

## Guidance – Section 42 Caused Enquires

### Purpose of this Guidance

The Guidance has been agreed by Rotherham Safeguarding Adult Board and is for use by staff who manage or undertake statutory Safeguarding Adult Enquiries under Section 42 of the Care Act 2014 (CA 2014) once a decision has been reached by the Local Authority that the safeguarding criteria under s42 CA 2014 has been met.

This Guidance outlines the framework that should be followed when responding to safeguarding concerns and undertaking enquiries. It sets out the expectations regarding the standards, roles and responsibilities of agencies and organisations and practice of staff and managers involved in safeguarding work around what is meant and understood by the phrase 'cause to be made' in relation to a local authority's duty under s42 Care Act 2014 to undertake an adult safeguarding enquiry.

The Guidance supplements Section 5.2 of the Safeguarding Principles and the approach for South Yorkshire for the protection of adults with care and support needs. [south-yorkshire-principles-of-safeguarding \(rsab.org.uk\)](https://rsab.org.uk/south-yorkshire-principles-of-safeguarding)

### Overview

S42 CA 2014 requires that the local authority must make enquiries (or cause others to do so) if it believes an adult is experiencing, or is at risk of, abuse or neglect. When an allegation about abuse or neglect has been made, an enquiry is undertaken to find out what, if anything, has happened.

If the information received gives the local authority reasonable cause to suspect that the criteria under s42(1)(a)-(c) CA 2014 are met, then the statutory duty to undertake a safeguarding adult enquiry is triggered.

If the information received is not sufficient to enable the Local Authority to make a reasonable judgement as to whether the statutory duty is triggered, then it may seek further information until there is sufficient information to make a decision.

This could include:-

- reviewing previous records,
  - gathering further information from the person who raised the concern.
- Once the duty to enquire is triggered, the enquiry should establish whether any action needs to be taken to prevent or stop abuse or neglect and if so, by whom. An enquiry must take into account the adult's views as to what actions, if any, they wish to happen as part of the enquiry.

Under s79 CA 2014 the local authority is prevented from delegating certain functions, including duties under s42-s47 CA 2014, safeguarding adults at risk of abuse or neglect.

Sections 6 and 7 of the Care Act 2014 can also assist the local authority with the exercise of its safeguarding duty and getting partners to work with the local

authority. S6 CA 2014 is the general duty of a local authority to cooperate with each of its relevant partners and each relevant partner also has a duty to cooperate with the local authority in the exercise of different matters including their respective functions relating to adults with needs for care and support.

S7 CA 2014 supplements the duty to cooperate under s6 CA 2014 and considers the cooperation of a relevant partner, or of another local authority that is not a relevant partner, in specific cases, in the exercise of its functions under the Care Act 2014. There are a couple of exemptions to this duty where cooperating would be:-

- Incompatible with its own duties, or
- Would otherwise have an adverse effect on the exercise of its functions.

Although it will always have the formal responsibility in relation to an adult safeguarding enquiry, there may be cases where the local authority is not the right agency to undertake the enquiry. In these cases, the local authority can cause them to make an enquiry on the basis that is the most appropriate agency or has the expertise to do so.

Causing an enquiry to be made is distinct from requesting actions from another organisation as part of an enquiry being carried out by the local authority. The local authority retains accountability and oversight of the enquiry and outcomes, and it cannot delegate its lead co-ordinating duty of enquiry to another organisation or agency.

The Care and Support Statutory Guidance and in particular paragraph 14.100 (who can carry out an enquiry), considers this in more detail:-

*“Although the local authority is the lead agency for making enquiries, it may require others to undertake them. The specific circumstances will often determine who the right person is to begin an enquiry. In many cases a professional who already knows the adult will be the best person. They may be a social worker, a housing support worker, a GP or other health worker such as a community nurse. The local authority retains the responsibility for ensuring that the enquiry is referred to the right place and is acted upon. The local authority, in its lead and coordinating role, should assure itself that the enquiry satisfies its duty under section 42 to decide what action (if any) is necessary to help and protect the adult and by whom and to ensure that such action is taken when necessary. In this role if the local authority has asked someone else to make enquiries, it is able to challenge the body making the enquiry if it considers that the process and/or outcome is unsatisfactory”.*

Although the local authority cannot delegate its duty under s42 CA 2014, the local authority can cause another agency to make whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case. The local authority can decide that another agency can undertake a s42 enquiry and report its findings back to the local authority.

The local authority could request a number of different organisations to make enquiries depending on the nature of the safeguarding concerns and if there is more than one adult affected by these.

When causing another agency to make enquiries the local authority should set out the parameters of the enquiry including:-

- The scope and strategy of the enquiry;
- Confirm what the agency is expected to do including timescales;
- Agreement on specific roles and responsibilities;
- Support the agency – feedback mechanisms;
- Assure the quality of the enquiry when returned.

Agencies asked to make enquiries by the local authority have a responsibility to:

- Take actions forward in a timely way.
- Feedback updates regarding progress and any delays.
- Feedback the outcome of their actions and enquiries to the adult.
- Fulfil their responsibilities as an employer to consider DBS (Disclosure and Barring Service) referrals and to make these referrals in line with their legal duty to refer where the criteria are met.

It is for the local authority to decide whether further enquiry or action is required and if so what further enquiry or action is required.

The local authority will then review the actions, outcomes and records the reasons to conclude the enquiry.

## **Safeguarding Enquiry**

A Safeguarding Enquiry is any action taken or instigated by the Local Authority in response to a concern that abuse, or neglect may be taking place.

The purpose of the Safeguarding Enquiry is to establish with the adult and / or their representative(s) what action, if any, is required in relation to the concern and who should take such action. The first priority should always be to ensure the safety and well-being of the adult. However, this should be carefully balanced with the adult's views and wishes and any risks to others. The adult should experience the safeguarding process as empowering and supportive.

The specific objectives of an Enquiry into abuse or neglect are to, where possible:

- Establish facts.
- Ascertain the adult's views, wishes and desired outcomes.
- Protect the adult from abuse or neglect, in accordance with their wishes.

- Assess the needs of the adult for protection, support and redress, and how these might be met.
- Make decisions as to what action should be taken with regard to the person or organisation thought to be the cause of risk.
- Enable the adult to achieve resolution and recovery.

## **Who should conduct the Enquiry?**

When considering who should conduct the Enquiry the following points should be considered

- Who has the relationship with the individual? This could be a care provider, health professional etc.
- Has a crime been committed? If a crime is suspected the police must lead the criminal investigation.
- Who has the necessary skills and knowledge? Specific skills may be required such as treatment of pressure ulcers, medicines management etc.
- Are there any employment responsibilities? Allegations about staff may be best undertaken by the employer.
- Does the agency/organisation have ongoing contact with the individual? For example, if the adult has been discharged from a hospital setting it would not be appropriate for a Trust to lead on the enquiry.
- Does the agency/organisation have the capacity to take on an enquiry? Consideration must be given to the ability to resource undertaking the enquiry and it may be more appropriate to request information as part of the local authority section 42 Enquiry.

## **When it will not be appropriate to cause an Enquiry**

The Local Authority as the lead agency for making enquiries will not cause another person, agency, or organisation to undertake an Enquiry when

- There is a serious conflict on the interest on the part of the employer.
- There are or have been concerns about non-effective past enquiries.
- It is not clear they have the necessary skills and knowledge to undertake what is required.
- There are concerns about the failure to act to safeguard the adult.
- The situation relates to organisational abuse, or it requires a Large-Scale Enquiry.

## **Duty of the Local Authority causing an Enquiry to be carried out**

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

- Inform the organisation of this responsibility, firstly verbally and then in writing, clearly setting out the details of the Enquiry and the nature of the concern.
- Explain to the organisation why they are best placed to undertake the Enquiry.
- Be satisfied that the organisation being caused to undertake the Enquiry is competent to do so and that there is no conflict of interest in this organisation (or the person they appoint as to undertake the Enquiry) fulfilling this role.
- Agree a reasonable timescale for receiving a report of its outcome.
- Ensure the organisation knows how the Managing Officer can be contacted.
- Ensure the organisation knows of the appointment and contact details of any Independent Advocate or other person acting on the adult's behalf where they have substantial difficulty in taking part in the Enquiry.
- Ensure the Enquiry report has addressed the concerns and require rectification to be made where it does not.
- Resolve any disagreement regarding the commissioning of the Enquiry at the lowest level possible within the organisation, only escalating within the organisation and Local Authority where issues remain unresolved and proportionate to the disagreement.

## **Duty of the organisation identified to undertake an Enquiry**

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

- Appoint an Enquiry Officer to undertake the Enquiry and provide the Enquiry report, ensure they are competent to do so, that they receive the support necessary to satisfactorily complete it, and that there is no conflict of interest in their undertaking this role.
- Satisfy themselves that the concerns of the Enquiry are clearly understood and within the remit of the organisation to undertake.
- Make the Managing Officer aware of any circumstances where the organisation is not the appropriate body to undertake the Enquiry.
- Resolve any disagreement regarding the commissioning of the Enquiry at the lowest level possible within the organisation, only escalating where issues remain unresolved.
- Agree a reasonable timescale for receiving a report of its outcome.
- Conduct the Enquiry in line with the principles of Making Safeguarding Personal, by ensuring that the Enquiry reflects the outcomes that the adult wishes to achieve.
- The adult (or their representative or Independent Advocate) is included as far as possible throughout the process.
- That if in the progress of the Enquiry the adult alters their view of their desired outcomes, this is reflected in the Enquiry and that the Enquiry's Commissioner is informed of this.
- The adult (or their representative or Independent Advocate) are informed of the outcome of the Enquiry.

- Keep in contact with the Managing Officer and inform them of any changes or developments during the Enquiry.
- Ensure the Enquiry report has addressed the concern and is delivered to the Managing Officer within the agreed timescale.

The Section 42 Report Checklist (see Annex A) is a useful checklist for organisations undertaking enquiries.

## **Conduct the enquiry in line with the principles of Making Safeguarding Personal**

If the adult's outcomes have not been identified - the first action must be to ascertain the outcomes that the adult wishes to achieve.

The enquiry reflects the outcomes that the adult wishes to achieve.

The adult (or their representative or Independent Advocate) is included throughout the process.

If the adult does not have a representative or Independent Advocate but is having substantial difficulty in taking part in the enquiry the Enquiry Officer must liaise with the Lead Officer in the Local Authority so an advocate can be instructed.

The adult and or their representative has sufficient information to know their rights and choices.

That if in the progress of the enquiry, the adult alters their view of their desired outcomes, this is reflected in the enquiry and that the Lead Officer in the Local Authority is informed of this.

The conclusion of the enquiry is shared and discussed with the adult (or their representative or Independent Advocate).

The adult's outcomes are reviewed to ascertain whether they feel they have been met, partly met, or not met.

The adult is asked "Do they feel that they are safer now because of the help from people dealing with their concern?"

## **Advocacy**

S68 CA 2014 places a duty on the Local Authority to arrange an Independent Advocate to be available to support an adult who is the subject of an adult safeguarding enquiry, if the Local Authority considers that the adult would experience substantial difficulty in understanding the processes or information relevant or communicating their views, wishes or feelings.

If someone is assessed as lacking capacity – referral for IMCA.

## **ANNEX A**

### **Checklist for completed enquiries.**

A Section 42 enquiry can be concluded when the local authority is satisfied that the following has taken place:

1. The enquiry has included the views, wishes and best interests of the adult, and has been centred on their desired outcomes.
2. The enquiry has aimed to meet the identified desired outcomes of the adult, and has been reviewed with the adult before the enquiry is closed.
3. Consideration has been given to reflecting the views of the person or organisation thought to be the cause of risk within the enquiry if appropriate.
4. Relevant information has been gathered and evaluated so that the cause/s of risk can be identified to prevent future abuse where possible.
5. The enquiry has been thoroughly completed and accurately recorded.
6. Where the service provider is the focus of the concern information has been passed to the relevant commissioner, Contract Compliance Teams and the Care Quality Commission.
7. Information has been shared, where appropriate and as necessary, with any other relevant parties.
8. Where there has been serious injury to or the death of an adult, a Safeguarding Adults Review (SAR) referral was considered.
9. Any recommended further actions, including referrals to professional bodies and/or the Disclosure and Barring Service, have been addressed.
10. Where the risk cannot be reduced or removed there is consideration as to the ongoing arrangements (such as through a Support Plan or Safeguarding Plan). The plan should include arrangements for monitoring and review, including ongoing risk management.

This checklist should also be used as a guide by any agency or organisation the local authority has asked to undertake an enquiry under Section 42, to consider if it has concluded its enquiry appropriately, and has covered all the areas required in order to discharge its duty.

### **The Mental Capacity Act 2005**

The Mental Capacity Act 2005 (MCA) sets out in law how people over the age of 16, who may lack mental capacity, can be assessed, provided with the care they need and protected.

The MCA provides a test for people to use to make a judgment about whether a person has capacity. To assess whether a person has capacity to make their own decisions, an assessor must look at whether the person:

- Can understand information given to them about the decision.
- Retain that information.
- Balance or weigh up information about options, then communicate their decision.

When it has been established that an individual does not have capacity to make a particular decision, then someone else must make this decision.

## Example diagram of a Caused Enquiry

