



Hampshire Safeguarding Adults Board

# Safeguarding in Commissioned Services

Hampshire and Isle of Wight Guidance

May 2015

This guidance is designed to provide a clear framework with which to respond to safeguarding concerns occurring in regulated NHS and social care settings.

## Safeguarding in Commissioned Services

### 1. Introduction

- 1.1 This protocol has been jointly agreed between Hampshire, Portsmouth Southampton and Isle of Wight Safeguarding Adults Boards and 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 well-being and 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 is better to take action before harm occurs.	“ I receive clear and simple information about what abuse is, how to recognise the signs and what I can do to seek help.”
Proportionality – The least intrusive response appropriate to the risk presented.	“ I am sure that the professionals will work in my interest, as I see them and they will only get involved as much as needed.”
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.”

## Provider Responsibilities

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

- Have an up-to-date clear internal adult safeguarding policy and procedure consistent with the local Multi Agency Safeguarding Adults Policy and ensure all staff are aware of, and can act on concerns and allegations in accordance with the policy.
- Have clear care governance arrangements in place to prevent abuse or neglect.
- Have robust reporting mechanisms from the point of care to the senior management/ Board and from the management/ Board to the point of care to proactively monitor the risk of abuse and neglect in the care setting.
- Adopt robust recruitment and employment practices, with checkable references, checkable ID, and appropriate DBS checks in place at the commencement of employment.
- 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 the Mental Capacity Act, Deprivation of Liberty Safeguards, and the Prevent Agenda commensurate with their roles and responsibilities.
- Have a whistle blowing policy to enable staff to raise concerns outside their own chain of line management, including outside their organisation to the local authority where necessary.
- Have robust mechanisms for service users, relatives and visitors to raise concerns including how to make a complaint and the contact number for the local safeguarding adults team
- Ensure where necessary, all service users are supported by 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 CCG 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.
- Lead (at the request of the local authority) a section 42 enquiry providing any additional support the adult may need. This may be when the safeguarding enquiry relates to the conduct or actions of a staff member. Information relating to the action taken and what the outcome is must be made available to the local authority in line with s67 or s68 Care Act 2014.
- Fully cooperate with section 42 safeguarding enquiries being made by or on behalf of the local authority and to provide access to premises, staff and service users and relatives (including people funding their own care). Records should also be made available any independent advocate supporting the adult.
- Report allegations against staff to the Designated Safeguarding Adults Manager 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

- 3.1 As part of this Protocol, there is an expectation that commissioners will have in place a range of processes to ensure service users receive good quality and safe 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.
- 3.2 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.

- Regularly assuring themselves of the safety and effectiveness of the services commissioned.
- Respond promptly and robustly 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 lead a section 42 enquiry when the concern relates to the actions or conduct of staff. However, the local authority will have to satisfy itself that 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 may be circumstances when it is inappropriate or unsafe for the provider to lead 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 non-effective 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.
- Local authority and NHS commissioning organisations, other funding organisations and partner agencies working in partnership with each other sharing information as appropriate.
- The local authority working in partnership with CCGs in respect of its commissioner functions and its overview of the health economy.

- Inform CQC of safeguarding activity and progress so as to inform the regulatory process
  - 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.
- 3.3 The ADA SS safeguarding adults out of area protocol 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.
- 3.4 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

- 4.1 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 involved as far as possible in the process.
- 4.2 A person who has been assessed as lacking capacity to make decisions about their care and support should be provided with an 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 enquiry and subsequent actions should be recorded on the client record system.

## 5. Responding to concerns about organisational abuse

- 5.1 In cases of organisational abuse and where there are systemic issues, an appropriate manager will be designated to lead the safeguarding activity and to chair safeguarding meetings. This manager will oversee the formulation and implementation of service development plans.
- 5.2 If 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' referral should then be made for each individual for whom this is the case.
- 5.3 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.
- 5.4 Equally, where there is evidence of systemic abuse and neglect and non compliance with regulatory standards, CQC must be informed and requested to take action.
- 5.5 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 wilful 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 wilfully 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. In 2015, the wilful neglect or ill-treatment of adults in health and social care services becomes a criminal offence under the existing Criminal Justice and Courts Bill. This new 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.

- 5.6 Commissioners will maintain a record system to log all concerns and enquiries relating to the services they commission. These records will indicate whether the concerns raised were substantiated, unsubstantiated or undetermined. Upon subsequent referral this record system will be interrogated to ascertain any history of previous concerns relating to the service in question and the outcome of these. The name of the service will

be recorded instead of the service users'. The following additional information will be recorded:

- Name of the care provider
- Company name (if applicable)
- Client group served
- Type of concerns alleged
- Number of service users referred
- Number of service users reviewed
- Number of meetings and action taken

5.7 Any repeating and/or escalating pattern of concerns within a service should trigger a review to identify any underlying issues which may be adversely impacting on the operational effectiveness of the service and the improvement actions required.

## 6. Procedure for suspending or terminating placements

6.1 Placements can be suspended and/or terminated (and this would be 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.

6.2 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 e.g. suspending new placements, removal of the alleged perpetrator, bringing in specialist staff to address issues identified, by removing service users based on evidence of risk, etc. If not, the following process should be followed:

6.3 The safeguarding process must be formally invoked (via a section 42 enquiry) and clearly documented. The evidence trail should provide information including the following:

- 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 alerts, subsequent interventions and the outcome of these

- Whether the allegations/concerns have been upheld 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
- 6.4 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 this subsequently followed up in writing (a letter should be by recorded delivery). Both 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 to be achieved. The sanctions that will be applied in the case of non compliance with the contract should also be stated.
- 6.5 Following the letter, the provider will be invited to attend a specific meeting for further discussion about the concerns raised and to agree an action plan (with specified timescales) to rectify the situation. A review date will be set at which progress can be assessed. This meeting can be part of the safeguarding planning meeting or in addition to it.
- 6.6 The action plan should be reviewed within a specified date to ascertain if the agreed action has been undertaken and that any risks have been eliminated, minimised and/or managed.
- 6.7 The above process must be clearly and properly documented so as to provide evidence that safeguarding/adult protection concerns have been formally raised with the provider and the action needed to rectify the situation requested within a reasonable timescale and as agreed in the action plan. If there is sufficient evidence of the harm/neglect/poor practice and the provider has not taken the necessary steps to rectify the concerns raised, placements can be suspended and/or terminated.
- 6.8 The decision to suspend and/or terminate a placement can be made independently of any enforcement action CQC may be taking and criminal justice action.
- 6.9 The decision to continue with a placement must be subject to a full written risk assessment and the production of a safeguarding plan detailing monitoring and review arrangements.

- 6.10 Existing complaints procedures and/ or legal processes should be referred to by providers where there is a dispute.
- 6.11 Contracts and any other service specifications will reflect this framework and will include a clause stating that placements may be suspended or terminated where service users are at risk and where there is evidence that the provider has not taken the necessary action to address the situation.
- 6.12 If placements are suspended and/ or terminated, the person responsible for the contract should inform other neighbouring local authority and NHS commissioners. In addition, they should consider (on a case by case risk assessed basis) the need to share this information more widely, for example by informing service users, relatives, local authorities further a field, other organisations and the public. This is consistent with the commissioner's duty of care and the need to protect the public interest. This action will help ensure that purchasers (who may not have direct knowledge of safeguarding concerns about providers locally) can make informed purchasing decisions. Please refer to Appendix A for suggested criteria for placing cautions or suspending placements.

## Appendix A

### Suggested criteria for placing cautions or suspending placements

Cautions	Suspensions
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
	Criminal offences may have been committed
No clear criminal offence described in referral	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'
Provider co-operative and willing to engage	Systemic and on-going poor management of service placing service users at significant risk
Incident being managed appropriately by the service provider	Inability of provider to sustain improvements
	Inability or unwillingness of provider to engage in the safeguarding process