

# Welcome to Landmark Chambers' Social Care Webinar Series – Part 3

The recording may be accessed [here](#).

## Your speakers today are...



**Topic:**  
Local authority  
safeguarding  
responsibilities

**Galina Ward**



**Topic:**  
Local  
authority  
safeguarding  
and support  
for persons  
from abroad

**Stephen Knafler QC (Chair)**

## Local authority safeguarding responsibilities



**Galina Ward**

## Local authority safeguarding responsibilities for adults

- Developing safeguarding policies
- Enquiries under s42 Care Act 2014
- Safeguarding Adults Boards
- Duties where individuals lack capacity
- DBS – checking and reporting

## Safeguarding policies

Care Act 2014, section 1:

- General duty to promote individual's well-being
- Well-being includes protection from abuse and neglect
- Must have regard to:
  - importance of beginning with assumption that the individual is best-placed to judge own well-being;
  - individual's views, wishes, feelings and beliefs;
  - need to protect people from abuse and neglect;
  - need to ensure any restriction on individual's rights is minimum necessary

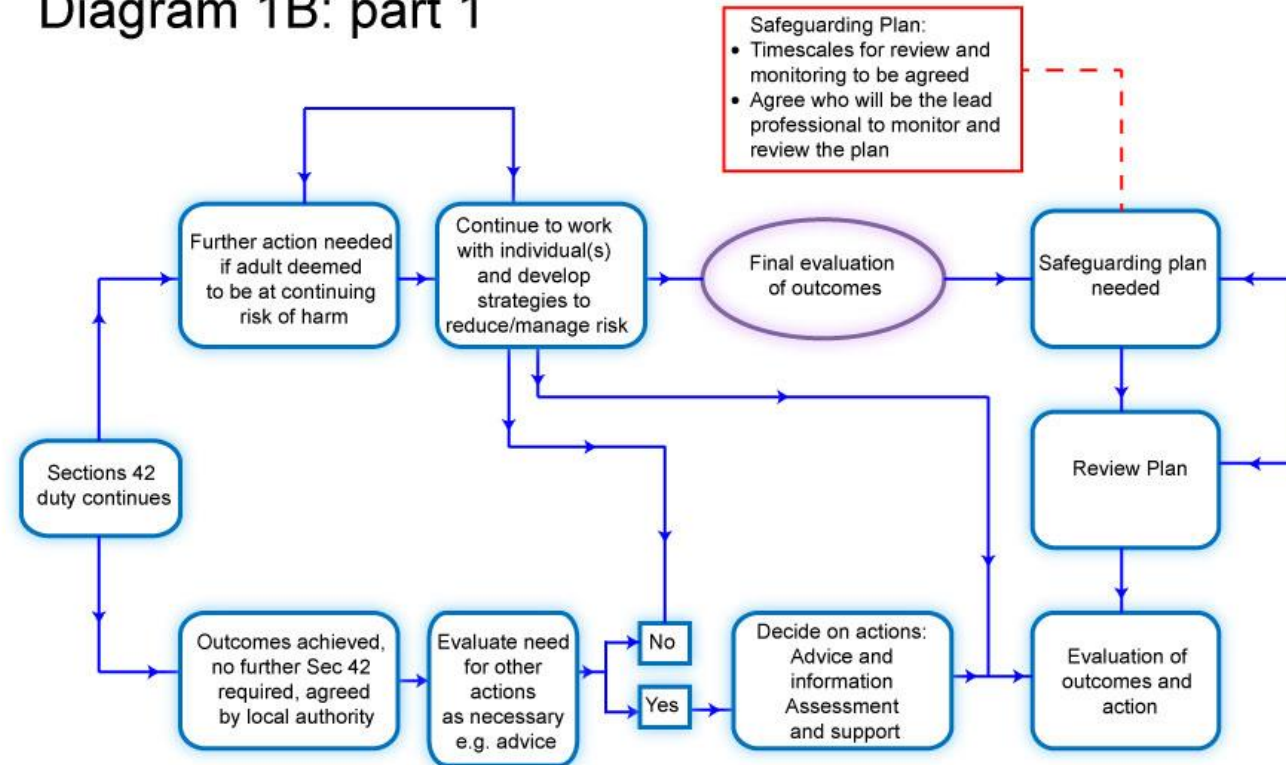
- 14.52 In any organisation, there should be adult safeguarding policies and procedures. These should reflect this statutory guidance and the decision making tree diagram 1B (following para. 14.92) and are for use locally to support the reduction or removal of safeguarding risks, as well as to secure any support to protect the adult and, where necessary, to help the adult recover and develop resilience. Such policies and procedures should assist those working with adults how to develop swift and personalised safeguarding responses and how to involve adults in this decision making. This, in turn, should encourage proportionate responses and improve outcomes for the people concerned. Procedures may include:

## Procedures may include:

- a statement of purpose relating to promoting wellbeing, preventing harm and responding effectively if concerns are raised
- a statement of roles and responsibility, authority and accountability sufficiently specific to ensure that all staff and volunteers understand their role and limitations
- a statement of the procedures for dealing with allegations of abuse, including those for dealing with emergencies by ensuring immediate safety, the processes for initially assessing abuse and neglect and deciding when intervention is appropriate, and the arrangements for reporting to the police, urgently when necessary
- a full list of points of referral indicating how to access support and advice at all times, whether in normal working hours or outside them, with a comprehensive list of contact addresses and telephone numbers, including relevant national and local voluntary bodies
- an indication of how to record allegations of abuse and neglect, any enquiry and all subsequent action
- a list of sources of expert advice
- a full description of channels of inter-agency communication and procedures for information sharing and for decision making
- a list of all services which might offer access to support or redress
- how professional disagreements are resolved especially with regard to whether decisions should be made, enquiries undertaken for example

# Decision making tree

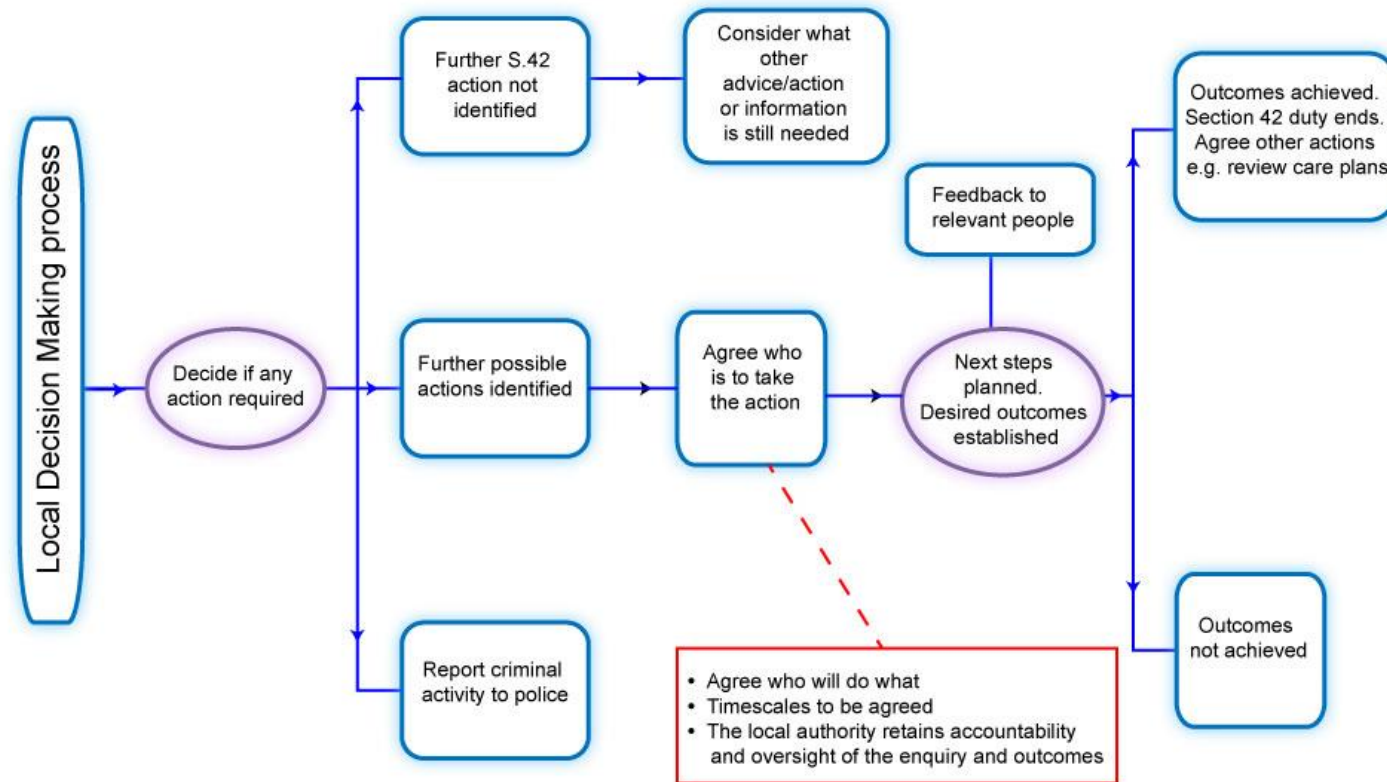
Diagram 1B: part 1





# Decision making tree

Diagram 1B: part 2



## Abuse and neglect

CASS 14.16-

- Physical abuse
- Domestic violence and abuse
- Sexual abuse
- Psychological abuse
- Financial or material abuse
- Modern slavery
- Discriminatory abuse
- Organisational abuse and neglect
- Self-neglect
- Financial abuse

## Principles

### CASS 14.13-14.14

- Empowerment
- Prevention
- Proportionality
- Protection
- Partnership
- Accountability
- Making safeguarding personal

## Section 42 duty

### Enquiry by local authority

(1) This section applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there)—

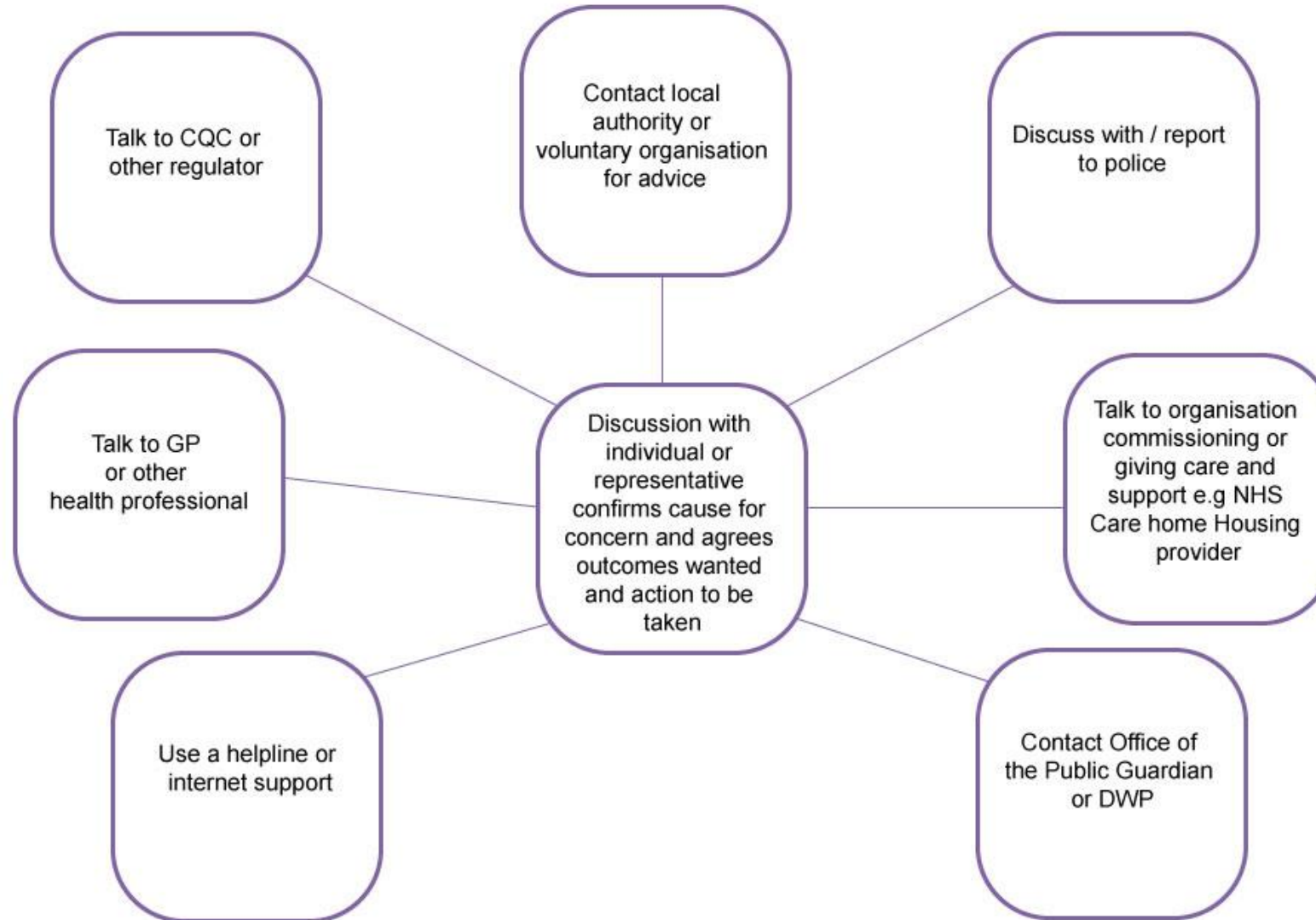
- (a) has needs for care and support (whether or not the authority is meeting any of those needs),
- (b) is experiencing, or is at risk of, abuse or neglect, and
- (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

(2) The local authority must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case (whether under this Part or otherwise) and, if so, what and by whom.

(3) “Abuse” includes financial abuse; and for that purpose “*financial abuse*” includes—

- (a) having money or other property stolen,
- (b) being defrauded,
- (c) being put under pressure in relation to money or other property, and
- (d) having money or other property misused.

## S42: information gathering



## Nature of enquiry

CASS 14.77, 14.92:

- Must be appropriate and proportionate
- Range from conversation with adult through to multi-agency plan
- Must record adult's views, wishes, any immediate action taken and reasons
- Adult with capacity may not want action to be taken, but information can still be shared to enable assessment of risk of harm

## Result of enquiry

- Partnership working: LA is lead agency, but, multi-agency working vital
- Where adult lacks capacity, action under Mental Capacity Act 2005
- Inherent jurisdiction of High Court where vulnerable adult has capacity
- Report perpetrator
- Provide care and support – CASS 14.107: *Where the local authority determines that it should itself take further action (for example, a protection plan), then the authority would be under a duty to do so.*
- May need to assess under sections 9 and 10
- Powers of access under Mental Health Act 1983, Mental Capacity Act 2005, Public Health Acts, or via police and/or courts

## Independent advocacy

Care Act 2014 section 68:

(1) This section applies where there is to be—

(a) an enquiry under section 42(2),

....

(2) The relevant local authority must, if the condition in subsection (3) is met, arrange for a person who is independent of the authority (an “independent advocate”) to be available to represent and support the adult to whose case the enquiry or review relates for the purpose of facilitating his or her involvement in the enquiry or review; but see subsections (4) and (6).

(3) The condition is that the local authority considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following—

(a) understanding relevant information;

(b) retaining that information;

(c) using or weighing that information as part of the process of being involved;

(d) communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means).



## Safeguarding Adults Boards

Care Act 2014, sections 43-45

CASS 14.133-14.161

Every LA must set up a SAB to ensure that local safeguarding arrangements and partners act to help and protect adults falling within section 42

## SAB core duties

- Strategic plan – how it will meet its main objective and what members will do achieve it
- Annual report – what it has done during the year to achieve objective and implement strategic plan
- Safeguarding Adult Reviews – Care Act 2014, section 44

## Safeguarding Adults Reviews

Must be held if reasonable cause for concern about how the SAB, members of it or other persons with relevant functions worked together to safeguard an adult and either:

- The adult has died and the SAB knows or suspects that the death resulted from abuse or neglect (whether or not it knew about or suspected the abuse or neglect before the adult died); or
- The adult is still alive and the SAB knows or suspects that the adult has experienced serious abuse or neglect.

May be held in any other case involving an adult in its area with needs for care and support (whether or not the local authority has been meeting any of those needs).

## Individuals lacking capacity

- Mental Capacity Act 2005
- *Mental Capacity Act 2005: Code of Practice*
- May need to apply to Court of Protection to, for example, stop a perpetrator living with or contacting adult at risk
- Need authority of Court if considered necessary to remove a person lacking capacity from their home, or restrict their contact with others
- Application may need to be made on urgent basis, but should give as much notice as possible to persons affected (as far as consistent with welfare of adult concerned)

## DBS: when to report

Safeguarding Vulnerable Groups Act 2006, section 35: duty on **regulated activity provider** who holds any **prescribed information** in relation to a person (“P”) engaged in regulated activity provided by him, if he either withdraws permission for P to engage in the activity or would or might have done so if P had not otherwise ceased, for any reason that engages DBS’s **barring powers**

## DBS: when to check

Police Act 1997 Part V – Certificates of Criminal Records

Section 113B: enhanced criminal record certificates – must be issued if proper application made on ground that required for the purposes of an **exempted question** asked for a **prescribed purpose**.

Exempted question: section 113A(6)

Prescribed purpose: Police Act 1997 (Criminal Records) Regulations 2002, regs 5A and 5B

# SAFEGUARDING AND SUPPORT FOR PERSONS FROM ABROAD



**STEPHEN KNAFLER QC**

## SUPPORT FOR ADULTS: INTRODUCTION

There are 4 issues:

- Does the PFA qualify for support under the terms of the support statute eg the Care Act 2014?
- If so, is the PFA ineligible, by virtue of paragraphs 1 and 4 to 7A of Schedule 3 to the Nationality, Immigration and Asylum Act 2002?
- If so, is the PFA restored to partial eligibility by paragraph 3 of Schedule 3?
- If not, is the PFA entitled to 'packing up' help under the Travel Assistance Regulations?



## CENTRAL GOVERNMENT SUPPORT

- **PFA who are destitute and who apply for LTR under the Refugee Convention/Article 3 ECHR are eligible for accommodation and support under Part VI of the Immigration Act 1999, together with their dependants.**
- **If their claim fails, but they cannot be expected to leave the UK, and remain destitute, they qualify for accommodation under section 4 of the Immigration Act 1999.**
- **There are large scale changes pending in the Immigration Act 2016.**

# LOCAL AUTHORITY SUPPORT UNDER THE CARE ACT 2014

- **Section 21 of the Care Act 2014 excludes the provision of care and support for persons subject to immigration control, where their needs, or future needs, have arisen solely because of destitution.**
- **An applicant for international protection, and a failed applicant for international protection for whom it remains necessary to make provision to avoid a breach of a person's ECHR/EU rights, will qualify for accommodation and support under the Care Act 2014, rather than from the Secretary of State under the Immigration and Asylum Act 1999, when he is destitute and has an eligible need for the sort of care that is normally provided in a home (whether ordinary or specialised) or that would be effectively useless if he had no home: *R (SL) v Westminster CC* [2013] UKSC 27, *R (SG) v Haringey LBC* [2015] EWHC 2579, [2017] EWCa Civ 332.**

# SCHEDULE 3 TO THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

- **Schedule 3 to the 2002 Act prohibits local authorities providing support or assistance under the Care Act 2014, and a raft of other social welfare enactments, in the case of adults who fall within a defined class of persons from abroad.**
- **That prohibition is dis-applied insofar as it is necessary to make provision in order to avoid a breach of a person's ECHR/EU rights.**
- **It will be necessary to make provision in order to avoid a breach of a person's ECHR rights when, unless provision is made, the person concerned will suffer to an inhuman or degrading extent and the person cannot reasonably be expected to alleviate their suffering by returning to their country of origin.**
- **It will be necessary to make provision in order to avoid a breach of a person's EU rights when the person concerned is lawfully resident in the UK in the exercise of EU Treaty rights e.g. as a worker or a person with the permanent right of residence, or a family member.**
- **A local authority always has the power to take interim protective steps to prevent inhuman and degrading suffering.**

## QUESTIONS

- **A disabled asylum-seeker applies for accommodation and support under the Care Act 2014. How do you assess whether he is entitled?**
- **A failed asylum-seeker applies for accommodation and support under the Care Act 2014. How do you assess whether he is entitled?**
- **An asylum-seeker is released from treatment under section 3 of the Mental Health Act 1983 and is in need of after-care services. Is he eligible and, if so, what is the test? Would it make any difference if the patient was unlawfully present in the UK?**

## QUESTIONS

- **How may a local authority assess, lawfully, whether it is necessary to provide accommodation and support under the Care Act 2014, to avoid a breach of a person's ECHR rights under paragraph 3 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002?**
- **How may a local authority assess, lawfully, whether it is necessary to provide accommodation and support under the Care Act 2014, to avoid a breach of a person's EU rights under paragraph 3 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002?**

## CHILDREN

- **Unaccompanied asylum-seeking children are accommodated under section 20 of the Children Act 1989.**
- **Families including children are accommodated under Part VI of the Immigration and Asylum Act 1999 (but local authorities may need to provide supplementary services under section 17 of the Children Act 1989 if any of the children are a 'child in need' in the usual understanding of that expression.**
- **A former relevant child, who is a foreign national, applies for accommodation, support and help with education. Is he entitled if he is (a) an applicant for international protection; (ii) a failed applicant for international protection who has made further submissions?**

## QUESTIONS

- **An unaccompanied child, who a foreign national but not an asylum-seeker, applies for accommodation and support. Are they entitled if so on what basis?**
- **Are the duties owed to foreign looked-after children any different than those owed to British citizen children? What about Zambrano children?**

## SAFEGUARDING

- The process duties are the same.
- It is hard to imagine how it could be lawful to provide lesser protection to a PFA, irrespective of their immigration status, having regard to paragraph 3 of Schedule 3 to the Nationality, Immigration and Asylum Act 2002.



# Thank you for listening

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