117. Guidance on responding to self neglect and persistent welfare concerns

Recognising risk of abuse and neglect is an essential component of the safeguarding duty, but so to is ensuring an effective response that manages that risk in a manner that respects an adult's personal dignity, physical, mental and emotional wellbeing and the control they wish to exert over their own lives. Failure to do so can alienate the adult at risk and unwittingly increase the risk of harm if the adult then withdraws from necessary support.

When an adult with needs for care and support appears to be at risk of self neglect, is refusing care and support despite persistent welfare concerns or whose self-neglecting behaviours pose a risk to others it can be difficult for practitioners or concerned carers, friends/family members to understand how various legal powers and duties should be applied to find an appropriate solution.

The purpose of this guidance is to support practitioners, adults and their carers/family members to identify when to raise concerns regarding poor self care or lack of care for living conditions, set out what they may expect by way of a response and support defensible decision making in accordance with our duty of care. The multi-agency Risk Management Framework included in this policy provides an effective tool for responding to cases of self neglect and persistent welfare concerns.

118. What is self neglect?

The Care Act Guidance advises that 'self neglect' covers a wide range of behaviour including neglecting to care for one's personal hygiene, health or surroundings and includes behaviour such as hoarding. Research literature states the term 'self-neglect' is commonly used to refer to:

- Lack of self-care: in personal hygiene, in adhering to daily needs, in refusal of essential care or necessary medical treatment
- Lack of care of the living environment: hoarding, squalor and infestation

These definitions are a useful starting point, but interpretation needs to guard against an assessor's subjective and value-based interpretations. The 4 LSAB therefore recommends agencies consider the following aspects in relation to self-neglect:

- lack of care for self to an extent it threatens personal health and safety
- neglecting to care for personal hygiene, health or surroundings such that it has significant impact on the person's wellbeing or creates a public health hazard
- inability to avoid harm to self
- failure to seek help or access services to meet necessary health or social care needs

The LSAB requires agencies to think of these issues in a broad context – not just in terms of obvious manifestations such as hoarding. Other areas to consider would include; substance misuse issues, individuals with diagnosis of high functioning Autistic Spectrum Disorder who may have difficulties that bring them into frequent contact with services, prostitution wherein there may be situational incapacity or exploitation, people subject to frequent 'Missing Persons Alerts' wherein they may be putting themselves at risk of sexual exploitation or other significant harm, people with significant mobility issues who are not taking action to protect themselves from fire risk, those who are non concordant with medication, whom are Bariatric patients or whom as a result of vulnerabilities linked to their care and support needs are putting themselves at repeated high risk of significant harm.

LSAB promotes early intervention as the most effective means to manage cases where self-neglect is suspected or there are concerns regarding a vulnerable person's disengagement despite persistent welfare concerns. Experience has demonstrated that delaying intervention under a person's circumstances have become severe is costly, both in terms of the person's wellbeing and public resources.

It should be noted that self–neglect may not prompt a section 42 enquiry. A judgement should be made on a case by case basis. A decision on whether to respond is required under safeguarding will depend on the adult's ability to protect themselves by controlling their own behaviour. There may come a point when they are unable to do this without eternal support. The multi-agency Risk Management Framework included in section 3 of this Safeguarding Policy and Guidance provides an effective tool for responding to cases of self neglect and persistent welfare concerns where a section 42 enquiry is not being undertaken.

People working in LSAB partner agencies therefore have a vital role in the early recognition and prevention of self neglect and have a responsibility to recognise and act upon the risk factors associated with self neglect. This includes undertaking sufficiently robust initial enquiries to identify the type and level of risk to ascertain an appropriate response according to the attached toolkit.

An initial response should take into account the underlying MSP principles, but it should be understood that it is not necessary to obtain consent to share information or conduct enquiries where there is a significant risk of harm or where the behaviours pose a risk of harm to others. This is explored in more detail later.

119. Assessment of risks associated with self neglect and persistent welfare concerns

Working together to effectively assess the needs of people at risk of self-neglect or with persistent welfare concerns.

The LSAB promotes the use of a 'Social Psychological Model' to assess and intervene in cases of self-neglect and persistent welfare concerns. This model recognizes the interplay of a variety of physical, mental, social, personal and environmental factors – both internal and external. This model highlights a variety of important factors for consideration:

- underlying mental disorder, trauma response and/or neuropsychological impairment
- diminishing social networks and/or economic resource
- physical and nutritional deterioration
- personal philosophy and identify

Where a person with needs of care and support is self neglecting and/or refusing services and in so doing

placing themselves or others at risk of significant harm, a multi-disciplinary approach may be the most effective in gathering information regarding the extent of the risk and identifying an appropriate person or agency to take the lead in coordinating a person centred, outcome focused response.

The 4 LSAB recommend the use of the attached threshold toolkit to identify poor self care and determine the appropriate response. This incorporates HFRS's flags which highlight serious risk in respect of home fires and includes the Clutter Image rating tool to assist practitioners objectively assess the impact of living conditions. Practitioners from across the partnership agencies are expected to complete this tool in order to assist them to determine the most effective pathway for support, but the LSAB would also invite non-statutory agencies, carers, family or friends to use the tool where they have concerns.

Pathways for support may vary across the pan Hampshire areas, this toolkit has been designed to support robust risk analysis and takes into account concerns that could trigger a response in line with various agencies' statutory or contractual duties. It is important therefore that all sections are completed and that those making the referral use the comments section to explain what evidence they have to justify the level of concern.

If, following completion of the threshold toolkit, a practitioner believes further work should be undertaken either to prevent needs for care and support escalating, in line with duties under s2 Care Act 2014 or to address a moderate risk they may wish to work with the adult to complete a comprehensive assessment form. This comprehensive assessment form must be completed In all cases where the needs are identified as high.

The risk assessment gives consideration to the following aspects of the person's life:

- Presentations of self-neglect and Observation of home situation
- The individual's perception of their situation
- Engagement in activities of daily living
- Functional and cognitive abilities of the person
- Family and social support networks, including support by voluntary organisations
- Underlying medical conditions
- Underlying mental health conditions or substance misuse issues

The assessment should also consider

- Environmental factors
- Domiciliary care and other services offered/in place and whether living conditions are preventing necessary care being provided
- Environmental health monitoring
- Money management and budgeting.

120. Intervention and management

Research has confirmed that the most important factor in securing successful outcomes from interventions is for practitioners to build a positive relationship with people. The focus should be on assisting them achieve outcomes that matter to them and promote their wellbeing within a jointly acceptable timeframe.

In line with 'Making Safeguarding Personal' principles of good practice the person should, as far as possible, be included and involved in the assessment process and in developing a plan to reduce or

eliminate identified risks. The person should be invited to attend any meetings and comment on any findings or proposed actions.

The Care Act guidance [pg.14.14] advises a 'broad community approach' to safeguarding responsibilities so it is vital that statutory bodies understand the full extent of statutory powers for intervention when living conditions pose risk to an adult at risk or others. A list of relevant statutory and common law provision is set out below, together with links to relevant statutory guidance and Codes of Practice practitioners and carers will be required to follow.

It is also important, however, to note that some agencies may have statutory duties to intervene which are not dependent on the characteristics of the adult at risk. They may also have wider powers and duties to support information gathering. Practitioners should also refer to the guidance on gaining access to an adult suspected to be at risk of neglect and abuse (at section 72) for support in relevant cases.

121. Key Agencies and their role

Local Safeguarding Adults Boards

The Care Act 2014 established Local Safeguarding Adults Boards as a forum where key leaders from the criminal justice, health and care system work together to improve the health and wellbeing of their local population. As such they will have strategic oversight of this guidance and monitor its successful implementation.

Public Health and Environmental Health Service ['EHS']

Currently this agency has a range of powers to intervene where a property is in a condition that is prejudicial to health, these powers do not rely on a presumption that the individual affected by such intervention lacks capacity. Under s31of the Public Health Act 1984 a local authority has the power to cleanse premises, and if the occupier fails to comply or is incapable of doing it themselves, take the necessary action and charge.Section.32 permits the entry and removal of a person from the property to enable action under s31. The Environmental Protection Act 1990 provides powers of entry to inspect premises and serve improvement or prohibition notices where there is a hazard.
It is anticipated that EHS will have a crucial role under the protocol as a frontline agency in raising concerns and early identification of such cases. In addition, where properties are verminous or pose a statutory nuisance, EHS will take a leading role in case managing the necessary investigations and determining the most effective means of intervention.

However, where the individual residing in conditions that pose a threat only to their own welfare the powers available to the EHS may have limited or no effect. In cases involving persistent hoarders the powers may only temporarily address and/or contain the problem.

Landlords

Landlord's, including in the private sector, have an obligation to ensure that their properties are in a good state of repair and are fit for human habitation. Where the tenant is responsible for the disrepair the landlord has a right of action, including ultimately seeking possessions of the premises. The role of the landlord and powers afforded to them suggests they have a key role in raising concerns to the statutory authorities to particular cases and that consideration should always be given to their inclusion within protection planning discussions.

Housing Department
Under Part 1 of the Housing Act 2004 the Housing department have powers to take enforcement action where there is any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise) and can require access to residential premises in their district to assess if such a hazard exists. The duty to inspect the property is restricted to where there is an official complaint made by either a Justice of the peace or parish council. However, where there is evidence that there is imminent risk of serious harm to the health and safety of the occupier the local authority has emergency powers to serve a Remedial Action notice or an emergency probation notice prohibiting the use of the property. Further there are powers to serve a deferred action notice and take emergency remedial action. There is no requirement that the property is owned by the local authority, nor is the capacity of the inhabitant relevant to the exercise of those powers. But similarly the use of these powers in isolation will have limited effect on those who have persistent behaviours.

Local Authority Housing Department will be key partners, where an adult is at risk of homelessness as a result of self-neglect or hoarding behaviour, the housing department will offer pro-active advice and assistance to individuals and practitioners involved in their care to minimise any risk of homelessness. Early involvement from this team, particularly when considering alternative temporary or permanent accommodation options, is therefore essential.

Adult Social Care Department
In many cases an assessment of the person's needs for care and support (s9-10 Care Act) or more detailed consideration of their ability to protect themselves from risk (under MCA and/or s42 Care Act) procedures will be the best route to provide an appropriate intervention in situations of hoarding or self-neglect.

Under this protocol where an individual is already in receipt of ASC, known to the service or appears eligible for ASC support the relevant team manager will initiate the first strategy discussion and will ensure an allocated social worker is assigned to complete necessary assessments, including of the individual's capacity and social care needs. The allocated worker will then lead the strategy meeting and act as lead in coordinating any plan for intervention.

Mental Health Services
Aside from the role as lead agency where the individual is eligible or believed to be eligible for services from secondary mental health service the mental health team will have a crucial role within any investigation under this protocol, not least because, for many individuals, hoarding or self-neglect are the manifestations of an underlying mental health condition. Powers conferred by the Mental Health Act 1983 ['MHA'] to Approved Mental Health Professionals (AMHP) afford this team opportunity to take such steps as they consider reasonably necessary and proportionate to protect a person from the immediate risk of significant harm.

Section 115 MHA confer powers of entry and inspection, whether there is approved mental health on a particular person, the council may at all reasonable times enter and inspect any premises other than a hospital in which a mentally disordered patient is living, where the assessor has reasonable cause to believe that the patient is not under proper care. It must be recognised that this power is reliant on the

reasonable suspicion that the individual is suffering from a mental illness. If there is no such suspicion this power is not available. Similarly, where an AMHP believes a person is suffering from a mental disorder is unable to care for himself and living alone (or otherwise being ill-treated or neglected) the AMHP can apply for a warrant under s135 MHA to enter a property, using force if necessary, to remove a patient for treatment or care. Individuals acting under powers conferred by the Act benefit from immunity under s129 MHA, whereas those seeking to obstruct the inspection of premises or the exercise of functions under the act are guilty of an offence under s.129 MHA, but it must be noted that this would only assist where a third party sought to obstruct an assessment.

Further the powers available under the MHA to detain an individual for compulsory treatment are limited in cases of hoarding because expert opinion believes the most effective treatment is that which is provided consensually. However, it may be useful in cases of self-neglect or where it is required to treat the manifestations or symptoms of hoarding.

Finally Mental Health services may also be included within strategy discussions/ meetings to advise on access to secondary psychological treatment options and to secure access for the individual.

Police

As with AMHPs the Police have powers of entry and so may prove pivotal in gaining access to conduct assessments if all else fails for persistent cases. Under Section 17 (1) (a) of the Police and Criminal Evident Act 1984, the police has power to enter without a warrant if required to save life; or limb or prevent serious damage to property; or recapture a person who is unlawfully at large while liable to detained. Under the common law, the doctrine of necessity[20] would provide a defence if force is used to gain entry to private property to apprehend a dangerous mentally disordered person in cases of serious harm to themselves or others within the community.[21] Therefore, the reasonableness of time will presumably depend upon the urgency of the situation.

Where a third party seeks to obstruct assessment or frustrate lawful intervention by statutory services the Police may have additional powers of arrest for offences under either s127 MHA or s44 MCA, but again it is recognised that these powers will be used only in exceptional circumstances.

Primary Health Services (GPs, SCAS Ambulance Service and District nurses)

Anecdotally it is believed that in cases of chronic or persistent self-neglect, where individuals are reluctant to engage with social care services they remain compliant with primary healthcare services and will access their GP, district nursing service etc. As such it is envisaged that primary healthcare services will adopt this protocol and work as part of the multi-disciplinary team. The key role for primary health services will be to raise concerns and provide information to the strategy discussions and continue to meet need in accordance with their professional standard and duty of care.

As set out above they will also be expected under the protocol to provide preventative advice and support and monitor adults at risk who are engaged with their service, show signs of self-neglect or hoarding but where this does not pose a risk of significant harm.

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[20] Mental Health Law (2010), p.114 doctrine under R v Bournewood Community and Mental Health NHS Trust, ex p. L [1998] 3 ALL E.R 289

[21] R. (on the application of Munjaz) v Mersey Care NHS Trust [2003] All ER (D) 265 (Jul)
Neutral Citation: [2003] EWCA Civ 1036

Hampshire Fire and Rescue Service
HFRS are best placed to work with individuals to assess and address any unacceptable fire risk or risk to wellbeing and to develop strategies to minimise significant harm cause by potential fire risks. In the past they have also raised concerns where called to addresses repeatedly or where homes have significant damage because of a fire and the individual continues to reside at that address.

Research into case reviews highlight that utilising public health/ housing legislative powers in isolation may not be the most effective use of resources, particularly where a coordinated approach could provide protection and promote a long term solution. However, partner agencies must consider their statutory duties and the powers they have that may aid in gathering information to enable an assessment. 'No professional should assume that someone else will pass on information which they think may be critical to the safety and wellbeing of the adult'[22]. The LSAB support a multi-agency response, all partners must be mindful of their respective duty of care and exercise powers in accordance with this. They should also be mindful of the duty (under s6-7 Care Act) to cooperate and that this must be performed in a way that promotes the well-being of adults [s.6(6) Care Act]. Agencies who determine that they are required to act, notwithstanding the person's capacitated or incapacitated opposition, should set out in writing their reasons for doing so.

Key considerations for assessment and protection planning processes

122. Mental Capacity Act and Best Interests

If the person leading the enquiry believes that the person lacks capacity to be involved in the assessment or planning process an assessment should be carried out to determine if the person has the capacity to make decisions. Where there is a dispute between practitioners or with the adult, carers or family members regarding a person's capacity then local authorities can seek a declaration from the Court of Protection.

Findings from safeguarding case reviews and audits identified practitioners have historically wrongly believe that because a person appears lucid or articulates opposition, they have capacity to 'choose' to reside in poor living conditions and that therefore statutory services have no powers to intervene. This guidance intends to challenges assumptions.

Capacity assessments will need to accurately record how the various statutory and contractual duties of the relevant agencies were explained to the person, consider whether the person understands those and the cumulative impact of seemingly smaller decisions and analyse whether resistance to accept support or execute actions to address concerns is due to an impairment affecting their decision making capacity.

*When someone is believed to be lacking mental capacity to make decisions for him/herself a*ny intervention or support offered must comply with the duties set out in the Mental Capacity Act 2005 and associated MCA Code of Practice.

Where the person continues to refuse all assistance and they have been assessed as having the mental capacity to understand the consequences of such actions, this should be fully recorded. Practitioners should also include a record of the efforts and actions taken by all agencies involved to provide support

[22] Pg 14.43 Care Act statutory guidance

and confirmation that they have considered alternative means to meet any duty of care owed to the person or others affected by the living conditions.

123. Advocacy

Section 67 of the Care Act imposes a duty on the local authority to arrange an independent advocate to facilitate an individual's involvement in their assessment, care planning, review and any safeguarding enquiry or SAR where they have 'substantial difficulty' participating. 'Substantial difficulty' is explained by reference to the 4 stage test of decision making under s.3 MCA [see s67(4) CA and pg. 6.33 guidance]. The duty to appoint an independent advocate falls away if the local authority is satisfied that an appropriate person, who is not professionally engaged in care or treatment for that individual, is available and willing to support the adult ***and*** the person consents to the appropriate person acting or, where lack capacity, it is in their best interests for that person to act.

If the person is believed to lack capacity to agree to support or execute agreed actions because of an impairment to the mind or brain, then there is a duty to appoint an independent advocate under s35 MCA.

The advocate or appropriate person must take an active role, assisting the adult understand their rights and challenge decisions they believe are inconsistent with local authority's duties to promote wellbeing. Where the person is lacks capacity on the specific decision then the advocate or appropriate person advises the local authority to identify the person's 'best interest' under s4 Mental Capacity Act 2005.

Considering impact on wellbeing

Practitioners assessing an adult for care and support or a carer's need for support must carefully consider the consequential impact on wellbeing. Whilst the person's own view is an essential factor in that decision the assessor is ultimate responsible for determining whether there is consequential significant impact on a person's wellbeing.

Therefore, if a capacitated person was neglecting their self care or living in poor housing conditions, denying any impact on their wellbeing, they could still be found to have eligible needs because it is for the assessor's to determine *objectively* whether the impact is consequential.

However, the duty to meet needs under the Care Act 2014 hinges on what needs the person themselves wants met. So whilst they may be found eligibility for care and support under the Care Act, the local authority has no explicit powers to compel an adult to accept care and support. Even where the person lacks capacity you may need additional legal authority to act to remove risk. Such cases may require the lead agency to make an application to the Court of Protection, or if the person has capacity to the High Court under their Inherent Jurisdiction. Practitioners should always seek legal advice from their respective services in those circumstances.

124. Links to relevant legislation, policy documents and Codes of Practice

Legislative Framework

- Human Rights Act 1998
- Care Act 2014
- National Health Service Act 2006
- Mental Capacity Act 2005
- Inherent Jurisdiction of the High Court

- Mental Health Act 1983
- Public Health Act 1936, Environmental Protection Act 1990
- Police & Criminal Evidence Act 1984
- Rights of Entry (Gas and Electricity Boards) Act 1986
- Animal Welfare Act 2006
- Prevention of Damage by Pests Act 1949
- Housing Act 2004
- Refuse Disposal (Amenity) Act 1978
- Coroners & Justice Act 2009
- Common Law – Gross negligence manslaughter
- Willful Neglect (Mental Capacity Act 2005, s44)
- Building Act 1984
- Public Health (Control of Disease) Act 1984
- Crime & Disorder Act 1998

Codes of Practice

Mental Capacity Act 2005[23]

Mental Health Act 1983 (revised 2007)[24]

Office of the Public Guardian (Mental Capacity Act)[25]

Department of Health (Mental Capacity Act Deprivation of Liberty Safeguards)[26]

Policy Documents

Multi-agency Policy, Procedures and Guidance (Southampton, Hampshire, Isle of Wight and Portsmouth)

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[23] *http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf*

[24] *http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Healthcare/Mentalhealth/InformationontheMentalHealthAct/DH_4001816*

[25] *https://www.gov.uk/government/organisations/office-of-the-public-guardian*

[26] *https://www.gov.uk/government/organisations/department-of-health*