Rotherham Metropolitan Borough Council

Rotherham Adult Social Care Practice Guidance:

Organisational Abuse

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1. Introduction

What is Organisational Abuse?

The Care Act (2014) defines institutional abuse (or "organisational abuse") as one of the 10 types of harm. It includes neglect and poor care practice within a specific care setting. This could be a hospital or a care home, but also the care received in one's own home.

Organisational abuse can range from one off incidents to ongoing ill-treatment. It can be through neglect or poor professional practice as a result of the structure, policies, processes, and practices within an organisation. Organisational abuse can involve one or more abusers.

Why might Organisational Abuse happen?

There is no single cause of organisational abuse. However, one or a combination of indicators that organisational abuse is occurring might include organisations where staff are poorly trained, staff are poorly supervised, there is a lack of effective managerial support, lack of professional accountability exists, there is poor communication, the organisational culture that does not recognise the actions of individuals or groups of individuals who are abusive, poor professional practice as a result of the structure, polices, processes and practices within an organisation.

2. The Care Act 2014

The Care Act 2014 describes Organisational Abuse as:

*"Neglect and poor care practice within an institution or specific care setting such as a hospital or care home, for example, or in relation to care provided in one's own home. This may range from one off incidents to on-going ill-treatment. It can be through neglect or poor professional practice as a result of the structure, policies, processes, and practices within an organisation" (**Care Act 2014 Chapter 14.17**)*

The statutory guidance goes on to provide advice on the response to abuse and neglect in a regulated care setting:

- It is important that all partners are clear where responsibility lies where abuse or neglect is carried out by employees or in a regulated setting, such as a care home, hospital, or college. The first responsibility to act must be with the employing organisation as provider of the service. However, social workers or counsellors may need to be involved in order to support the adult to recover.

- When an employer is aware of abuse or neglect in their organisation, then they are under a duty to correct this and protect the adult from harm as soon as possible and inform the local authority, CQC and ICB where the latter is the commissioner. Where a local authority has reasonable cause to suspect that an adult may be experiencing or at risk of abuse or neglect, then it is still under a duty to make (or cause to be made) whatever enquiries it thinks necessary to decide what if any action needs to be taken and by whom. The local authority may well be reassured by the employer's response so that no further action is

required. However, a local authority would have to satisfy itself that an employer's response has been sufficient to deal with the safeguarding issue and, if not, to undertake any enquiry of its own and any appropriate follow up action (e.g., referral to CQC, professional regulators).

- The employer should investigate any concern (and provide any additional support that the adult may need) unless there is compelling reason why it is inappropriate or unsafe to do this. For example, this could be a serious conflict of interest on the part of the employer, concerns having been raised about non-effective past enquiries or serious, multiple concerns, or a matter that requires investigation by the police.

- An example of a conflict of interest where it is better for an external person to be appointed to investigate may be the case of a family-run business where institutional abuse is alleged, or where the manager or owner of the service is implicated. The circumstances where an external person would be required should be set out in the local multi-agency procedures. All those carrying out such enquiries should have received appropriate training.

- There should be a clear understanding between partners at a local level when other agencies such as the local authority, CQC or ICB need to be notified or involved and what role they have. ADASS, CQC, LGA, and NHS England have jointly produced a high-level guide on these roles and responsibilities.

- The focus should be on promoting the wellbeing of those adults at risk. It may be that additional training or supervision will be the appropriate response, but the impact of this needs to be assessed. Commissioners of care or other professionals should only use safeguarding procedures in a way that reflects the principles above not as a means of intimidating providers or families. Transparency, open-mindedness, and timeliness are important features of fair and effective safeguarding enquiries. CQC and commissioners have alternative means of raising standards of service, including support for staff training, contract compliance and, in the case of CQC, enforcement powers.

- Commissioners should encourage an open culture around safeguarding, working in partnership with providers to ensure the best outcome for the adult. A disciplinary investigation, and potentially a hearing, may result in the employer taking informal or formal measures which may include dismissal and possibly referral to the Disclosure and Barring Service.

3. Organisational Abuse Criteria

As with all concerns about abuse or neglect, there will be a continuum of harm. The following information reflects our wider Safeguarding Adults Threshold Guidance in the context of organisational abuse.

It is expected that concerns related to low level harm and/or poor practice are dealt with by individual organisations, commissioning, complaints and/or CQC procedures as opposed to safeguarding adult's procedures. If a decision is made not to make a referral, the individual agency must make a record of the concern and any action taken. Concerns should be recorded in such a way that repeated, low level harm incidents are easily identified and subsequently referred. Not referring under safeguarding adult's procedures, does not negate the need to report internally or to regulators/commissioners as appropriate.

Regular, low-level concerns can amount to a far higher level of concern which then requires more in-depth investigation or assessment under safeguarding adult's procedures.

If low-level harm or poor practice concern is reported via safeguarding adult's procedures, it is unlikely that an in-depth organisational abuse enquiry will be undertaken (as described later, in this guidance). The concern will be recorded by the Local Authority and proportionate action taken to manage the risks that have been identified. This may include sharing information with commissioning, CQC, or care management staff; provision of information or advice; referral to another agency or professional; assessment of care and support needs.

The number of safeguarding referrals which constitute an organisational abuse enquiry is deliberately not specified as the criteria relates to the seriousness, complexity, uniformity, and systemic nature of allegations.

4. Identifying Organisational Abuse and the Level of Harm

Some of the signs and indicators of Organisational Abuse, may include

- Evidence of current, basic health or care needs not being met
- Sanctions being applied by the Commissioning team
- Difficulty engaging with proprietors, managers, or staff in the organisation
- Multiple alerts to the Care Quality Commission
- Rapid turnover of staff or managers
- Transfer of ownership or responsibilities for the service
- Issues concerning staff behaviour and attitudes
- Frequent or repetitive challenging behaviour incidents and the response to these
- Service design and/or environmental concerns
- Non-Compliance with care plans, risk assessments, court orders, and/or positive behavioural support plans
- Staff team not appropriately trained to meet the needs of service users/patients
- Failure to follow Mental Capacity Act "Restrictive" practice that has not been authorised under a DoL or on a care plan/risk assessment i.e., locking kitchen doors.

To support in identifying the level of harm, staff should adopt the Level of Harm Matrix to assist in decision making.

Level of Harm Matrix

	Dealt with via commissioning / complaints procedures	Must be dealt with via safeguarding adult's procedures	
	Poor practice/low level harm	**Significant harm**	**Critical/serious harm**
Examples of harm / abuse	• Lack of stimulation. • Service user not involved in running of service. • Care planning documentation not person centered. • One-off incident without intent, causing no significant harm and managed appropriately by organisation e.g., medication error, missed call, low-level verbal abuse.	• Rigid inflexible routines. • Service user's dignity is undermined, including more serious (or repeated) verbal abuse. • Poor practice (against recognised care standards) not reported and goes unchecked. • Unsafe, unhygienic living environments where the organisation is responsible for maintaining this. • Repeated abuse of service users by other service users.	• Staff misusing position of power. • Over-medication and/or inappropriate restraint used to manage behaviour. • Widespread, consistent ill treatment and neglect, including repeated medication errors, missed calls etc.
Pattern of abuse	Isolated incident.	Recent abuse in ongoing relationship.	Repeated abuse which has gone on for significant period of time.
Impact on victim(s)	No impact or short-term impact.	Some impact but not long-lasting	Serious long-lasting impact.
Intent	Unintended or ill informed.	Opportunistic or serious unprofessional response.	Planned and deliberately malicious.
Illegality	Poor or bad practice but not illegal.	Criminal act.	Serious criminal act.
Risk of repetition	Very unlikely to recur.	Not if significant changes are made e.g., training, supervision, support.	Very likely even if changes are made or more support provided.

Are any of the following risk factors present? *(These are not listed in an order of seriousness, they are risk factors that if present in addition to the above indicators are likely to suggest a higher risk of harm.)*

• Poor recording. • Lack of training. • Lack of openness. • Host authority don't contract with the service. • High staff turnover. • Unclear boundaries between personal and professional relationships. • Management and support functions not working effectively.	• Out-dated practice. • Inadequate staffing levels. • No manager/temporary manager. • Out of area placements. • Poor management/leadership. • Use of temporary staff. • Staff not aware of their duty to protect.

** This list is not exhaustive and professional judgement must be applied*

5. Powers of Enquiry

Local Authorities are the lead agency in the safeguarding process, enabling it to undertake enquires or instruct others to do so. The Safeguarding Adults Manager (the person co-ordinating the safeguarding adult's enquiry) may deem professionals in partner agencies, including service providers, to be in a more suitable position to undertake some or all of these enquires (refer to our Caused Enquiries guidance for further information).

As part of the safeguarding adults process, there may be multiple enquiries or investigations undertaken by a number of different agencies.

The depth of the safeguarding enquiry depends upon the initial concern and the level of harm that has occurred or is suspected to have occurred.

Section 6 (1) of the Care Act (2014) states:

- A local authority must co-operate with each of its relevant partners, and each relevant partner must co-operate with the authority, in the exercise of —

  a) Their respective functions relating to adults with needs for care and support,
  b) Their respective functions relating to carers, and
  c) Functions of theirs the exercise of which is relevant to functions referred to in paragraph (a) or (b).

  This specifically includes cooperating to fulfil the following duties:

  d) Protecting adults with needs for care and support who are experiencing, or are at risk of, abuse or neglect, and
  e) Identifying lessons to be learned from cases where adults with needs for care and support have experienced serious abuse or neglect and applying those lessons to future cases.

6. Principles for an Organisational Abuse Enquiry

All Adult Safeguarding activity must follow **six** key principles (Care Act 2014):

Principal 1: Empowerment

People using provider services, or their representatives, must be supported to be involved in any Organisational Abuse enquiries. This will need to include:

- Consulting service users about their experience of the quality of the service and changes they wish to see, for themselves and the service as a whole;

- Ensuring that people are well informed of what is happening on a regular basis, according to their needs and wishes;

- Advocates are involved for those adults who will struggle to engage with the Safeguarding enquiry in line with the Care Act;

- Providing information about other action the adults can take to resolve their issues. This might include complaints, legal remedies, criminal enquiries etc.

Principal 2: Prevention

Providers will work with all relevant partners to ensure that the risk of abuse or neglect in their service is minimised, including compliance with both CQC standards and any contractual requirements. It is expected that all health and social care services will be well managed and well led, freely use the expertise of other professionals, keep staff well trained and supported and continually promote person centered good quality care. These actions will all contribute to minimising the possibility of organisational abuse.

Adults receiving support/care from providers should be aware of what they can expect in relation to their care and treatment and how they can raise concerns if these are not being met.

Principal 3: Proportionality

Responses must be proportionate to the level of, or risk of, harm evidenced by collating information from all sources. Support must be provided to adults and their families who use the service to contribute to the assessment of risk and harm.

Principal 4: Protection

Adults and their advocates should be empowered to speak up and report harm and abuse and receive a timely response from the health/social care provider. If this is not possible or providers do not respond appropriately, all partners will work together to ensure that adults at risk using provided services have their rights upheld and have access to the full range of supportive and protective measures needed to safeguard their wellbeing.

Principal 5: Partnership

Providers should always be informed of allegations against them or their staff and be treated with courtesy and openness (unless this would prejudice a criminal enquiry).

All allegations must be responded to in a timely and sensitive way to stop further abuse and neglect and to agree a transparent process for all involved.

Providers are a crucial part of any enquiry into organisational abuse, as they will have responsibilities under employment law and will be able to drive forward the necessary changes to improve the quality of the care.

Support a process of learning and improvement in practice by partnership working.

If a provider is unable to participate, for example because a corporate criminal issue is alleged, exploration of the role of the wider organisation in the enquiry may need to be agreed.

Principal 6: Accountability

The progress of the enquiry should be shared as openly and fully as possible with:

- The adults and or their advocates/families (including access to anonymised minutes etc.).
- The provider
- Partners contributing to the enquiry
- Commissioners
- Regulators

If information cannot be shared in full, the reasons for this need to be clearly documented.

Organisational Abuse Enquiry

The purpose of the enquiry is to:

- Secure the safety of the adults as soon as possible and reduce the risk of further harm by introduction of individual or organisational protection plans

- Establish facts and assess the risks to determine if an organisation enquiry is required? If so, this will take priority and individual safeguarding will follow the conclusion of this enquiry if requested by the adult or their advocate. If the threshold for an organisational abuse enquiry is not met, individual safeguarding enquiries (Section 42 Enquiries) may be required to deliver the adults outcomes and reduce the risk of further harm. These S42 enquiries may be accompanied by action by commissioning and or regulators to improve the quality of the service. (Possible exit point from organisational abuse enquiry – does not meet the threshold)

- Obtain the adult's views and wishes directly or via an advocate or Independent Mental Capacity Advocate (IMCA)

- Assess the adult(s) need for support and protection and decide how these might be met.

- Implement a protection plan to reduce the risk of further harm or abuse, in accordance with the wishes of the adult or best interest decision compliant with the Mental Capacity Act (MCA)

- Agree an action plan to address areas of concern with the provider

- Agree roles and responsibilities of each organisation for the enquiry, with timescales.

- Appoint a lead coordinator from Adult Social Care.

- Identify communication channels to senior managers if not involved in the meeting.

- Agree a communication strategy to update adults, families, advocates and if necessary, the media.

- Consider suspension of placements or arrangement of alternative provision to address risks.

- Share the findings of enquiries with the provider, adults, and their advocates/families.

- Ensure that any disciplinary action results in referral to the appropriate bodies – e.g., DBS, professional registration, regulators etc.

- Decide if organisational abuse has been substantiated and if substantiated what actions must be completed before safeguarding will be exited.

- Make decisions as to what follow-up action, if any, should be taken with respect to the person or organisation responsible for the abuse or neglect.

- Agree how commissioners and regulators will monitor quality and what will require consideration of further safeguarding enquiries on either an individual or organisational basis.

Roles and Responsibilities

Placing and Host Authorities

The placing authorities must be notified of concerns and their involvement ensured. It is the responsibility of Rotherham Metropolitan Borough Council, as the "Host" authority to inform placing authorities of concerns relating to the service. Placing authorities may include both social care and health commissioners and for some specialist service providers, such as secure mental health or learning disability services, may involve both local and 18 regional specialised commissioning teams.

Host authorities may need to be supported by commissioning colleagues in health and social care in identifying and contacting placing authorities in specialist settings.

Good practice guidance on organisational enquiries involving many placing authorities is included in the ADASS (2016) Out of Area Safeguarding Arrangements at https://www.adass.org.uk/out-of-area-safeguarding-adult-arrangements/.

When an organisational abuse enquiry is instigated and several placing authorities are involved, a strategic management meeting may be required. This group will invite placing authorities to identify the most appropriate senior manager to represent their organisation and take responsibility for any required actions, setting up a

sequence of meetings if required, to aid communication and wider strategic decision making.

Care Quality Commission

CQC monitor, inspect, and rate all providers to support adults and their families to choose a high-quality and safe service. They can hold providers to account, outside of safeguarding, by taking enforcement action and agreeing action plans to drive improvements. CQC should be informed of all safeguarding and commissioning concerns about a provider to support their monitoring.

They will always contribute to an organisational abuse enquiry. CQC have powers to remove registered managers and /or close a service, via the courts, if required. CQC work closely with commissioners to share information and intelligence to support robust evaluation of services.

Commissioners

Commissioners have a responsibility to assure themselves of the quality and safety of the organisations they place contracts with. All contracts should include specific requirements about safeguarding. Commissioners have a responsibility to intervene where services fall below fundamental or contractual standards, or abuse is found to be taking place. This may be via a service improvement plan with regular monitoring.

If contracts are breached and the service improvement plan has not delivered the required change, commissioners must make decisions about the viability of the service provider. Commissioners will be involved in organisational abuse enquiries and will take the lead on monitoring service improvements and providing updates to the organisational abuse enquiry.

Commissioners will be able to assist in identifying placing health services and local authorities and in communication with the placing authorities.

Providers

Providers must promote a culture that encourages candour, openness, and honesty at all levels. (The Duty of Candour of Health and Social Care providers is specified in Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014).

Providers must meet the fundamental standards of care (set out in CQC KLOE's and contractual obligations), supported by:

- Monitoring by senior management within the provider organisation.
- High quality care management and reviews, completed in a timely manner by both social care and health
- Monitoring and inspection by commissioners.
- Monitoring and inspection by regulators.

Providers must engage with both individual and organisational abuse enquiries, this may include:

- Investigating and responding appropriately to incidents, complaints, and whistle-blowers.
- Undertaking section 42 enquiries when caused to do so by the local authority.
- Taking appropriate action regarding staff who have abused or neglected people in their care.
- Contributing to an action plan, showing evidence of how they have made the required changes and how this will be monitored to demonstrate they are embedded.
- Contacting the police if a crime has been committed.
- Providing a voice to adults receiving a service and /or their families/advocates.

Police

Everyone is entitled to the protection of the law and access to justice no matter where they live. A criminal investigation by the police takes priority over all other enquiries or investigations.

Potential offences may have occurred under the Mental Capacity Act section 44, or the Criminal Justice and Courts Act 2015, or under any other legislation.

Police have a duty under legislation to assist those witnesses who are vulnerable and intimidated. The Youth Justice and Criminal Evidence Act and the Achieving Best Evidence provide adults with access to a range of special measures to assist them to engage with the criminal justice system. It is vital the police are asked to explore possible offences at an early stage in an organisational abuse enquiry.

Organisational abuse enquiries will be managed by specialist officers in the Protecting Vulnerable Adults team (PVP). Ideally the same officer will attend all meetings to improve consistency of responses.

The Local Authority

Adult social care will take the lead role in all safeguarding cases, including organisational abuse. They will obtain initial information from the provider, commissioners, safeguarding records, CQC and health to inform a risk assessment and associated protection plan. If the threshold for the use of the organisational abuse policy and procedures has been met, the Team Manager/Operations Manager will complete a Need to Know form to escalate to the Assistant Director and Strategic Director and discuss next steps with Head of Service/Assistant Director of Adult Social Care.

Senior managers from all relevant organisations will be involved in the initial planning meeting which will address risks, create an enquiry plan, and notify placing authorities.

Adult Social care will be responsible for organising subsequent meetings to progress the enquiry and make sure appropriate people attend.

Care reviews of all placements should be organised as soon as possible, and feedback obtained from out of area reviews completed on adults receiving a service.

If necessary, or at the request of the adult or their advocate, alternative services should be identified.

Records of previous safeguarding cases, within the last 18 months, should be collated to identify trends and to evaluate the providers ability to deliver required changes to improve the quality and safety of the service.

Rights of the Adult(s) and/or their Representatives

Adults and/or their representative must be supported to contribute to the enquiry. They will have expert knowledge of their experiences of the service and may have a view on how it can be improved. Consideration must be given to:

- Use of independent advocates who may work with the adult on a 1 -1 basis or may be able to hold group meetings in the service (Section 68 of the Care Act, requires use of advocates in a safeguarding enquiry).
- Individuals or groups may be consulted by the worker(s) undertaking the enquiry
- The provider and local authority may hold joint short meetings with people who use services

It is good practice for organisations involved in the enquiry to spend time within the environment where they can be approached by adults, their representatives or family members.

Families and representatives should be supported to share information with named members of the enquiry.

It is the Provider's role to keep the people using services and/or their representative updated regarding adult safeguarding enquiries, safeguarding plans and service improvement plans in line with agreements reached with the Local Authority.

The local authority or as appropriate health commissioner must monitor and support the Provider to do so by regular visits or contact with the manager(s).

Whistleblowing

"Whistle-blowers often put the public good first at great personal risk. They can and do make a big difference in the fight against corruption and deserve our support, protection, and admiration"

A whistleblowing referral may be the catalyst for identifying wider concerns about a service. Whistleblowing should be distinguished from a complaint in that a whistleblowing referral will be made typically, by an employee of the organisation.

The person may or may not have tried to raise the issue with their management. Ideally, they should have done but clearly there are times when an employee will feel too intimidated to do so or have and no response or don't like response.

7. Cross Boundary Arrangements

Providers in organisational safeguarding may be hosting service users/patients from neighbouring authorities, referred to as 'placing authorities. In organisational safeguarding, placing authorities have a duty to assist the host authority in ensuring no further risk is posed to the adults affected.

The Out-of-Area Safeguarding Adults Arrangements guidance issued by Association of Directors of Adult Social Services (ADASS); outlines the roles and responsibilities in out of area safeguarding cases. The chair of the organisational meeting should involve placing authorities in the arrangements where required, and co-ordinate any actions requested.

In exceptional and high-profile organisational cases, a strategic management group may be convened. This group sits out with the operational safeguarding organisational meeting and involves electing a senior manager from each relevant agency. This is not solely confined to the hosting and placing authorities but may be extended to agencies as outlined in section 6. More information can be found in the above ADASS guidance.

8. Outcomes of an Organisational Abuse Enquiry

The outcomes will be dependent upon the nature of the concerns. Outcomes may include one or more of the following:

- Human resources processes and procedures
- Introduction/Review of policy and procedures
- Commissioning Monitoring
- ICB Monitoring
- Social Work Reviews
- Further investigations
- Review of systems
- Staff Training
- Suspension of provider; either voluntary or enforced (this can be alerted to Social Workers via the care planning alert function on LAS)
- Referral to the Disclosure and Barring Service
- Referral to Professional Registration Bodies
- Safeguarding Adult Reviews

Safeguarding Adults Reviews (section 44 enquiries) must be undertaken by the local Safeguarding Adults Board (SAB) when the following criteria has been met.

An SAB must arrange for there to be a review of a case involving an adult in its area with needs for care and support (whether or not the local authority has been meeting any of those needs) if –

a) There is reasonable cause for concern about how the SAB, members of it or other persons with relevant functions worked together to safeguard the adult, and
b) Condition 1 or 2 is met

Condition 1 is met if –

a) The adult has died, and
b) The SAB knows or suspects that the death resulted from abuse or neglect (where or not it knew about or suspected the abuse or neglect before the adult died).

Condition 2 is met if –

a) The adult is still alive, and
b) The SAB knows or suspects that the adult has experienced serious abuse or neglect.

An SAB may arrange for there to be a review of any other case involving an adult in its area with needs for care and support (whether or not the local authority has been meeting any of those needs).

The Safeguarding Adults Manager is responsible for identifying that this criterion **may** be applicable. Where it has been identified that criteria may have been met, this should be discussed with the Safeguarding Board Manager and a referral made. It is the SAR Committee's responsibility to decide whether to progress with a Safeguarding Adults Review.

Usually, an organisational safeguarding meeting will need to continue alongside any Safeguarding Adults Review processes (in order to safeguard the adults who may still be at risk), but this will need to be discussed with the Chair of the SAR Committee to avoid any potential conflicts of interest.

9. ORGANISATIONAL SAFEGUARDING FLOWCHART