

Safeguarding and the Court of Protection - Adults

What is Safeguarding?

The investigation and possible intervention in cases of suspected neglect or abuse.

What are the aims of Safeguarding?

- To prevent harm and reduce the risk of abuse or neglect to adults with care and support needs.
- Stop abuse or neglect wherever possible.
- 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.
- Address what has caused the suspected abuse or neglect.

Who is responsible for Safeguarding?

Local Authorities in England & Wales have a statutory duty to promote the well-being of an individual and to investigate potential abuse or neglect of a vulnerable adult. NHS bodies equally have a responsibility to monitor and manage suspected abuse.

Safeguarding Principles

There are 6 principles which should underpin all adult safeguarding processes. These include:

- 1) Empowerment: This means the adult should be asked what they want as the outcomes from the safeguarding process and these should directly inform what happens.
- 2) Prevention: This means the adult should be provided with clear and simple information about what abuse is, how to recognise the signs and how to seek help.
- 3) Proportionality: This means professionals should be involved as much as is actually needed.
- 4) Protection: This means the adult should be provided with help and support to report suspected abuse and neglect.
- 5) Partnership: This means that staff should handle personal and sensitive information in confidence, only sharing what is helpful and necessary. Everyone should work together to achieve a proportionate outcome.
- 6) Accountability: This means the adult understands the role of everyone involved.

The Duty of Enquiry

A Local Authority has a statutory duty of enquiry wherever it has reasonable cause to suspect that an adult, in its area:

- Has needs for care and support (whether or not the Local Authority is meeting any of those needs); and
- Is experiencing, or is at risk of, abuse or neglect; and
- As a result of those needs is unable to protect himself or herself against the abuse or neglect, or risk of abuse or neglect.

“Abuse” includes: physical abuse, domestic abuse, sexual abuse, psychological abuse, modern slavery, discriminatory and organisational abuse, and financial abuse.

“Neglect” includes: neglect by acts of omission such as ignoring medical, emotional or physical care needs, failure to provide access to appropriate health, care and support, and the withholding of the necessities of life such as medication, adequate nutrition, hydration and heating. It can also include self-neglect.

Every Local Authority should have a Safeguarding Adults Board which ensures a multi-agency approach to safeguarding enquiries and investigations.

What happens if a Duty of Enquiry arises?

A 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 care, and if so, what action and by who.

Action following an Enquiry

A range of possible responses may follow from an enquiry. If, however, the Local Authority concludes that further action should be taken, the Local Authority has a duty to ensure such action is taken. Often this will include the preparation of a ‘protection plan’ which should set out:

- What steps are to be taken to ensure the adult’s safety in the future.
- The provision of any support, treatment or therapy including on-going advocacy.
- Any modifications needed in the way services are provided. For example, through the appointment of a Deputy.
- How best to support the adult through any action they take to seek justice or redress.
- Any on-going risk management strategy as appropriate.
- Any action to be taken in relation to the person or organisation that has caused the concern.

What powers does a Local Authority have to address Safeguarding concerns?

Proceedings can be initiated in the Court of Protection when an adult lacks capacity and steps need to be taken to reduce the risk of, or prevent further abuse or neglect.

In a situation where an adult has capacity, but the Local Authority is concerned that the adult has suffered, or is at risk of, abuse or neglect, an application to engage the High Court’s inherent jurisdiction may be necessary.

When might an application to the Court of Protection be made?

If a Local Authority considers it necessary to remove a person who lacks capacity to consent from their home or to restrict contact with others due to safeguarding concerns.

Who else may have powers to investigate suspected abuse and neglect?

If the suspected abuse or neglect has taken place in a care setting, the Care Quality Commission (CQC) can be notified. The CQC is the statutory body responsible for the regulation of health and social care providers. The CQC may review or investigate concerns with regard to inadequate care.

There is also the possibility that suspected abuse or neglect may amount to a criminal offence, which requires investigation by the police.

What should I do if I suspect abuse or neglect?

The starting point is to discuss your concerns with the adult concerned to obtain their consent before suspected abuse or neglect is reported.

If the adult has capacity, and does not consent, but you feel the adult may be subject to coercion, duress or exploitation from others, you may still wish to raise concerns with the Local Authority.

For any adult whom lacks capacity, concerns can be raised with the Local Authority and/or the police.

How can Lester Aldridge assist?

At Lester Aldridge we can provide:

- An initial, free consultation to discuss the circumstances of the case.
- Support to raise safeguarding concerns with a Local Authority in accordance with the relevant Local Authority's safeguarding procedure.
- Advocacy at safeguarding meetings to ensure your concerns are clearly articulated to those completing enquiries.
- Support to ensure appropriate protection plans are put in place if the evidence suggests there is reasonable cause to believe an adult is at risk of abuse or neglect.