

# Safeguarding and Human Rights

Presented by  
Fiona Bateman, BSAB Independent Chair



## Welcome to our Lunch & Learn session



Please **MUTE** microphones, but raise a hand and do feel free to engage in discussions



If you would like to ask a question, please use the **CHAT** function



**RESPECT** the stories you hear and protect the identity of adults at risk through **CONFIDENTIALITY**



Take care of your own **WELLBEING** throughout this session

# How to report concerns in Barnet: Adults at risk

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**Social care direct at Barnet council are the point of first contact**

- **Tel 020 8359 5000 text (SMS) 07506 693707**  
**email [socialcaredirect@barnet.Gov.Uk](mailto:socialcaredirect@barnet.Gov.Uk)**

**Police community safety unit in an emergency 999**

- **Tel 020 8200 1212 email [sxmailbox-tib@met.Pnn.Police.Uk](mailto:sxmailbox-tib@met.Pnn.Police.Uk)**
- What happens after you report abuse:  
<https://www.Barnet.Gov.Uk/sites/default/files/assets/citizenportal/documents/adultsocialcare/whathappensafteryoureportabusebookletmay12.Pdf>
- Your concern should always be taken seriously and acknowledged. Usually, the adult at risk will be consulted and you should always be told if the concern will be investigated.
- Barnet MASH : [mash@barnet.gov.uk](mailto:mash@barnet.gov.uk) / 0208 359 4066 / [www.thebarnetscp.org.uk](http://www.thebarnetscp.org.uk)
- If you hadn't had this it is ok to ask again!



# 'Revisiting the Care Act' Guidance

New guidance published 31.03.22 explores s42 duties in light of what we've learnt in the 7 years since the Care Act was introduced *'This is about more than simply keeping someone safe, this is about respecting and protecting an individual's needs, aspirations and integrity, both mental and physical...making sure the environments they inhabit, and the people and services they encounter within them, reflect these same ideals.* Minister of State for Care & Mental Health

The guidance sets out expectations for those within senior leadership roles, including system leaders, Principal Social Workers, commissioners and practitioners undertaking safeguarding enquiries and all health, social care and public protection functions (safeguarding- with a little 's').

It calls for organisations that 'ensure their workforce is well trained and 'legally literate', embed collaboration in their organisation, promote trauma-informed practice, ensure workloads are reasonable and help practitioners to maintain a relational practice, build and promote positive relationships with local care providers.'

- <https://www.gov.uk/government/publications/revisiting-safeguarding-practice/revisiting-safeguarding-practice>

# Human rights- based approach to safeguarding and risk management

National and local guidance advocates a human rights-based approach to safeguarding and risk assessment, moving away from paternalistic protections of those with care and support needs to supporting people to understand their legal rights, identify coercive or exploitative behaviours, make informed decisions about risk based on potentially differing viewpoints and manage risk from a person centred, strength-based perspective!

*Emphasis must be on sensible risk appraisal. Seeking a proper balance and being willing to tolerate manageable or acceptable risk as the price appropriately to be paid in order to achieve some other good. What good is it making someone safer if it merely makes them miserable?”* Munby J, Local Authority X v MM [2007]

*“Between active decision makers and those certified as lacking mental capacity is a category of vulnerable adults who are open to exploitation.”* DL v A local Authority [2012]

*‘The healthy and moral human instinct to protect vulnerable people from unwise, potentially catastrophic decisions must never be permitted to eclipse their fundamental right to take their own decisions where they have the capacity to do so. Misguided paternalism has no place in the Court of Protection.’* Hayden J, LB Tower Hamlets v PB [2020]

# Common pitfalls in safeguarding practice



Information shared isn't always information understood, facts aren't always checked, and information isn't always properly recorded!



Attention is focused on the most visible or pressing problem



Insufficient engagement with families, or insufficient attention/ weight is given to what the adult at risk says, how they look or behave.



Case responsibility is diluted in the context of multi-agency working, impacting on referrals and response.

## Local Context

The Right to respect for family life is enshrined in the Human Rights Act, but we know from local safeguarding practice reviews that interpreting these duties alongside obligations to safeguard adults at risk can be complex.

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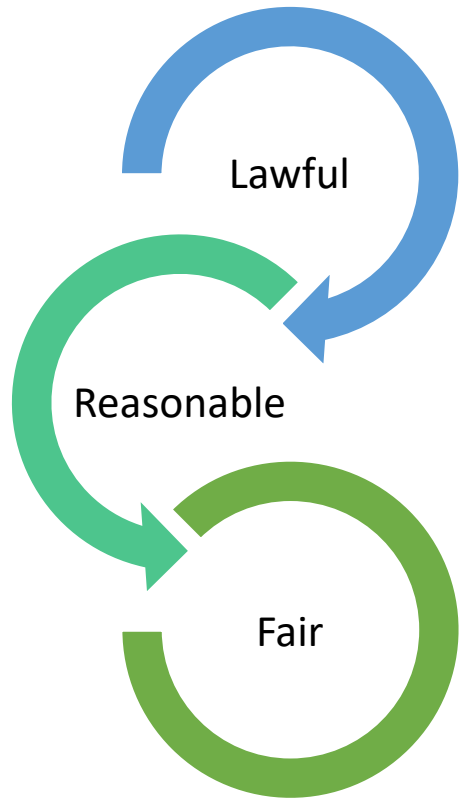
### BSAB Safeguarding Adults reviews:

- Gabrielle- harm caused by family members refusing pressure ulcer care for their loved one during the Covid-19 lock down. This highlighted the importance for professionals to understand the issues of the whole unit and balancing seemingly conflicting duties to respect the right to privacy and family life, whilst upholding the person's right to live free from neglect and abuse.
- Thematic SLIP review- harm caused by family members refusing health and social care support for their adult child with learning disabilities. Whilst professionals recognised the risk of harm, failures to pass relevant information to legal advisors hindered escalation, leaving practitioners feeling powerless to intervene and support the adult at risk and her family.

### LSCP thematic and practice reviews:

- Transitional safeguarding- importance of understanding the whole picture around young people, including their relationships with siblings and parents, who often have their own support needs. It is crucial that practitioners are aware of the support/interventions going on with other family members and consider how this interacts with their work with the individual young person. The wider context of the young person's life, including cultural heritage and any protected characteristics that may make them more vulnerable or in need of a more bespoke approach to safeguard them through their transition.

# Nature of Human Rights obligations:



Practitioners must be able to demonstrate, in Court if necessary, the response (whether that is action or inaction) to a safeguarding concern was lawful, fair and reasonable in the circumstance.

In *Cheshire West* the Supreme Court unequivocally confirmed that the fundamental freedoms protected by the Human Rights Act are guaranteed to everyone *‘whatever their frailties or flaws’*.

As any safeguarding enquiry could amount to an interference with human rights it is only justified if:

- it is carried out in line with legal powers- in a safeguarding context, this means understanding the parameters of partner agencies powers too,
- is necessary in the circumstances and
- is a proportionate response to safeguard and promote the adult’s well-being.

As with duties owed to safeguarding children, although allegation may involve criminal offences the standard of proof required is on the balance of probably: *“it more likely than not that something did take place, then it is treated as having taken place.”*

Where allegations involve behaviours which, if proven, would constitute criminal offences guidance encourages early police involvement in the enquiry. [see national guidance pg. 14.83-101]

# Seemingly conflicting duties

Providing care and treatment is only lawfully if you have capacitated consent or, if an individual cannot give capacitated consent, any acts are done in accordance with the legal obligations under the Mental Capacity Act ['MCA'].

Equally, not providing necessary care/ treatment to an incapacitated patient or providing care and treatment in a way that interferes with someone's family life could amount a breach of duties under Human Rights Act 1998 and Equalities Act 2010.

When balancing often seemingly conflicting duties and powers, practitioners working with individuals who present with needs for care and support, persistent and/or significant risk in respect of their welfare/wellbeing (including the risk of neglect or abuse), should explore options for intervention with an individual, their family, friends, carer, representative or advocate.

Inaction also needs justification, for example, because the evidence supports intervention would be an unnecessary or disproportionate interference by the state.



# Our safeguarding principles reflect the expectations to uphold human rights

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**Empowerment:** Assessing how the person's needs for care and support impacts on their ability to make a decision, understand the safeguarding process and ultimately protect themselves is a legal duty (s68 Care Act 2014 and R (SG) v Haringey [2015]). If someone has a substantial difficulty that prevents their involvement an advocate **MUST** be appointed to support them.

- LB Hillingdon v Neary [2011] failure to properly engage family within care planning process and obtain legal powers to intervene and deprive Steven Neary of his liberty amounted to a breach of articles 5 and 8.

**Prevention:** There is a pro-active duty under article 2 (right to life) and article 3 (prohibition on inhuman or degrading treatment) Human Rights Act 1998 to respond where there is a real and imminent risk. These are reinforced by specific legal powers and duties to protect life (s17 PACE), prevent homelessness (s195 Housing Act 1996) or social care needs escalating (s2 Care Act 2014) which require partner agencies to provide advice and assistance before service eligibility thresholds are met. This means practitioners must actively investigate with relevant partners to obtain pertinent information, consider everything reasonably be expected to know and act to meet any relevant duty of care. Be confident, if necessary, use assertive outreach as trusted assessors and your local safeguarding information sharing &/or escalation protocols

**Proportionality:** requires inquisitive enquiry, including reviewing the case history so all safeguarding issues are understood in context. The safeguarding enquiry duty (s42 Care Act 2014) is an effective mechanism to support multi-agency risk management as it is triggered whenever there is reasonable cause to suspect ...

**Protection:** Assessment and safeguarding duties are triggered on deliberately low thresholds- namely, the appearance of need and continues, despite capacitated refusal by an adult, if the local authority has concerns there is a risk of abuse or neglect (s11(2) Care Act 2014 and South-end on Sea Council v Meyers [2019]).

Safeguarding enquiries can't be triaged on basis of the setting where care is provided, the person's mental capacity or access to services. Also note, the Homelessness Code Of Guidance [ 'HCOG' 8.44-45] includes a requirement to consider clinical vulnerability to Covid-19 for those with history of rough sleeping.

**Partnership:** There are reciprocal duties to refer if a person may require social care support on discharge from hospital [discharge regs 2014] or is threatened with homelessness [s213B Housing Act] if the person is young (16-17) or a care leaver (18-24) or would leave custody without accommodation [pg23.4 HCOG]. Practitioners must also make **reasonable adjustments** so that organisational barriers (e.g. rigid operational service criteria, appointment times) don't prohibit people from securing support: Haque v Hackney [2017]

There are also duties to co-operate across agencies [s6-7 Care Act]. Relevant partners, including Police, DWP, health and housing providers, must co-operate when exercising their functions. Refusals only permitted if in writing and show incompatible with their own duties or would have adverse effect on their own functions.

**Accountability:** Public law principles of fairness and a right to a fair hearing (article 6) are reinforced by specific legal duties for statutory bodies to provide assessment findings and reasons for decisions in writing (s203(4) Housing Act 1996 and s12.(3) Care Act 2014).

# Discussion:

- How frequently do you discuss case law developments in team meetings, is time taken to explain how they relate to supporting you to make the right decision in difficult cases?
- What mechanisms do you have to get support if risk remains despite protective interventions?
- Are you more confident now to consider the balance to be taken under the Human Rights Act?



# Further reading



- 'Safeguarding Adults under the Care Act 2014', Jessica Kingsley Publishers, 2017
- [https://www.local.gov.uk/sites/default/files/documents/25.130%20Making%20Decisions%20on%20the%20duty\\_06%20WEB.pdf](https://www.local.gov.uk/sites/default/files/documents/25.130%20Making%20Decisions%20on%20the%20duty_06%20WEB.pdf): LGA and ADASS guidance on decision making re s42 enquiries
- [https://www.local.gov.uk/sites/default/files/documents/25.143%20Making%20Safeguarding%20Personal\\_04%20WEB\\_0.pdf](https://www.local.gov.uk/sites/default/files/documents/25.143%20Making%20Safeguarding%20Personal_04%20WEB_0.pdf): Case studies for discussion at team meetings
- <https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>: MCA Code of Practice
- <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>: Care Act statutory guidance
- <https://www.scie.org.uk/care-act-2014/safeguarding-adults/adult-safeguarding-practice-questions/>: SCIE guidance and <https://www.scie.org.uk/care-act-2014/safeguarding-adults/adult-suspected-at-risk-of-neglect-abuse/> on gaining access to an adult at risk
- [http://www.cps.gov.uk/legal/p\\_to\\_r/prosecuting\\_crimes\\_against\\_older\\_people/#mental](http://www.cps.gov.uk/legal/p_to_r/prosecuting_crimes_against_older_people/#mental): Guidance on prosecuting crimes against adults at risk
- [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/419628/Information\\_sharing\\_advice\\_safeguarding\\_practitioners.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419628/Information_sharing_advice_safeguarding_practitioners.pdf): Advice for social care practitioners on duties regarding information sharing and safeguarding