Berkshire Safeguarding Adults Multi-Agency Guidance
Legal Literacy in Adult Safeguarding: A Practical Guide to Decision-Making Frameworks

Reference guide – for use as needed
This guide is intended to be consulted as a reference resource, not read and absorbed in full at one sitting. It supports, but does not replace, professional judgement, statutory decision-making or the need to seek specialist legal advice in line with organisational procedures. See section 2 for guidance on how to use it.

Version History

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1. Introduction

This guidance sits beneath the Pan Berkshire Safeguarding Adults Multi-Agency Policy and Procedures and should be read alongside the Pan Berkshire Safeguarding Adults' Information Sharing Protocol. It provides supplementary guidance to help professionals recognise, understand and apply relevant legal and decision-making frameworks within adult safeguarding practice. It does not replace statutory guidance, organisational procedures, professional judgement or the need to seek specialist legal advice where required.

2. How to use this guide

This guide is a reference resource. Professionals are not expected to read and absorb it in full at one sitting. Like a dictionary or glossary, it is intended to be consulted as and when needed to clarify legal frameworks, mechanisms and concepts relevant to a particular situation. Use the contents page to find relevant sections, practical examples and further reading.

This guidance should be read alongside the Berkshire Safeguarding Adults Multi-Agency Policy, the Berkshire Safeguarding Adults Multi-Agency Procedures and the Berkshire Safeguarding Adults' Information Sharing Protocol. It is intended to support, not replace, organisational legal advice, professional judgement or statutory decision-making.

3. Legal Literacy

In a Multi-Agency adult safeguarding context, legal literacy means understanding and applying relevant legal frameworks, professional duties, ethical principles and human rights considerations to support safe, lawful and person-centred decision-making. It helps partner organisations recognise their responsibilities, share information appropriately, work together effectively, challenge decisions when needed, and use legal powers proportionately to protect adults while promoting their rights, autonomy and wellbeing.

Strong legal literacy across partner agencies supports a shared understanding of duties, powers and thresholds, enabling timely challenge, clearer accountability and more consistent, lawful and proportionate Multi-Agency safeguarding responses.

4. Legal Frameworks

In adult safeguarding, legal frameworks are the laws, regulations, statutory guidance and case law that guide how organisations and professionals work together to protect adults with care and support needs who are experiencing, or at risk of, abuse or neglect. Within a Multi-Agency safeguarding system, these frameworks define the duties, powers and responsibilities of different organisations, including local authorities, health services, police, housing providers and care providers. They provide the legal basis for safeguarding enquiries, information sharing, mental capacity assessments, risk management, advocacy, and protection planning, while ensuring that adult's human rights, autonomy and wellbeing remain central. Key frameworks are listed in section 8. Together, these frameworks support lawful, proportionate and person-centred decision-making, clarify accountability, and enable agencies to work together effectively to prevent and respond to abuse, neglect and wider risks of harm.

5. Decision Making Principles

When considering any legal framework, professionals should ensure that decisions are:

- person-centred and informed by the adult's views, wishes, feelings and desired outcomes;

- strengths-based, recognising the adult's abilities and protective factors, as well as risks and needs;
- lawful, necessary and proportionate;
- informed by the wellbeing principle and Making Safeguarding Personal;
- based on relevant information shared on a need-to-know basis;
- clear about consent, capacity and any lawful basis for acting without consent;
- mindful of public interest, vital interests, duty of care and human rights;
- recorded clearly, including the rationale, risks considered, legal basis and agreed next steps.

5. Culture, Equality, Diversity and Inclusion

Consideration should be given to how culture, identity, inequality and lived experience may affect how an adult understands safeguarding concerns. How they express risk, access support, engage with services and make decisions.

Safeguarding responses should avoid assumptions, stereotypes or culturally insensitive practice, while also ensuring that culture is never used to minimise abuse, neglect, coercion or discrimination.

Cultural sensitivity should support professional curiosity and person-centred practice but must not prevent proportionate action where there is abuse, neglect, coercion, discrimination or risk of serious harm.

This section should be read alongside the Equality Act 2010, Care Act 2014, Mental Capacity Act 2005, Human Rights Act 1998, Care and Support Statutory Guidance and Pan Berkshire Safeguarding Adults Multi-Agency Policy and Procedures

6. Escalation

Where there are professional disagreements about safeguarding thresholds, legal frameworks, information sharing, risk, roles, responsibilities or proposed action, professionals should follow the relevant local escalation or dispute resolution arrangements. Where the disagreement relates to a case that meets, or may meet, s42 criteria, escalation must not delay action needed to manage immediate risk.

7. Reference Documents

The following documents informed this guidance and provided further detail for readers seeking more in-depth information:

- Research in Practice – *Legal Literacy Practice Tool* and *The Importance of Legal Literacy in Adult Social Care*.
- Legal literacy: e-learning resource - SCIE
- Mental Capacity Resource Centre | 39 Essex Chambers

8. Legal Frameworks and Their Relevance to Adult Safeguarding

This section summarises the legal frameworks that may need to be considered during a safeguarding work and includes brief fictional examples of how they may apply in practice. Case law is regularly updated and, although this guidance is reviewed by the Pan Berkshire Safeguarding Adults Multi-Agency Policy and Procedures Subgroup, some legal developments may not yet be reflected. This guidance should therefore be used to support further consideration of relevant legal frameworks and does not replace the need to seek legal advice in line with your organisation's procedures.

Legal Framework	Description	Situation where it may be used	Further Reading

Care Act 2014	The Care Act 2014 provides the statutory framework for adult safeguarding in England. It places duties on local authorities and Safeguarding Adults Boards to prevent and respond to abuse or neglect, promote wellbeing, undertake safeguarding enquiries where the s42 criteria are met, work with partners, share information where required, and arrange Safeguarding Adults Reviews when statutory criteria apply.	A housing officer raises concerns about an adult who is living in unsafe conditions, appears to have care and support needs. The adult is reluctant to accept help and says they want to remain at home. The local authority considers the Care Act 2014 to understand how the situation is affecting the adult's wellbeing, including dignity, health, safety, control over day-to-day life, accommodation and relationships.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance
			• Care Act 2014
			  • Section 1 wellbeing principle;
			  • Section 9 needs assessment;
			  • Section 11 refusal of assessment;
			  • Section 42 safeguarding enquiry;
			  • Section 45 supply of information;
			  • Care and Support Statutory Guidance, Chapter 14.

Care Act 2014 – Section 42	s42 of the Care Act 2014 places a duty on the local authority to make, or cause others to make, enquiries where it has reasonable cause to suspect that an adult has care and support needs, is experiencing or at risk of abuse or neglect, and is unable to protect themselves because of those needs. The purpose of the enquiry is to decide what, if any, action is needed to help and protect the adult.	A domiciliary care worker reports that an adult with care and support needs has unexplained bruising and appears anxious when a relative is present. The adult says they are fine, but the worker is concerned they may be unable to protect themselves because they rely on the relative for daily support. The local authority considers whether the s42 criteria are met and whether enquiries are needed to understand the risk and decide what action, if any, should be taken to help and protect the adult.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Care Act 2014: Section 42 safeguarding enquiry;
Care Act 2014 – Section 1	s1 of the Care Act 2014 places a general duty on local authorities to promote an adult's wellbeing when carrying out care and support functions. Wellbeing includes personal dignity, physical and mental health, protection from abuse and neglect, control over day-to-day life, suitability of accommodation, relationships,	An adult with care and support needs tells professionals they want to remain at home after repeated concerns are raised about financial pressure from a neighbour who regularly asks for money. The adult says the relationship is important to them and does not want formal action taken. s1 is considered to ensure that any	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Care and Support Statutory Guidance, Chapter 1 and Chapter 14. • Care Act 2014: Section 1 wellbeing principle;

Legal Framework	Description	Situation where it may be used	Further Reading
	participation in work or education, and social and economic wellbeing.	safeguarding response promotes the adult's wellbeing, respects their wishes and relationships, and balances protection from abuse with autonomy, dignity and quality of life. Professionals also consider the neighbour's circumstances, including whether their financial difficulties or support needs may be affecting their own wellbeing and contributing to the situation.	
Care Act 2014 – Section 9	s9 requires the local authority to carry out a needs assessment where it appears that an adult may have needs for care and support. The assessment must consider the adult's needs, how these affect their wellbeing, the outcomes they wish to achieve, and whether care and support could help them achieve those outcomes.	A hospital discharge coordinator is concerned that an adult returning home after a stroke may not be able to manage medication, meals or personal care without support. The adult is anxious about accepting services but agrees to speak with adult social care for an assessment. s9 is considered so the local authority can assess the adult's care and support needs, understand the impact on their wellbeing, identify their desired outcomes, and consider whether support could reduce the risk of deterioration, neglect or further safeguarding concerns.	• Care Act 2014: Section 9 needs assessment;
Care Act 2014 – Section 11	s11 of the Care Act 2014 sets out what should happen where an adult refuses a needs assessment. A local authority is not required to carry out an assessment where an adult with capacity refuses it, unless specific exceptions apply. These include where the adult lacks capacity and an assessment would be in their best interests (s11(2) (a)), or where the adult is experiencing or at risk of abuse or neglect (s11(2) (b)).	An adult with a long-term physical disability repeatedly refuses a care and support assessment after neighbours' report that they are struggling to leave the property, missing essential appointments and relying on an informal carer who appears overwhelmed. The adult says they do not want services involved. s11 is considered to decide whether the refusal can be accepted, or whether assessment should still proceed because there may be safeguarding concerns, questions about capacity, or risks that require further action to protect the adult.	• Care Act 2014: Section 11 refusal of assessment; • Daniyal SAR Learning Brief • Ursula SAR • Tina SAR Learning Brief

Legal Framework	Description	Situation where it may be used	Further Reading
Care Act 2014 – Section 45	s45 of the Care Act 2014 enables a Safeguarding Adults Board (SAB) to request information from a person or organisation where that information is needed to support the Board's safeguarding functions. The request should be complied with where the statutory conditions are met, unless disclosure would be unlawful or incompatible with another legal duty.	Where information is required for SAB functions, including Safeguarding Adults Reviews, learning reviews, audits, assurance activity or escalation where information sharing is delayed or disputed.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Care Act 2014: Section 45 supply of information;
Mental Capacity Act 2005	The Mental Capacity Act (MCA) 2005 provides the legal framework for assessing whether an adult has capacity to make a specific decision at a specific time. It sets out five statutory principles, including the presumption of capacity, the right to be supported to make decisions, the right to make unwise decisions, best interests decision-making where capacity is lacking, and the requirement to use the least restrictive option.	An adult with a learning disability is refusing urgent treatment for an infected wound. Professionals are unsure whether the adult understands the risks of refusing treatment or whether communication support is needed. The MCA is considered to assess capacity for this specific decision, support the adult to understand and weigh the information, and determine whether any best interest's decision is required if they lack capacity.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Mental Capacity Act 2005 • Mental Capacity Act Code of Practice • Safeguarding Adults Reviews | Reading Safeguarding Adults Partnership Board
Mental Health Act 1983	The Mental Health Act 1983 provides the legal framework for assessment, treatment and detention of people with a mental disorder where statutory criteria are met. In adult safeguarding, it may be relevant where mental health needs, risk to self or others, refusal of admission or treatment, aftercare duties, or the need for a Mental Health Act assessment must be considered alongside safeguarding, capacity and human rights duties. Relevant sections may include s2, s3 and s4 for assessment/admission; s5(2) and s5(4) for holding powers in hospital; s7 guardianship; s17 and s17A for leave and community treatment; s35–s41 and s47–s48 where criminal justice and	An adult with care and support needs is experiencing severe paranoia, refusing all contact, not eating and threatening to harm themselves if professionals enter the property. The local authority considers if s42 criteria is met and identify that an MHA assessment may be required and request that Mental Health Services undertake an MHA assessment.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Mental Health Act 1983 • Mental Health Act Code of Practice.

Legal Framework	Description	Situation where it may be used	Further Reading
	mental health overlap; s115 access by an AMHP; s117 aftercare; and s135–s136 where entry, removal or place of safety powers may be required.		
Inherent Jurisdiction of the High Court	The inherent jurisdiction of the High Court allows the court to make protective orders where no other legal route is available. In adult safeguarding, it may be considered where an adult has mental capacity under the Mental Capacity Act 2005 but may be unable to make a genuinely free decision because of coercion, control, undue influence, intimidation or other vulnerability. It is not used simply because professionals disagree with the adult's decision; there must be evidence that the decision may not be voluntary or that the adult's ability to exercise free choice is being undermined. Inherent jurisdiction should be considered only after other relevant legal routes have been explored and where legal advice confirms that the circumstances may justify High Court intervention.	An older adult with capacity lives with their spouse. Professionals observe that the spouse answers all questions, blocks access to services and pressures the adult to refuse care. The adult appears frightened when spoken to alone but states they do not want intervention. If there is evidence that the adult's apparent decisions are being driven by coercion or control rather than free choice, legal advice may be sought regarding the High Court's inherent jurisdiction.	• Redcar and Cleveland Borough Council v PR [2019] EWHC 2305 (Fam) • RK (Capacity; Contact; Inherent Jurisdiction) [2023] EWCOP 37 • Re P (Vulnerable Adult: Withdrawal of Application) [2024] EWHC 1882 (Fam)

Human Rights Act 1998 / European Convention on Human Rights	The Human Rights Act 1998 incorporates key rights from the European Convention on Human Rights into UK law and requires public authorities, and those carrying out public functions, to act compatibly with those rights. In adult safeguarding, it supports lawful, proportionate and rights-based decision-making, particularly where agencies must balance protection from harm with autonomy, privacy, family life, liberty, dignity and the right to life.	An adult with care and support needs is living with a family member and there are concerns about coercion, neglect and restricted contact with professionals. The local authority determines that the s42 criteria are met and that a safeguarding enquiry is required, based on reasonable cause to suspect care and support needs, abuse or neglect, and an inability to self-protect because of those needs. The adult says they do not want agencies involved. Safeguarding partners consider the Human Rights Act to balance the adult's Article 8 right to private and family life (a qualified	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance
			• Human Rights Act 1998
			  • Article 2 right to life
			  • Article 3 protection from inhuman or degrading treatment
			  • Article 5 liberty and security
			  • Article 6 fair hearing
			  • Article 8 private and family life
			• European Convention on Human Rights

Legal Framework	Description	Situation where it may be used	Further Reading
		right) with the need to protect them from harm, uphold their autonomy and ensure any intervention is lawful, necessary and proportionate. Partners also consider whether Article 2 right to life, Article 3, protection from inhuman or degrading treatment (which are both absolute rights), or Article 5 liberty and security (a conditional right) may be engaged and whether additional legal routes, advocacy, information sharing or care and support planning are required	
Equality Act 2010	The Equality Act 2010 is the main legal framework for equality and anti-discrimination in the UK. In adult safeguarding, it requires agencies to consider protected characteristics, avoid discriminatory practice, make reasonable adjustments, and ensure safeguarding responses are accessible, fair and proportionate. It is particularly relevant where disability, communication needs, age, race, religion or belief, sex, sexual orientation, gender reassignment, pregnancy or maternity, or marriage and civil partnership may affect how an adult experiences risk, accesses support or participates in safeguarding processes.	An adult with a sensory impairment and limited English is involved in a s42 enquiry after concerns are raised about neglect in supported accommodation. The adult has not understood previous letters or meetings and has been labelled as "not engaging". The Equality Act is considered to ensure reasonable adjustments are made, including accessible information, communication support and interpretation, so the adult can understand the concerns, express their wishes and participate meaningfully in decisions about their safety and support.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Equality Act 2010
Data Protection Act 2018 (DPA)/ General Data Protection Regulation (GDPR)	The DPA 2018, alongside the GDPR, provides the current legal framework for processing personal information in the UK. In adult safeguarding, it supports lawful and proportionate information sharing by requiring agencies to identify a lawful basis for processing, protect personal and special category data, share only what is necessary, record decision-making, and respect individual rights while recognising that data protection law is not a barrier to sharing	A GP practice receives information that an adult with care and support needs may be experiencing neglect and financial abuse by someone who manages their appointments and correspondence. The adult has not consented to information being shared, but there are concerns about risk and possible coercion. The DPA 2018 and GDPR are considered to identify the lawful basis for sharing relevant information with safeguarding partners, ensure the	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Data Protection Act 2018 • GDPR

Legal Framework	Description	Situation where it may be used	Further Reading
	information where this is needed to prevent harm or support safeguarding duties.	disclosure is necessary and proportionate, and record the rationale for sharing or not sharing.	
Crime and Disorder Act 1998	The Crime and Disorder Act 1998 provides a legal framework for partnership working to prevent and reduce crime and disorder. s115 allows relevant authorities to disclose information where this is necessary or expedient for the purposes of preventing or reducing crime and disorder. In adult safeguarding, it may be relevant where concerns overlap with criminal activity, exploitation, anti-social behaviour, cuckooing, hate crime, domestic abuse or wider community safety risks.	Police and housing receive reports that an adult with care and support needs is being targeted by people using their flat to store stolen goods and drugs. The local authority determines that the s42 criteria are met, and a s42 enquiry is required. Partners consider the Crime and Disorder Act 1998 alongside the Care Act 2014 to support proportionate information sharing, reduce crime and disorder, and manage risks linked to exploitation, coercion and community safety.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Crime and Disorder Act 1998 • Section 115
Modern Slavery Act 2015	The Modern Slavery Act 2015 provides the legal framework for identifying and responding to slavery, servitude, forced or compulsory labour and human trafficking. In adult safeguarding, it may be relevant where an adult with care and support needs is being exploited, controlled, coerced, transported, housed or required to work for little or no pay, and where safeguarding partners need to consider protection, police involvement, the National Referral Mechanism and the duty to notify.	A community nurse visits an adult with care and support needs who is living in overcrowded accommodation with several unrelated people. The adult appears fearful, has no access to their own money or identification documents, and says they are taken to work long hours but are not paid. The local authority determines that the s42 criteria is met. Safeguarding partners consider the Modern Slavery Act 2015 to support a coordinated response with police and specialist services, assess immediate safety, share information lawfully and consider referral through the National Referral Mechanism.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Modern Slavery Act 2015
Forced Marriage (Civil Protection) Act 2007 and section 63A Family Law Act 1996.	A Forced Marriage Protection Order (FMPO**)** is a civil legal order in the UK used to protect a person from being forced into a marriage or to support someone who has already been forced into one. A forced marriage is not the same as an arranged marriage where families are involved in selecting a partner, but it is up to the	A woman in her early twenties living in the UK. She lost her mother at a young age and grew up with her father and stepmother. She experienced emotional and physical abuse at home, amounting to so-called honour-based abuse. When she reached the age of 20, her father asserted authority, telling her she owed	Forced Marriage (Civil Protection) Act 2007 and section 63A Family Law Act 1996. Forced marriage - GOV.UK Forced Marriage Unit - fmu@fcdo.gov.uk

Legal Framework	Description	Situation where it may be used	Further Reading
	individuals to decide whether to enter the marriage, and both parties have the choice. It is important to know the factors of forced marriage as these may involve: Physical force, threats or violence. Emotional or psychological coercion. Making someone feel they must comply to avoid shame or dishonour. Taking someone abroad to force them to marry Marrying someone who lacks the mental capacity to consent to the marriage (whether they are pressured or not). Forced marriage affects a wide range of communities, including Irish Traveller, Turkish, Roma, Afghan, South Asian, Kurdish, Iranian, Arab and African communities. There are no religions which support or advocate the practice of forced marriage. Forced marriage can happen to anyone from any background, regardless of social class, financial status and sexuality; which include people who identify as lesbian, bi-sexual, gay and transgender, or are perceived as such.	him obedience and must marry a cousin living in his country of origin. While no direct physical violence was used to compel this specific act, she felt intense psychological and emotional pressure, believing she was deeply indebted to her father and unable to refuse without causing a great upset. Local authority makes urgent application to the High Court for a Forced Marriage Protection Order and Passport Order with a port alert.	
Schedule 5A(2)(a) schedule 2 Part 1 of the Female Genital Mutilation Act 2003.	An application for a Female Genital Mutilation Protection Order (FGMPO) under the Female Genital Mutilation Act 2003 can be utilized alongside the Mental Capacity Act 2005 to protect an adult woman who lacks the mental capacity to consent to or refuse the procedure	A is aged 21. She has a severe learning disability and a global developmental delay. She relies entirely on her family and paid carers for her daily care. Amina's family belongs to a community where FGM is traditionally practiced. Her older sister underwent FGM as a child before the family migrated to the UK. The social worker notices a flight booking during a routine home visit. The family was planning a six-week trip to their country of origin to attend a cousin's wedding and have A "cleansed and	• Schedule 5A(2)(a) schedule 2 Part 1 of the Female Genital Mutilation Act 2003

Legal Framework	Description	Situation where it may be used	Further Reading
		blessed by community elders"—a known euphemism for FGM. Because of A's severe learning disability, her capacity to consent to travel and medical/bodily interventions must be formally assessed under the MCA 2005. A was assessed as lacking capacity. Best interests meeting took place. A s42 enquiry identifies A as an "adult at risk" due to her care needs, the threat of abuse, and her inability to protect herself. Local Authority makes urgent application to the Court of Protection for a FGMPO.	

Counter-Terrorism and Security Act 2015	s26 of the Counterterrorism and Security Act 2015 places a Prevent duty on specified authorities, including local authorities, health, education, police and criminal justice agencies, to have due regard to the need to prevent people from being drawn into terrorism. In adult safeguarding, it may be relevant where there are concerns that an adult with care and support needs may be susceptible to radicalisation, exploitation or coercion, and where agencies need to share information, assess risk and consider referral through Prevent or Channel arrangements.	A support worker becomes concerned that an adult with care and support needs is increasingly isolated and is being influenced online by people encouraging extremist views. The adult has recently stopped engaging with usual support and appears fearful of discussing the contact. The local authority determines that the s42 criteria is met. Safeguarding partners consider the Counterterrorism and Security Act 2015 and Prevent duty guidance to decide whether a Prevent referral, information sharing, risk assessment or wider safeguarding response is required, while ensuring the adult's rights, consent, capacity and wellbeing are considered.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance
			• Counter-Terrorism and Security Act 2015:
			  • Section 26 Prevent duty
			  • Schedule 6 specified authorities
			• Prevent duty guidance

Suicide Act 1961	The Suicide Act 1961 decriminalised suicide, but s2 makes it a criminal offence to encourage or assist another person's suicide or attempted suicide. In adult safeguarding, it may be relevant where there are concerns that an adult with care and support needs is being pressured,	An adult with care and support needs tells a professional that their partner is controlling, regularly says they would be "better off dead". The adult and has searched online for ways to end their life own life and appears frightened, isolated and unsure whether they want help.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Suicide Act 1961

Legal Framework	Description	Situation where it may be used	Further Reading
	coerced, encouraged or assisted to end their life, or where suicide risk intersects with exploitation, coercion, mental health, capacity, domestic abuse or neglect.	The local authority determines that the s42 criteria are met because the concern arises within a context of coercive and controlling abuse. Safeguarding partners consider the Suicide Act 1961 alongside mental health, capacity, domestic abuse and information-sharing duties to assess immediate safety, consider police involvement, and ensure any response is lawful, proportionate and protective.	
Serious Crime Act 2015	The Serious Crime Act 2015 includes the offence of controlling or coercive behaviour in an intimate or family relationship under s76. In adult safeguarding, it may be relevant where an adult with care and support needs is experiencing a pattern of control, isolation, intimidation, threats, financial control, monitoring or restriction by a partner, former partner or family member. It should usually be considered alongside the Domestic Abuse Act 2021, mental capacity, human rights, information sharing and police involvement.	An adult with care and support needs tells a social prescriber that their adult child controls their phone, restricts visitors, manages their money and becomes angry if they speak to professionals alone. The adult says they feel trapped but is worried about consequences if agencies intervene. The local authority determine s42 criteria is met. Safeguarding partners consider whether the pattern may amount to coercive or controlling behaviour under the Serious Crime Act 2015, while also assessing immediate safety, capacity, consent, information sharing, domestic abuse support and police involvement.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Serious Crime Act 2015, Section 76: controlling or coercive behaviour. • Controlling or coercive behaviour statutory guidance
Domestic Abuse Act 2021	The Domestic Abuse Act 2021 provides a statutory definition of domestic abuse and recognises that abuse can include physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse and psychological or emotional abuse. In adult safeguarding, it is relevant where an adult with care and support needs is experiencing abuse from someone they are personally connected to, including a partner, former partner, relative or person with whom they have	An adult with care and support needs tells a district nurse that their partner controls their medication, prevents them from seeing friends, monitors their phone and threatens to withdraw care if they speak to services. The adult says they are frightened but does not want the partner to get into trouble. The local authority determine s42 criteria is met. Safeguarding partners consider the Domestic Abuse Act 2021 to understand the pattern of abuse, assess immediate and ongoing risk,	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Domestic Abuse Act 2021

Legal Framework	Description	Situation where it may be used	Further Reading
	parental responsibility links. It should be considered alongside safeguarding duties, mental capacity, information sharing, human rights, risk assessment and police or domestic abuse specialist support.	consider capacity and consent, share information lawfully, and coordinate a response with domestic abuse services, police and adult safeguarding.	
Health and Social Care Act 2008 / Regulated Activities Regulations 2014	The Health and Social Care Act 2008 provides the regulatory framework for health and adult social care services in England, including registration and oversight by the Care Quality Commission. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 set out the fundamental standards that regulated providers must meet, including safe care and treatment, safeguarding service users from abuse and improper treatment, person-centred care, dignity and respect, staffing, complaints and good governance. In adult safeguarding, this framework is relevant where concerns relate to the quality, safety, regulation or governance of a care provider or health service.	Several adults living in the same care home experience unexplained injuries, medication errors and missed personal care. Families raise concerns that staffing levels are low and complaints have not been acted on. The local authority determines that the s42 criteria are met and that safeguarding enquiries are required. Safeguarding partners consider the Health and Social Care Act 2008 and Regulated Activities Regulations 2014 to support enquiries into organisational abuse or neglect, share information with commissioners and the Care Quality Commission, and consider whether provider quality, governance or regulatory action is required.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Health and Social Care Act 2008 • Care Quality Commission
Housing and Environmental Health Legislation	Housing and environmental health legislation gives local authorities powers to assess and respond to hazards, statutory nuisances, insanitary conditions, pest infestations, waste accumulation and unsafe housing. In adult safeguarding, these powers may be relevant where the home environment creates serious risks to health, safety or wellbeing, particularly in cases involving self-neglect, hoarding, fire risk, poor sanitation, infestation or unsafe accommodation.	An adult with care and support needs is living in a property affected by severe hoarding. Exits are blocked, there is a strong odour, evidence of pest infestation, limited access to cooking and washing facilities, and the fire service has raised concerns about escape routes. The adult is reluctant to allow professionals into the property and does not want items removed. The local authority determines that the s41 criteria is met. Safeguarding partners consider housing and environmental health legislation alongside Care Act assessment, mental capacity, fire safety advice and a Multi-Agency risk management response.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Housing Act 2004 • Housing Health and Safety Rating System • Environmental Protection Act 1990: including statutory nuisance powers. • Public Health Act 1936 • Public Health Act 1961 • Prevention of Damage by Pests Act 1949 • Building Act 1984 • Care Act 2014: Section 9 needs assessment; • Care Act 2014: Section 11 refusal of assessment;

9. Legal Mechanisms

This section explains key legal mechanisms that may be used in adult safeguarding practice. Legal mechanisms are the routes, processes or formal powers through which legal frameworks are applied in practice. They may include court applications, warrants, statutory referrals, escalation routes, formal requests for information, regulatory processes, authorisations and review mechanisms. In a Multi-Agency safeguarding context, understanding these mechanisms helps agencies identify the correct route for action, use powers lawfully and proportionately, clarify accountability, and ensure that adults are protected from abuse or neglect while their rights, autonomy, wishes and wellbeing remain central to decision-making.

Legal Framework	Description	Situation where it may be used	Further reading
Court of Protection	The Court of Protection (CoP) makes decisions about the health, welfare, property and financial affairs of adults who lack capacity to make specific decisions for themselves. In adult safeguarding, it may be needed where there are serious disputes about capacity or best interests, concerns about deprivation of liberty, decisions about residence or contact, or welfare or concerns about attorneys, deputies or others acting on behalf of the adult.	An adult who lacks capacity to decide where they should live is ready to leave hospital, but professionals and family members disagree about whether they should return home with support or move to a care setting. There are safeguarding concerns about self-neglect if the adult returns home but also concerns about restricting their liberty if they move. The CoP may be asked to decide what is in the adult's best interests and whether any restrictions are lawful and proportionate.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Mental Capacity Act 2005 • Mental Capacity Act Code of Practice
Deprivation of Liberty Framework	The deprivation of liberty framework is used to determine whether restrictions on an adult's care, treatment or residence amount to a deprivation of liberty requiring lawful authorisation. In hospitals and care homes, this may require authorisation through the Deprivation of Liberty Safeguards (DoLs). In community settings, authorisation may require an application to the Court of Protection. Professionals should seek legal advice where there is uncertainty about whether arrangements amount to a deprivation of liberty or whether restrictions are lawful, necessary and proportionate.	An adult with advanced dementia lives in a care home and repeatedly tries to leave, including at night, without awareness of traffic, weather or how to return. They become distressed when prevented from leaving, are unable to understand or consent to the care arrangements, and require locked external doors, one-to-one observation at key times, sensor alarms and staff intervention to stop them leaving unsafely. Although the 2026 judgment requires a wider, person-specific assessment, the intensity, duration and effect of the restrictions, the adult's lack of understanding, active attempts to leave, and the need for staff to prevent departure mean the arrangements are still likely to require DoLS authorisation, with regular review of best interests, least restrictive options and safeguarding risks.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Mental Capacity Act 2005 • Mental Capacity Act Code of Practice • UK Supreme Court judgment on the definition of deprivation of liberty, 2026. • Department of Health and Social Care Interim

			Guidance on what constitutes a deprivation of liberty.
National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care	The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care is a statutory guidance and decision-making mechanism used to determine whether an adult has a primary health need and is eligible for NHS Continuing Healthcare or NHS-funded Nursing Care. In adult safeguarding, it may be relevant where complex health and care needs, delayed assessments, funding disputes, unsafe discharge planning or gaps in support create or increase risk of abuse, neglect, self-neglect or carer breakdown.	An adult with rapidly deteriorating neurological needs is ready for discharge from hospital, but there is disagreement between health and social care about whether their ongoing package should be funded through NHS Continuing Healthcare or local authority care and support. The delay has resulted in harm to the adult. The local authority decides that the s42 criteria is met. s42 enquiries consider the National Framework to support timely assessment, clarify funding responsibilities, manage risk while eligibility decisions are made, and ensure the adult's needs are not left unmet because agencies disagree about funding.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care • Care Act 2014
Mental Health Act assessment	A Mental Health Act assessment is a formal process to decide whether a person with a suspected mental disorder meets the criteria for assessment, admission or treatment under the Mental Health Act 1983. In adult safeguarding, it may be relevant where mental health needs, refusal of support, risk to self or others, deterioration or crisis presentation require coordinated consideration with safeguarding, capacity, consent and human rights duties.	An adult with severe depression and psychosis is refusing contact with services, not eating regularly and expressing beliefs that others are trying to harm them. Neighbours report escalating concerns and there is uncertainty about immediate risk. Due to the level of self-neglect present a s42 enquiry, during the process it becomes apparent that add beliefs, the enquiry requests that mental health services consider whether or not a Mental Health Act assessment is required, while also considering the adult's capacity, wishes, least restrictive options, information sharing and any safeguarding actions needed to reduce risk.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Mental Health Act 1983 • Mental Health Act Code of Practice.

Section 135 warrant / Section 136 place of safety	s135 and s136 of the Mental Health Act provide practical mechanisms for accessing or removing a person to a place of safety where mental disorder and immediate risk are concerns. s135 requires a warrant and may be relevant where access to a private premises is needed. s136 applies where police encounter a person in a public place who appears to need immediate care or control.	An adult appears acutely mentally unwell and is believed to be inside their home in unsafe conditions, but access is repeatedly refused and there are serious concerns about immediate risk. Agencies consider whether an Approved Mental Health Professional (AMHP) should seek a s135 warrant so the adult can be assessed safely and lawfully.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance
			• Mental Health Act 1983
			  • Section 135
			  • Section 136

			• Mental Health Act Code of Practice.
Care Act s42 safeguarding enquiry	A s42 safeguarding enquiry is the formal mechanism through which the local authority decides what action is needed to help and protect an adult where the statutory criteria are met. The local authority may make enquiries itself or cause others to do so, while retaining responsibility for coordinating and assuring the response.	A care provider reports repeated unexplained injuries to an adult who has care and support needs and cannot clearly explain what has happened. The local authority considers whether the s42 criteria are met and, if so, coordinates enquiries with safeguarding partners to establish the facts, understand the adult's wishes and decide what action is needed.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Care and Support Statutory Guidance, Chapter 14. • Care Act 2014: Section 42 safeguarding enquiry;
Non-Statutory Safeguarding Response (Care Act 2014)	A coordinated safeguarding response undertaken where there are concerns about abuse, neglect, self-neglect, exploitation, or significant risk, but the criteria for a statutory s42 enquiry are not met. The response may involve information sharing, multi-agency risk management, referrals, care and support assessments, prevention activity, or coordination of services to reduce risk and promote wellbeing.	A care leaver with neurodiversity, partner agencies are concerned about possible exploitation by others. The local authority considers the s42 criteria but determines that is not met because there is no appearance of care and support needs. However, the level of risk still warrants a coordinated non-statutory safeguarding response. This brings together housing, health, police, and community safety partners to share information, assess risks, develop an engagement plan and consider what support can be offered to reduce harm.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Care and Support Statutory Guidance, Chapter 14.
Care Act Section 45 request for information	s45 is a mechanism that allows a Safeguarding Adults Board (SAB) to request information from a person or organisation where it is needed to support the Board's safeguarding functions. It may be used where information is required for Safeguarding Adult Reviews (SARs), audits, assurance activity or learning, and where voluntary information sharing has been delayed or disputed.	A SAR is unable to progress because a partner agency has not supplied relevant records. The SAB considers whether a formal s45 request is required to obtain information needed for the statutory review and learning process.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Care Act 2014: Section 45 supply of information;
Safeguarding Adults Review referral (SAR)	A SAR referral is the mechanism for asking the Safeguarding Adults Board to consider whether the statutory criteria for a SAR are met. It supports multi-agency learning where an adult with care and support needs has died or experienced	An adult dies following a period of self-neglect, missed appointments and repeated concerns shared across agencies. Professionals are concerned that opportunities to coordinate risk management may have been missed. A SAR	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding

	serious abuse or neglect and there are concerns about how agencies worked together.	referral is submitted so the SAB can consider whether the statutory criteria are met and whether learning should be commissioned.	Adults Policies, Procedures & Guidance • Care Act 2014: Section 44 SAR • Care and Support Statutory Guidance, Chapter 14.

Prevent / Channel referral	Prevent and Channel are referral and support mechanisms for concerns that a person may be susceptible to being drawn into terrorism. In adult safeguarding, they may be relevant where radicalisation, grooming, exploitation, coercion, isolation or online influence intersect with care and support needs or wider safeguarding risks.	A professional is concerned that an isolated adult with care and support needs is being targeted online by individuals encouraging extremist content. The local authority determines that the s42 criteria are met because there is reasonable cause to suspect that the adult has care and support needs, is experiencing or at risk of abuse or neglect through exploitation or coercion and may be unable to protect themselves because of those needs. The enquiry considers whether a Prevent referral is required and whether Channel support may help manage risk alongside safeguarding, mental capacity and information-sharing considerations.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance
			• Counter-Terrorism and Security Act 2015:
			  • Section 26 Prevent duty
			  • Schedule 6 specified authorities
			• Prevent duty guidance

National Referral Mechanism	The National Referral Mechanism (NRM) is the process for identifying and supporting potential victims of modern slavery and human trafficking. In adult safeguarding, it may be relevant where there are indicators of exploitation, forced labour, servitude, trafficking, control, debt bondage, restriction of movement or withholding of documents.	An adult with care and support needs is found living in overcrowded accommodation, working long hours without pay and unable to access their passport or wages. The local authority determines that the s42 criteria are met because there is reasonable cause to suspect abuse or neglect through exploitation or coercion, and that the adult may be unable to protect themselves because of their care and support needs. The enquiry considers immediate safety, police involvement, lawful information sharing and whether a NRM referral is required.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Modern Slavery Act 2015 • National Referral Mechanism guidance and duty to notify guidance.

Domestic abuse MARAC / specialist referral route	Multi-Agency Risk Assessment Conference (MARAC) and specialist domestic abuse referral routes are multi-agency mechanisms for assessing and managing high-risk domestic abuse. In adult safeguarding, they may be relevant where domestic abuse, coercive control, economic abuse, isolation or threats intersect with care and support needs.	An adult with care and support needs is being threatened by a partner who controls their medication, finances and contact with professionals. The local authority determines that the s42 criteria is met. The enquiry considers referral to specialist domestic abuse services and MARAC, alongside adult safeguarding and police involvement.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Domestic Abuse Act 2021
Housing and environmental health enforcement	Housing and environmental health enforcement mechanisms may include housing inspection, hazard assessment, statutory nuisance investigation, pest control action, waste clearance, improvement notices or emergency remedial action. In adult safeguarding, these mechanisms may be relevant where the home environment creates serious risks linked to self-neglect, hoarding, fire safety, infestation, unsafe accommodation or poor sanitation.	An adult with suspected care and support needs is living with severe hoarding, blocked exits, pest infestation and no safe access to washing or cooking facilities. The local authority determines that the s42 criteria is met. The enquiry considers environmental health and housing enforcement options alongside Care Act assessment, mental capacity, fire safety advice and a Multi-Agency risk management plan.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Housing Act 2004 • Housing Health and Safety Rating System • Environmental Protection Act 1990
CQC / provider quality escalation	The Care Quality Commission (CQC) and provider quality escalation mechanisms support action where safeguarding concerns indicate wider service quality, governance, staffing, safety or regulatory issues. These routes may sit alongside s42 enquiries where concerns involve organisational abuse, neglect, repeated incidents or risks affecting more than one person. CQC has statutory civil and criminal enforcement powers under the Health and Social Care Act 2008 and associated regulations. Depending on the circumstances, this may include imposing or varying registration conditions, suspending or cancelling registration, issuing notices or prosecuting specified regulatory offences. CQC action may run alongside safeguarding enquiries, commissioner action and provider improvement processes.	Multiple adults receiving care from the same domiciliary care agency experience missed visits, medication errors and poor personal care. The local authority determines that s42 criteria is met for one or more adults because there is reasonable cause to suspect care and support needs, neglect, and an inability to protect themselves because of those needs. The enquiries consider provider quality escalation, commissioner involvement and CQC notification or intelligence sharing alongside s42 enquiries and risk management.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • Health and Social Care Act 2008 • Care Quality Commission

Office of the Public Guardian referral	An Office of the Public Guardian (OPG) referral is a mechanism for raising concerns about Lasting Power of Attorneys (LPAs), deputies or others acting under formal decision-making authority. In adult safeguarding, it may be relevant where there are concerns about financial abuse, misuse of a LPA, neglect of duties, conflict of interest or decisions that do not appear to be in the adult's best interests.	A bank alerts adult social care that large withdrawals are being made from an adult's account by an LPA, while care fees are unpaid and the adult's needs appear unmet. The local authority determines that the s42 criteria is met. The enquiry considers an OPG referral alongside financial safeguarding enquiries, capacity and information sharing.	• Mental Capacity Act 2005 • Office of the Public Guardian safeguarding referral guidance.
Advocacy / IMCA referral	Advocacy and Independent Mental Capacity Advocate (IMCA) referral mechanisms support adults to understand information, express views, participate in decisions and secure their rights. In adult safeguarding, advocacy may be required where the adult lacks capacity for relevant decisions or has substantial difficulty participating and has no appropriate person to support them.	An adult with communication needs is involved in a s42 enquiry about neglect but cannot understand meeting papers or express their views without support. The local authority considers advocacy duties so the adult can participate meaningfully in decisions about safety, support and desired outcomes.	• Care Act 2014 • Mental Capacity Act 2005 • Mental Capacity Act Code of Practice • Commissioning independent advocacy under the Care Act - SCIE
Escalation and dispute resolution	Escalation and dispute resolution mechanisms provide a structured route for resolving professional disagreement about risk, thresholds, roles, responsibilities, information sharing, funding or safeguarding actions. They support timely resolution, clear accountability and defensible decision-making where disagreement could increase risk to the adult.	Health and social care agencies disagree about whether risks linked to self-neglect meet the threshold for a safeguarding enquiry or should be managed through assessment and support planning. Because delay may increase risk, partners use the escalation process to clarify the decision, record rationale and agree next steps.	• Pan Berkshire Safeguarding Adults - Pan Berkshire Multi-Agency Safeguarding Adults Policies, Procedures & Guidance • See local escalation and dispute resolution policies.
Judicial review	Judicial review is a High Court mechanism for challenging the lawfulness of a decision, action or failure to act by a public body. It focuses on whether the decision was lawful, procedurally fair, reasonable and compatible with relevant legal duties, rather than whether the court would have made the same decision.	An adult or representative challenges a local authority decision not to undertake a s42 enquiry, arguing that the s42 criteria was not properly considered, relevant evidence was overlooked, or the decision-making process was procedurally unfair. Legal advice should be sought promptly because judicial review focuses on the lawfulness of the decision rather than whether the court would have reached the same s42 judgement, and time limits are short.	• Judicial review - Courts and Tribunals Judiciary

Warrant of entry / powers of entry	A warrant or power of entry is a lawful route for authorised professionals to enter premises for a specific statutory purpose. In adult safeguarding in England, the Care Act does not give social workers a general power of entry, so agencies must consider the most appropriate legal route, such as Mental Health Act powers, police powers, environmental health powers or court orders.	An adult with care and support needs may be at serious risk inside their home, but access is being blocked by a third party. Agencies first try proportionate engagement and advocacy, then seek legal advice about whether a s135 warrant, police emergency powers, environmental health powers, Court of Protection order or High Court order may be appropriate.	• SCIE: Right of entry guidance • Powers of entry - GOV.UK • Powers of entry: code of practice - GOV.UK
Statutory guidance	Statutory guidance is official guidance issued under legislation. It is not usually primary legislation, but public bodies and relevant organisations are expected to follow it unless there is a clear, defensible and recorded reason for departing from it. In safeguarding, statutory guidance helps translate legal duties into practice expectations.	Partners are unsure whether a s42 response should be taken where self-neglect, refusal of assessment and risk to wellbeing overlap. Professionals use the Care and Support Statutory Guidance to support threshold decisions, proportionality, Making Safeguarding Personal and recording of rationale.	• Care and Support Statutory Guidance
Primary legislation	Primary legislation means Acts of Parliament that create the main legal duties, powers and responsibilities. In adult safeguarding, primary legislation provides the statutory foundation for decision-making, including duties under the Care Act 2014, Mental Capacity Act 2005, Mental Health Act 1983, Human Rights Act 1998 and Equality Act 2010.	A professional needs to understand whether the local authority has a duty to make enquiries, whether capacity must be assessed, and whether human rights are engaged. The relevant Acts provide the primary legal basis for the safeguarding response.	• Legislation.gov.uk
Secondary legislation	Secondary legislation, often made as regulations or statutory instruments, provides detail about how powers and duties in primary legislation should operate. In adult safeguarding, secondary legislation may define regulated activities, eligibility criteria, procedural requirements, authorisations or enforcement arrangements.	A s42 concern relates to poor care by a regulated provider. Partners consider the Health and Social Care Act 2008 alongside the Regulated Activities Regulations 2014 to understand provider duties, fundamental standards and possible regulatory escalation.	
Legal professional privilege	Legal professional privilege protects confidential communications between a client and their lawyer made for the purpose of giving or receiving legal advice, or for litigation. In safeguarding, it is relevant where agencies seek legal advice about complex risk, court action, information sharing or disputed decisions. Privilege should not be confused with ordinary confidentiality or used to avoid appropriate safeguarding accountability.	A local authority seeks legal advice about whether to apply to the High Court where an adult appears to have capacity but may be under coercive control. Professionals record the safeguarding rationale and actions clearly, while managing any legally privileged advice in line with organisational procedures. Legal advice given to the local authority should not be shared with other partners or service users, or service users' families.	• Seek advice from your organisation's legal services team. • Follow local information governance and legal advice procedures.
DWP benefit, appointee and	Department for Work and Pensions (DWP) routes may be relevant where safeguarding concerns involve benefit entitlement, financial exploitation, suspected benefit fraud	An adult with care and support needs is dependent on a relative who acts as their DWP appointee. There are concerns that benefits are not being used in the adult's best	• GOV.UK: Become an appointee for someone claiming benefits

fraud referral routes	or the management of benefits by an appointee. DWP can appoint and monitor an appointee where a claimant cannot manage their own benefit affairs. Concerns should be referred through the appropriate DWP route; DWP involvement does not replace safeguarding, police, Office of the Public Guardian or other legal action where these are also required.	interests and essential bills and care costs are unpaid. The local authority considers whether the s42 criteria are met and coordinates proportionate information sharing and referrals, including contact with DWP about the appointeeship and, where relevant, reporting suspected benefit fraud, alongside consideration of police or Office of the Public Guardian involvement.	• GOV.UK: Report benefit fraud
Common Law Police Disclosure	Common Law Police Disclosure is a narrowly defined police mechanism for disclosing relevant information to a third party where police identify a significant risk connected with an individual's employment or voluntary role and there is an urgent pressing social need to support public protection. It complements, but is separate from, Disclosure and Barring Service arrangements and routine safeguarding information sharing. Decisions are made by the police and must be lawful, necessary and proportionate.	During a police investigation, information indicates that a person working or volunteering in a role involving adults with care and support needs may present a significant risk linked to that role. Police consider whether there is an urgent pressing social need to disclose relevant information to the employer or responsible organisation so that proportionate risk-management action can be considered. Professionals may share relevant safeguarding information with police, but the decision whether to make a Common Law Police Disclosure rests with the police.	• College of Policing: Information sharing

10. Legal Concepts

This section explains key legal concepts that commonly arise in adult safeguarding practice. Legal concepts help professionals understand how legal duties, powers and principles should be interpreted and applied in complex Multi-Agency situations. They support lawful, proportionate and person-centred decision-making by clarifying issues such as risk, consent, capacity, information sharing, public interest, vital interests, best interests, professional accountability, reasonable adjustments, proportionality, defensible decision-making and the least restrictive approach. In practice, these concepts help agencies work together consistently while balancing the need to protect adults from abuse or neglect with respect for their rights, autonomy, wishes and wellbeing.

Legal Concept	Description	Situation where it may be used
Public interest	Public interest involves balancing an adult's right to privacy and autonomy against the need to protect them or others from serious harm, prevent crime, or support lawful safeguarding action. It does not mean what is merely interesting to the public; it requires a clear safeguarding or wider protection reason.	An adult refuses consent to share information, but there are concerns that another person may also be at risk from the same source of harm. Agencies consider whether disclosure is justified in the public interest.
Vital interests	Vital interests is a lawful basis for processing personal data where it is necessary to protect someone's life. In safeguarding practice, urgent action or information sharing may also be justified where there is an immediate or serious risk of harm and it is not practicable or appropriate to seek consent first. The decision and rationale should be clearly recorded.	A professional has information that an adult is at immediate risk of serious harm, but the adult cannot be contacted. Information is shared with emergency services to protect life and prevent serious harm.
Duty of care	Duty of care means taking reasonable steps to prevent foreseeable harm where a professional or organisation has responsibility for an adult's care, support or safety. It does not remove the adult's rights, but it requires risks to be recognised, considered and responded to appropriately.	A provider is aware that an adult has repeated falls linked to poor moving and handling practice. The organisation must take reasonable steps to reduce foreseeable harm and escalate concerns if risk remains.
Best interests	Best interests is a Mental Capacity Act principle used where an adult lacks capacity to make a specific decision. Any decision or action must consider the adult's wishes, feelings, beliefs and values, involve relevant people where appropriate, and choose the least restrictive option that meets the need.	An adult lacks capacity to decide whether to accept urgent care after neglect has been identified. Professionals consider their known wishes and the least restrictive way to protect them while meeting their care needs.
Consent	Consent means that the adult has been given clear, accessible information and freely agrees to a proposed action, intervention or information sharing. In safeguarding, consent should be sought wherever appropriate and safe to do so. However, consent is not the	An adult says they do not want a safeguarding concern raised. Professionals consider whether the adult has understood the concern,

	only lawful basis for action or information sharing. Where consent is refused, cannot be obtained, or it is unsafe or inappropriate to seek it, agencies must consider whether there is another lawful basis to proceed, including public task, legal obligation, vital interests, public interest or safeguarding duties. The rationale for sharing or not sharing information must be recorded.	whether consent is freely given, and whether there are public interest or vital interests reasons to act.
Mental capacity	Mental capacity is decision-specific and time-specific. Adults must be presumed to have capacity unless there is reason to doubt it, and they must be supported to make their own decisions before any conclusion is reached that they lack capacity.	An adult refuses support after alleged financial abuse. Professionals assess whether they can understand, retain, use and weigh relevant information and communicate their decision about the specific safeguarding issue.
Fluctuating capacity	Fluctuating capacity means an adult's ability to make a specific decision may change over time or in different circumstances. Professionals should consider whether the decision can wait until the adult is better able to decide, unless urgent action is needed to prevent harm.	An adult's capacity appears affected during periods of acute mental distress or intoxication. Professionals consider timing, support and reassessment before relying on the decision, unless immediate safeguarding action is required.
Situational incapacity	Situational incapacity describes circumstances where an adult may appear to have capacity in principle but is unable to make or express a free and genuine decision because of coercion, control, fear, trauma, dependency, intimidation or the immediate environment.	An adult refuses support while a controlling relative is present but expresses fear when spoken to alone. Agencies consider whether the adult can exercise free choice and whether legal advice is needed.
Undue influence / coercion	Undue influence and coercion occur where pressure, control, manipulation, threats or dependency undermine an adult's ability to make a free decision. This may be relevant even where the adult appears to understand information and has mental capacity under the Mental Capacity Act.	An adult repeatedly says they do not want help, but all communication is controlled by a partner who threatens to withdraw care. Professionals consider whether the stated refusal is voluntary.
Least restrictive option	The least restrictive option means choosing the approach that achieves the necessary safeguarding aim while interfering as little as possible with the adult's rights, liberty, autonomy and private life.	Agencies consider whether increased home support, assistive technology or regular review would manage risk before considering more restrictive placement or legal action.
Proportionality	Proportionality means any safeguarding response should be lawful, necessary and no more intrusive than required to address the identified risk. The level of intervention should reflect the seriousness, likelihood and immediacy of harm.	An adult wants to remain at home despite ongoing risk. Professionals consider a proportionate plan that reduces risk while avoiding unnecessary restriction or removal from their home.

Defensible decision-making	Defensible decision-making means decisions are lawful, evidence-informed, proportionate, clearly reasoned and recorded. It requires professionals to show what information was considered, how risk was balanced, how the adult's views were included, and why the agreed action was reasonable at the time.	Agencies agree not to proceed with a safeguarding enquiry but record the evidence, legal basis, risk assessment, adult's wishes, alternative pathway and review arrangements.
Professional curiosity	Professional curiosity means actively seeking to understand what is happening, testing assumptions, questioning inconsistencies, and considering whether there may be hidden harm, coercion, neglect or unmet need.	An adult repeatedly misses appointments and is described as hard to engage. Professionals explore barriers, coercion, communication needs and environmental factors rather than closing the concern too quickly.
Reasonable adjustments	Reasonable adjustments are changes made to remove or reduce disadvantage for a person. In safeguarding, they help ensure the adult can understand information, communicate their views and participate meaningfully in decisions.	An adult with a learning disability is invited to a safeguarding meeting. Easy-read information, additional time, advocacy and communication support are arranged so they can take part.
Substantial difficulty	Substantial difficulty refers to significant difficulty understanding, retaining, weighing or communicating information as part of involvement in care, support or safeguarding processes. It may trigger advocacy duties where there is no appropriate person to support the adult.	An adult cannot follow safeguarding discussions or weigh options about risk. The local authority considers whether an advocate is required to support meaningful involvement.
Common Law Duty of Confidentiality	The Common Law Duty of Confidentiality means confidential information should not usually be disclosed without consent. However, confidentiality is not absolute and may be overridden where there is a lawful justification, such as preventing serious harm, protecting others, or meeting statutory safeguarding duties.	A professional holds confidential information about abuse but the adult refuses consent to share. Agencies consider whether confidentiality can be overridden because serious harm or risk to others is likely.
Lawful basis for processing	A lawful basis for processing is the legal reason that allows personal data to be used or shared under data protection law. In safeguarding, agencies should identify and record the lawful basis for sharing information, especially where consent is not relied upon.	A safeguarding referral is made without consent because there are concerns about coercion. The referrer records the lawful basis relied upon and why sharing was necessary and proportionate.
Public task	Public task is a lawful basis for processing where a public body or organisation is carrying out a task in the public interest or exercising official authority with a basis in law. It is commonly relevant to safeguarding functions.	A local authority processes information to decide whether s42 duties are met. Public task may provide the lawful basis for processing relevant safeguarding information.

Legal obligation	Legal obligation is a lawful basis for processing where information must be used or shared to comply with a legal duty. In safeguarding, it may be relevant where legislation requires cooperation, information sharing, reporting or regulatory action.	A Safeguarding Adults Board requests information needed for a Safeguarding Adult Review. The agency considers its legal duties to cooperate and provide information where the statutory conditions are met.
Legitimate interests / recognised legitimate interests	Legitimate interests and recognised legitimate interests are lawful bases that may support processing where there is a legitimate purpose and appropriate safeguards. Public authorities should not normally rely on legitimate interests for processing carried out as part of their official tasks. Where recognised legitimate interests may be relevant under current data protection law, agencies should follow their own information governance arrangements, local protocols and legal or data protection advice before relying on this basis.	An agency considers whether information can be shared to safeguard an adult with care and support needs but checks internal information-sharing protocols and data protection advice before relying on this basis.
Special category data	Special category data includes particularly sensitive personal information, such as health information, racial or ethnic origin, religious beliefs, sexual orientation and biometric data. It requires additional protection and a specific condition for processing.	Health information is shared during a safeguarding enquiry to understand risk. Agencies ensure the information is relevant, necessary and shared securely with an appropriate legal basis.
Need-to-know basis	Need-to-know means information should only be shared with people or organisations who need it for a clear safeguarding purpose. It supports proportionate, focused and lawful information sharing.	A safeguarding meeting includes several agencies. Only information relevant to risk, protection and decision-making is shared, rather than full records or unrelated personal history.
Necessary, proportionate, relevant, accurate, timely and secure	This information-sharing principle means that any information shared should be needed for the safeguarding purpose, limited to what is relevant, accurate and up to date, shared promptly where risk requires it, and transferred securely.	A professional shares current risk information with the local authority but avoids sending historic or unrelated information that is not needed to decide the safeguarding response.
Fettered discretion	Fettered discretion occurs when a decision-maker treats a policy or threshold as fixed and fails to consider the individual facts of the case. In safeguarding, agencies must apply policies consistently but still make case-specific, lawful and reasoned decisions.	A referral is initially screened out because it does not appear to meet a standard threshold. The decision-maker reviews the individual circumstances, cumulative risk and legal duties before finalising the decision.
Vicarious liability	Vicarious liability means an employer may be legally responsible for actions or omissions of staff carried out in the course of their work. In safeguarding, it reinforces the need for clear policies, supervision,	A care worker repeatedly fails to follow moving and handling guidance and an adult is injured. The organisation considers staff conduct, supervision, training and whether wider safeguarding or quality action is required.

	training, safe systems and appropriate organisational responses to risk.	
Duty to cooperate	Duty to cooperate means relevant agencies should work together, share appropriate information and support safeguarding functions where required by law or local Multi-Agency arrangements. It supports coordinated responses and avoids risk being passed between organisations.	Housing, health and adult social care all hold relevant information about escalating self-neglect. The agencies cooperate to assess risk and agree a coordinated plan.
Care and Support needs	"Care and support needs" is a legal concept under the Care Act 2014 and should be understood broadly; an adult does not need to be receiving services, have eligible needs already determined, or have a formal diagnosis for safeguarding duties to be considered.	All safeguarding partners should understand 'care and support needs', but it is applied most directly by local authority adult social care staff, when screening safeguarding concerns, deciding whether s42 criteria may be met, undertaking or causing enquiries, and determining what action is needed to help and protect the adult.

11. Conclusion

This guidance is intended to support lawful, proportionate and defensible safeguarding decision-making. It does not replace the Pan Berkshire Safeguarding Adults Multi-Agency Policy and Procedures, the Information Sharing Protocol, organisational procedures or specialist legal advice. Where there is uncertainty about legal powers, duties, information sharing, capacity, human rights or court action, professionals should seek advice through their organisational governance and legal routes.

END OF PAPER