

SAFEGUARDING ADULTS

Bergen

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AIM

- To inform about practices and procedures in relation to Safeguarding Adults in England.
- To outline the types of abuse that come under the Safeguarding Adults Procedures in England.
- To consider the impact of legislation on Safeguarding Adults and in particular, the Mental Capacity Act
- To outline the process and the role of an Independent Chair

Safeguarding Children

Despite legislation, ongoing high profile child protection cases receive huge publicity and press interest:

- Maria Colwell
- Victoria Climbié
- Peter Connolly (Baby P)

High profile cases

- Winterbourne View. During five weeks spent filming undercover, a reporter captured footage of some of the hospital's most vulnerable patients being repeatedly pinned down, slapped, dragged into showers while fully clothed, taunted and teased. The home has subsequently closed and other homes in the group have also been found, following inspection, to have serious concerns
- Fiona Pilkington killed herself and her disabled daughter after years of antisocial behaviour and harassment from local young people. This highlighted the impact of anti-social behaviour, lack of support to vulnerable people and a lack of partnership working

High profile cases ..(ctd)

- Steven Hoskin, who had severe learning disabilities, was violently tortured for hours before being forced to take 70 painkillers. He was frogmarched to the upper edge of a railway viaduct and his hands were stamped on until until he lost his grip and fell to his death.
- Staffordshire NHS Trust. An independent inquiry found the safety of sick and dying patients was 'routinely neglected'. Others were subjected to 'inhumane treatment', 'bullying', 'abuse' and 'rudeness'.

Some Current Issues

- It has been evidenced from a national prevalence study that the number of elderly people experiencing abuse in regulated settings and in their own homes is significantly higher than was thought.
- More and more cases of vulnerable adults living independently in the community and being targeted are coming to light – hate crime/mate crime. A significant % of people with learning disabilities report that they have been physically assaulted and a significantly higher % report verbal abuse and bullying on a regular basis

Current Issues ...(ctd)

- Empowerment vs.. duty of care – implications for safeguarding within the national personalisation agenda.
- Primary health services do not always recognise a learning disability or a brain injury and the Health Care for All Enquiry highlighted the fact that people with LD do not have equal right of access to effective treatment
- Continued lack of consistency around the country in responding and dealing with allegations of abuse – Pan London Procedures

What is Abuse?

Abuse is a violation of an individual's human and civil rights by any other person or persons

It may consist of a single act or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect or omission to act, or it may occur where a vulnerable person is persuaded to enter into a financial or sexual transaction to which he or she has not consented, or cannot consent

Who is an Adult at Risk?

A person aged 18 years or over, who is, or may be in need of community care services 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

Whether or not a person is at risk in these cases will depend upon surrounding circumstances, environment and each case must be judged on its own merits

Types of Abuse

- Physical
- Sexual
- Financial
- Neglect
- Psychological/Emotional
- Abuse of Rights/Discriminatory/Racial
- Institutional

Other Forms of Abuse recognised Nationally

- Professional Abuse
- Hate/Mate Crime
- Domestic Abuse
- Self neglect
- Forced Marriage/Honour Based Violence (HBV)
- Female Genital Mutilation

Physical Abuse

‘The non accidental infliction of physical force that results (or could result) in bodily injury, pain or impairment’

Examples of behaviour

Hitting, slapping, pushing, burning, physical restraint, harassment, enforced sedation, inappropriate use of medication and catheterisation for management ease

Psychological / Emotional

‘That which impinges on the emotional health and development of individuals’

Examples of behaviour

Shouting, swearing, insulting, ignoring, threats, intimidation, harassment, humiliation, depriving an individual of the right to choice and privacy.

Sexual Abuse

‘Direct or indirect involvement in sexual activity without consent’

Examples of behaviour

Non contact: looking, photography, indecent exposure, harassment, serious teasing or innuendo, pornography

Contact: Coercion to touch e.g. breast, genitals, anus, mouth, with or by penis, fingers or other objects

Neglect

‘Ignoring or withholding physical or medical care’

Examples of behaviour

Failure to provide: appropriate food, shelter, heating, clothing, medical care, hygiene, personal care, appropriate medication

Financial / Material

The unauthorised, fraudulent obtaining and improper use of funds, property or any resources of a vulnerable person'

Examples of behaviour

Misappropriating money, valuables or property, forcing changes to will, denying the adult at risk the right to access personal funds

Discriminatory Abuse

Abuse of Individual Rights is a violation of human and civil rights by any other person or persons

Discriminatory Abuse consists of abusive or derisive attitudes or behaviour based on a person's gender, sexuality, ethnic origin, age or disability

Institutional Abuse

Occurs when the lifestyles of individuals are sacrificed in favour of the rituals and routines of the home or care setting

Examples of Behaviour

Lack of individualised care, inappropriate confinement or restrictions, sensory deprivation, inappropriate use of rules, custom and practice, no flexibility of bedtimes or waking times, dirty clothing or bed linen, lack of personal possessions or clothing, misuse of medical procedures

Domestic Abuse

- Domestic violence is defined as actual or threatened physical, emotional, psychological and sexual abuse involving the misuse of power and exercise of control by one adult over another in the context of a relationship
- About one third of safeguarding cases have an element of domestic abuse. Not always recognised or dealt with appropriately by the police

Professional Abuse

- Professional abuse is the misuse of therapeutic power and abuse of trust by professionals, the failure of professionals to act on suspected abuse / crimes, poor care practice or neglect in services, resource shortfalls or service pressures that lead to service failure and culpability as a result of poor management systems / structures

Hate Crime/Hate Incident

- The term 'hate crime' refers to any criminal offence which is perceived by the victim or any other person as being motivated by prejudice or hate, based on the victim's actual or perceived race, religion, sexual orientation, disability or transgender status
- 'Hate incident' refers to any non criminal incident which is perceived by the victim or any other person as being motivated by prejudice or hate, based on the victim's actual or perceived race, religion, sexual orientation, disability of transgender status

Forced marriage

- A forced marriage takes place when the bride, groom or both do not want to get married but are forced to by others, usually their families. In the UK, forced marriage amounts to a form of domestic violence and/or child abuse.
- Vulnerable adults, particularly those with a learning disability, may be subjected to a forced marriage

Honour Based Violence

Honour based violence is a crime or incident, which has or may have been committed to protect or defend the 'honour' of the family and/or community.

Examples may include murder, un-explained death (suicide), fear of or actual forced marriage, controlling sexual activity, domestic abuse (including psychological, physical, sexual, financial or emotional abuse), child abuse, rape, kidnapping, false imprisonment, threats to kill, assault, harassment, forced abortion.

Legislation

- There is no single or coherent statutory framework in England relating to Safeguarding Adults
- There is specific legislation to protect children and animals
- Scotland has brought in the Adult Support and Protection Act (Scotland) 2007

Some key Guidance and Legislation

- No Secrets 2000 – DOH Guidance
- Human Rights Act 1998
- Public Interest Disclosure Act 1998 (Whistle Blowing)
- Mental Health Acts 1983/2007
- Fraud Act 2006
- Health and Social Care Act 2008

Key legislation...(ctd)

- Corporate Manslaughter and Corporate Homicide Act 2007
- Youth Justice and Criminal Evidence Act 1999 (Special Measures Directions)
- Safeguarding Vulnerable Groups Act 2006
- Coroners Act 2009
- Sexual Offences Act 2003

Mental Capacity Act

- The Act received Royal Assent in April 2005
 - After over 15 years of planning and discussion
 - Cross party support in Parliament
- It was implemented in April 2007
- It only covers England and Wales

Mental Capacity Act

- It provides a statutory framework for people who may not be able to make their own decisions through mental disability
- The Act promotes the fair treatment and protects the rights of some of the most vulnerable people in society

Who does the Act affect?

- Mental capacity issues potentially affect everyone
- Over 2 million people in England and Wales lack mental capacity to make decisions for themselves
e.g. people with
 - dementia
 - learning disabilities
 - mental health problems
 - stroke and head injuries
- There are up to 6 million informal carers, social and healthcare professionals

Why was the Act needed?

- Current common law lacks consistency
- People's autonomy not always respected
- People can be written off as incapable because of diagnosis
- No clear legal authority for people who act on behalf of a person lacking mental capacity
- Limited options for people who want to plan ahead
- Enduring power of attorney seen as open to abuse

Mental Capacity Act 2005

There are 5 key principles:

- Assume a person has capacity unless proved otherwise
- Do not treat people as incapable of making a decision unless you have tried all practicable steps to help them
- A person is not incapable of making a decision because their decision may seem unwise
- All decisions must be in the best interests of the person concerned
- Use the least restrictive action

Concept of varying capacity

- Act sets out the best practice approach to determining capacity – whether an individual is able, at a particular time of making a particular decision
- Decision specific
- Detail on what is involved in assessing capacity is covered in the Code of Practice

Best Interests

- All decisions must be made in the best interests of the person who lacks capacity
- It is the key principle that governs all decisions made for people who lack capacity
- Same as current common law
- Must consider all relevant circumstances

Best Interests..(ctd)

- Act does not define best interest but gives a checklist
 - Must involves the person who lacks capacity
 - There must be a regard for past and present wishes and feelings
 - There must be consultation with others who are involved in the care of the person
 - There must be a non-discriminatory approach

Capacity test

- Does the person have an impairment that could affect capacity?
- If yes, then a person is unable to make a **specific** decision for themselves if they are unable to-
 - Understand the information about the decision
 - Retain that information
 - Use that information to make the decision
 - Communicate their decision

Framework of the Mental Capacity Act

- 'Decision specific' Capacity Assessments
- Section 44 – Criminal Offence of 'wilful negligence'
- Independent Mental Capacity Advocate regarding serious medical treatment decisions, move of accommodation decisions, safeguarding
- Lasting Power of Attorney – Property and Affairs
Health and Welfare
- Advanced Decisions
- **In addition:**
- Deprivation of Liberty Safeguards (DOLS)(Amendment to MCA via MHA)

Duty to consult an IMCA

- The Local Authority/NHS **must** consult the IMCA where:
 - A decision is being made about either
 1. Serious medical treatment
 2. Long term moves (more than 28 days in hospital/8 weeks in a care home)
 - **And** the person does not have the capacity to make that decision
 - **And** there are no 'appropriate' family to represent them

Safeguarding allegations in certain situations

IMCA – Role and Function

- To support the person who lacks capacity
- To ascertain as far as possible the person's wishes and feelings
- To obtain and evaluate relevant information
- To ascertain alternative courses of action
- To obtain a further medical opinion where necessary

IMCA – Role and Function..(ctd)

To do this the IMCA can:

- Interview the person in private
- Examine and take copies of health and social care records
- Challenge the decision maker

The IMCA will also check that the MCA principles and best interests checklist have been complied with

Deprivation of Liberty Safeguards

The Mental Capacity Act Deprivation of Liberty safeguards (formerly known as the Bournewood safeguards) were introduced into the Mental Capacity Act 2005 through the Mental Health Act 2007

The safeguards are designed to protect the interests of an extremely vulnerable group of service users and to:

- ensure people can be given the care they need in the least restrictive regimes
- prevent arbitrary decisions that deprive vulnerable people of their liberty
- provide safeguards for vulnerable people
- provide them with rights of challenge against unlawful detention
- avoid unnecessary bureaucracy

Sexual Offences Act 2003

- Three groups of offences:
- causing/inciting a person with a mental disorder to engage in sexual activity
- engaging in sexual activity in the presence of a person with mental disorder /causing person with mental disorder to watch sexual activity
- inducement/threat/deception to procure sexual activity with a person with a mental disorder
- Offences by Workers employed in a position of trust who engage a person with a mental disorder in sexual activity
- **there is no need to prove victim did not have capacity to consent**
- neither is there a need to show the care worker exerted any undue influence
- it is presumed that the care worker knew the victim had a mental disorder unless he/she can provide evidence to the contrary

Youth Justice and Criminal Evidence Act 1999 (Special Measures Directions)

- Aims to help vulnerable and intimidated witnesses give the best evidence they can in criminal proceedings. This is to be achieved by allowing certain witnesses access to a range of special measures where it is felt that their evidence will thereby be improved. Reducing the stress associated with a court case will, it is hoped, mean that vulnerable witnesses are more confident and give better testimony. In addition, individuals who in the past would have been unable to participate in proceedings and were therefore considered incompetent to give evidence will now have a voice.

Special Measures Directions..(ctd)

Vulnerable witnesses are defined as:

- All child witnesses (under 18)
- Any witness whose quality of evidence is likely to be diminished because they: are suffering from a mental disorder (as defined by the Mental Health Act 1983); have a significant impairment of intelligence and social functioning; or have a physical disability or are suffering from a physical disorder.
- Being eligible for special measures does not mean that the court will automatically grant them. The court has to satisfy itself that the special measure or combination of special measures is likely to maximise the quality of the witness evidence before granting an application.

Health and Social Care Act 2008

The Care Quality Commission was created under the Act to be a new integrated regulator for health and adult social care bringing together existing health and social care regulators into one regulatory body, with tough new powers to ensure safe and high quality service

It brought together the:

- Health Care Commission
- The Commission for Social Care Inspection
- The Mental Health Act Commission

What should happen after a referral is made

- Social Services will ensure the immediate safety of the adult at risk
- Social Services will make initial enquiries and decide if it is a safeguarding alert (within 48 hours)
- Threshold of intervention will be decided (Levels 0 - 4)
- If proceeding down safeguarding, a strategy discussion/meeting will be held (within 5 days)

Referral... (ctd)

- If deemed appropriate, an investigation will be undertaken (within 28 days)
- Following investigation, a Case Conference/Senior Strategy meeting will be held (within 15 days)
- A Safeguarding Review will be held (within 3 months)

CONCERN ABOUT AN ADULT AT RISK

Is this an emergency?

Yes

Contact Police

No

Contact local Adult Social Care / Integrated Mental Health Team or SCC Contact Centre

Is it a Safeguarding Alert?
Is there An adult at risk?
Potential abuse?
Confirm with responsible Manager *

Within 48 hours of contact being received

** If no further safeguarding action required then process can be terminated and care management continues.*

Forward to Responsible Worker

- Undertake initial enquiries (same day)
- Ensure immediate safety
- Complete assessment of seriousness and risk
- Determine Threshold of Intervention Level (TOI)
- Initiate Care Management process in parallel

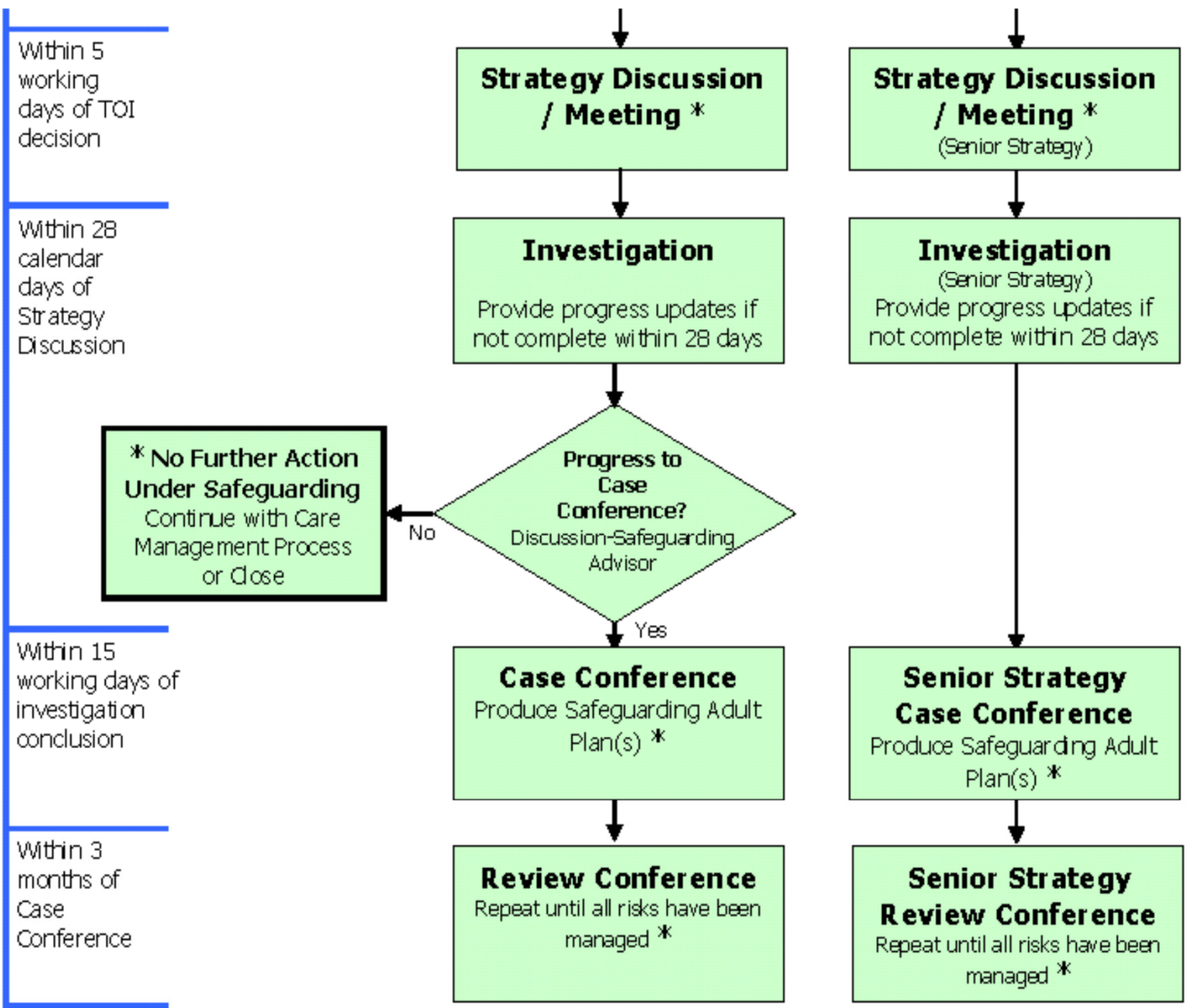
TOI Level 0:
* No further action under Safeguarding
Continue with Care Management Process or close

TOI Level 1:
Intervention by service providers
TOI Level 2:
Intervention by appropriate team
TOI Level 3:
Safeguarding Adults Enquiry

TOI Level 4:
Senior Strategy
(Complex safeguarding adults enquiry)

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Role of the Independent Chair

- To ensure the meeting is properly conducted
- To bring impartiality and objectivity
- To ensure anti-oppressive practice
- To ensure confidentiality
- To ensure that the right people attend and contribute
- To ensure that there is a clear structure using standard Agenda
- To facilitate decision making and recommendations

Role of the Independent Chair..(ctd)

- To summarise and complete the action plan
- To ensure accuracy of notes, sign and password protect
- To ensure distribution of notes (in accordance with timeframes)
- To ensure completion of relevant paperwork and recording
- To complete and sign off closure form when Safeguarding process ends

Responsibilities of the Independent Chair

- Ensure relevant invitees share information
- Decide following facilitated discussion and information sharing whether to investigate and which agency will lead
- Parallel proceedings (e.g. disciplinary, Health and Safety, SUI)
- Legal intervention/application of legislation
- View of the service user and how they will be supported – who will do this

Responsibilities of the Independent Chair (ctd)

- ISA/NMC/GSCC referral
- Whether a joint investigator is needed
- Mental Capacity / need for decision specific assessment
- Identify risks and how those risks will be managed
- To nominate person to coordinate management of investigation
- Ensure the Actions plan is robust and appropriate

Skills and Good Practice in relation to Chairing a safeguarding meeting

- Ability to encourage participation
- Ability to keep the focus of the discussions on the vulnerable adult
- Ability to listen and concentrate
- Ability to liaise with a group of possibly disparate individuals from a range of agencies with different levels of confidence or experience
- Good Verbal and written skills
- Ability in Managing information

Skills and Good Practice in relation to Chairing a Safeguarding meeting (ctd)

- Competency in relation to knowledge of Safeguarding Adults procedures, Police processes, guidance and wider legislative information
- Commitment to fair play and justice, and an acknowledgement of the 'independence' of the role

General Duty of referral

- Where a person knows or has a concern that an adult at risk has been abused and/or may be the victim of a criminal offence there is a duty and a responsibility to contact the police or social services

Confidentiality

Refusal or absence of a person's consent to disclosure

A person may positively refuse to give consent to disclosure or his/her consent may be absent

A person's right to confidentiality is not absolute and may be overridden where there is evidence that sharing information is necessary in exceptional cases

'Exceptional Cases'

Because of:

- The power of the courts
- The power of certain tribunals
- As a requirement of legislation e.g. statutory assessment under the Mental Health Act 1983 or Crime and Disorder Act 1998 – power to share information to reduce crime and disorder

To prevent:

- Serious crime
- Danger to a person's life
- Danger to others
- Danger to the community
- A deterioration in the health of the person

Law Commission

- On the 11th May 2011, the Law Commission published 'Adult Social Care' which reviewed adult social care in England and Wales and contained recommendations for reform
- The Government has committed to consider the conclusions of the report with a view to introducing legislation in 2012

Law Commission recommendations (1)

- An Inter-Departmental Ministerial Group will be established to co-ordinate government policy
- Revised Multi agency guidance will be produced setting out roles and responsibilities for all those involved in safeguarding adults
- A guide to the law on safeguarding will be produced to help professionals understand and use the range of legal powers that can prevent and deal with harm
- ACPO will lead a programme of work to improve response against financial crime against vulnerable adults

Law Commission recommendations (2)

- Local social services authorities will have the lead coordinating responsibility for safeguarding
- A duty will be placed on local social services authorities to investigate adult protection cases or cause an investigation to be made by other agencies
- A duty will be placed on the Secretary of State to make regulations prescribing the process for adult protection investigations

Law Commission recommendations (3)

- New definition of an 'Adult at Risk' and 'Harm'
- The statute will not include any new compulsory or emergency powers
- Adult safeguarding boards will be placed on a statutory footing, should have specific functions, and appropriate agency membership
- There will be an enhanced duty for organisations to co-operate in Adult Protection cases.

Other Key milestones

- Equality and Human Rights Commission – ‘Hidden in Plain Sight’. Disability harassment Inquiry Final report
- SCIE – Governance of Adult Safeguarding Boards
- Department of Health – Statement of Government Policy on Adult Safeguarding
- Safeguarding Adults at Risk information Hub (SAaRIH)

Awaiting Publication

- Guide to safeguarding law-SCIE
- National Police Guidance on Safeguarding and Investigating the Abuse of Vulnerable Adults-NPIA / ACPO
- Financial Crime against Vulnerable Adults Report -City of London Police/ACPO.

Remember !!

- This is not only about the vulnerable adult. There is the wider family to consider such as children and primary carers
- Vulnerable adults can be abusers too
- This is not just about social care and health agencies – what about Fire and Rescue, Trading Standards, Voluntary sector, Police, Crown Prosecution Service, Housing etc
- Partnership working is essential – inclusion of the vulnerable adult