

Guidance for Managing Officers and Enquiry Officers responsible for conducting Adult Safeguarding Enquires under Section 42 of the Care Act 2014

1. Introduction

This Guidance has been agreed by the Birmingham Safeguarding Adults Board, and is for use by staff who manage or undertake a Statutory Safeguarding Adult Enquiry under Section 42 of the Care Act 2014. It comes into effect once a decision has been reached by the Local Authority that the criteria for such an enquiry has been met (see Section 1. below). It is in addition to Chapters 7- 9 of the *Multi-agency Policy and Procedures for the Protection of Adults with Care and Support Needs in the West Midlands* (available at www.bsab.org).

Not every safeguarding adult concern will be best dealt with by referral to the local authority, or meet the criteria for a Statutory Enquiry. Where they do not, other courses of action may need to be taken, dependent upon the circumstances of each case and the views of the adult the concern is about (or the person representing their view). Further guidance is available in the *Multi-agency Policy and Procedures*, (especially Chapter 9, pages 64-65).

2. Background to Safeguarding Adults Enquiries

2.1 The Care Act 2014 requires that Local authorities must make enquiries, *or cause others to do so*, if they reasonably suspect an adult:

- has needs for care and support (whether or not the local authority is meeting any of those needs) and;
- is experiencing, or at risk of, abuse or neglect;

and

- as a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.

These are known as “Section 42” enquiries.

2.2 Where a crime is suspected and referred to the police, then the police must lead the criminal investigations, with the local authority’s support where appropriate. The

local authority has an ongoing duty to promote the wellbeing of the adult in these circumstances.

2.3 An enquiry is the action taken or instigated by the local authority in response to a concern that abuse or neglect may be taking place. Its purpose is to decide whether or not the local authority or another organisation, or person, should do something to help and protect the adult.

2.4 All adult safeguarding situations and enquiries into their circumstances are unique, and range from the very straightforward to the very complex. Therefore the form and extent of an enquiry could range from:

- a conversation with the adult, or if they lack capacity, (or have substantial difficulty in understanding the enquiry, their representative or advocate), prior to initiating a formal Section 42 Enquiry,
- right through to a much more formal multi-agency plan or course of action.

2.5 An enquiry will usually start with asking the adult their view and wishes which will often determine what next steps to take. Everyone involved in an enquiry must focus on improving the adult's well-being and work together to that shared aim.

- a. The local authority has a duty to consider whether the adult requires an independent advocate to represent and support them in the enquiry and if so, appoint one. If there is no appropriate family member to represent the person, the Local Authority must appoint an independent advocate.

2.6 The objectives of a Section 42 Enquiry are to:

- Establish facts;
- Assess the needs of the adult for protection, support and redress and how they might be met;
- Protect from the abuse and neglect, in accordance with the wishes of the adult;
- Make decisions as to what follow-up action should be taken with regard to the person or organisation responsible for the abuse or neglect; and
- Enable the adult to achieve resolution and recovery.

2.7 What happens as a result of an enquiry should reflect the person's wishes wherever possible, as stated by them or by their representative or advocate.

2.9 The adult should always be involved from the beginning of the enquiry unless there are exceptional circumstances that would increase the risk of abuse.

2.10 The adult should experience the safeguarding process as empowering and supportive. Practitioners should wherever practicable seek the consent of the adult before taking action.

2.11 However, there may be circumstances when consent cannot be obtained because the adult lacks the capacity to give it, but it is in their best interests to

undertake an enquiry. Whether or not the adult has capacity to give consent, action may need to be taken if others are or will be put at risk if nothing is done or where it is in the public interest to take action because a criminal offence has occurred.

3 . Causing Enquiries to be made

3.1 Although the local authority is the lead agency for making enquiries, it may require others to undertake them where this is in the best interests of the adult. The specific circumstances will often determine who is the right person to undertake an enquiry. In many cases a professional who already knows the adult will be the best person.

3.2 Where it causes another organisation to undertake an enquiry, or a part of it, the local authority retains the responsibility for ensuring that the enquiry is referred to the right place and is acted upon.

3.3 If the local authority decides that another organisation should make the enquiry, then it must make clear the enquiry's terms of reference. These should include

- The scope of an enquiry,
- Who is responsible for commissioning the enquiry and receiving the report of its outcome
- The timescale for reporting the enquiry outcome

3.4 The organisation commissioned to undertake the enquiry should confirm to the enquiry's commissioner the details of the person who will be responsible for undertaking the enquiry and ensure that it is undertaken within the required timescale.

3.5 Once enquiries are completed, the outcome should be notified to the local authority which should then determine with the adult what, if any, further action is necessary and acceptable.

3.6 The local authority, in its lead and coordinating role, should assure itself that the enquiry satisfies its duty under section 42 to decide what action (if any) is necessary to help and protect the adult and by whom and to ensure that such action is taken when necessary. In this role if the local authority must challenge the body making the enquiry if it considers that the process and/or outcome is unsatisfactory.

4. Process for commissioning a Section 42 Enquiry from an organisation outside the Local Authority

4.1 Duty of the Local Authority causing an enquiry to be carried out

Where the **Managing Officer** responsible for a Section 42 Enquiry within the Local Authority identifies that another agency is best placed to undertake that enquiry, or an element of it, they must:

4.1.1 Inform the organisation of this responsibility (initially verbally, and then formally using the template letter at the end of this guidance clearly setting out the enquiry's terms of reference).

4.1.2 Explain to the organisation why they are best placed to undertake the enquiry.

4.1.3 Be satisfied that the organisation being caused to undertake the enquiry is competent to do so and that there is no conflict of interest in this organisation (or the person they appoint as Enquiry Officer) fulfilling this role.

4.1.4 Agree a reasonable timescale for receiving a report of its outcome.

4.1.5 Ensure the organisation knows how the Managing Officer can be contacted.

4.1.6 Ensure the organisation knows of the appointment and contact details of any Independent Advocate or other person acting on the adult's behalf where they have substantial difficulty in taking part in the enquiry.

4.1.7 Make any amendments to the terms of reference necessary as the enquiry progresses or the adult's desired outcomes change or develop.

4.1.8 Ensure the enquiry report has addressed the terms of reference and require rectification to be made where it does not.

4.1.9 Resolve any disagreement regarding the commissioning of the enquiry at the lowest level possible within the organisation, only escalating within the organisation and local authority where issues remain unresolved and proportionate to the disagreement. (N.B. where the organisation is the best placed to undertake the enquiry and its terms of reference are within the scope of its jurisdiction, the organisation has a legal duty under the Care Act 2014 to cooperate).

4.2 **Duty of the organisation identified to undertake an enquiry**

The organisation that is caused to undertake a Section 42 Enquiry must:

4.2.1 Appoint an **Enquiry Officer** to undertake the enquiry and provide the enquiry report, ensure they are competent to do so, that they receive the support necessary to satisfactorily complete it, and that there is no conflict of interest in their undertaking this role.

4.2.2 Satisfy themselves that the enquiry terms of reference are clearly understood and within the remit of the organisation to undertake

4.2.3 Make the Managing Officer aware of any circumstances where the organisation is not the appropriate body to undertake the enquiry

4.2.4 Resolve any disagreement regarding the commissioning of the enquiry at the lowest level possible within the organisation, only escalating within the organisation

and local authority where issues remain unresolved and proportionate to the disagreement. (N.B. where the organisation is the best placed to undertake the enquiry and its terms of reference are within the scope of its jurisdiction, the organisation has a legal duty under the Care Act 2014 to cooperate).

4.2.5 Agree a reasonable timescale for receiving a report of its outcome

4.2.6 Conduct the enquiry in line with the principles of Making Safeguarding Personal, I.E. ensure:

- The enquiry reflects the outcomes that the adult wishes to achieve
- The adult (or their representative or Independent Advocate) is included as far as possible throughout the process
- That if in the progress of the enquiry the adult alters their view of their desired outcomes, this is reflected in the enquiry and that the Enquiry's Commissioner is informed of this
- The adult (or their representative or Independent Advocate) are informed of the outcome of the enquiry

4.2.7 Keep in contact with the Managing Officer and inform them of any changes or developments during the enquiry

4.2.8 Ensure the enquiry report has addressed the terms of reference and is delivered to the Managing Officer within the agreed timescale.

5. Concerns identified during an enquiry about a person in a position of trust

5.1 Where during an enquiry that an organisation has been caused to undertake, information comes to light to suggest that a person in a position of trust may have behaved in a way that has harmed or may have harmed an adult with care and support needs, then appropriate action must be taken in line with *Birmingham Safeguarding Adults Board Protocol for responding to concerns about a person in a position of trust* (available at www.bsab.org).

5.2 This will include, if the PiPoT (paid worker or unpaid volunteer) is removed by either being dismissed or permanently redeployed to a non-regulated activity from their role of providing a regulated activity to people with care and support needs because the person poses a risk of harm to adults, the meeting its legal duty to refer the person to the Disclosure and Barring Service. This is also the case if a person leaves to avoid a disciplinary hearing following the safeguarding incident.

5.3 In addition where the PiPoT in the circumstances described in 4.2 is a registered member of a professional body, the organisation is required to inform that body.

Template Terms of Reference letter



Private and Confidential

Name

Address

Address

Address

Date

Dear,

Commissioning of an Adult Safeguarding Enquiry under Section 42 of the Care Act 2014

Further to our previous communication on (*enter date*), I write to confirm my request that under the above statutory duty, and in line with *the Multi-agency Policy & Procedures for the Protection of Adults with Care & Support Needs in the West Midlands*, you undertake an Adult Safeguarding Enquiry to address the Terms of Reference detailed below.

Please provide a written report detailing the outcome of this enquiry to the Enquiry Manager named below and by the date required.

Clarification of the task and further information can be obtained from the Enquiry Manager.

Please confirm to me the name of the person who will be the Enquiry Officer responsible for undertaking this enquiry and reporting its conclusions.

Section 42 Enquiry Terms of Reference	
Name of the adult affected by adult safeguarding concern :	
Name and contact details of any Independent Advocate supporting the person (where appropriate):	
Details of adult safeguarding concern that this enquiry relates to	
Outcomes that the adult wishes to achieve from this enquiry	

Enquiry Details

General: This enquiry should establish if the adult is at risk of, or experiencing, neglect or abuse (as outlined in the concern above) and if so, what if any action is needed to protect them.

Specifically this enquiry should establish:

1.

2.

3.

4.

5.

Enquiry Manager' name and position

Contact details

Telephone: 0121

Mobile:

Fax:

Email:

Date enquiry report required by:

N.B. Unless otherwise agreed, reports should be received by the Managing Officer within 28 days of the setting of these terms of reference.

Making Safeguarding Personal

The enquiry should be undertaken in line with the principles of Making Safeguarding Personal. It should ensure that:

- The enquiry reflects the outcomes that the adult wishes to achieve
- The adult (or their representative or Independent Advocate) is included as far as possible throughout the process
- That if in the progress of the enquiry the adult alters their view of their desired outcomes, this is reflected in the enquiry and that the Enquiry's Commissioner is informed of this

- The adult (or their representative or Independent Advocate) is informed of the outcome of the enquiry, asked the extent to which they feel their outcomes were met, and reflect this in the enquiry report.

The Enquiry Officer must:

- Assess the needs of the adult for protection, support and redress and how these might be met
- Initiate any action within their power which is necessary and proportionate and in accordance with the wishes of the person, to protect them (or others with care and support needs) from abuse or neglect, or report the need for action to their line manager.
- Advise the Enquiry Manager of any follow-up action that may be necessary to protect the adult, or to enable them to achieve resolution and recovery.
- Identify and take appropriate action necessary with regard to any person in a position of trust, or report the need for action to their line manager.
- Advise the Enquiry Manager of any further action that may be necessary with regard to the person or organisation responsible for the abuse or neglect.

Methodology

This is an enquiry under Section 42 of the Care Act 2014 and should be conducted in line with the *Multi-agency policy & procedures for the protection of adults with care & support needs in the West Midlands 2015* (available at www.bsab.org). It should address the above purpose and scope using the methods and resources outlined below for obtaining information, to include:

- Consulting with all persons directly involved in the allegations/incidents
- Consulting with any other persons who may contribute substantive evidence in relation to the allegations
- Examining all relevant documentary or other sources of information that is relevant to the enquiry.
- Any other methods the Managing Officer or Enquiry Officer may deem appropriate.

Should any other issues arise relating to potential abuse or neglect during the course of this enquiry this should be brought to the attention of the Enquiry Manager immediately.

Further guidance can be found into *Multi-agency Policy & Procedures for the Protection of Adults with Care & Support Needs in the West Midlands* at www.bsab.org .

Yours sincerely,

Enquiry Manager

