

Guidance & Policy

LIFETIME LAWYERS SAFEGUARDING GUIDANCE AND POLICY

Recognising, preventing and dealing
with abuse and neglect of adults at risk of harm





**Recognising, preventing and dealing
with abuse and neglect of adults at risk of harm:
Safeguarding Guidance & Policy**

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Introduction

Professional legal advice is an important safeguard for a client who may be at risk of abuse or neglect. The professional has a crucial role to ensure the client wants the advice they seek and to enter into the legal transaction; has the mental capacity to decide to do so; and is able to make an informed decision, free from the undue influence, duress and coercion of others.

The legal professional can advise on and draft documents which contain appropriate safeguards to reduce the risk of abuse, and provide relevant advice to any legally appointed agent of the client, such as a deputy or attorney to reduce the risk of abuse.

However, there may be occasions when the legal professional becomes aware or has a reasonable suspicion that an adult is at risk of harm and requires steps to be taken to safeguard them.

Every client has the potential to be vulnerable to harm occurring and so the legal professional should be alert to situations where the client may be more easily exploited by others. This includes clients with care and support needs, such as those who have a long term illness or condition, disability or impairment who are at particularly risk. Clients with communication difficulties, where English is a foreign language, have limited ability to read or write, trouble with reading and writing accuracy and comprehension, and illiteracy or with poor financial literacy may also be vulnerable to abuse.

Social challenges can make a person vulnerable to abuse, including people living alone or who are socially isolated, suffered an adverse life event, such as bereavement, or who have become reliant on others for care, support or accommodation.

This guidance is aimed at legal professionals, but may be useful for others working with adults at risk of abuse or neglect. It is not a definitive statement of the law relating to safeguarding adults at risk of harm but aims to provide signposts for recognising, preventing, and dealing with abuse and neglect.

It should form part of a legal practice's safeguarding clients policy to be followed by everyone working within their organisation and promoted by those in leadership positions. Everyone has a duty and responsibility to safeguard clients at risk of harm, to promote their welfare and allows them to live safely.

Legal practices should identify a safeguarding lead who has overall responsibility for maintaining best practice to reduce the risk of abuse or neglect of clients at risk of harm, providing support, advice and information about concerns raised, and directing what action should be taken.

It may be appropriate to prepare a Safeguarding Plan, which sets out the client's support needs, their wishes, action that is to be taken and by whom, and if the matter is to be referred to an external body, such as the local authority, Office of the Public Guardian, the police or others, the date this occurred and any action taken by that organisation, including no action with the reasons given. The Safeguarding Plan may include details of any ongoing risks and how these are to be managed. It should be kept under review.

1. What do we mean by abuse?

1.1 There is no single internationally agreed definition of abuse, although the World Health Organisation defines elder abuse as

'is a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.'

1.2 Abuse takes many forms and constitutes a violation of a person's human rights and includes physical, sexual, psychological and emotional abuse, financial and material abuse, abandonment or isolation, neglect and self-neglect, and modern slavery. It can take place in any setting, by anyone and may be perpetrated as the result of a deliberate intended act, ignorance or an omission to act. See section 3 of this guidance for details of how to identify different types of abuse.

1.3 Local authorities in England and Wales have statutory safeguarding duties towards adults with care and support needs regardless of whether those needs are being met, regardless of whether the adult lacks mental capacity or not, and regardless of setting. These are set out in sections 42 to 46 of the Care Act 2014 in England and Chapter 14 of the Care and Support Statutory Guidance; and Part 7 of the Social Services and Well-being (Wales) Act 2014 and its supporting Code of Practice, which is available on the safeguarding.wales website. Section 6 of this guidance sets out local authorities responsibilities towards adults at risk of harm.

1.4 Section 42(3) of the Care Act 2014 simply refers to 'abuse' as including financial abuse which covers:

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

1.5 In Wales, whilst adopting the same definition of financial abuse under s.197(1) of the Social Services and Well-being (Wales) Act 2014, it extends the definition to cover physical, sexual, psychological, emotional or financial abuse (and includes abuse taking place in any setting, whether in a private dwelling, an institution or any other place).

2. The risk factors for abuse

2.1 Abuse occurs for many reasons and the causes are not fully understood. The following risk factors have been identified as being associated with elder abuse, but apply equally to abuse of any adult:-¹

- poor physical and mental health of the victim
- in some cultures, where women have inferior social status, they may be at higher risk of neglect and financial abuse

¹ Elder abuse prevalence in community settings: a systematic review and meta-analysis. Yon Y, Mikton CR, Gassoumis ZD, Wilber KH. *Lancet Glob Health* 2017 Feb 5(2):e147-e156: <https://www.ncbi.nlm.nih.gov/pubmed/28104184>; The prevalence of elder abuse in institutional settings: a systematic review and meta-analysis. Yon Y, Ramiro-Gonzalez M, Mikton C, Huber M, Sethi D. *European Journal of Public Health* 2018: <https://www.ncbi.nlm.nih.gov/pubmed/29878101>.

- women are at higher risk of more persistent and severe forms of abuse and injury
- dependency on the older person for accommodation, financial and emotional support
- a long history of poor family relationships may worsen as a result of stress when the older person becomes more care dependent
- as more women enter the workforce and have less spare time, caring for older relatives becomes a greater burden, increasing the risk of abuse
- social isolation because of loss of physical or mental capacity, or through the loss of friends and family members
- ageist stereotypes where older adults are depicted as frail, weak and dependent
- erosion of the bonds between generations of a family
- systems of inheritance and land rights, affecting the distribution of power and material goods within families
- migration of young couples, leaving older parents alone in societies where older people were traditionally cared for by their offspring
- lack of funds to pay for care
- within institutions, abuse is more likely to occur where standards for health care, welfare services, and care facilities are low; staff are poorly trained, remunerated, and overworked; the physical environment is deficient; and policies operate in the interests of the institution rather than the residents.

3. Identifying abuse

3.1 In a 2017 study based on the best available evidence from 52 studies in 28 countries from diverse regions, including 12 low- and middle-income countries, it was estimated that 15.7% of people aged 60 years and older were subjected to some form of abuse.² This is likely to be an underestimation, as only 1 in 24 cases of elder abuse is reported, in part because older people are often afraid to report cases of abuse to family, friends, or to the authorities.

3.2 Research by the charity, Hourglass in 2020 revealed that more than a fifth of the UK public have personally experienced abuse as a person aged 65 and over, or know someone who has been abused.³ Worryingly, the researched highlighted that abuse against older people is often not seen as abuse. It found that:

- more than 1 in 3 people do not believe that acts of domestic violence directed towards an older person counts as abuse.
- 1 in 3 people do not believe that inappropriate sexual acts against an older person constitutes abuse
- 30% do not believe that pushing, hitting or beating an older person is abuse

3.3 In Hourglass’s “Growing Old in the UK” Survey in 2024 found:

- 26% of people do not consider using a power of attorney for personal financial gain is abuse
- 26% of people do not believe that family members trying to change the will of an older relative is a form of abuse
- 25% do not believe that taking items from an older relative’s home without their consent is abuse

² Elder abuse prevalence in community settings: a systematic review and meta-analysis. Yon Y, Mikton CR, Gassoumis ZD, Wilber KH. Lancet Glob Health. 2017 Feb; <https://www.ncbi.nlm.nih.gov/pubmed/28104184>

³ <https://wearehourglass.org/research>

- 16% do not believe scamming an older person of money whether online or over the phone is abuse

3.4 Self-neglect is a form of abuse where an adult fails to care for their own basic needs, to the point that their health, safety, or wellbeing is seriously at risk. The estimated prevalence rate of self-neglect among older adults is 27% with the incidence being higher in males, aged 80 years.⁴

3.5 Hoarding disorder is a recognised mental health condition in which a person persistently finds it difficult to discard or part with possessions, regardless of their actual value. This leads to the accumulation of possessions that interferes with usual living spaces. In its extreme it can create a risk to health and life and can be considered a form of self-neglect. There is uncertainty concerning the prevalence of hoarding disorder but it is believed to affect about 6% of the general population.⁵

3.6 The following factors create difficulties in identifying and dealing with abuse:

- the action is not always recognised as abuse
- lack of knowledge and training by professionals involved in care, and so may fail to identify, report and act
- lack of reporting and recording incidents of abuse by the abused and those caring for them
- fear of further abuse and the ramifications, such as dependence on the abuser and jeopardy of care
- fear they will not be believed
- trauma suffered as a result of the abuse
- embarrassment to admit abuse
- secrecy of the perpetrator
- cultural and language barriers

3.7 The main types of abuse can be identified as follows: -

Physical abuse

Examples of physical abuse would include hitting, slapping, punching, kicking, hair-pulling, biting, pushing, rough handling, scalding and burning, physical punishments, inappropriate or unlawful use of restraint, making someone purposefully physically uncomfortable, involuntary isolation or confinement, over-sedation, force feeding or withholding food or physically restricting the person's movement.

Possible indicators of physical abuse

The individual may present one or more of the following: -

- Cuts, lacerations, puncture wounds, open wounds, bruises, welts, discoloration, black eyes, burns, loss of hair in clumps, fractures, broken bones and skull fractures, without an explanation or inconsistent with the account of what happened, or with the person's lifestyle
- Unexplained falls

⁴ The prevalence of self-neglect among older adults: A systematic review and meta-analysis: Qi Mao BS, RN, Zhaojing Huang BS, RN, Lulu Zhang BS, RN, published in the International Journal of Nursing Knowledge, 9 January 2025.

⁵ Comorbidity in hoarding disorder, Oct 3, 2011, Frost RO, Steketee G, Tolin DF.

- Untreated injuries in various stages of healing or not properly treated
- Poor skin condition or poor skin hygiene
- Dehydration and/or malnourished without illness or related cause
- Loss of weight
- Soiled clothing or bed
- Broken eyeglasses/frames, physical signs of being subjected to punishment or signs of being restrained
- Inappropriate use of medication, overdosing or under dosing
- Failure to seek medical treatment or frequent changes of GP
- Subdued or changed behaviour in the presence of a caregiver
- A person telling you they have been hit, slapped kicked or mistreated

Psychological or emotional abuse

The person may be subjected to behaviour, including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, bullying, blaming, controlling, intimidation, coercion, harassment, verbal abuse, social isolation or withdrawal from services or supportive networks, including preventing someone from meeting their religious and cultural needs. Removing mobility or communication aids or intentionally leaving someone unattended when they need assistance, failing to respect the person's privacy, addressing a person in a patronising or infantilising way, preventing them from expressing choice and opinion and preventing stimulation, meaningful occupation or activities, can also amount to abuse.

Possible indicators of psychological or emotional abuse

- Helplessness
- Hesitation to speak openly particularly when a certain person is present
- Implausible stories
- Confusion or disorientation
- Anger, aggression or tearfulness, without apparent cause
- Sudden changes in behaviour, including insomnia, weight gain or loss
- Emotionally upset, distressed or agitated
- Unusual behaviour (sucking, biting, or rocking)
- Unexplained fear
- Denial of a situation
- Extremely withdrawn and non-communicative or responsive
- A person telling you they are being verbally or emotionally abused

Financial or material abuse

The illegal or unauthorised use of a person's assets, which may include theft, fraud, false representation, internet scamming, exploitation, undue pressure, duress or undue influence in connection with loans, wills, powers of attorney, property, inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits including by power of attorney, deputyship, appointeeship or other legal authority, are all forms of financial or material abuse. Preventing or denying a person from accessing their own money or assets or arranging less care than is needed to save money to maximise inheritance are also abusive actions.

Possible indicators of financial or material abuse

- Signatures on cheques or other documents that do not resemble the person's signature, or signed when the person cannot write

- Any sudden changes in bank accounts, including unexplained withdrawals of money by a person accompanying the holder of the account
- Unexplained withdrawals from a cash machine at a time when the account holder could not have accessed the account
- The sudden inclusion of additional names, such as a carer or neighbour on the person's bank accounts or benefits payments.
- Abrupt changes to, or unexpected creation of a will that leave most or all of the assets to a new friend or only one relative
- Ordinary Power of Attorney or Property and Affairs Lasting Power of Attorney being obtained after the person has ceased to have mental capacity to manage their own finances and property
- a financial attorney 'justifying' the transfer of money to themselves belonging to the donor, as an acceleration of their inheritance, to purchase expensive items, such as cars which they need to carry out their role, charging for their time without proper authority, or because they deserve recompense for the sacrifice they are making as an attorney
- The sudden appearance of previously uninvolved relatives claiming their rights to the person's affairs and possessions
- Unusual concern or interest shown by family or others in the assets of the person and how money is being spent, particularly on the care package
- The unexplained sudden transfers of assets to a family member or someone outside the family
- Numerous small sums of cash being 'given' to, or money regularly disappearing after visits from a relative, carer or neighbour
- Numerous unpaid bills, overdue rent, care home bills, public utilities bills etc when there is someone who is supposed to be paying the bills
- Change in living conditions, lack of heating, clothing or food or inability to pay bills/unexplained shortage of money
- Lack of amenities such as TV, personal grooming items, appropriate clothing items, that the person should be able to afford
- The person allocated to manage financial affairs is evasive or uncooperative
- The lack of financial records kept by a care home, care service, deputy, attorney or appointee
- The unexplained disappearance of funds or valuables such as art, silverware, jewellery or other personal possessions
- Deliberate isolation of the person from their friends and family, resulting in another person having total control

Sexual abuse

This may involve forcing or manipulating a person to take part in any sexual activity without their consent, irrespective of the relationship. It also includes, indecent exposure, sexual teasing or innuendo, sexual harassment, inappropriate looking or touching, sexual photography or recording, forced use of pornography or witnessing of sexual acts.

Possible indicators of sexual abuse

- Bruises particularly to the thighs, buttocks and upper arms and marks on the neck
- Bleeding, pain or itching in the genital area
- Unexplained vaginal or anal bleeding
- Torn, stained or bloody underclothing
- Unexplained venereal disease or genital infections
- Unexplained difficulties in walking or standing
- Incontinence not related to any medical diagnosis

- Marked changes in behaviour, such as self-harming, poor concentration, insomnia, withdrawal, excessive fear or apprehension, or reluctance to be alone with a known individual
- The uncharacteristic use of explicit sexual language or significant changes in sexual behaviour or attitude
- A person tells you that they have been sexually assaulted or raped

Neglect, acts of omission and self-neglect

This may be demonstrated by the ignoring of medical, emotional, religious, cultural, ethnic, social, recreational or physical care needs, failure to provide access to appropriate health, care and support, housing or educational services, the withholding of the necessities of life, such as shelter, food, clothing, medication, adequate nutrition and heating. Self-neglect can involve a wide range of behaviour, such as neglecting to care for one's personal hygiene, health or surroundings.

Possible indicators of neglect, acts of omission or self-neglect

- Dirty, unhygienic, or other health and safety hazards in the person's living environment whether in their own home or in a care home
- Rashes, sores, ulcers, lice, inadequate clothing
- The person is malnourished or dehydrated
- The person has untreated injuries or medical problems
- Poor personal hygiene
- The withholding of medication or over medication
- Lack of assistance with eating and drinking
- Inconsistent or reluctant contact with health and social care organisations
- Accumulation of untaken medication
- Uncharacteristic failure to engage in social interaction
- Inappropriate or inadequate clothing
- A person tells you that they are not having their needs met

Possible indicators of Hoarding Disorder

- Persistent difficulty discarding or parting with possessions, even if they have no or little value
- Extreme distress associated with the idea of getting rid of possessions
- Clutter of living spaces and compromises the use of living spaces, including the ability to maintain a safe space.
- Use the clutter image ratings as a simple way to identify the severity of the disorder: <https://hoardingdisordersuk.org/clutter-image-ratings/>

Caregiver abuse

A caregiver may be doing their best but cannot provide the level of care and support that is needed. However, there may also be signs that abuse or neglect is deliberate.

Indicators of caregiver abuse

- The cared for person may not be allowed to speak for themselves, or see others, without the presence of the caregiver and (suspected abuser) being present
- Attitudes of indifference or anger towards the cared for person, or the obvious absence of assistance

- The caregiver blames the cared for person (e.g. accusation that the incontinence is a deliberate act)
- Aggressive behaviour (threats, insults, harassment) by the caregiver towards the cared for person
- Previous history of abuse or exploitation by others
- Inappropriate display of affection by the caregiver to the cared for person
- Flirtations, coyness, etc, which might be indicators of inappropriate sexual relationships
- Social isolation from family, or isolation or restriction on the activity of the cared for person by the caregiver
- Conflicting accounts of incidents by family, supporters or the cared for person
- Inappropriate or unwarranted defensiveness by the caregiver
- Indications of unusual confinement (closed off in the room; tied to furniture; changing routine activity)
- Obvious absence of assistance or attendance
- Previous history of abusive behaviour

Stranger abuse

This can include distraction burglaries, bogus trades' people, exploitative 'cold calling' or street robbers who target vulnerable people. It can also include identity fraud, where the perpetrator gains access to the person's identification documents and obtains credit cards and loans in their name. The Government is seeking to raise awareness of how people can protect themselves and what to do in the event they have been scammed. See <https://stopthinkfraud.campaign.gov.uk/> and <https://www.gov.uk/government/publications/frauds-tricks-and-scams/fraud-tricks-and-scams>

Domestic or family violence

This may be a single incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse by someone who is or has been an intimate partner or family member regardless of gender or sexuality, and includes: psychological, physical, sexual, financial, emotional abuse; and so called 'honour' based violence, such as Female Genital Mutilation, dowry-related abuse, transnational marriage abandonment and forced marriage.

'Coercive behaviour' describes an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.

Indicators of coercive behaviour

- Threatening harm or leaving them to control someone
- Enforcing trivial rules and punishing breaches
- Monitoring communications or movements
- Gaslighting (making the victim doubt their perception of reality)
- Financial control (withholding money, restricting access to benefits and their money)

'Controlling behaviour' describes an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

- Isolating them from friends or family

- Exploiting their resources or finances
- Depriving them of independence or access to support
- Regulating their daily behaviour (who they see and where they go)

Modern slavery

This encompasses slavery, human trafficking, forced labour and domestic servitude. Traffickers and slave masters use whatever means they have at their disposal to coerce, deceive and force individuals into a life of abuse, servitude and inhumane treatment.⁶

Romance abuse and predatory marriages

There are increasing stories of vulnerable people being ‘groomed’ to have a relationship with the perpetrator with the intention of scamming the victim out of money, or marrying them with the intention of inheriting their estate.

Discriminatory abuse

Unequal treatment based on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex or sexual orientation (which are known as ‘protected characteristics’ under the Equality Act 2010) is unlawful. Verbal abuse, derogatory remarks or inappropriate use of language, harassment or deliberate exclusion, substandard service provision, denying basic rights to healthcare, education, employment and criminal justice, which are related to a protected characteristic is unlawful. It also extends to denying a person access to communication aids, not allowing access to an interpreter, signer or lip-reader because of a protected characteristic.

Organisational or institutional abuse

Organisation or institutional abuse, includes neglect and poor care practice within an institution or specific care setting such as a hospital or care home, for example, or in relation to care provided in one’s own home. This may range from one off incidents to ongoing ill-treatment. It can be through neglect or poor professional practice as a result of the structure, policies, processes and practices within an organisation.

Possible indicators of organisational or institutional abuse

- Lack of flexibility and choice for adults using the service
- Inadequate staffing levels
- People being hungry or dehydrated
- Poor standards of care
- Lack of personal clothing and possessions and communal use of personal items
- Lack of adequate procedures
- Poor record-keeping and missing documents
- Absence of visitors
- Few social, recreational and educational activities
- Public discussion of personal matters or unnecessary exposure during bathing or using the toilet
- Absence of individual care plans
- Lack of management overview and support

⁶https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328096/Modernslavery_booklet_v12_WEB__2_.pdf:
https://www.modernslaveryregistry.org/pages/reporting_guidance

4. Abuse and human rights

4.1 Public bodies, such as local authorities and the NHS must follow the European Convention on Human Rights which is enshrined in UK law. There is an overarching duty owed by public bodies to their citizens require steps to be taken to prevent an abuse of a human right (See as examples *Dordevic v Croatia* (application number 41526/10: [2012] CCLR 657 and *The Mental Health Trust & Ors v DD* [2015] EWCOP 4). In some cases, steps will only be taken if it is proportionate and justified, for example where it may be an interference in their private life, whilst in others action may need to be taken to ensure a person's right to life is not breached. In particular:

- Article 2 - *'Everyone's right to life shall be protected by law.'*
- Article 3 - *'No one shall be subjected to ... inhuman or degrading treatment.'*
- Article 5 - *'Everyone has the right to liberty and security of person':* The *'lawful detention of ... persons of unsound mind'* is allowed for but everyone who is deprived of his liberty by detention shall be entitled to have the lawfulness tested by a Court and to compensation if it was unlawful.
- Article 6 - *'In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'*
- Article 8 - *'Everyone has the right to the right to respect for his private and family life, his home and his correspondence.'*
- Article 1 First Protocol - *'Every ... person is entitled to the peaceful enjoyment of his possessions.'*
- Article 14 - *'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race ... religion ... property, birth or other status.'*

4.2 The UK Courts increasingly have regard to The United Nations' Convention on the Rights of Persons with Disabilities ('CRPD') when making decisions. Although it does not form part of domestic law, it has judicial interpretative influence, particularly in cases affecting the rights of a person with a disability.

4.3 Article 12.4 of the CRPD requires that:

'States Parties ... shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, [and] are free of conflict of interest and undue influence.'

4.4 In its General Comment No 1 (2014), published on 11 April 2014, the Committee on the Rights of Persons with Disabilities stated, at paragraph 18, that:

'All people risk being subject to 'undue influence' yet this may be exacerbated for those who rely on the supports of others to make decisions. Undue influence is characterized where the quality of the interaction between the support person and the person being supported includes signs of fear, aggression, threat, deception or manipulation. Safeguards for the exercise of legal capacity must include protection against undue influence - however the protection must also respect the rights, will and preferences of the person, including the right to take risks and make mistakes.'

4.5 The Commission on Equality and Human Rights extensively promote human rights and provide useful advice and guidance, which may assist legal professionals (see section 20 of this guidance).

5. A general overview of the perpetrator of abuse

5.1 The abuser may be a relative, friend, associate or neighbour, or a person acting in a paid capacity, such as a professional involved in care in the person's own home, in a care home or day centre or by the person's professional adviser. The abuser could hold a position of trust, such as being an attorney or deputy. They could be a trade or service provider, sales' person or a total stranger.

5.2 Abuse may have occurred due to neglect, an omission to act or as a deliberate and premeditated act. The deliberate abuser is one who sets out with intent to abuse the adult and may have access to information, which opens up opportunities for abuse, such as bank accounts, correspondence and other personal information. Sometimes it may be the result of desperation, due to lack of support from others, for example, where the caring role places undue pressure upon the caregiver who takes out their frustration on the cared for person. Abuse may also occur due to lack of understanding, poor decision making or poor practice. It is a common response for the perpetrator to attempt to justify their actions, as being reasonable, particularly as recompense for all they do for the person abused, or the lack of support they are given by others.

5.3 The adult may themselves be the perpetrators of harm. For example, some people with a brain acquired injury, dementia, mental health disorder, or learning disability may exhibit challenging behaviour, as a symptom of their condition, including verbal or physical aggression.

6. The local authority's safeguarding role

6.1 Local authorities in England and Wales have particular duties towards 'adults at risk', which is defined as an adult who—

- (a) is experiencing, or is at risk of abuse or neglect; and
- (b) has needs for care and support (whether or not the authority is meeting any of those needs); and
- (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.⁷

Duty to make enquiries

6.2 Where a local authority has reasonable cause to suspect that an adult in its area is or maybe an adult at risk, the local authority must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case and, if so, what and by whom. Each local authority has Adult Safeguarding Officers who may also be known as '(Vulnerable) Adult Protection Officers', with responsibility to involve multi agency teams and manage cases referred to them.⁸

Duty to assess care and support needs

⁷ s.42(1) Care Act 2014: s.126(1) Social Services & Well-being (Wales) Act 2014.

⁸ s.42(2) Care Act 2014: s.126(2) Social Services & Well-being (Wales) Act 2014.

6.3 The local authority must carry out an assessment of the care and support needs of an adult at risk, even if the person refuses to be assessed. The assessment may be multi-agency. Entitlement to an assessment is not linked to the person's own financial resources or whether they are likely to be eligible for services. Provision will be made to those who are at risk of neglect or self-neglect without regard to the usual eligibility criteria. However, the individual may be financially assessed and have to contribute towards the cost of support services.⁹

Duty to work with safeguarding partners

6.4 There is a reciprocal duty to cooperate between the local authority and relevant partners, such as NHS providers, care and support providers, and private registered social housing providers in the exercise of its functions to protect adults at risk. It is expected that different departments of the local authority will work together, including social services, housing and environmental health departments. Safeguarding Adults Boards are locally established, which include the local authority, NHS and police, which develop, share and implement a joint safeguarding strategy. The local authority leads the multi-agency local adult safeguarding system.¹⁰ In some areas, Multi Agency Safeguarding Hubs (MASH) exist, to bring key professionals together to facilitate early, better quality information sharing, analysis and decision-making, to safeguard vulnerable people more effectively. These operate in relation to children and young people, but in some areas have been extended to cover adults at risk.

Duty to carry out safeguarding reviews

6.5 The local authority must carry out a Safeguarding Adults Review when someone with care and support needs dies or seriously suffers as a result of neglect or abuse and there is a concern that the local authority or its partners could have done more to protect them (referred to as 'a serious case review' in England or 'adult practice review' in Wales).¹¹

Duty to protect movable property

6.6 The local authority is under a duty to take reasonable steps to prevent or mitigate loss or damage to the person's movable property when they have been admitted to hospital or residential accommodation.¹² The local authority can enter the premises to take steps to protect it. Any reasonable expenses incurred in doing such are recoverable from the person concerned.

6.7 Guidance on English local authorities safeguarding duties under the Care Act 2014 are contained in Chapter 14 of the Care and Support Statutory Guidance (CSSG). The Social Care Institute for Excellence has numerous resources on adult safeguarding.¹³ Safeguarding guidance for Wales is contained in Part 7 of the Social Services and Well-being (Wales) Act 2014 Statutory Code of Practice and is accompanied by issue specific safeguarding policy and practice documents: <https://www.gov.wales/safeguarding-guidance>.

Adult Protection and Support Orders (APSOs) (Wales only)

6.8 Welsh local authorities can obtain Adult Protection and Support Orders (APSOs) to authorise entry to premises (if necessary by force) for the purpose of enabling an authorised

⁹ s.9, s.10, s.11(2) Care Act 2014: s.19,s.24, s.20(2) Social Services & Well-being (Wales) Act 2014.

¹⁰ s.6 and s.43 Care Act 2014: ss.128-130, ss.132-140 Social Services & Well-being (Wales) Act 2014.

¹¹ s.44 Care Act 2014: Safeguarding Boards (Functions and Procedures) (Wales) Regulations 2015.

¹² s.47 Care Act 2014: s.58 Social Services and Well-being (Wales) Act 2014.

¹³ <https://www.scie.org.uk/safeguarding/adults>.

officer of a local authority to assess whether an adult is at risk of abuse or neglect and, if so, what to do about it.¹⁴ No such power exists in England.

6.9 Part 7 of the Welsh Code of Practice provides a single point of reference on APSOs for local authorities. It provides comprehensive information regarding the seeking, making and enforcement of an APSO, which are used to enable an authorised officer, and any other person specified in the order, to speak to an adult suspected of being at risk of abuse or neglect in private, to establish whether the adult can make decisions freely, to assess whether the person is an adult at risk and to establish if any action should be taken.

Appointment of an advocate

6.10 Section 67 of the Care Act 2014 expressly requires that an English local authority consider whether to appoint an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry or Safeguarding Adult Review where the adult has ‘substantial difficulty’ in being involved in the process and where there is no other suitable person to represent and support them. In Wales, this requirement is contained in Part 10 of the Social Services & Well-being (Wales) Act 2014 Code of Practice.

Principles for safeguarding

6.11 Public assistance and intervention is based on the principle of proportionality and least intrusiveness, in line with Art 8 of the European Convention on Human Rights (the right to a family life and privacy). As such, the extent, nature and degree of a response should be commensurate with the extent, nature and degree of the risks in question. This may mean that the legal professional has to manage the expectations of those interested in the adult at risk’s welfare, as intervention may not always occur or to the extent they expect it should.

6.12 In May 2011, the Department of Health published the government’s policy¹⁵ on safeguarding vulnerable adults. It includes a statement of principles which should inform the way in which all sectors and settings including care and support services, further education colleges, commissioning, regulation and provision of health and care services, social work, healthcare, welfare benefits, housing, wider local authority functions and the criminal justice system work with adults at risk. This has been adopted in the CSSG:

- **Empowerment** - People being supported and encouraged to make their own decisions and informed consent.

“I am asked what I want as the outcomes from the safeguarding process and these directly inform what happens.”

- **Prevention** - It is better to take action before harm occurs.

“I receive clear and simple information about what abuse is, how to recognise the signs and what I can do to seek help.”

- **Proportionality** - The least intrusive response appropriate to the risk presented.

“I am sure that the professionals will work in my interest, as I see them, and they will only get involved as much as needed.”

¹⁴ s.127, Social Services & Well-being (Wales) Act 2014.

¹⁵ Gateway reference 16072.

- **Protection** - Support and representation for those in greatest need.

“I get help and support to report abuse and neglect. I get help so that I am able to take part in the safeguarding process to the extent to which I want.”

- **Partnership** - Local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse.

“I know that staff treat any personal and sensitive information in confidence, only sharing what is helpful and necessary. I am confident that professionals will work together and with me to get the best result for me.”

- **Accountability** - Accountability and transparency in delivering safeguarding.

“I understand the role of everyone involved in my life and so do they.”

6.13 The aims of adult safeguarding are to:

- stop abuse or neglect wherever possible;
- prevent harm and reduce the risk of abuse or neglect to adults with care and support needs;
- safeguard adults in a way that supports them in making choices and having control about how they want to live;
- promote an approach that concentrates on improving life for the adults concerned;
- raise public awareness so that communities as a whole, alongside professionals, play their part in preventing, identifying and responding to abuse and neglect;
- provide information and support in accessible ways to help people understand the different types of abuse, how to stay safe and what to do to raise a concern about the safety or well-being of an adult; and
- address what has caused the abuse or neglect. ¹⁶

6.14 The Welsh Code of Practice sets out the following principles for an effective safeguarding systems, which are those where:

- the individual’s personal outcomes are known, and they are able to communicate them effectively;
- the needs of the individual are put first, so that the adult receives the care and support they need before a problem escalates;
- all professionals who come into contact with adults at risk are trained and alert to their needs including any potential or suspected abuse or risk of abuse or neglect;
- all professionals share appropriate information in a timely way, and have direct access to advice to discuss any concerns about an individual;
- all professionals are able to use their expert judgment to put the individual’s needs and personal outcomes at the centre of the system so that the right solution can be found for them; and

¹⁶ para 14.11, CSSG.

- all professionals work in a multi-agency and co-operative way to safeguard and promote an adult at risk's well-being and regularly review progress against the outcomes set out in care and support plans.¹⁷

6.15 'Making Safeguarding Personal' is an initiative which aims to develop an outcomes focus to safeguarding work, and has developed a range of tools, videos and guidance to support people to improve or resolve their circumstances. It is supported by the Local Government Association and the Association of Directors of Adult Social Care and others to promote and share good practice.

Support for victims of domestic violence

6.16 Under Part 4 of the Domestic Abuse Act 2021, local authorities in England have a statutory duty to ensure that victims and their children have access to safe accommodation and support, which extends to the provision of advocacy and advice. This is dovetailed with responsibilities under the Housing Act 1996 s.177, a person is homeless if it is not reasonable for them to continue to occupy their home because of domestic violence or abuse.

7. Professional conduct issues for legal professionals

7.1 Solicitors must have regard to the Solicitors Regulation Authority's Code of Conduct for Solicitors, RELs, RFLs and RSLs, in particular they must:

- act in the client's best interests.¹⁸ This will require the legal professional to identify who is the client, and to whom they owe a duty of care. Under common law, the duty of care is higher in cases where a professional is appointed as an attorney or deputy. The client will usually be the donor (whether mentally capable or incapable) in the case of an Enduring or Lasting Power of Attorney or the person referred to as 'P' in Court of Protection cases, unless they are separately represented or there is a conflict of interest between the donor/P and their attorney or deputy.
- act on the instructions from the client, or from someone properly authorised to provide instructions on their behalf. However, in circumstances where you have seen an agent's legal authority to act, for example instructions are by an attorney or deputy and it is not possible to obtain or ascertain the instructions of your client, then you are still subject to the overriding obligation to protect your client's best interests.¹⁹
- consider and take account of the client's attributes, needs and circumstances.²⁰ As such the legal professional should have proper regard to the client's mental capacity, influences or any other vulnerability.²¹ Consider whether the client is making the decision freely and of their own volition and that they are not being subjected to fraud, duress, coercion, undue pressure or undue influence. You should not act for a client where there are reasonable grounds for believing that the instructions are affected by duress, undue pressure or undue influence without satisfying yourself that they represent the client's true wishes.²² This could be achieved by carrying out a risk/ benefit analysis at the outset so that the client understands the risks and the benefits of what they are doing and the consequences of the steps they are taking.

¹⁷ Para 4, Volume 6 of Part 7.

¹⁸ SRA Code of Conduct, Principle 7.

¹⁹ Paragraph 3.1 Code of Conduct.

²⁰ Paragraph 3.4 Code of Conduct.

²¹ SRA Code of Conduct 3.4

²² SRA Code of Conduct 3.1

Ignoring the client's mental capacity when there is evidence of incapacity, might result in a fine being imposed by the SRA.²³

- consider, ascertain and record whether the client has the necessary capacity to give instructions and undertake the specific transaction. The Mental Capacity Act 2005 governs the assessment of mental capacity, but reference should also be made to the common law, as to the information which the client would be expected to understand to enter into the relevant legal transaction:
 - Making a will: *Banks v Goodfellow* [1870] LR 5 QB 549
 - Revoking a will: *Re Sabatini* 1970 114 SJ 35
 - Making a gift: *Re Beaney* (1978) 2 All ER 595
 - Making a Lasting Power of Attorney: *Re Collis* (Court of Protection, 27.10.2010): *The Public Guardian v RI & Ors* [2022] EWCOP 22
 - Revoking an Enduring Power of Attorney: *Re KJP* [2016] EWCOP)
 - Revoking a Lasting Power of Attorney: *SAD and ACD v SED* [2017] EWCOP 3
 - Getting married - *In the Estate of Park deceased* [1953] 3 W.L.R. 1012; *Sheffield City Council v E* [2004] EWHC 2808 (Fam); *Southwark LBC v KA* [2016] EWCOP 2; *Re DMM* [2017] EWCOP 33
 - Engaging in sexual relations: *A Local Authority v JB* [2021] UKSC 35
 - Conducting legal proceedings - *Masterman Lister v Jewell* [2003] 3 All ER 162; *Dunhill v Burgin (No.2)* [227] [2014] UKSC 18
 - Consenting to medical treatment - *Re C* (adult refusal of treatment) [1994] 1 All ER 819; *Montgomery v Lanarkshire Health Board* [2015] UKSC 11
 - Managing property and affairs: *Masterman Lister v Jewell* [2003] 3 All ER 162; *A,B,C v X & Y* [2012] EWCHC 2400; *A, B & C v X, Y & Z* [2012] EWCOP 2400
 - Using the internet and social media: *Re A* (Capacity: Social Media and Internet Use: Best interests) [2019] EWCOP 2; *Re B* [2019] EWCA Civ 913
 - Deciding residence, contact and care: *LBX v K* [2013] EWHC 3230 (fam); *CC v KK & STCC* [2012] EWHC 2136
 - Deciding about personal possessions: *AC & GC* (Capacity: Hoarding) [2022] EWCOP 39

Confidentiality

7.2 Solicitors and SRA regulated firms must keep the affairs of current and former clients confidential unless disclosure is required or permitted by law or the client consents.²⁴ This duty continues even when the client lacks mental capacity to give consent. To avoid ethical concerns, consider whether it is appropriate for your client to give you advance consent to disclose confidential information to safeguarding bodies in the event you subsequently believe them to be vulnerable to abuse or neglect. Pages 51-52 have a precedent authority.

7.3 The Money Laundering Regulations and Anti- Terrorism legislation sets out the circumstances when disclosure must occur. Disclosure can also occur to prevent a crime being committed. Neither the Data Protection Act 2019 nor the General Data Protection Regulations prevents you from disclosing information to safeguard a client from serious

²³ <https://www.legalfutures.co.uk/latest-news/solicitor-who-certified-lpas-as-a-favour-is-fined-6000>; <https://www.lawgazette.co.uk/news/solicitor-fined-for-allowing-elderly-woman-in-care-to-sell-home/5115056.article>

²⁴ Paragraphs 6.3 of the SRA's Code of Conduct for Solicitors, RELs and RFLs and SRA Code of Conduct for Firms.

harm, and falls within the exceptional circumstances when data can be disclosed the client's without consent.

7.4 The duty of confidentiality has to be weighed against the duty to act in the client's best interests. It would be incongruous if the legal professional could not disclose information which they hold to safeguard a client at risk from harm and then be criticised for breaching the client's confidentiality. However, whether the legal professional can act or what action should be taken will involve consideration of the following:

- Whether the client has capacity to consent to disclosure of confidential information.
- Whether the client has capacity but because of their circumstances they are not in a position to take steps to protect themselves from harm, for example they are acting under the undue influence, duress or coercion of another person.
- Whether the client lacks capacity and is not in a position to take steps to protect themselves from harm.
- The nature of the safeguarding concern and seriousness of risk of harm happening to the client in the event of no action being taken. For example, if there is a risk to the person's life, immediate action should be taken, or whether other people such as a disabled dependent could also be at risk.

7.5 Where the concern is raised by the client:

- Try to have the conversation in a 'safe place', where they can speak openly.
- Listen carefully to what they tell you, get a clearer picture.
- Give the client your time and your attention: do not stop them from freely recalling significant events.
- If they have specific communication or understanding needs, provide support and information in a way which is most appropriate for them.
- Do not be judgmental or jump to conclusions.
- Reassure the client that they have done the right thing in telling you and they have not done anything wrong.
- Assure them that the matter will be taken seriously.
- Ask the client what they would like to happen.
- Explain that steps can be taken to make them safer, and what these steps might be.
- Explore whether they have any immediate protection needs.
- Explain that you cannot promise not to speak to others about the information they have shared.
- Explain that you will speak to your Safeguarding Lead within your practice.
- Reassure them that they will be involved in decisions about what will happen next.
- Report the concern to your Safeguarding Lead.
- Make an accurate record of the concern, using the person's own words of what was said, and action taken.

7.6 The following may help legal professionals manage any suspicion of abuse:

- Keep alert to situations where there is a risk of abuse.
- Abuse is often 'hidden'; so do not always take the situation at face value.

- The abuse may be done at the hands of the client's attorney or deputy, with whom the legal professional has formed a professional relationship, and there is a risk the legal professional may lose objectivity about the wrongdoings and simply accept any justification given.
- The legal professional should handle the matter with care and sensitivity, as the client may not be prepared to follow advice due to fear or shame.
- The client may not like or indeed may be unwilling to admit abuse by others, for example, in relation to financial abuse, being subject to a romance scam.
- The client may need additional help and support, both emotionally and practically. Consider support from advocacy groups and support from the NHS and/or local authority's Adult Safeguarding Team.
- Abuse may start by being unintentional and the abuser may rationalise the abuse, for example using the client's money for their benefit, as an advancement of their inheritance entitlement; as reward or payment for the burden that they carry in looking after the client, or a belief the client would give them permission if they were capable of consenting.
- Client's may not like airing their 'dirty linen in public' and may rectify abuse by internal management, for example amending their will or making gifts to non-abusers to equalise their estate distribution.
- The client may be subject to different forms of abuse and the solution may involve a number of public bodies and/or legal proceedings.
- Consider obtaining the client's advance consent to disclose confidential information to safeguarding bodies in situations where the client is not in a position to safeguard themselves or their property (see [page 46-48](#) of this guidance).

8. Preventing financial abuse by an attorney

8.1 Legal professionals should have regard to the Law Society's Practice Notes for Solicitors on the making of Lasting Powers of Attorney, Assessment of Mental Capacity, Making Gifts of Assets, Financial Abuse and Meeting the Needs of Vulnerable Clients, which sets out best practice for solicitors.

Advise on suitability of attorney

8.2 When advising and drafting lasting powers of attorney, legal professionals are in a position to build in protection for the client. Simply advising a donor to choose an attorney who is trustworthy, is not sufficient. The proposed attorney might be disorganised, not good with money, indecisive, challenging, self-serving, domineering, or easily influenced by others, which impacts on their ability to make good decisions. The legal professional should ask sufficient questions to establish whether the attorney will be a good decision maker. The appointment of a sole attorney provides more scope for abuse than a joint or several appointment, yet a joint and several appointment also provide a greater opportunity for exploitation than a joint appointment due to there being less accountability. It is possible to reappoint the remaining joint attorneys in the event there is a terminating event, such as one attorney dies. The Lifetime Lawyers Lasting Powers of Attorney precedent pack contains a reappointment clause.

8.3 A power of attorney is relatively easy to make and very easy to abuse or misuse. Attorney's who misuse or abuse their powers, may not see they are doing anything wrong and may justify their actions, for example say that the donor agreed they could have money or would if they had mental capacity. They may seek to justify unauthorised larger gifts as being an acceleration of their eventual inheritance or as recompense for the sacrifice they have made for the donor. This is often because the attorney does not fully understand their

role or how they are meant to make decisions. As it is not possible to know whether a power will be abused, legal professionals should discuss the risk and suggest including appropriate safeguards.

Lasting Power of Attorney or Deputy?

8.4 In some cases, it may be better for the Court of Protection to appoint a deputy, rather than the client making a Lasting Power of Attorney, because of the supervision given by the Office of the Public Guardian and the Court's requirement for a security bond protects them against a defaulting property and affairs deputy. This may be particularly relevant where the client has a history of being exploited or where their relevant relationships are dysfunctional.

8.5 Paragraph 4.1 of the Law Society's Practice Note on Lasting Powers of Attorney states,

'There may be situations where a deputyship (once the person has lost capacity) could be viewed as being more appropriate and protective than the creation of an LPA. This may be advisable, for example:

- where the assets are more substantial or complex than family members are accustomed to handle and there is no suitable professional to appoint as attorney
- in cases where litigation may lead to a substantial award of damages for personal injury.'

Check capacity and undue influence

8.6 Legal professionals need to be careful when receiving instructions for Lasting Powers of Attorney, if they receive those instructions from a third party or where they are acting for a donor who has previously been unknown to them. Third party instructions must be confirmed by the donor. Always see the client alone for at least part of the interview to identify capacity and that the power is what the client wants and is being made free from the influence of others. This is independent to the role of the certificate provider in the power, but will overlap when the legal professional is also acting as such.

8.7 If the client is unknown to the legal professional or they have not seen the client for a long while, take some time to talk about wider issues, which can provide context, to be sure the client has the necessary capacity and they are not acting under duress, coercion, undue influence, or undue pressure of another. If mental capacity is in doubt, it may be appropriate to involve a suitably qualified and experienced practitioner to assist with ascertaining capacity.

Include restrictions and conditions within the power

8.8 When drafting the power, consider including a condition in the power to have the accounts checked by, or copies of all financial statements provided to a third party, such as an accountant, solicitor, relative or friend would provide accountability and transparency. Notifying a third party after registration with details of the Office of the Public Guardian dovetails with such a clause. If accounts or records are not rendered in accordance with the condition, then a concern could be raised with the Office of the Public Guardian, who could

investigate²⁵ and make a Court application for cancellation of the power on the grounds that the attorney is exceeding their authority and is not acting in the donor's best interests. Including a provision which sets out the attorney's powers of investment, can also prevent the attorney from making loans and investments where they may benefit to the detriment of the donor. See Lifetime Lawyers' Precedents for Lasting Powers of Attorney on lifetimelawyers.org.

Include guidance within the power

8.9 Guidance contained in the power, which sets out a framework for the attorney to make decisions may help to prevent abuse, such as expressly requiring the attorney to support and consult the donor, take into account the donor's views, and name the people with whom the attorney should consult. This is a prompt for the attorney to follow the guidance and provides a clear baseline against which the attorney's actions can be judged by third parties such as banks, the OPG and the Court of Protection. See Lifetime Lawyers Precedents for Lasting Powers of Attorney on lifetimelawyers.org.

Provide information on the operation and limits of the power to make gifts

8.10 The donor and the attorney should be given information, about how to make decisions under the power, in particular the limited power to make gifts. An attorney cannot use the power to make larger gifts when the donor has mental capacity, as s.12 of the Mental Capacity Act 2005 does not state that it only applies when the donor lacks mental capacity. Including reference to the limit power to make gifts may keep the attorney in check, and can raise a 'red flag' to third parties, such as financial institutions who may notice larger gifts being made. See Lifetime Lawyers Precedents for Lasting Powers of Attorney on lifetimelawyers.org.

Provide the attorneys with information on the fiduciary duties they owe to the donor

8.11 Under the law of agency, the attorney owes fiduciary duties towards the donor, in particular:

- a duty to act within the scope of their authority, subject to any conditions or restrictions
- a duty and ensure that they do not put themselves in a position where their personal interests and duty as an agent conflict
- a duty not to benefit from their position without express authority within the power or from an order of the Court of Protection
- a duty not to interfere with the donor's succession plans so far as reasonably possible (*Attorney General v The Marquis of Ailesbury* [1887] App Cas 672; *Re Treadwell deceased: The Public Guardian v Lutz* [2036]WCOP 2409.
- a duty to keep accounts
- a duty to keep the donor's money and property separate from own finances

Advise on when the power is to be used

8.12 The donor will need to be advised about when the power can be used. Legal professionals may feel they should act as a gatekeeper to the operation of the power, but this might become a barrier to decision making at a critical time.

²⁵ See Regs 46, 47 & 48 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007.

8.13 A property and affairs Lasting Power which does not limit when the attorney can act, can be used as soon as the power has been registered with the Office of the Public Guardian. The attorney would be able to make decisions when the donor has mental capacity and, if and when the donor lacks mental capacity. If requested, there is no legal basis to prevent the attorney from having a copy, as the power forms the property and affairs which belong to the donor and which the power authorises the attorney to manage. However, it is best practice to first write to the donor, in case the donor does not yet want the attorney to act. See the joint Guidance published by the Solicitors Regulation Authority, The Law Society and Legal Services Ombudsman in relation to what forms part of the donor's property and affairs.²⁶

8.14 In the event the power contains a condition that the power is only to be used when the donor lacks mental capacity to make a financial decision, the attorney must establish this condition has been met, before they can act under the power. Inclusion of such a clause will often create administrative problems as evidence is sought, and delay decision making.

9. Preventing abuse by a professional attorney

9.1 In cases where a professional has been appointed, develop a practice wide policy of monitoring and auditing files on a regular basis, by someone who is not involved with the case.

9.2 Ensure that accounts are managed by the attorney through a designated account. The practice's client account should not be used as a bank account for the client, as others may be able to access funds and it is contrary to advice from the Solicitors Regulation Authority.²⁷

9.3 Discourage, where possible a single or an unqualified member of staff from being a sole attorney- use joint or joint and several appointments instead.

9.4 If the legal professional is to act with a lay attorney, ensure that copies of all financial statements are seen and ensure the lay attorney understands the need to consult with the professional attorney when making significant decisions. Check with the practice's professional indemnity insurance providers that they will cover the situation.

9.5 Make clear that in the event of anyone being found to have abused their power and taken advantage of their position as an attorney that the matter will be referred to the Police and the Solicitors' Regulation Authority or other professional regulatory body and that internal disciplinary proceedings will result.

10. Dealing with abuse in the person's own home

10.1 Abuse can be hidden, particularly where there is dependence on a caregiver, where supervision is weak and there is little or no contact with others who might otherwise raise concerns. Detection may be poor if the various agencies involved in arranging care do not communicate with each other.

²⁶ <https://www.sra.org.uk/solicitors/code-of-conduct/guidance/guidance/Access-to-and-disclosure-of-an-incapacitated-persons-will.page>.

²⁷ <https://www.sra.org.uk/solicitors/guidance/warning-notice/Improper-use-of-client-account-as-a-banking-facility--Warning-notice.page>.

10.2 Abuse may be identified by professionals involved, for example, a GP, a social worker during a care and support assessment, an Independent Mental Capacity Advocate appointed under the Mental Capacity Act 2005²⁸ or a Court of Protection General Visitor.²⁹

Regulated care providers

10.3 For those in receipt of local authority's social services support, there should be a periodic review of the person's care and support needs. The review by social services should identify inappropriate care packages. Often the first indication of abuse may be the issue of raising complaints about service delivery that may expose abuse. Alert social services by contacting the local authority's Monitoring Officer, the Adult Safeguarding Officer and/or make a formal complaint to social services (see below at 11.12-11.13). In addition, including those who have independently arranged their care, a complaint can be made to the care agency, the Local Government and Social Care Ombudsman, and/or the Care Quality Commission (CQC)/ Care Inspectorate Wales (CIW) (see 11.1-11.5 below for more details).

10.4 Caregivers employed by registered care providers will be subject to a Disclosure and Barring Service (DBS) check, which undertakes searches of police records and, in relevant cases, barred list information. Abuse by such a caregiver, may necessitate notification to the DBS and the CQC/CIW to prevent future abuse.

Independent unregulated care providers

10.5 Day care services and personal assistants employed directly are unregulated. The individual will need to be confronted directly and if necessary the police called to investigate. The relevant local authority social services department and the Adult Safeguarding Officer should also be alerted as other service users may be affected.

10.6 Legal professionals may be able to prevent abuse by considering contracts and terms of employment as well as carrying out a DBS check and setting up supervision systems, such as in relation to financial management. Legal professionals should ensure that adequate references are followed up. Direct employment of those who have left agencies and have poor employment track records or about whom there may be suspicions is inherently risky.

See also 11.8 -11.11 below for other action to be taken.

11. Dealing with abuse in care homes

The Regulatory Authority for Care Homes

11.1 The Care Quality Commission (CQC) registers and inspects all health and social care provision in England and ensures they operate within fundamental standards of quality and safety. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014³⁰ set out the fundamental standards of quality and safety expected from service providers of regulated activities such as care homes. These are set out in Regulations 9 to 20a and are supported by compliance guidance.

11.2 Service providers are required to ensure service users are protected from abuse and improper treatment.³¹ Providers must have a zero-tolerance approach to abuse, unlawful

²⁸ ss.35-41 Mental Capacity Act 2005 (MCA 2005).

²⁹ s.61 MCA 2005.

³⁰ SI 2014/2936 as amended by 2015/64.

³¹ Reg 13, 2014 Regulations.

discrimination and restraint, which includes neglect; subjecting people to degrading treatment; unnecessary or disproportionate restraint; and inappropriate deprivation of liberty.

11.3 The CQC expect service providers to:

- Take action to identify and prevent abuse from happening in a service.
- Respond appropriately when it is suspected that abuse has occurred or is at risk of occurring.
- Ensure that Government and local guidance about safeguarding people from abuse is accessible to all staff and put into practice.
- Make sure that the use of restraint is always appropriate, reasonable, proportionate and justifiable to that individual.
- Only use de-escalation or restraint in a way that respects dignity and protects human rights, and where possible respects the preferences of people who use services.
- Understand how diversity, beliefs and values of people who use services may influence the identification, prevention and response to safeguarding concerns.
- Protect others from the negative effect of any behaviour by people who use services.
- Where applicable, only use Deprivation of Liberty Safeguards (see 16.14-16.15 below) when it is in the best interests of the person who uses the service, in accordance with the Mental Capacity Act 2005.

11.4 The Care Inspectorate Wales (CIW) under the Regulation and Inspection of Social Care (Wales) Act 2016 has similar functions to ensure care homes and domiciliary support services, adult placement services in Wales meet minimum standards that place requirements on the service provider to protect the service user from abuse. Statutory guidance and The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 require:-

- Protection from physical, financial or material harm, psychological or sexual abuse, neglect, discriminatory abuse or self-harm, inhumane or degrading treatment, through deliberate intent, negligence or ignorance in accordance with written policies.
- Putting robust procedures in place to respond to suspicions or evidence of abuse or neglect and passing these concerns to CIW in accordance with Part 7 of the Social Services and Well-being (Wales) Act 2014's Code of Practice and the Public Interest Disclosure Act 1998.
- Follow up action in relation to all allegations or incidents of abuse.
- Staff who are considered to be unsuitable to work with vulnerable adults are to be referred for placement on the DBS list and this is to be recorded on the Inspection Report.
- Policies and practices to be in place so that physical and/ or verbal aggression by service users is understood and dealt with appropriately.
- Policies to be in place to protect abuse of service user's financial affairs.
- Complaints procedures are in place and made known including a requirement that written information should be provided to all service users for referring a complaint to the CIW at any stage should the complainant wish to do so.

11.5 In England, periodic inspections are undertaken for care homes evaluated as 'outstanding', 'good', 'require improvement' or 'inadequate'. In Wales, inspections are annual. In addition to these periodic inspections, without notice visits can be made at any time, if concerns have been raised about a care home. Care Homes are required by their 'duty of candour' to notify the CQC or CIW if there has been an incident of abuse or neglect in the home.

Identifying risk before moving into the care home

11.6 Legal professionals need to anticipate a move into a care home by setting up a protective framework in relation to financial matters, checking care contracts and keeping full records of assets and personal possessions at the start of occupancy. A trial period at the home is useful to see how things are run and quality of care given. Talking to other residents and their families can also be helpful.

11.7 The care home's Inspection Reports, (available from the CQC or CIW websites), may highlight problems, for example whether or not the home has a reputation for poor practice. The care home should undertake a DBS check prior to employing staff.

Action to take on detecting or suspecting abuse

11.8 On suspicion or detection of abuse, complain to the manager and proprietor of the home. The home may remove, dismiss or prevent the perpetrator from being in the home. They may also decide to call the police to investigate. If the internal complaints procedure does not provide the required solution it may be necessary to report the matter directly to the CQC in England or CIW in Wales. This does not necessarily result in action, as it may simply be logged, but if they receive multiple concerns it should trigger an unplanned inspection.

11.9 At the same time contact the local authority's social services department, the NHS and the local Integrated Care Board in England or Local Health Board in Wales who may place residents and commission care in the care home.

11.10 Charities, such as Age UK and the Alzheimer's Society at local level may offer advocacy support and help in presenting complaints.

11.11 If the abuse occurred as a result of another resident or visitor, the home should take action to protect all residents to avoid the abuse from reoccurring.

Social services complaints

11.12 Where the care is being provided or commissioned by social services, a complaint can also be made using the local authority complaints' procedure. Social services should provide the complainant or their representative's details of how to complain in accordance with the Local Authority Social Services and National Health Services Complaints (England) Regulations 2009. In Wales, the Social Services Complaints Procedure (Wales) Regulations 2014 apply. These are similar but not identical to the English Regulations. It is to be read alongside, 'A guide to handling complaints and representations by local authority social services' published in 2014.

11.13 The complaint should be made in writing within twelve months of the incident forming the basis of the complaint or within twelve months of becoming aware of the circumstances about which you want to complain. In exceptional circumstances these time limits may be waived.

11.14 If after going through the care home or local authority's complaint's procedure, the desired outcome has not been reached, the complaint can be pursued through the Local Government and Social Care Ombudsman (LGSCO) for England or Public Services Ombudsman

for Wales. To avoid complaints to the Ombudsman, the LGSCO has published, 'Adult Social Care Complaints, Reviews and Appeals: A good practice guide for local authorities'.³²

Complain to the perpetrator's regulatory body

11.15 The Health and Care Professions Council is the regulatory body for the majority of professionals working in health and social care in England, who are required to undergo continuing professional development annually in order to stay on the register and to comply with professional standards. Social Care Wales is the Welsh equivalent body. Doctors and nurses are separately regulated by the General Medical Council and the Nursing and Midwifery Council. A complaint can be made concerning the registered perpetrator.

Surveillance recordings

11.16 Covert surveillance (such as hidden cameras or audio recording equipment) or overt surveillance (such as visible CCTV cameras) may be the only practical way to ensure safety or quality of care. Consent should be obtained from the person being cared for, particularly as there is a risk that this may impact on their dignity and privacy. For those who lack capacity to consent, a decision to use surveillance recordings should be made in their best interests under the Mental Capacity Act 2005. The CQC has published guidance to help care providers operate within the law.³³ See also the Code of Practice published by the Surveillance Camera Commissioner.³⁴

Death in a Care Home

11.17 All deaths in care homes have to be notified to the CQC³⁵ or the CIW.³⁶ The information submitted must include details of the circumstances of death. Records of deaths may indicate trends and could potentially identify areas of abuse. GPs who are called into care homes to certify death are in a position to observe whether anything untoward has happened. Legal professionals who have concerns about the death of a client should consider contacting the CQC/CIW or the client's treating doctor.

11.18 The Births and Deaths Registration Act 1953 imposes a requirement on the doctor who last attended the deceased to issue a medical certification of death. The Medical Certificate of Cause of Death Regulations 2024, The Medical Examiners (England) Regulations 2024, The National Medical Examiner (Additional Functions) Regulations 2024 and the Medical Examiners (Wales) Regulations 2024 requires an independent medical examiner to provide scrutiny of the cause of death proposed by the attending doctor in cases where the death is not being referred to the coroner. This has the potential to identify abuse.

12. Dealing with abuse in the NHS

³² <https://www.lgo.org.uk/information-centre/information-for-organisations-we-investigate/councils/guidance-notes/adult-social-care-complaints-reviews-and-appeals-a-good-practice-guide-for-local-authorities>

³³ <https://www.cqc.org.uk/guidance-providers/all-services/using-surveillance-information-service-providers>

³⁴ <https://www.gov.uk/government/organisations/surveillance-camera-commissioner>

³⁵ Reg 16 CQC (Registration) Regulations 2009.

³⁶ Schedule 3, para 22, The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017.

12.1 A complaint can be made using the NHS complaint's procedure. In England, the Local Authority Social Services National Health Service Complaints (England) Regulations 2009³⁷ should be followed. The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011³⁸ applies to complaints in Wales and provides a way to obtain financial redress worth up to £25,000 and/or packages of care and independent legal advice for people who have suffered negligent treatment or care that has been provided or commissioned by Local Health Boards or NHS Trusts in Wales.

12.2 The Patient Advice and Liaison Services (PALS) based in local hospitals in England or Community Health Councils in Wales can provide information about the NHS complaints procedure and may also act as a conduit for complaints.

12.3 The complaint should be made in writing within twelve months of the incident forming the basis of the complaint or within twelve months of becoming aware of the circumstances about which you want to complain. In exceptional circumstances these time limits may be waived. The complaint will be dealt with at local NHS level, including any investigation.

12.4 Local authorities have a statutory duty to commission independent advocacy services to provide support for people making, or thinking of making, a complaint about their NHS care or treatment. Arrangements vary between areas in England. In Wales, this function is carried out by the Community Health Council.

12.5 If after going through the NHS complaint's procedure, the desired outcome has not been reached, the complaint can be pursued through the Parliamentary and Health Service Ombudsman in England or the Public Services Ombudsman in Wales.

13. Dealing with concerns about a forced marriage

13.1 If a person is under the duress, undue influence or coercive control of another or they lack capacity to consent to a marriage that marriage is considered a forced marriage. Approximately 26% of forced marriages involve people where there is concern about their mental capacity. The Anti-Social Behaviour, Crime and Policing Act 2014³⁹ makes it a criminal offence in England and Wales to force a person to marry. The same rules apply to civil partnerships.

13.2 A forced marriage protection order can be sought under s.4A of the Family Law Act 1996,⁴⁰ which makes provision for protecting those at risk of being forced into marriage or civil partnership and offers protection for those who have already been forced into the arrangement. It is a criminal offence to breach a forced marriage protection order.⁴¹ The Family Court can also authorise a local authority to retain the person at risk's travel documents, preventing others from applying for more travel documents for that person and preventing the person at risk from travelling abroad unless accompanied by a carer.

13.3 If the legal professional has any concern that a person may be subject to a forced marriage or civil partnership, they should obtain advice and support from the Forced Marriage Unit by telephoning 020 7008 0151 (Monday to Friday: 09.00 to 17.00) or out of

³⁷ SI 2009/309.

³⁸ SI 2011/704 W.108.

³⁹ s.121.

⁴⁰ s.4a of the 1996 Act was inserted by the Forced Marriage (Civil Protection) Act 2007.

⁴¹ s.120 The Anti-social Behaviour, Crime and Policing Act 2014.

hours: 020 7008 1500 (ask for the Global Response Centre) or email: fm@fco.gov.uk. The Government website has useful information: <https://www.gov.uk/crime-justice-and-law/forced-marriage>

13.4 For specific guidance see:

- Multi-agency statutory guidance for dealing with forced marriage and multi-agency practice guidelines: Handling cases of forced marriage (April 2023)⁴²
- The right to choose: government guidance on forced marriage (21 March 2022)⁴³
- Crown Prosecution Service, Protocol on the handling of ‘so-called’ Honour Based Violence/Abuse and Forced Marriage Offences between the National Police Chiefs’ Council and the Crown Prosecution Service (November 2016)⁴⁴

13.5 Where the proposed marriage or civil partnership is to take place at a Register Office, at a venue approved by the local authority or a non- Anglican church or premise, such as a Quaker Friends’ House, a synagogue, mosque it will require the issue of a Registrar-General’s licence. This requires giving 28 days’ notice to obtain the certificate that allows them to marry or enter into a civil partnership. The couple must present in person to the Superintendent Registrar at their local office with evidence showing that they are free to enter into the contract. Couples where one of the parties is a non-UK national will be referred to the Home Office, which will be able to extend the notice period to 70 days while it investigates.

13.6 During this 28-day notice period any person can register a ‘caveat’ either at the office of the Registrar-General or of the Superintendent Registrar to whom it is anticipated that the application for the certificate or licence will be made. A form can be obtained from the Superintendent Registrar’s office. The caveat must state the ground for objecting to the marriage or civil partnership and be signed by the objector or their agent.

13.7 Where a Superintendent Registrar refuses by reason of such caveat, to issue a certificate or licence, an appeal lies to the Registrar General who must examine the matter and decide whether or not the certificate or licence should be granted. The decision of the Registrar General is final. Parties can petition for judicial review for the decision to be reviewed by a judge.

13.8 It is not necessary to obtain a licence where a marriage is due to take place in an Anglican church, as marriage is authorised by banns or a church licence issued under ecclesiastical law by the church. An intended marriage can be prevented by dissent from publication of banns. Alternatively, any person can object at the wedding on the basis that it cannot be legally entered into because one of the parties lacks mental capacity or is under the undue influence, duress, coercion control of another person and cannot give free and informed consent.

⁴².<https://www.gov.uk/government/publications/the-right-to-choose-government-guidance-on-forced-marriage/multi-agency-statutory-guidance-for-dealing-with-forced-marriage-and-multi-agency-practice-guidelines-handling-cases-of-forced-marriage-accessible>

⁴³ <https://www.gov.uk/government/publications/the-right-to-choose-government-guidance-on-forced-marriage>.

⁴⁴https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/hbv_and_fm_protocol_no_v_16.pdf.

13.9 If the person lacks capacity or there is doubt about their capacity to consent to the marriage or civil partnership, an application can be made to the Court of Protection for a declaration as to their capacity, and to consent to sexual relations (as this forms a component of the marriage). Compelling, inciting or facilitating a person who lacks capacity to engage in a sexual activity and so cannot give consent is an offence under the Sexual Offences Act 2003. If necessary, the Court can also make a restraining order to prevent others from arranging a marriage or civil partnership for the person and can prevent that person being taken overseas for that purpose. This application is usually made by the person's local authority.

13.10 If the person is subject to coercive control, duress or undue influence of the person whom they seek to marry or entered into a civil partnership, but has mental capacity to make that decision, it may be possible for the Court to exercise its inherent jurisdiction to prevent a marriage or civil partnership. As an example see *WU v BU* (by her litigation friend, the Official Solicitor) [2021] EWCOP 54. See 15.5 below for more on what constitutes coercive control and 14.16 below about the inherent jurisdiction of the High Court.

13.11 Where a marriage has occurred under s.12(1)(c) of the Matrimonial Causes Act 1973, the marriage can be annulled on the grounds that they did not validly consent because they were subject to duress or of 'unsound mind' or under s.12(1)(d) if it is established the person lacked mental capacity to consent as they had a mental disorder. The application is to the Family Court. It is also possible for the Court to make a declaration of non-recognition of the marriage under s.55 of the Family Law Act 1986 (see *Re SA* [2023] EWCA Civ 1003). Equivalent provisions apply to civil partnerships under s.49(1)(c) (lacked capacity) or s.50 (duress/coercive control) of the Civil Partnership Act 2004.

13.12 As marriage or a civil partnership automatically revokes a person's will, they should make a new will, if they have testamentary capacity, or if they lack capacity an application to the Court of Protection can be made for a statutory will to be made on their behalf.

14. Remedies for financial abuse by an attorney

Donor with mental capacity

14.1 If the donor has mental capacity, they should revoke the power by a Deed of Revocation. The donor's capacity to revoke the power is determined by their understanding:

- (1) who the attorney is, or who the attorneys are;
- (2) what authority they have;
- (3) why it was necessary or expedient to revoke the power;
- (4) the reasons the donor originally made the power; and
- (5) the foreseeable consequences of revoking the power.⁴⁵

⁴⁵ Capacity to revoke an Enduring Power of Attorney (*Re KJP* [2016] EWCOP 6): Capacity to revoke a Lasting Power of Attorney (*SAD and ACD v SED* [2017] EWCOP 3).

14.2 In addition to this the donor must notify the attorney. With a registered Lasting Power of Attorney, the donor must also notify the Public Guardian.⁴⁶ Unlike a registered Enduring Power of Attorney, (see 14.9 below) it is not necessary to seek confirmation by the Court of Protection for the donor to revoke a registered Lasting Power of Attorney. As neither the Mental Capacity Act 2005 nor the Lasting Powers of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007 mention when a revocation is effective, the common law has established that a revocation is effective when it is signed by the donor.

14.3 Revocation may be very difficult if the donor is frightened of the ramifications and should be dealt with sensitively. In *Re CA (capacity- inherent jurisdiction)*[2024] EWCOP 64, the Court considered whether to exercise its inherent jurisdiction to revoke a lasting power of attorney where the donor had mental capacity but was vulnerable and suffering harm. The donor was subject to verbal abuse and force feeding from her attorney who was also her daughter. Although the Court did not revoke the power, it demonstrates the possibility of the inherent jurisdiction being used when the donor had mental capacity to revoke the power. See 14.16 below for more about the inherent jurisdiction.

14.4 Both civil (see 14.10 & 14.16 below) and criminal (see 15.2-15.6 and 16.3 below) remedies may be available. It may also be appropriate to involve social services (see section 6 of this guidance). It is advisable to notify any financial organisations that are aware of the power. See 14.7 below.

The donor without mental capacity

14.5 Notwithstanding the loss of mental capacity, the legal professional continues to owe the donor a duty of confidentiality.⁴⁷ However, they must also act in the client's best interest, which may allow the legal professional to do such acts to safeguard the client when they are at risk of harm.⁴⁸ At common law, the doctrine of 'necessity' enables any person to take action to prevent significant harm occurring where it is necessary to act. Under the Mental Capacity Act 2005,⁴⁹ any person taking action which relates to the care and treatment of a person who lacks mental capacity, provided it is in that person's best interests, is protected from liability. The Solicitors Regulation Authority are likely to treat a breach of confidentiality in such circumstances as justified.⁵⁰ Where appropriate, speak to the Solicitors Regulation Authority about ethical concerns on Tel: 0870 606 2555 and keep a note of any discussion.

14.6 If the donor has care and support needs regardless of whether those needs are being met by the local authority or others, concerns can be raised with the local authority's Adult Safeguarding Officer. They should organise an assessment of the person's needs and put into place suitable measures (see section 6 of this guidance for details of the local authority's safeguarding duties). This could result in the local authority applying for injunctive relief.⁵¹ Both civil (see 14.10-14.16 below) and criminal (see 15.2-15.6 below) remedies may be available.

⁴⁶ Reg 21 of Lasting Powers of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007 (SI 2007/1253).

⁴⁷ SRA Code of Conduct 6.3.

⁴⁸ SRA Principle 7.

⁴⁹ s.5 MCA 2005.

⁵⁰ <https://www.sra.org.uk/solicitors/code-of-conduct/guidance/guidance/Access-to-and-disclosure-of-an-incapacitated-persons-will.page>:

<https://www.sra.org.uk/solicitors/guidance/confidentiality-client-information/>

⁵¹ s.222 Local Government Act 1972).

14.7 Banks and other financial organisations have their own fraud investigations teams. Contact the financial companies where the client holds funds and inform them of the concerns. It will be down to the financial organisation how they respond, but they may be liable to refund the client for any funds taken when they are aware that the attorney is exceeding their authority or not acting in the donor's best interests. The Financial Conduct Authority has published 'Guidance for firms on the fair treatment of vulnerable customers' for regulated financial organisations to follow, and where the customer has been let down by a practice and has lost money as a result, it is expected that the firm will remedy any loss. See <https://www.fca.org.uk/publications/finalised-guidance/guidance-firms-fair-treatment-vulnerable-customers>. UK Finance (the trade association for the UK banking and finance sector) has published a Code on Financial Abuse which is aligned to the Financial Conduct Authority's Consumer Duty.⁵² The Code is intended to help financial organisations identify, respond to, and support customers experiencing financial or economic abuse (including but not limited to domestic abuse, coercive control, exploitation of finances) by a partner, family member, carer or other trusted person.

14.8 If the abuse relates to another professional, report the matter to the Compliance Officers for Legal Practice (COLPs) and Compliance Officers for Finance and Administration (COFAs) in the practice concerned.

Unregistered Enduring Power of Attorney (EPAs)

14.9 The Public Guardian has no power to investigate concerns in respect of unregistered EPAs. If the attorney of an unregistered EPA is not prepared to register the power and so enable a challenge to be made, then an application to the Court of Protection should be made for the appointment of a financial deputy. Evidence of the existence of the EPA and that fact the donor lacks mental capacity to manage their property and financial affairs will be required. The attorney will need to be notified of the application. The Court will resolve the matter as appropriate. This could be by ordering the attorney to register the power or the removal of the attorney and/or revocation of the power. The cost of making an application in good faith is usually borne by the donor, although the Court has wide power to order the errant attorney to pay the costs.⁵³

Investigation by the Office of the Public Guardian

14.10 The legal professional can report concerns on a confidential basis, to the Office of the Public Guardian's Investigation Unit which has power to investigate concerns about registered Enduring or Lasting Powers.⁵⁴ This may involve requesting a Court of Protection Visitor to see the donor and/or the attorney to investigate concerns.⁵⁵ A Lasting Power of Attorney is not valid until registered so currently the Public Guardian has no investigative functions until then. When the Powers of Attorney Act 2023 is in force, the Public Guardian will have power to investigate concerns under the amended schedule 1, paragraph 13 of the Mental Capacity Act 2005 during the registration period. This may result in the power not being registered. Any challenge against an adverse decision is to the Court of Protection. See <https://www.gov.uk/report-concern-about-attorney-deputy-guardian> for details of how to raise a concern.

Revocation of registered Enduring Power of Attorneys (EPAs)

⁵² <https://www.ukfinance.org.uk/system/files/Financial-Abuse-Code-151221-FINAL.pdf>

⁵³ Court of Protection Rules 2017, r.19.2 and r.19.5.

⁵⁴ Regs 46, 47 & 48, of Lasting Powers of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007.

Reg 44 Lasting Powers of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007, s58 (1)(d)&(f) Mental Capacity Act 2005⁵⁵

14.11 If an EPA has been registered, it can only be revoked with the confirmation of the Court of Protection.⁵⁶ There is no automatic revocation of an EPA by a donor subsequently making a Lasting Power of Attorney (LPA),⁵⁷ although making a property and affairs LPA in the same terms but appointing a different attorney, might by a declaration from the Court of Protection constitute revocation of an EPA by conduct.⁵⁸

Court of Protection orders for removal of attorney and/or revocation of power

14.12 If concerns are warranted, the Public Guardian can make an application, in respect of a registered power for the removal of the attorney and/or the revocation of the power.⁵⁹ A third party can also make an application to the Court on the basis that the attorney is unsuitable (Enduring Power of Attorney) or is not acting in the best interests of the donor, or has exceeded their authority (Lasting Power of Attorney).⁶⁰ The Court can also make an order appointing a deputy where the power has been revoked. The cost of making an application for a deputy is usually borne by the donor.⁶¹ The Court will usually order an errant attorney to pay the costs of a successful application for their removal.⁶²

Other orders of the Court of Protection

14.13 The Court has wide power to deal with the consequences of abuse, which could include:

- Requiring a deputy or attorney acting under the registered power to provide documents or things in their possession, render accounts and produce records.⁶³
- A statutory will to restore parity under the terms of the person's will
- An order prohibiting a specified person from having contact with the abused person.⁶⁴ As the Court of Protection can only make an order in respect of a decision which the incapacitated person could make themselves, but for their mental incapacity, the order cannot be used to exclude a person who has a right to occupy the abused person's property. In such cases, an alternative jurisdiction may provide the desired outcome.
- An order enabling another person to bring proceedings on behalf of the abused person for example, for recovery in the civil Court, this may involve claims of fraud, coercion, duress, undue influence, lack of capacity, and breach of fiduciary duties.⁶⁵
- Residency orders.⁶⁶
- The appointment of a deputy.⁶⁷
- Contact orders.⁶⁸

⁵⁶ Sch 4, para 10 (c), Mental Capacity Act 2005.

⁵⁷ Re E (Enduring Power of Attorney [2000] 1 FLR 882.

⁵⁸ Re Boar, 19th February 2010, Decision of SJ Lush, Court of Protection (unreported): In the matter of Cloutt (Court of Protection) (Reported ACTAPS Journal October 2008).

⁵⁹ Reg 43, Lasting Powers of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007.

⁶⁰ Schedule 4, para 16 (4)(g): s.22(3)(b), s.22(4)(b) MCA 2005.

⁶¹ Court of Protection Rules 2017, r.19.2.

⁶² Court of Protection Rules 2017, r.19.2 and r.19.5.

⁶³ s.16(5), s.23(3)(a) & (b), or Schedule 4, para 16(2)(b)(ii) and (c), MCA 2005.

⁶⁴ s.17 (1) (c) MCA 2005.

⁶⁵ s.18 (1)(k) MCA 2005.

⁶⁶ s.17 (1)(a) MCA 2005.

⁶⁷ s.16 (2)(b) MCA 2005.

⁶⁸ s.17 (1)(b) MCA 2005.

14.14 The cost of making an application relating to the donor’s property and affairs, made in good faith is usually borne by the donor, although the Court has wide power to order the errant attorney to pay the costs.⁶⁹ In personal welfare cases brought usually by the local authority to safeguard the person, the local authority bear the costs, unless the Court orders otherwise.⁷⁰

High Court orders

14.15 The High Court can also make freezing injunctions to prevent money or property being disposed of, search orders to allow access to the perpetrator’s home or workplace to search for documents. Injunctions can also be obtained to prevent the perpetrator from leaving the country. The donor with capacity or a person acting as litigation friend for the mentally incapacitated donor can also apply to the High Court for recovery of funds and setting aside a transfer of an asset, procured by undue influence, duress or fraud or the rectification of the title deeds under Schedule 4 of the Land Registration Act 2002.⁷¹

Inherent jurisdiction

14.16 The exercise of the High Court’s inherent jurisdiction may also be used to obtain appropriate orders, where the person is ‘vulnerable’, whether or not incapacitated by mental disorder or mental illness, or is reasonably believed to be, either: (i) under constraint; or (ii) subject to coercion or undue influence; or (iii) for some other reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.⁷² Munby J has described a ‘vulnerable adult’ (rather than defined) as ‘someone who, whether or not mentally incapacitated, and whether or not suffering from any mental illness or mental disorder, was or might be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation, or who was substantially handicapped by illness, injury or congenital deformity.’⁷³ This could extend to revocation of a lasting power of attorney where the donor has mental capacity. See *Re CA (capacity- Inherent jurisdiction- injunctive relief)* [2024] EWCOP 64.

Criminal remedies

14.17 15.2 -15.6 below sets out criminal charges which the attorney could be charged with.

15. Remedies for financial abuse by others

Investigation of deputies by the Office of the Public Guardian

15.1 The Office of the Public Guardian when supervising Court appointed deputies, can investigate, identify and deal with abuse, which can include an application to the Court of Protection for the removal and replacement of the deputy. The Court can order that any security bond in place is ‘called in’ and paid to remedy the loss. This power also applies

⁶⁹ Court of Protection Rules 2017, r.19.2 and r.19.5.

⁷⁰ Court of Protection Rules 2017, r.19.3.

⁷¹ *Chandler v Lombardi* [2022] EWHC 22 (Ch).

⁷² *DL v A Local Authority* [2012] EWCA Civ 253.

⁷³ *SA (Vulnerable Adult with Capacity: Marriage)* (2006) 1 FLR 867.

after the death of the incapacitated person.⁷⁴ The Court can also make appropriate orders as set out in 14.13 above.

Criminal offences

15.2 Any person who gains unauthorised access to the person's finances and takes assets belonging to another, or who dishonestly obtains benefits or provides false information to gain a financial advantage, can be charged with various criminal offences, including:

- theft;⁷⁵
- blackmail;⁷⁶
- forgery;⁷⁷
- obtaining property,⁷⁸ a service,⁷⁹ pecuniary advantage,⁸⁰ money transfer⁸¹ or the execution of a valuable security by deception;⁸²
- dishonest representation for obtaining benefit;⁸³
- false accounting,⁸⁴ for example, where a person destroys, defaces, conceals or falsifies accounts, records or documents with a view to gain or to cause loss to somebody else. It can extend to making use of these, when the person knows they may be misleading, false or deceptive.

15.3 Section 4 of the Fraud Act 2006 makes it a criminal offence where a person intentionally and dishonestly takes advantage of their position. In *R v TCJ* [2015] EWCA Crim 1276, the Court of Appeal held that by looking at the total value of withdrawals made by the attorney, compared with the reasonable sums which would have been incurred over specific periods to provide for the donor's needs, there was evidence that the attorney could not have been acting honestly.

15.4 Financial abuse may also be a form of domestic abuse which is defined in s.1 of the Domestic Abuse Act 2021 if the behaviour of a person ('A') towards another person ('B') where they are each aged 16 or over and are personally connected to each other, and the behaviour is abusive. Part 3 of the Act creates additional powers to tackle domestic abuse. See 16.3 below for additional detail. Domestic abuse includes 'economic abuse' and is defined in s.1(4) as:

'any behaviour that has a substantial adverse effect on B's ability to—
(a) acquire, use or maintain money or other property, or
(b) obtain goods or services.

15.5 Section 76 of the Serious Crimes Act 2015 makes it a criminal offence where a person (the perpetrator) repeatedly or continuously engages in behaviour towards another person, that is controlling or coercive; and at the time of the behaviour, they are personally

⁷⁴ Reg 37, Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007.

⁷⁵ s.1(1) Theft Act 1968.

⁷⁶ s.21 Theft Act 1968.

⁷⁷ s.1 and s. 8 of the Theft Act 1968; s.1 the Forgery and Counterfeiting Act 1981 & s.4 & s.6 Identity Documents Act 2010.

⁷⁸ s.15(1) Theft Act 1968

⁷⁹ s.1(1) Theft Act 1978

⁸⁰ s.16 Theft Act 1968

⁸¹ s.15A Theft Act 1968

⁸² s.20(2) Theft Act 1968

⁸³ s.111(a) Social Security Administration Act 1992.

⁸⁴ s.17 Theft Act 1968.

connected; and the behaviour has a serious effect on that person; and the perpetrator knows or ought to know that the behaviour will have a serious effect on the other person. The term 'personally connected' includes current or former partners, and family members (including parents, children, siblings, in-laws, step relatives, uncles, aunts, nephews and nieces and first cousins). The Crown Prosecution Service has published guidance on 'Controlling or Coercive Behaviour in an Intimate or Family Relationship'⁸⁵

15.6 The police should be contacted and a complaint made. In deciding whether to prosecute, the Crown Prosecution Service follows the Code for Crown Prosecutors, which requires them to consider whether there is enough evidence to provide a realistic prospect of conviction; and whether a prosecution required in the public interest.⁸⁶ It may be possible for the Court to order the recovery of stolen assets as proceeds of crime.

State pensions and allowance decisions

15.7 It may be necessary to involve the Department for Work and Pensions, (DWP) particularly if the perpetrator is an appointee or agent or third party acting under a mandate set up with a bank or other financial organisation. These should be cancelled, and the organisations made aware of the position. The DWP Fraud Investigation Unit⁸⁷ should be contacted and their advice sought. See 14.7 above for the role of financial organisations in dealing with financial abuse.

15.8 Civil remedies

14.13 - 14.16 above may also be relevant.

16. Remedies for physical and sexual abuse

Criminal proceedings

16.1 Slapping, hitting, pushing, shoving and administering any kind of physical damage to a person amounts to assault and battery⁸⁸ and is a matter for the police and if it takes place in a care setting, also the CQC or CIW. An offence may be committed where the victim believes they will suffer physical harm, but are not actually harmed.⁸⁹ A wide range of criminal charges can be brought against the perpetrator. In particular, common assault,⁹⁰ sexual assault, rape,⁹¹ actual and grievous bodily harm⁹² and murder or manslaughter charges. It may also be the case that an organisation commits the offence of corporate

⁸⁵ <https://www.cps.gov.uk/prosecution-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>

⁸⁶ <https://www.cps.gov.uk/publication/code-crown-prosecutors>.

⁸⁷ Tel: 0800 854 400 - lines are open Monday to Friday 8.00am to 6.00 pm.

⁸⁸ s.47 of the Offences Against the Person Act 1861.

⁸⁹ ss.4, s.4A & 5 Public Order Act 1986; s.16 Offences Against the Person Act 1861,

⁹⁰ s.39 of the Criminal Justice Act 1988

⁹¹ The Sexual Offences Act 2003.

⁹² ss.18 and 20 of the Offences Against the Person Act 1861.

manslaughter where it owes a duty of care, grossly breaches that duty because of how its activities are managed or organised, which result in a person's death.⁹³

16.2 If there are concerns that a new, former or existing partner has an abusive past, the person can ask the police to check under the Domestic Violence Disclosure Scheme. If records show that the person may be at risk of domestic abuse, the police will consider under the common law disclosing the information. A disclosure can be made if it is legal, proportionate and necessary to do so.⁹⁴ Statutory guidance has been published under the Domestic Abuse Act 2021 to assist when making disclosure decisions.

16.3 Physical violence may form part of coercive control between family members and is a criminal offence. See 15.15-15.16 above for more information. A Domestic Violence Protection Notice (DVPNs), which is an emergency non-molestation and eviction notice can be immediately issued by the police to a perpetrator, when attending to an abuse incident where the victim and the perpetrator are personally connected. It covers spouses, civil partners, people in an intimate relationship, parents, grandparents, siblings, children, uncles, aunts, nephews, nieces, step relations and first cousins. Because the DVPN is a police-issued notice, it is effective from the time of issue, giving the victim the immediate support they require in such a situation. Within 48 hours of the DVPN being served on the perpetrator, an application should be made by the police to a magistrates' Court for a Domestic Violence Protection Order (DVPOs).⁹⁵ The perpetrator is effectively banned from returning to the victim's residence and from having contact with the victim for up to 28 days, allowing the victim time to consider their options and get the support they need. DVPOs are currently available in only some areas of England and Wales.⁹⁶ If needed, the police can enter premises in order to save life or limb or prevent serious damage to property.⁹⁷

16.4 Under s.5 of the Domestic Violence, Crime and Victims Act 2004, it is a criminal offence to cause or to allow the death of a vulnerable adult, when a member of the household had either caused or allowed the death.

16.5 It is imperative, to obtain evidence as soon as any abuse has been identified. In the case of sexual abuse, to preserve evidence the victim should not wash and retain their clothes, until seen by the police surgeon. It may be helpful to obtain photographs of any injuries, which have been incurred as a result of the abuse. In practice, it may be difficult to obtain a medical report from the victim's own medical practitioner if they care for both the perpetrator and the victim or may feel insufficiently qualified to prepare such a report. In any event the local police surgeon is likely to be involved and should be able to provide evidence.

16.6 If the perpetrator is convicted, the Court can make an order for compensation, which unlike the civil system is based on ability to pay and so may be low.

⁹³ The Corporate Manslaughter and Corporate Homicide Act 2007.

⁹⁴ <https://www.gov.uk/government/publications/domestic-violence-disclosure-scheme-pilot-guidance/domestic-violence-disclosure-scheme-accessible>

⁹⁵ Sections 24-33 Crime and Security Act 2010 and https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224877/DV_Disclosure_Scheme_Guidance_-_REVISED_W.pdf

⁹⁶ <https://www.gov.uk/crime-justice-and-law/domestic-abuse>: <https://www.gov.wales/live-fear-free/domestic-abuse-wales>

⁹⁷ s. 17 of the Police and Criminal Evidence Act 1984.

Criminal Injuries Compensation

16.7 Victims of violent crimes can apply to the Criminal Injuries Compensation Authority for payment of compensation. It does not matter that a prosecution was not brought or that the perpetrator could not be held responsible because they were suffering from a mental disorder. The claim must be brought within 2 years from the date of the incident and any responsible person on behalf of a victim who is mentally incapacitated can make a claim.

Compensation in the civil Courts

16.8 Under the civil law of trespass to the person, (which encompasses assault and battery); it is possible for the victim to sue for compensation. Trespass to the person is a wrong committed against the personal security or personal liberty of one person to another. The act must be either intentional or negligent, and without the victim's consent. It is also possible to claim compensation for negligence and for the resulting injury suffered. A claim for damages may be made against a public body, where a person's human rights have been infringed by the public body when carrying out its functions, such as false imprisonment or an unlawful deprivation of the person's liberty.

Injunctions under the common law

16.9 Obtain a common law injunction to stop future abuse and/or stop a person entering the abused person's home. It cannot be used to exclude a person who has a right to occupy the property and there is no power of arrest for breaching this type of injunction. See also 14.16 above on the exercise of the High Court's inherent jurisdiction.

Orders from the Court of Protection

16.10 The Court of Protection has power⁹⁸ to make an order, which may stop future abuse by making a contact order, which stops the perpetrator from entering the abused person's home. It cannot be used to exclude a person who has a right to occupy the property. The Court has power to include a penal notice.⁹⁹ See also 14.13 above for other orders, which the Court may make. The local authority social services department, in the area in which the abused person resides, usually makes these applications as part of their safeguarding function. As such, the cost of making these applications are borne by the local authority.¹⁰⁰

Harassment or stalking injunctions

16.11 Under the Protection from Harassment Act 1997 (PHA 1997) the police can arrest and charge a person for harassment. Harassment includes, nuisance phone calls, stalking, threats, excessive noise etc and covers any behaviour which causes 'alarm' or 'distress'. Section 12 of the Domestic Violence, Crime and Victims Act 2004, provides the Court with the power to make a restraining order even when a person has been acquitted, where the Court considers it necessary to do so to protect a person from ongoing stalking or harassment from the defendant. Stalking is also an offence. Section 2A (3) of the PHA 1997 sets out examples of acts or omissions which, in particular circumstances, are ones associated with stalking. For example, following a person, watching or spying on them or forcing contact with the victim through any means, including social media. Such offences could also be prosecuted under the Offences Against the Person Act 1861, the Sexual Offences Act 2003 and the Malicious Communications Act 1988.

⁹⁸ s.17 (1)(c) MCA 2005.

⁹⁹ s.47 (1) MCA 2005.

¹⁰⁰ Court of Protection Rules 2017, r.19.3.

16.12 Alternatively, an ‘Anti-Harassment Injunction’ may be obtained from the County or High Court (see also 14.15 and 14.16 above). Compensation for ‘anxiety’, ‘distress’, ‘alarm’ or financial loss can be made at the same time.

Injunctions against family members

16.13 The Family Law Act 1996 enables an injunction to be granted excluding the domestic abuser from the home and restraining conduct. Breaches can be dealt with by a fine or imprisonment. See also 16.3 above about Domestic Violence Protection Orders. If there is cause, it is possible to obtain an interim injunction without giving notice to the abuser, pending a final hearing. Injunctions can be obtained against ‘associated persons’, defined in s.62 (3) as people who:

- are or have been married or civil partners to each other;
- are or have been cohabitants (defined as a man and a woman, not married to each other by living together as husband and wife);
- have lived in the same household (other than one of them being the other’s tenant, lodger, boarder or employee). This does not therefore include those in lesbian and gay relationships and those sharing a house;
- are relatives (this is defined to include most immediate relatives)
- have agreed to marry (evidence by a written agreement, the exchange of a ring, or a witnessed ceremony);
- they have or have had an intimate personal relationship with each other which is or was of significant duration;
- they have entered into a civil partnership agreement (as defined by s.73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);
- in relation to a child (they are both parents, or have or have had parental responsibility for a child);
- are parties to the same family proceedings (other than under Part IV of the Act, but excluding the local authority).

Restraint and Deprivation of Liberty

16.14 Whilst proportionate restraint is acceptable to prevent serious harm occurring to a person who lacks mental capacity, anything that exceeds this or amounts to a deprivation of the person’s liberty without proper authority (such as detention under the Mental Health Act 1983; an order from the Court of Protection under sections 16A, 15 or authorisation under the Deprivation of Liberty Safeguards under Schedule A1 of the Mental Capacity Act 2005) is unlawful.¹⁰¹

16.15 Positive duties are also imposed on a local authority to protect vulnerable persons against interferences with liberty carried out by private persons.¹⁰² As such, they must take reasonable steps to prevent (or seek Court authorisation for) a deprivation of liberty which they are aware of, or which they ought to be aware of. This includes investigating whether there is a deprivation of liberty, monitoring the situation if appropriate, and taking steps to end the deprivation of liberty (for example by providing additional support services) or, if that is not possible, bringing the matter to Court. However, the local authority must seek

¹⁰¹ See Deprivation of Liberty Safeguard Code of Practice (Ministry of Justice, 2008).

¹⁰² *Stork v Germany* [2005] 43 EHRR 96; *Staffordshire CC v SRK* [2016] EWCA Civ 1317.

the assistance of either the Court of Protection or the High Court ‘before it embarks upon any attempt to regulate, control, compel, restrain, confine or coerce a vulnerable adult.’¹⁰³

16.16 Actual physical restraint, including placement of furniture to prevent the person from leaving, physical confinement, and electronic tagging are unacceptable. It may also include locking people in their rooms and ignoring their needs. Cot sides should only be used, where appropriate, and with informed consent or if the person lacks mental capacity after consultation with those interested in the person’s welfare. Other forms of restraint with the potential to be considered criminal offences include: - restriction of liberty by locking someone in their room; misuse of furniture or equipment including bedrails and Buxton chairs (chairs which restrain or restrict movement by the use of integral tables); unsafe or outmoded restraint practices which risk physical injury.

16.17 Such restraints may amount to the tortious act of negligence or trespass to the person and/or a criminal offence of assault and battery.

Local Authority Assistance

16.18 Section 6 of this guidance sets out the local authority’s duties to safeguard adults at risk of abuse or neglect.

Misuse of Medication

16.19 The inappropriate medication of an adult at risk of harm, particularly with anti-psychotic medication is a matter of serious concern, if it is used as a tool for behavioural management and may amount to abuse.

16.20 There can be insufficient local prescribing guidelines in relation to powerful painkilling drugs; a lack of rigorous review of pharmacy data on high levels of prescribing on wards/care homes caring for older frail people; an absence of supervision of prescribing and a lack of multidisciplinary assessment to determine care needs and medication.

16.21 Health and social care records may be obtained under the Data Protection Act 2018, when requested by a welfare deputy or attorney of a registered personal welfare Lasting Power of Attorney or the written consent of the patient with capacity to enable the monitoring of medication. Attorneys acting under Enduring Powers or Property and Affairs Lasting Powers have no express authority to access health and social care records, although advance consent may have been given when the power was prepared. The release of records may still be provided in respect of patients who lack mental capacity without their consent, if the health or social care body believe the release of the records would be in the patient’s best interest.¹⁰⁴

16.22 If over medication is observed, make a complaint to the registered provider and/or the CQC/CIW (see 10.3, 11.1 and 11.4 above) and where appropriate, the local Integrated Care Board in England or Local Health Board in Wales and the police.¹⁰⁵

¹⁰³ See *Re BJ (Incapacitated Adult)* [2009] EWHC 3310 (Fam), [2010] 1 FLR 1373, at paras [21]-[22], and *Re Z (Local Authority: Duty)* [2004] EWHC 2817 (Fam).

¹⁰⁴ *S v Plymouth City Council* [2002] EWCA 388: Chapter 16 of the Mental Capacity Act 2005 Code of Practice.

¹⁰⁵ Misuse of medication to manage behaviour can amount to an assault, false imprisonment, and the application of stupefying over-powering drugs with intent to commit indictable is an offence under s.22 of the Offence Against the Person Act 1861, poisoning with intent to injure, aggrieve or annoy under ss. 23 and 24 of the Offence Against the Person Act 1861, and/ or unlawfully administering medication under s.58 of the Medicines Act 1968.

Female Genital Mutilation (FGM)

16.23 FGM is illegal in the United Kingdom. The Female Genital Mutilation Act 2003 makes it a criminal offence to circumcise a female (unless it is for specific physical or mental health purposes). It also makes it an offence for UK nationals or permanent UK residents to carry out FGM abroad, or to aid, abet, counsel or procure the carrying out of FGM, even in countries where the practice is legal. The maximum penalty for committing or aiding the offence is fourteen years in prison.

16.24 Local agencies should be alert to the possibility of FGM where there are communities or individuals known to practice it.

Modern Slavery Act 2015

16.25 Modern slavery can include the exploitation of adults at risk through force, coercion, threat and the use of deception and human rights abuses such as debt bondage, deprivation of liberty and lack of control over one's labour. Exploitation may occur through prostitution and other types of sexual exploitation and through labour exploitation. The Modern Slavery Act 2015 makes such activity a criminal offence. Guidance has been issued and is available from the Modern Slavery Registry organisation.¹⁰⁶

17. Remedies for psychological abuse

17.1 Due to its nature psychological abuse can be difficult to detect. It may be possible to obtain an injunction if it amounts to harassment and for criminal proceedings to be brought as it may form part of coercive control under s.76 of the Serious Crimes Act 2015 (see.15.5 above). Humiliation, intimidation, emotional blackmail, verbal abuse and being shouted at may also amount to harassment, alarm or distress and an offence under the Public Order Act 1986.¹⁰⁷ Harassment in a person in their own home may also be an offence under s.42A of the Criminal Justice and Police Act 2001.

17.2 Under the Malicious Communications Act 1988, any person who sends a letter, electronic communication or article which is indecent or grossly offensive with the intent to cause distress or anxiety are guilty of a criminal offence. Similarly, it is an offence under s.127 Communications Act 2003 to send a message which the perpetrator knows to be indecent, obscene, of a menacing character or grossly offensive for the purpose of causing annoyance, inconvenience or needless anxiety. Section 33 of the Criminal Justice and Courts Act 2015 makes it an offence to disclosing private sexual photographs and films with intent to cause distress. The Online Safety Act 2023 made amendments to the Sexual Offences Act 2003 to create an offence of sharing or threatening to share intimate photograph or film with the intention of causing the recipient alarm, distress or humiliation or fear that the threat to share will be carried out.¹⁰⁸

Injunctions against anti-social behaviour: Anti-Social Behaviour, Crime and Policing Act 2014

17.3 A civil injunction under this Act may be made against a person aged 10 or over if the Court is satisfied, on the balance of probabilities (the civil standard of proof), that the person has engaged in, or is threatening to engage in, anti-social behaviour (such as bullying,

¹⁰⁶ https://www.modernslaveryregistry.org/pages/reporting_guidance.

¹⁰⁷ ss.4,4A & 5.

¹⁰⁸ s.66B.

gangs, noisy or abusive neighbours) and that the behaviour must be likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); or conduct capable of causing nuisance or annoyance (housing-related anti-social behaviour); and just and convenient to grant the injunction to prevent anti-social behaviour. Various entities are entitled to apply for such injunctions, including a local authority, a housing provider, Transport for London, and the chief officer of police for a police area (s.5).

17.4 A criminal behaviour order (CBO) is an order made under Part 2 of the Anti-Social Behaviour, Crime and Policing Act 2014. A CBO can be issued following a conviction for any criminal offence in the Crown Court, a magistrates' court or a youth court. A CBO can prohibit the offender from doing anything described in the order or require the offender to do anything described in the order or both.

17.5 For a CBO to be made the court must be satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person; and that the court considers making the order will help in preventing the offender from engaging in such behaviour

17.6 See 16.8-16.10 and 16.12 above for suitable civil redress, 16.11 for criminal redress, and see section 6 of this guidance for details of the local authorities' safeguarding duties.

18. Remedies for neglect and self-neglect

18.1 Most of the interventions likely to occur within the abuse of neglect including self-neglect will involve the local authority and/or the NHS. In the case of a person living with Hoarding Disorder, which is a form of self-neglect the local authority's social services department will work with their environmental health department to find a way to resolve the problem. The Chartered Institute for Environmental Health has published guidance which can assist understand local authorities extensive powers.¹⁰⁹

Care and Support arranged or provided by Social Services

18.2 See section 6 of this guidance which sets out local authorities' safeguarding duties. The local authority will also take the lead should it be discovered that a regulated care provider has allowed a person to be abused or neglected. See 10.3, 11.1 to 11.5 above for more details of the CQC and CIW role in concerns about abuse and neglect by regulated care providers.

Entry and inspection of premises for people who may have a mental disorder

18.3 Under s.115 of the Mental Health Act 1983, an approved mental health professional can enter and inspect any premises (other than a hospital) occupied by a mentally disordered person, if they think that the person is not receiving proper care. They cannot use force to break in, and have no power to remove the person. If it is thought that removal is necessary then a warrant under s.135 (see 18.4 below) should be obtained. Anyone refusing entry to the approved mental health professional would be committing an offence.¹¹⁰

Place of safety order of a person who may have a mental disorder in a premise

¹⁰⁹ <https://www.cieh.org/policy/resources/>

¹¹⁰ s.129 Mental Health Act 1983.

18.4 Section 135 of the Mental Health Act 1983 enables an approved mental health professional to apply to a Magistrate for a warrant which will allow a police officer to enter premises where it is thought that a person who is suffering from a mental disorder is residing and:

- (1) They are being (or have been) ill-treated, neglected; or
- (2) Not kept 'under proper control'; or
- (3) They are living alone and unable to care for them self.

18.5 An approved mental health professional and a doctor should accompany the police officer that is to execute the warrant, which is valid for 28 days. They can break into the premises, if appropriate and where necessary, remove the person and take them to a place of safety, for the purpose of making arrangements for the person's care and treatment. A place of safety can be a police station (in limited circumstances), a hospital, a care home or other suitable place. If appropriate, with agreement of the person or householder, and if it is safe the person can be assessed on the premises without the need for their removal.

18.6 The detention lasts for up to 24 hours from the time that the person arrives at the place of safety. The person should be assessed during this period and once a decision is made as to the treatment or care required, then the detention ceases. There is no right of appeal.

Place of safety of a person who may have a mental disorder in a public place

18.7 Section 136 of the Mental Health Act 1983 enables a police officer to remove a person, without the need for a warrant, to a place of safety, which can be a police station (in limited circumstances), a hospital, a care home or other suitable place, (and if practical, in consultation with a mental health professional), if they find that person in a public place, and the person:

- (1) Appears to be suffering from a mental disorder;
- (2) Is in immediate need of care and control; and
- (3) The police officer thinks it is necessary, in the interest of that person or for the protection of others for such removal.

18.8 Section 136 cannot be used if the mentally disordered person is in a private dwelling or the private garden or buildings associated with that place. Other than this exception, s.136 can be used in any other setting. The police officer may use force to enter any place where the power may be exercised. Detention can be up to 24 hours, during which time an assessment would take place for any necessary arrangements for care to be made, with the possibility of a 12-hour extension under clearly defined circumstances. There is no right of appeal.

Guardianship orders for people who have a mental disorder

18.9 The Mental Health Act 1983 enables a guardianship order to be made.¹¹¹ To be received into guardianship the person must be suffering from a mental disorder of a nature or degree that warrants the order and it is necessary in the interests of the person, or for the protection of other people.

18.10 The order may specify:

¹¹¹ s.7.

- (1) Where the person lives;
- (2) That the person attends a place or at a time for medical treatment, occupation, education, and training; or
- (3) That a doctor, an approved mental health professional or anyone else the guardian specifies must have access to see the person.¹¹²

18.11 The guardianship lasts for 6 months and is renewable for a further 6 months and then for a year at a time under s.20. There is a right of appeal to the First-tier Tribunal (Mental Health) in England or Mental Health Review Tribunal for Wales.

Criminal proceedings by those providing care under the Mental Health Act 1983

18.12 Section 127 of the Mental Health Act 1983 makes it a criminal offence to ill-treat or wilfully neglect a patient receiving treatment, subject to a guardianship order or otherwise in his custody or care for treatment of a mental disorder in hospital or a care home by staff. Any proceedings require the approval of the Director of Public Prosecutions.

18.13 Ill treatment and wilful neglect are separate offences. The offence does not necessarily require that the ill treatment must have resulted in actual injury to the patient or at least have caused them unnecessary suffering or injury to health. Wilful neglect is a failure to act when a moral duty demands it, whereas ill treatment is a deliberate course of action.¹¹³ The Court of Appeal has stated that there needs to be both an objective breach of a duty of care, and an element of subjective (that is, in the mind of the perpetrator) intention or recklessness.¹¹⁴

Criminal proceedings by those acting under the Mental Capacity Act 2005

18.14 Section 44 of the Mental Capacity Act 2005 created a criminal offence of ill-treatment or wilful neglect of a person lacking capacity or who is reasonably believed to lack capacity. It applies to three categories of people:

- Caregiver (this includes paid and informal caregivers such as relatives)
- The attorney of an Enduring Power of Attorney or Lasting Power of Attorney
- A deputy

18.15 It should be noted that under criminal law, the standard of proof is ‘beyond reasonable doubt’, however for s.44 offences, the prosecution must prove (1) to the criminal standard that the defendant ill-treated or wilfully neglected a person in his care, and (2) that on a ‘balance of probability’ that person was a person who at the material time lacked capacity, in accordance with s.2(4) Mental Capacity Act 2005.¹¹⁵

18.16 The person will be guilty of an offence if they ill-treat or wilfully neglect the person they care for or are appointed to act for. The definition of ill treatment or wilful neglect is not defined in the legislation, but the Mental Capacity Act 2005 Code of Practice,¹¹⁶ provides that for a person to be found guilty of ill treatment, they must either have deliberately ill-treated the person, or been 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 cause harm or

¹¹² s.8.

¹¹³ R v Newington [1990] 91 Cr App R 247.

¹¹⁴ R v Salisu [2009] EWCA Crim 2702.

¹¹⁵ R v Dunn [2010] EWCA Crim 2935; R v Hopkins; R v Priest [2011] EWCA Crim 1513; Kurtz v R [2018] EWCA Crim 2743.

¹¹⁶ Paragraph 14.25.

damage to the victim's health. The meaning of 'wilful neglect' varies depending on the circumstances, but usually means that a person has deliberately failed to carry out an act they knew they had a duty to do.¹¹⁷ Actions or omissions, or a combination of both, which reflect or are believed to reflect the protected autonomy of the individual (where they have mental capacity) needing care do not constitute wilful neglect.¹¹⁸

18.17 Although the principles governing offences of ill treatment and wilful neglect are identical, cases involving alleged ill-treatment do not appear to raise quite the same difficulties as cases of alleged wilful neglect, perhaps not least because evidence of ill-treatment is generally less elusive than evidence purporting to establish wilful neglect.¹¹⁹

18.18 The Court of Appeal has found, neglect is wilful if a nurse or medical practitioner knows that it is necessary to administer specific treatment and deliberately decides not to carry out that treatment, which is within their power but which they cannot face performing. If the practitioner was acting at a time of stress, that would be a matter which the judge could take into account at the time of sentence.¹²⁰

Ill treatment or wilful neglect by paid care worker

18.19 The Criminal Justice and Courts Act 2015 ss 20 and 21 provides that it is an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully to neglect that individual.

18.20 Any cases brought are triable either way. On summary conviction, a maximum prison term of 12 months and/ or fine not exceeding a statutory maximum could be imposed. On conviction on indictment a maximum prison term of five years and /or fine could be imposed.

19. Problems of legal remedies

Public bodies failure to act in line with expectations

19.1 Public bodies responses may not always live up to expectations. If a decision is made that they do not intend to take safeguarding steps, they should explain their reasons. Most commonly, it is because either the victim does not want any intervention or because the abuse is not considered sufficiently serious to justify the public body interfering in the person's life. Private law actions may still be made taken.

The cost of legal remedies

19.2 Using the civil Court system can incur expense and this deters many people from using this method of intervention. Those on a low income, with little or no savings may qualify for legal support through Legal Aid but will still need to establish that there is a viable cause of action. An application for Legal Aid and subsequent action can be made on behalf of someone who lacks mental capacity. Many practices of solicitors have given up undertaking legal aid work due to the low levels of pay. Others may act on a contingency fee basis, for personal injury cases.

¹¹⁷ R v Sheppard 1981 AC 394.

¹¹⁸ Ibid, Paragraph 18.

¹¹⁹ Ligaya Nursing v R [2012] EWCA Crim 2521, paragraph 17.

¹²⁰ R v Patel [2013] EWCA Crim 965.

Court action can take time to get to a full hearing

19.3 One would need to consider the effect of Court proceedings on the abused person. The Court will attempt to accommodate the needs of the abused person. The Crown Prosecution Service has published guidance, 'Victims and Witnesses: Care and Treatment' for those involved in criminal proceedings.¹²¹ See Practice Direction 1a - Participation of vulnerable parties or witnesses under the Civil Procedure Rules; Practice Direction 3AA - 'vulnerable persons: participation in proceedings and giving evidence' in respect of the Family Procedure Rule; and Court of Protection Practice Direction 1A - Participation of P. The Advocate's Gateway provides free access to practical, evidence-based guidance and tools on communicating with vulnerable witnesses.¹²²

Evidence must be established

19.4 It is imperative that sufficient evidence is obtained as soon as possible after the event of abuse. This may take the form of medical reports, photographic evidence, written records and statements from parties involved. Where a criminal act has occurred, consider involving the police.

19.5 Although a person without capacity may pose evidential problems, it does not preclude them from having the protection of the law. An expert witness may be able to give evidence of abuse; Eyewitness's accounts may be able to provide corroborative evidence and the victim may be capable of giving evidence. The Youth Justice and Criminal Evidence Act 1999 include a range of measures to support witnesses to give their best evidence, such as the use of screens around the witness box, the use of live-link, screens, evidence given in private, or recorded evidence-in-chief and the use of an intermediary to help witnesses understand the questions they are being asked and to give their answers accurately.

19.6 In determining whether the person is competent to give evidence, the judge has to ascertain, if they understand what telling the truth is as well as being able to recall the facts. This may involve calling an expert witness, such as a psychologist. If the person lives with dementia it may be worthwhile obtaining written evidence in the form of an affidavit during a period of capacity supported by medical evidence as to capacity to make the statement.

What does the client want the outcome to be?

19.7 It is easy to assume, but it is not always the case, that the client wants intervention of some sort. They will usually want the abuse to stop but there may be repercussions. Counselling and/or advocacy services may be needed. The client may decide to deal with the matter without legal redress, for example by amending wills and gifts to rectify the position

Is the perpetrator worth pursuing?

19.8 If compensation is the redress desired, does the perpetrator have any financial means to pay any Court order made? In civil cases, mentally disordered persons are liable to the same extent as those with mental capacity, provided they have the state of mind required for liability in the particular tort.¹²³ Even if the perpetrator is unaware that they

¹²¹ <https://www.cps.gov.uk/prosecution-guidance/victims-and-witnesses-care-and-treatment>

¹²² <https://www.theadvocatesgateway.org/>

¹²³ *Morris v Marsden* (1952) 1 All ER.

may be committing a wrongful act, they may still be liable. However, if their actions are purely involuntary and automatic it cannot be litigated.

19.9 In criminal cases, the decision to prosecute a mentally disordered person depends on if it is in the public interest. In such cases the Court has wide sentencing powers.

20. Resources

Publications

- The Law Society Practice Notes on Lasting Powers of Attorney, Making Gifts of Assets, Financial Abuse, Mental Capacity, and Advising Vulnerable Clients
- Chapter 14, Care and Support Statutory Guidance, Department of Health and Social Care
- Part 7 Code of Practice, Social Services and Well-being (Wales) Act 2014
- Social Care Institute for Excellence Report 50, Safeguarding adults at risk of harm: A legal guide for practitioners¹²⁴
- OPG Safeguarding Policy¹²⁵
- Guidance issued by the Crown Prosecution Service (CPS) about prosecuting crimes against older people (CPS, 2008) ¹²⁶
- Principal Social Worker Network
- STEP Loss of Mental Capacity: A Global Perspective: November 2023¹²⁷

Useful Contacts

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Age Cymru

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¹²⁴ <http://www.scie.org.uk/publications/reports/report50.pdf>

¹²⁵ <https://www.gov.uk/government/publications/safeguarding-policy-protecting-vulnerable-adults/sd8-opgs-safeguarding-policy>

¹²⁶ http://www.cps.gov.uk/publications/prosecution/older_people.html

¹²⁷ <https://www.step.org/research-reports/mental-capacity>

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Tel: 0300 7900 126
Email: CIW@gov.wales
Website: careinspectorate.wales

The Health and Care Professions Council

Park House
184-186 Kennington Park Road
London SE11 4BU
Tel: 020 7840 9814
Email: ftp@hcpc-uk.org
Website: hcpc-uk.org

Social Care Wales

South Gate House
Wood Street
Cardiff CF10 1EW
Tel: 0300 30 33 444
Email: info@socialcare.wales
Website: www.socialcare.wales

Independent Age

6 Avonmore Road
London W14 8RL
Tel: 020 7605 4200
Website: independentage.org.uk

Re-engage (previously Contact the Elderly)

7 Bell Yard
London WC2A 2JR
Help Line Tel: 0800 716543
Office Tel: 020 7240 0630
Website: reengage.org.uk

The Alzheimer's Society

Alzheimer's Society
Suite 2
1st Floor East Wing
Plumer House
Tailyour Road
Plymouth PL6 5FS
Dementia support Tel: 0333 150 3456
General enquiries Tel: 0330 333 0804
Website: alzheimers.org.uk

Counsel and Care

Tel: 0845 300 7585 (advice)
Email: info@counselandcare.org
Website: counselandcare.org.uk

The Court of Protection

PO Box 70185,
First Avenue House,
42-49 High Holborn,
London WC1A 9JA
Tel: 0300 456 4600
Website: gov.uk/courts-tribunals/court-of-protection

The Office of Public Guardian

PO Box 16185
Birmingham B2 2WH
Tel: 0300 456 0300
www.gov.uk/government/organisations/office-of-the-public-guardian

The Official Solicitor and Public Trustee

Post Point 0.53
102 Petty France
London SW1H 9AJ

Court of Protection - Healthcare and Welfare

Email: oswelfarereferrals@ospt.gov.uk
Tel: Healthcare and welfare: 020 3681 2751

Court of Protection - Property and Affairs

Email: OSPTSecretarialsupport@ospt.gov.uk

Tel: Property and Affairs: 020 3681 2758

The Parliamentary and Health Service Ombudsman

Citygate
Mosley Street
Manchester M2 3HQ
Tel: 0345 015 4033
Website: ombudsman.org.uk

The Public Service Ombudsman for Wales

1 Ffordd yr Hen Gae
Pencoed CF35 5LJ
Tel: 0300 790 0203
Website: ombudsman.wales

Local Government and Social Care Ombudsman

PO Box 4771
Coventry CV4 0EH
Tel: 0300 061 0614
Website: lgo.org.uk

National Trading Standards Scams Team

Report - contact Action Fraud on 0300 123 2040.
Website: <https://www.nationaltradingstandards.uk/contact/>

Criminal Injuries Compensation Authority

10 Clyde Place
Buchanan Wharf
Glasgow G5 8AQ
Tel: 0800 358 3601
Website: gov.uk/government/organisations/criminal-injuries-compensation-authority

Hoarding Charities

<https://hoardingdisordersuk.org/support/>
<https://hoardinguk.org/support-groups/>
<https://hoarding.support/>



ADVANCE CONSENT TO SAFEGUARD YOU AND/OR YOUR PROPERTY

There might be a time in the future, when you are less able to protect yourself and/or your property because for example, you lack mental capacity or are vulnerable to abuse of trust, coercion, duress, manipulation, or undue influence from another person, or you may be unintentionally neglecting yourself.

Solicitors must not disclose confidential information without their client's consent. Confidential information includes records of meetings, advice provided and details of legal transactions.

Our legal practice is encouraging clients to consider whether to give consent to the disclosure of limited confidential information, which would allow your solicitor to take such steps as he or she considers is necessary and appropriate to safeguard you and/or your property.

The information disclosed would only be provided to people working in a professional capacity, for example those working in social, health, environmental health, housing, police, financial institutions, the Office of the Public Guardian and the Court of Protection.



**ADVANCE CONSENT
TO DISCLOSE CONFIDENTIAL INFORMATION**

I *[insert client's full name and address]* give my consent to:

[insert legal practice's name and address] (the legal practice) which includes any successive or amalgamated practice which has resulted in a change of its name or address:

1. To disclose any confidential information held or known in respect of me, to personnel working in social, health, environmental health, housing, financial institutions, the Office of the Public Guardian and the Court of Protection or other organisation which has a safeguarding role, for the purpose of protecting my interests, if it is reasonably believed that I am not in a position to safeguard myself and/or my property and harm may occur unless action is taken.
2. I understand that any confidential information disclosed will be limited to what is considered by the legal practice at the time to be necessary and appropriate.

Signed.....

Dated.....

SAFEGUARDING PLAN

SECTION 1: DETAILS OF THE CLIENT

Forenames	
Surnames	
Date of birth	
Male or female	
Age	
Address line one	
Address line two	
Town	
Postcode	
Telephone numbers	
Ethnicity	
Religion	
Sexuality	

Doctors surgery name (if known)	
Doctors surgery address (if known)	
Preferred contact person	
Preferred contact person's details: Telephone number/address	

Does the client have any specific communication needs?	
Does the client have any special contact preferences, or persons they wish to be contacted?	

SECTION 2: INCIDENT DETAILSs

Date of the alleged incident	
Date this alert was completed	
Is the client aware and in agreement with this safeguarding plan?	Yes <input type="checkbox"/>

	No <input type="checkbox"/>
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The client should be presumed to have capacity. Is it your assessment that the Client may lack the capacity to make their own decisions about their personal safety or protection?	Yes <input type="checkbox"/> No <input type="checkbox"/>
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Details of any other involved agencies (e.g. homecare, support workers, sitting service)

Usual living arrangements for the client (tick all that apply)	
Lives alone	
Lives with spouse/partner	
Lives with parents/family/carer	
Lives in care/nursing home	
Lives with children under 18 years	
Lives within Supported Living	
Lives in temporary accommodation	
Other (please specify)	

Vulnerability factors for the client (tick all that apply)	
Older person (age 65 and over)	
Learning disability	
Mental health	
Physical and sensory disability	
Substance misuse	
Other (please specify)	

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Details of recent hospital admissions

SECTION 3: THE PERSON COMPLETING THE FORM

Forenames	
Surnames	
Address line one	
Address line two	
Town	
Postcode	
Telephone numbers	
Relationship to client (deputy/ attorney/adviser)	

PROFESSIONAL(S) TO COMPLETE THE FOLLOWING SECTION

Has the incident been reported to the police?	Yes <input type="checkbox"/>
	No <input type="checkbox"/>
If yes, please specify the following	
Police CAD number	
Crime reference number	
If the police have not been informed please provide reasons	

SECTION 4: PERSON ALLEGED TO BE CAUSING THE HARM (PACH):

If this person is employed in a position of trust please include the name and	
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telephone number/s for their employer below	
Full Name of employer	
Address and postcode of (PACH) (Or Organisation details if applicable)	
Postcode	
Telephone number	
Is the person alleged to be causing the harm known to the Client?	Yes <input type="checkbox"/> No <input type="checkbox"/>
What is the persons relationship to the client?	
Is this person the client's partner/ex partner?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Is the Person alleged causing the harm (PACH) also a client?	Yes <input type="checkbox"/> No <input type="checkbox"/>

What are their vulnerability factors (tick all that apply)	
Older person (65 and over)	
Learning disability	
Mental Health	
Physical and sensory disability	
Substance misuse	
Other (please specify)	

SECTION 5: INCIDENT

Setting where the alleged abuse or neglect took place (please tick all that apply)	
Own home	
Public place	
Care or nursing home	
Hospital	

Day care	
Property of the person causing harm	
Mental health inpatient setting	
Supported accommodation	
Training/education/workplace	
Other (please specify)	

Did anyone else witness the alleged abuse or neglect?	Yes <input type="checkbox"/>
	No <input type="checkbox"/>
If yes, please provide contact details for witness	
Has the client made an allegation of an offence?	Yes <input type="checkbox"/>
	No <input type="checkbox"/>

What offence is being alleged by the Client? e.g. theft / fraud/ assault	
If no offence is being alleged by the client, what offence is being alleged by the person raising the concern?	
If you are not the original recipient of this information please detail the source of the information	
How often do you think the alleged abuse or neglect happens and when was the most recent episode?	

Nature of the alleged abuse or neglect (tick all that apply)	
Physical	
Psychological/emotional	
Financial/material	
Sexual	
Neglect & Acts of Omission	
Self-Neglect	
Caregiver Abuse	
Stranger Abuse	

Please describe your concerns in more detail below. Be specific about what has happened and why you are concerned about the possible abuse or neglect of the client. Please include where possible the impact this has on the client.

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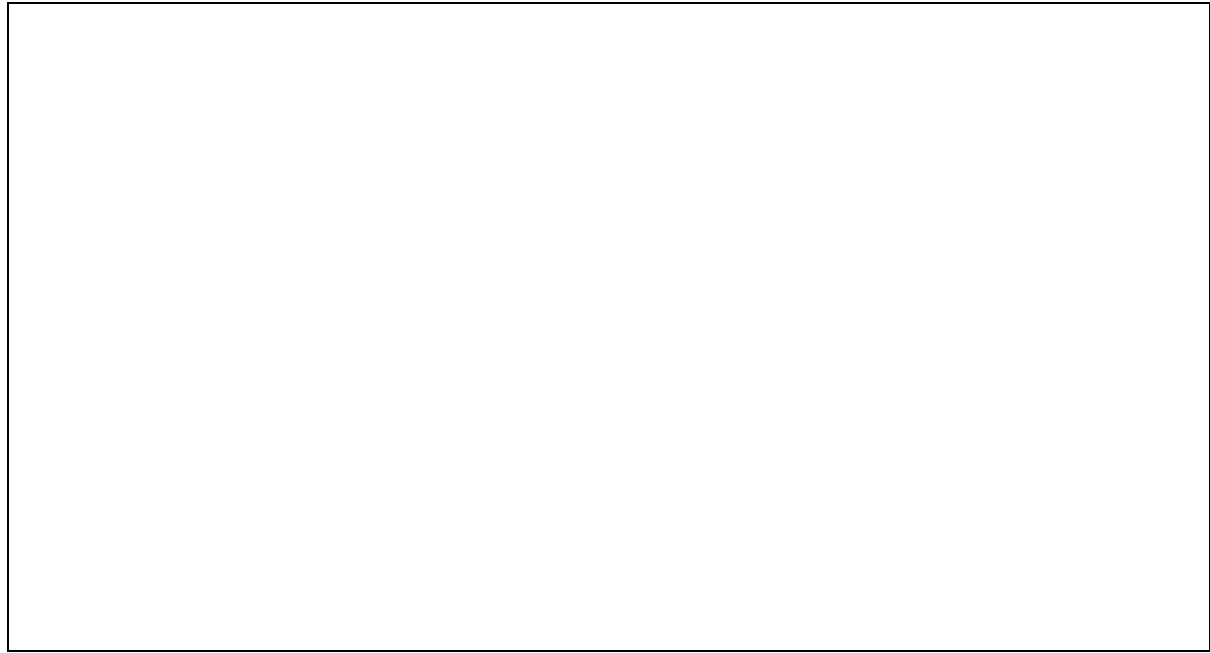
Domestic Abuse	
Modern Slavery	
Discriminatory	
Organisational/institutional	
Do you believe that other people may be in danger from this alleged person causing the harm?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Are children also at risk?	Yes <input type="checkbox"/> No <input type="checkbox"/>

If **yes** you must now alert the Child Protection Team of the local authority in which the client lives.

Making Safeguarding Personal

What outcomes does the client want?

Take into account their preferences, history, circumstances and lifestyles, it is important to ask the client and record where safe to do so their desired outcomes.



SECTION 6: REQUIRED ACTIONS CHECKLIST

- Consider and take any immediate action required to ensure safety.
- If a criminal act is alleged / suspected alert the Police in an emergency calling 999 or report in person at the front desk of ANY police station
- Consider how to preserve potential evidence and secure your records.
- Inform the Safeguarding Lead
- If a Care Home, Nursing Home, or Acute Hospital is involved alert the regulatory body. If children are thought to be at risk alert Child Protection Team
- If an adult is at risk a referral can be made to the local authority's Safeguarding Adults Team
- If the concern is in respect of an attorney or deputy refer the matter to the Office of the Public Guardian
- If you suspect that domestic abuse has taken place or you wish to seek advice on domestic abuse, please contact the local domestic abuse service.