Section 42

Adult Safeguarding Enquiries in Health services

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adult social services
eastern region
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ADASS East of England Safeguarding Adults Network

Foreword

In the East of England we are proud of our collaborative work and have put considerable time and effort into our Sector Led Improvement Programme. This has supported real improvements and innovation both locally and regionally.

Adult Social Services has distinctive values in our duty to safeguard, to promote independence and to stand up for our communities, putting the people we serve first in our improvement work and all that we do. This is grounded in the values and practice of our frontline teams and their ability to develop, share, and learn from good practice at local, regional and national levels. Papers such as this positively promote such sharing and learning and prompt discussion and further development of practice across our services. I would encourage you to use the good practice within this paper for your own training and guidance materials and to use it to initiate discussions regarding Section 42 Enquiries within your authority.

Please do not hesitate to contact Helen Duncan who is the chair of the Eastern Region Safeguarding Network if you would like to discuss the content or further issues that it raises at **Helen.Duncan@Cambridgeshire.gov.uk**. I hope that you find it a useful resource.

Nick Presmeg
Regional Chair of the Eastern Region ADASS Branch

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Introduction

This guidance is for social workers or any others who will make s42 Adult Safeguarding Enquiries.

The creation of this guidance was funded by the ADASS (Association of Directors of Adult Social Services) Eastern Region in 2019 and initiated by the ADASS Eastern Region Safeguarding Network Group in recognition of the complexities of undertaking s42 Adult Safeguarding Enquiries in health settings.

The guidance takes the form of a fact sheet for quick reference to bring key points easily to your attention

The aim is to:

- Support you when making an enquiry and with the decision making involved in this
- Reduce confusion about who does what, the information that can be obtained and what can be shared
- Empower you in meetings and provide clarity on what should be done and when.
- Increase cooperation between social care and health care services in keeping people safe and in making safeguarding enquiries and implementing interventions
- Build positive relationships between social care and health care services.

The guidance should be read alongside your own organisation's policies and procedures. These will take precedence if there is any conflict with the advice in this guidance and will also provide you with local information on timescales, reporting lines and governance arrangements.

Best Practice and Principles for s42 Enquiries in Health settings

1 The Planning / Strategy Stage

Where concerns about clinical / medical / nursing care have been raised,

1.1 **Consider discussing the concern with the CCG (Clinical Commissioning Group) Safeguarding team to share information about:**

Situations where this might be appropriate include suspected medical and medication errors, accidents and cases of alleged neglect.

Share information about:

- the concern and;
- the professional(s) involved.

And decide:

- Is there an adult (or adults) at risk? Do they meet the criteria for a safeguarding enquiry under the s42 of the Care Act (2014) i.e.

  a. do they have or appear to have care and support needs;
  b. have they experienced, or are they at risk of, abuse or neglect
  c. as a result of their care and support needs, are they unable to protect themselves?

- Is a safeguarding enquiry necessary? Is the nature of the concern one that would be better addressed a different way, through for example, the health service's own investigative processes? A safeguarding enquiry must be made if the criteria in the Care Act is met.
- For further guidance on deciding whether or not to make a safeguarding adults enquiry please refer to the resources at
- https://www.local.gov.uk/making-decisions-duty-carry-out-safeguarding-adults-enquiries-resources
- If your local policy and procedures require consultation with the police about safeguarding concerns then make sure that this is done.
- Who is best placed, with the right clinical expertise and knowledge, to make the enquiry?
- If the decision is that you are to make the enquiry, then agree who will provide you with advice during the enquiry. For example, a pharmacist or other specialist if there are questions about medication administration or a tissue viability nurse if there are questions about pressure care.

- If the decision is that the staff in the health service should lead the enquiry, then agree the broad terms of reference for this with the CCG first before discussing this with the health service. The terms of reference will include timescales and how and to whom the outcome of the enquiry will be reported. This gives you an opportunity to prepare for your discussion with the health service and to identify what the health service's s42 enquiry or internal investigation process should involve.

1.2 **Have a conversation with colleagues in the health service (usually in the health service's own safeguarding team), as quickly as possible to agree:**

This will help to build a relationship and avoid duplication of the areas covered by the s42 enquiry and any health service investigation processes. The information required should be set out within this discussion and a decision made on who completes which tasks/ enquiries.

- Will the health service carry out its own investigation (i.e. a management investigation or other process)?
- Should anyone else be notified (i.e. the Health and Safety Executive of the Care Quality Commission)?
- Who will lead the safeguarding enquiry?
- Who will be involved in the safeguarding enquiry and in what role?
- What are the key lines of enquiry and the questions that need to be answered?
- Who will do what?
- What are the timescales?
- Are there risks that need urgent assessment, action, reduction and management? If so:
  - When this will be completed and by whom?
- Who will be the lead contact for the person and or the person's family. See 3. Involving and working with family members and representatives)

1.3 Delegation of the s42 enquiry.

- If you delegate the safeguarding enquiry to staff at the health service (as this may be more appropriate if they have, for example, appropriate health knowledge; better access to information etc) then you as the Local Authority are still responsible for the quality and thoroughness of the enquiry and for any necessary multi-agency co-ordination?
- You do not absolve yourself of this responsibility by causing others to make the safeguarding enquiry. You therefore need to be assured that the safeguarding enquiry was sufficiently comprehensive, inquisitive, thorough, robust and transparent and applied the Six Principles of Adult Safeguarding and Making Safeguarding Personal.
- Be assured that the correct processes are in place and are being carried out. You may need to be assertive about this: remember social work principles. You are the "grit in the system" and should challenge other professionals and organisations if they put personal, professional and institutional requirements and interests before the rights and needs of people at risk of harm. It is your responsibility to make sure that the adult at risk's human rights are upheld.

2 The Enquiry Stage

2.1 Agree how the safeguarding enquiry and any health service processes that may take place in parallel, will relate to each other

Adult safeguarding enquiries are mandated by law (s42 of the Care Act, 2014). Even though the health service may conduct its own investigation process (for example, a management or a clinical practice investigation), if the criteria are met, the adult safeguarding enquiry should still take place to:

- Make sure that mental capacity is considered
- Identify what happened before the incident
- Identify whether or not other people are at risk.
- Identify how other people are being, and will be, protected.
- Make sure that the adult at risk of abuse is involved and that the principles of Making Safeguarding Personal are applied. These include:
  - Obtaining consent for the safeguarding enquiry to proceed.
    - This includes determining whether or not the adult at risk has the mental capacity to consent to the enquiry and the extent that they can participate in it.
    - Best Interests decisions may need to be made if the adult lacks capacity and an advocate may need to be instructed if there are no family members or friends that could represent them.
    - Even if the adult at risk does not give consent, the enquiry could still be made as a matter of public interest if other people are at risk of harm.
      - Identifying the outcome that the adult at risk (or their representative) wants.
      - Establishing with the adult at risk (or their representative) whether or not these outcomes were achieved.
      - Establishing whether or not the adult at risk feels (or their representative believes that they are) safer as a result of the enquiry or safeguarding process.
- Apply the Six Principles of Adult Safeguarding:
  - Empowerment
  - Protection
  - Prevention
  - Partnership
  - Proportionality
  - Accountability

- Offer support with coming to terms with the short- and long-term impacts of what has happened. This can include counselling and other interventions aimed at building resilience and coping with trauma.
- It is important to agree how the s42 enquiry and the health service's own investigative process relate to each other and whether or not any information obtained in the health service's own investigation will be referred to in the s42 enquiry.

The above principles apply to delegated safeguarding enquiries too, including those made by the health service.

2.2 Avoid duplication between multiple forms of enquiry and investigation.

Check whether or not there will be a criminal investigation and, if there is, agree with the police how the safeguarding and/ or the internal enquiry will work alongside it. The safeguarding enquiry should not be stopped just because there is a police investigation. The safeguarding enquiry and the hospital's own investigation process should also not duplicate each other even though there may be areas of cross over.

If the decision is to have just one form of enquiry, then it also possible to work jointly on this.

Make sure that this is agreed before the safeguarding enquiry and the health service investigation process commence.

The Serious Incident Process and Adult Safeguarding Enquiries

Serious incidents (SI) requiring investigation were defined as1

> *"An event in health care where the potential for learning is so great or the consequences to patients, families and carers, staff or organisations are so significant, that they warrant using additional resources to mount a comprehensive response. Serious Incidents can extend beyond incidents which affect patients directly and include incidents which may indirectly impact patient's safety or an organisations ability to deliver ongoing healthcare"*

Serious incident investigations are at once broader in scope and narrower in focus than adult safeguarding enquiries are. They aim to improve the way services are provided and to minimise the risk that incidents of concern will reoccur, through sharing lessons learned, by focusing on:

- Acts and/or omissions occurring as part of NHS-funded healthcare (including in the community)
- Never Events (serious, largely preventable safety incidents that should not occur if preventative measures are implemented. Examples surgery on the wrong part of the body or foreign objects left in a person's body after an operation.

- An incident (or series of incidents) that prevents, or threatens to prevent, an organisation's ability to continue to deliver an acceptable quality of healthcare services
- Failures in the security, integrity, accuracy or availability of information.
- Major loss of confidence in the service, including prolonged adverse media coverage or public concern about the quality of healthcare or an organisation

Adult Safeguarding interventions protect adults with care and support needs from abuse or neglect. The purpose of the safeguarding enquiry under s42 of the Care Act is to involve the adult at risk or their representative to establish what outcomes they want to inform the protection planning to reduce the likelihood of abuse or neglect reoccurring and to increase the individual's safety. The adult safeguarding enquiry should apply the Six Principles of Adult Safeguarding2.

Whilst there is some crossover, the purpose of safeguarding enquiries and serious incident investigation are often not the same. The findings of one do not necessarily determine the conclusions of the other.

- It is appropriate to continue the safeguarding enquiry until you know that the agreed actions have been carried out. This may involve suspending the safeguarding enquiry and reconvening when other processes have been completed to review the actions and to establish whether or not there are any outstanding risks and how best to mitigate these.
- If the investigation by the health setting is to form part of the s42 enquiry there should be agreement at the outset that the information will be shared with the enquiry and the time frame.

2.3 What happens if the adult at risk has died?

- If an adult at risk has died before a safeguarding concern was raised, the safeguarding enquiry should continue if there is a possibility that other people may be affected.
- Safeguarding procedures must be completed if they began before the adult at risk died.

2.4 What information can you expect to receive about the health service's investigation process?

- You will not receive management investigation information such as the transcripts of interviews.
- You will not be told about the outcome of disciplinary hearings or any disciplinary penalties.
- You should expect to receive a summary report of findings.
- You should expect to receive a summary of the actions that the health service has carried out (or will carry out, including time scales).

3 Involving and working with family members and representatives

Make sure that there is a lead contact for the family who will remain in touch with them throughout the safeguarding enquiry. This person will be the conduit for passing information back and forth.

Agree:

- What information will be provided to family members? Agree what is confidential and what can be shared.
- Who will provide the information and who will be the contact for the family to keep the updated and to enable any questions they have to be answered?

4 Challenges

4.1 What to do if there are difficulties accessing information.

The Care Act (2014) requires that information is shared if it is necessary for the safeguarding enquiry. The Duty of Candour applies to all members of the local Safeguarding Board and requires that they have a culture of:

- Openness: enabling concerns and complaints to be raised freely without fear and questions asked to be answered.
- Transparency: allowing information about the truth about performance and outcomes to be shared with staff, patients, the public and regulators.
- Candour: any patient harmed by the provision of a healthcare service is informed of the fact and an appropriate remedy offered, regardless of whether a complaint has been made or a question asked about it.

If you experience difficulties obtaining the necessary information, escalate quickly through your line management system and do not keep the difficulties to yourself. Your manager will be able to raise the need for information with their equivalent colleagues in the health service or Clinical Commissioning Group and will escalate further as necessary.

If there are still problems obtaining information, then this can be raised with the local Safeguarding Adults Board through its own escalation and/ or disputes process.

4.2 What to do when safeguarding adults at risk who are placed in your area by another commissioning authority

The ADASS Out of Area Safeguarding Adult Arrangements (June 2016) require that the local authority in whose area abuse or neglect may have occurred (the "host" authority) should make the necessary safeguarding enquiry.

The commissioning authority (which may be another local authority or a Clinical Commissioning Group), which placed the adult at risk, will be involved in the enquiry as necessary and will remain responsible for any assessment, planning and commissioning of services.

The host authority must ensure that there is good communication between partners including the commissioning authority.

- Notify the commissioning authority of the safeguarding concern and of the details of the enquiry and any health service investigation process that is taking place.
- Invite representatives from the commissioning authority to any meetings as required.

Even though the adult at risk is in a health service, the commissioning authority may need to assess needs and revise the person's care plan either prior to or at the point of their discharge from health service.

4.3 Failure to cooperate in making an enquiry

There is a statutory duty of co-operation in safeguarding enquiries and in most cases there will be an expectation that the enquiry will be made as requested. If an organisation declines to undertake an enquiry it must give the reasons in writing and this should then be discussed and escalated to Senior Officers in the health service, CCG and Council. Whilst this is going on the safety of the adult at risk must remain the priority and any necessary protective action should not be delayed. Ultimately if no progress can be made on sharing information and cooperating then the matter should be referred to the chair of the local safeguarding adults board, who may wish to use the s.45 Care Act clauses on the supply of information

Where an agreed time scale has not been met then you need to consider whether the risks and circumstances allow for an extension of time or whether another agency (i.e. the council or CCG) will need to take over the enquiry.

5 Further learning

5.1 Coroner's Preventing Future Deaths involving health services

Coroner's issue Preventing Future Deaths notices if they believe that action should be taken to prevent future deaths. It is worthwhile reading the notices published on the website: *https://www.judiciary.uk/subject/prevention-of-future-deaths/*, especially those that relate to services in your area.

5.2 The Parliamentary and NHS Ombudsman and the Local Government and Social Care Ombudsman

Both Ombudmans will investigate complaints made against NHS and Adult Social Services respectively. Once again, it is worthwhile familiarising yourself with their findings at *https://www.ombudsman.org.uk* and *https://www.lgo.org.uk*.

References:

1 NHS England (2015) Serious Incident Framework: Supporting learning to prevent recurrence. Accessible at *https://www.england.nhs.uk/wp-content/uploads/2015/04/serious-incidnt-framwrk-upd.pdf*

2 NHS (2017) England Safeguarding Adults. Accessible at *https://www.england.nhs.uk/wp-content/uploads/2017/02/adult-pocket-guide.pdf*

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