

OLDHAM METROPOLITAN BOROUGH COUNCIL

**POLICY ON THE
PROTECTION OF
VULNERABLE ADULTS
IN OLDHAM**

FORWARD

It is a truism that nothing stands still. Oldham Council and its community partners first published a policy on the protection of vulnerable adults in 1994. It was revised in 2001, following the publication of the Department of Health's guidance on the protection of vulnerable adults, "No Secrets".

It is with pleasure, then, that I commend to you, practitioners and the public at large, this latest revision to the policy. The substance is very much the same, rooted as it is in the principles of seeking to protect the most vulnerable members of our community from abuse, in whatever form it might take.

This revision takes account of the Home Office's publication on the protection of vulnerable witnesses, which is about supporting vulnerable people through the criminal justice system. The revision also takes account of experience gained during the last few years in the field of adult protection.

While the Council's Social Services Department is the lead agent in the policy of protection, it works very much in partnership with other agencies, voluntary organisations, the independent sector and the community at large. Everyone is and must be involved in accepting the need to speak out to protect vulnerable adults from abuse and everyone needs to know how to get help or advice.

This is an important document and one which will no doubt continue to change and improve over time. Whether you are a professional or a lay person, I commend it to you.



**Andrew Kilburn
Chief Executive**

Oldham Metropolitan Borough Council

THE PARTNERSHIP

The following agencies have worked together to produce a policy, which strives to protect Vulnerable Adults within Oldham.



**Oldham MBC
Social Services Department**

A handwritten signature in black ink, appearing to read "David Friday".



Greater Manchester Police

A handwritten signature in black ink, appearing to read "David Toines".



Pennine Acute Hospital NHS Trust

A handwritten signature in black ink, appearing to read "C.P. Penn".



Oldham Primary Care Trust

A handwritten signature in blue ink, appearing to read "Paul Richards".



Pennine Care NHS Trust

A handwritten signature in black ink, appearing to read "J. D. ...".



First Choice Homes Oldham Ltd

A handwritten signature in black ink, appearing to read "Hugh Bradburn".

Background to the Development of the Policy

To prevent the abuse of vulnerable adults in Oldham agencies who provide or commission services have agreed to the following principles and long term strategy for protecting vulnerable adults from abuse.

Agencies have agreed to the following principles;

1. Actively working together to develop:
 - Joint policy and procedures
 - Meet regularly to review existing policy and procedures
 - Monitor cases of abuse and learn from the information gathered
 - Seek to promote a culture which welcomes the open investigation and exploration of issues raised by staff, service users and carers.
2. Actively promote the empowerment and well being of vulnerable adults through the service they provide.
3. Act in a way that supports the rights of the individuals to lead an independent life based on self-determination and personal choice.
4. Recognises people who are unable to take their own decisions and provide them with protection.
5. Recognises that the right to self determination can involve risk and ensure that:
 - Risk is understood and minimised
 - Ensure that an open discussion about risk takes place between the individual and all relevant agencies.
6. Ensure the safety of vulnerable adults by developing integrated strategies, policies and services relevant to abuse within the framework of the following legislation:
 - NHS and Community Care Act 1990
 - The Mental Health Act 1983
 - The Public Disclosure Act 1998
 - Human Rights Act 1998
 - Care Standards Act 2000
 - Speaking up for Justice 1998
7. Ensure that when the right to an independent lifestyle and choice is at risk the individual concerned receives appropriate help, including:
 - Advice
 - Protection
 - Support from all relevant agencies
8. Ensure that the law and all statutory requirements are known and used appropriately so that vulnerable adults receive the protection of law and access to the judicial process.

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1. Introduction.

The Adult Abuse Policy in Oldham

This Policy and its Procedural Guidelines aim to ensure that adults living in Oldham, who are vulnerable to abuse, receive protection and support. Oldham Social Services along with their partner agencies involved in the care of the vulnerable adults (A full list of agencies that contributed to the development of this policy can be found in the appendix) are committed to:

- Preventing and protecting vulnerable adults from abuse.
- Ensuring, staff involved in dealing with abusive situations are supported effectively.
- Ensuring that action taken under these guidelines will take account of a persons, culture, religion, language, disability, gender, age, sexual orientation and belief.

In dealing with abuse it is important that staff ensure that any lack of understanding of a person's cultural needs does not lead them to make assumptions about whether abuse is taking place. It should also not affect the staff's judgement about reporting abuse when there are concerns even if this means challenging cultural stereotypes. Abuse is abuse regardless of culture, age, gender identity, class, disability, belief, sexual orientation and race.

“We will respect the dignity and individuality of all our service users and staff and value their knowledge and experience”

(Extracted taken from Anchors Rights and Responsibilities Policy)

2. Values and Principles Guiding Intervention.

The following principles have been used to inform this Policy and the resulting guidelines, it is important to note that if these principles are not put into practice, it can create an environment where abuse can flourish.

- **Privacy** - the right of individuals to be free of interference and public attention into their affairs and as a general rule to have information treated as confidential (refer to 3.5 - Confidentiality).
 - **Dignity** - The right to be treated with dignity and have their personal needs respected.
 - **Independence** - All individuals should be supported to gain the greatest control over their lives. People should be able to make informed choices about their lifestyles, including risk taking if they want to.
 - **Choice** – The right and opportunity to select from a range of options, including the right to remain in an abusive situation given that they are fully aware of the risks. Lack of capacity impinges upon an adults ability to make an informed decision.
- Citizenship** –The right to all entitlements associated with citizenship including non – discrimination on the grounds of a persons age, gender identity, race, religion, disability, belief and sexuality.
- **Fulfilment** - The right and support to have personal aspirations and abilities realised in all aspects of daily life.

3. Definitions.

For the purpose of this policy and procedures the following definitions apply:

3.1 Vulnerable Adult

Is a person who: -

”is or may be in need of Community Care services by reason of mental or other disabilities, age or illness;

and who

is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation”.

“ **Adult**” refers to persons aged 18 years or over.

As you will see from the definition, the term vulnerable adult, includes people with learning disabilities, mental health problems, older people and people with disability or impairment, particularly when their situation is complicated by additional factors, such as, physical frailty or chronic illness, challenging behaviour or social chaotic lifestyles and emotional problems.

3.2 Abuse

“Is a violation of an individual’s human and civil rights by any other person or persons“.

Abuse may be a single act or a repeated act over time and can occur in any relationship. It may include the failure to take appropriate action or it may be that a person has been persuaded to enter into a financial or sexual transaction to which they have not, or cannot consent (see section on Consent).

Abuse can take many forms and can be complex in nature but the following definitions of abuse are generally accepted.

- **Physical abuse** - this includes hitting, slapping, pushing, kicking, misuse of medication, restraint, or inappropriate sanctions such as involuntary isolation, force-feeding and confinement, an overlap with neglect may be a feature of physical abuse.
- **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. All sexual activity involving staff will be regarded as contrary to professional standards and hence abusive.

- **Psychological / Emotional abuse** - including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, verbal or racial abuse, isolation or withdrawal from services or supportive networks.
- **Financial or material abuse** - including theft, fraud, exploitation or pressure in connection to wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits.

Institutional abuse - This refers to the arrangements, practices and care systems of an organisation that restricts the freedom existing rules and standards over the needs of the individual. Institutional abuse maintains the existing rules and standards over the needs of the individual.

- **Discriminatory abuse** - Harassment, slurs, or similar treatment intended to discriminate against people because of their belief, gender identity and disability or in a racist, sexist, homophobic and ageist manner.
- **Multiple forms of abuse** - may occur in an ongoing relationship or within a service to an individual or individuals. It is therefore important to consider not only single incidents of abuse but also any underlying dynamics and patterns that emerge. Abuse may be perpetrated as a result of deliberate intent and targeting of vulnerable people, negligence or ignorance, and choices of an individual or group to maintain established practices.
- **Neglect and acts of omission** – including the following:

ignoring medical or physical care needs

failure to provide access to appropriate health, social care, employment and/or educational services

the withholding of the necessities of life, such as medication, adequate nutrition and heating

failure to intervene when a person judged to lack capacity to make informed decisions, takes unreasonable risks. (This needs to be balanced by effective risk assessments in order not to deprive a person of opportunities in every day life)

- **Forced Marriage**
Forced marriage is not an Asian issue and should not be used to stigmatise any community. A Forced Marriage is one conducted without the valid consent of either one or both parties, where duress is a factor. It is a form of abuse and an infringement of human rights. It is not a religious or cultural practise. (Refer to Briefing paper on Forced Marriage Is An Abuse Of Human Rights – Guidance for Oldham Social Services Departments – 03/07)

- **Domestic Violence**

'Domestic Violence is the emotional, financial, physical and / or sexual abuse of a person by their partner, family member or someone with whom there is or has been a relationship'.

It is important to acknowledge that anyone can be a potential victim, perpetrator or witness: - women, men, children, parents, grandparents, the young elderly, same sex partners, married or unmarried. Similarly domestic violence occurs in all socio economic groups and in all cultures.

All agencies will work within the protocols agreed within the domestic strategy.

A base-line measure will be established. This will involve accurate recording, cross-referencing and information sharing.

The Domestic Violence Strategy will strive to: -

- Increase options of support for victims and their children that should include information of different support options such as Community Based support and Residential Support, particularly in cases of long-term abuse.
- Increase the use of positive action by police officers attending domestic violence incidents
- Review personal and social health education in schools and day care to include opportunities to increase levels of understanding of domestic violence and its consequences for individuals, families and the community at large

Guidance for Working with People Who Are Experiencing Domestic Abuse

'Disclosure of domestic violence requires privacy, confidentiality and sensitive questioning by non-judgemental staff. Women may not disclose violence unless directly asked' Bewley S, Friend J, and Mezey G, 1997

3.3 Consent

It is essential that the individual fully understands the concerns and choices facing them. At present there is no legislation that can be used to determine a person's ability to give consent and it is therefore a matter of professional judgement. Any decision regarding consent needs to be objective and involve more than one person. Consent is a deciding factor in determining whether abuse has taken place. Action must be taken if an adult does not agree with what is happening to them, or they are unable to understand what they are agreeing to may be abusive. In order to assess whether a person has given their consent three issues need to be explored:

1. The person's ability to understand the act or relationship

2. The amount of pressure or intimidation they had been subjected with, in order to comply
3. The status, authority or power of the perpetrator in relation to the service user, bearing in mind their fears of reprisals if they do not comply

3.4 Capacity

To determine whether a person has the capacity to consent or to make informed decisions regarding risk taking will depend on an assessment of their emotional, physical, intellectual and mental capacity in relation to self-determination. The assessment should be fully recorded in the case notes and be undertaken by a person who has relevant expertise to the service user's circumstances. It is good practice to reassess a person's capacity in relation to individual issues rather than making a blanket decision that a person does not have the capacity to make informed decisions.

For further guidance refer to the DoH document 2001 'Seeking Consent: Working with people with learning difficulties'.

3.5 Over-riding the Vulnerable Adults Wishes

It is important for the vulnerable adults wishes to be taken into account, however there are some circumstances when the 'Investigating Officer' will have to over-ride the Vulnerable Adults wishes, for example: -

- If the alleged suspect / perpetrator is a worker / professional for either a private agency or social services, then an investigation would have to take place informing NCSC & S.S.D and where appropriate the Police (refer to 4.5 Roles and Responsibilities of the Police).
- If there is a concern that the alleged perpetrator has access to Vulnerable Adults e.g. volunteer or another vulnerable adult, then consultation with the Police should take place.
- If the vulnerable adult has not got the capacity to comprehend the potential / actual abuse which is occurring.

3.6 Confidentiality

When considering the issues of confidentiality it is important, to bear in mind that personal information can only be disclosed **Lawfully and Fairly**. In terms of lawfulness information may only be disclosed when:

- The individual gives consent
- Where there is an overriding public interest or justification to do so

In terms of fairness, consideration needs to be given to the individual's rights to the knowledge that information may be shared in some circumstances. These circumstances are as follows:

- Information sharing will be undertaken with guidance from the Sharing Person – Identifiable Information guidelines, which has been written for health and social care staff who may need to transfer person-identifiable information to colleagues and to partner organisations. The Crime and Disorder Act 1998 section 115, states that you have a power to share information with anyone from, the Local Authority, Probation, Health and Police, if it is felt that a crime has or might be committed (refer to Appendix J Sharing Person-Identifiable Information)

3.7 Risk Taking

Is defined as “choosing to act (or not act) to achieve beneficial results in an awareness that harm might result”.

Management of risk is of paramount importance and should be minimised by risk assessment procedures and should be an agreed part of the service provided and contained in the service users care plan.

The risk assessment should be shared during supervision and multi-agency meetings and should take into account the following:

Description of Risk	<ul style="list-style-type: none"> > Seriousness of abuse > Whether single occurrence / part of systemic pattern > Illegality of abuse
Vulnerable adults wishes	<ul style="list-style-type: none"> > Mental capacity to make informed choice > Impact on victim / others
Risk of abuse being repeated	<ul style="list-style-type: none"> > Individual > Others
Is this risk acceptable	<ul style="list-style-type: none"> > Individual > Others
Options to minimise risk	<ul style="list-style-type: none"> > Movement > Place of safety > Support mechanisms in place
Monitoring	<ul style="list-style-type: none"> > Review arrangements > Responsibility

- A service user may decide to remain in a situation of high risk even if a lower risk option may be available. If the person is judged as having the capacity to make this decision, staff should ensure that the person is supported and everything possible is done to reduce the likelihood of harm occurring. Regular reviews will need to be conducted in order to respond to a change in the situation. This process should be clearly recorded in the service users case notes.

3.8 Multi-Agency Public Protection Panel (MAPPP)

The Criminal Justice and Court Services Act 2000 Sections 67 and 68 sought to increase public protection by building on existing interagency arrangements. It introduced a statutory duty on Police and Probation Service to make joint arrangements for the assessment and management of risk posed by violent and sexual offenders and other offenders who may cause serious harm to the public. This duty commenced on 1st April 2001.

The MAPPP reviews are usually held every six weeks and involve regular panel members from Probation, Police, Child Protection and Housing plus any other agencies directly involved with individual cases.

3.9 Whistle Blowing

This is the term used, when a member of staff, draws attention to concerns of abuse. It is often used in the context of a member of staff reporting alleged abuse by other members of staff. You may feel that raising the matter would be disloyal to colleagues or you may feel unsure of whom to talk to about your concerns. However, **it is the responsibility of all staff to report concerns of abuse.** You should do this by raising the matter with your line manager or a staff member designated to this task. For more details staff should refer to their Whistle blowing policy, for social services staff, this can be found in the Code of Conduct for Employees. If you report concerns of abuse, you can be assured of the following:

- They will be taken seriously
- Your comments will be treated confidentially (your identity will not be revealed to any person unless they are directly involved in the investigation or we are required by the police or a court of law)
- You will be given support and afforded protection if necessary
- You will be dealt with in a fair and equitable manner
- You will be kept informed of action that has been taken (we may not be able to tell you the exact details where this would infringe our duty of confidence to someone else.)

“Our Whistle Blowing policy is available to all staff but is likely to be of use for more junior members of staff to be able to express dissatisfaction with any inappropriate actions of more senior members of staff”

(Extract taken from Supported Housing & Care, Policy on Whistle Blowing)

3.10 Vulnerable Adults who Abuse

When the alleged perpetrator is another vulnerable adult, a re-assessment of their needs will be undertaken. This will need to include an assessment of the risk the person poses to the alleged victim and other vulnerable adults. This risk assessment will determine whether the alleged perpetrator should continue within the service on a time limited or permanent basis and should be undertaken prior to the initial case conference.

If there is a need to devise a plan of action for the alleged perpetrator, this will be done through the care management process. If the alleged perpetrator is suspended from the service, the effect of that on relatives and carers will be assessed. It may be necessary to in place a short-term Care Plan to meet the alleged perpetrator’s needs whilst protecting other vulnerable adults.

Consideration should be given to appointing an advocate to the alleged perpetrator. An assessment must be made as to whether the alleged perpetrator would benefit from receiving therapeutic intervention to help them address their behaviour. Consideration will need to be given as to the alleged perpetrator’s capacity to understand the consequences of their actions.

If the police interview the alleged perpetrator, a decision needs to be made as to whether there is a need for a speech and language assessment to ascertain the most effective method of interviewing. It will usually be necessary for an appropriate adult to be present in line with Police and Criminals Evidence Act Regulations. This cannot be the person to who the abuse was disclosed.

4. Rights, Roles and Responsibilities.

When dealing with incident of potential abuse the rights of several people need to be protected. At times there may be a need to consider how to balance these rights. The following list outlines the rights of people who use services, staff and paid carers and parents and carers.

4.1 People who use the Service have the Right to :-

- be allowed to make informed choices about how to live their lives even when this presents an element of risk
- receive information about protecting themselves from abuse. This information needs to be given in a form that can be understood by the person
- be fully informed and involved in any incident of alleged abuse. This requires those carrying out the investigation to understand the person's needs and abilities
- be supported during any investigation by advocates/friends and to be supported to receive treatment following any abusive incident, this may include a workable protection plan if the client is perceived as being at risk

4.2 Staff and Paid Carers have the following Rights and Responsibilities:

- They have the right to be protected from harassment or harm from a person whom an allegation has been made against
- To have, independent support if an allegation has been made about them, such as the trade union or a solicitor. They can also expect a fair hearing at any resulting disciplinary that will take account of any specific issues relating to the nature of the complaint. Staff should be clearly informed of their rights under employment legislation and internal disciplinary procedures
- Any member of staff reporting abuse shall be protected from dismissal and as far as possible from any adverse affects, providing that the allegation was made in good faith
- Staff, are entitled to receive appropriate training and supervision around the issues of abuse
- To have the support and to be listened to by Managers regarding concerns of abuse. Managers will need to create an environment where by staff feel safe to air such concerns. Managers must ensure that staff, are protected from harassment and harm following a complaint
- Staff, have a responsibility to adhere to their agencies 'Equal Opportunities Policy'. They also have a responsibility to challenge discriminative practice or comments made by colleagues

Staff, have the responsibility and duty to report any concerns of abuse, even if they feel this will put them in a difficult position. Staff have the responsibility to follow the guidelines contained in this document regarding the procedure for dealing with an incident of alleged or actual abuse. Staff are required to act in a confidential manner to protect the privacy of the alleged victim and perpetrator (see Confidentiality and Procedures).

“Staff’s prime responsibilities are to call the emergency services, if necessary, and to report any concerns to their line manager”

(Extract taken from Abuse Policy used by Independent Home Care Services)

4.3 Parents and Carers Rights:

- Not to be judged for airing concerns about the care and treatment of their relative
- To be given information on how services are operated and how to make a complaint
- In as far as possible to be given information and consulted about the progress of any inquiry into the abuse involving the person they are caring for. **(It is important for parents and carers to understand that they can only be fully involved and informed of information relating to abuse if the service user so wishes)**
- Information will be shared when it is in the best interest of service users
- It is good practice to gain informed consent to share information but where this is not possible or if a vulnerable adult is at risk, it may be necessary to override this
- If a complaint or allegation has been made against a parent or carer, staff will inform them of their rights under appropriate legislation and the right to an independent advocate

It is inappropriate for staff to give assurances of absolute confidentiality in the case of adult abuse, particularly when other adults may be at risk.

4.4 Roles and Responsibilities of the Contracts Unit in Adult Abuse Cases involving independent care providers.

If there is an allegation or concern of abuse to a vulnerable adult and it involves staff in a residential unit or from domiciliary care then you should consult with the Contracts Unit.

When a service user is alleged to have been the subject of abuse.

- The Contracts Unit will assist investigating officers to ensure that the service user is safe. This will involve liaison with investigating officers, the National Care Standards Commission and the managers of the care provider involved in the alleged abuse
- The Contracts Unit will assist in the investigation of the alleged abuse. This could involve attending meetings called under the adult abuse procedures or providing written reports to such meetings
- The Contracts Unit will provide information to care management staff about alternative services for the service user. For example if a service user wishes to move from a care home where an allegation of abuse had been made
- A member of the Contracts Unit will be available to speak to a service user or their representative to provide general information about contractual matters relating to an allegation of abuse. For example where the police are involved or where Oldham Social Services are liaising with other Social Service Departments
- The Contracts Unit will liaise with legal services, internal audit and insurance and risk management services only in the context of the contractual implications of an alleged abuse incident not in the context of the adult procedure
- The Contracts Unit will notify other Local Authorities about the alleged abuse if appropriate under the Greater Manchester Information Sharing Protocol

When one alleged incident of abuse means that other service users may be at risk of abuse.

- The Contracts Unit will assist care management staff to identify service users at risk of abuse
- The Contracts Unit will carry out risk assessments both independently and with other to determine the level of risk to other service users
- The Contracts Unit will assist care management staff to ensure that other service users are safe
- The Contracts Unit will assist in any investigation of alleged abuse. This could involve attending Case Conferences
- The Contracts Unit will liaise with legal services, internal audit and insurance and risk management services only in the context of the contractual implications of an alleged abuse incident not in the context of the adult abuse procedure

4.5 The Roles and Responsibilities of the Police.

Where it is considered that abuse may have occurred, it is essential to consult with the police in order to ascertain if a criminal investigation is required. Consultation with the police must be sought if: -

Non-accidental injuries are apparent or suspected

Sexual offences are believed to have taken place

Significant financial abuse by theft or misappropriation of funds has taken place

The vulnerable person wishes the matter to be referred to the police

Any other incident may also be referred but the police reserve the right not to become involved in matters of a minor or less serious nature.

Initial referrals should be made to a sub-divisional Detective Inspector (DI) telephone number **0161 856 8943**.

If the matter is more urgent, e.g. an assault or sexual offence has just occurred, normal lines of communication to the police should be used (999, call to police switchboard, etc).

The police have a duty to obtain evidence of offences and a responsibility to investigate and interview any identified suspect. This may not result in prosecution. The wishes and best interests of the vulnerable person should be considered in making a decision.

Although most cases will be referred to the police from social services, occasionally the reverse will apply and the police will need to refer cases to social services departments. (Refer to Achieving Best Evidence for Vulnerable Adults 2003)

Police Action

Following referral the DI will review the information available, including the outcome of any investigation already conducted by Social Services or any other agency, to determine whether a police investigation is appropriate and if so who should conduct it.

A Police investigating officer with an appropriate level of experience will be appointed. Normally this will be a detective officer. The DI will oversee the investigation.

A record of the referral must be created.

The police will take the lead in the criminal investigation, although teamwork between the police, social services and other agencies is essential.

Multi-agency Consultation

At any stage of the investigation, but in particular at the outset, it may be useful to consult with interested parties from different agencies and discuss what information they possess, how the investigation might progress and their expectations in terms of the outcome. This could take place at the case conference or by telephone. Written records must be made of decisions reached during such consultation.

Police should try to work to the timescale of Social Services (see procedure for investigating officer) insofar as other operational commitments allow.

The police-investigating officer should consult regularly with other agencies during the course of an investigation, making use of the information and expertise, which may be available.

Medical Examination

In cases involving physical or sexual abuse, decisions regarding medical examination will be taken by the police.

The consent of the vulnerable person to medical examination must be obtained and if possible someone who has a good relationship with the adult should accompany the vulnerable person.

If it is decided not to seek a medical examination where the nature of the complaint would normally require it, the reasons for this must be recorded.

Interviewing the vulnerable person

The Police will take the lead when interviewing the Vulnerable Adult in consultation with Social Services, who will advise the police on the Vulnerable Adult's needs. Refer to the Achieving Best Evidence with Vulnerable Adult Witnesses in Greater Manchester 2003.

Interviewing the suspect

The police will conduct interviews of suspects. Representatives of other agencies will not normally be present. Preparations for such interviews may be conducted jointly, particularly if the alleged abuser is a member of staff or has some role in caring for the vulnerable victim.

Where the suspect is also a vulnerable person, appropriate safeguards in terms of free legal advice and the presence of an appropriate adult are provided by the Police and Criminal Evidence Act 1984.

Decision to prosecute

Having conducted a criminal investigation the police would normally make a decision whether to prosecute an alleged offender on the grounds of sufficiency of evidence and public interest. The advice to the Crown Prosecution Service may be sought before a decision is made.

The views of other professionals will be taken into consideration. This will include discussion of any other sanctions available to deal with the offender. It should be borne in mind that evidence which fails to satisfy the burden of proof for a criminal prosecution may be used in civil proceedings where a lower level of proof is applied which is based on the balance of probabilities.

Details of the decision made, whether it is to prosecute or not, must be fully recorded and endorsed by the DI overseeing the investigation. The police-investigating officer should inform the relevant professionals.

4.6 Role of National Care Standards Commission

The National Care Standards Commission (NCSC) is an independent public body set up to regulate social care and private and voluntary health care services throughout England.

The NCSC is responsible for the Registration and Inspection of Service and has been established to provide a single, independent authority to ensure consistent quality of service and improve the level of protection for vulnerable people.

The NCSC oversees a range of care services provided for older people and younger adults. The following services fall under the NCSC's remit:

- Care homes
- Care homes providing nursing
- Care homes for Younger Adults
- Adult Placement schemes
- Domiciliary Care Agencies
- Nurse Agencies

In situations of abuse NCSC will work jointly with social services and other relevant professionals to investigate the alleged concern or disclosure.

5. Procedures.

The following procedures are to be used in allegations or concerns of abuse or suspected abuse to ensure that action is taken swiftly and consistently, ensuring the safety and protection of vulnerable adults. **It is the duty of all staff, to act on any suspicion or evidence of abuse or neglect.**

The guidelines are designed to be easy to use and are represented in a step-by-step guide, which is followed by a summarised flow chart. The procedures are divided into three headings:

- **Concern of possible abuse.**
- **A confidential disclosure.**
- **Allegation / disclosure of abuse.**

The procedure you follow will differ depending on whether or you are an investigating officer, residential worker or domiciliary worker. There are also procedures, if you are a carer for someone who receives community care services or a concerned member of the public.

Each section is clearly indicated and will guide you to the procedures, which you should follow.

5.1 Procedures for Carers, Relatives and Members of the Public.

5.2 Concern Of Abuse

This is where there is no substantiated or concrete evidence that someone is being abused, but there may have been an incident, which has caused you concern or you may have noticed some worrying signs (see Appendix A - Recognising Abuse).

STEP 1

In this situation you should ensure the safety of the person as best you can.

STEP 2

You should contact the person who is responsible for organising the care of your relative or person you are concerned about, i.e. his or her care manager/social worker to discuss your concerns.

If the person does not have a social worker or you are unsure who this is, you should contact a duty social worker at either:

Failsworth Town Hall
(Older People's Team)

Tel: 0161 683 4077

Broadway House
(Learning Disability Team)

Tel: 0161 911 3868

The Beeches - First Response
(Mental Health Team)

Tel: 0161 909 8088

Highbarn Resource Centre
(Older People's with Mental Health Team)

Tel: 0161 911 3715

The Link Centre
(Physical & Sensory Impairment Team)

Tel: 0161 911 4799

18 Greaves Street
(Vulnerable Young Adults Team)

Tel: 0161 620 1359

You do not have to leave your name but it may be useful for the person carrying out an investigation, as they may need further information.

5.3 A Confidential Disclosure

This is when someone tells you of abuse but requests you not to discuss it with anyone else. In this case you will have to decide as to whether you can keep this confidential, balancing the safety of the individual with respecting the wish to not discuss it with anyone else.

Step 1

It is very important to listen and believe what the person has said to you. It may help to establish as much information as possible to determine exactly what abuse is occurring. This should be done gently. You should establish why they do not want this information to be shared and what they would like from you in terms of support. You could also suggest that they contact a counsellor or support group.

Step 2

It may be that after consideration you decide that you will not discuss this with anyone else or that you feel the person has decided that they can live with the situation and is able to make an informed decision. However you must be sure that the person is safe and is not being intimidated, threatened or afraid of reprisals and therefore too frightened to inform anyone else.

5.4 Allegation / Disclosure of Abuse

The following procedures describe what should be done if you have witnessed or feel you have found evidence of abuse:

STEP 1

Take appropriate action to ensure the person is safe, for example, remove them to a place of safety but do not put yourself at risk.

If the vulnerable adult is in immediate danger or in need of urgent medical attention, action must be taken to ensure their immediate safety and well-being. This may include calling the appropriate emergency services.

STEP 2

Contact the Police giving as much detail as possible. The Police may, depending on the nature of the abuse, ask you to also contact Social Services (refer to step 2 section 5.2).

5.5 Procedures For Investigating Officers

Investigating officers are: - Social Workers, Care Co-ordinators (Mental Health Teams), Care Managers and their respective team managers. Team managers will appoint the investigating officer to individual cases'

The investigating officer should also take on the role of an advocate for the vulnerable adult.

IT IS IMPORTANT TO RECORD ALL CONCERNS / DISCLOSURES / ALLEGATIONS OF ABUSE ON AN ABUSE MONITORING FORM TO DEVELOP FUTURE PRATICE / SERVICES.

If the referral has become apparent as a result of a call from a professional, a letter of acknowledgement regarding this referral should be sent to the professional within 6 weeks (refer to appendix H).

5.6 Concern, Of Abuse

Concerns of abuse may result from the findings of an assessment, a referral, a visit or a review. Staff may become concerned, by some worrying signs, or specific practice (see Appendix A - Recognising Abuse). At this stage the concern is unlikely to be substantiated by any concrete evidence.

If you are concerned or a concern has been brought to your attention that a vulnerable adult is being abused, it is your duty to discuss this with your manager, (if this is not appropriate as your concerns are about your manager, you must then take this up with their manager). The worker must report these suspicions within 12 hours.

Staff should not take it upon themselves to instigate any sort of an investigation before discussing their concerns with their manager.

If at any point in the investigation there are no longer any concerns – No Further Action is to be taken. The decision needs to be recorded stipulating the reasons for the outcomes.

STEP 1

1. Ensure the service user is as safe as possible.
2. Obtain as much information as possible from the referrer and inform your manager of the situation and arrange an 'initial strategy meeting'.
3. The way a member of staff responds to the vulnerable adult is important. Staff should listen carefully, not ask questions, give clear information about what they will do next and, as far as they know, what will happen next.
4. If the perpetrator is a member of staff Oldham Social Services would advise suspension until the investigation is completed.

STEP 2

'INITIAL STRATEGY MEETING'

Initial Strategy Meeting should be convened immediately (definitely within 12 hours after the concern arises). This is a meeting between the manager and the social worker, care co-ordinator (mental health), care manager. The purpose of this is to organise the investigation (refer to guidance 6.1) and: -

1. clarify roles and responsibilities – determine the process of the investigation and who will be the investigating officer
2. consult / inform the police – refer to roles and responsibilities
3. consult / inform NCSC if the alleged abuse has taken place in a residential home or by domiciliary care
4. consult with the contracts unit if it is alleged that the abuse has been committed by a member of staff working for a residential home or domiciliary care
5. ensure the vulnerable person is as safe as possible – undertake a visit to the vulnerable adult and ascertain their capacity
6. write a protection plan to monitor the safety of the adult, with agreement the vulnerable adult (if appropriate) and other person's who can safeguard the adult against risk. If this is not possible to formulate a protection plan without a multi-agency meeting then a Case Conference should be convened.

These tasks are to be undertaken as soon as possible to safeguard the vulnerable adults (definitely before the Case Conference).

STEP 3

'THE INVESTIGATION' – refer to 6.1 for detailed guidance.

The investigation should be undertaken by two investigating officers (this might include an other professional from a different agency (e.g. health worker).

It is important that the investigating officers take time to plan and prepare the investigation before going to interview the vulnerable adult. Remembering that the objectives of the investigation are to: -

1. Establish the facts – asking non-leading, open ended questions
2. Assess the needs of the vulnerable adult for protection, support and redress; and
3. Make decisions with regard to what follow-up action should be taken with regard to the perpetrator and the service or its management if they have been culpable, ineffective or negligent.

STEP 4

'CASE CONFERENCE'

Is undertaken when there is a concern of the abuse and it is not possible to continue with the investigation and formulate a protection plan without a collective discussion of information, assessments and alternative courses of action. It is a multi-disciplinary forum, which enables the exchange of information, assess the individual's situation, develop a protection plan, make recommendations and review concerns (within 3 weeks of the initial strategy meeting (refer to Guidance 6.2-6.5).

1. The meeting will include: - Introductions
2. Reasons for the case conference
3. Case conference reports to be presented to the meeting – all written information written for and during the case conference should be returned to the chair at the end of the conference (all reports should be discussed with the vulnerable adult – refer to guidance 6.2-6.5)
4. Views and wishes of the individual concerned.
5. Discussion
6. Consideration to whether there is a need for criminal proceedings against the perpetrator of abuse
7. Formulation of the vulnerable adult protection plan (to be written within 7 days of meeting see guidance 6.6)
8. Nominate Core Group – the conference nominates a group of people who are responsible for undertaking an assessment of the situation and implementing the protection plan (refer to guidance 6.7)
9. Summary of conference
10. Agree to Review Conference decision and the protection plan within a minimum of 3 months from the first Conference and at least 6 months there after.

Any significant change to the agreed plan will not be implemented without the conference being re-convened to consider proposed change to the plan.

5.7 Confidential Disclosure.

During the course of your work for the Department, service users will undoubtedly tell you information that they wish to go no further. However, if a confidential disclosure has been made and you become aware that a service user is at risk of significant harm, you do have to act on this information and inform the vulnerable adult that you will have to break confidentiality. Inform your manager. Wherever possible, consent should be sought from the service user to break confidentiality.

If a vulnerable adult has disclosed that they have / are experiencing abuse by a member of staff but do not wish to pursue the matter further, it is important to try to encourage them to change their mind and agree to an investigation, however if they still are resistant then you are required to inform them that you will have to over-ride their wishes and pursue the matter further, as the staff member could be abusing other people or being falsely accused.

Follow the procedures for concerns/allegation/disclosure of abuse.

5.8 Allegation / Disclosure of Abuse.

All allegations or disclosures of abuse should be investigated regardless of previous allegations / concerns and / or the person's circumstances.

STEP 1

1. If the vulnerable adult is in immediate danger or in need of urgent medical attention, action must be taken to ensure their immediate safety and well-being.
2. If a criminal act has taken place then call the police immediately (day time 0161 856 8943 / anytime 0161 872 5050).
3. In cases involving physical or sexual abuse care must be taken to preserve evidence (Appendix E).
4. Gather as much information as possible from the referrer and inform your manager of the situation.
5. Arrange to undertake a joint visit with the appropriate party, e.g. Police

STEP 2

'INITIAL STRATEGY MEETING'

Initial Strategy Meeting should be convened immediately (definitely within 12 hours after the concern arises). This is a meeting between the manager and the social worker, care co-ordinator (mental health), care manager. The purpose of this is to organise the investigation (refer to guidance 6.1) and: -

1. Clarify roles and responsibilities and monitor the situation – how and who will undertake the investigation
2. If the perpetrator is a staff member the Oldham Social Services would advise suspension
3. Consult / inform the Police – Contact Detective Inspector for vulnerable adults, telephone number **0161 856 8943** (refer to roles and responsibility of the police 4.5).
4. Ensure the vulnerable adults safety – arrange a visit
5. Contact / Inform National Care Standards Commission (NCSC)
6. Contact / Contracts Units, if it is an allegation by staff member from Residential Home / Domiciliary Care
7. Arrange a Case Conference (within 3 weeks)

STEP 3

'THE INVESTIGATION' – refer to 6.1 for detailed guidance.

The investigation should be undertaken by two investigating officers (this might include an other professional from a different agency (e.g. health worker)).

It is important that the investigating officers take time to plan and prepare the investigation before going to interview the vulnerable adult. Remembering that the objectives of the investigation are to: -

1. Establish the facts – asking non-leading, open ended questions
2. Assess the needs of the vulnerable adult for protection, support and redress; and
3. Make decisions with regard to what follow-up action should be taken with regard to the perpetrator and the service or its management if they have been culpable, ineffective or negligent.

STEP 4

'CASE CONFERENCE'

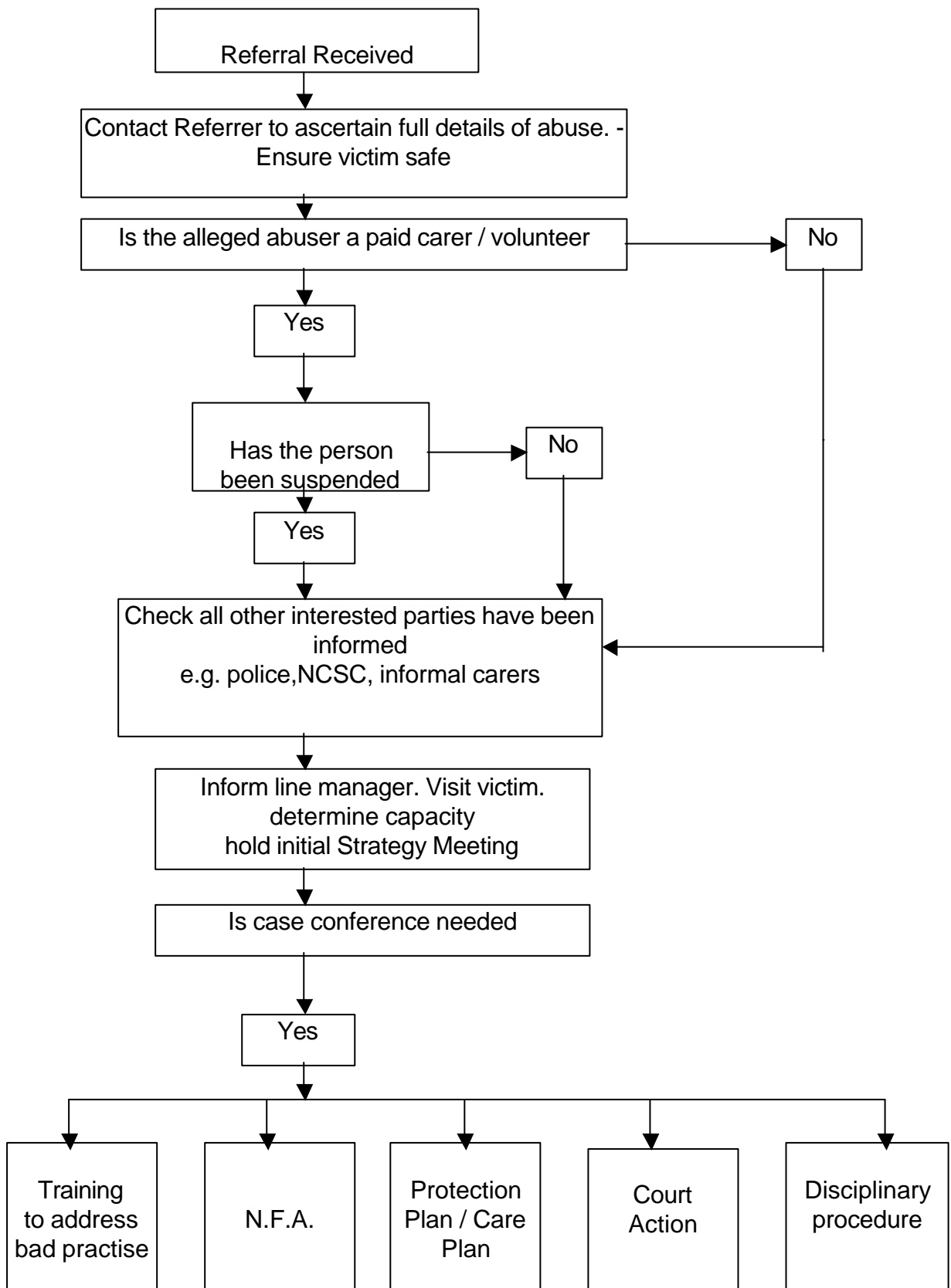
A Case Conference should be convened within a maximum period of three weeks from the initial disclosure / allegation or serious concern of abuse. It is a multi-disciplinary forum, which enables you to exchange information, assess the individual's situation and develop a protection plan and monitor and review the situation (refer to Guidance 6.2-6.5).

1. The meeting will include: - Introductions
2. Reasons for the case conference
3. Case conference reports to be presented to the meeting (all reports should be discussed with the vulnerable adult – refer to guidance 6.2-6.5)
4. Views and wishes of the individual concerned.
5. Discussion
6. Consideration to whether there is a need for criminal proceedings against the perpetrator of abuse
7. Formulation of the vulnerable adult protection plan (to be written within 7 days of meeting see guidance 6.6)
8. Nominate Core Group – the conference nominates a group of people who are responsible for undertaking an assessment of the situation and implementing the protection plan (refer to guidance 6.7)
9. Summary of conference

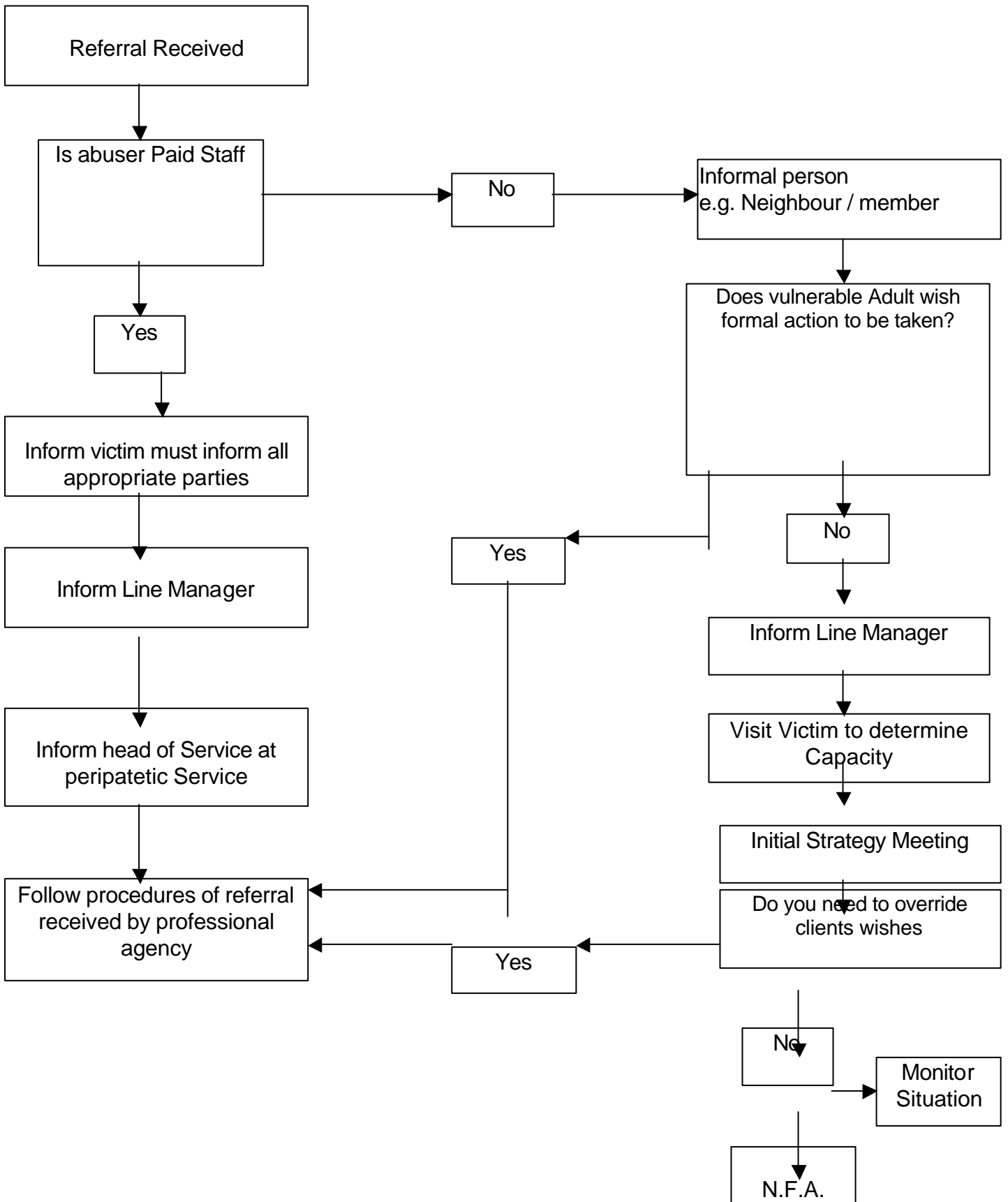
10. Agree to Review Conference decision and the protection plan within 3 months of the first Conference and at least 6 months there after.

Any significant change to the agreed plan will not be implemented without the conference being re-convened to consider proposed change to the plan.

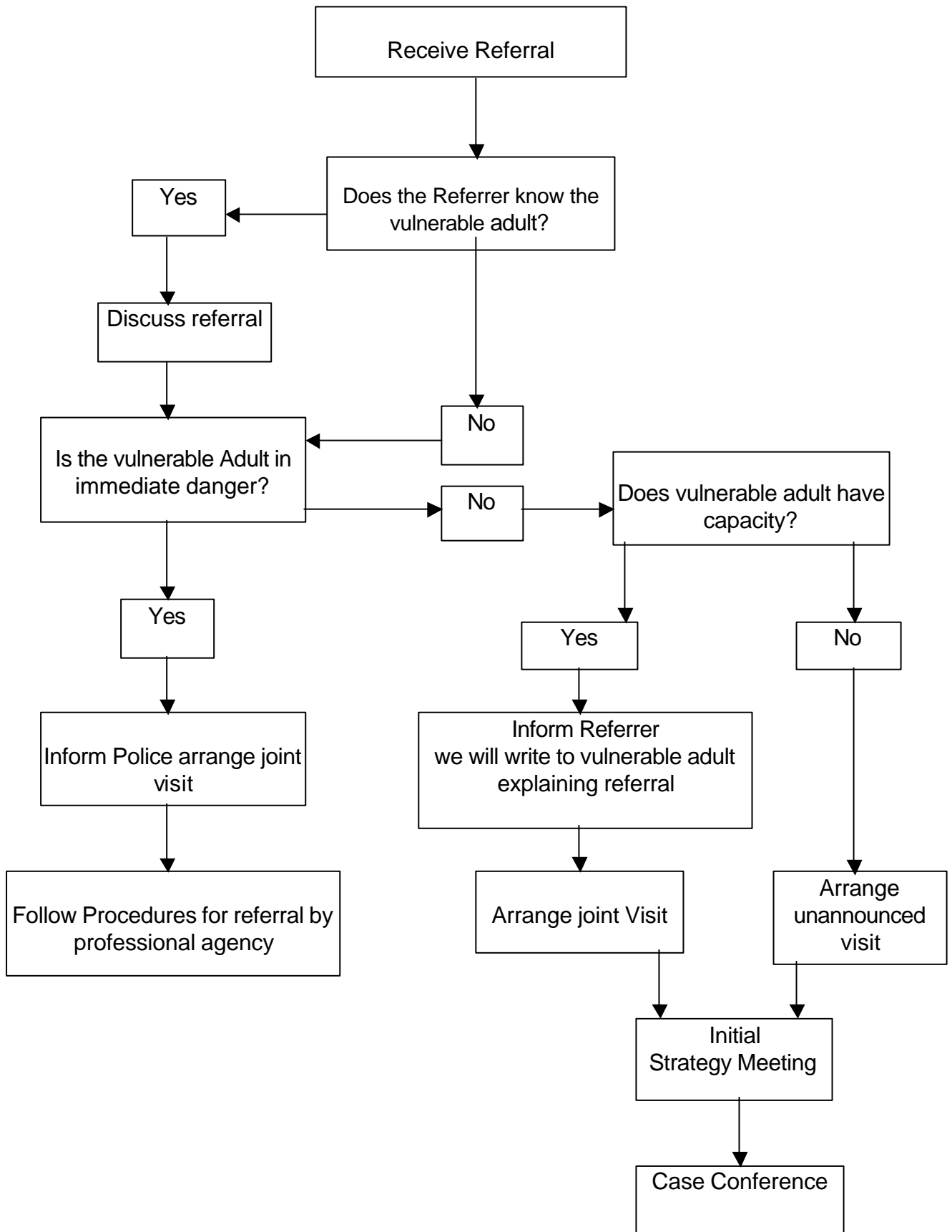
Referral Received by agency / professional



Vulnerable Adult Self-Disclosure



Referral from the General Public



5.9 Procedures For Residential and Day Care Staff.

5.10 Concerns of Abuse.

All concerns of abuse must be reported to the Social Services Department who will take the lead in the investigation of abuse. It is the responsibility of those involved in supporting the vulnerable adult to ensure the information is passed on quickly to the Social Services Department.

STEP 1

1. If you have any concerns that a service user is being abused you should ensure the person is as safe as possible.
2. It is then your **duty** to discuss this with your line manager, within 12 hours. If this is inappropriate, the next senior manager should be informed. If the Service user is in immediate danger e.g. suffering physical / sexual / financial abuse contact the appropriate Social Services Department / the Police.

You should not take it upon yourself to investigate or gather evidence.

STEP 2

1. Your line manager should contact the Social Services Department either by contacting the service user's social worker or their manager and the National Care Standards Commission. This should be done within 12 hours of the concerns being raised.
2. If the alleged abuser is a member of staff Oldham Social Services would recommend that they are suspended until there is an outcome of the investigation.
3. If the service user is not known to social services then a new referral will need to be made to the appropriate social services department.

Failsworth Town Hall (Older People's Team)	0161 683 4077
Broadway House (Learning Disability Team)	0161 911 3868
The Beeches – First Response (Mental Health Team)	0161 909 8088
Highbarn (Older Peoples Mental Health Team)	0161 911 3715
The Link Centre (Physical & Sensory Impairment Team)	0161 911 4799

STEP 3

1. Social Services will then follow the procedures for investigating officers. Day Care / residential staff may be asked to be apart of this process depending on the out come of the initial strategy meeting.

5.11 A Confidential Disclosure.

All staff are governed by the same rules of confidentiality, if a service user makes a confidential disclosure of abuse you must inform the service user that you are unable to keep the information to yourself but are required to share it with your line manager.

STEP 1

1. Ensure the service user is safe as possible.
2. Discuss immediately with the line manager to establish the next course of action.
3. The manager should then contact the appropriate social services department / NCSC.

STEP 2

1. Follow the same procedures as concern / allegation / disclosure of abuse depending on the incident disclosed.

5.12 Allegation / Disclosure Of Abuse

All allegations or disclosures of abuse should be investigated regardless of previous allegations / concerns of abuse and or the person's circumstances.

Step 1

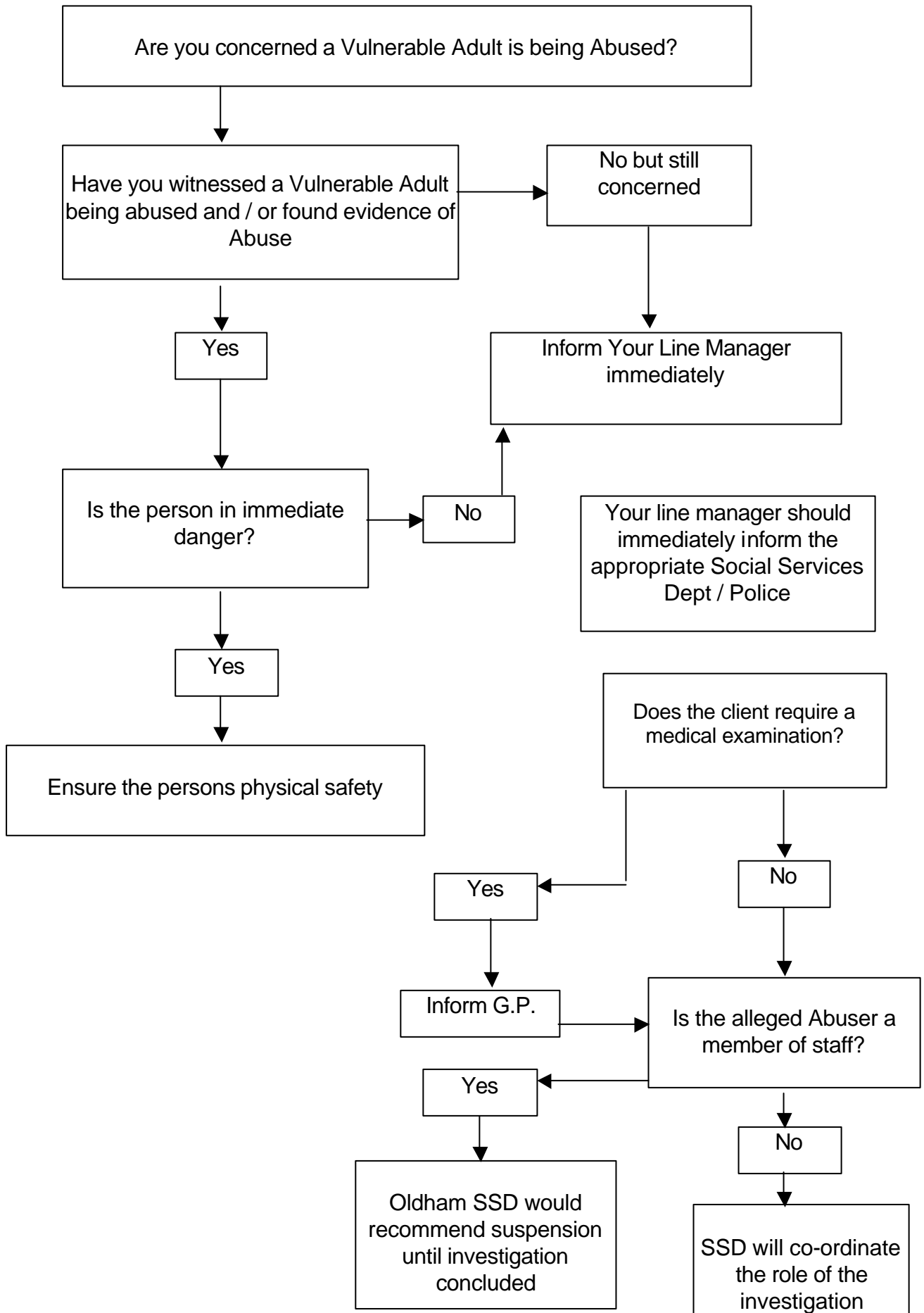
1. Ensure the safety of the service users as much as possible.
2. You should immediately contact your line manager, who will either, contact social services and / or the police (**the police should be immediately informed when a criminal offence has taken place** telephone '0161 872 5050' or '999') and NCSC. If you are unable to contact your line manager, you should attempt to contact another senior manager.
3. If you cannot contact any management you should immediately contact social services and / or the police.

Step 2

1. Social Services will then follow the procedures for investigating officers. Day Care / residential staff may be asked to be a part of this process depending on the outcome of the initial strategy meeting.

"No form of abuse will be tolerated"
(Extract taken from Dryclough Mannor, Nursing Home, Policy on abuse)

Procedures for Residential / Daycare staff / Care and either paid Staff



6 GUIDANCE FOR INVESTIGATING OFFICERS

6.1 The Investigation

Once information has been received regarding an incident or concern of abuse it is the responsibility of the team manager or the investigating officer to inform their service manager, the team manager will usually delegate the responsibility to an investigating officer to co ordinate the investigation and involve all relevant people. They should also ensure they collate as much information as possible regarding: -

- The individual who may be the victim of abuse, including clarifying whether s/he is aware of the referral (do not ask the referrer to inform the individual)
- The nature of the alleged abuse
- The alleged abuser
- Other family member or carers

The investigating officer will check SSID to see if the individual is known to social services.

The investigating officer will consult with their Team Manager / Section Head who will decide whether this is an adult abuse referral where adult abuse and protecting procedures should be followed.

Responsibility for the investigation remains with the social services fieldwork team who receives the referral (apart from the Emergency Duty Team). The Team Manager / Section Head will negotiate regarding who is the most appropriate to undertake the investigation. In some cases a joint approach across two teams will be the most appropriate method of investigation.

The Emergency Duty Team will only commence an investigation in cases of emergency. This, and all other adult abuse referrals, will be transferred to the appropriate team as soon as "office hours" commence.

Other than in the case of the Emergency Duty Team, investigations will not be transferred to another team before the investigation is completed and the development of a protection plan. Transfers will then take place following negotiation between the relevant managers involved.

The Team Manager / Heads of Service will ensure: -

- All record of the investigation that is observations, contacts and action. Need to be completed accurately and as soon as possible after the event

- The alleged victim is interviewed (by the investigating officer if the police do not wish to interview the victim) within 24 hours of the concern, allegation and or disclosure arises
- Two workers will conduct the investigation and one should be a qualified social worker
- Wherever possible one worker should be known to the individual
- Consideration is given to whether a joint investigation with another agency should be undertaken – in particular the police, NCSC
- If the individual concerned is living in a residential or nursing home, the Team Manager / Head of Service will notify the appropriate NCSC within 24 hours to enable the investigation to be conducted jointly
- Where there is a child in the household the Investigating officer / team manager will notify the appropriate Children and Family Team
- Consideration is given to the choice of venue for the interview and special requirements.

Team Managers and Investigating Officers should approach reports or allegations of abuse with an open mind as often the seriousness or extent of the abuse is not clear when concerns are first raised. Investigations aims: -

- To ascertain the facts to enable the development of an vulnerable adult protection plan
- To obtain the agreement of the individual to involve other people / agencies
- To identify the wishes and needs of the individual – e.g. does the individual want an advocate present during the investigation and subsequent meetings
- To identify the length of time the abuse has been occurring
- To acknowledge the impact on the individual
- To ascertain the risk of repeated or escalating acts involving this or other vulnerable adults
- To ensure that any action taken does not jeopardise any police investigation if it becomes apparent that this is the course of action. All interactions between the investigating officer and the vulnerable adult could be disclosed to the courts and therefore should be recorded in a durable format.
- To ensure that all investigations are conducted strictly in accordance with anti-discriminatory practice

Investigators' Interviews

If there is any possibility that a criminal offence may have been committed, the vulnerable adult should not be interviewed alone, or in the presences of the person alleged to be responsible for the abuse, after the first disclosure. In such cases a joint interview, led by the police, is preferable, at which the vulnerable adult may be accompanied by any of the following:

1. An 'appropriate' adult under the Police and Criminal Evidence Act (1984)
2. An independent advocate
3. A member of their family or close friend, if this is deemed appropriate.

Care should be taken to ensure that an assumed outcome of abuse does not occur prior to the investigation. No plan of action, except in emergency circumstances, should be initiated until the facts surrounding the alleged abuse have been established. All information gathered must be recorded and shared with the Investigation Manager.

Once it has been ascertained that a criminal offence has occurred then do not question the victim further until after the police have interviewed and gathered information.

During the interview the Investigating Officer should ensure that:

1. Information about his/her designation and the agency s/he represents is stated clearly.
2. The purpose of the interview is made clear.
3. The nature of the allegation is identified.
4. How the interview is to be carried out is explained.
5. A relaxed and caring manner is adopted.
6. A rapport is established prior to discussion of the alleged abuse.
7. The vulnerable adult is encouraged to describe the event in their own words before more detailed questions are asked.
8. An attempt is made to establish how the alleged abuse occurred.
9. Any signs of injury, the explanation given for the cause of the injury, and the general condition of the vulnerable adult are noted.
10. An initial assessment of the needs of the vulnerable adult together with a social history is made.

11. Support networks are in place for the vulnerable adult.
12. The risks are assessed.
13. Attention is paid to the indicators of abuse.
14. Consideration is given at every stage of the investigation as to whether police.
15. Involvement and / or medical assessment or treatment is required.

When ending an interview the following points should be covered:

1. A clear review of what has happened
2. A statement that the Investigating Officer is required to consult with the manager in order to make decisions.
3. Clear information about any agencies that will be involved at this stage; e.g. police, doctor.
4. The support which is available and, if required when it will come into effect.

Consideration will need to be given as to how best to record the interview and feed back the content of the recording to the vulnerable adult for their agreement as to it's accuracy. It may be appropriate to use an independent advocate to facilitate this.

“Discuss Elder Abuse – raise the topic at team meetings and ensure you and others are clear about procedures”

(Extract taken from Longwood Lodge policy on Abuse)

6.2 Case Conferences

The main purposes of a case conference are:

1. To ascertain the current level of risk.
2. To develop an Adult Protection Plan and nominate a worker who has responsibility to co-ordinate and monitor the plan.
3. To agree who needs information on a 'need to know' basis.
4. To make arrangements for further reviews as required.
5. To make recommendations about changes to the organisation and delivery or services, if appropriate.

There are general principles that should be followed regarding the conduct of the Case Conference: -

1. Invitations to participants should state the purpose of the case conference and all information should be presented in a format, which participants can understand.
2. Participants should be advised the proceedings are being conducted in strict confidence.
3. Contributors should be reminded of the importance of distinguishing between fact and opinion.
4. Language used should be non-discriminatory in nature having regard to the age, gender sexuality, race, disability religion/belief and role of all persons involved.
5. The overriding consideration should be to protect the vulnerable adult from further harm.
6. Respect for the views and wishes of the vulnerable adult, where they can be determined, will always be maintained and the need for confidentiality protected
7. Any decision to override the views of the vulnerable adult will always be taken in consultation with others and the reasons recorded.
8. The contents of the notes of Case Conferences should not be discussed with any third party without the consent of the Chairperson

6.3 A guide regarding who should be invited to Case Conference.

The following list is a guide to who should be invited to attend the Case Conference. You should only invite those people who are relevant to the case (maximum 12 people):

-

1. Abused person
2. Carers and / or advocate
3. Managers from investigating agencies
4. Police
5. Social worker
6. Investigating social worker
7. Social work team manager
8. Community psychiatric nurse/Community nurse
9. Home care manager
10. Environmental health officer
11. Appropriate family members
12. Health Visitors
13. National Care Standards Commission
14. Human Resources
15. Housing officer
16. Occupational therapist
17. Probation officer
18. Senior health / social services manager
19. Any voluntary agency known to be involved
20. Investigations unit
21. General Practitioner
22. Legal representative
23. Contracts Division

Reviewing within one month, then after three months and, thereafter, six monthly until it is agreed at a case conference that there is no further need for a Protection Plan.

NB: The individual concerned can withdraw their consent for action/involvement at any time.

6.4 Case Conference Report

The investigating officer should produce a report which, (if appropriate) should have been discussed with the vulnerable adult prior to the case conference, the report should have the following headings

1. Individual / Family / Significant Persons information – names, ages, relationship, addresses
2. Circumstances leading to the Case Conference
3. Relevant background Information
4. Concerns / risks / issues to be addressed
5. Other Agencies Views
6. Vulnerable adult views and wishes
7. Family Views and wishes
8. Desired out come
9. Contributors/sources of information for the report
10. Recommendations.

Subsequent reports need to be discuss and illustrate the changes and progress in the case.

Other Professionals may choose to submit reports as this may help them to deliver information in a structured and thorough manner, including all relevant information.

6.5 Format and Content of a Case Conference

All Case Conferences should have an independent chair (Team Manager/Head of Service) and a minute taker, all minute takers should have the chance to be de-brief after a case conference.

Proceedings should normally cover the following:

1. Introductions and roles of those present
2. Outline by the Chair of the purpose of the case conference, definition of abuse (No Secrets DoH 2000) and Significant Harm (Lord Chancellor's Department 1997 Who Decides?)
3. Rules of conduct
4. Presentation of the Investigating Officer's report
5. The opportunity for the vulnerable adult and or their advocate to participate and express their views and concerns
6. The opportunity for the carer/s to participate and express their views and concerns
7. The opportunity for representatives of agencies who have experience of the vulnerable person's situation to contribute what they know about the situation and identify what their concerns are.
8. A summary of the participants' views, including dissenting views.
9. An assessment of current risks to the vulnerable adult
10. Formulation of an Adult Protection Plan, including review dates and information about who will carry out the review

6.6 A Vulnerable Adults Protection Plan

A Protection Plan must be drawn up (within 7 days of the conference) and shared with the members of the Case Conference.

It is essential that the Protection Plan attempts to develop ways of protecting vulnerable adult from future harm by: -

1. Ensuring that attempts are made to work with the abuser to change his / her behaviour if they remain in contact with the abused: This must be undertaken in consultation with the police as it could potentially effect evidence
2. Facilitating monitoring and reviewing of the situation, e.g. providing day care, respite care, social work support
3. Complementing the care plan
4. Allocating tasks to identified people

6.7 The Function of the Core Group

The Core Group identified at the Case Conference will be a small number of professionals shared with the responsibility of working together with the vulnerable adult to provide services to implement the recommendations of the Case Conference and the protection plan to further protect the vulnerable adult. The membership of the group should be kept to a minimum practical number for reasons of efficiency and confidentiality.

The investigating officer should arrange for the group to have an initial meeting with all the members as soon as is practically possible after the Case Conference (within 10 working days). The investigating officer will chair this meeting and the agreed Vulnerable Adult Protection Plan should be drafted and signed by all parties, including all relevant family members. All Core Group members must be given a copy of the plan. The Core Group is responsible for developing the Vulnerable Adult Protection Plan as a detailed working tool, and implementing it within the outlined plan agreed at the Case Conference.

The Core Group should meet on a regular basis (maximum every 4 weeks). At the last Core Group meeting prior to a review, it will be the task of Core Group to draft a report for the review conference which takes into account: -

1. Work undertaken, progress made and any outstanding work needed
2. An assessment of the current risk to the vulnerable adult
3. A recommendation about whether an adult is still at risk and if they need to continue with protection plan or not and why.

6.8 Guidelines for Managers Regarding the Allegation of Staff.

Managers should presume innocence until there is evidence to the contrary or it is proved otherwise. This should underpin all dealing with regard to those against whom a complaint has been made.

If the subject of the complaint is a member of staff, it is important to be clear about what the allegations are and who is making them. Disciplinary action should never be taken against an employee until the allegations have been fully investigated. It is also the manager's responsibility to ensure that any resulting disciplinary procedure is carried out in a manner that is effective, fair, well understood and consistently applied. (Refer to guidance with regard to investigations and disciplinary procedures)

Staff should be clearly advised of their rights under employment legislation and internal disciplinary procedures, including the right to seek representation from a union. **As a matter of course allegations about a member of staff regarding criminal offences should be reported to the police.**

An investigating officer should be nominated, and the investigation should be carried out **as quickly as possible after the allegation has been made.** Managers have equal responsibilities towards staff members who have been accused as well as the alleged victim of abuse. It is therefore important to ensure that disciplinary procedures are followed. If at any stage of the investigation or when applying the disciplinary procedures you need advice, or to check that you are applying the disciplinary procedures fairly, contact Personnel and Staffing who will be able to give you support and advise.

Members of the public, parents or carers should also be informed of their rights and their entitlement to an independent advocate. If the alleged perpetrator is also a vulnerable adult, they should be informed of their right to an “appropriate adult“ whilst being questioned by the Police, under PACE - the Police and Criminal Evidence Act (see Legal Section).

6.9 Out of Borough Placements

(See LAC (93) 7)

The following needs to be considered in relation to placements outside the borough but for whom the Local Authority still has responsibilities:

- Roles and responsibilities need to be negotiated regarding overall responsibilities for monitoring and adult protection.
- Deciding which registering body will fulfil a regulatory function regarding residential accommodation.
- The placing authorities continuing duty regarding the abused person.

6.10 References

All references, including a reference from the last employer, should be taken up before a formal offer of appointment and should be in writing. All reasonable checks should be made to ensure that references are bona fide. The expected Care Standards Bill will contain more details.

6.11 Direct Payments

Direct Payments is a method by which an individual is paid directly to buy in services they require instead of having a service from Social Services.

This allows for as much independence as possible for the individual but could also leave them vulnerable to abuse.

Direct Payments can be complex to arrange. There are a number of issues around employer liability and recruitment of staff that could leave an individual vulnerable if good practise is not developed.

The department continues to work on developing good practise and procedural guidelines for the administration of direct payments. It is anticipated that over time these procedures will be included within this policy.

6.12 Monitoring Form / Monitoring System

A monitoring form is contained in the appendix and should be completed in all cases. It is anticipated that social services staff will complete this form with input from other staff involved. Staff from other agencies should record as advised by their own recording procedures. One copy should be kept on care manager's file and a second should be sent to:

**David Friday (Assistant Director)
Civic Centre
Level 11
West Street
Oldham
OL1 1UW**

The information contained on the form will be collated and monitored. This will be used to inform future policy and practice.

6.12 Role of the Adult Protection Committee

To ensure that Oldham Social Services along with its partner agencies who are involved in the care of vulnerable adults are committed to:

1. Preventing and protecting vulnerable adults from abuse
2. Ensuring staff involved in dealing with abusive situations are supported and trained effectively
3. Ensure that vulnerable adults who are suffering or at risk of suffering abuse have their individual needs and choices (cultural, religious, belief, language, disability, gender, age and sexual orientation) taken account
4. Respect the dignity and individuality of all our service users and staff and to value their knowledge and experience.
5. Developing services for all vulnerable adults
6. Recognising that when abuse does take place that appropriate action is taken and that this is monitored
7. Responsible for the updating of the vulnerable adult protection policy and guidelines, ensuring that it is a workable document.

The Committee will be fed into by a number of sources one been the sub-groups that have been set up to look at and develop good practice another is from the adult abuse monitoring forms which will enable professionals to identify gaps in services offered to vulnerable adults who have experience abuse.

If you have any further questions regarding the adult abuse committee or would like to feed into their agenda, please contact that Adult Protection Co-ordinator.

“We will celebrate our success, and learn from our mistakes. We have a Shared responsibility to continue to learn and improve both as individuals and as an organisation”

(Extract taken from Anchors Rights and Responsibilities policy)

7

Appendices

LIST OF APPENDICES

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APPENDIX A - RECOGNISING ABUSE

Adult abuse can occur when an adult, who in some way is vulnerable, is faced with a set of circumstances or person with the potential to harm. Added factors may increase the risk of abuse, some of which are described below:

- Poor communication or a breakdown in communication
- Living in the same household as a known abuser or someone with a history of sexual offences
- An inappropriate or dangerous environment
- Considerable change in the carer's life style, or carer's needs outweighing their ability to meet them
- Emotional or social isolation
- Living with someone with a history of mental problems, alcohol or drugs misuse

What To Look For

The following list highlights situations or events that may require closer attention, the list is not exhaustive and are purely indicators, the presence of one or more does not confirm abuse, but a cluster of several may indicate a potential for abuse, hence the need for further assessment:

- Social factors
- Physical and mental dependence on a key member of the family
- Poor communication/breakdown of communication
- Considerable change in carer's lifestyle
- Negative perspective of a carer towards a dependence of vulnerable person
- Frequent visits of the GP or visits to Accident & Emergency
- Role reversal - introduction of personal care
- History of falls and minor ailments
- Provocative behaviour, e.g. wetting, spitting, shouting, exposure

- Apathy of carer/dependent
- Personal history of drug/alcohol abuse or violence for either carer or person being cared for
- Financial dependency
- An institution that provides poor quality care
- Increased stress on carer of a sudden nature
- Verbal threats to abandon or harm individual

Physical Indicators

- An injury not fully explained by the history given
- Self inflicted injury
- Unexplained bruises in various stages of healing; clusters forming patterns, reflecting shapes of objects
- Unexplained burns, including immersion burns, rope burns, electric appliance burns
- Unexplained fractures to any part of the body, in various stages of healing
- Unexplained lacerations to mouth, lips, gums, eyes, or external genitalia
- Malnutrition - rapid or continuous weight loss or dehydration
- Lack of personal care, inadequate clothing or heating
- Untreated medical problems
- Urinary/faecal incontinence
- Over or under use of medication

Financial Indicators

- Unusual or inappropriate bank activity
- Power of Attorney obtained without person being able to comprehend
- Recent change to deeds or title of house
- Person lacks belongings or services that they can clearly afford

- Recent acquaintances expressing sudden or disproportionate affection for the person with means
- Care asks only financial questions of worker
- Person managing financial affairs is evasive or unco-operative

Psychological Indicators

- Ambivalence
- Deference
- Passivity
- Resignation
- Fearful expression in the eyes, avoids looking at caregiver, flinching on approach
- Emotional withdrawal
- Sleep disturbance
- Low self esteem

Sexual Indicators

- Full or partial disclosure or hints of sexual abuse
- Wetting or soiling
- Poor concentration
- Unusual difficulty with walking or sitting
- Torn, stained or bloody underclothing
- Pain, itching, bruising or bleeding in the genital area
- Sexually transmitted disease / urinary tract / vaginal infections
- Love bites
- Significant change in sexual behaviour or outlook
- Bruising to upper arms or thighs

- Pregnancy in a person unable to give consent

Rights Violation Indicators

- Coercion
- Causing distress to a person by locking in at home, car etc.
- Inappropriate clothing
- Sensory deprivation, not allowing hearing aids or glasses
- Seclusion and isolation
- Restricted access to personal hygiene and toilet
- Lack of respect for the dependent person as an individual
- Carer does not offer personal care
- Use of furniture or other equipment to restrict movement

Neglect Indicators

- Neglect of accommodation
- Inadequate heating
- Inadequate lighting
- Physical condition of person poor, e.g. ulcers, bed sores
- Person's clothing in bad condition, unclean/wet
- Failure to engage in social activities e.g. parents/carers withdrawing services without the consent of the vulnerable adult
- Malnutrition
- Failures to ensure appropriate privacy and dignity
- Failures to access appropriate medical care
- Inconsistent or reluctant contact with callers or visitors

APPENDIX B - SUPPORTING PEOPLE WHO HAVE BEEN ABUSED

An awareness of the affects of abuse is essential in providing support to people especially if they have just experienced an investigation. Common feelings are a loss of confidence, self-esteem and the ability to trust people. It can also be common for the person to feel a sense of loss, especially if the abuser was a carer or family member.

The following steps may be of use:

Find out from the person how they feel - do not assume, ask. There may be a need to engage specialist help such as psychiatrist or psychologist.

Set up a monitoring process - that involves a person to support the individual that has been abused. Ensure the individual feels safe with this person, it maybe the person they disclosed the abuse to or someone they feel able to talk to. Set time aside to let the individual to talk about their experiences.

Support the person to develop their confidence and self esteem - if appropriate encourage the person to build social contacts, they want to join self-help or support group. Help the person work on their assertiveness skills, there are classes and books available (see Appendix F- Useful Address).

Set up a formal review - the review and monitoring process should involve the service user and will give them time to reflect on their progress. They should have support to attend and their opinions sought as whether the level of support they are receiving is adequate or needs to be looked at again. More than one review may be necessary.

APPENDIX C - SUPPORT FOR WORKERS

Dealing with abuse can be traumatic for workers, it is important for managers to ensure support is given to address this, through supervision. It may be wise to check out if there is a need to meet more regularly to support the worker at the time of an investigation. For Social Services staff there is a Staff Support Officer available for staff who feel they need added support. Contact -

Peter Dougherty
Staff Support Officer
Metropolitan House
Hobson Street
Oldham.

Telephone: 0161 652 6381

Workers who have been accused of abuse should make contact with their union representative who will advise them of their rights regarding disciplinary procedures.

APPENDIX D - LEGAL FRAMEWORK

At present, the legislation protecting adults who are being abused is limited. This is likely to change in coming years as the Government reviews the need for legislation to protect vulnerable adults. The Green Paper "Who decides" has indicated the Government's commitment to this area of legislation.

It is hoped that 'Speaking up For Justice' will make a significant difference to vulnerable adults who are witness or victim to criminal offences. Speaking for Justice (Home Office 1998) made 78 recommendations designed to encourage and support vulnerable and / or intimidated witnesses through the stages of investigation, pre trial, and the trial and beyond. 'Action for Justice' (Home Office 1999) laid out an implementation programme for Speaking for Justice. Ten Local Authorities in Greater Manchester and Social Services Inspectorate were invited to meet with Greater Manchester Police and Crown Prosecution Service, who devised a protocol of 'Achieving Best Evidence with Vulnerable Adult Victims and Witnesses in Greater Manchester 2003'.

The legal advice contained within this Appendix D is only given in general terms and Oldham SSD accepts no responsibility for its accuracy and would always advice that appropriate legal advice is obtained before taking any action.

It has to be recognised that the terminology used in long standing legislation is some what dated and at times could be viewed as quite offensive. Where possible we have changed such language to use more appropriate terminology but where necessary we have had to use those words used in the actual legislation.

There is no legal definition of adult abuse, although 'No Secrets' (DoH 2000) provides the following basis for proceeding: 'Abuse is a violation of an individual's human and civil rights by any other person or persons'.

There is no specific statutory duty to investigate concerns of adult abuse however local authorities have a positive obligation under the Human Rights Act 1998 to comply with the Articles of ECHR which includes the rights to have your life protected by law, and not to be subjected to inhuman or degrading treatment or punishment.

'No Secrets' also makes it clear that Social Services are to be the lead agency in adult protection. As a result of the absence of an effective legal framework, it is necessary to be 'creative' in respect of any legal intervention, the following principle, as developed by the Law Commission is useful: -

'That people are enabled and encouraged to take for themselves those decisions which they are able to take, that where it is necessary in their own interests or for the protection of others that someone else should take decisions on their behalf, the intervention should be as limited as possible and concerned to achieve what the person would themselves have wanted; and that proper safeguards be provided against exploitation, neglect and physical, sexual or psychological abuse'.

Financial: -

Enduring power of attorney
Court of Protection
Criminal prosecution – Theft Act 1968

Receivership

The Court of Protection is an office of the Supreme Court with jurisdiction to protect and manage the property and financial affairs of individuals who are incapable due to mental disorder/impairment of doing so themselves.

An application should be made to Public Guardianship office in London for the appointment of a Receiver to manage an adult's financial affairs. A medical certificate confirming that the adult is currently "incapable by reason of mental disorder of managing and administering his property and affairs" must accompany all applications submitted to the Court. The medical certificate will have to be completed by the adult's doctor or consultant, and must be in the approved Court of Protection form called a CP3. If they are unable to do so and have not executed an enduring Power of Attorney. The person to be appointed can be a relative; a friend; an officer from the local authority; a solicitor; the Public Trustee or any 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 receives an occupational pension or the adult has an interest in a property then a Receivership application should be made. However, although the rules do not prescribe who can apply, normally, it is the adult's spouse who is the proper person to make the application.

If there is a dispute, over who should act as Receiver then this can involve a contested hearing before the Master in London. Obviously, if the Local Authority was to apply in place of a relative, then they would need to be able to produce evidence to support their reasons for doing so. Where the case is straightforward and there are less substantial assets, the Public Trustee may make directions authorising use of certain funds, without the appointment of a Receiver

Power of Attorney

A power of Attorney is a legal document, which empowers someone to act on behalf of another in relation to all his or her financial affairs. Unless any 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 in a prescribed form, which can be purchased from Legal Stationers. Anyone who is thinking of making a Power of Attorney should consider making this an Enduring Power of Attorney.

An ordinary Power of Attorney lasts only so long as the person who grants it is mentally capable

Enduring Power of Attorney

An Enduring Power of Attorney is document, which provides for a person to deal with the financial affairs of an adult after an adult becomes mentally incapable. It must be prepared while the doner still has mental capacity. The Attorney must apply to register the Enduring Power of Attorney with the Court of Protection before they can act or continue to act under it. (Always ask to see a copy)

Appointeeship

If a person is mentally incapacitated, 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 considers that Social Services should assist in that event. 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 considers that an appointment can, in appropriate circumstances, still be made. If the local authority is concerned that as appointee is financially abusing their position, then they should contact the Benefit's Agency and ask for the appointee to be replaced.

Agency

If an adult cannot go to the 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, which will give a card to the Agent. The Agent will have to take this card to the Post Office whenever cashing an order. Of course, the adult can cancel this arrangement at any time they see fit. There is no monitoring of agency agreements.

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 them. If they do so, they can be sued in the Civil Courts.

Role of the Official Solicitor

The Official Solicitor to the Supreme Court; the Official Solicitor's office is at:

81 Chancery Lane
London
WC2A 1DD
Telephone: 0171 911 7127 Fax: 0171 911 7105

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

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 that 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 that the Official Solicitor can help with:

- 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 their house away to the next door neighbour at a time when they did not appreciate what they were doing.
- 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 legal representation of the adult.

- Representing an adult if an application has been made to the Court of Protection for a gift of that adult's money to be made to another person or for a statutory 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) fulfil this function.

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 has made a report concerning it.

- 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, then 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, then they can always be telephoned to clarify the position. If they are asked to take over the representation of an adult in a court, then 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.

Sexual: -

Criminal prosecution – Sexual Offences Acts 1956 & 1968 NB specific offences against people with severe learning disabilities

Civil action – assault, battery or false imprisonment (restraint)

Family Law Act 1996 injunction for non-molestation

Mental Health Act 1983

Care Standards Act 2000

Community Care support

Sections 7, 9 and 27 of the Sexual Offences Acts 1956 recognise that adults with severe learning disabilities are not able to give consent to sexual acts.

Section 128 of the Mental Health Act 1983 makes it an offence for a member of staff in a hospital or nursing home to have sexual intercourse with a woman receiving treatment in that hospital or home for a mental disorder.

Physical: -

Criminal prosecution – Offences Against the Person Act 1861

Civil action – assault, battery or false imprisonment (restraint)

Family Law Act 1996 injunctions: non-molestation and occupation

Mental Health Act 1983, ss. 115, 135, 127, 117 (after care)

Police and Criminal Evidence Act 1984, s. 17 (power to enter to save life and limb)

Care Standards Act 2000 – regulation of care homes and domiciliary provision, supported by National Standards.

National Health Service and Community Care Act 1990, s. 47 (support)

The Mental Health Act 1983

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 s/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 Mental Health Act 1983 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 Mental Health Act 1983 allows for a Police Officer to intervene if the adult is in a public place (e.g. wandering outside at their own home).

Section 13(4) Mental Health Act 1983: Duty to make application for admission. This places a duty on the Social Services Department to direct an approved social worker to consider making an application for admission under the Act, if requested to do so by the nearest relative. A third party, provided grounds exist under the MHA could use this power if the nearest relative of a mentally disordered adult complains of mistreatment.

Section 2, 3 and 4 Mental Health Act 1983: Admission to hospital. These sections give power to an approved social worker to authorise the admission to hospital of a mentally disordered adult, if s/he is satisfied the criteria for compulsory admission are met as per the provisions of the MHA.

Section 7 Mental Health Act 1983: Guardianship. A vulnerable adult can be received into guardianship by the local authority if s/he has a mental illness, severe mental impairment or mental impairment associated with “abnormally aggressive or seriously irresponsible conduct” or a psychopathic disorder which results in “abnormally aggressive or seriously irresponsible conduct”. The Guardianship must also be “necessary in the interests of the welfare of the adult or for the protection of other persons”. The ‘welfare of the patient’ is interpreted broadly.

Guardianship gives the guardian 3 basic powers: -

- to say where someone is to live;
- to require the adult to attend somewhere for purpose of medical treatment, occupation, education or housing;
- to gain access to the patient at a place in which someone is living.

There is a necessity to consult the nearest relative when considering guardianship. If the nearest relative is the perpetrator of mistreatment then consideration should be given to whether the circumstances would allow an application to be made to a County Court to displace the nearest relative.

It has been argued that, in the case of mental impairment, failure to remedy mistreatment of the mentally impaired victim is “seriously irresponsible conduct” and thus a guardianship order could be granted. This would depend upon the assessing Psychiatrist.

Section 127 Mental Health Act 1983: Ill-treatment of patients. This section makes it an offence for an officer on the staff or otherwise an employee, or a manager of a mental nursing home or hospital, to “ill-treat or wilfully neglect” a patient who is either:

- Currently receiving treatment for mental disorder as an in-patient in that hospital or home
- A patient receiving treatment as an outpatient.

Furthermore, under sub-section (2) “It shall be an offence for any individual to ill-treat or wilfully neglect a mentally disordered patient who is for the time being subject to his guardianship under this Act or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise).” This sub-section has rarely been used but potentially could include the mistreatment of a mentally disordered adult by any carer - informal or otherwise.

National Care Standards Act 2000 s.81&82

Neglect: -

National Assistance Act 1948, s. 47 (1951 Act, *ex parte*)

Mental Health Act 1983, s.127

Criminal Law – R v. *Stone* (1977) 2 All ER 341

This procedure can only be initiated if the community physician is satisfied that it is in the persons best interests to remove them.

In practice, this section of the National Assistance Act is rarely used, as it is difficult to satisfy all conditions. 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.

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 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 & Disabled 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. Vulnerable people who are being abused would therefore be eligible for an assessment under this legislation.

Local authorities have a preventative duty (under Section 66 The Housing Act 1985 Part 111 (Homelessness)) to take 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 there is much that 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 Housing Act 1985, 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 cooperate 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 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 for them (under Section 2 of the CSDP Act 1971). The disabled person, or their carer(s), can make the request for an assessment or a representative of the disabled person or their carer(s), is seeking help for protection from mistreatment. Although it does not imply any action, it may open the way for contact and debate.

National Assistance Act 1948 section 47 gives power to a local district authority to apply to a Magistrates Court to remove a person from their home against their will on the grounds:

- that a person is suffering from grave chronic disease or, being aged, infirm or physically incapacitated, is living in insanitary conditions; and
- 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.

Psychological: -

Protection from Harassment Act 1997

Care Standards Act 2000

Anti-discrimination legislation (race, sex, disability)

Community care support

Anti-Social behaviour order – Crime and Disorder Act 1995

The Protection from Harassment Act 1997 includes offences of knowingly harassing another person; pursuing a course of conduct amounting to harassment or engaging in a course of conduct (at least two occasions) which causes the person to fear violence. These types of offences are helpful with regard to stronger abuse.

The Care Standards Act 2000, section 81, have a list of persons (Secretary of State) who are unsuitable to work with adults.

The Anti-Discrimination Law relating to Disability Rights, Race Relations and Gender ensures that people receive services on an equal footing.

The Anti-Social Behaviour orders – Crime and Disorder Act 1998, provides no specific guidance for vulnerable adults, there are notable implications for this group. The Crime and Disorder Act 1998 places all those working in the youth justice system under a statutory duty to have regard to a “principal aim of preventing offending by children and young people” Section 37 of the Act places all the different agencies and individuals working in the youth justice system under a duty to have regard to the principal aim. This duty aims to strengthen partnerships between agencies working in the youth justice system.

An effective youth justice system must ensure that justice is delivered for all concerned and that the best interests of all are served. There must be consideration, by all agencies and individuals, of the welfare of the child or young person. But there must also be a balance between the interests of the child or young person who has offended and the interests of the victim or potential victims. Preventing offending is in the best interests of the child or young person. It is also in the best interests of the victim and the wider public.

Through concentrating on the preventing of offending behaviour by young children and young people along with a call for strengthening of inter-agency working within the youth justice system, the government hopes to see benefits to vulnerable adults who are often victims of such crime.

An Anti-Social behaviour order can be made in respect of anyone over the age of ten who has acted in an anti-social manner and it is necessary to protect persons living in the local authority area from further anti-social acts.

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 interest 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 that 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, the negligence action has been established.

Contract: With regards to financial or property abuse, the law of contract offers protection from duress or undue influence being exerted over a vulnerable adult and in the event of the above being proved to have taken place, the contract can be set aside.

The Police and Criminal Evidence Act 1984

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

Public Health Powers

The local authority has powers under Public Health legislation to enter and cleanse premises, which constitutes a public health risk. A Magistrate's warrant is usually required, e.g. to inspect premises under section 287 of the Public Health Act 1936. See also the earlier reference to Section 47 of the National Assistance Act.

Common Law

Common Law allows for intervention, without consent, to save life or avoid 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 a doubt concerning which of the two takes precedence, then 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 it 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.

Compensation Law

Enables a private action to be taken against an individual in the civil courts for compensation, and criminal injuries compensation scheme, which enables recompense for criminal injuries or damage.

Speaking Up for Justice (Home Office Report June 1998)

This report commissioned by Jack Straw MP, the Home Secretary, provides wide-ranging recommendations, some of which will require legislation whilst others can be implemented administratively.

This report arose from the concerns that while measures are in place to assist child witnesses, many adult victims and witnesses find the criminal justice process daunting and stressful, particularly those who are vulnerable because of personal circumstances, including their relationship to the defendant or because of the nature of certain serious crimes, such as rape. Some witnesses are not always regarded as capable of giving evidence and so can be denied access to justice. Others are in fear of intimidation, which can result in either failure to report offences in the first instance, or a refusal to give evidence in court.

The recommendations cover the following broad areas:

- Definition of a vulnerable or intimidated witness.
- Encourage reporting of crime.
- The identification of intimidated and vulnerable witnesses.
- Measures to provide protection and reassurance to intimidated witnesses.
- Communication between the police and CPS about witness' needs.
- Ensuring appropriate interview methods are used.
- Investigate and pre-trial support measures.

- Procedures for applying for special measures to be available at trial.
- A range of measures available for use at the trial to assist vulnerable or intimidated adults and children
- Continuation of any necessary measures after the trial.

Action for Justice (Home Office 1999)

Action for Justice laid out an implementation programme for the Speaking Up for Justice, 'Achieving Best Evidence in Criminal Proceedings – Guidance for Vulnerable or Intimidated Witnesses, including Children. Ten Local Authorities within Greater Manchester worked in partnership with Greater Manchester Police and Victim Support & Witness Service Greater Manchester to develop a protocol to work together for Achieving Best Evidence with Vulnerable Adult Victims and Witnesses in Greater Manchester (2003).

Support from County Secretary's Department:

Should advice be required on any particular matter relating to the law on Adult Protection a solicitor in the Personal Services Division of the County Council's County Secretary's Department will be pleased to assist.

The Personal Services Division can be contacted through the main County Hall switchboard on Lewes (01273) 481000.

The Human Rights Act 1998

It is important to state that the Human Rights Act 1998 will have an overarching effect for all people experiencing abuse and professionals who are working with vulnerable adults who have or are at risk of abuse.

Progress in Adult Protection? The High Court has Power to Grant a Declaration as to the Best Interests of an unwilling, yet Incapacitated, Adult.

There are limited adult protection powers open to local authorities under statute. Perhaps for this reason, the judiciary has recently extended the common law so as to provide for a determination as to what is in the best interests of a mentally incapacitated adult. Whilst this jurisdiction has been available for some years, it has been used by local authorities under a continuing question mark as to their right to act as the protector of the incapacitated person, especially if the intervention appears to be contrary to the perceived wishes of the individual and carers, relatives, or other persons involved. Fortunately the Court of Appeal has just cleared away this doubt and emphasized that it may be the duty, **and not** merely the power, of the local authority, in some cases, to take the step of going to court for a **decision**.

In *Re F (Adult Patient)*, the mentally incapacitated adult was an 18 year old who had first been placed under an emergency protection order in a residential home. At 16 she had been made the subject of a guardianship order which was eventually set aside, on the successful appeal of the Nearest Relative against displacement, and upon wardship having been deemed the more appropriate regime. On the woman's turning 18, the authority sought a declaration from the High Court that it was in her best interests to be prevented from returning home, and to have only supervised contact with her mother.

The mother contended that the court had no jurisdiction to grant a declaration in these circumstances. The Court rejected this argument and held:

- The jurisdiction of the High Court to grant a declaration as to the best interests of a mentally incapacitated adult is not excluded by the statutory regime under the Mental Health Act 1983;
- There is an obvious gap in the legal framework for managing welfare-related decisions affecting mentally incapacitated adults, which the court is entitled to fill, relying on the common law doctrine of necessity;
- The perceived wishes of the mentally incapacitated adult could be overridden by the need to protect her from intervention which was not in her best interests; if necessary, protecting her could extend to **restraining** or detaining her.

NO BREACH OF HUMAN RIGHTS

The Court also said that this approach was not inconsistent with Article 8 of the European Convention on Human Rights the right to respect for home, private and family life. A specific exception is made in Article 5 (the right to liberty) to permit the state to restrict the personal freedom of persons of unsound mind, so long as such interference is otherwise justifiable. Article 8 comes qualified by reference to the protection of health or morals, the rights or freedoms of others and the prevention of crime. Lord Justice Sedley said:

[the Article 8 right] ... is not a proprietary right vested in either parent or child; it is as much an interest of society ... its purpose is to assure within proper limits ... the benefit of what is benign and positive in family life. It is not to allow other individuals, however closely related and well-intentioned, to create or perpetuate situations which jeopardise their welfare. [In article 8(1)]

there may be positive obligations inherent in an effective respect for family life. ... It is upon the court and the local authority that any such positive obligation comes to rest.'

PRACTICE POINTS

All that is required is that the court be persuaded that the person is mentally incapacitated with regard to the issue in question, and that a serious, justiciable issue is being brought before the court by someone with a genuine and legitimate interest in obtaining a decision against an opponent. The incapacitated adult and anyone disputing the proposal are made defendants, and the Official Solicitor will act for the

patient. Thus this remedy works well in cases where singular issues, such as the best place for residence, the desirability of contacts or certain activities or regimes, are in dispute.

Draft Mental Incapacity Bill

The draft Mental Incapacity Bill must also be taken into account when considering Declaratory Relief. The Bill is intended to clarify a number of uncertainties where decisions

HOW CAN ROWE & MAW HELP YOU?

Our Public Law Group specialises in administrative and public law, including community care and health law, advising on the powers and duties of public bodies and regulatory authorities. We have extensive experience of handling and avoiding judicial reviews. We can provide pro-active advice to Health and Social Services Authorities, PCGs/PCTs and NHS Trusts on the lawfulness of policies and procedures, to ensure best value and effective risk management of litigation costs. We also provide specialist back-up to in-house legal staff. We offer specialist Human Rights Act legal advice for a fixed fee through an annual subscription service. The HRA could potentially affect *every* sphere of public sector activity, including service provision and employment functions. Our subscription package enables in-house lawyers and risk managers to work with our specialist team for an annual fee of £1,000 (÷ VAT) for 10 hours' help. The package includes a regular newsletter in which legal queries we have received will be discussed, thus avoiding 'churning' of the same problem over and over again.

are made on behalf of others, providing recourse, where necessary and at the appropriate level, to a court with power to deal with all personal welfare (including health care) and financial decisions on behalf of adults lacking capacity.

The Bill includes the following

- Provisions defining "persons who lack capacity", setting out a checklist to be used in ascertaining their best interests and establishing a statutory "general authority" to act reasonably when caring for them.
- A new statutory scheme for powers of attorney which can extend to personal welfare (including health care) matters and which survive the incapacity of the donor.
- Sets out the jurisdiction of the court to make declarations orders and directions in relation to persons who lack capacity and provides that the court may also appoint substitute decision-makers called "deputies" for them.
- Sets up a "Court of Protection" and associated "Public Guardian" with jurisdiction to deal with all areas of decision-making for persons who lack capacity.

As such, careful consideration should be paid to when the Act comes into effect as applications for declaratory relief may be superseded by the introduction of the Court of Protection.

APPENDIX E - PRESERVING EVIDENCE

Whilst your first concern will be the immediate well being of the victim, your efforts to preserve evidence may be vital.

When Police involvement is required following suspected physical or sexual abuse; they are likely to be on the scene quickly. To enable the Police to investigate effectively, it is important that vital evidence is preserved. For the short time before the Police arrive, what you do can make a vital difference. The following is a checklist that may help to ensure that evidence is not destroyed:

- Obtain consent before examining the victim.
- Where possible, leave things the way they are. If anything needs to be handled, keep this to a minimum. **Do not clean up.** Do not touch what you do not have to.
- Leave weapons where they are unless they are handed to you. In this case ensure you do not destroy fingerprints and keep in a dry safe place until the police arrive. Do not wash, or in any way remove blood or fibres.
- Preserve the clothing and footwear of the victim. Handle as little as possible.
- Preserve anything used to comfort the victim, e.g. a blanket.
- Make notes on the following - state of clothing of the victim and the alleged perpetrator, injuries, the conditions and attitudes of the people involved in the incident.
- Note and preserve footprints or fingerprints.
- Secure the room; do not allow anyone to enter other than the Police.

In Cases of Sexual Abuse

- It is crucial that victim and alleged perpetrator are medically examined for forensic evidence as soon as possible.
- Try not to have physical contact with the victim or the alleged perpetrator as this can cross contaminate the evidence.
- Do not throw away anything with blood on it.
- Preserve any used condoms.

Methods of Preservation

- Use a clean brown paper bag or a clean envelope.
- For liquids use clean glassware.
- **Do not handle items unless it is necessary to move to make safe.**

These guidelines are obviously ideal solutions and may not be possible at times of trauma, do the best you can in the circumstances.

APPENDIX F - USEFUL ADDRESSES

One to One Counselling Service

C/o The Hollies Mental Health Resource Centre
Frederick Street
Werneth
Oldham

Telephone: 0161 633 4612

(Hollies Resource Team provides a range of self-help and assertiveness groups)

The Samaritans

4 Oldham Road
Rochdale. OL11 1BU

Telephone: 01706 868686 or 0161 633 3377

The Brook Advisory Service

99 Union St.
Oldham
OL1 1QH

Telephone: 0161 627 0200

(Aimed at young people under 25's)

Clinical Psychology Department

314 - 316 Oldham Road
Royton
Oldham. OL2 6AB

Telephone: 0161 624 0420

Family Crisis Group

P.O. Box 82
Oldham. OL8 3BF

Telephone: 0161 628 4991

(For abused women and children)

Prevention of Professional Abuse Network (POPAN)

1 Wyvil Court
Wyvil Road
London

Telephone: 0171 622 6334

(For people, who have experienced physical, sexual, emotional or financial abuse by care professionals)

Caring for young people and the vulnerable

APPENDIX G - LIST OF CONTRIBUTORS TO OLDHAM'S PREVENTION OF ABUSE POLICY

Statutory Bodies

Greater Manchester Police
National Care Standards Commission
Oldham Primary Care Trust
O.M.B.C Social Services Department
Pennine Care Trust
Pennine Acute NHS Hospitals Trust

Oldham Care Homes

Abbey Hey
Acorn Lodge
Alexandra
Anbridge
Ashbourne House
Ashgrove
Avalon Park
Avonliegh Gardens
Belford College
Birchwood Nursing Home
Brierfields Residential Home
Cedars, The
Chadderton Total Care
Chamber Mount
Coppice
Dryclough Manor
Edgehill
Edward House

Elizabeth House
Fernbank
Firs Hall
Franklin House
Hadfield House
Hartford Grange
Laburnum House
Longwood Lodge
McCormack House
Millfield
Moorhaven
Naughton Grange
Neville House
Oakdene
Oaklands
Park Hills
Park House
Park Lane House
Parkside
Roselands
Royley House
Shaw Side
Springfield House
St Georges Nursing Home
Stoneliagh House
Stoneswood
Treelands Nursing Home
Tree Tops
Wellington Lodge
Werneth Lodge
Westholme
Windsorlea

Woodend
Woodlands

Home Support Providers

Able Care
Access Homecare Ltd
Arcadia Homecare
Goldsborough Home Care
Helpful Hands
Independent Home Care Services
Manchester Care
Nightingales Homecare
North West Initiatives Ltd
Primecare Nursing and Homecare Services
Quality Care

Voluntary Organisations

Age Concern
Anchor Trust – Staying Put
D.I.A.L Oldham
Independent Advocacy (Mental Health)
Oldham Disability Alliance
Rochdale and Oldham Crossroads – Caring for Carers
Rochdale and Oldham District Samaritans

Housing Providers

English Church Housing
First Choice Homes
New Leaf Housing Association
Sheltered Warden Scheme
St Margaret's Gardens Sheltered Housing

Others

I.A.S Services Ltd
Oldham SCOPE

APPENDIX H - LETTER OF ACKNOWLEDGMENT

(SAMPLE)

Dear

Re:

I am writing to confirm receipt of your referral regarding the above Vulnerable Adult; appropriate investigations are being undertaken in accordance with the Vulnerable Adult Protection Policy.

Thank you for your assistance.

Yours Sincerely,

Name &
Designation

APPENDIX I – MONITORING FORM

**Prevention of Abuse
Of Vulnerable Adults In Oldham**

MONITORING FORM

Name: _____

Address: _____

Date of Birth: _____

Gender: Male Female

Ethnic Origin: **White**
 British Irish
 Any Other White Background
Please state: _____

Black or Black British
 Caribbean African
 Any Other Black Background
Please state: _____

Asian or British Asian
 Bangladeshi Indian
 Kashmiri Pakistani
 Any Other Asian Background
Please state: _____

Mixed / Dual Heritage
 White & Black Caribbean White & Black African
 White & Asian
 Any Other Dual Heritage Background
Please state: _____

Chinese

Chinese

Other Ethnic Group

Any Other Ethnic Group
Please state:

Language:		
Religion:		

Is this a New Referral: **Yes** **No**

Source of referral: - _____

Name of investigating officer: - _____

Team & Sector: - _____

Type of Abuse:

Financial	<input type="checkbox"/>	Sexual	<input type="checkbox"/>	Psychological / Emotional	<input type="checkbox"/>
Institutional	<input type="checkbox"/>	Neglect	<input type="checkbox"/>	Forced Marriage	<input type="checkbox"/>
Domestic Violence	<input type="checkbox"/>	Physical	<input type="checkbox"/>		
Discriminatory	<input type="checkbox"/>	Other	<input type="checkbox"/>		

Where did the Abuse Take Place? e.g. residential accommodation, day centre, private dwelling: -

Which organisation provided the service? e.g. Social Services, Health, Housing, voluntary, independent provider: -

Please state Relationship of the Alleged Abuser to the Client: -

How did you become Aware of the Abuse?: -

Does the Client wish Formal Action to be taken?

Yes

No

If No, does this need to be overruled?

Yes

No

If yes, please state reasons: -

The alleged abuser is a member of staff / professional for either the private sector or social services
The vulnerable adult has not got the capacity to comprehend the potential / actual abuse occurring
Other: -

PROCEDURE: -

Date of **Initial Strategy Meeting:** _____

Date of Case Conference: _____

List the people who were invited to attend

Name	Job Title	Present at meeting	Apologies sent

--	--	--	--

Date of Protection Plan: _____

Review date of Protection Plan: _____

Has a criminal investigation taken place?

Yes

No

Any other information pertinent to the situation: -

Signature Investigating Officer: - _____

Signature Team Manager: - _____

Date: - _____

**Please Send To: Assistant Director for Vulnerable Adult
Level 11
Civic Centre
West Street
Oldham
OL1 1UW**

APPENDIX J – GUIDELINES FOR STAFF RE: SHARING INFORMATION

The sharing information Principle is a part of the Crime and Disorder Act 1998, which states that you have a power to share information with anyone in either, the Local Authority, Probation, Health and the Police under section 115 of the Act, if you feel that a crime has or maybe committed. It is important to state in case recordings if you are over ruling an individuals wishes – ‘I am breaking confidentiality under the Crime and Disorder Act 1998 section 115, in the best interests of vulnerable adults’.

PENNINE CARE NHS NHS TRUST

SHARING PERSON—IDENTIFIABLE INFORMATION

GUIDELINES FOR STAFF

1. INTRODUCTION

1.1 This guidance is written for health and social care staff who may need to transfer person-identifiable information to colleagues and to partner organisations. Sharing such information is vital to the provision of high quality, responsive, co-ordinated care for clients/service users. It is essential that transfers must meet legal and ethical standards demanded.

1.2 The objective is to promote good practice around the transferring of person-identifiable information. Working to such high standards will promote the respect and dignity of the client/service user and will help sustain and improve the public’s trust in our services.

1.3 A definition of person-identifiable information is included in the FAQs section.

2. LEGAL AND ETHICAL REQUIREMENTS

2.1 The Data Protection Act and the Caldicott principles lay down rules on confidentiality and transfer of information that are:

- Legally required
- Part of your contract of employment
Part of some professional codes of conduct
- Necessary to show the respect we have for clients/service users
and enable us to maintain public confidence in our services.

2.2 Breaches of confidentiality and security can result in disciplinary action and even criminal or civil action against individual members of staff.

2.3 If you have any queries, please speak to the Information Security Manager or your line manager.

3. INFORMATION SHARING PROTOCOLS

3.1 This guidance is part of an information sharing protocol signed by the Trust's Caldicott Guardian. The protocol with partner organisations promotes good practice, staff training and organisational responsibilities around confidentiality.

3.2 Information may only be shared with partner-organisations that have signed the protocol, for the purposes agreed within the protocol. If you are unsure which organisations have signed, check with the Information Security Manager. Information may be shared with organisations where a protocol does not exist but only in line with the Trusts Information Sharing Policy.

4. BASIC PRINCIPLE OF PASSING CONFIDENTIAL INFORMATION

4.1 The law states that:

“Personal information given for one-purpose cannot be used for - another without the consent-of As a general rule, you need consent from the client/service user before sharing their personal information.”

4.2 General Principles

Sharing personal information between partner agencies is vital to the provision of co-ordinated care for clients/service users. There are important rules to be observed to meet legal requirements around the sharing of personal information, especially in handling security and confidentiality.

4.3 Background

There are legal and ethical responsibilities on organisations that share person-identifiable information. These cover information shared by word of mouth, on paper, and in computer records. The rules around information sharing are encompassed in the six Caldicott principles, which are:

1. Justify the purpose of using confidential information (for instance would you feel confident in explaining to a court or industrial tribunal why you have given personal confidential information to someone)
2. Only identify the client/service user if necessary (if you can avoid identifying the client/service user, please do so).
3. Use the minimum information required (don't send the whole record or file if the next person only needs part of it).

4. Access should be on a strictly need-to-know basis (that is, only people who need to see the medical record to do their job should see the file, and then they should only see what they need to see to do their job).
5. Everyone should be aware of their responsibilities. (Organisations who have signed the protocol must have a commitment to staff training on confidentiality.)
6. Everyone should understand and comply with the law. (If you have any questions, speak to the Information Security Manager.)

Under the law information must be obtained and held fairly and lawfully. You should not mislead or deceive clients/service users - nor other colleagues - into giving you personal information.

4.4 Gaining consent

As a general rule, clients/service users should be before their information is shared with colleagues or another

4.5 Advise people of the uses of their information

It is good-practice -and essential to meet legal requirements for clients/service users to be told of the likely uses of their personal information. This should be done as soon as practicable after they come into contact with the service. The leaflet entitled "How we use your information" should be made available to clients/service users and their carers in reception areas, outpatient departments etc. Copies of this leaflet are available from the Information Security Manager.

Specific consent is necessary before passing person-identifiable information to another organisation, unless exceptional circumstances exist (see below).

Permission does not have to be in writing, but be sure to note the discussion in the patient's clinical record.

4.6 Requests to withhold information

Sometimes an individual will not want their information shared with a particular person or organisation who otherwise would have a justifiable need to see it. In those cases the individual's wishes must respected unless exceptional circumstances exist.

Every effort should be made to explain to the individual the consequences for care and planning, but the final decision rests with the individual.

You should ensure that you have made a clear note on the record of why the Information has not been shared.

4.7 Exceptional circumstances

The exceptional circumstances, which override an individual's wishes, arise where the information is:

- Required by statute or court order
- Where there is a serious public health risk or risk of harm to other individuals
- For the prevention, detection or prosecution of serious crime
- Where there is a serious risk of harm to self

In these circumstances, the decision to share the information should be made on a case by case basis and will depend on the Health Professional's clinical judgement as to whether conditions are met which satisfy a disclosure being made in the public interest balanced against a breach of patient confidentiality. Advice in making these judgements can be obtained from the Information Security Manager, Risk Adviser and Caldicott Guardian who have access to legal or other specialist advice.

Be sure to include an explanation exceptional circumstances for your decision.

4.8 Inability to give consent

Where individuals cannot give consent due to incapacity, the decision to share person-identifiable information should be made on the individual's behalf by those responsible for providing care, taking into account the known views of clients/service users and carers. The client's/service user's best interests are paramount in these decisions. Where practicable, advice should be sought from the senior healthcare professional.

4.9 The reasons for the final decision should be clearly recorded.

4.10 Identify yourself

When seeking personal information regarding a client/service user from a colleague or partner organisation:

- Be sure to identify yourself fully
- Justify your reason for seeing the information, especially when the purpose (clinical audit, planning, commissioning.)
- When passing/transferring sensitive data to others, ensure you list a source (probably yourself). This will help in the case of any queries.

4.11 Anonymous

Wherever possible only pass on information, or request information, that has been anonymised. Anonymised information will exclude any clues as to the identity of the individual, e.g. it will exclude names and addresses.

4.12 Limit your use

Under the law organisations can only use personal information for the reasons listed in their registration with the Information Commissioner.

If you have any doubt about this, please speak to the Information Security Manager.

5. Frequently Asked Questions

1. What is person-identifiable information?	Any information where an individual can be identified, e.g. name, address, date of birth. There are instances where as little as initials and postcode could be enough information to identify someone.
2. Does client consent have to be in writing	No. This is not always practical or necessary. A client should be made fully aware of the uses of their data and should be given access to the leaflet “How we use your information” on first contact with the trust.
3. Do I have to ask permission to keep person-identifiable information on a computer?	No. As a responsible health/social services organisation we must keep records and it is our decision to keep them on paper or electronically. We must all keep personal information safely and securely according to legal requirements. (Ask the Information Security Manager for advice on security of information.)
4. What if the clients/service users say they do not want me to share their information with other organisations?	Unless it is covered by one of the exceptions, their wishes must be honoured. It is usually helpful if you explain to them the disadvantages of not sharing but the final decision rests with the individual
5. Can I pass information to colleagues in my own team?	The rules are there to protect the clients/service users. You can pass information to colleagues on a strictly ‘need to know’ basis. If they do not need the information to do their job then do not pass the information on.
6. How can I be sure that the partner organisation has the same standards of confidentiality and security as my own?	If you have any doubts talk to your line manager and/or the Information Security Manager before you pass on any information. Organisations that have signed up to the information sharing protocol are committed to the same standards as the Trust.

CHECKLISTS FOR STAFF

1. Does the Person requesting the information need it to do their job?
2. Have you got the client's consent to pass the information on?
3. If not, can you justify passing on the information without consent?
(See section 4.7 of these guidelines for advice)
4. Are you sure the person requesting the information is who they say they are?
5. Will anonymised information do?
6. Do you need to pass on the whole record/file? Try to pass on the minimum information necessary

WHEN YOU ARE REQUESTING PERSONAL INFORMATION

1. Do you need the information to do your job?
2. Can you use anonymised information?
3. Do you need the whole file/record?
4. If you only need minimum details, or a summary, please only request this.

Information Sharing Protocol

Between..... (Organisation- “A” name-i

And..... (**Organisation “B” name**)

This is an overarching protocol to enable the above organisations to govern information sharing, thereby ensuring seamless pathways of care for the service user.

It provides a framework for safeguarding the processing of all person- information

The protocol will be supplemented in some circumstances by individual protocols for specific service areas. These will set out detailed purposes and operational procedures for the of information. It should also be read in conjunction with staff guidelines on the transfer of person-identifiable information.

General Principles

1. Each organisation signing this protocol shall have appointed a responsible officer who will ensure the protection of personal identifiable information e.g. Caldicott Guardian or senior manager responsible for data protection.
2. Each organisation signing this protocol will be taking appropriate measures towards compliance with Data Protection Act 1998, Caldicott Report, BS7799/ISO 17799 Information Security code of practice and national guidance and rules around holding and destroying health/social services records and other relevant legislation.
3. A template for documenting information flows is attached. Organisations should be working towards producing a comprehensive list of data flows. Caldicott Guardians/Data Protection Officers will approve-any--additions--to-this
4. Each organisation is committed to reviewing practice with the aim of ensuring all exchanges of person-identifiable information are within this protocol.
5. Each organisation is committed to ensuring staff are appropriately trained in data protection/Caldicott procedures.
6. Each organisation is committed to issuing practical guidelines to staff on the transfer of person-identifiable information.

7. This protocol will be reviewed in

Signed by:

.....
Signature Caldicott Guardian/ Data Protection Officer	Print name	Date

.....
Signature Caldicott Guardian/ Data Protection Officer	Print name	Date