Bath and North East Somerset Local Safeguarding Adults Board

SAFEGUARDING ADULTS: GUIDANCE ON CRITERIA AND THRESHOLDS

1. Introduction

1.1 This document sets out guidelines on whether or not a case should be dealt with under the Safeguarding Adults procedures. This document should be read in conjunction with the ADASS South – West Region Safeguarding Adults Thresholds Guidance (March 2011)

1.2 The Guidance also sets out the criteria for considering whether a Whole Service Investigation is required

2. Definitions

2.1 Safeguarding Adults procedures apply where an adult at risk (someone 18 years old or over) is involved and where abuse is suspected.

2.1 An adult at risk is defined as someone:

"who is or may be in need of community care services[1] *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 exploitation."[2]

[1] Community Care Services' are taken to include all care services provided in any setting.

[2] No Secrets, DH 2000

2.3 Abuse is defined as follows:

A violation of an individual's human and civil rights by any other person or persons. It exists where the vulnerable person suffers significant harm or is exposed to significant risk.

In this context the definition of 'significant' will require a professional judgement.

2.4 An adult at risk may experience one or more of the following forms of abuse:

- Physical
- Sexual
- Psychological
- Financial or material
- Neglect
- Discriminatory abuse
- Institutionalised abuse

2.5 It is important to note that the abuse does not need to be deliberate. Some neglect is not deliberate. It is not the intent that needs to be considered but the harm that has resulted from the act or omission and which should trigger Safeguarding Adults procedures.

2.6 This Guidance must be applied in conjunction with other relevant legislation including (but not exclusively) the Mental Capacity Act 2005 and Human Rights Act 1998.

3. Significant Harm

3.1 Deciding whether *significant harm* has occurred, or may occur in the future, can be difficult, as each decision is likely to depend on a number of different factors.

3.2 If an alert meets the criteria, 'is this person an adult at risk?' and 'is abuse/neglect by a third party alleged?' a referral is accepted. In order to assess whether a referral crosses the threshold for use of the safeguarding adult procedures, the decision needs to be made as to whether 'significant harm' is likely to have occurred or not. The seriousness or extent of the abuse or neglect is often not clear when an alert is made. Sometimes a single violent episode may constitute significant harm, but more often it is the accumulation of significant events which are acute and longstanding.

When making the decision it is important to ensure there is sufficient information available to make an informed judgement and be mindful that not all breaches of human rights need a Safeguarding Adults response, only those that cross the threshold of *significant harm*.

3.3 The definition of *significant harm* used in Safeguarding Adults comes from a definition given by the Law Commission (Who Decides? 1997), which builds on the definition used in the Children Act 1989. It is as follows:

'Harm' should be taken to include not only ill treatment (including sexual abuse and forms of ill treatment which are not physical), but also the impairment of, or an avoidable deterioration in, physical or mental health; and the impairment of physical, intellectual, emotional, social or behavioural development'.

3.4 The phrase *impairment of development* is particularly relevant to people who have a learning disability or a cognitive impairment, and who may need support to be able to fulfil their potential to have best possible experience of life.

3.5 Whether abuse is intentional or not is not relevant; it is vital to ascertain what harm has been / is being done, what future harm might be done and whether this might be repeated.

3.6 B&NES Multi-Agency Safeguarding Adults Procedures (pp12-14) set out good practice guidelines for deciding what factors to consider when making the decision to progress the safeguarding procedures. These must be considered in order to determine whether a case meets the threshold for action to be taken to help protect the Service User from (potential) abuse *(see Appendix 1: Practice Guidance for Threshold Decisions).* Hyperlink to B&NES Multi – Agency Safeguarding Adult Procedures required here.

4. Self Neglect

4.1 Self neglect is not included within the Safeguarding Adults Policy and Procedures unless there are significant other factors – eg the role of others in maintaining the self neglect.

4.2 However, other actions can and - in most cases - should be taken to ensure the vulnerable adult is not at significant risk.

NB. We may need to reconsider this in light of the Law Commission Report which makes reference to self neglect and self harm falling under the umbrella of safeguarding.

5. Issues of Consent

5.1 It is important that, wherever possible, consent is sought from the adult considered to be at risk before Safeguarding Adults procedures are instigated. The safeguarding concerns should be discussed fully with the adult at risk and (where appropriate) family / carers and he/she should be given all the relevant information available in order to make an informed decision.

5.2 However, there may be situations where it is not possible or appropriate to gain meaningful consent. There will also be situations where consent is refused but it is still essential that an investigation is pursued.

5.3 There are four potential exceptions to the general rule outlined above are as follows:

1. If other people appear to be at risk of harm (adults or children)
2. If there is a 'legal restriction' or an overriding public interest
3. If the person is exposed to life threatening risk and they are unreasonably withholding their consent
4. If the person has impaired capacity or decision making in relation to the safeguarding issues and the withholding of consent

A 'legal restriction' in this context means that there may be exceptional circumstances where a service user makes a decision or intends to act in a way that is unlawful or where their care needs to be addressed under the Mental Health Act 1983.

An 'overriding public interest' refers to a situation where it is essential to share information in order to prevent a crime or to protect others from harm (Crime and Disorder Act 1998)

5.4 Where there are concerns about gaining consent, or the withholding of consent, it is essential to refer to your agency's policy on Consent in relation to Safeguarding.

6. Alerts / Concerns Which Do Not Meet the Threshold

6.1 Where it is decided that the threshold for Safeguarding Adults procedures has not been met, the responsible manager in CH&SC or AWP will decide what further action is needed and will do this in relation to their responsibilities under the NHS and Community Care Act 1990 and other health and social care legislation.

6.2 Good practice guidance on what to do if a Safeguarding alert has not reached the threshold of significant harm is provided in *Appendix 3: Alerts Falling Outside the Safeguarding Adults Procedures Threshold*

6.3 The Safeguarding Adults Multi-Agency Procedures Part 2 (pp13-14) states:

A decision that the threshold has not been reached and the case does not need to continue through the later stages of the Safeguarding procedure is based on the following:

That there is sufficient information available to make a decision that the situation does not involve abuse or exploitation

and

that significant harm is not indicated and that action through care management, the care programme approach or referral to health colleagues is appropriate

or

that the person is not a "vulnerable adult" in which case, if the person agrees, a referral will be made to other services such as the police, domestic violence unit, a refuge or victim support, or the person will be given information about other relevant services.

7. Recording

7.1 It is essential that all concerns are fully recorded on the appropriate system, including all 'alerts' which do not become full referrals.

7.2 This is important in order that patterns of alerts can be detected and also to ensure that statistics relating to Safeguarding matters are accurate

8. Communications

8.1 It is important to keep referring agencies informed of progress and of decision making, whether or not 'alerts' become full referrals. This includes the need to communicate the rationale behind decisions.

9. Whole Service Investigations

9.1 A Whole Service Investigation is an investigation which involves a number of individuals in the same establishment who are considered to be at risk. This will usually be led by the Councils Safeguarding Adult Coordinator in line with the B&NES Multi – Agency Policy and Procedures.

9.2 The decision to undertake a Whole Service Investigation can be difficult and may be as a result of poor practice coming to light rather than specific safeguarding alerts.

9.3 CH&SC and AWP have clear systems in place for monitoring and reporting concerns about a Care Home, in addition to monitoring arrangements by the Local Authority as the statutory lead for Safeguarding Adults

9.4 Guidance on the type of concerns which might trigger a Whole Service Investigation is included at *Appendix 2: Whole Service Investigations: Criteria for Consideration.*

9.5 A decision on whether to undertake a Safeguarding Adults Whole Service Investigation will take place is made by the responsible Commissioner

in consultation with the Safeguarding Co-ordinator and (where appropriate) other managers in CH&SC or AWP (together, where relevant, with the Care Quality Commission and the Police).

10. Additional Relevant Reading

No Secrets: Guidance on Developing and Implementing Multi Agency Policies and Procedures to Protect Vulnerable Adults from Abuse; Department of Health 2000

ADASS Safeguarding Adults: A National Framework of Standards for good practice and outcomes in adult protection work 2005

Safeguarding adults: report on the consultation on the review of *No Secrets,* Department of Health 2009

Clinical Governance and Adult Safeguarding - An Integrated Process, Department of Health 2010

National Framework for Reporting and Learning from Serious Incidents Requiring Investigation; National Patient Safety Agency, 2010

Self Assessment Quality & Performance Framework for Adult Safeguarding: South West ADASS/SHA 2010

Safeguarding Adults; the Role of the Health Practitioner, Department of Health 2011

Safeguarding Adults**:** The Role of Health Service Managers & their Boards, Department of Health 2011

Safeguarding Adults**:** The Role of NHS Commissioners, Department of Health 2011

South West Safeguarding Adults Threshold Guidance (SW ADASS Mar 2011)

B&NES Multi – Agency Safeguarding Adults Policy and Procedures (March 2010)

B&NES Multi – Agency Safeguarding Adults Consent Policy (Draft July 2011)

Draft Policy written July 11
To be reviewed
To be piloted

Appendix 1: Practice Guidance on Threshold Decisions

The following guidance is taken from a variety of sources and is not exhaustive; other factors may also need to be considered depending on the individual case.

1. Decision Stage: Good Practice Guidelines

Factors to be taken into account when deciding whether the case warrants formal safeguarding adult procedures include:

- The vulnerability of the individual
- The views and opinions of staff in partner agencies
- The nature and extent of the abusive acts
- The length of time it has been occurring
- The impact of the abuse on the adult who has been victimised or exploited
- The impact of the abuse on others
- The intent of the person alleged to be responsible for the abuse
- The risk of repeated or increasingly serious acts involving this or other vulnerable adults
- The mental capacity of the vulnerable adult (eg, are they able to act on the assessed risk or courses of action in the situation they are in?)
- The illegality of the alleged perpetrators action(s)
- The mental capacity of the alleged perpetrator

(extract *from Multi-Agency Safeguarding Adults Procedure April 10 p 12-14)*

In addition to this the following issues should be considered:

- The Non Acute and Social Care Commissioning Team should be consulted when the service user is in receipt of a commissioned service as they may be in receipt of additional information about either the adult at risk or the alleged perpetrator, which in itself may have not triggered a safeguarding alert at the time.
- The views and opinions of witnesses should be considered
- Case file observation notes should be checked for previously reported concerns
- Consider whether (the service user) is under duress
- The adult at risk's wishes and views need to be considered in the light of the possible impact on other adults at risk, or on children. Where an adult is not consenting to safeguarding adult procedures, a public interest decision under the Crime and Disorder Act (1998) will need to be made. Where children are identified to be at risk, a referral into Safeguarding Children's Services must be made.

  If the adult at risk is assessed as not having capacity to understand the risks and consequences of the alleged abuse or to consent to

protective measures, then a best interest decision needs to be made to ensure that appropriate safeguards are put in place to protect the individual from further harm.

- Threshold decisions are made on the basis of a combination of the factors below, the most important of which is **significant harm** to the individual concerned. The power dynamic between people in a harmful situation also needs to be assessed as a contributor to significant harm as powerlessness to stop or prevent on-going abuse (i.e. being unable to protect oneself)

2. 'Significant Harm'

The factors which should be considered when considering whether 'significant harm' is involved are set out in the following table:

Issue	**Seek information from**	**Factors in Making Decision**
Nature of alleged abuse	Person's own account (where appropriate / possible) Witness account Reports to police, CQC Alerter account	Does this alleged abuse meet the definitions of abuse in No Secrets? Did the alleged abuse lead to actual harm? Is there a strong possibility it will lead to future harm? Is there significant harm?
Power issues		
The person needs the assistance of others to attend to their basic needs	Person's own account Alerter account Agency records	Is the person experiencing difficulties in accessing protection or ensuring their own human or civil rights are met? Is there potential for the risk to increase because the alleged perpetrator is responsible for the persons care or well being?
The person lacks the mental capacity to assess risk or decide on protective courses of action	Mental capacity assessment	Is the person's vulnerability and likelihood of significant harm increased as a result of them lacking mental capacity to: • Understand the nature of the abuse to which they have been or continue to be allegedly subjected • Understand and assess the risks and consequences of the abuse to which they are being or continue to be allegedly subjected • Consent to protective measures and decide on a course of action?

Issue	Seek information from	Factors in Making Decision
The person is under duress	Person's own account (interview separately) Accounts of others, eg. alerter, other agencies Records	Are there others in control of the person's life, either by controlling access to services, delivering care, living at the same address, who are exerting duress? Are there concerns regarding the mental capacity of the 'alleged perpetrator' in that they: • Do not understand that their actions are abusive and harmful, and / or • Do not understand the risks and consequences associated with their actions

Issue	Seek information from	Factors in Making Decision
The person is isolated	Person's own account / accounts of others, eg. alerter, other agencies Records	Is the isolation making it hard for the person to self protect or get assistance? Do they have family or friends who will speak up on their behalf if needed? Is there the likelihood of the person being targeted by people who want to exploit them?
The person has experienced previous abuse	Person's own account / accounts of others, eg. alerter, other agencies Police records Other records	Does the person feel powerless and unable to change their situation? Do the person's internalised feelings of worthlessness, powerlessness, or low expectations of others (possibly as a result of their own abuse or the abuse of others) have an impact on the situation? Has the person experienced domestic abuse? Are they still in an abusive relationship? If a previously abusive partner or family member is now dependent on the person they have abused (domestic abuse or child abuse) there is a possibility of retribution, or maintenance of previous power dynamics.

Issue	Seek information from	Factors in Making Decision
The person at risk, or the person allegedly harming them, is addicted to substances or gambling	Person's own account / accounts of others, eg. alerter, other agencies Records	Is the addiction affecting the alleged abusive situation? Is it likely to prevent action being taken to resolve the safeguarding situation? Is the person dependent on the alleged abuser to sustain their addiction? Does the alleged abuser use the person at risk to maintain their habits rather than focusing on the person's well being? Is the influence of addiction leading to risky behaviour, dis-inhibition and poor judgments?
Impact of the alleged abuse on the person at risk		
Physical impact	Documented injuries Accounts / reports from medical practitioners Person's own account / accounts of others	Safeguarding Adults procedures are designed to protect people who are unable to protect themselves without assistance, therefore any physical injury should lead to consideration of use of SA procedures
Emotional impact	Person's own account Observations of others	What impact is the emotional distress having on the person's quality of life? Is the impact immediately obvious? Is there potential that it will emerge at a later date? Does the person appear to be having difficulty remembering the cause of the incident or event, but is showing general anxiety or fearfulness? Is the person having difficulty articulating their feelings?
Other risks		

Issue	Seek information from	Factors in Making Decision
This has occurred in the past	Records Person's own account /	Is there a pattern of incidents suggesting this is not a "one off "event and that there is a possibility that the person, or others, are still at

	accounts of others	risk?
Likelihood that the risk will occur again	Risk assessment using all the above	Does the allegedly abusive person still have contact with the person? Is the person still living in circumstances that mean other incidents may occur if risk factors are not explored?
Others, including children, are at risk of further harm	Records Person's own account / accounts of others	Is there a need to make a referral to Safeguarding Children's services? Should information be passed to MAPPA and MARAC? If others are at risk, Safeguarding procedures will need to be used
Course of action		
What is the person's preferred course of action?	Person's own account	Has the person concerned indicated that they want no further action taken? Issues of consent and public interest disclosure need to be fully considered. Are there any children at risk for which a referral to Safeguarding Children's Services is required ('Hear the voice of the child') Is there any early information on what their preferred outcomes are? Are they aware of what the use of the SA procedures can offer to help? Is the person at great risk of further significant harm? Does the person lack mental capacity to make this decision? Is a best interest decision required?

Appendix 2

Whole Service Safeguarding Investigations: Criteria for Consideration

Please note that this Practice Guidance is for guidance only and is not exhaustive

The presentation of concerns might result from

- Investigation into the care of one person which then indicates that the practices within the service may be putting other vulnerable people at risk.
- A whistle blower within the service
- A poor CQC review outcome
- Reports from commissioners undertaking QA monitoring
- Reports or complaints from service users, professionals or family members and friends.
- **An accumulation of (? No) Safeguarding Alerts of a (? Length) period of time**

The common thread is a significant breach of CQC essential standards of quality and safety (2010). Problems may emerge as:

- poor hydration/nutrition
- widespread neglect of other basic needs such as medical care, medication and hygiene
- lack of dignity and respect
- poor care planning
- poor risk assessment and/or management
- lack of person centred approaches
- ignorance of health and safety, including moving and handling
- dirty environments
- a high number of medication errors
- Pressure sores (Grade 3 and 4) where there are concerns that neglect may have occurred.

Underpinning these is often a lack of clear leadership, concerns about staff competence and a culture of poor practice. Occasionally, there may be members of staff who plan to exploit these environments, in these cases patterns of theft, sexual assault or physical assault may emerge.

“Institutional abuse develops where there is a lack of leadership and supervision, poor staffing levels and where staffs fail to see the essential humanity of each patient. The consequence is that neglect or abuse can grow unrecognised or unchallenged” (Safeguarding Adults: A Guide for NHS Commissioners & Provider Boards 2011, page 10).

The numbers of people already affected is not significant, if these factors are present early identification and multi agency action plans may prevent further abuse and neglect.

To effect any change in such an environment, the multi agency safeguarding procedures are essential in bringing together key agencies (i.e. police, CQC, commissioners, safeguarding nurses, providers and social workers) to plan the investigation; arrange immediate support for people living in the care home or using the service; agree action plans to remedy failings; communication plans, etc. Cultural changes in institutions can take a long time to embed, forming a 'core group' of advisors and monitors will support these changes and lead to effectively implemented and monitored action plans.

Poor Practice and Abuse or Neglect

The difference between poor practice and neglect is much contested. The Mental Capacity Act (2005) cites two offences under Section 44 whereby a person/s 'may be guilty of an offence if they ill treat or wilfully neglect the person they care for or represent' if the adult at risk lacks the mental capacity to make relevant decisions regarding care and interventions to safeguard their health, safety and welfare. It is important that this is taken into consideration when neglect or poor practice is suspected.

If a person is totally dependent on others assistance to meet basic needs, continual "poor practice" can lead to serious harm or death.

Useful elements in deciding if poor practice has occurred which does not require a safeguarding adults response are to ascertain if the concern:

- is a "one off" incident to one individual
- resulted in no harm
- indicates a need for a defined action.

Examples of the difference between poor practice and neglect can be seen in Appendix 1**.**

Incidents which indicate that poor practice is impacting on more than one adult, that poor practice is recurring and is not a "one off", must result in safeguarding adults procedures being initiated as these incidents can be good indicators of more wide spread, "institutional" abuse.

Sometimes a "one off" incident is an indication of a lowering of standards by health or care providers. Early indications of poor practice must be challenged and can be addressed using other systems, such as commissioners' quality assurance processes; care management reviews; complaint investigations; or human resources systems. All of these will ensure that the issue is properly investigated, recorded, resolved and monitored. Commissioners need to collate records of poor practice concerns and keep the safeguarding adults lead informed of any escalating concerns about individual agencies.

Note: The B&NES Non Acute Social Care Commissioning Team meet with CQC and the Councils Complaints Team to discuss the concerns and incidents reported.

Appendix 3

Alerts Falling Outside the Safeguarding Adults Procedures Threshold

1. Where a decision has been made not to instigate Safeguarding procedures, it is important that the person who made the alert is informed as soon as possible that Safeguarding Adults procedures are not thought to be appropriate.

2. An alerter who believes that action is being taken may cease to monitor or take protective action in the belief that others are involved.

3. Alerters are also keen to learn whether the alert has been appropriate or not, by providing information and feedback inappropriate referral patterns can be changed.

4. If the vulnerable adult themselves has made the alert or is aware that the alert had been made, they must also be informed that Safeguarding procedures will not be followed.

5. Any further action or recommendations made about the case must be recorded and care taken to ensure that these are carried out. For example, if a provider is asked to change a support plan to reduce the risk of a further incident then this action should be followed up with a care management review.