



# 4LSAB Multi-Agency Guidance on Safeguarding Adults in Commissioned Services

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## 1. Guidance on Safeguarding in Commissioned Services - Introduction

This guidance is designed to provide a clear framework with which to respond to safeguarding concerns occurring in regulated NHS and social care settings. This framework recognises that promoting wellbeing and protecting safeguarding adults against abuse and neglect is an integral part of the commissioning and contracts processes and is underpinned by the following six principles:

Principle	Outcome Statement
Empowerment – people being supported and encouraged to make their own decisions and informed consent	“I am asked what I want as the outcomes from the safeguarding process and these directly inform what happens.”
Prevention – it’s better to take action before harm occurs	“I receive clear and simple information about what abuse is, how to recognise the signs and what I can do to seek help.”
Proportionality – least intrusive responses appropriate to presenting risks	“I am sure that the professionals will work in my interests, as I see them and they will only get involved as much as needed.”
Protection – support and representation for those in greatest need	“I get help and support to report abuse and neglect. I get help so that I am able to take part in the safeguarding process to the extent to which I want.”
Partnership – local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse	“I know that staff treat any personal and sensitive information in confidence, only sharing what is helpful and necessary. I am confident that professionals will work together and with me to get the best result for me.”
Accountability – accountability and transparency in delivering safeguarding	“I understand the role of everyone involved in my life and so do they.”

## 2. Provider responsibilities

There is an expectation that all Health and/or Social Care provider services, commissioned or funded, must have in place a range of processes to enable them to meet their duty of care to safeguard service users. In addition to providing high quality and safe care, providers are expected to:

- Have an up to date internal adult safeguarding policy and procedure consistent with the Hampshire, Isle of Wight, Portsmouth and Southampton Safeguarding Adults Multi Agency Policy.
- To ensure that all staff are aware of it and can act on concerns and allegations in accordance with the 4LSAB Allegations Management Framework. The policy provides details for the management of allegations relating to both children [Local Authority Designated Officer (LADO)] and adults [Safeguarding Allegations Management Advisor (SAMA)].
- Have care governance arrangements in place to prevent abuse or neglect.
- Have robust internal reporting mechanisms from the care staff to senior management/Board and vice versa to ensure relevant action, learning and feedback, in order to proactively monitor the risk of abuse and neglect in the care setting.
- Adopt robust recruitment and employment practices, with: references; right to work checks; gaps in employment checks; ID and appropriate DBS checks are in place prior to the commencement of employment. Ensure they have mechanisms in place for review and risk assessment as needed.
- Ensure all staff receive training on the nature of abuse and neglect, recognising the signs and how to report concerns.
- Ensure all staff have training in Safeguarding, Modern Slavery, the Mental Capacity Act, Deprivation of Liberty Safeguards/Liberty Protection Safeguards, and the Prevent agenda, commensurate with their roles and responsibilities.
- Have a whistle blowing policy to enable staff to raise concerns including outside their organisation to the Local Authority where necessary.
- Have robust mechanisms for service users, relatives and visitors to raise concerns including a Complaints Policy and relevant details for reporting to Adult Social Care.
- Ensure where necessary, all service users have access to an advocate.
- Ensure staff governed by professional regulation, understand how their professional standards and requirements underpin their organisational roles to prevent, recognise and respond to abuse and neglect.
- Ensure all job descriptions include a clear statement on the responsibility to prevent abuse and neglect and to report concerns. This statement must be commensurate with the responsibilities of the post.

- Ensure that disciplinary procedures are compatible with the responsibility to protect adults at risk of abuse or neglect.
- Correct abuse or neglect in their organisation and protect the adult from further harm as soon as possible. The Local Authority must be informed as well as the CQC and also the ICB where the latter is the commissioner.
- Respond to allegations of abuse, neglect or misconduct including having robust processes in place to investigate the actions of members of staff.
- Information relating to the action taken and what the outcome is must be made available to the Local Authority in line with the Care Act 2014.
- Co-operate with Section 42 safeguarding enquiries being made by or on behalf of the Local Authority. Provide access to premises, staff and service users and relatives (including people funding their own care).
- Records should be made available to any independent advocate supporting the adult.
- Report allegations against staff to the Safeguarding Allegations Management Advisor (SAMA) for their sector or the Safeguarding Adults Lead in their organisation.
- Ensure that the person who is alleged to have caused harm is appropriately informed and supported during the process and that information, advice and support is provided to the adult(s) harmed or their representative.

### 3. Commissioner responsibilities

As part of this framework, there is an expectation that commissioners will have in place a range of processes to ensure service users receive good quality, safe and effective care. They must assure themselves that a provider is capable and competent in responding to allegations of abuse or neglect, including having robust processes in place to investigate the actions of members of staff.

Commissioners should encourage an open culture around safeguarding, working in partnership with providers to ensure the best outcome for the adult. Commissioners will be transparent and proportionate in any decisions and actions taken to safeguarding service users and specifically it will:

- Place service users' well-being, quality of life and safety at the centre of all commissioning activity.
- Offer regular assurance of the safety and effectiveness of the services commissioned.

- Respond promptly and effectively to concerns about possible abuse or neglect arising in regulated care and support settings, adopting a person-led and outcome-focused approach.
- Make available a continuum of responses in order to ensure responses are proportionate to the nature and level of concerns raised and that these are undertaken by the appropriate body or organisation.
- Inform providers at the onset about the nature of any concerns and share minutes of meetings as appropriate.
- Request the provider to co-operate with a Section 42 enquiry when the concern relates to the actions or conduct of staff. The Local Authority will ultimately approve whether the provider's response has been sufficient to deal with the safeguarding issue and, if not, to undertake any enquiry of its own and any appropriate follow up action (e.g. referral to CQC, professional regulators).
- There will be circumstances when it is inappropriate or unsafe for the provider to undertake a section 42 enquiry. For example, this could be a serious conflict of interest on the part of the employer, concerns having been raised about ineffective past enquiries or serious, multiple concerns, or a matter that requires investigation by the police.
- Work in partnership with care providers ensuring responses are proportionate and based on a clear assessment and evidence of risk.
- Focus on service development and the achievement of sustained improvement within services.
- Maintain up to date, accurate information on all safeguarding adults concerns arising in regulated care settings to ensure informed decision making and risk assessment.
- Clearly document any actions or decisions taken under safeguarding adults arrangements.
- Work in partnership across Local Authority and NHS Commissioning organisations and other funding organisations sharing relevant information as appropriate.
- Inform CQC of safeguarding activity and progress as to per regulatory requirements.
- Make decisions to suspend and/or terminate a placement(s) independently of any enforcement action CQC may be taking and/or criminal justice action that may be in progress.
- Ensuring that appropriate processes are in place to respond swiftly and appropriately in the event of a home closure.

The ADASS Out-of-Area Safeguarding Adults Arrangements - Guidance for Inter-Authority Safeguarding Adults Enquiry and Protection Arrangements published in June 2016 will be used to determine which Local Authority should lead the safeguarding process and which clarifies respective roles and responsibilities of host and placing authorities e.g. host authorities convene and manage the overall safeguarding process whereas placing authorities undertake specific activities aimed at safeguarding the individual such as review, assessment, protection planning and monitoring of care. As this is an overarching Framework, each commissioning organisation will develop its own business process detailing how it will implement this framework internally.

#### **4. Responding to concerns about individuals**

Concerns relating to individual service users will be assessed by the Local Authority. If there is reasonable cause to suspect that an adult may be experiencing or at risk of abuse or neglect, then it will make (or cause to be made) enquiries to determine what (if any) action needs to be taken and by whom. The adult at risk (or their representative) should be asked their views on the situation and what outcome they are seeking and should be involved as far as possible in the process.

A person who has been assessed as lacking capacity to make decisions about their care and support should be provided with an Independent Mental Capacity Advocate (IMCA) if there is no one suitable to represent and support them. A person assessed as having capacity to make decisions about their care and support may be offered the support of an independent advocate if they would experience 'substantial difficulty' in being involved in the process and where there is no other suitable person to represent and support them. It would be the responsibility of the Local Authority to arrange advocacy support even when another organisation is leading the Section 42 enquiry. The outcome of the safeguarding enquiry and subsequent actions should be recorded on the client record system.

#### **5. Responding to concerns about organisational abuse**

Where there are allegations or concerns of organisational abuse where there is a high level of risk and/or complexity that places several service users at risk of harm or abuse. the 4LSAB Large Scale Safeguarding Enquiry Protocol should be followed.

For concerns about organizational abuse for which a Large Scale Safeguarding Enquiry is not indicated, the safeguarding process must be formally invoked (via a section 42 enquiry), be clearly documented and the evidence trail should provide information including:

- The nature of any allegations and evidence of harm arising from the neglect/poor practice alleged.
- Information about who is involved (adults harmed and people alleged to have caused harm), the period of time in which the harm is thought to have been occurring.

- Any history of safeguarding concerns, subsequent interventions and the outcome of these.
- The outcomes of the safeguarding enquiry and an assessment of these in the context of the provider's contractual requirements.
- Any other action taken to rectify the situation.
- An assessment of the risks posed to the service user(s) by remaining in the placement including an assessment of the broad risks to **all** service users and how this informs the purchasing decision.

Where care reviews are required on other service users to ascertain if they are also at risk, these should take place within the usual care management process and recorded as such. If harm or risk of harm, is indicated for any other service user during the course of these reviews, a safeguarding adults concern should then be raised for each individual for whom this is the case.

Contracts, procurement and quality improvement representatives should be actively involved in the safeguarding activity relating to organisational abuse and attend meetings as appropriate. In some circumstances, it may be appropriate for commissioning, contract team or quality improvement teams to lead the safeguarding enquiry.

Equally, where there is evidence of systemic abuse and neglect and non-compliance with regulatory standards, the CQC must be informed and requested to take action. Where there is evidence of potential criminal offences including offences relating to wilful ill-treatment or neglect, the police must be informed and requested to take action.

Wilful ill-treatment or neglect of an adult with needs of care and support is an offence under a number of statutes. Where the person lacks capacity, their willful ill treatment or neglect is an offence under section 44 of the Mental Capacity Act 2005. Section 127 of the Mental Health Act 1983 Act makes it a criminal offence to ill-treat or willfully neglect a person receiving treatment, subject to a guardianship order or subject to after-care under supervision for a mental disorder in hospital or mental nursing care home by staff. Wilful neglect or ill-treatment of adults in health and social care services is a criminal offence under the Criminal Justice and Courts Bill. This offence protects adults receiving domiciliary care but not those cared for informally, such as by a friend or family member. This offence allows the prosecution of both health and social care staff and organisations.

Commissioning organisations will keep records of safeguarding concerns and enquiries and their outcomes in relation to the services that they commission. .

Any repeating and/or escalating pattern of concerns within a service should trigger consideration of a Large Scale Safeguarding Enquiry to identify any underlying



issues which may be adversely impacting on the operational effectiveness of the service and the improvement actions required.

## 6. Enquiry Process Including Large Scale Safeguarding Enquiries

It is imperative that a meeting be held with all relevant agencies at the earliest opportunity and within five working days of the decision to progress to a Large Scale Safeguarding Enquiry.

Please refer to the 4LSAB Large Scale Safeguarding Enquiry protocol for detailed information about when to initiate a Large Scale Safeguarding Enquiry and the process to follow.

The responsible manager and/or registered manager or owner of the service should be informed as soon as possible of the concerns. Initially this should be done verbally and subsequently followed up in writing (a letter should be by recorded delivery) or by email with read and delivery receipt. All communications should explain the nature of the concerns, what aspect of the contract these relate to, the action needed to rectify the situation and the timescales within which this is to be achieved. The sanctions that will be applied in the case of non-compliance with the contract should also be stated.

## 7. Process for suspending or terminating placements

Restrictions on admissions or the suspension or termination of placements are consistent with the commissioner's duty of care, but a specific process should be followed to avoid or minimise the risk of litigation. This process would include making sure there is a clear evidence trail to justify the decision and ensuring that issues and concerns are compared to the requirements of the contract. Safeguarding provisions have been built into commissioning and contract requirements.

In the case of serious risk to the life, health or well-being of a service user and/or severe risk immediate action should be taken as part of the coordinated safeguarding process to protect the safety and well-being of service users such as suspending new placements, removal of the alleged person to have caused the harm, bringing in specialist staff to address issues identified and removing service users based on evidence of risk.

Please refer to Appendix A for suggested criteria for placing cautions or suspending placements.

## 8. Self-Funding and Direct Payments

The care and support statutory guidance issued under the Care Act 2014 states:

*“The local authority must be satisfied that the direct payment is being used to meet the care and support needs set out in the plan, and should therefore have systems in place*

*to proportionally monitor direct payments usage to ensure effective use of public money”.*

Direct payments should only be given and continued if certain conditions are met. If as part of a Safeguarding Enquiry, the Local Authority identify that one or more conditions have been breached, a decision can be taken to terminate the Direct Payment (section 33 (5) CA 2014. This would include concerns relating to “sub-standard care” and safeguarding. The Local Authority must be satisfied that the direct payment to the adult or nominated person is appropriate to meet the needs of that individual and as such has a duty to ensure that the care provided is safe. The Local Authority can therefore terminate the direct payment until the required standard has been achieved.

**Appendix A: Suggested criteria for placing cautions or suspending placements**

<b>Cautions</b>	<b>Suspensions</b>
Single issue rather than systemic	Concerns form part of a pattern of organisational abuse placing service users at significant risk
Not part of an apparent pattern of abuse	Section 42 enquiry relating to an individual service user identifies serious concerns for others
No previous history of similar incidents recorded for the service provider	Serious harm, injury or fatality involved
Concerns have occurred in the past, but at lengthy and infrequent intervals	Deliberate intent to exploit/harm indicated
Police investigation to establish if a crime has been committed	Criminal offences may have been committed
No clear criminal offence described in the safeguarding concern	Care/clinical/nursing standards fall well below accepted standards placing service users at significant risk
No indication of on-going risk to the adult or other service users	Significant breach of an implied or actual 'duty of care'
Poor management of service, however Provider co-operative and willing to engage	Systemic and on-going poor management of service placing service users at significant risk
Systemic issues / incident being managed appropriately by the provider	Inability of provider to sustain improvements
Limited involvement with the safeguarding process	Inability or unwillingness of provider to engage in the safeguarding process