

Professional Decision Making in Response to a Safeguarding Concern

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Introduction

Safeguarding means protecting an adult's right to live safely, free from abuse and neglect. It is about people and organisations working together to prevent and stop both the risks and experience of abuse or neglect. However, identifying what action needs to be taken and whether the eligibility criteria is met for Section 42 enquiries isn't always easy.

This guidance has been compiled for RBSAB membership agencies and Adult Care in order to give some clarity as to what actions need to be taken when a safeguarding concern has been received by Adult Care.

This document has been reviewed following the publication of guidance from [ADASS](#) in July 2019 and in response to the LGA/ADASS (understanding what constitutes a safeguarding concern and how to support effective outcomes) framework.

[Understanding what constitutes a safeguarding concern and how to support effective outcomes | Local Government Association](#)

The Care Act 2014

From April 2015 the Care Act put adult safeguarding on a legal footing and made it a legal requirement for local authorities to make enquiries, or cause others to do so, if it believes an adult is experiencing, or is at risk of, abuse or neglect and as a result of those care and support needs is unable to protect him/herself against the abuse/neglect.

An enquiry should establish whether any action needs to be taken to prevent or stop abuse or neglect, and, if so, by whom. 'Making Safeguarding Personal' is shifting the focus of adult safeguarding work towards a person centred approach, and working towards outcomes that the person wants to help them manage the risk of abuse and/or neglect.

Six key principles must underpin all adult Safeguarding work, these are:

- **Empowerment** - the presumption of person led decisions and informed consent
- **Prevention** - it is better to take action before harm occurs
- **Proportionality** - proportionate and least intrusive response to the risk presented
- **Protection** - support and representation for those in greatest need
- **Partnership** - local solutions through services working with their communities
- **Accountability** - accountability and transparency in delivering safeguarding

Regardless of the decision to progress the concern to a safeguarding enquiry, any decision making in response to a safeguarding concern must be legally literate based on understanding and the application of fundamental principles that are at the heart of the care act which includes a duty to promote well-being and to adopt a flexible approach, focusing on what matters most to the individual. The 6 statutory safeguarding adult principles (see above) underpin all aspects of adult safeguarding work these should be clearly and openly addressed from the outset and placed at the heart of decision making and action.

Alongside this there must be transparency in applying the 5 principles of the Mental Capacity Act 2005. The person concerned is central to the concern, with a focus on the outcomes they want to achieve and how these may be accomplished. This is at the heart of Making Safeguarding Personal. Adults must be involved in decision making and where the adult has substantial difficulty in being involved the support of a suitable person or advocate must be offered as set out in the Care and Support statutory guidance.

However if a person declines safeguarding support and/or a s42 enquiry that is not the end of the matter. Consideration should be given to ways in which the risk to the adult could be managed or mitigated, taking into account the impact of abuse or neglect on the person's well-being, including their vital interests and the impact on others in the situation.

Adults need to be able to make informed choices from the information they are given. In order to do this they may need support in a variety of ways such as the help of a family member or friend (subject to considerations below), an independent advocate or Independent Mental Capacity Advocate, a language interpreter or other communication assistance or aid. The need for an Advocate should be considered at the point of the first contact with the Local Authority and at any subsequent stage of the safeguarding enquiry or SAR. For further information, please see Chapter 9 of the RBSAB Adult Safeguarding Multi-Agency Policy and Procedures, available at www.rochdalesafeguarding.com

Section 42 Enquiry

The Care Act makes it clear that there are **2 stages** to a **Section 42 enquiry**.

Section 42 (1) – Known locally as the 'Concern stage.' The concern stage is to establish whether there is '**reasonable cause to suspect**' that an adult:

- i. **Has needs for care and support**
- ii. **Is experiencing, or is at risk of abuse or neglect, and**
- iii. **As a result of their needs is unable to protect themselves**

Section 42 (2) - Known locally as Section 42 enquiries.

- i. **Making (or causing to be made) whatever enquiries are necessary**
- ii. **Deciding whether action is necessary and if so what and by whom**

This guidance focuses on the 'Concern stage' and aims to provide support and guidance in decision making, reporting and recording what actions are to be taken, with the focus of this stage being on 'eligibility.'

Section 42 (1) – Concern Stage – Eligibility Criteria

The local authority is responsible for this public law decision as to whether or not to carry out a statutory Section 42 (2) enquiries. In order to determine this, information gathering needs to take place to establish if the concern meets the Concern Stage S42 (1) eligibility criteria (**as above**) in order to make a decision as to whether the statutory S42 (2) enquiry duty is triggered.

There are a number of considerations, shared values and principles to be applied at the concern stage to determine if the eligibility criteria is met including:

- **Human Rights** – Determine whether, within a human rights context, it is fair, reasonable and lawful to interfere.
- **Wellbeing** – Improve quality of life, well-being and safety (see below).
- **Mental Capacity Act** – Be transparent about the 5 principles of the Mental Capacity Act.
- **Safeguarding principles** – Refer to the 6 key principles when arriving at your decision.
- **Making Safeguarding Personal** – What is the person's views of the situation. What are their outcomes? What do they feel about the situation? What do they want to happen? Is an advocate required? Be person led and outcome focused.

Wellbeing

Safeguarding means protecting an adult's right to live in safety, free from abuse and neglect. It is about working together to support people to make decisions about the risks they face in their own lives, and protecting those who lack the capacity to make these decisions. We all share responsibility for safeguarding and promoting the welfare of vulnerable adults.

The definition of wellbeing is wide and can encompass looking out for someone's personal dignity, physical health, mental health and emotional well-being, amongst other things. In addition to this, under this section a local authority must have regard to the views, wishes, feelings and beliefs of an individual. It must also have regard to avoiding the development of the need for care and support of that particular individual. With regard to the principle of well-being, all aspects of a person's wellbeing should be given equal importance.

There's a strong link between safeguarding and mental and physical wellbeing. In short, if someone's wellbeing is suffering, they may consider certain actions that put them at risk. If a person is experiencing a form of abuse that is not noticed and tackled (and we all have a responsibility to do so, both as employees of the council, and members of the public) they may come to serious harm.

"Wellbeing" is a broad concept, and it can relate to the following areas in particular:

- Personal dignity (including treatment of the individual with respect);
- Physical and mental health and emotional wellbeing;
- Protection from abuse and neglect;
- Control by the individual over day-to-day life (including over care and support provided and the way it is provided);
- Participation in work, education, training or recreation;
- Social and economic wellbeing;
- Domestic, family and personal relationships;
- Suitability of living accommodation;
- The individual's contribution to society.

Essential steps for developing Making Safeguarding Personal resonate with themes that are core to developing wellbeing.

Understanding what is poor practice?

If a person is totally dependent on others' assistance to meet their basic needs, continual poor practice can lead to serious harm or death. This may require further enquiries.

Poor practice when identified, can be dealt with by other means such as a care home investigating the issues identified or by being passed to the commissioner of

the service to investigate and address. Alternatively, it can be addressed by teams completing Care Act Assessments or reviews.

Useful elements in deciding if poor practice has occurred, which does not require consideration for a statutory safeguarding adult section 42 enquiry response, are to ascertain if the concern:

- resulted in no harm
- indicated a need for a defined action

Incidents which indicate that poor practice is impacting on more than one adult, or that poor practice is recurring, must result in a formal S42 (2) enquiry being started. Section 42 (2) enquiries must involve the Integrated Commissioning Directorate where relevant. These incidents can be good indicators of more widespread, organisational abuse and commissioning services are best placed to manage these concerns.

Sometimes a “one off” incident is an indication of a lowering of standards by health or care providers. Early indications of poor practice must be challenged and can be addressed using other systems, such as commissioners’ quality assurance processes; care and support reviews; complaint investigations; or human resources systems. All of these will ensure that the issue is properly addressed, recorded, resolved and monitored. All reported incidents or complaints about poor care in a regulated setting should be sent to the Integrated Commissioning Directorate.

Integrated Commissioning Directorate will collate records of poor practice concerns and keep the safeguarding adults lead informed of any escalating concerns about individual agencies. Where this occurs, a multi-agency approach is needed to address any concerns within provider services.

Information Gathering stage

When a contact is received by Adult Care that indicates safeguarding concerns the contact should be progressed to the safeguarding concern stage to consider eligibility criteria s42 (1). At this point more information may need to be gathered to ascertain exactly what has happened. There needs to be consideration of the guiding principles, human rights, well-being, mental capacity and linking in the six key Safeguarding principles in order to make a decision whether the eligibility criteria is met.

Robust information gathering will allow professionals to decide whether the concern requires a statutory S42 (2) response or whether following information gathering it is established that the eligibility criteria is not met.

This 'information gathering stage' needs to focus on 'individual circumstances' to decide whether this meets the S42 (1) eligibility criteria, that there is reasonable cause to suspect an adult with care and support needs is at risk, or experiencing abuse or neglect and can't protect themselves as a result of their needs. It is important to ascertain the views of the adult on the nature, level and type of risk and support they may need to mitigate risk.

The following considerations need to be made to ascertain this:

- Asking for more information and clarification from the person who has raised the concern.
- Does the person have care and support needs? Are they at risk of harm? As a result of their care and support needs are they unable to protect themselves?
- Is the person **currently** experiencing, or at risk of, abuse or neglect? If the abuse or neglect was in the past and is not current, a s42 enquiry is **not** appropriate. Other mechanisms, such as a formal complaint process or an internal practice review should be used to address the concern.
- It is important for Adult Care to consider how the Adult will be contacted to ascertain how they view the concern and identify from their perspective whether they believe they have been harmed and what outcomes they want to achieve. This needs to be done in the most person centred way, usually by a professional or worker who knows the person best. It may therefore be appropriate for Adult Care to request the referrer or a provider service involved to get the adult's views.
- If the service user is in a provider service, it is appropriate to ask the service to complete the 'information gathering' form, as long as this would not compromise the Adult or interfere with the potential s42 enquiry.
- The individual's Mental Capacity should be assessed by Adult Care to determine if the individual has the ability to take part in a safeguarding enquiry.
- Adult Care will determine who is best placed to talk with the family if this is appropriate, about the concern and establish their involvement and how they could contribute to the potential protection plan.
- If it is ascertained that the individual does not have capacity to take part in a safeguarding enquiry, Adult care will ascertain who will advocate and whether a formal advocate needs appointing.

- Adult Care will gather information from relevant health professionals who may have involvement with the individual.
- Adult Care will determine whether within a human rights context it is fair, reasonable and lawful to 'interfere.'
- Has the harm been caused by a person in a position of trust (i.e. paid carer or volunteer) If so, the care organisation must follow their own disciplinary process to investigate the incident and they will need to risk assess whether this requires a referral into Allegation Management framework in Adult Care. (See separate RBSAB Allegation Management process)
- If harm has been caused by a person in a position of trust or there is evidence a crime has taken place, the Adult needs to know this information must be shared and investigated, even if this is against their wishes. The Adult must be informed that we have a duty to report all crimes to the police, even if this over-rides their wishes.
- If a person declines safeguarding support and/or a s42 enquiry that is not the end of the matter. Consideration should be given to ways in which the risk to the adult could be managed or mitigated, taking into account the impact of abuse or neglect on the person's well-being, including their vital interests and the impact on others in the situation. Consider what the person might need to recover (i.e. counselling, therapy referral).

Recording of information at concern stage (s42 (1))

All work relevant to the organization completed within the concern stage needs to be recorded, ensuring that reference is made to the six Safeguarding principles in justifying decision making at this stage. For Adult Care workers, the contact must be progressed to a safeguarding concern on ALLIS to clearly detail what actions have been taken within the concern stage to establish eligibility and justify decision making in relation to the concern..

What happens if the eligibility criteria isn't met?

If, after information gathering, Adult Care identify that the eligibility criteria is not met and there is no duty to continue to s42 (2) enquiry, then this decision-making, the impact of this and effectiveness needs to be recorded and captured. It is important to show what has been done - from prevention through to intervention, resolution and recovery.

Issues might still need to be addressed or risks mitigated under other powers and processes. This needs to be explicit and recorded.

Timescales

All safeguarding concerns should be reviewed on the day of receipt to address any immediate safeguarding and protection issues. Information gathering by Adult Care should take place and eligibility criteria should be established as soon as practicably possible and this should not unnecessarily delay the decision to progress to a S42 (2) enquiry where evidence indicates the S42 (1) eligibility criteria is met.

If the criteria is met for a statutory S42 (2) enquiry, then a multi-agency strategy meeting should take place as soon as possible, within 2-3 days.

Who is responsible?

Each service will have their own duty system arrangements where concerns will be actioned.

An Adult Care Safeguarding Adult Manager (SAM) is responsible for agreeing with the practitioners decision to progress the concern to a S42 (2) enquiry. The appointed SAM is responsible for allocating an Enquiry Practitioner and progressing to a strategy meeting.

It is essential that the rationale for any decision making is recorded on the appropriate case management system (i.e. ALLIS).

Case examples for safeguarding concerns S42 (1) and S42 (2) enquiries can be found below.

**Safeguarding Concern received
(S42 1)**

Decision Making Stage.

Is the s42 (1) eligibility criteria met? Consider if there is:
Reasonable cause to suspect an adult with care and support needs is at risk of, or experiencing, abuse or neglect and can't protect themselves as a result of their needs, and to ascertain the views of the adult on the nature, level and type of risk and support they may need to mitigate that risk.
What is the level of risk to the individual?

After proportionate fact finding, is it necessary to continue to the s42 (2) duty to make enquiries and take action?

NO

S42 (1) Concern stage
Eligibility criteria not met.
Justify decision making
Alternative responses:
Care management
Quality of care concern
Complaint
Safeguarding 'other' Enquiry
Signpost for advice
NFA

YES

S42 (2) Enquiry
'Make or cause to be made whatever enquiries are necessary. Decide whether action is necessary and if so what and by whom.'
Adult Care to follow ALLIS process.
May also include Care Act assessment.
Action plan, Strategy meeting,

Consideration Summary

S42 (1) Eligibility criteria needs to be determined for all safeguarding concerns and this is the focus of the initial, early information gathering to determine this eligibility.

Robust information gathering and documentation within the safeguarding concern is essential if a S42 (2) enquiry is not triggered. If a S42 (2) enquiry is triggered, this early documentation can all be used to form the S42 enquiry.

Where a provider service is indicated, the commissioning organisation of the service need to be notified of all concerns involving commissioned services to enable quality monitoring.

Where a worker, volunteer or someone in a position of trust is implicated then the provider should follow Allegation Management processes.

If there is an indication that a crime has been committed then consideration need to be given to referring to GMP via Hub.P@gmp.police.uk

Commissioning/ICS/ GMP/CQC or other partners to be included in Strategy actions as appropriate.

Whole Service Investigations

A whole service investigation is an investigation which involves a number of individuals in the same establishment who are considered to be at risk. This will usually be led by the Rochdale Council's Integrated Commissioning Directorate in line with the RBSAB multi-agency policy and procedures and the Rochdale Council Adult Care Escalation Plan and Accountability Framework for Care Provision in Heywood, Middleton and Rochdale.

The decision to undertake a whole service investigation can be difficult and may be as a result of poor practice coming to light rather than specific safeguarding concerns. Guidance on the type of concerns which might trigger a Whole Service Investigation is included at Appendix 1: Whole service investigations: Criteria for consideration

Appendix 1

Whole Service Safeguarding Investigations: Criteria for Consideration

Please note that this practice guidance is for guidance only and is not exhaustive:

The presentation of concerns might result from:

- Investigation into the care of one person which then indicates that the practices within the service may be putting other vulnerable people at risk
- A whistle blower within the service
- A poor CQC review outcome
- Reports from commissioners undertaking quality monitoring
- Reports or complaints from service users, professionals or family members and friends
- An accumulation of volume of provider safeguarding concerns over a period of time

The common thread is a significant breach of CQC's "Fundamental Standards" (2016). Problems may emerge as:

- Poor hydration / nutrition
- Widespread neglect of other basic needs such as medical care, medication and hygiene
- Lack of dignity and respect
- Numerous unwitnessed falls
- Poor care planning
- Poor risk assessment and / or management
- Lack of person-centred approaches
- Ignorance of health and safety, including moving and handling
- Dirty environment
- A high number of medication errors
- Pressure ulcers (Grade 3 and 4) where there are concerns that neglect may have occurred. There is separate guidance about pressure ulcers and safeguarding, available on www.rochdalesafeguarding.com

Underpinning these is often a lack of clear leadership, concerns about staff competence and a culture of poor practice. Occasionally, there may be members of

staff who plan to exploit these environments, in these cases patterns of theft, sexual assault or physical assault may emerge.

It is imperative that joint professional meetings are held as early as possible to identify risk and decide on appropriate actions to address the concerns.