

# SOUTHEND

# ESSEX

# THURROCK

## **Safeguarding Adults Guidelines**



April 2008

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## PREFACE

Since “*No Secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse*” was published in 2000, Southend, Essex and Thurrock Local Authorities have been working within a national framework, together with their local partners, to safeguard vulnerable adults.

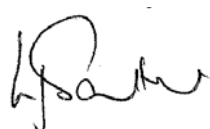
Where those local partners are “cross boundary” different agencies found themselves referring to three sets of policies, sharing the same outcomes but with different forms and variations in procedures. As a direct result of this a group was set up to consider how the three policies could be amalgamated clearly and consistently to ensure vulnerable adults of Southend, Essex and Thurrock can all expect to be safeguarded in the same way, wherever they live.

We are pleased to welcome this document as the result of the co-operation between each of the Local Authorities together with Strategic Partners. We believe it now represents a true multi agency policy - comprehensive in its approach to procedures and compliant with both legislation and best practice.

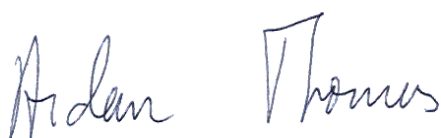
These guidelines will apply in all settings, including those managed by private, voluntary and statutory agencies. Anyone who suspects abuse in any setting should contact Adult Social Care (Southend), Social Care Direct (Essex), Initial Response Team (Thurrock) or if known the relevant social services team to share their concern.

It is expected that your local policies will comply with these SET guidelines.

**This document has been approved and endorsed by:**



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## PREFACE

Thanks are due to the following members of the steering group who oversaw the manual's development.

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The steering group will continue to keep the document under review to take account of changes in legislation, government policy, research findings, and professional experience.

# 1. STRATEGIC MANAGEMENT

## 1.1 THE ROLE OF AREA SAFEGUARDING BOARDS

Local authorities are required to ensure that there is a Vulnerable Adults Protection Committee covering their area, which brings together representatives of each of the main agencies and professionals responsible for helping to protect vulnerable adults from abuse and neglect.

### Roles and Responsibilities

- To develop and agree local policies and procedures for inter-agency work to protect vulnerable adults
- To audit and evaluate how well local services work together to protect vulnerable adults
- To put in place objectives and performance indicators for adult protection
- To encourage and help develop effective working relationships between different services and professional groups, based upon trust and mutual understanding
- To ensure agreement across agencies about operational definitions and thresholds for intervention
- To improve local ways of working in light of knowledge gained through national and local experience and research, and to make sure lessons are acted upon
- To help improve the quality of vulnerable adult protection work through inter-agency training and development
- To raise awareness within the wider community for the need to safeguard vulnerable adults and explain how the wider community can contribute to these objectives.

(‘No Secrets’ – Department of Health 2000)

In addition to the roles and responsibilities set out in No Secrets in some instances where it is considered that there are opportunities for learning and improvement in practice a ‘Serious Case Review’ may be convened. These will be based on the criteria set down by each Local Safeguarding Board.

## 2. GUIDELINES

### 2.1 VALUES AND PRINCIPLES

2.1.1 Everyone engaged in the safeguarding of vulnerable adults will be expected to adhere to working practices in accordance with maintaining, choice, rights, fulfilment, independence, privacy, and dignity for the individuals concerned.

2.1.2 The Southend Essex and Thurrock (SET) Safeguarding Vulnerable Adults Guidelines are based on the values and principles below:

#### 2.1.3 Rights and Responsibilities of the Individual, Families and Carers:

- It is the responsibility of **everyone** to recognise suspected or actual abuse and to take appropriate action in line with the procedures in this document. **IGNORING ABUSE IS NOT AN OPTION!**
- All individuals, regardless of age, ability, race, gender, sexual orientation, faith or beliefs should have the greatest possible control over their lives.
- People should be able to live as independently as possible and to make informed decisions about their own lifestyles, including the opportunity to take risks if they choose to do so, without fear of harm or abuse from others. It should be acknowledged that these decisions may be viewed as unsafe or unwise and must be heeded if a person has the capacity to make the specific decision. 'A person is not to be treated as unable to make a decision merely because he makes an unwise decision' (Mental Capacity Act 2005 (MCA)).
- People have a right to express their wishes and priorities and to be personally involved when plans are made for their care. Every effort should be made to enable people to express their wishes in a way that is appropriate for them.
- A person's human and civil rights should be protected. Some of these are legal rights; others are those that service users are entitled to expect from service providers. The rights of each individual should be respected but where it is appropriate these rights will need to be balanced against the risk of harm to the vulnerable adult or others.
- People should be offered realistic alternatives if they are being intimidated or are afraid.
- People have a right to expect that their contact with, and any information they give to statutory agencies will be treated with care and confidentiality (see section 4), unless disclosure is justified and/or permitted. It is recognised that organisations will have their own policies and procedures regarding confidentiality.

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### **The sharing of information is to safeguard the Vulnerable Adult.**

- In any intervention to reduce risk or respond to immediate danger, care should be taken to ensure the least possible disruption of people's lives. Every effort will be made to ensure that the vulnerable adult(s) who have allegedly been abused, or witnessed such abuse, or their nominated representative will be involved as much as practically possible with the procedures in this document and be supported throughout the process.
- 2.1.4 Anyone, whether in a caring role or not, who is concerned about the wellbeing of a vulnerable adult(s) has the responsibility to raise concerns about any aspect of care and to know it will be taken seriously. (See Section 5)
- 2.1.5 If a vulnerable adult has been deemed to lack capacity under the principles of the Mental Capacity Act 2005 the person making the decision on their behalf can:
- Bring a complaint of alleged abuse on behalf of the adult without capacity.
  - Be informed as appropriate of the progress of the enquiry.
  - Make a complaint under the statutory complaints procedures.
- 2.1.6 Usually when the vulnerable adult has capacity, only with their permission can another person be provided with confidential information.
- 2.1.7 A third party making a complaint on behalf of another person can be informed that the complaint is being progressed.
- 2.1.8 Vulnerable adults have the same rights as other citizens and these rights include:
- To live in a homelike atmosphere without fear and free from abuse from care givers or fellow users.
  - To move freely about the community without fear of violence or harassment.
  - To make informed choices about intimate relationships without being exposed to exploitation or sexual abuse.
  - To live as "normally" as possible, where individuality, independence, privacy, and personal dignity are respected.
  - To have their money and possessions treated with respect, and with appropriate safeguards.
  - To be empowered through appropriate social support and education to make choices about their lives.

## GUIDELINES

- To be given appropriate information about keeping themselves safe and exercising their rights.
- To be supported in making their own decisions about how they wish to proceed in the event of abuse and whom they wish to confide in. Their wishes should only be overridden if this is considered necessary for their own safety or the safety of another vulnerable person.

### 2.1.9 Staff Rights and Responsibilities:

Staff and paid carers have the following rights and responsibilities:

- Care staff have a **duty** to report concern about abuse. All allegations must be regarded and treated as serious. The recognition of suspected or actual abuse to vulnerable adults, or notification of an incident will be the responsibility of all staff within all agencies. **IGNORING ABUSE IS NOT AN OPTION!**
- Staff have the right to be given support and protection to help them in exercising their responsibilities in respect of abuse, without fear, in accordance with the employer's Whistleblowing Policy.
- Where a staff member's safeguarding concerns appear not to be taken seriously or there would be a delay in reporting, it is appropriate to take them to a more senior person and in exceptional circumstances outside of their agency to an independent body e.g. adult social services or a regulatory body. Staff taking this action will be supported by their organisation regardless of the outcome, providing the allegation has been made in good faith.
- 'If it is determined that a person lacks capacity then any decision taken on their behalf must be in their best interest (MCA2005).'

### 2.1.10 Managers/Organisations/Agencies have the following responsibilities:

- To report **all** safeguarding concerns to the relevant body and adult social services in a timely manner.
- To provide a safe environment in which to work and receive services, without fear of reprisal and in accordance with the organisation's Whistleblowing Policy.
- To encourage an atmosphere of openness and effective communication so that staff can approach them with any suspicions regarding abuse.
- To treat information about suspected abuse in a professional and objective manner.
- To keep all relevant persons informed of action taken and outcomes.

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- To ensure that all their own staff members have adequate and appropriate training for their roles and responsibilities within adult safeguarding.

## 2.2 DEFINITIONS

### 2.2.1 Adult

Any person aged 18 years or over

### 2.2.2 Vulnerability

A vulnerable adult refers to any person aged 18 years or over who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or serious exploitation which may be occasioned by actions or inactions of other people. ("Who Decides" Lord Chancellor's Department 1997)

### 2.2.3 Disclosure

A disclosure occurs when the vulnerable adult says or implies that they are being, have been, or are at risk of being abused. Disclosure may be direct, or may take the form of odd hints or veiled comments.

### 2.2.4 Allegation

An allegation is an assertion by the vulnerable adult, or other person/s that the vulnerable adult is or has been a victim of abuse, and can include a statement regarding the alleged perpetrator.

### 2.2.5 Concern

A concern is a feeling of anxiety or worry that a vulnerable adult may have been, is, or might be a victim of abuse. A concern may arise as a result of a disclosure, and incident, or other signs or indicators (see section 2.3)

### 2.2.6 Incident

An occurrence or event that gives rise to a concern or allegation.

### 2.2.7 Indicators

An indicator is a sign, symptom or behaviour that should alert the person noting / observing it, that the vulnerable adult may have been, is, or might be a victim of abuse. (see section 2.3)

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### 2.2.8 Abuse

Abuse is a violation of an individual's human and civil rights by any other person or persons. Abuse may consist of a single act or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented, or cannot consent. Abuse can occur in any relationship and may result in significant harm to, or exploitation of, the person subjected to it. (No Secrets, Department of Health 2000)

### 2.2.9 Significant harm

Ill-treatment, (including sexual abuse and forms of ill-treatment that are not physical); the impairment of, or an avoidable deterioration in, physical or mental health and the impairment of physical, emotional, social or behavioural development. ("Who Decides" Lord Chancellor's Department 1997)

### 2.2.10 Case Co-ordinator

'Someone who co-ordinates communication between two or more people or groups'.

It is important to state that the co-ordinator is not to be seen as having assumed case management responsibility, as this will remain the responsibility of the officially allocated worker.

Within the safeguarding adult process, the role of co-ordinator is primarily a central point of contact and liaison for all parties and for the collating of information and reports which will form part of any safeguarding process.

Each safeguarding situation will vary and the professionals will retain their own responsibilities within the process, (i.e. health, social care) and may have related tasks identified during the safeguarding process. The success of any safeguarding plan will be dependent on all parties effectively working together.

It is recommended that the case co-ordinator should be someone who has access to administrative skills or support.

## 2.3 TYPES OF ABUSE & POSSIBLE INDICATORS

### ABUSE

2.3.1 Abuse is a violation of an individual's human and civil rights by any other person or persons. Abuse may consist of a single act or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not

## GUIDELINES

consented, or cannot consent. Abuse can occur in any relationship and may result in significant harm to, or exploitation of, the person subjected to it. (No Secrets, Department of Health 2000)

2.3.2 Abuse can take place in any setting - this policy is applicable to all settings; individual's private home, care home, hospital, day service, public transport, park, police station, college. This list is endless.

### TYPES OF ABUSE

2.3.3 The following pages describe some of the types of abuse and possible indicators which might be encountered, and it may be that abuse encountered does not fit neatly into any one of these categories – it should be noted this list is by no means exhaustive.

- \* Physical Abuse
- \* Emotional Abuse
- \* Sexual Abuse
- \* Neglect, Wilful Neglect and Acts of Omission
- \* Discriminatory Abuse
- \* Financial/material Abuse
- \* Institutional Abuse

### PHYSICAL ABUSE

2.3.4 The non accidental infliction of physical force that results (or could result) in bodily injury, pain or impairment. Examples include:

- An inflicted physical injury, which is not satisfactorily explained
- An injury where there is knowledge or suspicion that it was inflicted intentionally or through lack of care
- Assaults on the body including hitting, slapping, pushing, kicking resulting in injuries such as burns, abrasions, fractures, dislocation, welts, wounds or marks of physical restraint.
- Misuse of medication or medical process e.g. catheterisation
- Restraint or inappropriate actions

#### **Possible indicators of physical abuse are:**

- Multiple bruising that is inconsistent with the explanation given
- Cowering and flinching
- Bruises or marks resulting from a slap or kick
- Abrasions, especially to neck, wrists and/or ankles
- Unexplained burns
- Scalds, especially with a well defined edge from immersion in water
- Hair loss in one area, scalp sore to touch
- Frequent minor accidents without seeking medical help
- Unusually sleepy or docile
- Unexplained fractures
- Malnutrition, pressure ulcers or other unexplained sores
- Frequent "hopping" from one GP to another or from one care agency to another

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- Untypical self harm, emotional distress, low self esteem

### EMOTIONAL ABUSE

2.3.5 Acts or behaviour which impinges on the emotional health of, or which causes distress or anguish to, individuals. This may also be present in other forms of abuse. Examples include:

- Threats of harm or abandonment
- Humiliation, shaming or ridicule
- Harassment, bullying, intimidation
- Control or coercion
- Deprivation of choice or privacy
- Deliberate social isolation
- Infantilisation – treating an adult like a child

#### Possible indicators of emotional abuse are:

- Disturbed sleep or tendency to withdraw to a room or to a bed
- Loss of appetite or over eating especially at inappropriate times
- Anxiety, confusion or general resignation
- Extreme submissiveness or dependency in contrast to known capacity
- Sharp changes in behaviour in the presence of certain persons
- Excessive or inappropriate craving for attention
- Self abusive behaviour – self mutilation, head banging, hand biting
- Loss of weight without apparent loss of appetite
- Loss of confidence

### SEXUAL ABUSE

2.3.6 Direct or indirect involvement in sexual activity without consent. This could also be the inability to consent, pressured or induced to consent or take part. (see also Sexual Offences Act 2003 – Legal Framework Appendix 2). Examples include:

- Rape
- Indecent assault
- Indecent exposure
- Exposure to inappropriate sexual behaviour or images/material

#### Possible indicators of sexual abuse are:

- Unexplained and uncharacteristic changes in behaviour
- New tendency to withdraw and spend time in isolation
- Recent development of openly sexual behaviour/language
- Deliberate self harm
- Incontinence/bedwetting
- Irregular or disturbed sleep patterns
- Difficulty/discomfort in walking
- Unexplained soreness around the genital area
- Repeated urinary tract infections
- Bruising or bleeding in the genital or rectal area

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- Excessive washing
- Unexplained “love bites”
- Stained or torn underclothing especially with blood or semen
- Sexually transmitted disease
- Pregnancy

### **NEGLECT, WILFUL NEGLECT AND ACTS OF OMISSION**

2.3.7 Ignoring or withholding physical or medical care needs which result in a situation or environment detrimental to individual/s. (Ill-treatment and wilful neglect of a person who lacks capacity are now criminal offences under the Mental Capacity Act). Examples include:

- Failure of a person who has responsibility, charge, care or custody of a vulnerable person to provide access to appropriate health, social care or educational services. (Unintentional or deliberate)
- Withholding necessities of life, including nutrition, medication, heating, shelter. (Unintentional or deliberate)
- The failure to intervene in behaviour which is dangerous to the vulnerable adult or to others
- Repeated incidences of poor care e.g. poor moving and handling – see also institutional abuse

#### **Possible indicators of neglect are:**

- Poor hygiene and cleanliness of a person who has assistance with their personal care
- Unkempt or unsuitable clothing for the weather conditions/environment
- Untreated physical illness
- Dehydration, weight loss, malnutrition
- Repeated infections
- Repeated/unexplained falls or trips
- Pressure ulcers
- Inadequate heating or lighting available
- Incontinence issues not addressed e.g. odour on clothes and/or furnishings
- Clear failure to ensure the taking of medication appropriately
- Inconsistent or reluctant contact with health or social care agencies
- Withholding of appropriate devices such as hearing aids, glasses etc.

### **DISCRIMINATORY ABUSE**

2.3.8 Discriminatory abuse exists when values, beliefs or culture result in a misuse of power that denies mainstream opportunities to some groups or individuals.

2.3.9 It includes discrimination on the basis of race, gender, age, sexuality, disability or religion, examples of which are:

- Unequal treatment
- Verbal abuse
- Inappropriate use of language
- Harassment

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- Exclusion

### **Possible signs of discriminatory abuse are:**

- The vulnerable person is subjected to racist, sexist/gender or homophobic abuse
- The vulnerable person is subject to abuse relating to their age, illness or disability
- Not meeting cultural or religious needs
- Imposing unwanted political, cultural, religious beliefs
- Acts or comments motivated to harm and damage, including incitement of others to commit abuse based on difference
- Lack of effective communication provision – e.g. interpreters, BSL etc

### **FINANCIAL/MATERIAL ABUSE**

2.3.10 The unauthorised, fraudulent obtaining and improper use of funds, property or any resources of a vulnerable person. Examples include:

- The misuse or misappropriation of property, possessions or benefits
- Theft, fraud, exploitation
- Pressure in connection with wills, property or inheritance or financial transactions
- Extortion of money, property and possessions by threat, coercion or fraudulent means
- Refusal to let the vulnerable person have access to their own money, property or possessions

### **Possible signs of financial/material abuse are:**

- Unexplained or sudden inability to pay bills
- Unexplained or sudden withdrawal of money from accounts
- Personal possessions of value go missing without explanation
- Contrast between known income and actual living conditions
- Someone responsible for paying bills, buying food etc. is not doing so
- Unusual interest by a relative, friend or neighbour etc. in financial assets especially if little real concern is shown in other matters
- Next of kin insists on informal arrangements re: financial affairs despite being advised re: Court of Protection etc.
- Where services are refused under pressure from potential beneficiaries
- Unusual purchases unrelated to the known interests of the vulnerable people

### **INSTITUTIONAL ABUSE**

2.3.11 Abuse by an organisation imposing rigid and insensitive routines; poor practices embedded in systems, unskilled, intrusive or invasive interventions; or an environment allowing inadequate privacy or physical comfort.

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### Possible indicators of institutional abuse are:

- Lack of or inappropriate care plans – not regularly reviewed
- Contact with the outside world not encouraged
- Few visitors or notification required before visiting
- Visiting restricted, not accounting for individuals preferences or allowing privacy on visits
- Little opportunity for outside activities
- Routines of “care” engineered for the convenience of staff
- No choice or flexibility re: getting up or going to bed
- Lack of choice or consultation about meals or opportunities for snacks and drinks
- Lack of consultation, involvement, preparation, discussion when medical or personal care tasks carried out
- Lack of privacy e.g. not knocking before staff enter bedrooms
- Lack of privacy when carrying out personal care tasks
- Unusually subdued behaviour
- Residents keep out of the way of staff
- Care of personal clothing lacking, dressed in other peoples clothes, given others spectacles, teeth, or hearing aids
- Strong smell of urine – bed linen or clothes not changed appropriately
- Chairs/tables positioned to restrict movement
- Inappropriate use of medicines or nursing procedures to make clients easier to manage rather than for bona fide health needs
- Not allowing views or opinions to be expressed
- Loss of rights as a citizen e.g. denying opportunity to vote
- Poor moving and handling practice.

## 2.4 CAPACITY, CONSENT & DECISION MAKING

Section 2 of The Mental Capacity Act 2005 states:

- (1) *‘For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.’*
- (2) *It does not matter whether the impairment or disturbance is permanent or temporary.*
- (3) *A lack of capacity cannot be established merely by reference to –*
  - (a) *a person’s age or appearance, or*
  - (b) *a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.*

Mental Capacity Act 2005 - Code of Practice states:

*“Mental Capacity is the ability to make a decision.*

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- *This includes the ability to make a decision what affects daily life – such as when to get up, what to wear or whether to go to the doctor when feeling ill – as well as more serious or significant decisions*
- *It also refers to a person's ability to make a decision that may have legal consequences – for themselves or others. Examples include agreeing to have medical treatment, buying goods or making a will.*

***The starting point must always be to assume that a person has the capacity to make a specific decision.*** *Some people may need help to be able to make or communicate a decision but this does not necessarily mean that they lack capacity to do so. What matters is their ability to carry out the processes involved in making the decision – and not the outcome.”*

- 2.4.1 The expressed wishes of vulnerable adults should, where possible, be paramount in the decision making process. However, there remains a fundamental duty to balance the persons right to autonomy with their, or the public need for protection.
- 2.4.2 The Principles of the Mental Capacity Act should be followed at all times where lack of capacity of an individual is assessed.
- 2.4.3 An Independent Mental Capacity Advocate (IMCA) should be appointed in line with the guidance in Section 6.2 of this policy, (Chapter 10 of the Code of Practice MCA) in order to support people who lack capacity through the safeguarding process.

## AGENCY ROLES & RESPONSIBILITIES

### 3. AGENCY ROLES & RESPONSIBILITIES

Department of Health issued statutory guidance in 2006 (Guidance on the Statutory Chief Officer Post of the Director of Adult Social Services, May 2006) sets out that Directors of Adult Social Services have responsibility and authority for ensuring that their local authority maintains a clear organisational and operational focus on safeguarding vulnerable adults.

In addition to the responsibility to report **all** alleged concerns in the first instance to the relevant social services department further agency roles and responsibilities are set out below.

	<b>Role</b>	<b>Responsibility</b>
<b>Health Care Trusts</b>	<ul style="list-style-type: none"> <li>• Investigating alleged or suspected breaches of organisational/ departmental standards by staff members.</li> <li>• Investigating complaints made against the organisation / department made by:               <ul style="list-style-type: none"> <li>– Patients for whom the organisation / department has responsibility</li> <li>– Members of the public in accordance with the organisations / department's policies and procedures.</li> </ul> </li> <li>• To provide information in accordance with confidentiality protocols in relation to a vulnerable adults:               <ul style="list-style-type: none"> <li>– Sensory functions</li> <li>– Mobility</li> <li>– Physical condition</li> <li>– Mental condition</li> <li>– Social environment</li> <li>– Use of medicines.</li> </ul> </li> </ul>	Undertake action in accordance with the disciplinary policies and procedures of the organisation / department.
<b>The police &amp; other law enforcement agencies</b>	<ul style="list-style-type: none"> <li>• The investigation of alleged or suspected criminal offences against vulnerable adult/s.</li> <li>• To support the vulnerable adults of alleged or suspected offences, and enable them to access support services e.g. victim support, social care.</li> </ul>	Investigate alleged or suspected criminal offences against a vulnerable adult/s.
<b>Voluntary &amp; private sector agencies including:</b> <ul style="list-style-type: none"> <li>• Providers of health &amp; social care</li> </ul>	<ul style="list-style-type: none"> <li>• Investigating alleged or suspected breaches of organisational / departmental standards by staff members.</li> <li>• Investigating complaints against</li> </ul>	Undertake action in accordance with the disciplinary policies and procedures of the agency.

## AGENCY ROLES & RESPONSIBILITIES

<ul style="list-style-type: none"> <li>• Providers of sheltered &amp; supported housing</li> </ul>	<p>the organisation / department made by:</p> <ul style="list-style-type: none"> <li>– Clients for whom the agency has responsibility.</li> <li>– Members of the public in accordance with the policies and procedures of the agency</li> </ul>	
<p><b>Commission for Social Care Inspection</b></p>	<ul style="list-style-type: none"> <li>• Investigating alleged or suspected breaches of the Care Standards Act 2000 and related regulations and National Minimum Standards for regulated services.</li> </ul>	<p>Require compliance to the Care Standards Act 2000 and subsequent amendments to the Act.</p>
<p><b>Local Authority Social Services Departments</b></p>	<ul style="list-style-type: none"> <li>• To establish the level of vulnerability of the adult who is the subject of the concern.</li> <li>• Co-ordinating all instances of alleged abuse that happens within their local area and collate statistics and report them back to the Board.</li> <li>• To work in partnership with other agencies to promote and ensure the safety and protection of vulnerable adults living in the community.</li> <li>• Investigating alleged or suspected breaches of organisational / departmental standards by social services staff members.</li> <li>• Investigating complaints made against the organisation / department made by: <ul style="list-style-type: none"> <li>– Clients for whom the organisation / department have responsibility</li> <li>– Members of the public in accordance with policies of the organisation/department.</li> </ul> </li> </ul>	<p>Undertake action in accordance with the disciplinary policies and procedures of the organisation / department.</p>

### 4. INFORMATION SHARING & CONFIDENTIALITY

**IF AN INDIVIDUAL WORKER HAS ANY DOUBT AS TO THE LEGALITY OF SHARING INFORMATION THEY MUST APPROACH THEIR LEGAL ADVISORS FOR ASSISTANCE AND ADVICE.**

#### 4.1 Why is it necessary to share information and with whom?

4.1.1 Information sharing is relevant to any investigative process, only after the collecting and collating of information can an informed decision be made about the nature and extent of any alleged abuse.

4.1.2 The issue of consent to the processing of information is relevant in vulnerable adult cases. If the vulnerable adult has capacity and was the data subject of information held it would be for them to either give consent or not to information sharing, though this can be subject to certain exemptions where consent is not required.

4.1.3 If the vulnerable adult lacks the capacity to consent to the sharing of information or there is doubt as to their capacity the Mental Capacity Act principles must be followed. There is guidance on the use of the mental capacity act on the Essex County Council internet site ([www.essexcc.gov.uk/mentalcapacityact](http://www.essexcc.gov.uk/mentalcapacityact)), accessible not just by social care professionals but all people who may be involved in the care of vulnerable adults.

4.1.4 If the professionals involved have doubts as to the legality of sharing information they should contact their relevant legal advisors as soon as possible.

#### 4.2 Relevant law

- Data Protection Act 1998 – enables individuals to access information about themselves and places legal obligations on organisations with regard to the keeping and processing of personal information.
- Human Rights Act 1998 (incorporating the European Convention on Human Rights into domestic law) protects a person's right to family and private life though this is a qualified right.
- Freedom of Information Act 2000 – allows for people to access information held by organisations which is not personal information. There are exemptions to providing information. Management and legal advice must be sought before a disclosure is made under the Freedom of Information Act.
- Crime and Disorder Act 1998 – enables the sharing of information with relevant authorities in the investigation and prevention of crime.

## INFORMATION SHARING & CONFIDENTIALITY

### 4.3 Common Law

4.3.1 There is a common law “Duty of Confidence”, where a person has a right to expect information given in confidence to be kept confidential by the person receiving the information i.e. doctor and patient, solicitor and client.

4.3.2 The “Duty of Confidence” is not absolute, disclosure can be justified:

- i) If when looked at the information is not of a confidential nature and can be accessed elsewhere
- ii) If it is in the public interest to disclose the information
- iii) If a Court orders the disclosure
- iv) If there is another legal obligation to disclose

4.3.3 When deciding on disclosing information without consent of the person the disclosure would have to be proportionate to the need to protect the vulnerable adult.

4.3.4 If there is a doubt whether to disclose such information the person wishing to share the information should obtain advice from their legal advisors.

### 4.4 Caldicott Principles

4.4.1 In January 2002 the Department of Health circular LAC (2002)2 introduced the Caldicott standards into social care. These are a set of standards designed to offer increased protection for personal data processed by Health organisations and Local Authorities.

4.4.2 There are six principles contained within the Caldicott standards, two of which relate to information sharing.

- i) **Principle 3:** Use the minimum necessary patient-identifiable information.
- ii) **Principle 4:** Access to patient-identifiable information should be on a strict need-to-know basis.

4.4.3 If you are unsure how these principles relate to information sharing or you require further information you should seek the advice of your organisation’s Caldicott Guardian.

### 4.5 Organisational responsibility with regard to information sharing

4.5.1 Each organisation involved in the protection of vulnerable adults should have in place a mechanism for recording what information about individuals is shared. Each agency/organisation must follow any protocol prescribed by law or guidance both nationally and locally with regard to sharing information.

4.5.2 This should include:

- Adequate recording if the consent of the person was obtained and if not why not

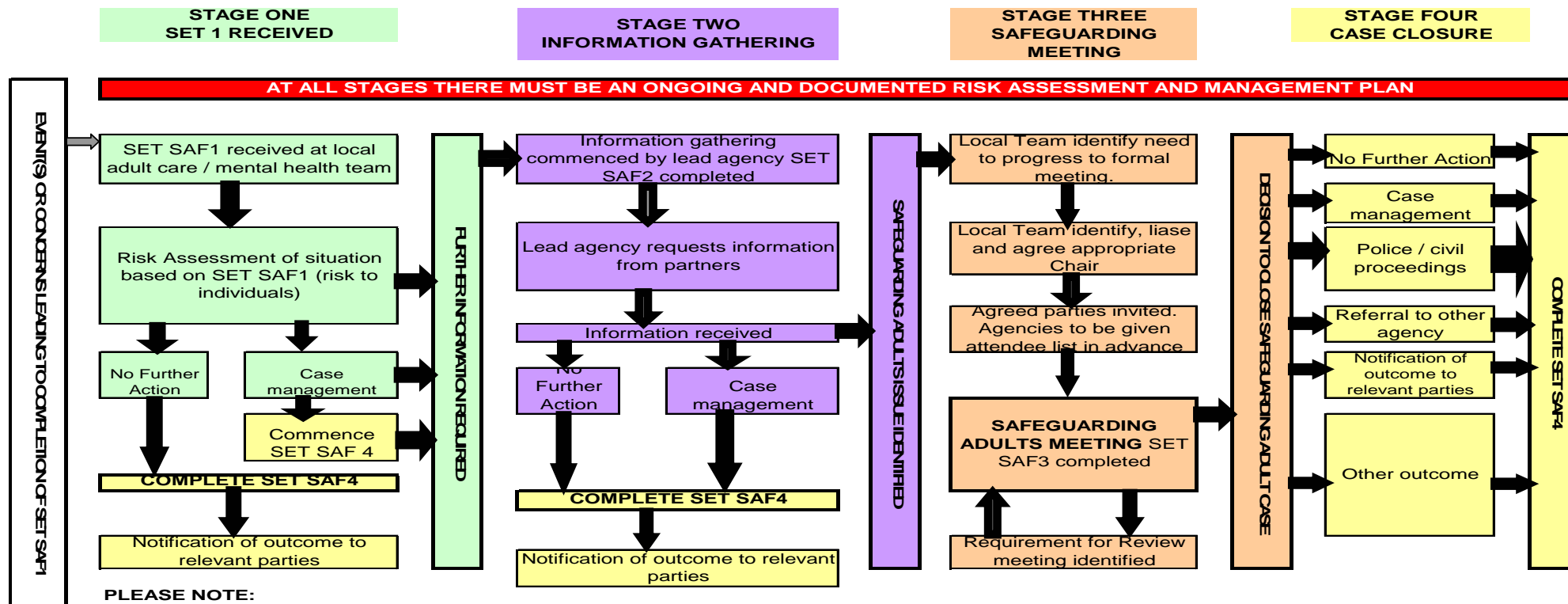
## INFORMATION SHARING & CONFIDENTIALITY

- What information was shared and with whom and how the request was received and recorded, and how the decision was made to share the information
- If third party information is involved if consent was obtained and if not which exemptions applied
- All agencies involved must follow the appropriate statutes and guidance.

## 5. PROCEDURES

### 5.1 FLOWCHART

GUIDE TO 4 STAGE PROCESS FOR SAFEGUARDING ADULTS IN SOUTHEND ESSEX AND THURROCK (SET)

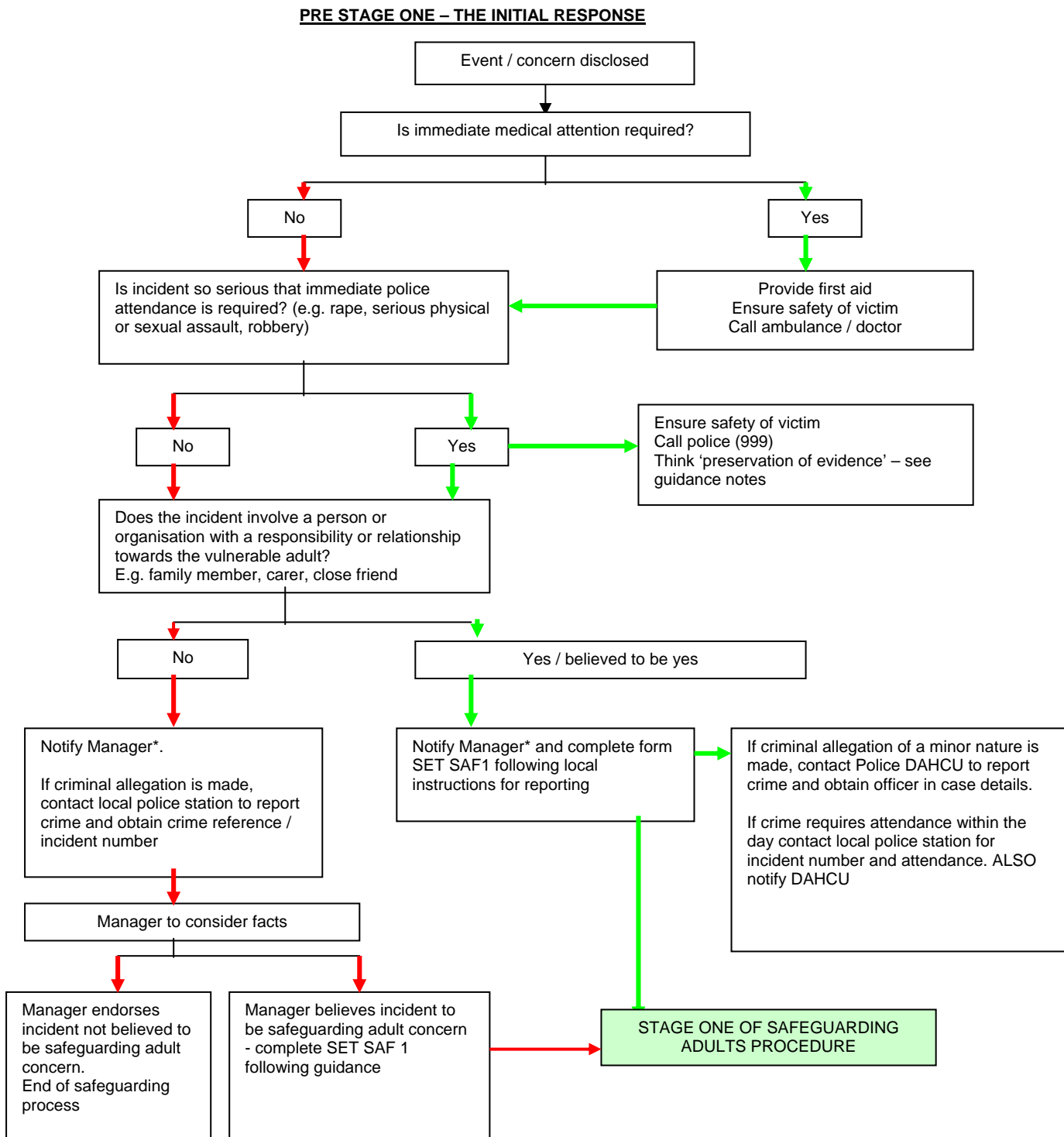


Pre-stage One:  
Stage One:  
Stage Two:  
Stage Three:  
Stage Four:

The Initial Response  
SET SAF1 received  
Information Gathering  
Safeguarding Adults Meeting  
Case Closure

- SET SAF1** The initial form for reporting concerns or incidents involving a vulnerable adult. It is available on line or direct reporting to the relevant help line. It can be completed by professionals, family, friends or other concerned individuals. The form can
- SET SAF2** Information gathering form
- SET SAF3** Safeguarding adults meeting notes and actions form.
- SET SAF4** The closure form for any case notified in the the local team. Good practice indicates that SET 4 should be started at the early stages of the process as it provides an audit of all the activity which has taken place around that report.

## 5.2 PRE-STAGE ONE – THE INITIAL RESPONSE - FLOWCHART



*\*Unless manager is alleged perpetrator or implicated in concern. In these circumstances identify alternative manager or discuss directly with social services.*

Ensuring the safety of the vulnerable adult and any other people at risk is the primary responsibility of staff when they become aware of a serious incident.

### 5.3 PRE-STAGE ONE – THE INITIAL RESPONSE - GUIDANCE

5.3.1 The first responses taken on discovering an incident has occurred or concern is raised are critical to any subsequent enquiry. In some cases the course of action is very clear, for example where a person has been subjected to a physical assault and needs immediate medical treatment for injuries, or there is an allegation of a crime.

5.3.2 It is often the less obvious cases which create concerns for staff and family on how they should be reported. These guidelines seek to assure positive action for all reports of injury, crime or concern raised on or behalf of a vulnerable adult.

#### 5.3.3 **IN ALL CASES**

- Medical attention should be sought where there is a possibility that an injury may have occurred even where there are no visible signs
- Preserve all essential and vital evidence (see 5.3.4)
- Aim to minimise the risk of further harm to the vulnerable adult
- Reassure the person
- Aim to minimise the risk of intimidation by any alleged perpetrator whether known or unknown
- Obtain **only** sufficient information to be able to tell the police, medical personnel or management what is believed to have happened, when and where.
- If a crime is being alleged contact the police use:
  - '999' for an emergency (e.g. rape, serious physical or sexual assault, robbery),
  - The local police station or non emergency number (0300 333 4444) for a crime where a safeguarding issue is not alleged/suspected (e.g. property has been stolen by another service user or the vulnerable adult has been assaulted by a neighbour when out shopping)
  - The local Domestic Abuse and Hate Crime Unit (DAHCU) if a safeguarding issue is suspected (e.g. property being stolen by a staff or family member, vulnerable adult being seen with unexplained bruises following a family visit or complaints by family of excessive force being used on a service user)
  - DO NOT interview any alleged perpetrator
- Notify manager or nominated senior person on duty as soon as practicable
- Removal of the vulnerable adult from home should not be seen as the first option to address situations of abuse (See Section 6.5 re: temporary accommodation moves)
- Relevant regulatory bodies must be notified when the concern relates to registered premises or services (e.g. CSCI, Health Care Commission (HCC), Reporting of Injuries, Diseases & Dangerous Occurrences Regulations (RIDDOR), Supporting People).

## PROCEDURES

### 5.3.4 **SERIOUS EVENTS OR INCIDENTS**

#### **Additional considerations**

- If a **serious physical or sexual assault** is known or suspected to have happened, in order to preserve evidence:
  - DO NOT allow the person to wash
  - DO NOT change their clothes unless essential for person's well being. If this is necessary put each item in a separate bag.
  - Try not to touch anything which may be a source of evidence
  - Do not tidy or remove anything from the location
  - Minimise the number of people entering the location or having contact with the vulnerable adult
- If a sexual assault is suspected or known to have happened **DO NOT** allow the person to eat or drink anything until agreed by the police unless contrary to medical advice.
- If the vulnerable adult and alleged perpetrator are in the same location keep them separate.
- Try not to allow the same person to deal with both vulnerable adult and alleged perpetrator (to prevent cross contamination)
- If the same person has had contact with both vulnerable adult and alleged perpetrator record this for the police
- If there are any witnesses record their details and give these to the police
- Secure any timekeeping sheets for duty staff to prevent them being tampered with
- Secure medical and care records for the vulnerable adult to prevent them being tampered with

## 5.4 STAGE ONE

### **SET SAF1 Received**

*At all stages there must be an ongoing and documented RISK MANAGEMENT PLAN (SET SAF Risk)*

- 5.4.1 SET SAF1 will be received within the agency by the agreed local route.
- 5.4.2 The team receiving the SET SAF1 will risk assess the situation within 4 hours, giving consideration to the severity of the incident, risk to the vulnerable adult and / or others and decide on an initial course of events.
- 5.4.3 Where the SET SAF1 is received out of office hours, the emergency duty team (EDT) will undertake a risk assessment on the information received and be responsible for the co-ordinator function until a named adult care or mental health team person takes on that role on the first working day following receipt.

## PROCEDURES

### 5.4.4 All safeguarding concerns will be nominated a case co-ordinator whose role will be:

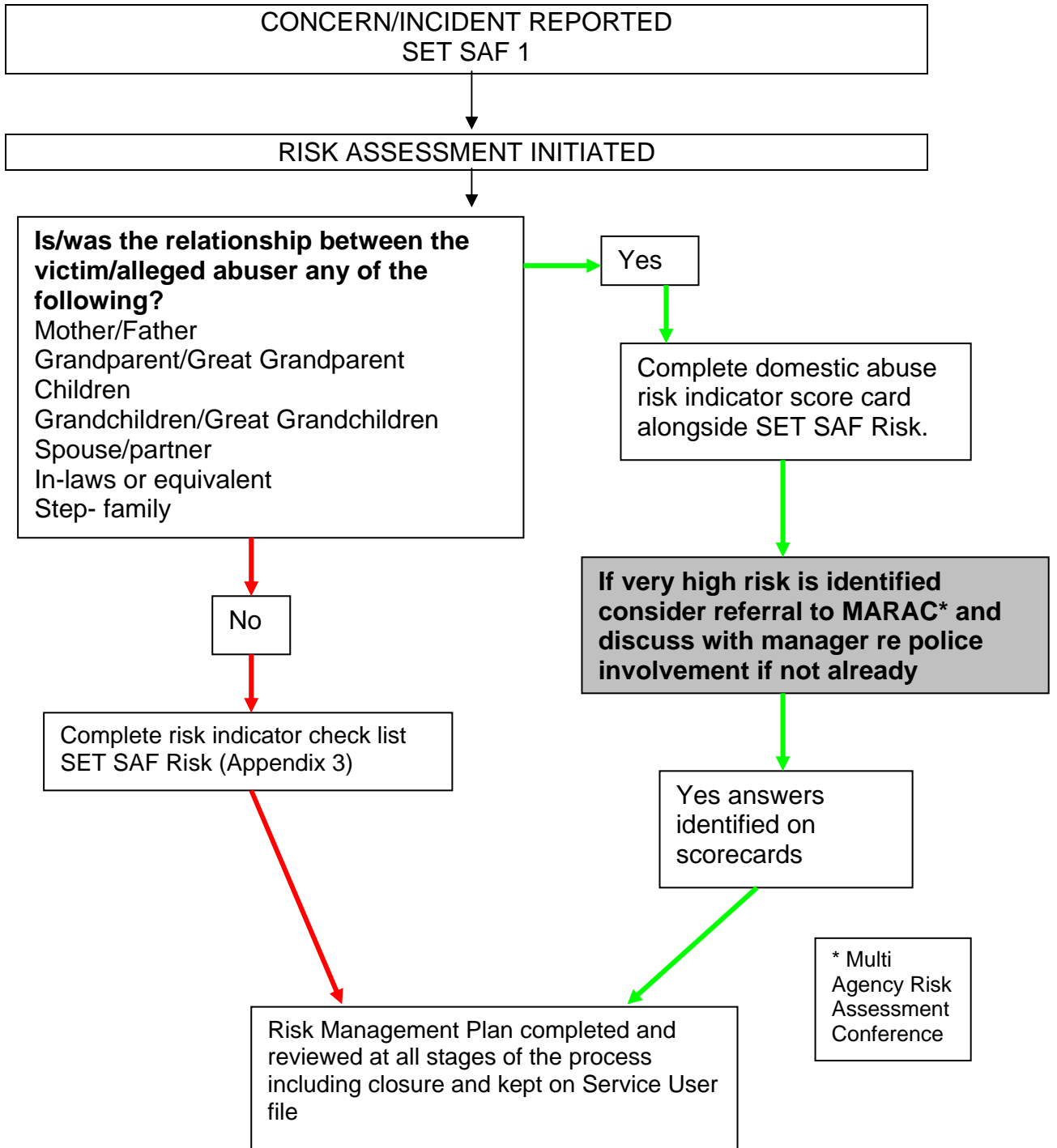
- To assess the risk to the vulnerable adult (see 5.4.5 'Risk Assessment')
- To assess the risk to others posed by an alleged perpetrator (see 5.4.5 'Risk Assessment')
- To decide whether further information is required before any decision about the concern can be made
- To co-ordinate the process through to an agreed closure
- To link with the relevant manager to ratify any decisions made and if need be sign off SET SAF4
- To record the progress of the concern throughout the stages on the relevant SET SAF forms

### 5.4.5 Risk Assessment - Guidance

Risks must be identified, in partnership with the vulnerable person involved in the safeguarding procedures where they have capacity, or with an appropriate person working in "best interests".

The following flow chart identifies the process to follow in completing a risk assessment which is initiated during the information gathering process, continued and reviewed until closure or transfer.

## PROCEDURES



## PROCEDURES

### 5.4.6 Where the case is to be closed this may be due to:

- The concern does not relate to a safeguarding issue e.g.
  - A service user has been assaulted in the town centre when shopping<sup>1</sup>  
or
  - A neighbour is being abusive about a disability<sup>1</sup>.
- An inability to substantiate the allegation having taken place or to identify all the parties involved
- The service user (where identified at this stage) must be consulted about the concern and their views taken into consideration
- If it is decided to close the concern at this point the SET SAF4 will be completed and authorised by the relevant manager
- SET SAF4 must then be sent to the agreed location, if sent by e-mail it must be sent by the authorising manager from their e-mail account
- It is good practice for the informant to be advised of the result in general terms e.g. “I have spoken to the service user about the issue you raised and as a result the concern has been finalised.” Where this is not possible the reason must be recorded on SET SAF4

### 5.4.7 If it is decided the case can be resolved by case management:

- This could be due to various reasons for example;
  - The service user has been subject to a bogus caller who has stolen their purse<sup>1</sup>. The incident involves a person with no links to the vulnerable adult, however there may be a need to review any care management plan to reduce the risk of a recurrence
  - The care plan requires the service user to be visited twice a day. A concern is raised that s/he is unable to eat the meal delivered at lunch time. This could be resolved by changing the type of food provided or removing the sealed cover of the meal before the worker leaves.
- The service user must be consulted about the concern and any need for change to their care
- Where there are concerns around the capacity of the service user the MCA Guidelines must be followed
- The relevant people and agencies must be involved in any proposed changes and reasons for this.
- It is good practice for the referrer to be advised of the general result e.g. “We have considered your call and appropriate action is being taken.” Where this is not possible the reason must be recorded on SET SAF4
- SET SAF4 must be completed and authorised by the relevant manager
- SET SAF4 must then be sent to the agreed location. If sent by e-mail it must be sent by the authorising manager from their e-mail account to ensure the decision is audited to them and it is clear they have agreed with the case coordinator’s decision and are endorsing it.

### 5.4.8 Where further information is required before a decision can be made the process will move on to STAGE TWO – INFORMATION GATHERING

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<sup>1</sup> Although there is no safeguarding concern requiring action by the coordinator, these may be criminal acts and the police should be notified by contacting the local police station and obtaining a crime reference and incident number. The police investigation will have due consideration for the vulnerability of the victim but not within the safeguarding adults context.

## PROCEDURES

5.4.9 Where the authorising manager sends the SET SAF4 by e-mail it MUST be sent from their e-mail account to ensure the decision is audited to them and it is clear they have agreed with the co-ordinator's decision and are endorsing it.

### 5.5 STAGE TWO – INFORMATION GATHERING

*At all stages there must be an ongoing and documented RISK MANAGEMENT PLAN (SET SAF Risk)*

5.5.1 Stage 2 is moved to when safeguarding adult concerns are raised which require further information before a decision can be made as to whether this is an issue requiring a Safeguarding Adults Meeting.

5.5.2 The information gathering phase is essential for the lead agency to make an informed decision. It must precede and be separate to Stage 3 where a decision has been made to hold a Safeguarding Adults Meeting.

#### **In all cases:**

5.5.3 SET SAF1 to be sent to police (DAHCU) if the possibility of a crime is suspected. Examples could be:

- Allegation of theft of money by a carer
- Allegation of assault due to excessively rough handling within a care setting
- Persistent unexplained bruising on a person who is being cared for by a relative (*see also section on Risk Assessment*)
- Untreated pressure ulcers on a person within a care setting.

5.5.4 Where the offence is thought to be serious the police should be called as shown in the guidance notes for **Pre-Stage One – The Initial Response**. The vulnerable adult will then be able to speak to the police and discuss what further action is to be taken. Generally the more serious the alleged offence the greater the requirement to notify the police as soon as it is discovered. For example if a staff member discovers a service user very distressed following a recent serious assault the police should be called immediately and the service user told that this has happened.

5.5.5. Where the offence is thought to be less serious, the vulnerable adult should be contacted to discuss whether they wish police investigation in respect of the criminal allegation e.g. theft from a purse/wallet.

5.5.6 Where the vulnerable adult does not wish police involvement the allegation may still be referred to the police for information or investigation if the risk to the individual from the alleged perpetrator is such that they are at serious risk of significant harm or death. In these cases the individual must be told that the police will be notified of the offence and that the police may wish to speak to them. – *For further information on this issue see section 5.4.5.*

## PROCEDURES

- 5.5.7 If there is evidence of a crime the police will decide whether it is a vulnerable adult abuse case and will arrange for it to be dealt with by the appropriate staff. If it is not safeguarding adult related they will direct it to the Crime Bureau for allocation. If there is no identified offence they will advise the lead agency accordingly. In all cases they will reply to the originator by e-mail with the decision.
- 5.5.8 Responsible Adult Care Team / Mental Health Case Co-ordinator will:
- Complete SET SAF2 detailing the information gathering process
  - Set the information gathering process and actions to be taken
  - Identify relevant agencies to the case
  - Contact agencies who need to be consulted in the information gathering stage
  - Carry out an ongoing risk assessment of the situation based on incoming information
  - Ensure that CSCI, HCC and other regulatory agencies are notified of SET SAF1 forms received relating to registered premises or services as required
  - Consider seeking early legal advice
  - Consider the involvement of commissioning department(s)
  - If there is a police investigation contact the officer in charge of the investigation to discuss procedures and actions
  - Collate information received and, in consultation with their manager, decide whether the case is to be finalised at the end of STAGE TWO or if it should continue to STAGE THREE – SAFEGUARDING ADULTS MEETING
  - Complete SET SAF4 if no further action or case management decision
  - It is good practice for the informant to be advised of the general result e.g. “We have considered your call and appropriate action is being taken.” Where this is not possible the reason must be recorded on SET SAF4
  - Move to STAGE 3 if evidence of safeguarding adult issue
- 5.5.9 The police will be responsible for investigating any criminal allegations.
- 5.5.10 Adult care, health agencies and service providers will be responsible for the care and well being of any vulnerable adult.
- 5.5.11 During this stage agencies or providers should be carrying out their own internal enquiries. These enquiries are separate to the safeguarding adult process, but may be linked by information gathering and sharing.
- 5.5.12 Internal enquiries may be suspended where the police request such action, or where the agency is unable to progress due to competing priorities between civil and criminal proceedings. For example a disciplinary hearing might not take place until the conclusion of a police investigation in order not to prejudice any possible prosecution.
- 5.5.13 Any statements taken during the course of an internal enquiry remain the property of the person making it and their organisation. It can only be shared with the informed consent of the person making it, by a court order or under a relevant provision of the Data Protection Act 1998 (e.g. where an employee

## PROCEDURES

has been interviewed as an alleged perpetrator by their employer as part of an internal enquiry).

5.5.14 The salient points required as part of the safeguarding adult process from any internal enquiry are:

- What the allegation is
- What evidence is there to substantiate it or otherwise
- Whether the allegation has been substantiated (if known)
- What the result is (if known)

5.5.15 **Liaison with the service user is essential** and their wishes should be considered at all stages of the process. For example a service user may be subject to abusive behaviour by a partner but does not want the police involved. Where the identified risk to the vulnerable adult is not at the very high level, their wishes should be respected as far as possible. However where the identified risk of significant harm is very high then the service user must be advised that information will be shared with the police in order for them to consider the safety of that individual and whether an investigation is appropriate. *For further information see section 5.4.5 on 'Risk Assessment' and section 4 'Information Sharing.'*

## 5.6 STAGE THREE - SAFEGUARDING ADULTS MEETING

*At all stages there must be an ongoing and documented RISK MANAGEMENT PLAN (SET SAF Risk)*

5.6.1 Stage Three is considered when the information gathering process is completed and there is evidence that there is a safeguarding issue which requires a multi agency meeting to be held to take issues forward.

5.6.2 This process runs parallel to any police or other investigation; however information from some agencies may be restricted dependent on the stage of their enquiry.

5.6.3 The case co-ordinator must liaise with and agree on a Chairperson and note taker who will ensure the meetings are carried out in an appropriate manner.

5.6.4 Chairperson's responsibilities:

- Agree with the co-ordinator the following information in advance:
  - Purpose of meeting
  - Attendees required
  - Agenda
  - Guidance on who should be invited and when
  - When the suspected perpetrator/provider/family should be invited or not

5.6.5 The case co-ordinator is to be responsible for inviting agreed attendees and is the link to the Chairperson to ensure the smooth running of the meeting.

5.6.6 Agencies will be responsible for making notes of what is relevant to them during the meeting, their agreed actions and timescales.

## PROCEDURES

5.6.7 The SET SAF3 should be used as the standard format to record the meeting and will include:

- list of attendees
- summary of original concern
- notes of information shared and by which agencies
- agreed action points with timescales
- names of people who have responsibility for these actions

5.6.8 The case co-ordinator will have responsibility for acting as a central point of contact for updates on actions and additional information.

5.6.9 Actions and tasks can only be allocated to agencies present at the meeting. In the event that an action needs to be passed to an agency not present, then an attendee needs to be identified to perform this role and this identified as a separate action and recorded with names and timescales in the action plan.

5.6.10 Notes and actions of the meeting are to be circulated within the following time scales:

Actions to be circulated	Within 2 working days
Draft notes and actions	Within 15 working days
Comments concerning accuracy or alternations to be returned	Within 5 working days of circulation of draft notes

5.6.11 The adult safeguarding meeting is confidential and SET SAF3 can only be distributed to those agency members attending or invited to attend the meeting or other designated managers of the agencies whose names shall appear on the distribution list on the front of the SET SAF3.

5.6.12 Agencies must be advised in advance who will be present at any stage of the meeting.

5.6.13 Depending on the circumstances it may be appropriate to hold the meeting in two parts, one where the alleged perpetrator(s) or representative are not present and the second part where they are.

5.6.14 During a police investigation it is not permissible for the police to engage with an alleged perpetrator outside the criminal justice process. Therefore the police will not attend meetings or parts of meetings where the alleged perpetrator or representative is present.

5.6.15 At the end of a meeting the Chairperson must ensure agreed outcomes where there are actions identified and if a further meeting is required this will remain within the scope of Stage Three until all the review meetings are concluded.

5.6.16 If a service user has not attended the meeting they must be updated on the result of the meeting and any actions arising relevant to their case management.

## PROCEDURES

5.6.17 Where there are concerns around the capacity of the service user the relevant MCA guidelines must be followed.

5.6.18 If there are to be no more Safeguarding Adults Meetings the final outcome will be recorded on SET SAF4 under Stage Four – CASE CLOSURE.

### 5.7 STAGE FOUR - CASE CLOSURE

*At all stages there must be an ongoing and documented RISK MANAGEMENT PLAN (SET SAF Risk)*

5.7.1 Following the Safeguarding Adults Meeting there are two decisions; either there is a requirement for a further safeguarding meeting or the case is to be closed.

5.7.2 Where there is to be a further meeting the process will remain within STAGE THREE until the decision is made to close the concern.

5.7.3 Where the concern is to be closed, this will be endorsed on the notes of the meeting by the Chairperson along with any further actions required. These could be:

- Having considered all the information there is no evidence of a safeguarding issue and there is to be no further action
- All actions required to safeguard the service user have been carried out, or are in the process of being carried out and no further action is required
- The concern is being addressed or monitored through case management
- Civil or police proceedings are taking place
- The concern has been identified as being a single agency issue and they are taking responsibility for the ongoing case management
- Any other outcome, which must be specified on SET SAF4

5.7.4 There may be more than one reason given for closure of the concern, these should be made clear on the SET SAF3 and endorsed on SET SAF4.

5.7.5 **The service user is to be notified of the outcome of the concern and any ongoing issues relevant to their case management.**

5.7.6 Where there are concerns around the capacity of the service user the relevant MCA guidelines must be followed.

5.7.7 It is good practice for the referrer to be advised of the general result e.g. “We have considered your call and appropriate action is being taken.” Where this is not possible the reason must be recorded on SET SAF4

5.7.8 On completion the following must be carried out

- SET SAF4 must be completed/finalised and authorised by the relevant manager
- SET SAF4 must then be sent to the agreed location. If sent by e-mail it must be sent by the authorising manager from their e-mail account to ensure the final decision can be audited to them.

## PROCEDURES

- 5.7.9 Good practice dictates that SET SAF4 should be started by the co-ordinator at the initial stage when SET SAF1 has been received in order to document actions and meetings as they take place.

### 6. ADDITIONAL PROCEDURES

#### 6.1 DOMESTIC VIOLENCE

The definition of domestic violence used by the Home Office and most agencies is:

*‘Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults, aged 18 and over, who are or have been intimate partners or family members (defined as mother, father, son, daughter, brother, sister and grandparents) whether directly related, in-laws or step-family, regardless of gender and sexuality’*

6.1.1 Domestic violence is about the power and control of one person over another. The abuse can take many forms, but is sometimes classified under headings including:

- Making threats
- Intimidation
- Economic / financial abuse
- Using isolation
- Emotional abuse
- Taking domineering role in the partnership
- Using the children
- Minimising /denying own behaviour
- Physical / sexual violence.

6.1.2 The links between abuse of vulnerable adults and domestic abuse are clear in the similarities between the types of abuse experienced. Incidents can be considered as both domestic and vulnerable adult abuse when the perpetrator is, for example, both daughter and carer to the vulnerable person.

6.1.3 It is the familial relationship between the people involved which makes an incident or series of events ‘domestic abuse’.

6.1.4 Domestic abuse is a complex issue, vulnerable adults may remain with an abusive partner for many years suffering emotional, physical or other abuse without considering leaving or recognising that they are living within an abusive relationship. Vulnerable adults cannot be forced to leave an abusive situation, but consideration must always be given to offering appropriate support and, where possible, ensuring the safety and protection of the person being abused.

6.1.5 People working with vulnerable adults may regularly encounter situations of domestic abuse. They must be careful not to judge the people involved and must take action appropriate to their organisation. Where a service user has disclosed domestic abuse to a worker / volunteer then that person has a responsibility to consider the risk to the vulnerable adult and balance that against how the service user wants the matter dealt with. However all

## ADDITIONAL PROCEDURES

allegations of domestic abuse must be recorded within the service users records in case of further reports or serious incident. Each agency should have a process by which allegations of domestic abuse are recorded along with actions taken.

6.1.6 Where the indication of risk to the vulnerable adult is very high, there is an absolute requirement to take positive action to protect the vulnerable adult and this will almost certainly require information to be shared with other agencies. For more information about risk assessment see section 5.4.5 and information sharing section 4.

6.1.7 Where the risk identified to the victim is very high then consideration may be given to referring the victim to a Multi-Agency Risk Assessment Conference (MARAC) in addition to any other processes. MARAC is a victim focussed process in which the needs of the victims in domestic abuse cases and the risks posed by the alleged perpetrator are considered in a multi-agency forum and a joint safety plan is constructed around the individual. The MARAC works in conjunction with, and supports, the normal safeguarding processes outlined in this guidance.

6.1.8 Common examples of abusive relationships and how risk can be considered are:

- A husband and wife have been together for many years and she is now suffering from dementia. The care worker sees bruising on her arms and reports this to the Adult Social Care Team.

A care plan assessment shows that he is having severe troubles coping with his wife's increasing needs and does not know how to safely lift or restrain her. The wife has said that she does not want the police involved as she wants him to care for her. Additional support and instruction is provided to the husband and the situation is resolved.

The risk indication for this case would show that although this fits the definition of domestic abuse, the risks can be significantly reduced by effective case management. It can be dealt with on a single agency basis without the need to share information against the wife's wishes.

- An 80 year old widow's son returns home after his marriage breaks down, she has mobility issues and has adaptations provided through social care in her home. He demands money from his mother over a period of time, threatening her when she protests and when she finally refuses he violently assaults her leading her to be hospitalised for 2 days due to serious bruising across her face and body. She refuses to report it to the police because he is her son and she does not want to criminalise him.

The risk indication for this case would show that there is a very high risk to the vulnerable adult, the injuries suffered are severe, the assault has followed escalation of abuse over a short time, he is controlling, has money issues and there may well be other background issues. There is a need in this case to consider positive action to support and protect this

## **ADDITIONAL PROCEDURES**

lady. She may need advice on removing him from the home without going to the police. Due to the risk to the vulnerable adult, notifying other agencies without consent is a possibility in order to obtain information about the risks and options available to provide her with support and protection.

### **6.2 INDEPENDENT MENTAL CAPACITY ADVOCATES (IMCAs)**

6.2.1 The MCA Regulations extend the powers of local authorities and National Health Service (NHS) to instruct IMCAs in certain cases of accommodation care reviews and adult protection. There is a duty on local authorities and the NHS to decide which cases their clients would most benefit from IMCA support. It is unlawful not to consider the use of an IMCA in these circumstances.

6.2.2 The Regulations specify that LA's and NHS have powers to instruct an IMCA if the following two requirements are met:

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

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

6.2.4 The Regulations do not require the person to have no friends or relatives to represent them if it is considered that those friends or relatives may be involved in the alleged abuse.

6.2.5 The Regulations apply to those who have been abused, been neglected or are the alleged abuser.

6.2.6 The power to instruct an IMCA must be looked at in each individual case if they satisfy the requirements. If an IMCA is instructed then the LA and/or NHS body must take into account any information or submission made by the IMCA when reaching any decision about protective measures for the vulnerable adult.

### **6.3 WHISTLEBLOWING (CONFIDENTIAL ALERTERS)**

6.3.1 A whistle blower is an employee a former employee or member of an organisation especially a business or government agency who reports misconduct to people or entities that have the power and presumed willingness to take corrective action.

6.3.2 Each organisation should have its own policy/guidance with regard to whistle blowing. Staff must be made aware of these policies which should be in an easily accessible location for staff reference.

## ADDITIONAL PROCEDURES

- 6.3.3 It is good practice, and staff have a duty of care, to draw attention to bad/poor practice in the workplace. This includes practice that may be abusive and/ or neglectful. **Failure to report amounts to collusion with the perpetrator and abuse.**
- 6.3.4 Staff who work with vulnerable adults have an individual responsibility to raise concerns with someone who has the responsibility to take action. Sometimes it may be necessary to go outside the immediate work environment or the immediate organisation.
- 6.3.5 It is the responsibility of all organisations to promote a culture which values good practice and encourages whistle blowing.
- 6.3.6 People have in the past often been deterred from `whistle blowing` about abuse or neglect by duties of confidentiality and / or fear of the consequences of speaking out. The Public Interest Disclosure Act 1998 seeks to protect disclosure of the following:
- Criminal offence (past, ongoing or prospective) Failure to meet a legal obligation A miscarriage of justice Health and safety being endangered
  - Risk of environmental damage, or
  - deliberate concealment of any of the above
- 6.3.7 The Act envisages that disclosure about such malpractice will generally be made in the first instance to the person's employer, or another person or body who appears responsible for the malpractice (e.g. a relative of a resident reporting matters to managers of a home).
- 6.3.8 The Act envisages employers establishing procedures, so that staff who have justified concerns about breaches of practice or the law can pass on these concerns to be investigated.
- 6.3.9 They are only protected by the Act if they are acting in good faith, and reasonably believe that their allegations are true. Allegations made for financial gain are not protected, even if they are true.
- 6.3.10 Staff making disclosures to people other than their employer are likely to be protected if:
- They reasonably believe that they will be treated detrimentally for disclosing to the employer; or
  - They reasonably believe that the evidence will be destroyed or hidden if the employer is `tipped off`; or
  - The employer has been told, but has not taken appropriate action
- 6.3.11 Disclosure to a third party has to be a `reasonable` step in all the circumstances including:
- Whom one tells (e.g. disclosure to a statutory inspectorate in preference to the press);
  - How serious the concern is, and whether it is a continuing problem;
  - Whether the employer has a whistle-blowing procedure and if so, whether the employer has followed it

## ADDITIONAL PROCEDURES

6.3.12 It may be justified for the whistle-blower to disclose to a third party in the first instance rather than the employer.

6.3.13 A disclosure made in accordance with the Act's expectations will mean that:

- A confidentiality clause in an employment contract cannot be used to prevent one from disclosing relevant breaches of the law or practice. This means that confidentiality terms in employment contracts cannot be used by employers who are responsible for breaking a law or for abuse or neglect or other malpractice.
- Dismissal on grounds of disclosure within the terms of the act is automatically unfair, and can be challenged before the employment tribunal.

6.3.14 Someone who is treated detrimentally at work because of making a disclosure, which is protected by the Act, may be able to claim compensation at an Employment Tribunal.

6.3.15 The person providing the information may be reluctant to give their name or they may ask that they remain anonymous. Their wishes will be recorded and respected as part of the referral process. Whilst respecting their right to confidentiality, they cannot however be given an absolute undertaking that they will not be identified at a later date, especially, if any legal action is indicated.

## 6.4 CROSS BOUNDARY ASSOCIATION OF DIRECTORS OF ADULT SOCIAL SERVICES GUIDANCE (ADASS)

This agreement was ratified by the ADASS on 20th February, 2004 and is intended for adoption by all Local Authorities and Adult Protection Committees.

### 6.4.1 Introduction

These arrangements recognise the increased risk to vulnerable adults whose care arrangements are complicated by cross boundary considerations. These may arise, for instance, where funding/commissioning responsibility lies with one authority and where concerns about potential abuse and/or exploitation subsequently arise in another. This would apply where the individual lives or otherwise receives services in another local authority area.

### 6.4.2 Aims

This protocol aims to clarify the responsibilities and actions to be taken by local authorities with respect to people who live in one area, but for whom some responsibility remains with the area from which they originated.

This protocol should be read in conjunction with Section 3.8 of 'No Secrets' (DoH 2000) and LAC (93) 7 *Ordinary Residence* - Which identifies these responsibilities in terms of:

- The authority where the abuse occurred in respect of the monitoring and review of services and overall responsibility for adult protection;

## ADDITIONAL PROCEDURES

- The registering body in fulfilling its regulatory function with regard to regulated establishments; and
- The placing authority's continuing duty of care to the abused person.

### 6.4.3 Principles

- The authority where the abuse occurs will have overall responsibility for co-ordinating the adult protection arrangements (and, for the purposes of this protocol, be referred to as the host authority).
- The placing authority (i.e. the authority with funding/commissioning responsibility) will have a continuing duty of care to the vulnerable adult.
- The placing authority should ensure that the provider, in service specifications, has arrangements in place for protecting vulnerable adults and for managing concerns, which in turn link with local policy and procedures set out by the host authority.
- The placing authority will provide any necessary support and information to the host authority in order for a prompt and thorough investigation to take place.
- The host authority will make provision in service contracts, which refer to this protocol, outlining the responsibilities of the provider to notify the host authority of any adult protection concern.

### 6.4.4. Responsibilities of Host Authorities

- The authority where the abuse occurred should always take the initial lead on referral. This may include taking immediate action to protect the adult, if appropriate, and arranging an early discussion with the police if a criminal offence may have been committed.
- The host authority will also co-ordinate initial information gathering, background checks and ensure a prompt notification to the placing authority and other relevant agencies.
- It is the responsibility of the host authority to co-ordinate any investigation of institutional abuse. If the alleged abuse took place in a residential or nursing home, other people could potentially be at risk and enquiries should be carried out with this in mind.
- CSCI should always be included in investigations involving regulated care providers and enquiries should make reference to national guidance regarding arrangements for the protection of vulnerable adults.
- There will be instances where allegations relate to one individual only and in these cases it may be appropriate to negotiate with the placing authority their undertaking certain aspects of the investigation. However, the host authority should retain the overall co-ordinating role throughout the investigation.

### 6.4.5 Responsibilities of Placing Authorities

## **ADDITIONAL PROCEDURES**

- The placing authority will be responsible for providing support to the vulnerable adult and planning their future care needs.
- The placing authority should nominate a link person for liaison purposes during the investigation. They will be invited to attend any adult protection strategy meeting and/or may be required to submit a written report.

### **6.4.6 Responsibilities of Provider Agencies**

- Provider agencies should have in place suitable adult protection procedures to prevent and respond to abuse which link with the local inter-agency policy and procedures set out by the host authority.
- Providers should ensure that any allegation or complaint about abuse is brought promptly to the attention of Social Services, the Police, and/or CSCI in accordance with local inter-agency policy and procedures.
- Provider agencies will have responsibilities under the Care Standards Act 2000 to notify their local CSCI area office of any allegations of abuse or any other significant incidents.
- Provider agencies who have services registered in more than one local authority area will defer to the CSCI area office relevant to the area in which the abuse took place.

## **6.5 TEMPORARY OR ALTERNATIVE ACCOMMODATION WITHIN SAFEGUARDING**

- 6.5.1 The term 'place of safety' is taken from the Mental Health Act 1983 and refers specifically to situations that are applicable under the MHA.
- 6.5.2 In general terms the term 'place of safety' relates to the transference of someone who is deemed to be at risk to themselves or others for a specific purpose to carry out a MHA assessment. It does not refer to the temporary transfer of accommodation for someone who may be at risk for reasons unconnected with the MHA, and this has led to some confusion within safeguarding adult processes.
- 6.5.3 If a person refuses to leave and has capacity, their wishes have to be respected in most incidences.
- 6.5.4 Where the vulnerable adult appears to lack capacity a mental capacity assessment must be carried out. The decision maker may then make the decision in their best interests. In an emergency a court order may be necessary.
- 6.5.5 The misuse of the term 'place of safety' in respect of a safeguarding adults situation can sometimes be misleading and suggest a safer or more secure environment than may actually be the case through such a move.

## ADDITIONAL PROCEDURES

- 6.5.6 If a person is supported to willingly move to alternative accommodation in relation to a safeguarding adults issue, it is important to recognise that this should not be seen as it being 'secure' or 'safe', unless the person is sectioned under the MHA or by a declaration of the court, they have the right to leave, receive visitors (even alleged perpetrators) if they so wish. In reality no actual 'safety' may have been achieved by the move, other than a change of location which may in itself offer some protection geographically.
- 6.5.7 If the move is to a respite/residential service, remember that staff will not have any rights or power to control the movements or communication to or from the service user or others contact with the service user unless this is a wish clearly expressed by the service user or there is a court declaration in place.
- 6.5.8 When a temporary move takes place and there is potential that the alleged perpetrator (i.e. family member) may try to make contact or visit, or that the service user may choose to leave, a detailed case specific care and risk management strategy will need to be in place at the time of the move to cover eventualities that can arise.
- 6.5.9 A move away from a 'home' environment should not always be assumed to be the first option. In some instances this can doubly affect the service user, being the alleged victim of an abusive act, and then to be removed from their home environment, this could be seen as punitive by the service user and reinforce a sense of guilt that it is in fact themselves who were somehow at fault.
- 6.5.10 Discussions will need to take place with the other parties including Police and DAHCU units as to whether there are alternative options available as a temporary measure. If the service user is on a placement contract check to see if this will afford any additional safeguards.
- 6.5.11 Each case and situation will need to be considered on its own merits, however the continued safety of the vulnerable adult will be paramount, and this will be the driving force behind any moves for the vulnerable adult or perpetrator, protection should always override principle.

### 7. ALLEGATIONS AGAINST PEOPLE WHO WORK WITH VULNERABLE ADULT'S

#### Responsibility of the Employer of the Alleged Abuser

- 7.1 It is the responsibility of the employer of the alleged perpetrator to ensure that the vulnerable adult against who the alleged abuse occurred is safe.
- 7.2 The employer should inform the police of the alleged incident. They should be guided by the police on what steps to take next.
- 7.3 The employer should inform the relevant social worker/team leader of the incident immediately and what steps they have taken.
- 7.4 The employer should inform CSCI immediately.
- 7.5 The social worker/team leader in turn should contact their relevant procurement officer who will advise if contractually the placing authority can request the removal of the alleged perpetrator immediately from the premises or their removal to another part of the organisation. Unless there is a contractual clause permitting the authority to demand the removal of the alleged perpetrator this is a decision the employer must make in light of the seriousness of the accusation and the risks involved to the alleged victim and other service users. If the social worker/team leader believes the vulnerable adult is in immediate risk of further harm they should contact the Safeguarding Adults Co-ordinator for further guidance. Removal of the service user should not be seen as the first option.
- 7.6 It would be advisable for the service provider at this time to inform their insurance provider.

### GLOSSARY OF TERMS

ADASS	Association of Directors of Adult Social Services
ASWs	Approved Social Workers
BSL	British Sign Language
CSCI	Commission of Social Care Inspection
DAHCU	Domestic Abuse and Hate Crime Unit
DOL	Deprivation of Liberty
DWP	Department for Works and Pensions
EDS	Emergency Duty Service
EPA	Enduring Power of Attorney
HCC	Health Care Commission
IMCA	Independent Mental Capacity Advocate
LA	Local Authority
LPA	Lasting Power of Attorney
MARAC	Multi-Agency Risk Assessment Conference
MCA	Mental Capacity Act 2005
MHA	Mental Health Act 1983
NHS	National Health Service
POA	Power of Attorney
POVA	Protection of Vulnerable Adults
RIDDOR	Reporting of Injuries, Diseases & Dangerous Occurrences Regulations
SAF	Safeguarding Adults Form
SET	Southend Essex & Thurrock
Social Services	Adult & Community Services (Southend) Community Health & Wellbeing (Essex) Community Wellbeing (Thurrock)

## APPENDIX 1: CONTACT DETAILS

### APPENDIX 1: CONTACT DETAILS

#### Southend

**By Fax to:** 01702 534794

Making a referral/enquiry by telephone:

**Adult Social Care:** 01702 534777

**Out of hours:** 0845 606 1212 (Fax 01245 434700)

#### Essex

**By email to:** [socialcaredirect@essexcc.gov.uk](mailto:socialcaredirect@essexcc.gov.uk) as an attachment

**By Post to:** Essex Social Care Direct, Essex House, 200 The Crescent, Colchester, Essex, CO4 9YQ

**By fax to:** 0845 601 6230

Making a referral/enquiry by telephone:

**Normal telephone enquiries/referrals:** 0845 603 7630

**Out of hours:** 0845 606 1212 (Fax 01245 434700)

**Where there are concerns about the immediate welfare or safety of a vulnerable adult:** 0845 603 7634

#### Thurrock

**Email:** [SafeguardingAdults@thurrock.gov.uk](mailto:SafeguardingAdults@thurrock.gov.uk)

**By Fax to:** 01375 652760

Making a referral/enquiry by telephone:

**Initial Response team:** 01375 366083

**Out of hours:** 01375 372468 (Fax 01375 397080)

# APPENDIX 2: LEGAL FRAMEWORK

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Mental Health Act 1983 Section 127(2)

Mental Capacity Act s44

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Theft Act 1968

Sexual Offences Act 1959 Section 9

Sexual Offences Act 1959, 1967, 1985 2003

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Duty of Confidence

Physical Intervention

DOH Guidance 1999

### 1. INTRODUCTION

At present, the legal framework surrounding adult abuse is fragmented, but it should not be presumed that there are no legal powers to intervene in a case of suspected abuse. This section has been prepared in consultation with Essex County Council's Legal and Registration Service and with reference to the "Inter-Agency Adult Protection Policy" produced by Norfolk County Council.

#### **Department of Health guidance 'No Secrets'**

This protocol has been developed as a result of 'No Secrets'. All agencies should be aware of 'No Secrets'. Copies of "No Secrets" can be accessed through the Department of Health website [www.dh.gov.uk/en/publicationsandstatistics](http://www.dh.gov.uk/en/publicationsandstatistics)

It is intended to provide an overview of the legal powers that may be available in the context of adult protection work, but staff must seek legal advice in pursuing remedies through the courts or rely on a detailed understanding of the legal framework outlined in this document. Should advice be required on any particular matter relating to the law on adult protection a lawyer from your own organisation should be consulted.

#### **Mental Capacity Act 2005**

The new legislation came into force partly on the 1 April 2007 and fully on the 1 October 2007. All professionals and those caring for vulnerable adults must be aware of its provisions and follow the guidance when making decisions for those adults who have been judged to lack capacity. The first principle is to assume the adult in question has capacity to make a particular decision until proven otherwise. In the context of adult protection just because someone is making a decision that appears to be foolish does not make it wrong for that individual. The MCA 2005 has made significant changes to the laws relating to vulnerable adults making significant changes to previous statutes, these can be found in schedule 7 MCA 2005.

### 2. LEGISLATION UNDERPINNING SERVICES

#### **National Assistance Act 1948**

**Section 21(1)** – Local authorities have a duty to provide residential accommodation, including private and voluntary, for 'people aged 18 or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them' and who are ordinarily resident in their area. In cases of emergency or dispute a local authority can provide accommodation for people not normally resident in their area.

**Section 29** – To promote the welfare of people with disabilities 'the local authority shall make arrangements for promoting the welfare of persons blind,

## APPENDIX 2: LEGAL FRAMEWORK

deaf or dumb or who suffer from mental disorder of any description or who are substantially and permanently handicapped by illness, injury or congenital deformities or other disabilities’.

### **Chronically Sick and Disabled Persons Act 1970**

**Section 2** – places a duty on the local authority to inform themselves of the number of persons to whom section 29 of the National Assistance Act 1948 applies and of the need for the making by the authority of arrangements under that section for such persons.

### **Health Services and Public Health Act 1968**

**Section 45** – This Act places a duty on local authorities to promote the welfare of older persons ‘in order to prevent or postpone personal or social deterioration or breakdown’ (subject to the approval and directions contained in circular LAC(93)(10). Home meals and day centres are examples of services provided under this section.

### **Housing Act 1996**

**Part VII** – This Act places a duty on local authorities to provide accommodation for homeless people with a priority need, i.e. people who are vulnerable because of old age and homelessness, mental illness, learning or physical disability or other special reason.

### **National Health Service Act 1977**

**Schedule 8** – Places a duty on local authorities to make arrangements to prevent illness, care for people who are suffering from illness and provide aftercare for people suffering from illness, care of expectant and nursing mothers (other than the provision of residential accommodation) and home help and laundry facilities.

### **Disabled Persons (Services Consultation and Representation) Act 1986**

States the entitlement of disabled people to a written assessment of need. It also gives disabled people the right to have a representative present at the time of their assessment.

### **Care Standards Act 2000**

The Act ‘has at its heart two key aims – first to protect vulnerable people from abuse and neglect, and secondly, to promote the highest standards of quality in the care that people receive, whoever is providing it’.

The elements most relevant to the care of adults are:

- The establishment of a new regulatory body for social care and private and voluntary health care service in England – the Commission for Social Care Inspection. CSCI regulate, register

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and inspect services to ensure the quality of the service provided meets the regulatory requirements.

- Bringing local authority care homes within the scheme of registration and inspection which previously applied only to the private voluntary sector – the Registered Homes Act 1984 has been repealed now that the Care Standards Act 2000 has come into force.
- The establishment of a new council to register social care workers, set standards in social care work and regulate the training of social workers.
- The provision of powers for the Secretary of State to maintain a list of individuals who are considered unsuitable to work with vulnerable adults. The Protection of Vulnerable Adults List (POVA) was launched in July 2004.
- New provisions for the regulation of nursing and domiciliary care.
- The provision of power for the Secretary of State to issue statutory guidance to local authorities relating to their power to charge for non-residential welfare services.

**Part II** of the Act sets out the procedures which underpin the regulatory process.

**Section 13** - Puts the burden of proof that they will comply with all the relevant requirements with the applicant, rather than the registration authority.

**Section 14** - Gives the registration authority the power to cancel a registration where:

- a condition of registration has been breached
- a regulatory requirement has been breached
- a relevant offence has been committed

Relevant offences include:

- failure to comply with conditions
- contravention of regulations
- false description of an establishment or agency
- false statements in applications
- failure to display a certificate of registration
- obstructing an inspector

**Section 31** – Enables an authorised person to enter and inspect premises and requires a proprietor or manager to provide any information the registration authority requires to discharge its function.

**Section 32** – Allows a person to remove any material which could be used as evidence of possible non-compliance with requirements.

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### **Public Health Act 1936 and Public Health Act 1961**

**Sections 83-85** – Gives the power to enter and cleanse premises.

### **National Health Service and Community Care Act 1990**

**Section 47** - Provides a framework for all assessments of vulnerable adults. Allows provision for multi-agency assessment for complex situations. The lead agency for the co-ordination of assessments is the Social Services Department.

**Section 48** – The Secretary of State authorises persons to enter and inspect premises in which community care services are or are proposed to be provided by that local authority.

The service user/resident of the premises may be interviewed in private for the purposes of investigating a complaint.

### **Carers (Recognition and Services) Act 1995**

Under this Act a carer is entitled to request an assessment in their own right if they are providing a substantial amount of care on a regular basis. The person being cared for must have been assessed under Section 4(T) of the NHS and Community Care Act (1990), the Children Act (1989) or Section 2 of the Chronically Sick and Disabled Persons Act (1970). The results of the assessment should be taken into account when the local authority decides that services should be provided to the service user.

### **Health and Social Care Act 2001**

The Act supersedes the Community Care (Direct Payments) Act 1996 and Carers and Disabled Children Act 2000. Section 57 provides the Secretary of State with regulatory powers to enable direct payments to persons who have been assessed under s47 NHSCCA or CDCA s2 amended by s58 of the Act direct payments to those assessed under s17A Children Act 1989 as needing services.

There is now an obligation for local authorities to offer direct payments either to an adult or a person with parental responsibility for a child or young person aged 16-17 assessed as having eligible needs.

### **The Carers (Equal Opportunities) Act 2004**

Introduced a statutory obligation on social services to inform carers of their rights, and by requiring that carer's assessments consider whether the carer works or wishes to work and/or is undertaking, or wishes to undertake, education, training or leisure activity. If during the assessment the carer's ability to provide care may be enhanced by services provided by health, housing or education then the local authority can insist that such bodies give consideration to any request for assistance.

### **Safeguarding Vulnerable Groups Act 2006**

Introduces a new vetting and barring scheme for those working with vulnerable adults and children in a paid or voluntary capacity. The scheme should come into force in autumn 2008 when it will replace the POCA and POVA schemes, and will cover health and social care services.

## **3. MENTAL HEALTH**

The Mental Health Act 1983 is a complex piece of legislation. Approved Social Workers (ASWs) in the Social Services Department have detailed knowledge of this piece of legislation and should be able to advise if you feel any of these sections would be useful. ASWs are the only practitioners with the power to make applications for admission under this Act. The MHA will be amended by the Mental Health Act 2007, as will the Mental Capacity Act 2005 which will allow for the deprivation of certain people's liberty thus closing the Bournemouth Gap.

The Mental Health Act 2007 will amend the definition of mental disorder currently in s1 MHA 1983.

### **Mental Health Act 1983**

**Section 131 (1)** – Voluntary admission to hospital.

#### **Section 2** - Admission for assessment

A person may be admitted to a hospital and detained there for a period not exceeding 28 days on the grounds that:

- a) She/he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
- b) She/he ought to be so detained in the interests of his/her own health or safety or with a view to the protection of other persons.

An application for admission for assessment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in sub section (2) above are complied with.

A patient admitted to hospital in pursuance of an application for admission for assessment may be detained for a period not exceeding 28 days beginning with the day on which she/he is admitted, but shall not be detained after the expiration of that period unless, before it has expired, she/he has become liable to be detained by virtue of a subsequent application, order or direction under the following provisions of the Act.

## APPENDIX 2: LEGAL FRAMEWORK

### Section 3 - Admission for treatment

A person may be admitted to hospital and detained for a period of treatment. An application can be made in respect of a person on the grounds that:

- a) she/he is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment and his/her mental disorder is of a nature or degree which makes it appropriate for him/her to receive medical treatment in a hospital; and
- b) in the case of psychopathic disorder or mental impairment, such treatment is likely to alleviate or prevent a deterioration of his/her condition;
- c) it is necessary for the health or safety of the patient or for the protection of other persons that she/he should receive such treatment and it cannot be provided unless she/he is detained under this section.

An application for treatment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners. This section applies for up to six months and can be renewed initially for a further six months then yearly.

**Section 4** - Emergency admission/observation. Needs only one doctor to recommend. This Section lasts for three days.

**Section 7 – 11 Guardianship** is another relevant measure. The local authority or a private individual may be appointed guardian to a person whose mental disorder is one of a specified kind, including mental illness, where guardianship is considered necessary for his or her own welfare or for the protection of others.

An application supported by two doctors (**Section 7(3)**) can be made by an approved social worker or by the person's nearest relative (**Section 11(1)**) to the local Social Care Department and not to a court. The term 'nearest relative' is a technical one and is defined by section 26 of the 1983 Act (as amended by the MHA 2007), where there is a list, which identifies who this is in each patient's circumstances.

A person who acts as a guardian has the power to compel the patient to take certain action. The guardian's three powers are:

- 1) To require the patient to live at a specified place.
- 2) To require the patient to attend a particular place for medical treatment, occupation, education or training.
- 3) To require access to be given at any place where the patient is living to a named individual, e.g. a doctor or Approved Social Worker (ASW).

You should note that although a guardian has the power to compel a person to live in a specified place, a guardianship order does not give the guardian the power to convey the patient to that place against their will. However, once the patient is resident in the specified place, they can be conveyed back there if they abscond. In cases where it is the abuser who is removing a person

## APPENDIX 2: LEGAL FRAMEWORK

from the place specified by the guardian, consideration may be given to applying to the court for an injunction preventing such removal.

A guardian has no powers in relation to a patient's property and no power to compel a patient to undergo medical treatment without his or her consent.

Guardianship lasts for six months but can be renewed (**Section 20**) and people placed under guardianship have a right to apply to a **Mental Health Review Tribunal (Section 69 (21)(b))**.

Two examples of scenarios when guardianship could be considered are when;

- The patient is living at home with carers and there is evidence that the carers are abusing the patient. A guardianship order could be used to encourage the patient to live elsewhere.
- There is a dispute between relatives as to where the patient should live. A guardianship order could state where the patient is to live.

### **Nearest Relative and s2, s3 and s7 MHA 1983**

If an application is being considered under s2 MHA, the Approved Social Worker should try to consult with the nearest relative to see if he or she objects to the application being made. An application under s2 MHA can be made even if the nearest relative objects.

For an application under s3 or s7 MHA the ASW is under a duty to consult with the nearest relative. If the nearest relative does object to an application then this cannot be made unless the local Social Services Authority applies under s.29 of the Mental Health Act 1983 to the County Court for the existing nearest relative to be displaced and another person, usually the Director of Social Services be named in their place.

The grounds on which such an application can be made include the following:

- a) That there is no nearest relative or that it is not reasonably practical to ascertain whether or what that relative is (in practice this is not likely to be pursued as the whole purpose of the application will be that it is to remove a person who objects).
- b) That the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness.
- c) That the nearest relative of the patient unreasonably objects to the making of an application for guardianship. (In practice courts will want to be satisfied that no reasonable person could possibly object to an application being made. It is not enough that the nearest relative disagrees with the application against medical recommendation, although where there is a clear medical need, it may be easier to show unreasonableness. In cases where the reason for the application is that there has been abuse by the

## APPENDIX 2: LEGAL FRAMEWORK

nearest relative to whom the application relates, subject to there being sufficient proof, the court is likely to be persuaded to make an order.)

- d) That the nearest relative of the patient has exercised, without due regard to the welfare of the patient or interests of the public, his or her power to discharge the patient from hospital or guardianship under this part of the act, or is likely to do so.

**Section 13(4)** – Places a duty on Social Services to direct an ASW to consider making an application for admission under the Act if requested to do so by the nearest relative. (This power could be used if the nearest relative of a mentally disordered person complains of mistreatment/abuse of that person by a third party). It is the ASW who will make the decision that the person falls with s1 MHA and if it is appropriate to carry out a MHA assessment.

**Section 115** – States that an Approved Social Worker, who must be able to produce, if asked to do so, a duly authenticated document confirming ASW status, may enter and inspect, at all reasonable times, any premises within the area of their local authority (but not a hospital) in which a mentally disordered patient is living, if they have reasonable cause to believe that the patient is not under proper care. Forcible entry is not permitted, but obstruction of the social worker without reasonable cause would be an offence under

**Section 129(1)(a)**. Proceedings under this Section may be instituted by the local authority.

**Section 127(2)** - Provides that it is an offence for any individual to ill-treat or wilfully neglect a mentally disordered person in their guardianship or 'otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise)'. Proceedings may be instigated by the local authority with the consent of the Director of Public Prosecutions (**Section 127(4) and (130)**).

Should there be a situation where it is suspected that there has been such an abuse, consideration may be given to bringing proceedings. In such cases, a referral should be made as quickly as possible to your legal representative in order for a decision to be made about whether there is sufficient evidence to bring a prosecution.

**Section 135** -This gives an Approved Social Worker the power to apply to a Justice of the Peace (JP) for a warrant authorising a police officer to enter, if need be by force, any premises specified in the warrant and, if thought fit, to remove a person to a place of safety. This might be residential accommodation provided by the local authority, a hospital, police station, a nursing home or residential home for mentally disordered persons or any other suitable place the occupier of which is willing to temporarily receive the patient.

The grounds upon which a JP may issue such a warrant are that she/he has reasonable cause to believe that the person believed to be suffering from a mental disorder:

## APPENDIX 2: LEGAL FRAMEWORK

- a) Has been or is being ill-treated, neglected, or kept otherwise under improper control in any place within the jurisdiction of the JP or
- b) Being unable to care for him or herself, is living alone in any place within the jurisdiction of the JP

The purpose of the removal to the place of safety is to enable the local authority either to make an application for guardianship or compulsory admission to hospital, or to make other arrangements for the service user's treatment or care. The person may be detained in one of the places of safety for up to 72 hours whilst this is done, but not treated.

It is necessary for the police officer executing the warrant to be accompanied by an ASW and by a registered GP.

There are similar powers in relation to a person who is already liable to be detained under the **Mental Health Act (1983)** in which case a police constable may apply to a magistrate for a warrant empowering them to enter premises in which there is reasonable cause to believe the person is present (this is in certain circumstances where admission to the premises has been refused).

**Section 136** - This empowers the police to remove a person from a public place to a place of safety if he or she considers that the person is suffering from a mental disorder and is in immediate need of care or control. This confers the power to detain, but not treat, for up to 72 hours.

**See also 6. - Criminal Law** for criminal offences under the Mental Health Act.

## 4. GENERAL NEGLECT

### National Assistance Act 1948 – Section 47

**Section 47** was drafted as a response to resistance to slum clearance after the Second World War. Its purpose was not to protect people who were being abused, however, it is possible that these grounds may be met in cases where individuals have been abused and very severely neglected. It is much more likely to be used, if at all, in cases where there are extreme environmental health concerns.

It allows for compulsory removal to suitable premises, to secure care and attention for persons who are: -

- a) suffering from grave chronic disease; OR
  - b) aged, infirm or physically incapacitated and living in unsanitary conditions
- AND**
- c) unable to devote to themselves, and are not receiving from other persons, proper care and attention.

The process is initiated by an environmental health officer, who will decide whether or not to seek advice from a GP or health care professional. Agreement to apply to a Magistrates Court for a Removal Order is on a joint agency basis.

## APPENDIX 2: LEGAL FRAMEWORK

She/he must certify that removal is necessary:

- a) in the person's own interests; or
- b) for preventing injury to the health of others; or
- c) for preventing serious nuisance to others.

The process is completed by magistrates' court order. Seven days notice of application must be given.

Detention may be authorised for up to three months, with an unlimited power to extend. There can be no application to revoke within six weeks of the order.

### **National Assistance (Amendment) Act 1951**

**Section 1** – Enables a Section 47 application to be made on an emergency basis, without 7 days notice and ex parte, in other words without the knowledge of the person concerned, on the certificate of the community physician plus another medical practitioner. This is for 3 weeks only, after which time the Section 47 procedure must be followed.

## 5. FINANCIAL PROTECTION

### **The Mental Capacity Act 2005**

Repealed Part VII of the Mental Health Act 1983 dealing with the finances of people who lack capacity to manage their own finances. It also repealed in its entirety the Enduring Powers of Attorney Act 1985.

The MCA introduced Lasting Powers of Attorney for finance and property and LPAs to deal with welfare decisions. A person will need to make separate LPAs to deal with finance and property and welfare issues. Both will need to be registered with the Office of the Public Guardian, there is a fee payable for both though those on restricted income or benefits may apply for fee exemption or remission.

Both types of LPA have to be made when the donor still has capacity, a welfare LPA will have no affect until the donor lacks capacity, a finance and property LPA may either take affect straight away or be limited to when the donor lacks capacity. Both types of forms can be accessed via the OPG website.

There are restrictions on who can be a financial attorney they must be:

- Over 18
- Must not be bankrupt at the time of making the LPA
- Can be an individual or a trust corporation
- A paid care worker such as a care home manager should not be an attorney except in exceptional circumstances for example they are a close relative of the donor.

## APPENDIX 2: LEGAL FRAMEWORK

For a welfare attorney the requirements are the same apart from the rule on bankruptcy and the attorney must be an individual.

### **The Court of Protection**

The MCA 2005 ss45-61 abolished the former Court Of Protection and created a new one that is part of the High Court. The new Courts powers are detailed in s15-21 including the power to make declarations in a person's best interests. The MCA further introduces Court of Protection Deputies to replace receivers who were appointed under Part VII MHA (now repealed). Existing receivers will have automatically become CoP Deputies as of the 1 October 2007.

Section 20 of the MCA sets out limitations to the powers of Deputies including their making the decision prohibiting a person having contact with the incapacitated adult, this decision can only be made by the Court.

An individual, trust corporation or local authority can apply to the Court to become a deputy. If the incapacitated person has no family or no-one suitable to manage their finances then Essex Court of Protection Deputies Office should be contacted for advice.

### **Social Security (Claims and Payments) (Regs 1987) Regulation 33.**

**Agency** – The claimant nominates someone to collect their benefits. This is an understanding between the claimant and the agent.

### **Social Security Appointees**

The Secretary of State may appoint another person to receive and deal with social security benefits payable to someone who is 'unable to act'. The phrase unable to act is not defined but has been interpreted to mean that although the person may be unable to act due to mental inability this is not the same as lacking capacity, there has to be some understanding by the person to recognise they cannot manage their finances. In other circumstances the inability to act may be due to physical reasons.

An appointee has no power to deal with a person's capital, though they must inform the DWP of any changes to capital that may affect the benefit entitlement of the person receiving the benefits.

This procedure is widely used. However, please be aware that though the DWP is the responsible authority for the appointment, supervision and revocation of appointeeships:

- there is no monitoring of appointees
- there is great potential for abuse

The application for an appointee is by written application to the Secretary of State, through the Department of Work and Pensions. An appointee should be a close relative or friend or someone who is regularly in contact with the adult. Standard 35 of the National Minimum Standards for Care Homes for

## APPENDIX 2: LEGAL FRAMEWORK

Older People state that the registered care home manager may only be appointed as agent for a service user where no other person is available. The registration authority should be informed and if they are also appointee so should the DWP.

When there is no one else available Social Services can assist in this capacity.

The Secretary of State may revoke the appointment at any time. The person appointed may resign his or her office after giving one month's notice to the Secretary of State. Any appointment will terminate when the Secretary of State is notified and a receiver has been appointed.

An appointee can be appointed where a person is unable to act for themselves. There is no other criteria set out in Regulation 33.

### **Power of Attorney Act 1971**

Has not been repealed by the MCA, a PoA allows the donee to act on the directive of the donor to deal with their finances and property. The power may be limited or general and is only valid while the donor has the capacity to revoke it.

### **Enduring Powers of Attorney Act 1985**

Has been repealed by the MCA 2005, no new EPAs can be made after the 1 October 2007. Those either registered or properly executed prior to the 1 October 2007 are still valid, those not registered as yet will need to be once the donor lacks capacity with the Office of the Public Guardian.

The Office of the Public Guardian will keep registers of financial and property LPAs, welfare LPAs and EPAs, these can be searched for a fee if there is any doubt as to the validity of the attorney being presented.

## **6. CRIMINAL LAW**

### **Sub Judice**

Where a criminal investigation is in progress, information gained in the investigation is 'sub judice' and cannot be disclosed. If a case is so serious that there is a need to disclose information, advice should be sought from the Crown Prosecution Service or the constabulary solicitor. Each case should be considered on its own merit.

### **Police and Criminal Evidence Act**

**Section 17** – Gives the police the power to search and enter premises to save life and limb or prevent serious damage to property.

**Section 24** – Police may arrest without warrant anyone suspected of having committed or is about to commit an arrestable offence.

## APPENDIX 2: LEGAL FRAMEWORK

**Section 25** – Allows the police to arrest someone to prevent them causing physical injury to another person or to protect a child or others.

### **Criminal Procedures and Investigations Act 1996**

This Act was introduced to provide safeguards in relation to evidence gathered during the course of a criminal investigation.

It sets out procedures to document such material whether it is eventually used in a trial, or not, and introduces a code of conduct as to what material is disclosed to the defence. It highlights the importance of retaining all items that could later be used in evidence until the police 'Disclosure Officer' has assessed their relevant evidential value and advised on their retention or disposal. If these procedures are not followed the accused may be acquitted because of a breach of the Act or Code, or could be wrongly accused.

### **Crime & Disorder Act 1998**

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

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

**Section 115** - Provides for full disclosure of information by any person provided the disclosure is to an appropriate public authority, for example Social Services or the police, and is 'necessary or expedient' for the purposes of any provision of the Act.

**Section 17** - Directs that the police and local authorities have an obligation to reduce crime, i.e. in this context prevent abuse.

**Section 15** - directs that the police and local authorities share information to prevent crime, and again in this context, vulnerable adult abuse.

### **Criminal Justice Act 1988**

**Section 39 – Common Assault** - Assault is defined as any physical contact without consent. It includes acts or words involving threats of violence. No physical evidence may be present. It includes assault and battery – which involve the threat of immediate violence.

## APPENDIX 2: LEGAL FRAMEWORK

### Offences Against the Persons Act 1861

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

**Section 47** - actual bodily harm. This is an assault occasioning actual bodily harm.

**Section 20** - actual bodily harm. Either with or without weapons with the intention to cause harm. It includes assaults causing cuts, broken bones, and damage to internal organs.

**Section 18** - grievous bodily harm. This is wounding with intent to do grievous bodily harm. It includes assaults causing cuts, broken bones and internal injuries.

### Mental Health Act 1983

**Section 127 (2)** – Provides that it is an offence for any staff member of a hospital or mental nursing home or for any person to ill treat or wilfully neglect a patient or person who is subject to his/her guardianship under this Act. It is also an offence for a guardian or other person who has care of a mentally disordered person living in the community to ill treat or wilfully neglect that person.

### Medicines Act 1968

It is an offence to administer drugs that have been prescribed for someone else.

### Theft Act 1968

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

### Sexual Offences Act 1956

**Section 9** - Makes it an offence to procure a 'defective woman' unless he does not know and has no reason to suspect her to be 'defective'.

### Sexual Offences Act 2003 ss30 - 41

The Act replaces much of the previous legislation. Sections 30 – 33 create offences that rely on the inability of a person to refuse the sexual activity on account of lack of capacity or where they are unable to communicate their refusal. Sections 34 – 37 relate to situations where a person suffering from a mental disorder is threatened, coerced or deceived into sexual activity where the perpetrator knew the person was suffering from a mental disorder, or reasonably suspects. Sections 38 – 41 apply to care workers where the assumption is the worker knew or is reasonably expected to know the person is suffering from a mental disorder and do not rely on the inability of the vulnerable adult to refuse.

## APPENDIX 2: LEGAL FRAMEWORK

### Protection from Harassment Act 1997

**Harassment** - A person must not pursue a course of conduct, which amounts to the harassment of another and which that person knows or ought to know amounts to harassment of the other.

The alleged harasser ought to know that their behaviour amounts to harassment if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment.

Whereas a non-molestation order under the Family Law Act 1996 could be granted for one act of harassment, the 1997 Act can only be used if there has been more than one act i.e. a course of conduct.

There are three defences to a charge of harassment:

- a) That the course of conduct was pursued for the purpose of preventing or detecting crime;
- b) That the course of conduct was pursued in accordance with a legal requirement or duty;
- c) That in the particular circumstances the pursuit of the course of conduct was reasonable.

An action under the 1997 Act can be pursued as a criminal or civil matter. If it is pursued as a criminal matter, a person found guilty of harassment can be jailed and the complainant awarded damages. If the complainant decides to start civil proceedings, they could ask for an injunction to prevent further occurrences of the harassment and damages for the mental distress already caused.

The victim may apply to a Judge for an arrest warrant where the defendant is in breach of the terms of the injunction. Breach of the injunction is also a separate criminal offence punishable by a term of imprisonment or a fine. It is open to the court to award longer terms of imprisonment or higher fines for breach of an injunction than those which are available for the offence itself.

**Putting people in fear of violence** - A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him or her is guilty of an offence if she/he knows or ought to know that his/her course of conduct will cause the other so to fear on each of those occasions. Again, this is a criminal offence punishable by a fine or a period of imprisonment and, as with the offence of harassment, conduct pursued for purposes such as preventing or detecting a crime etc. will not be an offence.

**Restraining Orders** - A court sentencing or otherwise dealing with a person convicted of the offence of harassment or putting people in fear of violence may make a restraining order.

These orders are made by the court to protect the victim and will prevent the defendant from any further conduct which would amount to harassment or putting the person in fear of violence.

## APPENDIX 2: LEGAL FRAMEWORK

Breach of a restraining order is punishable, upon conviction, by way of a fine or a term of imprisonment.

### **Home Office Circular 60/1990 – Domestic Violence**

In this circular the Home Secretary indicates that violent assault or brutal or threatening behaviour within a domestic setting is as serious as violent assault by a stranger. Accordingly, police force policy concerning responses to domestic violence should, the circular indicates, contain undertakings which include:

- an overriding duty to protect victims from further attack
- the need to treat domestic violence as seriously as other forms of violence
- the use and value of powers of arrest
- the danger of seeking conciliation between the perpetrator and the victim

Note that unless the victim is vulnerable under the definitions of 'No Secrets' incidents of domestic violence should be referred to the relevant domestic violence unit, not the adult protection unit.

### **Domestic Violence, Crime and Victims Act 2004 s5**

Section 5 makes it an offence to cause or allow the death of a child or vulnerable adult, it is designed to address the evidential problem of proving who in a household actually caused the death or allowed the child or person to die.

The section allows for the prosecution if there was a significant risk of serious physical harm and the person ought to have been or was aware of the risk, and did nothing to protect the person, and the act occurred in circumstances the person foresaw or ought to have foreseen.

### **Race Relations Act 1976**

**Section 127** – Covers racially motivated offences.

## **7. CIVIL LAW**

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

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

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

## APPENDIX 2: LEGAL FRAMEWORK

In many cases, the vulnerable person will not be able to give instructions to a lawyer so before the case can proceed someone must be found to act on his/her behalf. She/he may 'sue by a next friend' under order 10 of the County Court Rules or order 80 of the Rules of the Supreme Court.

### **Common Law**

In situations of urgent high risk, in order to save life, it is acceptable under Common Law to intervene without consent.

### **Mental Capacity Act 2005**

The Mental Capacity Act 2005 allows for those caring for vulnerable adults to make decisions on their behalf if they lack the capacity to do so themselves. The Act allows for the decision maker to make the decision in a person's best interest where they should live and as long as they follow the five principles of the MCA and the Code of Practice they will be protected from prosecution.

If a person is thought to lack capacity to make the decision an MCA2 form needs to be prepared, this will involve two professionals and will enable them to conclude if the person lacks capacity or not to make a particular decision. If the person has family members then they, with the assistance of social workers, can make the decision for the incapacitated person.

If there are adult protection issues then an Independent Mental Capacity Advocate can be instructed by the local authority whether or not the person has family, friends or others involved in their care.

### **Declaratory Relief**

The Mental Capacity Act preserves the right of concerned parties to apply to the court for a declaration of best interests, dealing with both financial and welfare issues for those lacking mental capacity. Those who have capacity but are vulnerable for other reasons it is assumed that the High Court Family Division will retain jurisdiction.

An application to court for Declaratory Relief enables the court to consider whether one proposal or another is in the best interests of the service user. The declaration can cover matters such as:

- Where the person needs to live
- Whose company the person should have (and under what circumstances e.g. supervision)
- What the arrangements for care should be

The declaration can cover restraint, and in extreme circumstances, detention of the individual for their own safety, at least for a short period, pending, for instance, completion of an investigation into the conduct of the service user's carers if there is an allegation of neglect.

## APPENDIX 2: LEGAL FRAMEWORK

The vulnerable adult and the person opposing the care plan are made defendants. Thus the vulnerable adult gets a voice as well, unlike the procedure for guardianship which only involves the nearest relative.

The drawbacks of the remedy are:

- The cost of the application and subsequent costs for an oral hearing
- There is a risk that the judge will find against the claimant and favour the defendant's proposals
- The declaration usually only relates to single issues so does not give ongoing care and control
- It is not available in a situation of physical incapacity or illness unless accompanied by mental incapacity

An application can only be made if there is a serious justifiable issue that requires resolution. It is thought that the enactment of the MCA will lead to fewer applications.

### Capacity

**Mental Capacity Act (MCA) s1(2)** creates for adults the presumption of capacity unless it is established that he lacks capacity. The fact that a person has advanced dementia, a severe learning disability or is detained under the MHA 1983 does not affect this presumption. If there is no evidence to the contrary the person is deemed to continue to have capacity, the test is on the balance of probabilities.

Whether a person has the capacity to make a particular decision depends on the decision to be made. **MCA s2(1)** provides:

***".. a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance of the functioning of, the mind, or brain."***

**MCA s1(4)** specifically states that the person is not to be treated as lacking capacity just because the decision made is an unwise one.

**MCA s3(1)** adopts the Court of Appeal approach to rationalise and provides:

***" person is unable to make a decision for himself if he is unable –***  
***(a) to understand the information relevant to the decision***  
***(b) to retain that information***  
***(c) to use or weigh the information as part of the process of making the decision or***  
***(d) to communicate his decision(whether by talking, using sign language or any other means)".***

Ultimately it is a legal decision if a person lacks capacity or not.

### Mental Capacity Act 2005

## APPENDIX 2: LEGAL FRAMEWORK

The MCA primarily concerns itself with decision making by those caring for adults who may lack capacity to make certain decisions, it does not directly address the adult abuse provisions proposed by the Law Commission. If an act is to be in the person's best interests including making day to day decisions for the person, the decision maker will have to follow the principles of the MCA and Guidance, if they do then they will be protected under the MCA for the decision made.

**Sections 4(1) – 7** provide for best interest decisions to be made on behalf of a person who lacks capacity, though it does not define best interests. The MCA lays down a process at the end of which a decision maker is presumed to be able to form a reasonable belief of what decision should be made in a person's best interest. Section 5 of the MCA is based on the common law of necessity, it will also allow for the use of an incapacitated adults money to purchase necessary goods and services. Section 6 deals with restraint and when it can be used, it does not permit action that will amount to a deprivation of liberty. Though this issue is currently under review.

The Mental Health Act 2007 part 2 will amend the MCA 2005 to authorise the detention of people who lack capacity in certain situations. More information is available through CSIP.

### **Family Law Act 1996**

#### **Section 42 - Non-molestation Order**

This provision prohibits a person (the accused) molesting another person (the complainant).

In order to be able to use this legislation the complainant must be 'associated' with the complainant. An 'associated person' is defined widely and includes married couples, cohabitants, those living in the same household, relatives and engaged couples (as long as there is an agreement to marry).

The complainant is the only person who can start proceedings. In deciding whether or not to make an order, the court shall have regard to all circumstances including the need to secure the health, safety and well-being of the complainant.

The complainant can start proceedings in respect of particular acts of molestation or general ones. In other words, it is possible for a complaint to be made even though the behaviour has only happened once.

#### **Definition of 'molestation'**

There is no definition in the Act itself. The dictionary definition is 'to disturb or annoy by malevolent interference' 'to accost or attack'.

The Law Commission 1992 – Family Law, Domestic Violence and Occupation of the Matrimonial Home – states;

## APPENDIX 2: LEGAL FRAMEWORK

'Molestation is an umbrella term which covers a wide range of behaviour. It includes any form of serious pestering or harassment.'

'Any conduct which could properly be regarded as such a degree of harassment as to call for the intervention of the court.'

'The degree of severity depends less upon its intrinsic nature than upon it being part of a pattern and upon its effect on the victim.'

### **Making Orders of the Court's own motion**

A Non-Molestation Order can be made on the court's own motion in proceedings where the respondent is a party if the court considers such an order should be made for the benefit of any party to the proceedings or any relevant child.

### **Occupation Orders**

Magistrates sitting on the family panel will now share the jurisdiction of High Court and County Court Judges to regulate the occupation of the family home. There are five categories of applicants who can apply for an Occupation Order.

1. Those entitled to occupy the property as a result of matrimonial property rights.
2. Former spouses with no existing right to occupy where the respondent has a legal right to occupy.
3. Cohabitant or ex cohabitant without an existing right to occupy.
4. Spouse or ex spouse where neither has a right to occupy (e.g. where a couple are living in the home of the in-laws).
5. Cohabitant or ex cohabitant where neither has the right to occupy.

### **The types of Order which can be made**

1. An order enforcing the applicant's entitlement to remain in occupation as against the other person.
2. An order requiring the respondent to permit the applicant to enter and remain in the dwelling house or part of the dwelling house.
3. An order regulating the occupation of the dwelling house by either or both parties.
4. An order prohibiting, suspending or restricting the exercise by the respondent of his right to occupy the dwelling house.
5. An order restricting or terminating a respondent's matrimonial rights in relation to the dwelling house.
6. An order requiring the respondent to leave the dwelling house or part of the dwelling house; and
7. An order excluding the respondent from a defined area in which the dwelling house is included.

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### Grounds

The court must have regard to all of the circumstances of the case including

- a) The housing needs and housing resources of the parties.
- b) The financial resource of each of the parties.
- c) The likely effect of any order, or of any decision by the court not to exercise its powers on the health, safety and well-being of the party; and
- d) The conduct of the parties in relation to each other and otherwise.

In addition to the above, the court must consider the balance of harm test which imposes an overriding requirement for the court to make an order if it appears that the applicant or child is likely to suffer significant harm if an order is not made which is greater than the harm that the respondent is likely to suffer if the order is made.

An order under this section may be for a specified period, until the occurrence of a specified event or until further order.

As with Non-Molestation Orders, Occupation Orders may be made on an ex parte basis (i.e. in the absence of the respondent). In determining whether an order should be made in the absence of the respondent, the court will have regard to all of the circumstances including –

- a) Any risk of significant harm to the applicant, attributable to the conduct of the respondent, even if the order is not made immediately.
- b) Whether it is likely that the applicant will be deterred or prevented from pursuing the application if any order is not made immediately and
- c) Whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicants will be seriously prejudiced by the delay involved.

If the court makes an ex parte Order it must afford the respondent an opportunity to make representations relating to the order as soon as is just and convenient at a full hearing.

### Undertakings

In any case where the court has the power to make an Occupation Order or Non-Molestation Order, it may accept an undertaking from parties to the proceedings. It is important to understand that no power of arrest may be attached to any undertaking and the court must not accept undertakings in cases where it will be appropriate to attach a power of arrest.

The breach of an undertaking constitutes contempt of court. Since an undertaking is volunteered, rather than imposed, the person giving it is presumed to know it, so that proof of service is not required prior to enforcement.

## APPENDIX 2: LEGAL FRAMEWORK

### **Matrimonial Homes Act 1983**

**Section 1(2) & 9(1)** - The High Court and County Courts may make a variety of orders enforcing or restricting the respective rights of spouses to occupy their matrimonial home.

### **Domestic Violence and Matrimonial Proceedings Act 1978**

**Section 11(1) & 1(2)** – County Courts may grant injunctions against molestation or to exclude one party from the home. This applies to married couples and also to partners who are 'living together as husband and wife'.

### **Domestic Proceedings and Magistrates Court Act 1978**

**Section 16(2) & (3)** - Magistrates Courts have power to make orders protecting one spouse from violence by the other, including the power to exclude a violent spouse from the home. These powers apply only between married partners and only to the use or threat of violence.

### **Injunctions are available under the Law of Tort**

The principal purpose of the tort system is to provide financial compensation, but injunctions may be available in respect of the torts of assault, battery, nuisance, false imprisonment or trespass.

These may be useful in cases involving people who are not covered by legislation, although their scope is more limited. Injunctions may not restrain conduct which is classified as harassment and a person may not be excluded from a home which they have a right to occupy. Injunctions under the Law of Tort for trespass may be the only appropriate remedy where the abuser is not the spouse/cohabitee, but possibly another member of the family.

In *Egan v Egan* (1975), a woman who suffered continual physical assaults by her adult son was granted an injunction restraining him from trespassing on her property and from assaulting her or molesting her. A similar order was obtained in *Patel v Patel* (1988), by a man whose son-in-law had been trespassing on his home and threatening him.

### **Housing Act 1996**

**Part VII** – This Act places a duty on local authorities to provide accommodation for homeless people with a priority need, i.e. people who are vulnerable because of old age and homelessness, mental illness, learning and physical disability or other special reason.

### **Housing Act 1996**

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

## APPENDIX 2: LEGAL FRAMEWORK

### Compensation

A victim may receive compensation for damage to property or person resulting from a crime. For example,

**Criminal Compensation Order:** If a person is convicted, the court may make a Compensation Order in addition to sentence. Compensation is subject to the financial ability of an individual to pay and may be low.

**Claims for Damages in Civil Action:** The individual may sue for loss of or damage to property in assault cases. An individual may also sue for damages for injury, pain and suffering, expenses and loss of earnings.

**Criminal Injuries Compensation Authority:** Compensation is payable to victims of crimes of violence. A claim may be made by an individual or carer. Payment can be made to families, payable as a lump sum, inclusive of payment to compensate for pain and suffering.

Where the victim and the person responsible for carrying out the abuse are living in the same household as members of the same family, compensation will be paid only where:

- a) The person responsible has been prosecuted in connection with the offence, unless the Board considers that there are practical, technical or other good reasons why a prosecution has not been brought.
- b) In the case of violence between adults in the same family, the Board are satisfied that the person responsible and the applicant stopped living in the same household before the application was made and seem unlikely to live together again.

These measures were proposed in Speaking Up for Justice (June 1998), the report of an interdepartmental review of the treatment of vulnerable or intimidated witnesses in the criminal justice system.

The Act sets out who is eligible to apply for special measures to help them give evidence in court.

There are three categories:

- children under the age of 17
- those who suffer from mental or physical disorder, or have a disability or impairment that is likely to affect their evidence, and
- those whose evidence is likely to be affected by their fear or distress at giving evidence in the proceedings.

### Data Protection Act 1998

This act replaces the Data Protection Act 1984 and extends data protection principles to manual files as well as computerised. The Data Protection Act says that personal information should be obtained and processed fairly and lawfully. Such information should be accurate, relevant and not held any

## APPENDIX 2: LEGAL FRAMEWORK

longer than is necessary. The information should only be disclosed in appropriate circumstances and should be stored safely.

Each agency is responsible for ensuring that it complies with the law when handling personal information. Consent to share information regarding abuse should always be sought from the individual concerned where possible. This applies even if the person has already consented in general terms to the sharing of information, e.g. as part of the assessment and care management process. Agreement for information to be shared should be recorded on the case file.

There are circumstances where the sharing of information without the individual's consent is justifiable, for example, in preserving evidence for a possible criminal investigation. If there is doubt about whether sharing information is justifiable advice should be sought from a senior manager or legal services. If information is disclosed without consent the agency receiving the information needs to be aware of this.

### **Law of Contract**

Any person may enter into a contract, provided they have the necessary mental capacity, i.e. that they understand what they are doing. A contract may be set aside if it can be shown that the person entering into it did not understand the nature of it or did not have the capacity to enter into contractual relations and if the other person knew this or ought to have known it. The burden of proof will be on the person seeking to show that the contract should be set aside and it will be necessary to adduce evidence as to the person's mental state at the time when the contract was entered into.

Marriage is a contract and accordingly, it is necessary for a person to give valid consent to it in order for it to be a valid marriage. However, this does not mean that there is an automatic rule precluding somebody who is suffering from a mental disorder from entering into a marriage. The test will be whether they knew at the time that they were effectively participating in a marriage ceremony, even if they did not know what all the implications were. The Courts will require substantial evidence to show that a person simply did not understand they were getting married to declare the marriage void.

### **Consent to medical treatment**

**The MCA s4(1) – 7** can allow the medical profession to act in an incapacitated persons best interests, s5 prohibits where the determination relates to life sustaining treatment he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death. The Code of Practice at paragraph 6.5 details what health care and treatment can be carried out.

If serious medical treatment is contemplated and the person is un-befriended or the carers are inappropriate the medical person must involve an IMCA. If a consensus cannot be reached an application to the Court of Protection under the MCA can be made for a declaration. If the medics follow the principles of

## APPENDIX 2: LEGAL FRAMEWORK

the MCA and adhere to the Code of Practice they will not commit an offence, though the MCA does not protect against negligence or death.

An adult must normally consent to their own medical treatment. Where treatment involves touching the patient without their consent, this is trespass and may be actionable as an assault or battery. The person giving consent must understand what they are giving consent to and must have the capacity to do so voluntarily.

In some cases, it may be that a course of action is being proposed which social service professionals do not feel is in the best interests of the vulnerable adult. Examples may be where the parents and doctors of the adult have agreed that sterilisation should take place. In those circumstances, it is possible to apply to a court for declaration (supported, if necessary, by an injunction) that the treatment should not proceed.

For the purposes of the court proceedings people who lack capacity are known as 'people under a disability' and cannot commence proceedings in their own right. Therefore, it will be necessary for a person to be appointed to act on their behalf as 'litigation friend'. If there is no one able to act on behalf of the incapacitated adult an invitation to the Official Solicitor to act should be made.

The above principles do not apply to medical treatment carried out for the purposes of treating the mental disorder itself, as this is governed by the statutory provisions contained in sections 59 – 64 of the **Mental Health Act (1983)**.

### **Disability Discrimination Act 1995**

The act gives disabled people important rights to challenge discrimination on the grounds of disability. It makes it unlawful to discriminate against a disabled person in employment, or in relation to access to goods, services, transport and education.

### **Youth Justice and Criminal Evidence Act (Part 2) 1999**

The Act contains a range of measures designed to help young, disabled, vulnerable or intimidated witnesses give evidence in criminal proceedings.

The measures include:

- physical measures to reduce the stress of giving evidence at trial (such as informal dress, screens, live link CCTV and the use of pre-recorded video interviews)
- restrictions on the freedom of defendants to cross-examine their alleged victims personally
- further restrictions on publishing information that might reveal the identity of a witness

## APPENDIX 2: LEGAL FRAMEWORK

### Human Rights Act 1998

This Act came into force in October 2000.

The Act incorporates the European Convention of Human Rights into UK law and this enables claims to be brought in UK courts by individual victims against any public bodies for breach of those convention rights.

#### The Convention Rights

Article 2	Right to Life
Article 3	Prohibition of torture
Article 4	Prohibition of slavery and forced labour
Article 5	Right to liberty and security
Article 6	Right to a fair trial
Article 7	No punishment without law
Article 8	Right to respect for private and family life
Article 9	Freedom of thought, conscience and religion
Article 10	Freedom of expression
Article 11	Freedom of assembly and association
Article 12	Right to marry
Article 14	Prohibition of discrimination
Article 16	Restriction on political activity of aliens
Article 17	Prohibition of abuse of rights
Article 18	Limitation on use of restrictions on rights

#### The first Protocol

Article 1	Protection of property
Article 2	Right to education
Article 3	Right to free elections

- The Human Rights Act makes it unlawful for a public body to act (by commission or omission) in a way that is incompatible with Convention Rights.
- The Act requires all legislation to be interpreted and given effect, as far as possible, compatibly with Convention Rights or the law may be changed.

The Human Rights Act incorporates most, but not all, of the European Convention of Human Rights into UK law, enabling claims to be brought in UK courts by individual victims against public bodies.

The Act makes it unlawful for a public body to act (by commission or omission) in a way that is incompatible with Convention Rights (see below). In many respects, the Act underpins adult protection work, particularly in the context of an individual who is in receipt of a service. It has recently been decided that Article 8 rights are not exercisable by residents of private residential care homes. It is difficult to predict the impact of the Act and it will take some time to see the type of claims being made and the way the courts decide matters.

## APPENDIX 2: LEGAL FRAMEWORK

The following guidance is not intended to give comprehensive information about the context of the Act, but is offered simply as a means of helping to interpret the relevance of the Act in relation to adult protection work.

### **The Convention Rights**

#### **Article 2 – Right to life**

This convention appears most relevant in medical settings, particularly in relation to issues such as abortion, life-saving operations and end-of-life decisions, but it will also cover cases of neglect and suspicious deaths of people who are in care. Delay in approving funding for care, where this is seen to have a potentially life-threatening effect on the well-being of an individual, may be considered as a breach of this article. Similarly, unexpected movement as a result of home closures, which research indicates may have a potentially life threatening effect on life expectancy.

#### **Article 3 – Prohibition of torture (and inhuman and degrading treatment)**

Failure to take action to prevent cruelty, and the overall treatment of individuals and the conditions in which they live, should be considered. It should be noted, however, that the threshold for what amounts to inhuman or degrading treatment would need to reach a minimum level of severity and would have to have occurred more than once or be part of a pattern of abuse. Examples of such incidents may include individuals being confined to rooms or controlled in some way by the use of staff threats, verbal abuse and ridicule, leaving individuals in unsuitable clothing.

#### **Article 5 – Right to liberty and security** (There are a number of exclusions to this rule listed under Article 5)

Informal admission to hospital of a person with mental illness who is not capable of giving consent is currently being challenged in the European Court of Human Rights (linked to the Bournemouth judgement). Situations in which restrictions are being placed on vulnerable adults (for example, locking doors) may be brought under Article 5 and services should be clear about any decisions that are taken to protect people or keep individuals safe.

#### **Article 6 – Right to a fair trial**

This covers tribunal and may well cover some internal hearings or regulatory procedures. Challenges may occur if defendants, for example, people who have a learning difficulty, feel that proper thought has not been given to their understanding of their rights.

#### **Article 8 – Right to respect for private and family life, home and correspondence**

It could be interpreted that local authorities have a positive duty to support family life, not just a duty to refrain from interfering with it. So if an older person, for example, indicates that they need support to stay in their own home, but such support is not forthcoming until an emergency situation arises,

## APPENDIX 2: LEGAL FRAMEWORK

it might be argued that their rights to respect for private and family life have been breached. It may also be deemed a breach of an individual's rights when a decision is made, under adult protection procedures, to separate an individual from their family or carer.

Any interference of the rights has to be shown to be legitimate, reasonable and appropriate.

### **Public Interest and Disclosure Act 1998**

This Act came into force in July 1999. The Act amends employment legislation so that employees are protected against dismissal and other adverse action if they make complaints or public disclosures about malpractice. Such matters include allegations that the employer is putting the environment at risk, breaking the law or putting customers or employees at risk. Workers do not have protection if they 'go public' without first raising the matter internally with the employer, unless the worker can show that they believe raising the matter this way would be ineffective, would lead to a cover up or would result in retribution.

### **The Sex Discrimination Act 1976**

This Act makes it unlawful to discriminate on the grounds of gender and introduces two forms of discrimination – direct and indirect discrimination.

### **The Race Relations Act 1976**

This Act makes discrimination on the grounds of race illegal. Race is defined in terms of colour, race, nationality or ethnic or national origins. The Act uses the terms of direct and indirect discrimination and introduces a third category – victimisation.

The Stephen Lawrence Inquiry report gives these definitions:

“Racism in general terms consists of conduct or words or practices which disadvantage or advantage people because of their colour, culture or ethnic origin. In its more subtle form it is as damaging as in its overt form.”

“A racist incident is any incident which is perceived to be racist by the victim or any other person.”

“**Institutional racism** is the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.”

A summary of the definition in the draft ACPO Action Guide to Identifying and Combating Hate Crime gives **Third party reporting** as: “Where victims of hate crime report to a range of third parties, who in turn communicate with the

## APPENDIX 2: LEGAL FRAMEWORK

police or other agency direct, e.g. community associations for particular groups by race, gender, age or other purpose (housing association etc.)”

**Hate crime** – this is a crime where the perpetrator’s prejudice against any identifiable group of people is a factor in determining who is victimised. **Homophobic incident** is any incident which is perceived to be homophobic by the victim or any other person. In effect, any incident intended to have an impact on those perceived to be lesbians, gay men, bisexual or transgendered people. Like domestic violence, these incidents would only be dealt with as an adult protection incident if the victim came within the ‘No Secrets’ definition of “vulnerability”.

### Duty of Confidence

Information held by an agency is subject to the legal “duty of confidence” and should not normally be disclosed without the consent of the persons who have provided the information or are the subject of the information. However, the public interest in maintaining confidentiality can be overridden by the public interest to protect vulnerable persons.

Disclosure without consent must therefore be necessary and justifiable in each case and the information disclosed must be the minimum necessary to achieve the aim. If in doubt, legal advice should be sought before disclosure is made, but due regard must be made to the fact that this may cause unnecessary delay which could have additional implications regarding why immediate action wasn’t taken and a dangerous delay was caused.

The reason for disclosing information without consent must be recorded on the case file.

### Physical intervention

Section 6 MCA places restrictions on s5 MCA actions primarily surrounding restraint.

Restraint can only be used when:

- 1) the person restraining reasonably believes it is necessary to prevent harm to the incapacitated person; and
- 2) it is proportionate to both:
  - a) the likelihood of harm and
  - b) the seriousness of the harm, and
- 3) It would not constitute detention under article 5(1) of the European Convention on Human Rights (the Convention). This requirement will be repealed under MHA 2007 s50 schedule 9 part 10 when it comes into force.

Physical intervention refers to the use of force to restrict movement or mobility or the use of force to disengage from dangerous or harmful physical contact initiated by a service user. Physical intervention differs from manual guidance or physical prompting in so far as it implies the use of force against a resistance. **The main difference between holding and physical**

## APPENDIX 2: LEGAL FRAMEWORK

**intervention is the manner of the intervention and the degree of force applied.**

### **DOH Guidance 1999**

The law states that every citizen is entitled to live without interference from others. This means that people should not be unlawfully restrained (imprisoned), must not be in fear of being attacked by another (assault) and must not have unlawful violence inflicted on them (battery). The rights of service users should not be contravened in line with the Human Rights Act 1998.

Staff working with vulnerable adults must operate within the law. This also applies to carers and volunteers. Inappropriate use of physical restraint may give rise to criminal charges.

All staff have a duty to care which means taking reasonable care to avoid acts or omissions which could lead to cause harm to other people. In practice, staff failing to take appropriate steps to prevent injury would be seen as an omission.

In criminal and civil law battery may be interpreted as any act, which causes some physical contact with the person without the person's consent.

- Physical restraint or intervention should be used as a last resort.
- Physical restraint or intervention should only be used when:
  - Other less intrusive strategies have been tried and found to be unsuccessful.
  - The risks of not using an emergency intervention are outweighed by the need to intervene.
  - Where it is perceived that a service user or other person is in danger or there is a serious risk to property with a consequent risk to people. Behaviour which causes damage to property only and where there is no physical risk to themselves or others is unlikely to necessitate the use of physical interventions.
  - The amount of force used must always be proportionate to the risk presented.

Physical interventions should be used at the minimum level for the shortest period of time and be used in the service user's best interests.

There must be a clear justification for using physical restraint and its use must be recorded.

Physical restraint should be accompanied by reassuring speech and never with threats.

Holding or restraining the service user should only involve contact with robust areas of the body: arms, legs, and torso.

## APPENDIX 2: LEGAL FRAMEWORK

It should not involve pressure against a joint, holding by the neck, hair, fingers, any sexual area, or delicate areas like the ears or eyes.

It is unacceptable to

- Strike a service user
- Use physical interventions to incur pain
- Use physical intervention for a source of punishment
- Use any procedure, which restricts breathing or impacts upon the airways.

When a physical intervention is employed, as soon as the person is calm and it is felt safe to do so, the level of physical restraint or restriction should be systematically reduced. This returns personal control to the service user as soon as possible.

If a service user's behaviour is such that it repeatedly requires physical intervention or that a single intervention causes significant concern then a meeting should be held to discuss planned interventions. Planning should include discussion and/or involvement with the service user and if appropriate with the carer, or legal guardian or advocate subject to service user agreement and other relevant professions.

If as a result of an incident taking place a staff member feels abuse has taken place towards any of the people involved, then the adult protection procedures should be followed.

**APPENDIX 3: SET SAF FORMS**

**SET SAF 1**

Reference No
--------------

**1. – Tell us who the person is you are concerned about: (please complete as much of this as is known – if not known put N/K)**

Name
------

Gender
--------

Home address
--------------

Contact Address
-----------------

Telephone No:
---------------

Age:	D.O.B
------	-------

Ethnic Origin / Nationality
-----------------------------

Communication needs
---------------------

Are they aware of the referral	<input type="checkbox"/> Yes	<input type="checkbox"/> No
--------------------------------	------------------------------	-----------------------------

**1a. – Relative/Name of Main Carer**

Name:
-------

Relationship to Person:
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Is Relative/Carer aware of this referral?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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Contact Address:	Telephone No:
	Mobile No:
	Email:

County:	Postcode
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## APPENDIX 3: SET SAF FORMS

**2. – Please tell us about who you are (We cannot guarantee your anonymity but will do all we can to keep your details confidential if you would prefer) :**

<b>I would prefer to remain anonymous:</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Name:</b>		
<b>Job Title/ Relationship:</b>		
<b>Organisation (if applicable):</b>		
<b>Contact Address:</b>		
<b>County:</b>	<b>Telephone No:</b>	
<b>Postcode:</b>	<b>Mobile:</b>	
	<b>Email:</b>	

**3. – Current Situation and Details of the Incident/Concern(s) being raised**

<b>Does this person continue to be at risk of harm?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Are there other people who may be at risk of harm?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>If the answer to either of the above is yes, please describe the risk that remains and names of others potentially at risk: (please only refer to identified risk that relates directly to the concern)</b>		

## APPENDIX 3: SET SAF FORMS

3a. – Details of the concern(s) being raised	
Time of incident/concern	Date
<b>How were you made aware of this incident or concern?</b>	
<b>Brief Factual details of incident:</b> This should include a clear factual outline of the concern being raised with details of times, dates, people and places where appropriate.(please continue on separate sheet if required)	
<b>If Injuries are present please give a brief/accurate description</b>	
Has a body chart been completed? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Doctor informed?</b>	
<b>Actions taken by yourself to date to safeguard the individual</b>	
<b>Who else has been informed of this concern (in particular please specify if the police are involved)?</b>	
<b>Is there a crime reference number?</b>	

## APPENDIX 3: SET SAF FORMS

4. – Details of alleged perpetrator(s) involved if abuse is suspected (please complete as much of this as is known)	
Name:	
Gender:	
Address (if Known)	
Occupation/Position/Title:	
Date of Birth:	
Is this person known/related to the individual who is the subject of this concern? – if so please describe relationship	
Are they aware of this alert <input type="checkbox"/> Yes <input type="checkbox"/> No	

5. – Details of person completing form	
Name:	
Date completed:	
Address	Telephone No: Mobile: Email:

## APPENDIX 3: SET SAF FORMS

### Completed forms should be sent to:

<p><b>Southend</b></p> <p>By Fax to: 01702 534794</p> <p>Making a referral/enquiry by telephone:</p> <p>Adult Social Care: 01702 534777 Out of hours: 0845 606 1212 (Fax 01245 434700)</p>
<p><b>Essex</b></p> <p>By email to: <a href="mailto:socialcaredirect@essexcc.gov.uk">socialcaredirect@essexcc.gov.uk</a> as an attachment</p> <p>By Post to: Essex Social Care Direct, Essex House, 200 The Crescent, Colchester, Essex, CO4 9YQ</p> <p>By fax to: 0845 601 6230</p> <p>Making a referral/enquiry by telephone:</p> <p>Normal telephone enquiries/referrals: 0845 603 7630 Out of hours: 0845 606 1212 (Fax 01245 434700) Where there are concerns about the immediate welfare or safety of a vulnerable adult: 0845 603 7634</p>
<p><b>Thurrock</b></p> <p>Email: <a href="mailto:SafeguardingAdults@thurrock.gov.uk">SafeguardingAdults@thurrock.gov.uk</a></p> <p>By Fax to: 01375 652760</p> <p>Making a referral/enquiry by telephone:</p> <p>Initial Response team: 01375 366083 Out of hours: 01375 372468 (Fax 01375 397080)</p>

<b>For Official Use Only</b>		
<input type="checkbox"/> No further action  <input type="checkbox"/> No further action referral to other agency  <input type="checkbox"/> SET SAF4 completed	<input type="checkbox"/> Case Management Resolution  <input type="checkbox"/> SET SAF4 completed	<input type="checkbox"/> Proceed to information gathering (Adult protection SET SAF2)
Key team referred to:		Tel No
Name:		
Address:		Mobile:
		E-mail:

### APPENDIX 3: SET SAF FORMS

Referrer updated <input type="checkbox"/> By Whom
If referrer not updated reasons why:
Signed:
Date:

# GUIDANCE NOTES FOR COMPLETING SET SAF1 FORM

*At all stages there must be an ongoing and documented RISK MANAGEMENT PLAN (SET SAF Risk)*

### **Introduction**

The Adult Concern form can be used by anyone to begin communication between key agencies involved in the adult safeguarding process.

The form should be used to record any specific concerns or incidents that relate directly to the care or welfare of an adult, it is not to be used to outline generalised non specific concerns that would normally be addressed through social or care work process and involvement.

The form must be used whenever there are concerns that may identify possible abuse against an individual. The form should only be completed in respect of the alleged victim.

Details of the referral must always be recorded accurately and without delay. However

*Completion of form SET1 must not delay immediate action being taken where necessary to ensure the safety of the vulnerable adult and the preservation of evidence if it is suspected that a crime has been committed.*

### **Section 1 – Person you are concerned about**

This section is for you to tell us who you are concerned about, it is important to complete as much identification information as possible, as this will help in ensuring that the correct person is identified from the information provided.

The relative/main carer section should include the person closest to the individual who may need to be contacted about the concerns (unless this person is identified as being part of the concern – if so please identify the person in section 4 of the alert form).

### **Section 2 – Telling us who you are**

This section is for the person raising the concern to identify themselves. This part of the form should identify who this person is, and contact information so that further information can be obtained if required.

In the event that the person does not wish to be identified for reasons of anonymity, while reasonable efforts should be made to encourage the person to give contact information as this may assist in the safeguarding processes, if the answer is still no, then please state this in this section.

### **Section 3- Current situation and details of the incident/concern(s) being raised**

This section of the form is critical to identify if the person or other people remain at risk. In this section it is important to state the actual risk, not unspecified vulnerability – i.e. this person could be at risk if someone wanted to take money from them etc – the risk stated must relate directly to the specific concern that has instigated the completion of the alert – for *example where it is alleged that someone has been*

## APPENDIX 3: SET SAF FORMS

*assaulted by a staff member who is still in contact with the service user(s) then this would need to be highlighted as a current risk.*

### Details of the concern

This section is for telling us the main reason for the alert and needs to be a factual account or recording of the incident or event. It is important here to specify fact not opinion and will include observations stated by direct witnesses, the alleged victim, the location, time, date and anyone who was involved – including the identification of witnesses who may have been present in the area of the incident – this can be continued on a separate sheet, but please try to summarise as much as possible to present a clear pen picture of the incident, which may be read by someone who has no knowledge of the alleged victim or the service (if applicable).

### Brief/accurate description of injury

Use this section to briefly/accurately describe any injuries noted e.g. *yellowing 3cm bruise to underside of left upper arm.*

### Body chart completion/Doctor informed

Please use these boxes to identify whether or not these actions have been taken.

### Actions taken to safeguard the individuals

Please state here actions you have taken to reduce the risk of further incidents, these may include the removal of individual or alleged perpetrator from contact with each other or other parties, contacting other agencies – Police, GPs etc.

### Who else has been informed?

Identify which other people (professionals and others) have been made aware of the concern or incident(s), please list names, roles and any reference number.

### Crime reference number

Number obtained from police when reporting a crime.

## **Section 4- Details of alleged perpetrator**

This section is for identifying a person or persons who it is believed have contributed specifically to the incident or concern mentioned in the previous section. It is important that any person named is as a direct consequence of specific allegation and identification by the alleged victim or direct witness. It is not for speculation – please complete as much as is known – if this is single name i.e. “John” then please use this, if the person is not known, then please state this. In any incidents where the alleged abuser is a member of staff, please ensure this information is provided.

## SET SAF 2

### Record of Adult Safeguards Process

Name of service user(s):

Reference No(s):

Date of receipt of SET SAF1:

Team:

Co-ordinator of discussion/meeting:

#### Reason(s) for Progression from SET SAF1

#### Agencies/Individuals Contacted

Organisation/ individual (tick as appropriate)	<input checked="" type="checkbox"/>	Name	Relationship to person identified
CSCI	<input type="checkbox"/>		
Police	<input type="checkbox"/>		
Care Provider	<input type="checkbox"/>		
MH Partnership Trust	<input type="checkbox"/>		
GP	<input type="checkbox"/>		
District Nurse	<input type="checkbox"/>		
Other health professional	<input type="checkbox"/>		
Adults Safeguarding Service	<input type="checkbox"/>		

### APPENDIX 3: SET SAF FORMS

Contracts/ Commissioning	<input type="checkbox"/>		
Carer	<input type="checkbox"/>		
Relative/Friend/ neighbour	<input type="checkbox"/>		
Advocate	<input type="checkbox"/>		
Assessment and Care Management	<input type="checkbox"/>		
	<input type="checkbox"/>		
	<input type="checkbox"/>		

### Intervention/Actions/Reports/Incident sheets/requested

Activity	By Who	Date to be implemented/ completed

## APPENDIX 3: SET SAF FORMS

### **Main Issues Identified**

*(please summarise using bullet points)*

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### **Action/Strategies agreed**

<i>Action/Activity</i>	<i>Person Responsible</i>	<i>To be completed by (date)</i>

## APPENDIX 3: SET SAF FORMS

### **Feedback to Service user/carer**

*(Outcomes of meeting (please state person responsible and outline of agreed feedback))*

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### ***Professional responsible for co ordination of Action/Strategies:***

Name:

Role:

#### **Contact Details**

Telephone:

Email:

Fax:

**If NFA or when case is concluded a SET SAF4 must be completed and sent as directed.**

### GUIDANCE NOTES FOR THE COMPLETION OF SET SAF2 FORM

*At all stages there must be an ongoing and documented RISK MANAGEMENT PLAN (SET SAF Risk)*

#### **Record of Process**

The SET SAF 2 acts as a checklist for the process followed to gather more information should the concern not be resolved or addressed after the receipt of the SET SAF 1.

The document should be used as a record of the preliminary information collected and requested through the initial investigation.

The form needs to be completed fully and to include the names of all individuals / professionals / agencies from which feedback or reports have been requested.

The form is also used to highlight additional information received since the original referral, and also to record any safeguarding strategies and outcomes agreed at this point.

The evaluation of information gathered on the SET SAF 2 during this process will help to establish the direction the process needs to follow.

## SET SAF 3

### Adult Safeguards Meeting Record

**THE CONTENTS OF THIS DOCUMENT ARE CONFIDENTIAL AND SHOULD NOT BE DISCLOSED TO A THIRD PARTY WITHOUT PRIOR PERMISSION FROM THE CHAIR**

#### SECTION 1

Name of service user(s):

Reference No(s):

Is Service user Aware?:

YES/NO

Service User Attending meeting?:

YES/NO

Date of meeting:

Chair:

Minutes:

#### Attendance

Organisation/ individual (tick as appropriate)	<input checked="" type="checkbox"/>	Name	Role and Responsibility
CSCI	<input type="checkbox"/>		
Police	<input type="checkbox"/>		
Care Provider	<input type="checkbox"/>		
MH Partnership Trust	<input type="checkbox"/>		
GP	<input type="checkbox"/>		
District Nurse	<input type="checkbox"/>		
Other health professional	<input type="checkbox"/>		
Adult Safeguarding Service	<input type="checkbox"/>		
Contract/ Commissioning	<input type="checkbox"/>		
Carer	<input type="checkbox"/>		
Relative/Friend/ neighbour	<input type="checkbox"/>		
Advocate	<input type="checkbox"/>		
Assessment and Care Management	<input type="checkbox"/>		
	<input type="checkbox"/>		
	<input type="checkbox"/>		

## APPENDIX 3: SET SAF FORMS

### **Reports received**

*(To include original Adult concern alert form)*

Report	From	Dated
Comments:		

## APPENDIX 3: SET SAF FORMS

### **Background to current situation (including date of alleged incident/(s))**

### **Issues raised/summary of discussion** (include any disagreements)

## APPENDIX 3: SET SAF FORMS

### SECTION 2

#### Decisions and actions agreed (Section 2 to be circulated to meeting attendees within 2 working days of meeting)

*(Detail all direct actions from the discussion)*

Action/Activity	Person Responsible	Timescale

Comments:

*Link Professional for Co-ordination of Actions/Activity*

Name:

Role:

Contact Details

Telephone:

Email:

Fax:

## APPENDIX 3: SET SAF FORMS

### SECTION 3

#### Feedback to Service user/carer

*(Outcomes of meeting (please state person responsible and outline of agreed feedback)*

**If notes are not circulated to service user please record the reasons  
why**

#### Review arrangements

*(How will the situation be reviewed and when, identify who is responsible for arranging the review)*

**Signed:**

**(chair)**

**Date:**

*(only to be signed when agreement reached on content from all attendees)*

**Copies to:**

### GUIDANCE NOTES FOR COMPLETION OF SET SAF 3 – MEETING RECORD

Where information gathered through the SET SAF forms 1 and 2 dictates that a formal safeguards meeting is required, the SET SAF 3 should be used as the standard format to record the meeting, list of attendees, summaries of the original concern and discussions held.

The outcomes of the meeting and actions should also be fully recorded on the SET SAF 3 to include the names of people who will have responsibility for these actions/tasks, alongside clear and realistic timescales.

In a similar way to the CPA process, actions and tasks can only be allocated to attendees present at the meeting, in the event that an action needs to be passed to someone not present, then an attendee needs to be identified to perform this role, and this identified as a separate action and recorded with names and timescales in the action plan.

Section 3 of the form should be completed and distributed to all meeting attendees within 48 hours of the meeting. If necessary this can be done in advance of the SET SAF3 being sent out in its entirety.

At the meeting a coordinator for the action plan will need to be identified and noted, this person will also act as a central point of contact for information gathering.

The SET SAF3 should be circulated to all who attend within 10 working days. Any questions or clarity about the content of the form must be made to the chair within 5 working days of receipt. Only the chair can agree to any changes to the content of the form.

The adult safeguarding meeting is confidential and minutes can only be distributed to those agency members attending or invited to attend the meeting or other designated managers of the agencies whose names shall appear on the distribution list on the front of the SET SAF3

(The SET SAF 2 and 3 do not require information only copies to be sent to the Adult Safeguards Unit, these should be kept in relevant files and available for audit purposes as required).

## APPENDIX 3: SET SAF FORMS

### SET SAF 4

Name of service user(s):	Ref No(s):
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Date of Original Referral

#### **Summary of Original Concern/incident(s)**

*(Outline of issues from original referral)*

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#### **Actions Taken in Response to Concern**

(What involvements, Actions, Meetings have taken place?)

<i>Action/Activity</i>	<i>Person Responsible</i>	<i>Date Completed</i>

## APPENDIX 3: SET SAF FORMS

### Outcomes

Case Management Resolution	<input type="checkbox"/>	Substantiated	<input type="checkbox"/>
Inconclusive	<input type="checkbox"/>	Redirect to Other agency (Specify organisation and contact details in `reasons for case closure` box below)	<input type="checkbox"/>
Unsubstantiated	<input type="checkbox"/>		
Please state how original concern/risk has risk been addressed to stop or reduce similar issues arising			
Has service user been informed of outcome? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Has referrer been informed of outcome? Yes <input type="checkbox"/> No <input type="checkbox"/>			
If alleged perpetrator aware of referral have they been informed of outcome? Yes <input type="checkbox"/> No <input type="checkbox"/> (If yes by whom )			
Is service user satisfied with outcome? Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know <input type="checkbox"/>			
Is referrer satisfied with outcome? Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know <input type="checkbox"/>			
If no or don't know to any of the above please state reasons			

### Reason(s) for Case Closure

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**Signed:** (Practitioner)

**Date:**

**Signed:** (Manager)

**Date:**

**Copies to  
(including Safeguarding Adults Coordinator/ Adults Safeguards Unit)**

## GUIDANCE NOTES FOR THE COMPLETION OF SET SAF 4 – CASE MONITORING AND CLOSURE FORM

This form has been designed to track the progress of a case.

### Summary of Original Concern/incident(s)

This section should be used to briefly summarize the original concerns that triggered the case.

### Actions Taken in Response to Concern

This section should be used to record any significant events that occur for example meetings, moves, arrests inspections etc. Where necessary cross reference to other documents (for example a SET3) to avoid replication.

### Closure

The form must clearly state the reasons for the closure and offer a summary of evidence as to how and why this decision has been taken; the form will need to be countersigned by the responsible team manager.

On completion,

When the form has been completed and a copy retained for team/file use, please send a copy of the form to:

Essex:

The Adult Safeguards Unit

Fax No: 01245 434016 – For the attention of Emmet Perry

e-mail: [Q&D.GenericBusinessAdmin@essexcc.gov.uk](mailto:Q&D.GenericBusinessAdmin@essexcc.gov.uk)

Thurrock

Southend

**APPENDIX 3: SET SAF FORMS**

**SET SAF RISK**

RISK INDICATORS for (Name of Vulnerable person)	Yes	No	RMP	What is the victims level of concern? High, Medium, Low?
Is the alleged abuser a carer of the Vulnerable person?				
Is the victim a carer of the alleged abuser?				
Has there been any sexual abuse?				
Has there been any physical abuse?				
Is there fear of further abuse or reprisals from alleged abuser or other persons?				
Is the victim dependent on alleged abuser for basic needs?				
Does the alleged abuser administer medication to the vulnerable person?				
Is the victim subject to financial abuse				
Is the victim subject to emotional/psychological abuse?				
Does the victim feel safe in their current environment?				
Does the victim have fears about disclosing abuse?				
Is the victim isolated from family or friends or culturally or religiously isolated from their community?				
Are the victim's coping strategies posing any increased risks e.g. alcohol, drugs, suicidal thoughts, etc.				
Are there children in the household?				
Any other other identified risks to be included on risk management plan.				

ASSESSOR NAME .....

DATE .....

**APPENDIX 3: SET SAF FORMS**

YOUR RISK MANAGEMENT PLAN

Your name

Your date of birth

Assessor name

Identification number

Date of plan

RISK	YOUR PERSPECTIVE OF PRIORITY	MANAGEMENT PLAN	REMAINING RISK

Reviewed/date .....

Your signature

Assessors signature

### APPENDIX 4: BODY CHARTS

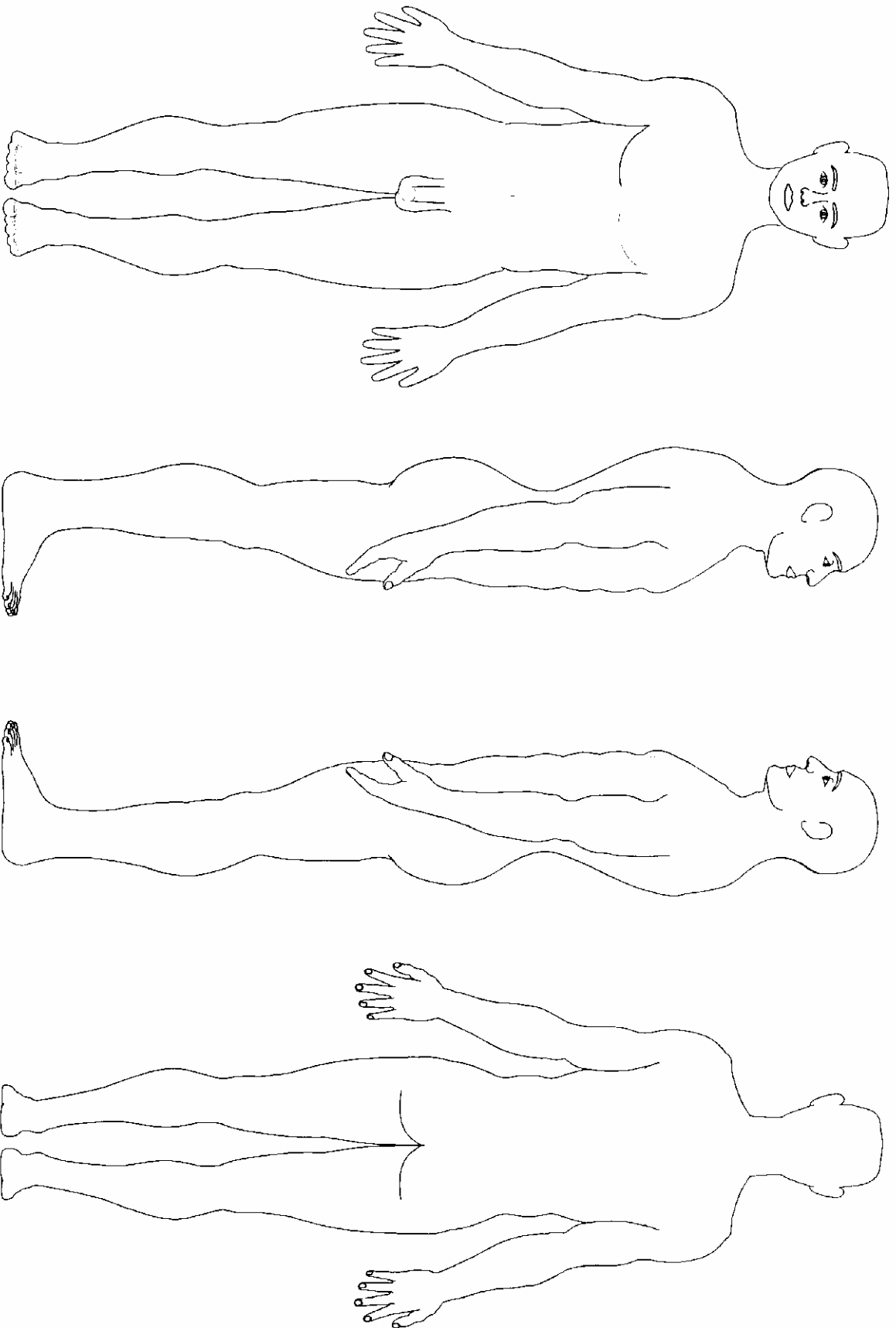
The chart overleaf is a useful and simple way of recording injuries as an aid to later diagnosis. It is better to record what is actually observed than to speculate on the cause of the injuries at this stage.

If the body chart is to serve as a monitoring tool for minor injuries observed over a period of weeks (or even months), **a new body chart should be used on each occasion**. It is therefore very important to be consistent in the method of recording injuries so that comparisons can be made with earlier charts. **Where several different staff may be completing the monitoring forms, managers should ensure they understand what is required of them.**

The following points should be covered:

- describe any marks, swelling, lacerations or other injuries carefully (cuts, bruises scratches)
- describe the colour (brown/yellow/blue), size and shape of any bruises and indicate their location on the body chart; also describe any pattern if there are several bruises close together
- briefly list any relevant circumstances witnessed, such as anger or aggression by vulnerable adult or by anyone in contact with the vulnerable adult
- also record any explanations of injuries given immediately by the vulnerable adult and any other witnesses
- ensure that for each chart completed the date and time of examination are clearly entered along with the name of the person completing the chart.

Body chart - male

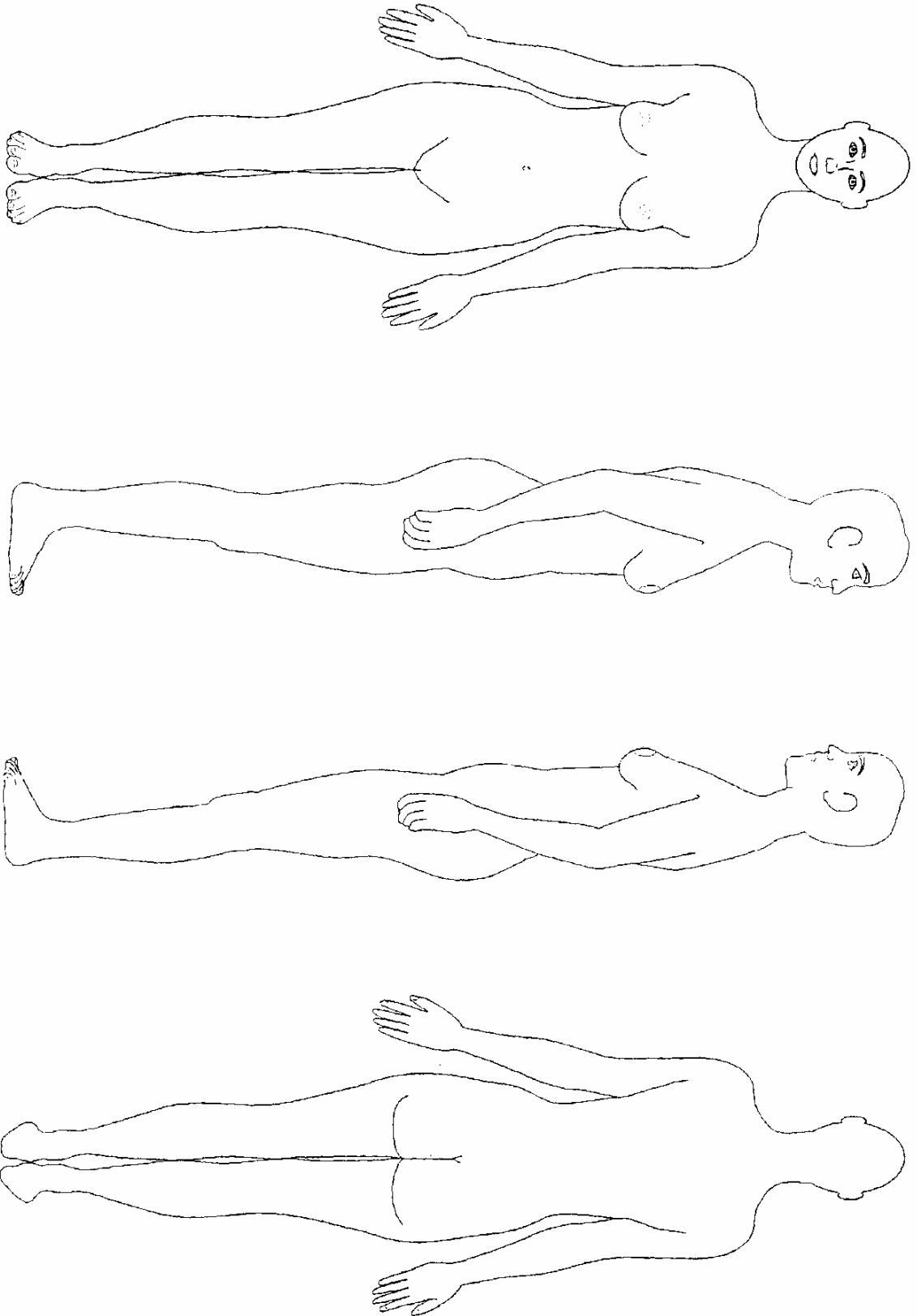


Please describe any marks you make on the chart e.g. cut, bite, bruise (and whether yellow or blue etc.)

Completed by: \_\_\_\_\_ Date and time: \_\_\_\_\_

APPENDIX 4: BODY CHARTS

Body chart - female



Please describe any marks you make on the chart e.g. cut, bite, bruise (and whether yellow or blue etc.)

Completed by: \_\_\_\_\_ Date and time: \_\_\_\_\_

## APPENDIX 4: BODY CHARTS