

IN SAFE HANDS

**IMPLEMENTING ADULT PROTECTION
PROCEDURES IN WALES
JULY 2000**

Foreword

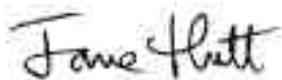
Making sure that vulnerable adults, who need care and support, are in safe hands is a key principle of the White Paper “Building for the Future”. The proposals to improve the regulation of social services and to raise standards in the workforce are being taken forward through the Care Standards Bill.

This guidance addresses the need for the development of local multi-agency codes of practice based on a consistent framework for the protection of vulnerable adults across Wales. These should be co-ordinated locally by each local authority social services department but will also involve the police service, the health service and will be of interest to the independent sector. These policies should also take account of the measures to provide greater protection to vulnerable or intimidated witnesses in the criminal justice system, as recommended in Speaking up for Justice. That report recognised the need to improve the identification and reporting of crime against vulnerable adults in care settings and agrees that this can best be tackled through multi-agency working. This approach has been endorsed by the Home Office.

To support the development and implementation of locally agreed codes of practice, this guidance is being issued under Section 7 of the Local Authority Social Services Act 1970 which requires local authorities, in their social service functions, to act under the guidance of the National Assembly for Wales.

In producing this guidance, The National Assembly for Wales recognises the excellent care that is provided by most family carers and staff, but acknowledges that there have been recent examples of misconduct, bad practice, exploitation and abuse which we must all endeavour to stamp out.

Signed:-



National Assembly for Wales



Home Office

July 2000

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IN SAFE HANDS

IMPLEMENTING ADULT PROTECTION PROCEDURES

IN WALES

INTRODUCTION

The National Assembly for Wales is committed to maintaining a balance between the promotion of independence and the safeguarding of vulnerable adults, and the public as a whole. The Social Services White Paper ‘Building for the Future’ identifies the protection and promotion of the welfare of vulnerable adults as a priority and this guidance reinforces the Assembly’s respect for human rights and the provisions of the Human Rights Act 1998.

This Framework for Wales has been developed following advice from a multi-agency advisory group¹ and wide consultation throughout Wales. There has also been close liaison with the Department of Health, who have developed similar guidance in England and with the Home Office. This guidance sets out how adult protection arrangements are proposed to be implemented in Wales, balancing the need to ensure coherent practice across geographical and agency boundaries whilst maintaining room for local arrangements and structures.

The aim is to ensure that these policies and procedures are in place right across Wales in order to strengthen local arrangements, clarify the principles of good practice and facilitate service development which is designed to prevent, identify and respond to abuse of vulnerable adults. Considerable progress has already been made by a number of Welsh authorities since local government reorganisation in establishing policies and procedures to safeguard vulnerable adults. It is not the intention of this document to undermine these initiatives but it is the intention to provide a consistent framework and to spread the good practice that already exists. It is anticipated that this can be achieved within the existing level of resources available to authorities.

¹ Membership, appendix 11

Local authority social services departments should play a co-ordinating role in developing the local policies and procedures for the protection of vulnerable adults from abuse. Social Services departments should note that this guidance is issued under Section 7 of the Local Authority Social Services Act 1970, which requires local authorities in their social service functions to act under the guidance of the National Assembly for Wales.

As such this document does not have the full force of statute, but should be complied with unless local circumstances indicate exceptional reasons which justify a variation.

1. THE POLICY

1.1 The National Assembly for Wales has agreed the following policy statements on the protection of vulnerable adults:-

- all vulnerable adult client groups are to be protected from abuse and supported in seeking treatment and redress in the event that they have been abused,
- action should be taken against those who deliberately abuse vulnerable adults and to support those who find themselves over stretched in their caring responsibilities
- Social Services Departments take the lead role in co-ordinating the development of local policy guidance for the protection of vulnerable adults at risk of abuse,
- agencies and organisations will work co-operatively on the identification, investigation, treatment and prevention of abuse of vulnerable adults.
- local policies will draw on other policy frameworks to ensure that a consistent response is given to the vulnerable adult(s) when concerns are raised whether these are reported under the rubric of complaints procedures, through inspection or registration activity, as a result of whistle-blowing or as a result of disclosure on the part of vulnerable adults or their carers.
- action will be co-ordinated against perpetrators to ensure that parallel processes are dovetailed including prosecution, disciplinary action and removal from, or notification to, professional registers and similar bodies
- a responsibility to share information on a "need to know" basis so that effective decisions can be made and appropriate preventative action taken.
- equality of opportunity will be available to all vulnerable adults regardless of their race, gender, sexuality, class, religion, culture or disability.

2. A FRAMEWORK FOR WALES

2.1 Wales has 22 unitary local authorities, 5 health authorities, and 4 police authorities. There are also a number of voluntary and independent agencies and bodies operating across all Wales whose efforts to prevent and/or act in the face of abuse involving vulnerable adults might be jeopardised by unclear or inconsistent approaches.

2.2 The aim of this document is to achieve a consistent approach, but one which will allow flexibility in relation to diverse local interagency arrangements which take a range of local circumstances into account. This document attempts to steer a middle way between outlining a too prescriptive overarching framework and the opposite approach of leaving authorities managing different systems in different parts of the Wales and very possibly within their own boundaries.

2.3 Hence, the National Assembly for Wales has agreed the following

- agreed definitions of abuse and of those included within the term "vulnerable adult"
- common terminology for the stages in the process of referral and decision-making
- agreed pathways for sharing information
- coherent recording, monitoring and analysis of cases dealt with under adult protection policies
- annual reports on adult protection to social services committees which may be audited by the National Assembly for Wales (SSI)

3. COMPONENTS OF A COMPREHENSIVE ADULT PROTECTION STRATEGY

3.1 Social Services Departments across Wales will need to co-ordinate a process of policy development to prevent, identify, respond to and ameliorate abuse of vulnerable adults in all settings and to take appropriate action against perpetrators of abuse. This will require co-operation with other agencies to ensure that procedures exist to facilitate the sharing of information and decision-making to achieve maximum effect.

Core agencies include:

- commissioners of health and social care services
- providers of health and social care services
- providers of sheltered and supported housing
- regulators of services
- the police and other law enforcement agencies
- voluntary and private sector agencies

Other local agencies and organisations (eg ambulance service) may need to be consulted or informed of the policy.

3.2 The consultancy group in Wales identified the following components of a comprehensive adult protection strategy to be set out in each local authority document.

- Written policies
- Inter-agency working - joint policies and procedures
- A positive service culture - shared values and principles
- Shared definitions

- Agreed decision making and follow up procedures
- Protocols about sharing information
- The legal context
- An implementation strategy
- Monitoring arrangements
- A commitment to prevention
- A key contact list

4. WRITTEN POLICIES

4.1 Each local authority should have its own written policy stating its own responsibilities and how it intends to carry these out.

4.2 Ideally they should have a joint policy demonstrating how agencies will co-ordinate their separate activities on behalf of vulnerable adults who have been, or are at risk of being, abused. Where agencies "sign up" to such a joint policy their commitment should be spelt out so that staff know when they are empowered to work directly in partnership with other agencies and when they need to refer within their own hierarchy.

4.3 These documents need to be dated and, given the fact that this is an emerging field, in which good practice is constantly being developed and reviewed, all policies and procedures should be updated on a regular basis.

Examples of written policies are at Appendix 1.

5. INTERAGENCY WORKING

5.1 The National Assembly for Wales endorses the importance of inter-agency working and co-ordination in the protection of vulnerable adults.

5.2 Interagency working involves co-ordination at a number of levels, across professional boundaries and beyond (but not outside) direct line management arrangements. Agencies should clearly designate staff at an appropriate level to attend multi- agency meetings and give prior thought to their mandate, remit and capacity to influence practice within their own agencies. Where agreements are entered into on behalf of the agency concerned these should be adhered to or explicitly renegotiated so that interagency planning and decisions are not compromised. It is very likely that people representing different agencies will bring with them different types and levels of expertise but also varying seniority and "clout". Variation may be particularly problematic where small agencies are relating to those with larger catchment areas that in turn relate to several local authorities or Trusts, which each have distinct cultures and structures.

5.3 Collaboration should take place at all the following levels:

- Operational level. Operational staff are responsible for identifying, investigating and responding to allegations of abuse. There needs to be a common understanding across agencies at operational level about what constitutes abuse and what the initial response to an allegation or suspicion of abuse should be. Arrangements must be established for the contribution of each relevant agency to be co-ordinated at this level. There must be a shared understanding about assessment and investigation processes and joint arrangements for decision making.
- Supervisory line management level. Managers with responsibility for overseeing and supervising the investigation of, and response to, adult abuse are responsible for ensuring that all appropriate agencies are involved in the investigation and the provision of support, and that good standards of practice are maintained. They will also provide the first line of negotiation if

differences arise between agencies. Arrangements must be established to enable managers in different agencies to contact each other quickly to resolve any inter-agency problems.

- Senior management level. A senior manager should be identified in each agency to take the lead role with regard to the development of the policy and strategy, issuing operational guidance, promoting good practice, making policy recommendations to corporate management groups and negotiating with other agencies within an inter-agency framework. It is important that lead managers in different agencies should have comparable discretion and authority to make strategic and resource decisions. To achieve effective working relationships, based on trust and open communication, such managers will need to understand the organisational frameworks within which colleagues in different agencies work.
- Corporate/cross authority level. For adult protection work to be undertaken by any agency, its role and relevance to the agency's overall function must be understood and acknowledged. To achieve this, it is recommended that lead officers from each agency should submit annual progress reports to their agency's executive management body or group to ensure that adult protection policy requirements are part of the organisation's overall approach to service provision and service development.
- Chief Officer and Chief Executive level. It is hoped that Chief Officers and Chief Executives would contribute to national developments. Locally their role is to raise the profile, support the policy, and promote the development of initiatives to ensure the protection of vulnerable adults. Nationally their role should include responding to, and supporting, national policy proposals. To achieve this, Chief Officers and Chief Executives should be regularly briefed on adult protection work within their agency.
- As Chief Officer for the lead agency the Director of Social Services will have a particularly important role to play.

- Local authority member level. Local authority members will need to be aware of issues relating to the protection of vulnerable adults at a strategic level as well as those relating to cases of institutional and individual abuse. At the strategic and policy level an item about the protection of vulnerable adults should be included in the annual report which chief officers are required to submit to their authority or agency. With regard to institutional and individual cases of abuse, chief officers and chief executives will need to keep authority members aware of incidents of abuse and have a mechanism for doing so.

5.4 The number of comparatively small unitary authorities has made representation on interagency working groups more complex in Wales. Fewer cases are likely to be encountered in these authorities and responsibilities are likely to be carried by generic senior managers rather than dedicated adult protection officers. It may be useful for social services to work closely alongside neighbouring authorities in order to streamline arrangements for their partner agencies. Examples of arrangements which take these boundary issues into account, can be seen in the Drug and Alcohol Action Teams and Youth Offender Teams.

5.5 Adult Protection Forums or Committees are being considered in some areas. These are groups of officers from the agencies concerned convened to oversee the implementation of policy across an authority or group of agencies. Their remit can be to aggregate information about adult protection referrals across their catchment area and to audit specific cases so that lessons can be learned and fed back into practice. Training and policy development could be a part of their ongoing responsibilities. To assist in developing common understandings it is proposed that the term "adult protection committee" is used as the term to describe groups meeting at the level of the local authority and "adult protection forums" to cross agency groups working across or bringing together a number of local authorities. It is noted that agencies in North Wales have already developed a forum to co-ordinate work across a number of authorities in that Region.

5.6 Provider agencies and their networks are also key players and may develop their own internal policy and guidance. These documents should reflect the fact that social services is the lead agency for adult protection and provide information about how their internal guidance is designed to work within the framework laid down by statutory services. They should provide information about independent routes into this system through social services and/or the inspection unit. Policies should also address the role to be played by voluntary bodies who campaign around these issues specifically, for example by running help-lines or providing financial advice. Agencies should be clear about when, and in what circumstances, they should share information with statutory agencies and be clear about their role in disseminating local procedures for reporting. Where these agencies provide services as well as advocacy these functions should be clearly separated so that independent advocacy can be provided to all service users including those using their other services.

5.7 Specialist psychological assessments and medical examinations may be required promptly where a person's capacity and consent are at issue or where forensic evidence is needed. Vulnerable adults for whom Welsh is a first language should expect that assessment /investigation will be carried out in their own language. Specialist interpreters may be needed in BSL and minority languages.

5.8 Core agencies such as health, social services and police will need to draw in a wider range of agencies who have a concern in the protection of vulnerable adults. These include housing departments, probation, victim support, counselling agencies and the Crown Prosecution Service. Local arrangements need to be set in place to develop these links.

6. A POSITIVE SERVICE CULTURE

6.1 Whilst procedures govern practice in respect of individual cases, it should be acknowledged that the organisational culture within and between service agencies is an important factor in serving to protect vulnerable people.

6.2 Adult protection policies should not be seen as separate from, nor a substitute for, effective care management. Safe services depend on clear standards, and definitions of abuse reflect clarity about good practice, particularly in difficult areas of practice such as challenging behaviour, sexuality and restraint.

6.3 Adult protection policies sit alongside a range of other policies which "set the tone" in a safe service. Policies on issues as diverse as medication, handling clients' money, whistle-blowing, will all play a part. Organisations which are open and have effective human resource management policies in place avoid the extremes of isolation which, research has shown, lead to abuse occurring and remaining unchallenged over time. Adult Protection Policies also dovetail with, and provide a backstop for a range of other policies that govern staff behaviour and provide avenues for resolution of conflict and difficulties such as grievance, disciplinary and supervision procedures. Where these are used to set clear boundaries around professional conduct and to assure fairness in the allocation of resources they also provide an important reference point.

6.4 A culture of respect for, and contribution which carers or families can make, should be generally encouraged by agencies. Where carers are over-stretched the aim should be to support them. However, realistic recognition also needs to be made that family carers can sometimes be perpetrators.

A helpful infrastructure

6.5 Each stage of this process needs to be properly addressed. Referral points and procedures need to be spelt out in policies and publicised through the local media and awareness campaigns. Incidents of abuse may initially be identified through routine social care assessment, complaints procedures or specific allegations or disclosures: these should

all be funnelled into the adult protection framework as soon as concerns about abuse surface. Designated workers are needed to undertake assessment/ investigation activities in all the relevant agencies, including joint interviews between social services and the police using agreed protocols. Without clear roles training cannot be properly targeted and if people are moved too frequently networks and expertise can be dissolved.

Shared values and principles

6.6 Many of the principles of good practice set out in this document are not the preserve of adult protection cases. Below are areas of practice which determine a culture which helps to safeguard vulnerable people:

- rigorous recruitment
- induction and training
- supervision
- record keeping
- accountability and systems of delegation
- workplace counselling schemes
- disciplinary action
- grievance
- complaints
- advocacy
- confidentiality/information sharing
- health and safety (eg lifting and handling)
- contract specifications and monitoring.

7. SHARED DEFINITIONS

7.1 For the purpose of both national and local guidance it is important to clarify how we define abuse, who is included under the heading of a "vulnerable adult", and what kinds of abuse are covered.

7.2 For the purposes of this guidance a **vulnerable adult** is a person over 18 years of age 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 himself or herself, or unable to protect himself or herself against significant harm or serious exploitation" Law Commission (Who decides?: making decisions on behalf of mentally incapacitated adults 1997)

7.3 People with learning disabilities or mental health problems, older people and disabled people may fall within this definition, particularly when their situation is complicated by additional factors, such as physical frailty or chronic illness, sensory impairment, challenging behaviour, social or emotional problems, poverty or homelessness. In addition to information about client group, agencies may wish to make a separate note where clients are from ethnic or minority communities and/or where they are Welsh speakers or where neither English nor Welsh is their first language.

7.4 The following definition of **abuse** provides a basis from which to develop practice:

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

7.5 Abuse may take different forms. The ADSS endorses the following categorisation and it is proposed that this be used as the basis of recording and monitoring in Wales.

- **physical abuse** , including hitting, slapping, over or misuse of medication, undue restraint, or inappropriate sanctions

- **sexual abuse** , including rape and sexual assault or sexual acts to which the vulnerable adult has not or could not consent and/or was pressured into consenting
- **psychological abuse** including threats of harm or abandonment, humiliation, verbal or racial abuse, isolation or withdrawal from services or supportive networks
- **financial or material abuse** including theft , fraud, pressure around wills, property or inheritance, misuse or misappropriation of benefits
- **neglect**, including failure to access medical care or services, negligence in the face of risk-taking, failure to give prescribed medication, poor nutrition or lack of heating.

7.6 **Racially motivated abuse** could take any of these forms and this needs to be noted additionally in situations when the victim perceives abuse to have been racist in its intent.

7.7 **Stranger abuse** will warrant a different kind of response than the response to abuse within an ongoing relationship or care setting. Nevertheless in some instances it may be appropriate to use the locally agreed inter-agency adult protection procedures to ensure that the vulnerable adult receives the services and support that they need. Such procedures may also be used when there is the potential for harm to other vulnerable people.

7.8 Some instances of abuse will constitute a criminal offence. In this respect vulnerable adults are entitled to the protection of the law in the same way as any other member of the public. In addition, statutory offences have been created which specifically protect those who may be incapacitated in various ways. Examples of actions which may constitute criminal offences are assault, whether physical or psychological, sexual assault and rape, theft, fraud or other forms of financial exploitation, and certain forms of discrimination, whether on racial or gender grounds. Alleged criminal offences differ from all other non-criminal forms of abuse in that the responsibility for initiating action invariably rests with the state in the form of the police and the Crown Prosecution Service (private prosecutions

are theoretically possible but wholly exceptional in practice). Accordingly, when complaints about alleged abuse suggest that a criminal offence may have been committed it is imperative that reference should be made to the police as a matter of urgency. Criminal investigation by the police takes priority over all other lines of enquiry.

7.9 Multiple forms of abuse are often seen in on ongoing relationship or an abusive service setting, making it important to look beyond single incidents or breaches in standards to underlying dynamics and patterns of harm. Any or all of these types of abuse may be perpetrated as the result of deliberate intent and targeting of vulnerable people, negligence or ignorance. Where it is difficult to determine the point at which more insidious and pervasive forms of oppression should be named as abusive, action should be taken to challenge services which discriminate against, and/or ignore the needs of minority groups.

7.10 The seriousness or extent of abuse is often not clear when a concern is first raised so it is important to approach allegations or concerns with an open mind about the appropriateness of intervention. Factors informing any assessment of seriousness will include:

- the frailty or vulnerability of the person involved;
- the extent of harm
- the length of time or frequency of the occurrence;
- the impact on the individual;
- the risk of repeated or escalating acts involving this or other vulnerable adult(s).

7.11 The Law Commission makes use of the concept of **significant harm** as an important threshold when considering the nature of intervention by which they mean -

"ill treatment (including sexual abuse and forms of ill treatment that are not physical); the impairment of, or an avoidable deterioration in physical or mental health; and the impairment of physical, emotional, social or behavioural development" (Law Commission Report 1995 - Page 207)

7.12 Significant harm may comprise a series of incidents which, when regarded in isolation, seem insignificant, but when frequent or continuous become serious.

7.13 Acts of random violence will warrant a different kind of response to abuse within an ongoing relationship, care setting or neighbourhood. While all abuse harms the individual and may signal a need for intervention there should be particular concern when abuse is perpetrated by someone in a position of power or authority.

7.14 Social care agencies always have a responsibility towards vulnerable victims and this will usually involve making an assessment of their needs and taking steps to protect them from further harm. The agency's role, powers and duties to the alleged abuser will vary and the action they will need to take will depend on whether the alleged abuser is

- a member of staff, proprietor or service manager
- a member of a recognised professional group, such as a doctor, accountant, clergy or counsellor
- a volunteer or member of a community group such as a church or social club
- another service user
- a spouse, relative or member of the person's social network
- someone who is also a carer in their own right
- a neighbour, member of the public or stranger.

7.15 Intervention will also be determined by the setting in which abuse has occurred. Residential and nursing homes are subject to specific actions set out in legislation and relevant guidance; caring relationships in domiciliary settings and within family relationship are inevitably more complex and difficult to interpret and mediate. Unregulated settings such as day centres, supported housing, informal or unsupervised adult placement schemes, may require particular vigilance.

7.16 Abuse which occurs within an institutional setting often includes more than one form of harm as a result of rigid and insensitive routines, unskilled, intrusive or invasive interventions or an environment which allows inadequate privacy or physical comfort. This type of abuse falls within the remit of regulators as well as purchasers of care. Legislation is being introduced to widen the type of settings which are regulated. However, contract specification monitoring also has a role to play in protecting vulnerable adults. Institutional abuse is therefore not a separate category of abuse but a particular manifestation of, and context for, it.

7.17 Where a vulnerable adult appears to be able to make informed choices and is not being unduly intimidated the available options should be explored with them and their wishes respected, unless these conflict with a statutory duty to intervene, or unless another person(s) is considered to be at risk. In all circumstances they should be consulted and involved in decision making as far as possible. Service users have a right to make choices and maintain their independence even when this involves a degree of risk. Where the individual chooses to accept this risk, their wishes should be respected within their capacity to anticipate and understand the risk. Making sound professional judgements in these situations may require formal assessment of capacity in relation to consent. Sexual acts or financial transactions are abusive in the absence of valid, informed consent, - lack of understanding, misuse of authority, intimidation or coercion cut across autonomous decision making on the part of vulnerable adults so that an initial refusal of help should not always be taken at face value.

8. AGREED DECISION MAKING AND FOLLOW UP PROCEDURES

8.1 Clear procedures for handling individual cases, from the point of referral through an appropriate form of assessment/ investigation to a case conference or similar forum for shared decision-making, form the core of adult protection policies.

8.2 Procedures should spell out decision points and suggested time-scales, allowing for a balance between flexible judgement based on individual practitioners' knowledge of individuals and their circumstances and the need for robust accountability in the face of any continued risk. There should be a clear separation between the agendas to be followed on behalf of the victim of abuse, the perpetrator(s) and those managers or agencies who have a responsibility for the overall context in which abuse has occurred.

8.3 Appropriate sharing of information throughout this process is an important task. This should include giving some feedback to the person who initially referred the case: this person may have taken a considerable risk in exposing bad practice and needs to be assured that their concerns are being taken seriously. There should be some route for appeal set up if this person feels that the agreed procedures have not led to a resolution of the initial allegations and/or if vulnerable adults are still deemed to be at risk.

8.4 It is entirely appropriate for different levels of evidence to inform these different strands of activity. Vulnerable people do not need to "prove" their need for support or intervention nor should these be denied where evidence against a perpetrator is insufficient to warrant criminal prosecution. Less stringent levels of proof are required under the Registered Homes Act and under disciplinary procedures and these should provide a backstop for vulnerable adults who may sometimes find justice denied to them.

Guidance relating to "Possible indicators for abuse" is reproduced from Carmarthenshire CC Adult Abuse - Policy and Procedures at Appendix 2

8.5 In order to streamline this process in the different agencies across Wales the following key stages and terminology are suggested:

- initial adult protection referral
- preliminary information gathering
- strategy discussion or meeting
- investigation/assessment
- case conference
- adult protection plan

8.6 **Initial adult protection referral** refers to the point at which a concern or alert is first logged. This may be as a result of a new referral which has been occasioned specifically because of adult protection concerns, but is more likely to involve existing clients who have been abused. In some cases a specific incident triggers this referral but more often there is a steady build-up of concern. Adult protection concerns may surface through a range of mechanisms, for example concerns may be identified during routine individual planning or review meetings, through inspections, via the complaints, grievance, or whistle-blowing procedures or directly from members of the public. Agencies should not "quibble" about which of these procedures to use. Adult Protection policies signal a commitment to see protection of vulnerable adults as the overriding organising principle in cases where such concerns have been raised or later come to light. Exceptionally, the first notification may be made to the police, especially if the matter is very serious. The issue of handling information from an anonymous informant must also be addressed. The early involvement of the police may have benefits. In particular:

- early referral or consultation with the police will enable them to establish whether a criminal act has been committed and this will give them the opportunity of determining if, and at what stage, they need to become involved;

- a higher standard of proof is required in criminal proceedings than in disciplinary or regulatory proceedings (where the test is the balance of probabilities);
- early involvement of the police will help ensure that forensic evidence is not lost or contaminated;
- police officers have considerable skill in investigating and interviewing and early involvement may prevent the abused adult being interviewed unnecessarily or subsequent occasions;
- police investigations should proceed alongside those dealing with the health and social care issues;
- guidance should include reference to support relating to criminal justice issues which is available locally from such organisations as Victim Support and court preparation schemes; and
- some witnesses will need protection. (Please see *Speaking up for Justice* (1988), including the provisions in Part II of the Youth Justice and Criminal Evidence Act 1999 - the majority of which will be implemented in the Crown Court by the end of 2000).

This process may not always result in criminal proceedings.

8.7 The policies should also legitimise variation from usual procedures and codes of practice where adult protection concerns are paramount, for example the need to share information may contravene the usual practice around confidentiality and/or adult protection concerns in residential settings may take priority over "transparency" in inspection practice.

8.8 It is a myth that police officers need a formal statement from vulnerable victims in order to initiate an investigation. It may be that any formal interview is held later in the process when more information is available. Where individuals lack capacity or are being

intimidated it is quite in order for the police to instigate an inquiry on the person's behalf. It may be that immediate action is necessary to make the person safe or to preserve evidence in which case it should be actioned as soon as feasible and recorded carefully.

8.9 It may also be important to take steps to protect whistle-blowers at this stage or to protect the anonymity of complainants, recognising the risk to their personal safety and livelihood which may ensue from their having reported concerns.

8.10 **Preliminary information gathering** refers to the process of initial consultation with other professionals and agencies to gather information; seek assessment of capacity, consent or duress; seek legal clarification or cross refer to previous incidents or allegations. This process may be managed by telephone and/or informal conversations but will sometimes require the convening of an early meeting to pool information. Information should be shared on a "need to know" basis. Whatever the degree of formality it is important that clear records are made about whose views have been sought as well as about what information they gave. The process will include initial checks and filters which screen out malicious or fanciful allegations and which bring together, from existing records, files and information, a 3-D picture of the context within which these concerns or allegations have been raised.

8.11 **The strategy discussion or meeting** is called when it is clear that further inquiries are needed and that these are likely to involve a number of agencies. A meeting may be called at which decisions can be taken about how to proceed on the basis of this first round of consultation and to set out a clear plan of action. The mental capacity and wishes of the vulnerable person and whether there is risk to others will need to be taken into account in determining the next steps. The co-ordinating role for the investigation will need to be confirmed at this point once a plan has been drawn up about the involvement of the various agencies concerned. A clear note should be put on record at this point, pertaining to the information received through the process of consultation and the decisions made on the basis of it. This is especially important where a decision is made not to proceed.

8.12 **Investigation/assessment** refers to the twin processes of assessment and investigation which ensue. Inquiries will seek to establish matters of fact, the needs of the vulnerable adult(s) involved, the responsibility and/or culpability of the person(s) against whom allegations have been made and the management of the service. Background information and evidence will be needed. Some witnesses may need assistance and/or protection. The person co-ordinating the investigation will try to come to a view about what has happened as the basis of protective action even if they cannot amass evidence that allows legal action to be taken. Difficulty in gathering evidence to corroborate the statements of vulnerable adults should not be allowed to divert from the need to put protective measures in place.

8.13 **Case conference** refers to the forum(s), which takes decisions and makes plans in the light of this information. Different forums may need to be convened to make decisions about the service user(s) as opposed to culpable individuals or establishments. Usually the case conference will draw on other professionals and agencies. Action will flow from the case conference and will need to be reviewed by the responsible manager. It will be unusual for the case conference to signal closure of the case. It should more helpfully be seen as a milestone on the way to resolution.

8.14 At the conference a number of measures need to be set in place which together assure proper risk management, protective and therapeutic intervention(s), redress, service provision and action against culpable individuals or service agencies. An individual protection plan may be used to document these commitments for individual service users.

8.15 It may be necessary to hold a series of meetings in complex cases or where a number of separate processes are being co-ordinated such as a criminal prosecution, action under the Registered Homes Act, the resolution of a complaint, or changes in contracting. Where these strands are brought together it is important to see Adult Protection as an overarching co-ordinating mechanism rather than as a substitute for any of these avenues for resolution or redress. (Example of Registration and Inspection Unit procedure at Appendix 3)

8.16 The case conference should also specify arrangements for review and, where further risk is a possibility, the protection plan should specify indicators which signal that the case conference should be immediately re-convened.

8.17 **Adult Protection plan** is the individual plan drawn up for the vulnerable adult that sets out

- what steps are to be taken to assure their safety in future,
- what treatment or therapy they can access
- modifications in the way services are provided to them (e.g. same gender care or placement)
- how best to support them through any action they take to seek justice or redress and
- puts in place any ongoing risk management strategy where this is deemed appropriate.

8.18 Particular attention is needed in planning care which may be required in the future. For example, a vulnerable adult may be safe while the person who abused them is being held in custody or in prison but protection may need to be reinstated when that person is released.

Examples of flow charts showing stages of an adult protection investigation are at Appendix 4

8.19 It will not be essential to follow through each and every one of these stages in every case. It may be that a decision can be reached at an early stage so that it is possible to resolve the issue by providing care management or other services. What is important is that decisions are made and recorded with input from the person who has led the assessment/investigation and from their supervisor. At the other end of the spectrum it may

be necessary to revisit previous stages, for example to recall a strategy meeting if new evidence comes to light which moves the focus of the investigation beyond its initial remit.

8.20 **Follow up procedures.** Outcomes in adult protection are the subject of ongoing debate and may not signal "resolution" in any accepted sense but combine elements of additional support and closer supervision, risk management, removal of one or both parties, therapeutic support, redress and compensation.

8.21 Other outcomes, including those relating to perpetrators and culpable service agencies are suggested in the "Summary of Recommendations from Adult Case conferences" at *Appendix 5*.

9. PROTOCOLS FOR SHARING INFORMATION

9.1 The question of sharing or disclosing information with a view to protecting vulnerable adults presents a number of professional, ethical, practical and legal dilemmas. Reference should be made to the Public Interest Disclosure Act. It will be necessary to identify the circumstances in which the usual practice of respecting confidentiality should be overridden in order to protect a vulnerable adult e.g. if a vulnerable adult is being intimidated, or if there is concern about risk to another vulnerable adult. Agencies need to consider:

- What powers are available to disclose confidential information, and to whom do these apply?
- What are the rights of those under suspicion to have their reputation and privacy respected?

9.2 It will always be difficult to make decisions about whether to share (or not to share) information about risk, particularly where the issue is about disclosing to individuals or voluntary bodies. It will always be crucial to gather the best information possible about the risk posed, assess the risk and consult thoroughly before reaching a decision.

9.3 The most recent discussion of all aspects of patient identifiable information and how this is to be protected is to be found in the report of the Caldicott Committee Report on the review of patient-identifiable information. That report recognises that confidential patient information may need to be disclosed in the best interests of the patient and discusses in what circumstances this may be appropriate and what safeguards need to be observed. The principles can be summarised as:

- information will only be shared on a 'need to know' basis when it is in the best interests of the service user;
- confidentiality must not be confused with secrecy;

- informed consent should be obtained but, if this is not possible and other vulnerable adults are at risk, it may be necessary to override the requirement; and
- it is inappropriate for agencies to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations when other vulnerable people may be at risk.

9.4 Decisions about who needs to know and what needs to be known should be taken on a case by case basis, within agency policies and the constraints of the legal framework.

9.5 Principles of confidentiality designed to safeguard and promote the interests of service users and patients should not be confused with those designed to protect the management interests of an organisation. These have a legitimate role but must never be allowed to conflict with the interests of service users and patients. If it appears to an employee or person in a similar role that such confidentiality rules may be operating against the interests of vulnerable adults then a duty arises to make full disclosure in the public interest.

9.6 In certain circumstances it will be necessary to exchange or disclose personal information which will need to be in accordance with the Data Protection Act 1998 where this applies.

9.7 The Home Office and the Office of the Data Protection Commissioner (formerly Registrar) have issued general guidance on the preparation and use of information sharing protocols.

9.8 The development of protocols setting out local information sharing procedures should aim to:

- support professional decision making in individual cases
- promote consistency
- reduce the risk of individual decisions being challenged

10. MONITORING ARRANGEMENTS

10.1 Accurate and consistent monitoring will increasingly enable agencies in Wales to base their policy and practice on sound and relevant evidence, highlighting trends and assisting in the planning process. Harmonising methods of information gathering across Wales will lay the foundation for shared learning and ensure coherence within and across different service systems.

Uses of Monitoring recording and monitoring systems to document abuse. Reproduced from Information Pack for Inspection and Registration Units O.U. H Brown and J Stein - Appendix 6

10.2 As experience develops this level of information will be generated and used but as a first step it is proposed in Wales that social services should collect and collate referral data using a standard format

Initially **adult protection referral data** should include as a minimum

- **the source of the referral**
- **the vulnerable adult's client group**
- whether they are already **known to social services or a new client**
- their **age, gender** and **ethnicity**
- the **category of abuse** (*as described in Shared Definitions section*)
- the **setting** in which the abuse occurs
- details of the **relationship between the service user and the alleged perpetrator** , i.e. family member, other service user, professional or contractual relationship, or stranger.

Case conference data should include

- **number of case conferences** held
- **outcomes** (*as described in appendix 5*)

10.3 Authorities should draw up an **annual report** to their committees about their work in relation to adult protection. The National Assembly for Wales will expect to see this information being collected, collated and, most importantly, used in developing practice and services. Monitoring information should be used to highlight

- failure to access or use the policy on behalf of certain client groups or sections of the community
- blocks between agencies at the referral, decision-making or action stage
- unsafe services or areas of practice.

10.4 Comparison between different reporting levels will be one (crude) indicator of whether a consensus exists about the appropriate threshold for reporting under adult protection procedures. Interpreting these statistics is not straightforward and will rely on local knowledge and professional judgement. Both hot spots and cold spots may give rise to concern. The former may indicate services which are inherently unsafe or those areas where complaints have been encouraged and actively facilitated. The latter may indicate a safe service or a culture within which it is difficult to complain.

Additional methods of monitoring

10.5 A flag on existing data bases can be used to indicate open files where adult protection concerns have been noted and where vigilance is warranted and also should be put on those new referrals which are made directly as a result of adult protection concerns. It should then be possible for each local authority to see the balance of existing vs new clients served through adult protection interventions.

10.6 Periodic audits of individual adult protection case records could be made to identify strengths and weaknesses in current practice, including

- quality of record- keeping
- service-user views / satisfaction
- appropriateness of decisions made, and of the decision making process itself
- attention to, and respect for, the service user's wishes
- involvement of other agencies
- helpfulness of outcome(s)

11. A COMMITMENT TO PREVENTION

11.1 The National Assembly for Wales wants adult protection activity in Wales to contribute to prevention as well as to good practice in response to referrals. Adult protection committees or forums may play a role in feeding back lessons into mainstream practice including what has been learned about

- unsafe practices or settings
- recruitment processes (e.g. vetting procedures)
- clients who are particularly vulnerable
- indicators of abuse in individuals or settings
- training needs of staff
- links with domestic violence services and community safety units
- areas of policy where further work needs to be done to clarify good practice or strengthen professional boundaries (e.g. sexuality, intimate care practices, handling personal moneys, control or restraint).

11.2 Training and policy development should increasingly take note of adult protection issues as these arise in the context of mainstream service development within and across social care agencies.

Example of Powys CC prevention policy at Appendix 7

12. USEFUL CONTACT LIST

12.1 A simple short guidance leaflet giving details of **key contacts** including the social services co-ordinator should be well distributed as part of an awareness raising process.

12.2 These could be put in GP surgeries, pharmacies, hospitals, care homes, libraries etc.

13. THE LEGAL CONTEXT

13.1 There is no comprehensive legislation or other body of common law relating to situations of abuse of, or risk to vulnerable adults. However there are several sources of law which can be utilised.

13.2 A list of relevant statutes is attached at Appendix 8.

13.3 Legal advice should be sought from local authority legal departments in individual cases.

13.4 Local authorities should consider whether vulnerable adults should be helped to access independent advocacy services or legal advice. The interests of vulnerable adults may not be best served by the local authority's legal officers: indeed their interests may be in conflict in cases where the authority itself, or the service provision it has arranged, are implicated in the alleged abuse. Specialist solicitors or other advice agencies may develop expertise, which allows them to more adequately represent vulnerable clients.

Appendix 9, reproduces " The legal context for adult protection", from Powys C.C. Social Services Department Policy and Procedures for Identifying and Responding to Allegations of Abuse and Protecting Vulnerable Adults.

APPENDICES

These are reproduced with permission of the relevant authors or authorities. It should be noted that these appendices do not form part of this guidance but are examples of current practice.

Appendix 1

Examples of local policy statements (Cardiff SSD; Sheffield SSD)

Appendix 2

Possible indicators of abuse (Carmarthenshire SSD)

Appendix 3

Procedure for Responding to the Alleged Abuse of Vulnerable Adults in Registered Premises (All Wales Registration and Inspection Units)

Appendix 4

Examples of Flow chart: stages in adult protection investigations (Carmarthen, Ceredigion and Powys SSDs)

Appendix 5

Summary of Recommendations from Adult Case Conferences.(AIMS Management Guide)

Appendix 6

Recording and Monitoring Systems to document abuse (Information Pack for Registration and Inspection Units Prof H Brown and J Stein. O.U.)

Appendix 7

Prevention policy. (Powys SSD)

Appendix 8

List of Relevant Statutes.

Appendix 9

The legal context for adult protection (Powys SSD)

Appendix 10

Analysis of Adult Protection Policies in Wales. April 1999. SSIW

Appendix 11

Membership of Consultancy Group

VULNERABLE ADULTS - POLICY CARDIFF CC

1. Community Care means providing services and support to enable vulnerable people to live as independent a life as possible in their own homes, their carers' homes or in homely settings with residential facilities in the community.
2. Every person has a right to be advised of, and within the resources available, receive whatever treatment or care necessary to enable them to live as normal a life as possible within the constraints of their incapacity.
3. There will be situations when the risk involved in people living on their own or with carers will necessitate an intervention by the statutory authorities. Such intervention should be at the minimum level required to provide the necessary support and should be aimed at allowing the people involved to achieve their highest level of independence consistent with mitigating the perceived danger/ risk.
4. A vulnerable person capable of making an informed decision about his/her circumstances must be made aware of the nature of the perceived danger/risk and offered possible interventions/solutions. However if the person does not wish to accept the interventions offered, his/her wishes must be respected, unless a statutory responsibility to intervene exists.
5. Where a vulnerable person is believed not capable of making an informed decision and refuses to acknowledge the perceived risk and rejects (or is prevented from accepting) appropriate help, a full assessment of their mental state should be arranged as soon as practical, and continued monitoring of the situation should be ensured as far as possible.
6. The prevention of unacceptable risk and the identification, assessment, intervention and protection of the person found to be at risk is a multi-disciplinary, inter-agency task to be co-ordinated by a nominated manager of the Social Services Department.

**JOINT POLICY STATEMENT ON THE MANAGEMENT OF ABUSE
OF VULNERABLE ADULTS (SHEFFIELD ADULT PROTECTION
POLICY)**

Sheffield's Community Care Plan endorses key principles which include a commitment to "securing people's freedom from neglect, abuse, exploitation, harassment and discrimination."

In pursuance of this principle The Health Authorities and the Department of Sheffield City Council have secured the agreement of the signatory organisations to the following policy statement on the Abuse of Vulnerable Adults:

The Abuse of Vulnerable Adults constitutes a clear infringement of their rights and a violation of the principles laid down in Sheffield's Community Care Plan. The signatory organisations therefore agree to:

- (i) Endorse the Values of Sheffield's Community Care Plan (Appendix 1)**
- (ii) Work co-operatively across all the organisations on the identification, investigation, treatment and prevention of abuse of vulnerable adults**
- (iii) Maintain Equal Opportunities by ensuring that:**
 - equality of opportunity will be available to all Vulnerable Adults regardless of**

their race, gender, class, religion, culture or disability
 - all assessments and investigations under this policy will be carried out in a**

setting, manner and language appropriate to the levels of understanding and

- **cultural background of the person concerned**
- (iv) Develop across all the organisations an Implementation Strategy for this policy statement that addresses the requirement for:**
- **a common definition of abuse**
 - **a common system of recording abuse**
 - **the joint investigation of allegations of abuse**
 - **the provision of relevant information to staff and to the general public**
 - **the provision of timely and consistent legal advice and support**
 - **work at a national level to clarify the policy and legislative framework under which work on abuse is conducted**
 - **identifying the resources necessary to fulfil the expectations of work in this area**
 - **an understanding of the factors that may lead to abuse, and of how abuse may be prevented**

The Implementation Strategy (Appendix 2) will incorporate plans for training and for the structures and systems necessary to support the work.

POSSIBLE INDICATORS OF ABUSE

Carmarthenshire CC

PHYSICAL ABUSE

Working definition

26 Any physical pain, suffering or injury which is wilfully inflicted by a person who has responsibility, charge, care or custody of, or who stands in a position of, or expectation of trust to a vulnerable person, constitutes physical abuse.

Typical examples

27. These include but are not limited to, unreasonable physical restraint, forced medication, slapping, direct beatings, pushing, rough handling, misuse of medication, forcing people to do things against their will and deprivation of care including food, water or medication.

Possible indicators

28. These indicators could, in some cases, suggest the possibility of physical abuse. A number of presenting indicators would arouse concern and should lead one to consider whether abuse has occurred. However, it should be stressed that these indicators are not exhaustive and practitioners will continually be confronted by the unusual and the 'unthought' of.

- cuts, scratches, lacerations, puncture wounds

- fractures, bruises, sprains, weal marks, discolouration

- any injury which has not been properly cared for (injuries are sometimes hidden on areas of the body normally covered by clothing)
- poor skin condition or poor skin hygiene
- absence of hair and/or haemorrhaging below scalp
- dehydration and/or malnourished without illness-related cause or when not living alone
- loss of weight
- burns and scalds
- soiled clothing or bed linen
- any fracture without a clear history of accident
- signs of hair pulling
- change of appetite
- insomnia or unexplained behaviour
- hypothermia
- finger marks
- untreated pressure sores
- fearfulness
- unexplained paranoia

- low self esteem
- excessive fear
- confusion
- asks not to 'be hurt'
- flinches at physical contact
- ulcers, bed sores and being left in wet clothing

FINANCIAL ABUSE

Working definition

29. Any theft or misuse of a person's money, property or resources, by a person in a position of, or expectation of trust to a vulnerable person, constitutes financial abuse.

Typical examples

30. This includes, but is not limited to, theft or misuse of money, property, possessions and insurance, gaining money or possessions by threat, persuasion or exploitation and blocking access to assets and extortion.

Possible indicators of financial abuse

31. These indicators, could, in some cases, suggest the possibility of financial abuse. A number of presenting indicators should arouse concern and lead one to consider whether abuse has occurred. However, it should be stressed that they are not exhaustive and practitioners will continually be confronted by the unusual and the 'unthought' of.

- sudden, unexplained or inappropriate withdrawals from bank and savings accounts
- signatures on cheques, etc, that do not resemble the person's signature, or signed when a person cannot write
- power of attorney given, or recent changes or creation of a will, when the person is incapable of making such decisions
- unusual concern by caregiver that an excessive amount of money is being expended on the care of the person
- inadequate money to pay bills, overdue rent, disappearing pension
- lack of amenities, such as TV, appropriate clothing, personal grooming items that the person can well afford
- missing personal belongings such as art, silverware or jewellery
- deliberate isolation, by a caregiver (formal or informal) in person's finances
- deterioration in health/hygiene through not able to access own money

NEGLECT

Working definition

32. The failure of any person having the responsibility, charge, care or custody of a vulnerable person to provide that degree of care which a reasonable person in a like position would provide constitutes neglect.

33. This definition includes

- failure to assist in personal hygiene or the provision of food, shelter, personal care, social contact, warmth and clothing for a person
- failure to provide medical intervention for the physical and mental health needs of a person. (This does not include instances in which a person refuses treatment)
- failure to protect a person from health and safety hazards

Typical examples

34. This includes, but is not limited to a lack of personal care, malnutrition, confining a person to a room on their own, preventing them from seeing friends or relatives or having other social contact, denying access to services and refusal of transportation.

Possible indicators

35. These indicators could, in some cases, suggest the possibility of neglect. A number of presenting indicators should arouse concern and lead one to consider whether abuse has occurred. However, it should be stressed that they are not exhaustive and practitioners will continually be confronted by the unusual and the 'unthought' of.

- dirt, faecal/urine smell, or other health and safety hazards in a person's living environment
- prolonged loneliness
- sense of isolation and depression
- rashes, sores, lice on the person
- person is poorly or inadequately clothed
- person is malnourished or dehydrated
- pressure sores
- person has an untreated medical condition
- person has withdrawn behaviour
- over or under medication

- dishevelled appearance
- basic needs appear not to be met e.g. person is always hungry looks emaciated
person is left unattended at home and so put at risk
- home environment does not meet basic needs e.g. no heating

SELF NEGLECT/SELF ABUSE

Working definition

36. Failure to provide for self, through inattention or dissipation. The identification of this type of case depends on assessing a person's ability to choose a lifestyle versus a recent change in the person's ability to manage their own well being.

Typical examples

37. Any vulnerable person who allows his/her accommodation, health or hygiene to deteriorate to such an extent that they become a major concern for family, friends, neighbours or carers.

Possible indicators

38. These indicators, could, in some cases, suggest the possibility of self neglect. A number of presenting indicators should arouse concern and lead one to consider whether self neglect has occurred. However, it should be stressed that they are not exhaustive and practitioners will continually be confronted by the unusual and the 'unthought' of.

- inability to manage personal finances, e.g hoarding, squandering, giving money away or failure to pay bills
- inability to manage activities of daily living, including personal care, shopping, meal preparation, housework etc

- suicidal acts, wanderings, refusal of medical attention, isolation, substance misuse
- lack of toilet facilities and utilities or animal infested living conditions
- rashes, sores, faecal/urine smell, inadequate clothing, malnourishment, dehydration etc
- changes in intellectual functioning e.g. confusion, inappropriate or no response, disorientation to time and space, memory failure, incoherence, etc
- not keeping medical appointments for serious illness

PSYCHOLOGICAL/EMOTIONAL ABUSE

Working definition

39. The wilful infliction of mental suffering, by a person in a position of, or expectation of trust to a vulnerable person, constitutes psychological/emotional abuse.

Typical examples

40. This includes, but is not limited to, emotional, mental and verbal abuse, bullying, and may take the form of verbal assaults, conditional love ('If you do this, then I will...'), threats, instilling fear, humiliation, shouting, ridicule, discriminatory remarks, name calling, deprivation/loss of liberty, denial of access to people, denial of access to cultural or religious observances, intimidation or isolation, blame, insults, swearing and denying a person their right to make their own decisions.

Possible indicators

41. These indicators, could, in some cases, suggest the possibility of psychological/emotional abuse. A number of presenting indicators should arouse concern and lead one to

consider whether abuse has occurred. However, it should be stressed that they are not exhaustive and practitioners will continually be confronted by the unusual and the 'unthought' of.

- demonstrates untypical changes in mood, attitude and behaviour e.g. mood swings, incontinence, sleeplessness
- becomes untypically aggressive/passive/withdrawn
- shows an obvious deterioration in health
- helplessness
- hesitation to talk openly
- implausible stories
- confusion or disorientation
- anger
- excessive fear
- withdrawal
- depression
- denial
- agitation
- mental anguish

- cowering on approach
- loss of appetite
- need for excessive sleep
- unusual weight gain/weight loss
- unexplained paranoia
- low self esteem
- ambivalence
- resignation

SEXUAL ABUSE

Working definition

42. Adult sexual abuse can be defined as the direct or indirect involvement of adults in sexual activities with any other person(s) having a relationship with them, which they do not fully comprehend, or to which they are unable to give informed consent, or which violates the social taboos of family rules, i.e. incest.

Typical examples

43. This includes, but is not limited to rape, actual or threatened or sexual assault, inappropriate touching, denial of person's right to enjoy privacy, abuse of power to gain sexual satisfaction, inappropriate use of explicit sexual language which causes offence, forced penetration and involvement of adults in sexual activities which they do not understand or to which they have not given their consent.

Possible indicators

44. These indicators, could, in some cases, suggest the possibility of sexual abuse. A number of presenting indicators should arouse concern and lead one to consider whether abuse has occurred. However, it should be stressed that they are not exhaustive and practitioners will continually be confronted by the unusual and the 'unthought' of.

- emotional distress
- genital discharge - a possible indicator of sexually transmitted diseases
- bruises and lacerations on genitalia
- semen staining on clothing
- blood stained underwear
- torn penial frenulum
- tissue tearing
- mood changes
- over affectionate displays - incestuous relationships
- inappropriate physical contact in terms of amount of contact or lack of contact
- change in usual behaviour
- feelings of guilt or shame
- withdrawn behaviour choosing to spend the majority of time alone

- demonstrates untypical changes in behaviour e.g. bedwetting, aggressiveness, self injury
- overt sexual behaviour/language by the person
- disturbed sleep pattern
- difficulty in walking/sitting
- 'love bites'

**ALL WALES REGISTRATION AND INSPECTION UNITS -
PROCEDURE FOR RESPONDING TO THE ALLEGED ABUSE OF
VULNERABLE ADULTS IN REGISTERED PREMISES**

Background

Local procedures for the protection of vulnerable adults are at different stages of development across Wales. Some authorities have already implemented multi-agency policies and procedures, whilst others are still working towards this goal. It is vital that the specific responsibilities and interests of the Registration and Inspection Units are built into all multi-agency systems and procedures. The Units will be involved in both feeding relevant information into a central point and by playing an agreed part in the investigations of allegations of abuse.

Registration and Inspection Units, whilst following the locally agreed formal procedure, will always ensure the processes outlined in this document are adhered to in order to fulfil their regulatory function.

This Registration and Inspection Unit procedure is directed towards specific instances of alleged abuse. General poor practice/low standards in a home will be dealt with through the normal route. However, there may be situations where low standards, which are not addressed, could result in the adult protection procedure being invoked.

1. Mission Statement

The Registration and Inspection Units in Wales recognise that individuals who live in registered premises are vulnerable to other peoples' actions, thus making them susceptible to aspects of abuse. Consequently, all Units are committed to raising awareness of the public to potential abuse within registered premises.

The Registration and Inspection Units will respond positively in every case of alleged abuse irrespective of how the information is received. This may be via the Person Registered/Person in Control, a member of staff, relative, visitor, a patient/resident or any other individual. Information may also be received during a statutory inspection. Any allegation, suspicion or incident of abuse will be recorded in accordance with the respective Units complaints procedure, and will be fed into the locally agreed formal adult protection procedure.

The Registration and Inspection Units in collaboration with the relevant Agencies will respond accordingly when abuse is suspected and implement this All Wales procedure.

The **role of the Registration and Inspection Unit** will always be to ensure that the Person(s) Registered/Person(s) in Control of the home carries out their responsibilities to safeguard and promote the welfare of individuals. The involvement of the Unit in any situation will be in accordance with the local adult protection procedure. The extent of this involvement will depend upon the severity of the allegation and the level of satisfaction in terms of the Person(s) Registered/Person(s) in Control undertaking his/her responsibility appropriately.

As Registration and Inspection Units have to ensure the continued fitness of the Registered Person(s)/Person(s) in Control, and must consider whether the home can continue to operate in the immediate future, they must be advised by all other agencies who are alerted to an allegation of abuse.

Other agencies will also have various responsibilities, which must be met in instances of abuse. Consequently ongoing liaison between the Registration and Inspection Unit and these parties would be essential.

Social Services Departments and Health Authorities may have a contract with the provider for one or more individuals in the home. Consequently, these agencies would owe a duty of care to a particular resident(s) and would need to work in conjunction with the Registration and Inspection Unit to ensure this duty is not breached.

The **local Social Services Department** , in the area where the care home is situated will have a broad duty to ensure individuals deemed to be in need are provided for. This agency could therefore have a substantial role in some cases of abuse eg Where abuse is extensive and a home ceases to operate, the local Social Services Department may need to relocate a significant number of individuals.

The Police will need to also be involved if it is believed that a criminal act may have been committed at a care home. Consequently, the Police would have a significant role in the investigation and would need to work in conjunction with the Registration and Inspection Unit and other agencies.

In all cases the lead co-ordinating agency will be identified in line with the locally agreed adult protection procedure. Because of its regulatory function all agencies must keep the Registration and Inspection Unit informed of all developments.

2. **Definitions**

(i) **Abuse**

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

(ii) **Vulnerable Adults**

A vulnerable adult is a person over 18 years of age 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 himself or herself, or unable to protect himself or herself against significant harm or serious exploitation. (Law Commission *Who Decides? Making decisions on behalf of mentally incapacitated adults* 1997.)

(iii) **Categories of Abuse**

Physical

Financial

Neglect

Psychological/Emotional

Sexual Abuse.

Refer to Appendix 1 for working definitions, typical examples and possible indicators.

3. Principles of Investigation

- The safety and well being of the individual will remain paramount at all times. The number of times a resident/patient is interviewed by different parties will be kept to a minimum and will be conducted by an individual who has the appropriate communication skills. Therefore this must be an issue for discussion between agencies at the outset.
- The principle of confidentiality of information must be upheld by all agencies. Information will be shared on a strict 'Need to know' basis. Guarantees and promises of confidentiality should not be given to individuals who disclose information. Assurances can however be given that this information would be handled with discretion.
- The roles and responsibilities of each agency will be clearly established at the outset and throughout the process of investigation. Upon receipt of the allegation initial consultation between agencies may only be possible via the telephone. In other cases it may be necessary and practicable to organise a strategy meeting at the commencement of the investigation.
- Information will be recorded accurately at all times, together with the detail of the basis for judgements.

- Where a resident/patient has no one to represent them, the services of an independent advocate will be offered to the individual. The Social Services Department will normally have the responsibility for co-ordinating any arrangements.

4. Procedure to be followed by Registration and Inspection Units

The Registration and Inspection Units will follow the formally agreed local adult protection procedures whilst taking the following steps to ensure compliance with the regulatory function.

- (i) If any agency receives an allegation of abuse in registered premises they will immediately inform the Registration and Inspection Unit. Identification of responsibilities between the Unit and the local Social Services Department must then take place. A joint investigation in conjunction with the provider will be appropriate in many cases. If the individual is contracted through someone other than the local Social Services Department (eg NHS Continuing Health Care/ out of area Social Services Department) liaison with this agency is necessary at the outset of the investigation.
- (ii) Registration and Inspection Units will ensure the wishes and considerations of the vulnerable adult will be taken into account in all matters. However, these wishes will need to be balanced against the risk to others in the home.
- (iii) It will be ensured from the outset that the Person in Control/Person Registered has called for medical assessment/treatment for the resident/patient as required. This action may be necessary to gain evidence to support the allegation.
- (iv) The victim's family/representative should be informed with the resident's consent and should be updated on all developments (where a resident is incapable of giving consent, consideration will be given to the resident's best interest).

(v) It is expected that the Person-in-Control/Person Registered will contact the police as necessary. However, the Head of the Registration and Inspection Unit will contact the senior designated police officer to confirm that this contact was made and would seek advice from the police in relation to the method of the investigation and to ascertain their potential involvement in line with the locally agreed procedure. This process ensures that any interventions by the Person(s) Registered/Person(s) in Control or the investigating officer(s) do not compromise any police investigation whilst recognising that the Inspection Unit has to carry out its own duties under the Registered Homes Act 1984.

(vi) Consideration will always be given by the Registration and Inspection Unit as to whether it is necessary to visit the home within 24 hours/1 working day of an allegation of abuse. This will occur in all instances where there are allegations of physical/sexual abuse.

The visit will be co-ordinated with other key agencies and in many situations a joint visit will be appropriate.

The purpose of this will be to consider:

- Whether the Person(s) Registered/Person(s) in Control is carrying out his/her duties appropriately.
- What activities have been undertaken to safeguard the victim of abuse (eg if the allegation is against a member of staff the Person Registered/Person in Control may need to consider their disciplinary procedures and whether suspension of the worker was appropriate whilst the investigation continued).
- Whether a multi-disciplinary strategy consultation/meeting is to be established to decide on the future course of action, and to enable information sharing between key agencies.

- Where appropriate, the need for the services of an advocate for the vulnerable person.
- Whether written statements/records are being properly maintained.

(vii) If the Registration and Inspection Unit is satisfied that the appropriate action has been taken, a report of the incident from the Person(s) in Control/Person(s) Registered will be requested, together with photocopies of all relevant statements.

A comprehensive written record will be prepared by the Inspecting Officer and submitted to the Head of Unit. Other involved agencies will then be advised of the outcome of the investigation and follow-up action will be agreed.

(viii) In the event of:

- the Registration and Inspection Unit being dissatisfied by the actions taken by the Person(s) Registered/Person(s) in the Control, and/or
- a situation becoming extensive/residents at risk, and/or
- the Person(s) in Control/Person(s) Registered being implicated.

The investigation of the incident will then be undertaken by the Registration and Inspection Unit in conjunction with other agencies as necessary, in line with the locally agreed formal procedure.

(ix) The Inspecting Officers will then ensure the immediate safety of the vulnerable adult by implementing actions, in conjunction with other agencies, which will prevent the risk of further harm.

(x) In all situations, regardless of other agencies' roles and involvement, the Heads of Registration and Inspection Units will continue to be fully briefed and party to all relevant decision making processes concerning the allegation. This will allow the Registration and

Inspection Unit to consider the continued fitness of the Registered Person(s)/Person(s) in Control.

(xi) Depending upon the circumstances the social care/nurses' registering body *UKCC) may need to be informed.

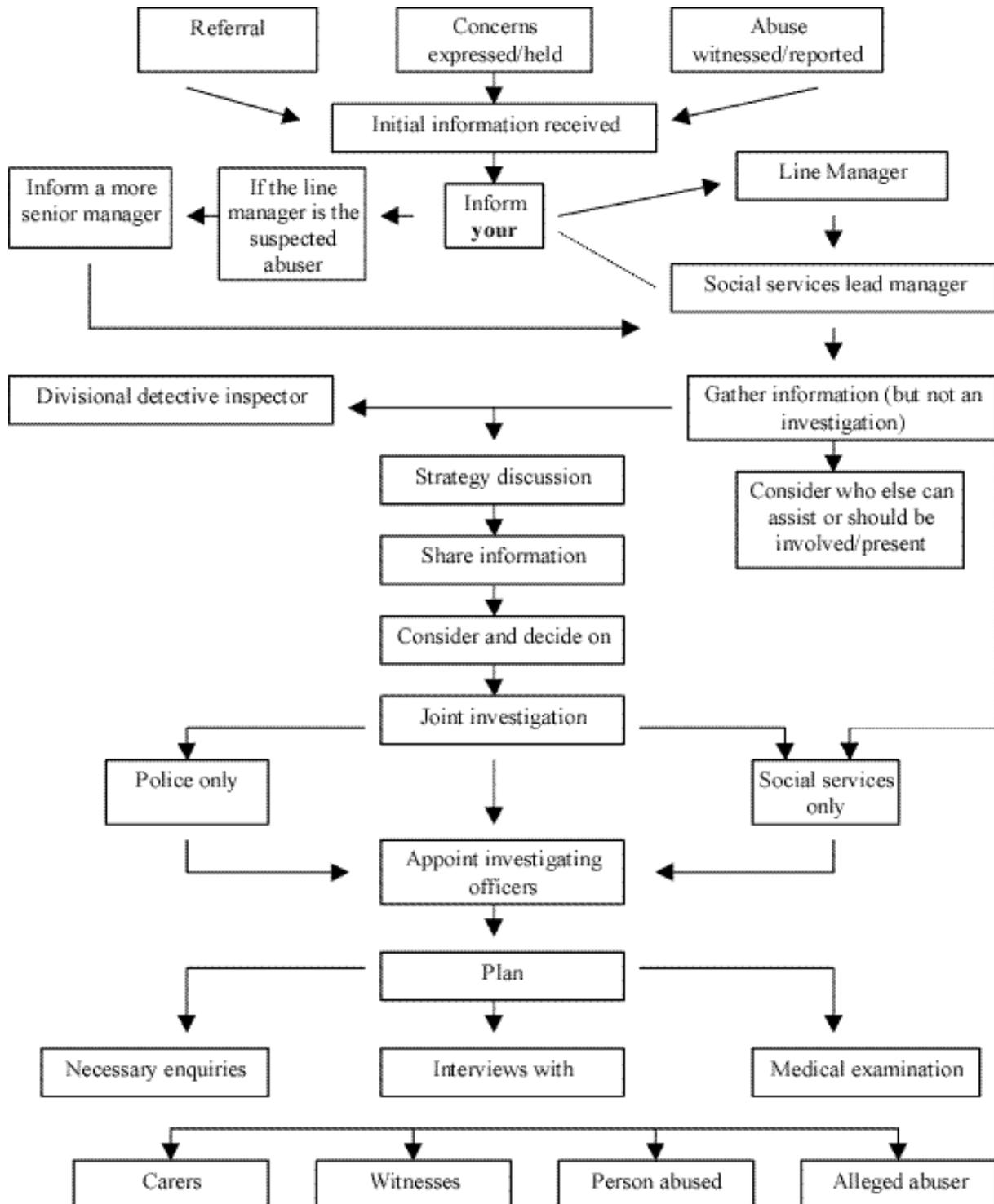
5. Outcome of the Investigation for Registration and Inspection Unit

- Possible enforcement action to be taken by the Registration Authority, such as notices, variation in conditions of registration, prosecution under the Registered Homes Act 1984 or cancellation of registration (urgent or ordinary procedure).
- Continued surveillance/monitoring of the home by Inspection Officers of the Registration Authority.

Carmarthenshire SSD

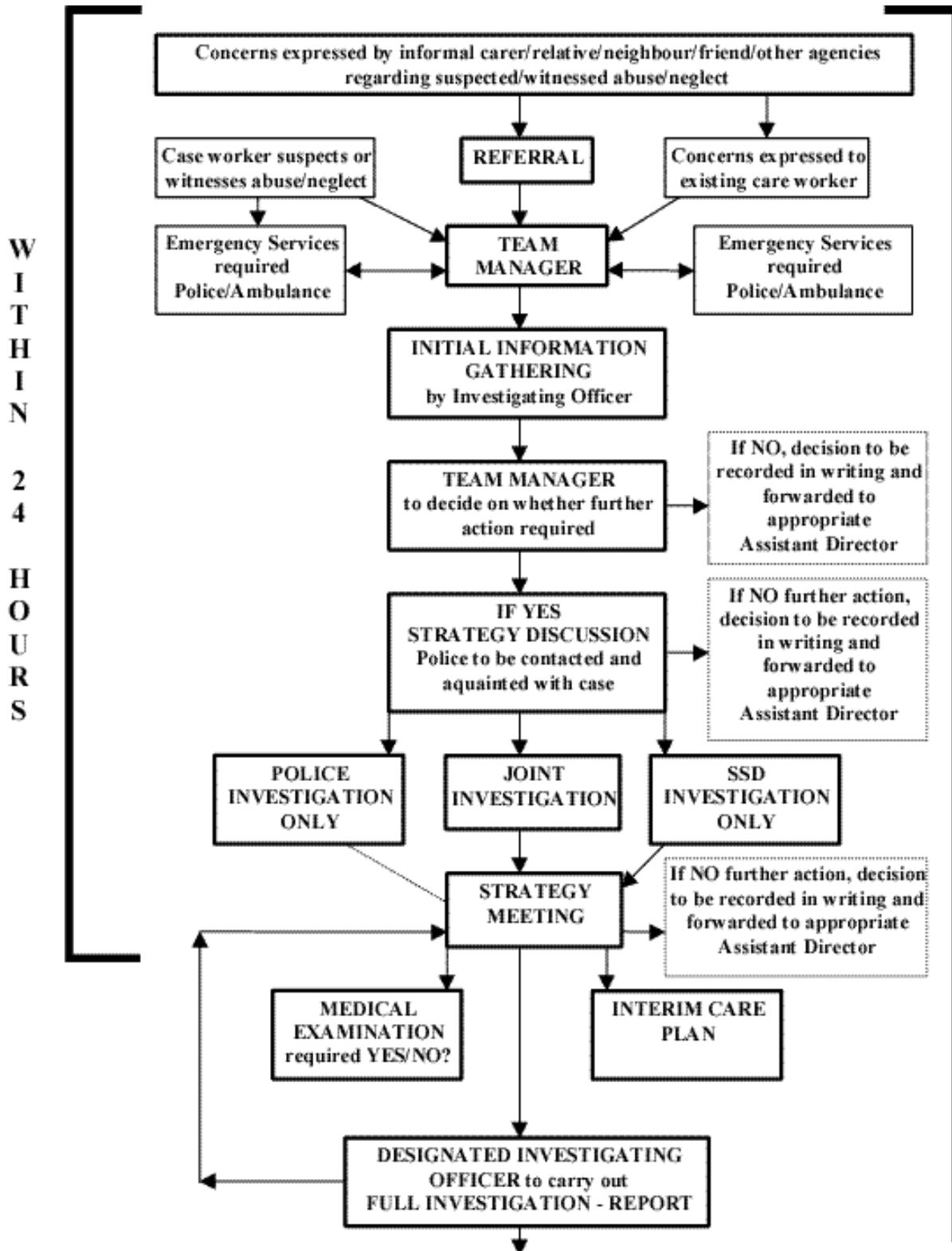
Full Investigation - social services

80. The following diagram sets out the investigation process



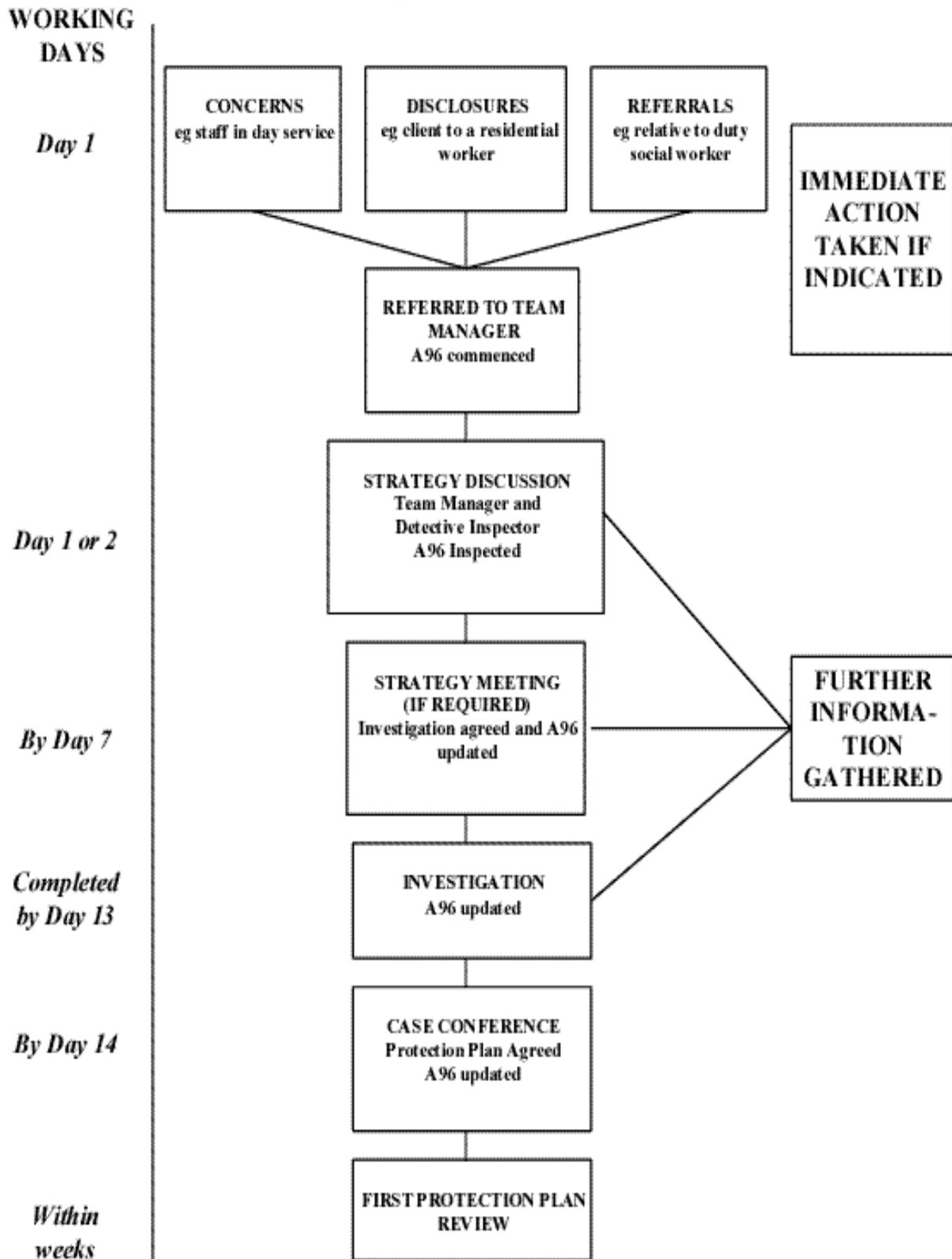
Ceredigion C.C.

INVESTIGATION - ALLEGATIONS OF ABUSE/NEGLECT BY INFORMAL CARER/RELATIVE/NEIGHBOUR/FRIEND OF VULNERABLE PERSON



Powys C.C

FLOW CHART: The Identification, Investigation and Planning Process and Timescale



SUMMARY OF RECOMMENDATIONS FROM ADULT PROTECTION CONFERENCES (FROM AIMS MANAGEMENT GUIDE)

To be completed by case conference chair and reviewed on:

[date].....

For adult client who has been abused

Move to safer environment

Counselling

Victim support group

Compensation from criminal injuries board

Preparation for court

Legal action (please specify):.....

Other [please specify]:

Information to be shared with (name agencies):

For person alleged responsible

Prosecution CPS

guilty

not guilty

Disciplinary

guilty

not guilty

- Complaint to professional body (action to strike off register)
- Resigned/left
- Suspended
- Move of residence
- Removal under Mental Health Act [scale timescale]
- Extra help (if carer)
- Specific worker(s) identified to provide support/training to person alleged responsible**
- Other [please specify]:**
- Information to be shared with (name agencies):**

For service provider

- Notices under Registered Homes Act (please specify):
- Emergency closure order
- Services changed to minimise/prevent potential for abuse
- Staff recruitment process modified to take account of adult protection issues
- Training/awareness focused on adult protection issues
- Revise policy/procedures

Review practice and training in relation to:

physical handling and restraint

financial accountability

sexuality and/or intimate care

recruitment

professional boundaries

other (please specify)

Information to be shared with (name agencies)

For Purchasing Agency

Revise contract

No further placements

Inform other agencies eg other placing authorities [state which]

Staff/management support systems changed

Inter-agency work identified

Service contract/agreement changed

Other agencies advised to change practice/procedures

Other (please specify):

For transfer to other agency

Responsibility for further action accepted and transferred to another agency?

Yes No

If yes:-

Police

Other SSD

Health

Inspection Unit

Housing

Personnel

Other Statutory Agency

Legal representative (eg if compensation is anticipated)

Voluntary Organisation

other (please specify):.....

No further action to be taken

Probability that abuse allegations unfounded

Insufficient evidence to proceed further

Adult/client's wishes not to proceed took prime consideration

Other (please specify):

Source: AIMS Management Guide Pavilion Publishing (forthcoming)

Taken From Information Pack for Inspection and Registration Units.

Prof H Brown and J Stein

Recording and monitoring systems to document abuse

Why record and monitor?

Who benefits from the information?

- professionals
- vulnerable adults
- purchasers
- the public

How can it aid the victims of abuse?

By realising that certain situations can be abusive and trying to avoid them. It will highlight for example

- tired staff
- poor management
- lack of training
- lack of respite care which gives carers a break as well as vulnerable adult a break
- Systematic abuse, deliberate and thought out.

And assuming something is done about it ... help the clients

Also by giving the vulnerable adult as well as carers, professionals and the public an easily accessible and user friendly way of reporting abuse where they know it will be listened to and something done.

Can I protect potential other victims?

Because abuse is monitored, the systems should be in place for protection of potential other victims without reinventing the wheel. Similar situations can be recalled and solutions and disasters quickly reviewed.

Does it help bring serial abusers to light?

This is a tricky one. Because of data protection you cannot keep the names of alleged perpetrators and perpetrators can change their names as they move on. But if you keep in touch with police they are permitted to keep names and if they are involved in the policies and know how they work the police can be the best source of information.

Does it highlight bad practice?

It can do. An example was in a place where there were cases recorded of physical abuse but were on investigation, the result of staff not trained to lift and carry properly. Cases of psychological abuse can highlight staff not trained how to deal with for example people with certain mental health problems with the staff expecting the clients to do things which they are unable to do and in frustration the staff shouting abuse at the clients.

Does it make professionals more vigilant or over vigilant so that they see abuse everywhere?

The knowledge that abuse reports will be taken seriously and dealt with using both understanding and expertise can help to reassure workers and keep them vigilant but not over vigilant.

Assuming that the guidelines cover whistleblowers, staff will be more confident in reporting what they feel is genuine abuse even if investigation shows it to be questionable and that untrue allegations perpetrated by those with vendettas or petty hatreds will cease.

Does it give workers a lot more work?

It may appear to at first but when staff realise the benefits it will in the end give less work. But training needs to be given for staff to understand the value of reporting and monitoring.

Does it aid the general public to report abuse?

It can do. Public notices about the guidelines, enhanced with easy to read statistics displayed in public places, contact numbers for reporting abuse, can all help in the long run to protect vulnerable adults.

Does it encourage a perpetrator to be more devious and subtle?

It is doubtful but possible. By letting people know who are the most vulnerable groups to abuse, who abuses most, what types of abuse are most prevalent could make a perpetrator more devious in their approach but it could also make them turn away from abuse in that area in the knowledge that their chances of being caught were much higher.

What are the cost implications?

It varies from place to place.

- guidelines need to be written, printed and disseminated
- training in their use for all levels of staff
- setting up of a monitoring system
- dissemination and comprehension of the results

BUT

- from it we can learn the costs in man hours of each case and see where savings can be made
- by monitoring we can learn, and one hopes help, towards eradicating or at least lessening abuse.
- by not reinventing the wheel one can make savings in information exchange, time spent in repetition, and basically a more efficient service that benefits both staff and client alike.

What to record for monitoring purposes

Are guidelines in place and working to facilitate ease of obtaining information?

Good guidelines should give easy access to what you want to know

How much information is it necessary to hold?

This is for your organisation to decide. Those listed below are the ones in current practice with various authorities.

Date of referral/alert

Source of referral/alert

Type of home

Client Group

Sector

Size of home or day service (Registration number)

Team receiving initial alert

Type(s) of complaint/abuse

Person(s) alleged responsible for any abuse or malpractice

Initial checks undertaken

Action taken in response to initial information

Investigative activities

Outcome of investigation/status of allegation

Outcome of Investigation/Decisions taken

Final Outcome after Appeal or Tribunal

Do we need to record, for example, ethnic origins?

This can help inform if all groups of the community being covered

Should only proven cases be recorded?

If proven cases only, are recorded, worrying trends may be missed

Should we record strategy meetings as well as case conferences?

Many places not only record strategy meetings but also the outcomes of these meetings as they find this information useful.

Do we need to record the name of the investigating officer?

Many areas are doing this as it helps with workload planning, shows maybe that someone is often left out and will also highlight factors if for example one person always dismisses cases as unproven.

What are the training implications of this?

One cannot record, monitor and really use the information to the full without training. But what training?

Awareness training as well as how to use the documentation

Make staff feel consulted, valued and listened to. Well-trained staff are worth the money spent.

How to record and monitor

How centrally should information be held?

Detailed information over smaller area and more generalised information for the larger area
Availability of generalised information to all line managers and above
User-friendly ... Not systems so complex no one understands

How often should it be updated?

Monthly/3 monthly/6 monthly depends on detail kept
If log sheets or something similar used as a tracking device the information can be added as soon as it happens and computer input updated regularly.

Who should input this information?

One person should be designated to gather in the information every three or six months. Ideally this should be the adult protection co-ordinator who should be very au fait with what is going on. Also high up enough in the organisation to obtain the information and then able to produce an easy to read report and draw conclusions from it that are listened to!

Should the information be held on a central computer system?

Yes, if possible so that cross check can be easily made.

How often should monitoring be undertaken and results published?

There should be co-ordination of monitoring on a regular basis and results published every 6 or 12 months.

How should the results be interpreted for the benefit of clients and staff?

Easy to read graphs are popular but it must be clear what the information means for them and the organisation.

There may be different levels of interpretation to highlight

Front-line workers may need to know what types of abuse are prevalent and how they can help to combat this. They need to know who is abused and how clients can be protected. Also staff should be encouraged to ask the question, "Are we abusing without realising it"

Line managers and area managers need to know all of the above plus are they helping staff to pick up signs of abuse, are whistleblowers supported, are they respecting peoples ethnicity and race? Are they always going as far as case conference? Is one worker doing more than their fair of investigations. The answers to these and other questions should be available in good monitoring and should encourage people to stop and think or rethink

Should information be shared with other disciplines and other geographical areas?

Yes. All those signed up to the protection policy will input and share in monitoring and this information can be shared with those not signed up to encourage them to also take on board protection policies. Where possible other areas can share their knowledge, expertise (or lack of it) with your area to help in solving problems and creating an area of co-operation.

Should a permanent committee be set up to keep guidelines up to date, disseminate results and inform policy?

This is a good idea and most areas already have them.

What is the end result?

One hopes that staff and clients feel valued and respected that abuse is lessened and people protected.

Log sheet no. _____ Complaints & Adult Protection Referral/Alert Monitoring Sheet for Registration and Inspection Unit

Date of referral/alert	Source of referral/alert code	Name of establishment and post code	Type of home client group (c) - code sector_(s) code_	Size of home Reg No	List initials (1) age (2) and sex (3) of all potential victims	Type(s) of complaint or abuse (1) General complaint code and/or (2) Adult protection code	Team receiving alert & Social Service establishment area where situated code	Person alleged responsible for abuse code (also for male or female)	Initial checks undertaken code	Action taken in response to initial information code	Investigation activities code(s)	Outcome of investigation and status of allegation code(s)	Outcome of investigation decisions taken code(s)	Time period for monitoring write in (eg month or NFM (no further monitoring required))	Final outcome code
			C S		1 2 3			M F							

PREVENTION OF ABUSE

EXAMPLE OF PREVENTION POLICY DEVELOPED BY POWYS CC

"The purpose of this policy, in conjunction with other Departmental policies, is to prevent abuse wherever possible by:

- **recognising the importance of screening job applications so that unsuitable staff are less likely to be recruited**
- **training and supporting staff effectively**
- **ensuring that services which are provided and purchased meet specified high standards and are monitored and supported to maintain these standards**
- **ensuring that service providers develop clear policies promoting good working practices (e.g. safeguards when providing personal care)**
- **assisting vulnerable adults such as people with learning disabilities and their advocates to become more aware of their rights and recognise when these are being infringed**
- **discouraging abuse by encouraging staff to be alert and to feel confident about reporting concerns**
- **promoting open care environments in which abuse is less likely to occur**
- **use of risk assessments**

- **wherever possible avoiding placing staff in 1:1 working situations which create opportunities for abuse to occur and which also leave staff open to allegations of abuse**
- **avoiding placing together in residential and day services clients likely to abuse other clients**
- **recognising that some clients are abusers who have life-long histories as abusers and require specialist services to assist them and protect others**
- **supporting carers and providing services which help them to avoid reaching breaking point**
- **ensuring that victims of abuse receive the support and services they need to help them to recover**
- **ensuring that occurrences of abuse are monitored and learnt from increasing professional and public awareness of abuse**

LIST OF RELEVANT STATUTES

Carer's (Recognition and Services) Act 1995

Chronically Sick and Disabled Persons Act 1970

Data Protection Act 1998

Disability Discrimination Act 1995

Disabled Persons (Services, Consultation and Representation) Act 1986

Employment Rights Act 1996

Enduring Power of Attorney Act 1995

Health Act 1999

Health Services and Public Health Act 1968

Housing Act 1985

Housing Act 1996

Human Rights Act 1998

Local Authority Social Services Act 1970

Mental Health Act 1959

Mental Health Act 1983

National Assistance Act 1948

National Health Service and Community Care Act 1990

National Health Service Act 1977

Police and Criminal Evidence Act 1984 (PACE)

Power of Attorney Act 1971

Public Health Acts 1936 and 1961

Public Interest Disclosure Act 1998

Registered Homes Act 1984

Registered Homes (Amendment) Act 1991

Sexual Offences Act 1956

Sexual Offences Act 1967

Youth Justice and Criminal Evidence Act 1999

The legal context for adult protection

1. **Legislation which seeks to provide some protection**

There is no specific legislation or body of common law relation to situations of risk or abuse of vulnerable adults. However, there are several pieces of legislation which seek to provide some protection. The legislation provides a potential framework for action. The challenge for staff is to interpret the rights, duties and powers available and apply them to individual circumstances.

Public health powers

The Public Health Act 1936 allows staff to enter, inspect and cleanse premises which constitute a public health risk.

National Assistance Act 1948

Section 47 gives power to a local district authority to apply to a Magistrates Court to remove a person from his home on the grounds:

- that the person is suffering from grave chronic disease or, being aged, infirm or physically incapacitate, is living in insanitary conditions;
- that the person is unable to devote to himself, and is not receiving from other persons, proper care and attention;
- that his removal from home is necessary, either in his own interests or for preventing injury to the health of, or serious nuisance to, other persons.

In practice, this section of the National Assistance Act is rarely used. However, its use could be considered if there is no alternative and the risk is considered to be very grave. An order will last for up to three months depending on the circumstances in which it is obtained.

Only in exceptional circumstances would Section 47 allow a local authority to take into residential accommodation an adult who was the subject of verbal or physical mistreatment. So far as financial mistreatment is concerned, Section 47 could be used to cover the situation of an adult whose money was being misused to the extent that the other conditions set above were satisfied. However, this would only assist in cases of financial abuse if it enabled a person who was exploited to be removed from the control of the abuser.

A modification of the section 47 procedure is provided by the National Assistance (Amendment) Act 1951 to deal with situations in which it is necessary to remove the adult without delay. An order can be made which lasts for up to 21 days.

The Health Services and Public Health Act 1968

Section 45(1) allows local authorities with a Social Services responsibility to promote the welfare of old people (subject to the approvals and directions contained in the Circular LAC (93)(10)). This legislation is underpinned by Section 29 of the National Assistance Act 1948 (local authority provision of services other than residential accommodation for a defined class of disabled adult) as extended by Section 2 of the Chronically Sick and Disabled Persons Act 1970 (provision of welfare services).

Residential accommodation and other services may be provided under Sections 21,24,26 and 29 of the National Assistance Act 1948. The relevant approvals and directions under those sections are contained in LAC (93)(10).

The National Health Service and Community Care Act 1990

Section 47 requires local authorities with a Social Services responsibility to carry out an assessment of need where people appear to them to be in need of community care services.

Section 48 authorises the local authority for the inspection of premises in which community care service are or are proposed to be provided. Service users/residents may be interviewed in private for the purposes of investigating a complaint.

The Disabled Persons (Services, Consultation and Representation) Act 1986

Section 4 of this Act places the local authority under a duty to assess the needs of disabled people when requested to do so, and to assess the ability of carers to continue caring (under Section 2 of the CSDP Act 1971). The request for an assessment can be made by either the disabled person, their carer(s), or a representative of the disabled person. This particular piece of legislation might prove helpful when either the disabled person or their carer(s) is seeking for protection from mistreatment. Although it does not imply any action, it may open the way for contact and debate.

The Housing Act 1985 Part III (Homelessness)

Local authorities have a preventative duty (under Section 66) to make reasonable steps to ensure that accommodation does not cease to become available for applicants threatened with homelessness (para. 10.1 Code of Guidance). The Code of Guidance stresses that much can be done to prevent homelessness. It mentions special reasons for considering people as a priority, one is "men and women without children who have suffered violence at home or who are at risk of further violence if they return home".

Section 72 of the Act says that a housing authority may seek help from another authority (Housing Association, Housing Authority or Social Services Department) to discharge their duties. The authority asked for help shall co-operate as is reasonable in the circumstances. This will help, for example, a woman fleeing violence who cannot be referred because of having a local connection with an area but feels she would not be safe living in that area.

The Registered Homes Act 1984 (as amended)

This Act gives powers to authorised staff of registration and inspection units to enter and inspect premises where vulnerable adults are living. Generally, all such homes must be registered either with the local Residential or Nursing Homes Registration and Inspection Unit. Where homes are registered the following may apply:

- if home owners persistently fail to comply with regulations, then their registration may be cancelled or they may be prosecuted;
- if officers of the Inspection Unit consider there is serious risk to "the life, health or well-being" of residents, then they may obtain an order for the immediate closure of the home;
- officers of the Health Authority may take proceedings for closure of nursing homes under similar circumstances. They may also use closure powers under Section 24 if a registered home has misrepresented itself as a nursing home.

Police and Criminal Evidence Act 1984 (PACE)

Section 17: Outlines powers to enter and search premises without a warrant for the purpose of saving a life or limb.

Section 24: Allows a police officer to arrest any person who is suspected of having committed, or is about to commit, an arrestable offence.

Section 25: Allows a police officer, where there are reasonable grounds, to make an arrest of someone to prevent them causing physical injury to another person, or to protect a child or other vulnerable person.

The Mental Health Act (MHA) 1983

Section 115: Powers of Entry and Inspection

An approved social worker may at all reasonable times enter and inspect any premises in which a mentally disordered adult is living, if she/he has reasonable cause to believe that the patient is not under proper care. Section 115 does not allow an approved social worker to force entry, although obstruction may be an offence under Section 129, and the approved social worker can apply for a warrant under Section 135. The adult need not be named in this warrant, so this allows for investigation of suspected mistreatment of people whose identity is unknown but whose whereabouts are known. The evidence used to obtain the warrant can be about mistreatment in the past and therefore allows for accumulation of evidence over a period of time.

Section 135: Allows an approved social worker to apply for a warrant to search for and remove adults where there is a reasonable cause to suspect that an adult believed to be suffering from a mental disorder has been, or is being, ill-treated or neglected and not kept under proper control, or is unable to care for himself or herself and is living alone.

Section 136: Allows for a Police officer to intervene if the adult is in a public place.

The Family Law Act 1996

Part IV of the Act - Family Home and Domestic Violence provides protection within the family from molestation or violence (non-molestation orders under section 42) and provides occupation rights in respect of the matrimonial home. Social Services staff should seek advice from the legal department in each case where an application for such orders may be a relevant consideration.

Protection from Harassment Act 1997

This Act makes it an offence to pursue a course of conduct in relation to someone else which the perpetrator knows or ought to know amount to harassment. In addition to being

prosecuted, the perpetrator can be sued in the civil courts for damages and injunctions. The courts can make Restraining orders to prevent a repetition of harassment and threatening behaviour (including stalking).

The Home Office Circular 60/1990 Domestic Violence

In this circular the Home Secretary indicates that violent assault or brutal or threatening behaviour within a domestic setting is as serious as a violent assault by a stranger. Accordingly, police force policy concerning responses to domestic violence should, the circular indicates, contain undertakings which include:

- An overriding duty to protect victims from further attack
- The need to treat domestic violence as seriously as other forms of violence
- The use and value of powers to arrest
- The danger of seeking conciliation between perpetrator and victim

Civil Law

Inherent Jurisdiction : The High Court may use its inherent jurisdiction to make a declaration as to whether action which is proposed to be taken is in the best interests of a person or is unlawful.

County & Magistrates Courts: County Courts may be approached for injunctions, for restraining orders and powers of arrest. Additionally, the Magistrates Court may issue a Family Protection Order which has similar restrictions and powers of arrest.

The Law of Tort : This is the civil law which allows one person to sue another complaining about a wrong that the other has committed vis-à-vis the complainant.

Trespass to the person (assault & battery) and false imprisonment, i.e. covering much of the same area as criminal law.

Negligence - if a person is owed a duty of care by another, breach of that duty lays that other potentially open to a civil action. A person who takes on board the care of another owes her/him a duty of care. If the carer fails to act as a reasonable carer would have done, s/he has broken that duty of care. If this breach causes the injury of which the person is complaining, negligence has been established.

Common Law

Common Law allows for the intervention, without consent, to save life or avoid serious physical harm based upon the principle that the action is reasonable and can be professionally justified as immediately necessary for the purpose of saving life or serious physical harm. On the converse, not to act under circumstances of the utmost gravity could be deemed negligent.

In high risk situations where both physical and mental disorders may be present (e.g. drug overdose, serious injury), if there is doubt concerning which takes precedence, the **Physical Disorder should be given priority** . The relevant action would then be a Common Law intervention, e.g. removing the individual to a casualty department. When it is physically safe to do so, the adult should then be assessed for treatment/admission under the Mental Health Act 1983 with respect to Sections 135/136.

Legal procedures can be daunting and the involvement of the police will often be vital. Legal procedures can also cause great anxiety to the adult - but this is an argument for counselling and support rather than for disregarding the law. Social Services workers can support adults to gain appropriate legal advice. Domestic Violence Units may hold a list of solicitors who specialise in civil law. Legal Aid may be available, but is means tested, and many applicants will be asked to make a contribution to the costs. If the applicant is not able to make a decision about this, the Court of Protection could be asked to make a short order to authorise the use of the applicant's funds for this purpose.

Financial Protection

Receivership : An application could be made to the Court of Protection for the appointment of a Receiver to manage the adult's financial affairs. The person to be appointed can be a relative; a friend; an officer from the local authority; a solicitor; the Public Trustee, or any other suitable person. If the Public Trustee is appointed, the adult will be charged for their services. Where the adult's capital exceeds £5,000 or s/he receives an occupational pension or has an interest in a property then a Receivership application should be made. If, however, the adult's resources are limited it might be possible for the court to issue a Short Order. All applications submitted to the Court must be accompanied by a statement confirming that the adult is currently "incapable by reason of mental disorder of managing and administering his property and affairs". The medical certificate will have to be completed by the adult's doctor or consultant, and must be the approved Court of Protection form called a CP3.

Power of Attorney : The adult can, through a legal process, empower someone else to act on their behalf in relation to all their financial affairs. Unless restrictions or conditions are placed on the Attorney this person will be able to do almost anything that the adult would have done, for example sign cheques, or withdraw money from savings accounts. The adult granting the Power of Attorney must be mentally capable at the time and can appoint almost anyone who is over 18 years of age. However, the Public Trustee does not act in this capacity. A Power of Attorney must be made on a prescribed form, which can be purchased from legal stationers. Anyone who is thinking of making a Power of Attorney should consider this an Enduring Power of Attorney.

An ordinary Power of Attorney lasts only so long as the person who grants it is mentally capable. In order for a Power of Attorney to be able to continue once a person has become incapable by reason of mental disorder, it should be an Enduring Power of Attorney with the Court of Protection before s/he can act or continue to act under it.

Appointee : The Benefits Agency can appoint someone else to receive the adult's benefits and to use that money to pay expenses such as household bills, food and personal items. An appointee should be a close relative or friend or someone who is regularly in contact with the adult. The person who is willing to act as the appointee must contact the local Benefits

Agency office, who will arrange to interview the adult to decide whether they are mentally or physically incapable of acting on their own behalf. The Appointee can give one month's notice of their intention to cease the arrangement and the Benefits Agency can end the arrangement at any time if it is not working satisfactorily. Some adults unfortunately have no-one to whom they can turn when they need an Appointee. The Benefits Agency Policy Unit consider that the Social Services should assist in that event. Apparently, an individual within Social Services must be named to take this on. Some adults are not capable of giving an informed consent to the appointment of an Appointee. The Benefits Agency Policy Unit consider that an appointment can, in appropriate circumstances, still be made.

Agent: If the adult cannot go to a post office because of a physical disability or incapacity, they could either fill in the back of the payment order or they could arrange for a suitable person to be made their Agent. The adult will need to contact the local Benefits Agency office, who will give a card to the Agent. The Agent will have to take the card to the post office whenever cashing an order. Of course, the adult can cancel this arrangement at any time they see fit.

The Attorney and Agent assume that the adult is able to make the decision. An Attorney is in fact under a legal duty not to misuse the power granted to him/her. If they do so, they can be sued in the Civil Courts.

The Official Solicitor to the Supreme Court : The Official Solicitor will assist, in certain respects (as to which, see below), an adult whose doctor signs either their medical certificate form or the CP3 Court of Protection form to the effect that the adult suffers from a mental disorder and, as a result, is not capable of managing and administering their property and affairs. It is important that the doctor who completes the form understands the nature of the legal problem which the adult is facing.

If the adult **does suffer from mental disorder and cannot manage their affairs,** then the following are the sorts of problems with which the Official Solicitor can help:

- a) Helping the adult put a case before the civil courts, e.g. if a Power of Attorney has allegedly been misused, or if the adult has given away their house to the next door neighbour at a time when they did not appreciate what they were doing;
- b) Helping the adult if they are being sued in the civil courts, e.g. for alleged unpaid fees for residential accommodation;

Please note that the Official Solicitor is not expected to intervene in the above situations if there is someone else who is suitable and willing to act as the patient's Next Friend or guardian ad litem, and arrange for the legal representation of the adult;

- c) Representing an adult if an application has been made to the Court of Protection for a gift of the adult's money to be made to another person, or for a will to be made on another person's behalf. In these cases, the Court of Protection will insist that the Official Solicitor (and no-one else) fulfils this function;
- d) Sometimes the Official Solicitor is also asked to assist the civil courts when difficult questions arise in relation to where an adult should live, who should be allowed to visit them and what sort of medical treatment can lawfully be given to them. The Official Solicitor can be asked to make an independent report to the Court as to what would be in the best interests of the adult or to act as *amicus curiae*. This area of law is in the course of considerable change and development and the Law Commission have made a report concerning it.
- e) The Official Solicitor can be asked to act as Judicial Trustee in cases where an adult is the beneficiary of a trust fund and the existing trustee is not administering the trust in a satisfactory manner.

The Official Solicitor does not act as Appointee or Receiver although they can offer advice about both areas if necessary.

The Official Solicitor does not represent persons who wish to apply to the Mental Health Review Tribunal. However, if an application is made to a County Court to replace an adult as nearest relative under the Mental Health Act, they could be asked to represent that adult.

The Official Solicitor's Office is funded by central government. They do not charge for offering advice over the telephone and **if a social worker is not sure whether they could assist or not, they can always be telephoned to clarify the position** . If they are asked to take over the representation of an adult in a court, they are expected to ensure that the costs of doing so can be funded from a source. If necessary they can apply for legal aid on behalf of the adult.

The Official Solicitor's office is part of the Lord Chancellor's Department which is a section of the Civil Service.

The Official Solicitor's Office is at:
81 Chancery Lane, London WC2A 1DD
(Telephone 0171-9117127; fax 0171 9117105)

Sexual Offences: People with Learning Disabilities

Indecent Assault : Under the Sexual Offences Act 1956 an indecent assault comprises three elements:

- a) an assault (the victim must have something done to him or her, or the apprehension that something will be done),
- b) in circumstances of indecency.
- c) without the victim's consent.

A person with a severe learning disability may not validly give consent. However, if the person committing the offence did not know or suspect that the person had severe learning difficulty, s/he cannot be guilty by reason of that incapacity to consent.

The law on indecent assault referring to people with learning disabilities might apply as follows in these examples:

- i) where two women (or men) are involved in a sexual relationship and there is evidence of exploitation of one by the other;
- ii) where a member of staff helps a person with learning disabilities to masturbate (but see under Sexual Intercourse, overleaf);

Indecent Exposure : Three offences of indecent exposure exist:

- i) under common law, it is an offence "to commit an act outraging public decency in public that more than one person can see or are able to see";
- ii) Under the Vagrancy Act (1824), it is an offence to "wilfully, openly, lewdly and obscenely expose one's person (e.g. penis) with intent to insult";
- iii) Under the Local Acts and Bye-Laws (check with your local Town Hall), certain "indecent" acts in public may be illegal.

Sexual Intercourse : Sexual intercourse in law is defined as vaginal penetration of a woman by a man, or by Section 1 of the Sexual Offences Act 1956, as being vaginal or anal intercourse. The latter is considered as being, under Section 12 of the Act, an 'unnatural offence' (ie buggery) save where certain statutory exemptions apply. It need not include ejaculation. Certain offences under the Sexual Offences Act 1956 apply to all women, e.g. rape and buggery, and by Section 1 of the 1956 Act it is an offence for a man to rape another man.

There are a number of offences relating to people with severe learning disabilities, as follows:

- i) it is an offence for a man to have unlawful sexual intercourse with a woman with severe learning disabilities (Section 7);

- ii) it is an offence to persuade a woman with severe learning disabilities to have sexual intercourse with a man (Section 9);

- iii) it is an offence to take a woman with learning disabilities away from the care of her parent or guardian in order to have unlawful sexual intercourse (sections 17,18 and particularly 21 of the 1996 Act);

- iv) it is an offence for a person to procure a girl under the age of 21 to have unlawful sexual intercourse in any part of the world with a third person.

"Unlawful" means outside marriage.

In all cases, if the alleged offender can prove he did not know or had no reason to suspect that the person had severe learning disabilities, the alleged offender will be found not guilty. These laws are to protect against exploitation of women with severe learning disabilities.

However, if the motive is deemed to be decent, then all the requirements for the offence may not be met, although this has never been decided conclusively. Any decision that a member of staff should teach someone with learning disabilities to masturbate should be agreed at a case conference, and the motive must be of a "decent nature". Prosecution will be unlikely unless evidence of exploitation can be found.

Sexual Relationships with Staff : Under Section 128 of the Mental Health Act 1959, it is an offence for a male member of staff or manager of a hospital or care home to have unlawful sexual intercourse with a woman "who is for the time being receiving treatment for mental disorder or is an outpatient at the hospital or home". It is also an offence for a guardian to have unlawful sexual intercourse with a person in his custody/care (Mental Health Act 1983) or in "Part III" accommodation (National Assistance Act 1948).

Sexual Offences Act 1967 makes it an offence for a male member of staff to commit acts of gross indecency on male patients (all prosecutions require the Director of Public Prosecutions' consent).

No equivalent law exists for female staff, or managers. However, Section 15 of the Sexual Offences Act 1956 makes it an offence for a person (a woman may be convicted) to make an indecent assault on a man and by Section 15(3) a man who is "defective" (Section 45 of the Act defines this as being a person "suffering from a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning) CANNOT in law give any consent which would prevent an act being an assault for the purposes of Section 15, as female staff will, presumably, have knowledge of their patients' condition and faculties. Sexual relationships between female staff and patients could be treated as ill-treatment under Section 127 of the Mental Health Act 1983).

PROTECTING VULNERABLE ADULTS

SSIW Analysis of a sample of existing documents in Wales (April 1999)

Introduction

Documents relating to the protection of vulnerable adults were requested from all 22 local authorities in Wales in order to identify the existing range of policies/procedures and guidance available. Documents from the following 13 local authorities were examined in the process:

Anglesey	Flintshire	Torfaen
Blaenau Gwent	Gwynedd	Vale of Glamorgan
Cardiff	Merthyr Tydfil	Wrexham
Carmarthen	Powys	
Denbighshire	Swansea	

An overview of the sample of documents indicated:

- evidence of substantial work undertaken in Wales since local government reorganisation
- several excellent examples of documents covering most of the themes considered by the working group
- ongoing work in a number of local authorities to
 - * revise/ redraft existing policies and guidance
 - * develop new policies and guidance
- evidence of joint working between an number of agencies including social services, health, police and voluntary organisations

A more detailed analysis of the content of these documents is provided below.

Scope

Of the 13 authorities examined, 12 had documents which covered all vulnerable adults, while 1 (Swansea) had a specific document relating to abuse of adults with a learning disability. Six of the documents had been developed during the last year, 4 documents were not dated and 4 were still in draft.

Agencies involved

In all 13 authorities the lead agency for producing the document was Social Services, although most specified that policies/ procedures etc. had been drawn up with representation from others. The interagency procedures produced by Blaenau Gwent provide a comprehensive example of the range of agencies which might be involved

- SSD

- Blaenau Gwent County Borough Solicitor

- Gwent Constabulary

- Gwent Health Authority

- Neville Hall NHS Trust

- Gwent Community NHS Trust

- Voluntary/ Independent Organisations

The intention of this group had been to create a framework for staff of all agencies in Blaenau Gwent to deal with the problem of abuse of vulnerable adults.

Status

The documents were referred to in a variety of ways:

- Procedural guidelines
- Interagency procedures
- Interagency guidelines
- a Protocol
- Policy and procedures

This possibly reflects a lack of clarity about the terms used and highlights the need for the working group to be clear about the status of any document it produces.

Underlying principles

All the documents referred to principles underpinning the guidance/procedure. The following principles and values were included:

Rights

Independence/ self determination

Dignity

Fulfilment

Privacy

Equality

Choice

Confidentiality

Information

Good Practice (including anti-discriminatory practice, multi-disciplinary working, intervention etc.)

Definitions

All the documents analysed in this exercise contained information relating to various categories of abuse. Again there were variations in the detail and terminology applied, with terms such as emotional abuse or material abuse being used in place of, or in addition to psychological or financial abuse. Other categories identified included sociological abuse and abuse of legal/civil rights. There were broad similarities in the definitions given for the different types of abuse and all documents provided some useful indicators of abuse across the categories. The document produced by Carmarthen provided a useful model for consideration as it set out under each type of abuse:

- a working definition
- typical examples
- possible indicators to assist with recognition

It is recommended that any guidance needs to clarify:

who is included under the heading of "vulnerable adults"

what kinds of abuse are covered

how serious an abusive incident or relationship might be before it triggers concern

who might abuse

in what settings

Alerting and reporting procedures

All the documents identified in varying degrees of detail, procedures for alerting or reporting abuse. A number of documents provided useful information about handling disclosures and action to be taken to provide immediate help/ protection for the adult(s) involved. Several authorities also include sample referral/incident forms in their documents, and provided useful checklists of information to be collected and recorded regarding

allegations of abuse. All the documents identify reporting procedures within social services, 8 of the documents also identify health reporting procedures and inter-agency reporting procedures.

Investigation Process

Some broad similarities in terms of the investigation process could be identified in the documents and most referred to a number of stages including the need for initial information gathering, strategy discussions/ meetings, full investigation. Carmarthen for instance identified seven sequential stages in the process:

1. Referral/ Preliminary information gathering
2. Evaluation regarding abuse allegations
3. Strategy discussion
4. Strategy meeting
5. Full investigation by the police/ social services
6. Case conference
7. Action plan review

Carmarthen has learnt, from practical experience, that when investigating allegations of abuse in residential settings it is often necessary to reconvene the strategy meeting following the investigation stage to ensure that different strands of action (police, disciplinary, regulatory investigations,) are properly co-ordinated.

Torfaen provides a useful checklist of key issues to be discussed at a strategy meeting where an investigation is proposed. This document also provided useful guidance on planning the investigation and action to be taken prior to and during interviews.

Case Conference & Follow up procedures

Case conferences were referred to in 10 of the documents in varying degrees of detail - some specifying the purpose, membership, timescales, as well as the roles and responsibilities of key individuals (Chairperson, Team Manager, Key Worker, Participating Agencies etc.) and monitoring and review procedures.

Legal Context

All the documents provided some information on the legal context surrounding adult abuse. Several authorities provided detailed information about the various pieces of legislation designed to protect vulnerable adults including:

- Public Health Powers
- National Assistance Act 1948
- Health Services & Public health Act 1968
- National Health Service & Community Care Act 1990
- Disabled Persons (Services, Consultation & Representation) Act 1986
- Housing Act 1985
- Registered Homes Act 1984
- Mental Health Act 1983
- Family Law Act 1996
- Protection from Harassment Act 1997

- Civil Law
- Common Law
- Financial Protection

Other issues

Little information was found to be contained in the documents about the overall monitoring of procedures/ gathering statistical information - only Carmarthen, Torfaen and Powys made any reference to this issue at all and only Powys had identified a specific process for monitoring and learning from abuse. Powys had produced an adult protection referral monitoring sheet to capture data and identified the purpose of monitoring to:

- help prevent abuse, protecting other victims
- bring serial abusers to light
- highlight bad practice
- make professionals more vigilant
- by its reporting, make the public more aware
- inform future reviews of the department's policy and procedures
- contribute to informing national policy priorities

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