestable, criminal offence to breach a non-molestation order, punishable for up to five years in prison

- Strengthening the civil law on domestic violence to ensure co-habiting same sex couples have the same access to non-molestation and occupation orders as opposite sex couples, and extending the availability of these orders to couples who have never lived together or been married.
- Stronger legal protection for victims of domestic violence by enabling Courts to impose restraining orders when sentencing for any offence. Until now, such orders could only be imposed on offenders convicted of harassment or causing fear of violence.
- Enabling Courts to impose restraining orders on acquittal for any offence (or if a conviction has been overturned on appeal) if they consider it necessary to protect the victim from harassment. This would deal with cases where the conviction has failed but it is still clear from the evidence that the victims need protecting.
- Putting in place a system to review domestic violence homicide incidents, drawing in the key agencies to find out what can be done to put the system right and prevent future deaths.

7. Civil Law

If the actions or evidence available do not support criminal proceedings, the issues may be pursued via the civil court. In criminal proceedings the evidence must meet the criminal standard of proof i.e. prove 'beyond all reasonable doubt'. In civil proceedings evidence must be proved on 'the balance of probabilities' i.e. more likely than not.

In addition compensation may be sought via the Criminal Injuries Compensation Authority, or by suing in civil proceedings.

Service users should always be advised of the right to discuss mistreatment with the Police and/or independent legal advisors.

In some cases, the vulnerable person will not be able to give instructions to a lawyer, so before the case can proceed someone must be found to act on their behalf. If an adult lacks capacity to conduct the proceedings (a protected party) they must have a litigation friend to conduct the proceedings on their behalf.

Common Law

In situations of urgent high risk where there are no statutory powers it is acceptable in certain situations under common law to intervene to save a life without consent (i.e. the doctrine of necessity). This issue should only arise in emergency situations where there is a necessity to

act when it is not practicable to communicate with the assisted person and secondly, the action taken must be such that a reasonable person in all the circumstances would take, acting in the assisted person's best interests. The Mental Capacity Act 2005 Section 5 endeavours to convert the Common Law Principle of Necessity into statutory language. It does this by stipulating that if:

1. a person (e.g. a carer) acts in connection with the care or treatment of someone believed to lack capacity; and
2. the person (e.g. a carer) has formed a reasonable belief as to:
 - a) the person's lack of capacity; and
 - b) their best interests

then the person (e.g. the carer) will not be liable for the action – provided it is something that the incapacitated person could have consented to had he or she had capacity.

Legal advice should always be sought if consideration is being given to using this power except in cases where there is insufficient time to make contact.

Housing Act 1996

Disabled, elderly or ill people may come within the scope of the Homelessness provisions of the Housing Act 1996, Part VII since it provides:

- a) A person is homeless for the purposes of the Act if he or she has no accommodation which it would be reasonable for him or her to occupy; and
- b) A person is considered in priority need if he or she is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or a person with whom such a person resides or might reasonably be expected to reside.

Housing Authorities should bear in mind their duties under the Homelessness legislation to secure accommodation for applicant households who are unintentionally homeless and in priority need.

Sections 145 and 149: Provide a new ground for the grant of a possession order on the application of the local authority/housing association where a partner has left the dwelling house because of violence or threats of violence by the other partner and the Court is satisfied that the partner who has left is unlikely to return. A tenancy granted by a private landlord does not qualify.

The Family Law Act 1996

The Act provides remedies for victims of domestic violence. Orders under this Act can be obtained in the Magistrates Court and the County Court. They are available not only against partners or former partners, but against anyone to whom the victim or child is linked by a domestic or family relationship. There are two types of orders available:

- A non-molestation order. This is aimed at preventing the partner or ex partner from using or threatening violence against a person or their child, or intimidating, harassing or pestering them, in order to ensure the health, safety and well-being of that person and their child.
- An occupation order. This regulates who can live in the family home and can also restrict the abuser from entering the surrounding area.

The breach of a non-molestation order is now a criminal offence. However, it is still possible to take the matter back to the civil court for breaking the order. If there is already an injunction there may be a Power of Arrest attached, which will come into effect if the abuser breaks the order.

Protection from Harassment Act 1997

This Act introduces four new criminal offences:

- Offence of Harassment (Section 2). This is a course of conduct which amounts to harassment of another, which the Defendant knows or ought to know amounts to harassment of another. The course of conduct needs to have occurred on at least two occasions. Harassment is not defined but includes causing alarm or distress and conduct is defined as including speech.
- Putting People in Fear of Violence (Section 4). This is a course of conduct which causes another to fear that violence will be used against him, which the Defendant knows or ought to know will cause another to fear that violence will be used against him.
- Breach of Civil Injunction (Section 3(6) and (5)) make it an offence for the Defendant to do anything which he is prohibited from doing under an injunction issued under Section 3 or a restraining order issued under Section 5.
- Breach of Restraining Order. Under Section 5 both the Magistrates and the Crown Court can make a Restraining Order on conviction, in order to protect the victim or any other person mentioned in the Order from further conduct which amounts either to harassment or causing fear of violence.

Law of Tort

Tort law is the name given to a body of law that creates and provides remedies for civil wrong that do not arise out of contractual duties. A person who is legally injured may be able to use tort law to recover damages from someone who is legally responsible or 'liable' for those injuries. Generally speaking, tort law defines what constitutes a legal injury and establishes the circumstances under which one person may be held liable for another's injury. Tort covers intentional acts and accidents. In much of the western world, the touchstone of tort liability is negligence. Negligence is a tort which depends on the existence of a breach of duty of care owed by one person to another. The elements of negligence are;

- Duty of care
- Breach of that duty
- Sufficiently close relationship between the parties to establish that duty (proximity)
- Breach of the duty, causing harm

Unless the injured person can prove that the person they believe injured them acted with at least negligence to cause their injury, tort law will not compensate them.

Injunctions may be available for assault, battery, nuisance, false imprisonment, and trespass. The local authority cannot act for a private individual in pursuing remedies under the law of tort and therefore there would be difficulties in using the remedies of an injunction or damages if the individual does not have capacity.

Public Interest and Disclosure Act 1998

This Act came into force in July 1999. Basically, the Act protects most workers in the public, private and voluntary sectors from detrimental treatment or victimisation from their employer, if, in the public interest, they blow the whistle on wrongdoing. The Act amends employment legislation so that employees are protected against dismissal and other adverse action if they make complaints or public disclosures about malpractice. Such matters include allegations that the employer is putting the environment at risk, breaking the law or putting customers or employees at risk. For a disclosure to be protected by the Act's provisions, it must relate to matters that qualify for protection under the Act. Qualifying disclosures are disclosures which the worker reasonably believes shows that one or more of the following matters is either happening now, took place in the past or is likely to happen in the future:

- A criminal offence
- The breach of a legal obligation
- A miscarriage of justice
- A danger to the health and safety of any individual
- Damage to the environment; or
- Deliberate concealment of information tending to show any of the above five matters.

It can be of particular use where care workers are concerned about abusive practices experienced within their organisations. Workers do not have protection if they go outside the organisation without first raising the matter internally with the employer, unless certain criteria are met. Workers who are concerned with wrongdoing or failures can make disclosures to a person or body which has been prescribed by the Secretary of State for the purpose of receiving disclosures about the matters concerned. If a worker makes a qualifying disclosure to such persons, it will be a protected disclosure provided the worker:

- Makes the disclosure in good faith
- Reasonably believes that the information and any allegation it contains are substantially true
- Reasonably believes that the matter falls within the description of matters for which the person or body has been prescribed (e.g. breaches of health and safety regulations can be brought to the attention of the Health and Safety Executive or appropriate Local Authority, or environmental dangers can be notified to the Environment Agency). A list of prescribed persons should be found attached to the organisation's whistle-blowing policy. A qualifying disclosure will be a protected disclosure if it is made to a legal adviser in the course of obtaining legal advice. In addition, a qualifying disclosure made in good faith by a worker employed in a government appointed organisation, such as a non-departmental public body, will be a protected disclosure if made to a government minister (either directly or via departmental officials).

The Sex Discrimination Act 1975

The Sex Discrimination Act 1975 renders unlawful sex discrimination and certain victimisation and harassment in the fields of employment and education and in the provision of goods, facilities, services and premises. The Sex Discrimination Act 1975 also renders unlawful certain discrimination on grounds of gender re-assignment and discrimination against married persons and civil partners.

Discriminatory practices and advertisements, and instructions and pressure to discriminate are also rendered unlawful. Liability is imposed upon employers and principals in respect of acts done by their employees and agents and on persons knowingly aiding lawful acts.

The Sex Discrimination Act 1975 established the Equal Opportunities Commission which is obliged to work towards the elimination of discrimination and to promote equality of opportunity between men and women generally. The Act also empowers the Equal Opportunities Commission to assist individuals in relation to certain research and educational activities and in relation to proceedings or prospective proceedings under the Act to conduct formal investigations and to bring proceedings in respect of certain contravention of the Act.

On 6 April, 2008, new rules amended provisions in this Sex Discrimination Act 1975 regarding harassment and discrimination on the grounds of pregnancy or maternity leave. They have removed the comparator when a woman brings a claim of discrimination on the grounds of pregnancy or maternity leave and the rules have also amended the provisions of unlawful sexual harassment to include situations where:

- Unwanted conduct relates to the sex of a person even if it is not prompted by the complainant sex
- A complainant witnesses a person being subject to conduct related to the sex of a person which has the purpose or effect of creating an intimidating environment for the witness
- An employer knows that an employee is being repeatedly harassed by a third party (such as a customer or client) and does nothing within their power to prevent further harassment.

The Race Relations Act 1976

The Race Relations Act 1976 renders unlawful racial discrimination and certain victimisation in the fields of employment and education and in the provision of goods, facilities, services and premises and in the exercise of planning functions by a planning authority. Certain harassment in a racial context is made unlawful. Discriminatory practices and advertisements, and instructions and pressure to discriminate are also rendered unlawful. Liability is imposed on employers and principals in respect of acts done by their employees and agents and on persons knowingly aiding unlawful acts. Local Authorities are required by the Act to make appropriate arrangements to secure that their various functions are carried out with due regard to the need to eliminate unlawful racial discrimination and to promote

equality of opportunity and good relations between people of different racial groups. The Act established the Commission for Racial Equality (CRE) which is obliged to work towards the elimination of discrimination and to promote equality of opportunity and good race relations. The Act also empowers the CRE to assist organisations and individuals to conduct formal investigations and to bring proceedings in respect of certain contraventions of the Act.

The Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005

The Disability Discrimination Act 2005 (DDA) builds on and extends earlier disability discrimination legislation, principally the Disability Discrimination Act 1995. The DDA 2005 introduces a duty on all public bodies to promote equality of opportunity for disabled people. This means that they must take account of the needs of disabled people as in integral part of their policies, practices and procedures and not as something separate or as a tag on. They will have to have due regard to the need to:

- Eliminate unlawful discrimination and disability related harassment;
- Promote equality of opportunity and positive attitudes to disabled people; and
- Encourage disabled people to participate in public life.

These duties apply to anyone carrying out functions of a public nature. If a public body was perceived as failed to comply with these duties, then anyone could apply to the High Court for judicial review.

In addition to this, many public bodies, including Government departments and local councils will be subject to specific duties, which will include having to produce a Disability Equality Scheme explaining how they intend to fulfil the duty to promote equality. When carrying out duties, public bodies;

- Will not be able to treat disabled people less favourably.
- Will have to make reasonable adjustments for disabled people.

Human Rights Act 1998

The Human Rights Act 1998 (HRA) was enacted to give further effect to the rights and freedoms guaranteed under the Convention for the Protection of Human Rights and Fundamental Freedoms. Certain provisions of the Convention, known as 'Convention Rights', are to

have effect for the purposes of the HRA. The HRA has two fundamental purposes (1) to ensure that domestic legislation is read and given effect in a way which is compatible with the Convention Rights, or if this is not possible, to enable a superior court to make a declaration of incompatibility; and (2) to provide individuals with a right to pursue and rely upon Convention Rights in domestic courts, and to provide a remedy for breach of such rights. Under the HRA if a court finds that an act is unlawful, Courts and Tribunals can grant any remedy, which is:

- Within their powers and
- Just and appropriate e.g. award damages; quash the unlawful decision; release a defendant on a criminal charge; quash a conviction; or order a public authority not to take proposed action which, if taken, would be unlawful.

Proceedings must be brought within a year of the act complained of. However, that period can be extended by the Court if it considers it equitable to do so, i.e. there would need to be very good grounds for an extension of time.

'Proportionality' is an important concept within the Act. This means that, even if a particular policy or action that interferes with the Convention Right pursues a legitimate aim, this will not justify the interference if the means used to achieve the aim are excessive in the circumstances. The Act aims to ensure that everyone's rights are properly respected. This means that one individual's rights will often have to be balanced against another's. For example, the rights of a person accused of a crime to question witnesses, needs to be balanced against the rights of victims and vulnerable witnesses.

The following Convention rights are particularly relevant to safeguarding adults:

Article 2: The right to life

In *Pretty v UK* 2002 EHRR the court indicated that the right to life is not a right to self-determination to choose death rather than life. However, it is compatible with the right to life for an NHS Trust to withdraw nutrition and hydration in certain circumstances. Also an individual with adequate capacity may refuse medical treatment without this being a breach of Article 2.

Article 3: Freedom from torture or inhuman or degrading treatment

This is the right not to be subjected to torture or to inhuman or degrading treatment or punishment. Torture is the most serious kind of ill-treatment. It consists of deliberate inhuman treatment, causing very

serious and cruel suffering. The suffering can be either mental or physical or both. Inhuman treatment or punishment is less severe than torture. Circumstances in which inhuman treatment or punishment can arise include: serious physical assault; the use of psychological interrogation techniques; inhuman detention conditions or restraints; failing to provide or withdrawing proper medical help to a person with a serious illness and a threat of torture if it is real and immediate. Degrading treatment or punishment is also less severe than torture. It may be degrading if it is ill-treatment which is also grossly humiliating. Whether or not treatment is degrading depends on whether a reasonable person of the same age, sex and health would have felt degraded.

There is a positive duty on the state to protect vulnerable adults from abuse. There is a positive obligation for an independent open investigation where abuse has been suffered by an individual in the care of a public authority and a duty to take reasonable steps to prevent that ill treatment.

Article 5: The right to liberty

No one shall be deprived of liberty unless he comes within one of the exemptions to the Article and the deprivation is in accordance with a procedure prescribed by law. The exemptions include lawful arrest or detention as part of the criminal process for dealing with offenders. In relation to mental health patients, actions that amount to a deprivation of liberty will not be lawful unless formal authorisation is obtained, for example, if detained in hospital under the relevant provisions of the Mental Health Act 1983 or an order through the Court of Protection. The Mental Health Act 2007 (due to come into force in October 2008) introduces 'Bournewood' safeguards through amendments to the Mental Capacity Act 2005. New sections are inserted into the MCA which will make it lawful to deprive a person of their liberty if a standard or urgent authorisation is in force, or if it is in consequence of giving effect to an order of the Court of Protection on a personal welfare matter, in accordance with the provisions of the MCA. Every individual deprived of liberty is entitled to take proceedings to have the lawfulness of the detention determined by a court.

Article 6: The right to a Fair Trial

This is a key feature of democratic society and includes: the right to a fair hearing; the right to a public hearing; the right to a hearing before an independent and impartial Tribunal; and the right to a hearing within a reasonable time. In terms of civil cases, these will involve disputes about private rights or the use of administrative powers which affect private rights. To fall within Article 6, the civil dispute does not necessarily have to be in a Court. If the procedure involves a decisive settlement of a genuine, serious dispute, Article 6 may apply.

Article 8: The right to a Private Life and Family

This is the right to respect for private and family life, home and correspondence. It is qualified in that there should be no interference except where it is in accordance with the law and is necessary in a democratic society. 'Proportionality' is an important concept within Article 8. This is whether a particular limitation of an individual's right is justified in that it is proportionate to the legitimate aim pursued i.e. a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's human rights. Therefore, in family matters, a local authority would have to demonstrate that the aim of the interference was for the protection of a child or vulnerable adult and that it is necessary to interfere with a person's right and that the interference was proportionate.

Data Protection Act 1998

The Data Protection Act defines a legal basis for the handling of information relating to living people. It is the main piece of legislation that governs protection of personal data in the UK. It gives individuals the right to know what information is held about them and provides a framework to ensure that personal data is handled properly.

Freedom of Information Act 2000

The Freedom of Information Act 2000 deals with access to official information held by government bodies. The Act provides individuals or organisations with the right to request information held by a public authority. The public authority must tell the applicant whether it holds the information and must normally supply it within twenty working days in the format requested. However, the public authority does not have to confirm or deny the existence of the information or provided if an exemption applies, the request is vexatious or similar to a previous request, or if the cost of compliance exceeds an appropriate limit. If the exemption applies but is qualified, then the public authority must decide whether the public interest in using the exemption outweighs the public interest in releasing the information.

Completed by: Lorraine Sherman, Solicitor
North Somerset Council
11 June 2008

Appendix B

Membership of the North Somerset Safeguarding Adults Partnership

North Somerset Council

Council Member representation
Director of Adult Social Services and Housing
Assistant Director of Adult Social Services and Housing
Safeguarding Adults Manager
Service Manager – Intermediate Care
Service Manager – Learning Disability Service
Training and Development Manager
Contracts and Commissioning Manager

Avon and Somerset Police

Detective Constable

North Somerset Primary Care Trust

Non-executive Director
Safeguarding Adults Lead Nurse

Western Area Health Trust

Executive Medical Director
Director of Nursing

Commission for Social Care Inspection

Avon and Wiltshire Mental Health Partnership Trust

Assistant Director for Public Protection and Safeguarding
Safeguarding Lead for Public Protection
North Somerset Social Work Lead

Care and Support West

Domiciliary Care

Voluntary Agency representative

Carer representative

There is the opportunity to invite other partners onto the Board and this is reviewed regularly.

Appendix C

The Serious Case Review Protocol

North Somerset Safeguarding Adults Partnership

Serious Case Review protocol

1. Relevant Standard

“Safeguarding Adults” (Association of Directors of Social Services 2005; 1.22) recommends that a multi-agency Serious Case Review protocol be agreed and used by all partner agencies.

It will be commissioned, after application has been made and considered, by the Safeguarding Adults Partnership Board (SAPB).

2. Purpose

The purpose of having this Serious Case Review protocol is neither to reinvestigate nor to apportion blame. It is:

- 2.1** To establish whether there are lessons to be learnt from the circumstances of the case about the way in which local professionals and agencies work together to safeguard adults at risk of abuse;
- 2.2** To review the effectiveness of procedures (both multi-agency and those of individual organisations);
- 2.3** To inform and improve local inter-agency practice;
- 2.4** To improve practice by acting on the lessons from serious cases and thereby developing best practice;

- 2.5** To prepare or commission an overview report which brings together and analyses the findings of the various reports from agencies in order to make recommendations for future action.

It is acknowledged that all agencies will have their own internal/statutory review procedures to investigate serious incidents; e.g. an “Untoward Incident” (in a health setting). This protocol is not intended to duplicate or replace these. Agencies may also have their own mechanisms for reflective practice.

Where there are possible grounds for both a Serious Case Review and a Domestic Homicide Review then a decision should be made at the outset by the two decision makers as to which process is to lead and who is to chair, with a final joint report being taken to both commissioning bodies. This process will be of specific benefit when the case involves a victim aged between 16 and 18.

3. Criteria for a Serious Case Review

The SAPB has the lead responsibility for conducting a Serious Case Review. A Serious Case Review should be considered when:

- 3.1** A vulnerable adult dies (including death by suicide) and abuse or neglect is known or suspected to be a factor in their death. In such circumstances the SAPB should always conduct a review of the involvement of agencies and professionals associated with the vulnerable adult;
- 3.2** A vulnerable adult has sustained a potentially life-threatening injury through abuse or neglect, serious sexual abuse, or sustained serious and permanent impairment of health or development through abuse or neglect, and the case gives rise to concerns about the way in which local professionals and services work together to safeguard vulnerable adults;
- 3.3** Serious abuse takes place in an institution or when multiple abusers are involved. In these circumstances the same principles of review apply. Such reviews are, however, likely to be more complex, on a larger scale, and may require more time. Terms of reference need to be carefully constructed to explore the issues relevant to each specific case;

- 3.4** Financial, institutional or systemic abuse where the outcome may not be life threatening or have a long term detrimental effect on a person's well being and it is of a nature where there are serious negative outcomes for the individuals involved.

(The Secretary of State also has authority under the Local Authority Social Services Act 1970 to cause an inquiry to be held where he considers it advisable.)

4. Process for commissioning and carrying out of a Serious Case Review

- 4.1** The SAPB will be the only body which commissions any serious case reviews. The Board will publicise both the process under which applications for reviews may be made and the terms of reference for each Serious Case Review;

(In very urgent circumstances a review could be commissioned by the Safeguarding Adults Manager in conjunction with the Chair of the Board.)

- 4.2** There must also be mechanisms for the consideration of requests from the Coroner, MPs, Elected Members and other interested parties;
- 4.3** Applications must attract the support of the quorum of the Board and be made in writing. Reviews agreed as very urgent by the Safeguarding Adults Manager and Chair must be communicated to Board members in writing within 5 working days of such a decision being taken. In the event of an application being turned down, the reasons need to be recorded in writing and shared with the applicant.

5. Initiating a Serious Case Review

The case for review will be passed to the Chair of the SAPB to initiate a discussion/decision by the quorate Board. If it is agreed, a multi agency Serious Case Review Panel will be set up:

- 5.1** The SAPB will be responsible for the appointment of an Independent Panel Chair;

- 5.2** The SAPB will ensure the Serious Case Review Panel Chair receives adequate support;
- 5.3** The Chair of the Panel will be responsible for establishing individual terms of reference and setting time scales for the review in agreement with the Safeguarding Adults Partnership Board. He will also be responsible for ensuring administrative arrangements are completed and that the review process is conducted according to the terms of reference;
- 5.4** The Chair of the SAPB will then write to the Chief Officers of all the agencies involved for nominations to the Serious Case Review Panel;
- 5.5** Membership of the Serious Case Review Panel will be comprised of appropriate representatives of the agencies;
- 5.6** Each agency will nominate a representative who has appropriate experience;
- 5.7** The Commission for Social Care Inspection (CSCI) will be informed of any Serious Case Review taking place.

6. Conduct of Serious Case Review

6.1 Initial Meeting

This will agree:

- The terms of reference;
- The “evidence” required from each participant;
- The support and other resources needed (any perceived deficits to be referred to Chair of SAPB);
- The time scales within which the review process should be completed;
- Dates, times and venues of meetings;
- The nature and extent of legal advice required, in particular: Data Protection, Freedom of Information and Human Rights Act

6.2 Serious Case Review – receipt of evidence

This stage of the meeting is a formal “information sharing” session where agencies will be encouraged to query and comment on the reports presented.

Each agency involved will be asked to:

- Present and examine the chronology of events, highlighting any Serious Case Review discrepancies;
- Present a comprehensive report of the actions by their agencies;
- Ensure any other management reports and other relevant information are made available.

6.3 Serious Care Review – discussion of evidence/ “adjudication”

This stage is where the assessment of alternative courses of action takes place. The review panel will:

- Cross-reference all agency management reports and reports commissioned from any other source;
- Examine and identify relevant action points;
- Form a view on practice and procedural issues;
- Agree the key points to be included in the report and the proposals for action.

6.4 Issues Arising

If at any stage whilst undertaking the procedure contained in 6.3, information is received which requires notification to a statutory body, e.g. GSCC, Dept for Education and Science, regarding significant omission by individual/s or organisations this should be undertaken by the Chair without delay.

The Chair of the review panel should report back to the SAPB and a decision made as to whether the Serious Case Review process should be suspended pending the outcome of such notification.

6.5 Report Stage

The review panel will complete the review of agency management reports and those commissioned from any other source and advise the Chair on the production of an Overview Report which brings together information, analyses it and makes recommendations. The Chair will ensure that the Report is written and delivered within agreed timescales.

6.6 Acting on the recommendations of the Serious Case Review

On completion, the Overview Report will be presented to the SAPB, which will:

- Ensure contributing agencies are satisfied that their information is fully and fairly represented in the Overview Report;
- Ensure that the Overview Report contains an Executive Summary that can be made public;
- Translate recommendations from the overview into an action plan which should be endorsed at senior level by each agency.

6.7 The action plan will indicate:

- Responsibilities for various actions;
- Time-scales for completion of actions;
- The intended outcome of the various actions and recommendations;
- Mechanisms for monitoring and reviewing intended improvements in practice and/or systems;
- To whom the report or parts of the report should be made available, and indicate the means by which this will be carried out;
- The processes for dissemination of the report and/or key findings to interested parties, for the receipt of feedback and for any debriefing to staff, family members and, where appropriate, the media.

6.8 Recommendations

The SAPB will ensure that all recommendations are actioned and will request updates from agencies;

The action plan will remain on the SAPB Agenda until such time that all recommendations have been implemented.

7. Annual Report

All Serious Case Reviews conducted within the year should be referenced within the Annual Report along with relevant service improvements

Additional Considerations for a Serious Case Review

- There will be a need to address the budgetary requirements for undertaking a Serious Case Review;
- Time scales for the completion of a Serious Case Review will need to be put in place to ensure that the process takes place within a timely and specific framework. (By comparison, a Domestic Violence Homicide Review aims to be completed within three months);
- Where a death has occurred the SAPB are advised to liaise with their local Coroner's Office to ensure that the arrangements for undertaking a Serious Case Review are acceptable
- Due regard for criminal/civil process should be observed at all times;
- Arrangements to obtain or secure records through statutory agencies should be utilised whenever appropriate, e.g. Police, CSCI;
- Circumstances may arise whereby it is appropriate to consult or involve a victim of abuse or a relative. This involvement should be carefully considered;
- The right under the Freedom of Information Act and the Environmental Information Regulations to request information held by public authorities, known as the 'right to know', came into force in January 2005;
- There are 'absolute' and 'qualified' exemptions under the Act. Where information falls under 'absolute exemption', the harm to the public interest that would result from its disclosure is already established;
- If a public authority believes that the information is covered by a 'qualified exemption' or 'exception' it must apply the 'public interest test';
- The public interest test favours disclosure where a qualified exemption or an exception applies. In such cases, the information may be withheld only if the public authority considers that the public interest in withholding the information is greater than the public interest in disclosing it;

- The Data Protection Act 1998;
- Children Act 1989 – updated 2004;
- There may be a need for the completion and implementation of media and communication strategies.

Acknowledgement

(This protocol has been written with reference to Association of Directors of Social Services guidelines)

Appendix D

Relevant National and Local Organisations

Public Concern at Work

Tel. **020 7404 6609**

16 Baldwins Gardens
London EC1N 7UY

This organisation would be appropriate for staff to contact where they feel inhibited about raising concerns of abuse or malpractice in their working environment.

www.pcaw.co.uk

Elder Abuse Response Line

Tel. **0808 808 8141**

(Monday to Friday 10am to 4.30 pm)

This helpline is run by Action on Elder Abuse and is funded by the Department of Health. It is confidential and provides information and emotional support to anyone involved in adult abuse situations.

Ann Craft Trust (formerly NAPSAC)

Tel. **0115 951 5400**

Centre for Social Work
The University of Nottingham
Nottingham NG7 2RD

This is a national association working with staff in the interests of people with learning disabilities who may be at risk from abuse. It provides information and advice, peer support networks, publications, training, research and awareness campaigns.

www.anncrafttrust.org

PAVA (Practitioner Alliance Against the Abuse of Vulnerable Adults)

PO Box 4670
Bournemouth NH6 3BL

This group aims to promote the protection of vulnerable adults through networking between professionals.

www.pavauk.org.uk

Counsel and Care for the Elderly

Tel. **020 7485 1566** and **0845 300 7585**

Twyman House, 16 Bonny Street
London NW1 9PG

10.00 am to 1.00 pm
Monday to Friday.

<http://www.counselandcare.org.uk>

VOICE UK

Tel. **01332 869 311**

The College Business Centre
Uttoxeter New Road
Derby DE22 3WZ

This organisation is a support and action group for people with learning difficulties who have been abused and for their families.

www.voiceuk.org.uk

Action on Elder Abuse

Tel. **020 8765 7000**

Astral House
1270 London Road
London SW16 4ER

This charity works to protect and prevent the abuse of vulnerable older adults

www.elderabuse.org.uk

Change

Minicom: **020 7490 3483**

First Floor, 69-85 Old Street, London EC1V 9HY

This is a charity fighting for equal rights for people with learning disabilities.

<http://www.changepeople.co.uk>

Samaritans

Tel. **020 8692 5228**
362 New Cross Road
London SE14 6AG

National Domestic Violence

Tel. **0345 023 468** (Helpline)

RESPOND

Helpline: **0808 808 0700**
Tel. **07383 0700**
3rd Floor, 24-32 Stephenson Way
London NW1 2HD

(1.30 pm to 5pm Mon.- Fri)

A service for people with learning disabilities who have been sexually abused.

www.respond.org.uk

Age Concern

National Tel: **0800 00 99 66**

Lesbian and Gay Switchboard

Tel: **020 7837 7324**

Rape & Abuse Line

Tel: **0808 800 0123**

Better Government for Older People

www.bgop.org.uk

Powerhouse

A safe house for women with a learning disability

www.thepowerhouse.org.uk

Commission for Social Care Inspection

www.csci.gov.uk

Refuge for women and children experiencing domestic violence

www.refuge.org.uk

Health Care Commission

This is the site for England's healthcare watchdog
www.chi.gov.uk

Criminal Justice Service

This site provides information about the criminal justice system for victims and alleged offenders
www.cjsonline.org

Home Office Crime Reduction

This is the Home Office Crime Reduction site provides information and resources for people working to reduce crime in their local area
www.crimereduction.gov.uk

Values into Action

This organisation supports and promotes the right of people with learning difficulties to enjoy, and be treated with the same respect due to all citizens
www.viauk.org

Department of Health

www.dh.gov.uk

Victim Support

Victim Support is the independent charity which helps people cope with the effects of crime. We provide free and confidential support and information to help you deal with your experience.
www.victimsupport.org.uk

The Home Office

www.homeoffice.gov.uk

Women's Aid

A charity working to end domestic violence against women and children
www.womensaid.org.uk

Information Commissioner's Office

The ICO is the UK's independent authority which promotes access to official information and to protect personal information

www.informationcommissioner.gov.uk

MENCAP

a learning disability charity working with people with a learning disability and their families and carers

www.mencap.org.uk

Local relevant organisations

Somerset Race Equality Council

Tel: **01458 274 200**

PO Box, Somerton, Somerset, TA11 9AR

SREC provide support and advice to people who have been the victims of racial abuse or discrimination

<http://www.srec.org.uk>

North Somerset Domestic Abuse Forum

This site provide information and advice to victims of domestic violence, but also to professionals working with victims.

<http://www.endabuse.org.uk>

Avon and Somerset Police

This provides information in relation to the local Police force

<http://www.avonandsomerset.police.uk>

Samaritans, Weston-super-Mare

Tel: **01934 632 555**

137a High Street

Weston-super-Mare BS23 1HN

The Samaritans provide confidential emotional support, 24 hours a day to people who are experiencing feelings of distress or despair, including those that may lead to suicide

<http://www.samaritans.org/weston-super-mare>

Age Concern, Somerset

Tel: **01823 423 496**

The Market House

Fore Street

Taunton TA1 1JD

This charity provide advice and information to older people, their families and carers across Somerset.

<http://www.ageconcernsomerset.org.uk>

North Somerset People First

Tel: **01934 426 086**

Partnership House

Building 400 Worle Parkway

Weston-super-Mare BS22 6WA

This local organisation is managed by and for people with a learning disability. It promotes the views and wishes of people with a learning disability in North Somerset.

<http://www.listentoourviews.org/default.aspx>

Alzheimer's Society, North Somerset

Tel: 01934 514 977

Severn Unit

Ebdon Court

Trenleigh Drive

Worle BS22 6LT

This Charity provide advice and support to people with dementia, their families and carers.

<http://www.alzheimers.org.uk/BranchWebsites/northsomerset>

Appendix E

Safeguarding Adults Referral Form

North Somerset Safeguarding Adults Partnership

Multi-Agency Referral Form

This form is necessary to complete data required by the Department of Health. Please complete it with as much factual detail as possible. This form might be used in future criminal or civil proceedings and accuracy is therefore vital. If there is evidence of a criminal offence please also fax a copy of this form to the Avon and Somerset Police Public Protection Unit, Fax no: **01934 638 186**

Referral

Referral Date: _____

Type of abuse (Please tick) If multiple tick those relevant

- Physical Financial Sexual Neglect
 Institutional Psychological Discriminatory

Swift

Swift number: _____

Previous Safeguarding Concerns? Yes No

Social Worker / Care Co-ordinator details

Social worker/Care Co-ordinator: _____

Team: _____

Contact telephone no: _____

Details of the vulnerable adult

Surname: _____ Alias: _____

Forenames: _____

Male Female

Address/Contact no: _____

GP: _____

Surgery: _____

Date of Birth: _____

Ethnic origin (Please tick)

- | | |
|--|--------------------------------------|
| <input type="checkbox"/> White British | <input type="checkbox"/> Bangladeshi |
| <input type="checkbox"/> White Irish | <input type="checkbox"/> Caribbean |
| <input type="checkbox"/> White and Black Caribbean | <input type="checkbox"/> African |
| <input type="checkbox"/> White and Black African | <input type="checkbox"/> Chinese |
| <input type="checkbox"/> White and Asian | <input type="checkbox"/> Indian |
| <input type="checkbox"/> Other Asian background | <input type="checkbox"/> Pakistani |
| <input type="checkbox"/> Other: | |

Location of abuse (Please tick)

- Vulnerable Adult's own home
- Independent Healthcare Provider (non NHS)
- Property regulated by Supporting People
- Sheltered/Supported accommodation
- Vulnerable Adult's parent's/carer's home
- Extra care sheltered scheme
- Residential Care Home
- Specialist/Community Hospital

- Nursing Care Home
- Public place
- General Hospital i.e. Weston General
- Day Centre
- Other (please specify): _____

Details of alleged perpetrator

Surname: _____

Forenames: _____

Alias: _____

Address: _____

**Relationship of alleged perpetrator to vulnerable adult
(Please tick)**

- Main family carer
- Other service user
- Friend
- Other professional e.g. nurse or GP
- Paid carer
- Neighbour
- Volunteer/befriender
- Other family member including relatives and in laws
- Institution (Health setting; Residential, Nursing, Domiciliary care)
- None

Details of abuse

Date of incident: _____

Time: _____: _____ am / pm

Brief details: _____

Name of person reporting concern:

Relationship to vulnerable adult(s):

Contact details:

Name of person completing form:

Relationship to vulnerable adult:

Contact details:

Appendix F

Safeguarding Adults

Multi-Agency

Discussion Form

North Somerset Safeguarding Adults Partnership

Safeguarding Adults Multi-Agency Discussion Form

1. Multi-agency discussion details

Date of Discussion: _____

Name of Team Manager leading discussion:

2. Name of service user

Surname: _____

Forename: _____

Date of birth: _____

SWIFT number: _____

3. Home address of service user

4. Details of people consulted

Name	Role and Agency	Copy of this form sent
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. Brief details of alert

6. Summary of multi-agency discussion and actions agreed

7. Outcome

If no Strategy Meeting, give brief statement of reasons and any further action:

8. Date of decision

NB: A copy of this form must be completed whenever a concern that abuse has or may have taken place does not proceed to a Strategy Meeting. A copy **MUST** be sent to the Safeguarding Adults Manager and all those involved in the Multi-Agency Discussion

Appendix G

Safeguarding Adults

Monitoring Form

North Somerset Safeguarding Adults Partnership

Multi-Agency Monitoring Form

This form is required to complete data required by the Department of Health. Please complete it with as much factual detail as possible. This form might be used in future criminal or civil proceedings and accuracy is therefore vital.

Adult Safeguarding Monitoring Form

1. Details of Vulnerable Adult

Name _____

Date of birth: _____ Swift no. _____

2. Strategy Meetings

Safeguarding Adults Strategy Meeting Date:

Safeguarding Planning Meeting Date:

Safeguarding Review Meetings/Dates:

3. Is Vulnerable Adult known to other agencies

Yes

No

(If yes, please provide details) _____

4. Has the Vulnerable Adult been placed in North Somerset by another Local Authority

Yes

No

(If yes, please provide details, name of Authority i.e. Council / PCT)

5. Source of Referral

Main family carer

Friend

Other family member inc. relatives and in laws

Other service user

Paid carer

Alleged abuser

Member of the public

Formal advocate

Police

GP

Volunteer

Social Services

Service Provider

CSCI

Healthcare Commission

Independent Healthcare Provider (non NHS)

Specialist/Community Hospital

General Hospital

Acute Hospital inc. A&E

Counselling/Therapy

Vulnerable Adult

Complaints

- | | |
|---|---|
| <input type="checkbox"/> Other PCT | <input type="checkbox"/> Prison/Probation |
| <input type="checkbox"/> Domestic Violence Unit | <input type="checkbox"/> Voluntary Agency |
| <input type="checkbox"/> Neighbour | <input type="checkbox"/> Anonymous |
| <input type="checkbox"/> Mental Health | |

6. Organisations involved in the investigation (please tick all agencies involved)

- | | |
|---|--|
| <input type="checkbox"/> Police | <input type="checkbox"/> CSCI |
| <input type="checkbox"/> Healthcare Commission | <input type="checkbox"/> Other Local Authority |
| <input type="checkbox"/> Hospital Non Acute | <input type="checkbox"/> Hospital Acute inc. A&E |
| <input type="checkbox"/> Housing | <input type="checkbox"/> Social Services |
| <input type="checkbox"/> Mental Health | <input type="checkbox"/> Nursing Home |
| <input type="checkbox"/> Residential Home | <input type="checkbox"/> Day Care Centre |
| <input type="checkbox"/> Domiciliary/Homecare Agency | <input type="checkbox"/> Court of Protection |
| <input type="checkbox"/> Provider Agency | |
| <input type="checkbox"/> Other (please specify) _____ | |

7. Has the Vulnerable Adult been deemed to have capacity?

- Yes**
- No**

If yes did they:

- Agree to investigation proceedings?
- Agree to participate in the investigation?
- Refuse to proceed with investigations prior to the referral?

8. Case Conclusion

- Concerns not substantiated
- Concerns substantiated, but service user is judged not to be at risk of significant harm
- Concerns not substantiated, but service user is judged to be at risk of significant harm
- Concerns substantiated, and service user is judged to be at risk of significant harm

9. Intervention(s) for the Alleged Victim / Protection Plan

- Removed from property/service
- Increased monitoring
- Community Care Assessment and Services
- Management of Access to Finances
- Counselling/Support
- Advocacy
- Management of access to alleged perpetrator
- Action under Mental Health Act
- Declaratory Relief
- Civil Action
- Referred to Complaints Procedure
- Guardianship
- Court of Protection
- No further action

10. Intervention(s) for Alleged Perpetrator / Organisation / Service

- Police action
- Criminal prosecution
- Disciplinary action
- Action by CSCI
- Action by placing Authority

- Action by Social Services
- Action by Healthcare Commission
- Referred to POVA list
- Carers Assessment offered
- Management action – supervision, training etc.
- Counselling/Support
- Removed from property/service
- Community Care Assessment and Services
- Action under Mental Health Act
- Case Review
- No further action
- Management of access to vulnerable adult

11. Date of Safeguarding Review

Date: _____

12. Date Case Closed (This refers to the incident/allegation)

Date: _____

13. Were the relevant people informed of any decisions and outcomes: (all relevant people should be informed that the issues have been addressed)

Service User _____

Date: _____

By Whom? _____

Carer _____

Date: _____

By Whom? _____

Staff Member _____

Date: _____

By Whom? _____

Referrer _____

Date: _____

By Whom? _____

14. Details of person completing the form

Name: _____

Team Manager: _____

Date: _____

Team: _____

Contact Tel. No: _____

Information about council services is available in large print,
audio, easy read and other formats.

Help is available for people who require council information
in languages other than English.

Contact 01934 529 600