



# **Old Farnley & District Community Association**

## **Safeguarding Adults Policy and Procedures**

All organizations have a responsibility to protect vulnerable adults from harm and this document will be used in conjunction with the use of Safeguarding: Disclosure and Barring Service.

The policy below will be adopted in the first instance from 1/1/25 until 1/1/26.

This will be reviewed at prior to 1/12/25.

## What is Abuse?

### Adults

In line with the Care Act 2014 we have extended the range of types of abuse that an adult could be at risk from:

- a) Physical: including hitting, slapping, pushing, kicking, misuse of medication, restraint, or inappropriate sanctions
- b) Domestic abuse: including psychological, physical, sexual, financial, Emotional abuse; so called 'honour' based violence
- c) Sexual: including rape, sexual assault, sexual acts carried out without the consent of the individual or where the individual was pressured into consenting
- d) Psychological: including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation, or withdrawal from services or supportive networks
- e) Financial or material: including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits
- f) Modern slavery: encompasses slavery, human trafficking, forced labor plus domestic servitude - (Traffickers and slave masters use whatever means they have at their disposal to coerce, deceive and force individuals into a life of abuse, and inhumane treatment)
- g) Discriminatory abuse: based on any of the 'protected characteristics' set out in the Equality Act (e.g. racism, sexism, and ageism) and other forms of harassment, slurs, or similar treatment
- h) Organizational: can include any of the above. This may range from one off incidents to ongoing ill-treatment sometimes intentional, but often unintentional and resulting from a lack of knowledge. It can be through neglect or poor professional practice as a result of the structure, policies, processes and practices within an organisation
- i) Neglect and acts of omission: includes ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, withholding of the

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

- j) Self-neglect: covers a wide range of behavior neglecting to care for one's personal hygiene, health or surroundings and includes behavior such as hoarding

People who behave abusively come from all backgrounds and walks of life. They may be doctors, nurses, social workers, advocates, volunteer's members, volunteers or others in a position of trust. They may also be relatives, friends, neighbours or people who use the same services as the person experiencing abuse.

## Policy Statement

FARNLEY COMMUNITY CENTRE is firmly committed to the belief that all adults have a fundamental right to be protected from harm and fully recognises its responsibility for adult protection. The safety and protection of all people at risk that we support is paramount and has priority over all other interests. All of our employees, volunteers and contractors are required to comply with the procedures contained within this policy.

We follow the child and adult protection guidelines and procedures developed by the local Safeguarding Adults Board and Safeguarding Children Board.

We think that: Safeguarding is everybody's business - Safeguarding is the responsibility of everyone. We will work together to prevent and minimize abuse. If we have concerns that someone is being abused our responsibilities to the child or adult comes before anything else – our group, other Hires, our colleagues and the person's friends and family.

Doing nothing is not an option - If we know or suspect that a child or adult is being abused, we will do something about it and ensure our work is properly recorded.

We recognize that it is not our role to carry out an investigation into abuse but it is our legal responsibility to refer to the appropriate agencies.

There are six main elements to the policy:

- ensuring that we practice safe recruitment in checking the suitability of volunteer and volunteers to work with adults;
- developing and implementing robust policies and procedures;
- raising awareness of safeguarding issues generally and adult protection issues specifically amongst all volunteers, trustees, hirers and committee members;
- developing and implementing procedures for identifying and reporting cases or suspected cases adult abuse;
- supporting adult who has been abused; and
- Establishing a safe environment in which adults can develop and grow, where they are able

to talk and be listened to.

Old Farnley & District Community Association will work:

- To promote the freedom and dignity of the person who has or is experiencing abuse
- To promote the rights of all people to live free from abuse and coercion
- To ensure the safety and well being of people who do not have the capacity to decide how they want to respond to abuse that they are experiencing
- To manage services in a way which promotes safety and prevents abuse

Old Farnley & District Community Association:

- will ensure that all management committee members, volunteers, and Hires are familiar with this policy
- will work with other agencies within the framework of the Leeds Multi-Agency Safeguarding Adults Procedures
- will act within its confidentiality policy and will gain permission from Hires before sharing information about them with another agency
- will inform Hires that where a person is in danger, a child is at risk or a serious crime has been committed then a decision may be taken to pass information to another agency without the service user's consent
- will pass information to Social Services when a person who does not have the capacity to consent to a safeguarding adults enquiry may be experiencing abuse

To refer an adult protection / safeguarding adults concern, please ring Social Services Call Centre

Voice: 0113 222 4401

Text Phone: 0113 222 4410

Out of hours: 0113 2409536

LEEDS.GOV.UK (Worried about someone)

And ask to make an adult protection / safeguarding adult's referral

The lead person in Old Farnley & District Community Association for safeguarding adults is the Designated Safeguarding Officer (currently Peter Allison), 07960010618 (farnleycommunitycentre@gmail.com) They should be contacted for support and advice on implementing this policy and procedures.

This policy should be read in conjunction with the

## 1) Preventing Abuse

All management committee members, volunteers, volunteers and Hires are expected to treat each other with respect. Violent, abusive and discriminatory behaviour will not be tolerated.

- a) All management committee members, volunteers and volunteers working for Old Farnley & District Community Association will supply two references.
- b) Referees will be asked if they would be prepared to re-appoint the person they are giving the reference for.
- c) Those appointing volunteers will telephone the referees of the selected candidate before the person is appointed to confirm the written reference.
- d) Hires will be encouraged to use their skills and expertise in the running of Old Farnley & District Community Association.
- e) There will be a clear agreement between individual Hires (or, where they do not have capacity to make such an agreement, the contractor of the service) and Old Farnley & District Community Association about the services that Old Farnley & District Community Association will provide
- f) Activities will be organised that enable Hires to gain information and skills to prevent abuse. For example assertiveness skills, self-defence, accessing the police and criminal justice system, relevant complaints procedures etc.
- g) Hires, volunteers, volunteers and management committee members should have access to information about independent help-lines and advocacy providers that can support people experiencing abuse.
- h) Hires, volunteers, volunteers and management committee members should have access to information about the organisations complaints procedure and whistle blowing policy.

## 2) Responding to people who have experienced or are experiencing abuse

- a) All situations of abuse or alleged abuse should be discussed with the Designated Safeguarding Officer. Hires will be told that this will happen.
- b) Where you are a witness to abuse or abuse has just taken place the priorities will be:
  - i) To ensuring that appropriate emergency health services are gained
  - ii) Where a crime has just been or is being committed, to call the Police
  - iii) To preserve evidence
  - iv) To maintain the safety of yourself, other volunteers or volunteers and Hires
  - v) To inform the Designated Safeguarding Officer as soon as possible about what has happened

- vi) To record what happened in the 'Safeguarding Adults' folder.
- c) Anyone communicating that they have experienced or are experiencing abuse will be given the opportunity to 'tell' about that experience if they wish to do so. This will include; creating the time, private physical space and access to the appropriate communication aids (for example, picture boards, sign language interpreters, computer technology).

However, volunteers should not investigate an incident of abuse until the Safeguarding Adults strategy has been agreed. In particular volunteers should not proactively ask the person who may have experienced abuse for information as this may prejudice future action to protect the adult (e.g. disciplinary hearings, criminal investigation). Neither should volunteers do anything that will alert the alleged perpetrator to an investigation unless it is necessary for the immediate protection of an adult covered by these procedures.

If a member of volunteers or volunteer suspects that someone is experiencing abuse but isn't communicating about the abuse they should discuss their concerns with Designated Safeguarding Officer. If appropriate, the Designated Safeguarding Officer will consult the Chair Person and decide who is the best person to ask the service user, about the concerns that have been raised.

- d) Any person disclosing abuse will be given information about other services that can:
  - i) enable them to decide what to do about the experiences they have had.
  - ii) enable them to recover from their experiences
  - iii) enable them to seek justice in relation to their experiences
- e) If the person is currently experiencing abuse, they will also be given information about the Safeguarding Adults Procedures and how agencies can work together to help them stop the abuse.
- f) All members of volunteers and volunteers should be aware of the utmost need for confidentiality in relation to someone who is experiencing abuse. The risk of abuse becoming more intense is often greatest at the time the victim starts to challenge that abuse.
- g) All members of the organisation should be aware of standards for safety and confidentiality for all Hires, for example:
  - i) asking for identification before the door is opened
  - ii) not giving information about people to anyone (including relatives/spouses) without that person's permission
  - iii) ringing back telephone callers to check they are who they say they are
- h) Everyone should also be aware that the person who is acting abusively might also target people who they think are interfering (that is, your volunteers) for abuse and sometimes violence. Care should be taken to protect everyone's safety.

Where either:

- i) The person has the capacity to decide what they want to happen in response to the abuse they are experiencing

**and**

have asked you to help them start the safeguarding adults procedures

Or either

- ii) The person does not have the capacity to decide what they want to happen about the abuse they are experiencing
- iii) There is a risk to other Hires from the same perpetrator
- iv) The abuse is being carried out by a person working or volunteering for an organisation

The Designated Safeguarding Officer will make a safeguarding adults Referral to Social Services.

### 3) Committee responsibilities

- a) To ensure that the organisation has done what it can to safeguard the immediate safety and well being of anyone experiencing abuse.
- b) To offer support to the Safeguarding Adults Procedures, for example by offering a place where the service user can be interviewed, enabling volunteers to support Hires to take part in the Safeguarding adults Procedures etc.
- c) For named person to inform Social Services of any concerns of abuse or disclosure that has been made about Hires who do not have the capacity to consent to an safeguarding adults enquiry.
- d) Where abuse has occurred within services provided by Old Farnley & District Community Association, the Designated Safeguarding Officer will inform Social Services and discuss with the Safeguarding Adults Co-ordinator the extent to which the organisation will take part in the Safeguarding Adults Procedure, for example, carry out an internal investigation that is co-ordinated with any other investigations (e.g. by police).
- e) If a volunteer or a management committee member is alleged to have been behaving abusively, the Designated Safeguarding Officer, (or where they are alleged to have been behaving abusively their line Designated Safeguarding Officer) will liaise with the Chair Person to ensure that the organisation's Disciplinary Procedures are co-ordinated with any other enquiries taking place as part of the Safeguarding Adults Procedures.
- f) When a hirer is alleged to have abused another hirer the Designated Safeguarding Officer will ensure that the needs of both Hires are met. The needs of the person alleged to be experiencing the abuse will be paramount and where the service offered needs to change (so for example they are not in contact with each other) the first option should be to change hirer provision to the alleged perpetrator.


Any action taken by the organisation should be co-ordinated with any other aspects of the Safeguarding Adults Enquiry that may be taking place.

- g) To ensure that volunteers and volunteers working directly with a user who has experienced or is experiencing abuse receives appropriate support and supervision

- h) To ensure that volunteers working directly with Hires who behave abusively, receive appropriate support and supervision.
- i) To ensure that all volunteers and management committee members receive information and attend training courses enabling them to recognise adult abuse and to operate this procedure.
- j) To monitor the number of safeguarding adults concerns raised and action taken.

Adopted by the Old Farnley & District Community Association Management Committee:

Date: 1<sup>st</sup> December 2024

Signature: 

**Peter Allison (Chair & Trustee)**

Safeguarding Officer

Reviewed: 01/12/24

Next review date: 01/12/25

For full Safeguarding Adults Procedures please refer to the

*Summary Guide West Yorkshire Multi-Agency Safeguarding Adults Policy & Procedures*

Old Farnley & District Community Association has made the following changes to protect volunteers, volunteers and Hires of both Old Farnley & District Community Association and Hillside Hall from any safeguarding issues:

- Recent emphasis on safeguarding children has resulted in clearer H&S guidelines, i.e. a poster displayed on the kitchen door explaining why children are not allowed in the kitchen.
- Policies for: Allowing others to use your space, Food Safety and Hygiene, Safeguarding for both Children and adults have been written, Responsibilities for Secretary, Treasurer and Trustees have all now in place.





## **Allowing Hiring**

**Farnley Community Centre will adopt the key points from this document for hiring of the Community Centre**

**Hire compliance considerations, these are things to be considered before hiring, our booking form completes this, attached at the bottom of document**

**Any Requests to be addressed to email below and a completed booking form.**

**[bookings.farnleycc@gmail.com](mailto:bookings.farnleycc@gmail.com)**

**Below is key guidance to consider.**

**Safeguarding contact:**

**Peter Allison**

**[farnleycommunitycentre@gmail.com](mailto:farnleycommunitycentre@gmail.com)**

**07960010618**

It is important that all the facts of the hire are established prior to the confirmation of

## Appendix 1

### Forms of Abuse

Abuse of a person often includes behaviour that is abusive in one or more of the categories outlined below. In particular the majority of people who are experiencing abuse of any kind will also be experiencing emotional abuse

Anyone may be a perpetrator of abuse

General indicators of an abusive relationship often include the misuse of power by one person over another and is most likely to take place in situations where one person has power over another. For example where one person is dependent on another for their physical care or due to power relationships in society e.g. between a professional worker and a service user, a man and a woman, and a person belonging to the dominant race/culture and a person belonging to an ethnic minority.

The clearest indicator of abuse is if abuse is witnessed or if someone makes a hint, partial or full disclosure that abuse is taking place

**Emotional Abuse** may include

intimidation and threats, humiliation, racial, sexual or homophobic abuse, harassment, coercion and extortion, being isolated from people other than the abuser and from other sources of information, being made to say or do things or think in ways prescribed by the abuser, being deprived of sleep, being kept exhausted and debilitated and having one's sense of reality distorted by misinformation/lies or misuse of medication.

It may also include denying choice and deprivation of privacy and other human rights, lack of access to activities and an abusive institutional "regime"

**Signs that emotional abuse is taking place include** difficulty gaining access to the adult on their own, or the adult gaining opportunities to contact you, the adult not getting access to medical care or appointments with other agencies, low self esteem, lack of confidence and anxiety, increased levels of confusion, increased urinary or faecal incontinence, sleep disturbance, person feeling /acting as if they are being watched all of the time, decreased ability to communicate, communication that sounds like things that the perpetrator would say, deference/submission to the perpetrator and behaviours that show resistance to a perpetrator.

**Physical Abuse** may include

a person being hit, punched, kicked, slapped, pushed, thrown, pinched, shaken, strangled, suffocated, hit or beaten with an object, stabbed, burnt or scalded.

It may include inappropriate restraint or imprisonment, abuse of medication, deprivation of use or misuse of physical aids and adaptations and neglect of personal care, food, drink and warmth

**Signs that physical abuse is taking place include** injuries that are consistent with physical abuse, injuries that are the shape of objects, presence of several injuries of a variety of ages, injuries that have not received medical attention, a person being taken to many different places to receive medical attention, pressure sores, skin infections, dehydration, unexplained weight changes or medication being “lost” .

It may include physical conditions that mean a person is restrained or imprisoned, e.g. locks that the person cannot use, wheel chair tyres deflated.

It may include behaviour that indicates that the person is afraid of the perpetrator, for example flinching at movements made by the perpetrator, change of behaviour in presence of the perpetrator or avoiding the perpetrator.

**Sexual Abuse** includes any forced or coerced involvement in sexual activity.

It may involve physical contact e.g. rape, buggery, oral sex, kissing and unwanted touching. It may include the person being abused being coerced into physical activity e.g. masturbating the perpetrator or carrying out sexual acts for which others pay the perpetrator. Non-contact abuse can include being forced or coerced to be photographed or videoed, to allow others to look at their body or to watch them masturbate, to look at photographs or videos, being sexually harassed verbally or through the sending of unwanted gifts.

Some sexual activity is defined as abuse because a person cannot legally consent to the activity. This includes incest, sexual activity with someone with a mental disorder or learning difficulties and sexual activity between a care worker and someone with a mental disorder or learning difficulties.

**Signs that sexual abuse may be taking place.**

The signs that a person is experiencing emotional abuse and that they are experiencing sexual abuse are often similar. This is due to the emotional impact of sexual abuse on a person’s sense of identity and boundaries and to the emotional manipulation that a perpetrator may carry out in “grooming” a person they plan to abuse sexually

The signs may include signs of sexual activity e.g. sexually transmitted diseases or pregnancy, pain/soreness/itchiness, tears or bruises in genital/anal areas, breasts or inner thighs, unusual difficulty in walking and sitting. It may include signs that someone is trying to take control of their body or body image, e.g. head banging, self-harm, putting on or losing a lot of weight, anorexia or bulimia.

They may include sexualised behaviour by the person experiencing the abuse towards the perpetrator and/or towards other people. It may include behaviour that indicates that the person is afraid of the perpetrator, or a change of behaviour in presence of the perpetrator or avoiding the perpetrator.

It may be that the perpetrator is observed to have an over familiar or sexualised relationship with the person experiencing abuse.

**Financial Abuse** includes any act of theft of money or property or use of money or property without the adults consent or without the appropriate legal authority. This often includes the misuse of money intended for or belonging to an adult by someone who has been trusted to handle their finances or who has assumed control of their finances by default.

**Signs that financial abuse may be occurring** include sudden loss of assets, unusual or inappropriate financial transactions, change to or pressure to change signatories to bank accounts/house deeds, visitors whose visits always coincide with the day a person's pension/benefits are cashed, person not receiving material goods (e.g. clothes), food, bills not being paid, household repairs not being carried out even though they do have an income that could cover these items, person having no choice in how their money is spent on their behalf, person who is managing the adults financial affairs is evasive or uncooperative, and only asks workers about financial aspects of the adults care.

**Neglect** is the intentional or unintentional failure to meet the needs of a person who is dependent on others for those needs to be met.

**Signs that neglect is occurring** include malnutrition, rapid or continuous weight loss, complaints of hunger, dehydration, lack of personal care, bedsores, ulcers, sensory deprivation (e.g. the lights or the television being left on constantly) inadequate or inappropriate clothing, inadequate or excessive heating, dirty clothing/bedding, person being left wet or soiled, untreated medical problems, too much or too little exercise or social activity, signs of medication over or under use, not having access to necessary physical aids and adaptations

If neglect is due to a carer being over stretched or under resourced the carer may seem very tired, anxious or apathetic.

**Discrimination** includes discrimination on the grounds of a persons race, sex, sexuality, age, disability and other forms of harassment, slurs or similar treatment.

## Appendix 2

### Capacity

The prime principle that underpins both current law and medical practice with regard to issues of mental capacity is that people should be

*“enabled and encouraged to take for themselves those decisions which they are able to take”(Law Commission Report No. 231 (1995), para 2.46).*

All adults are presumed to have legal capacity unless there is clear evidence to the contrary. The Mental Capacity Act defines a person lacking mental capacity as:

*“if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.”Mental Capacity Act 2005, Sect 2(1)*

This definition reflects the current legal position that capacity must be assessed in relation to the particular decision the individual makes.

The Act also defines the following key principles:

- a) A person must be assumed to have capacity unless it is established that he lacks capacity.
- b) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- c) A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- d) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- e) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Therefore the test of capacity to give consent to medical treatment may differ from the test of capacity to make a gift or draw up a will. It is essential that in situations where a vulnerable adult is thought to lack capacity, both medical and legal advice is sought at the earliest opportunity.

The Act defines the following test for assessing capacity. An individual must have the ability to:

- a) to understand the information relevant to the decision,
- b) to retain that information,
- c) to use or weigh that information as part of the process of making the decision,

**and**

- (d) to communicate his decision (whether by talking, using sign language or any other means).

An adult's mental capacity may fluctuate or change over time. If a decision is not required immediately and the person's capacity is likely to be restored then the decision can be deferred until that time.

All assessments of an adult's capacity should be recorded in their written record case file.

### **Independent Mental Capacity Advocacy**

In cases where a person lacks capacity and does not have anyone to represent them, an Independent Mental Capacity Advocate can be appointed to advocate on their behalf. In the case of an safeguarding adults concern, this service can be approached if there is not an appropriate person to represent the person who lacks capacity, e.g. the only person available is implicated in the abuse that is being investigated.

## Appendix 3

### Criminal Offences and Legal measures against Perpetrators

This section should not be seen as a definitive statement of the law.

#### Criminal Offences

The criminal law provides for the Crown to take action against individuals who carry out criminal offences

The police should be consulted about any incident of safeguarding adults that may involve a crime having been committed.

The police will investigate an alleged crime and determine whether or not it should be referred to the Crown Prosecution Service. They are able to offer other advice e.g. re crime prevention.

In order for a case to go to court the Crown Prosecution Service need to be shown that:

- There must be sufficient evidence to secure a realistic prospect of conviction against each defendant against each charge. This means that a properly directed jury or bench magistrates will be more likely than not to convict the defendant of the charge alleged.
- Evidence must be admissible and reliable. This includes competency of witnesses and their ability to provide an account in court and to be cross examined
- If there is a realistic prospect of conviction then a prosecution will usually take place if it is in the public interest. Public interest is judged on a case by case basis. Information on which to base this decision is vital to the CPS.

Public interest factors in favour of a prosecution include:

- the seriousness of the offence (likely penalty)
- the effect of the crime on the victim
- any racial motivation or other form of discrimination
- the alleged perpetrator being in a position of authority or trust
- the victim is vulnerable, in considerable fear, or suffered personal attack, damage or disturbance
- there is a marked difference in chronological age or stage of development between the victim and the defendant
- there is an element of corruption

Public interest factors against a prosecution include:

- serious ill health of the defendant
- the likely effect of the prosecution on the victim's health

The police will not usually pursue a prosecution unless the victim of the crime has made a complaint to them. The exception to this is assault. (As it is impossible to consent to an assault taking place on oneself then other evidence that an assault has taken place is evidence that a crime has been committed.)

#### Civil Law

Civil Law provides for an individual to sue another who has acted in a way that has been detrimental to them. The result of a civil action that is successful for the applicant is often that they receive financial

compensation for the injury or damage done to them. However, other action is also possible e.g. the granting of injunction(s) to prevent the perpetrator carrying out actions of assault, battery, nuisance, false imprisonment or trespass.

Under civil law the level of proof needed is “the balance of probabilities”. This is less than in a criminal case.

**If a person does not have the mental capacity to sue on their own behalf under any Civil Law proceedings it is possible to sue via the use of a “next friend”** who is appointed to conduct legal proceedings (Rules of the Supreme Court, Order 80) to take action on the persons behalf

### **Financial abuse**

Theft is the dishonest appropriation of property, intending to deprive the owner permanently (section 2 Theft Act 1968).

Theft does not necessarily involve physically moving something; any purported exercise of the rights of the owner will suffice, but dishonesty does have to be proved, and it is a defence to show a reasonable belief that the owner would have consented had she or he known.

A person may also be induced by deceit to enter into contractual arrangements that are plainly prejudicial. The deceit would invalidate the contract, and the other party may be guilty of obtaining property by deception contrary to section 15 of the Theft Act, or obtaining a pecuniary advantage by deception (section 16), or of fraud, which is defined as dishonesty prejudicing someone else's economic rights.

These three offences are useful when the victim is persuaded to part with intangibles (e.g. shares or benefit entitlement) at an undervalue. The difficulties are of demonstrating that there was dishonesty and that the contract was not freely and openly-entered into on both sides. The offences afford little protection from what are bad bargains, for example procured by unfair pressure, in the absence of clear deceit.

Under Civil Law contract law provides that an individual will not be held liable under a contract that was entered into under duress; undue influence or in the absence of full, free and informed discussion.

## Physical and Sexual Abuse

### Offences

- **Assault:** any physical contact without consent is capable of constituting an assault, as is any actual or threatened use of physical violence.

It is in the nature of "common" assault that it may leave no physical evidence and, unless there are witnesses, prosecution may be unlikely, as it is the perpetrator's word against his or her victim's. Carer's and professionals will want to bear in mind, however, that common assault does cover a wide range of language and behaviour. Any act or words involving a use or threat of violence towards someone will constitute an assault.

There are separate and more serious offences **if the assault results in injury:**

- Assault occasioning Actual Bodily Harm ('ABH' - section 47, Offences against the Person Act 1861). An assault which leaves any physical injury such as a bruise or a scratch.
- Assault occasioning Grievous Bodily Harm ('GBH' - sections 18 and 20, Offences against the Person Act 1861). An assault which causes a cut, a break in the skin, serious damage to internal organs or broken bones.

Trespass to the person i.e. **assault, battery and false imprisonment** may provide a basis for one person to sue another under civil law.

- An assault is any action where there is reasonable cause to fear that harm to the person was intended. This covers a range of threatening behaviour that falls short of physical harm
- Battery comprises actual, direct and intentional use of force to a person and includes any unwanted touching, e.g. unwanted kiss, removing of teeth, throwing an object at a person
- False imprisonment involves the infliction of physical restraint that has no legal authorisation

### Sexual Abuse

The following offences are of particular importance in protecting vulnerable adults. Note that the phrase "mental disorder impeding choice" includes learning disabilities and all offences are within the Sexual Offences Act 2003 unless stated otherwise.

- Sexual assault (section 3)
- Rape (section 1)
- Offences involving a person with a mental disorder impeding choice: sexual activity; causing or inciting to engage in sexual activity; engaging in sexual activity in the presence of; causing to watch a sexual act (sections 30 to 33)



- Use of inducement, threat or deception: to procure sexual activity with a person with a mental disorder impeding choice; causing to engage in or agree to engage in sexual activity; engaging in sexual activity in the presence of such person; causing to watch a sexual act (sections 34 to 37)
- Care workers: sexual activity with a person with a mental disorder; causing or inciting sexual activity; sexual activity in the presence of a person with a mental disorder; causing a person with a mental disorder to watch a sexual act (sections 38 to 41, Sexual Offences Act 2003)
- Incest (sexual relations between siblings, parents and children, and grandparents and grandchildren - sections 5 and 15, Sexual Offences Act 2003).

It is an offence under section 127 of the Mental Health Act 1983 for **a member of volunteers or a carer to wilfully mistreat or neglect someone with a mental health disorder**. This would include people with dementia and people with learning difficulties.

It is also an offence under Section 44 of the Mental Capacity Act 2005 for **a member of volunteers or a carer to wilfully ill-treat or neglect a person who lacks capacity or is reasonably believed to lack capacity**. This includes people with dementia and people with learning difficulties.

### Prosecuting the perpetrator

The physical evidence in cases of physical and sexual abuse may well be problematic. It may prove capable of supporting accidental or consented, as well as non-accidental or non-consensual scenarios. Sexual abuse in particular may leave little or no forensic evidence and it is rare for clinical evidence alone to identify the perpetrator. For all these reasons, the accounts of the victim and any witnesses are likely to be crucial to a successful prosecution. If the victim is not able to give evidence then this in turn may lead to cases not being prosecuted unless the evidence is strong and/or there is a high chance of a guilty plea. New legislation will hopefully provide increased protection for “vulnerable” witnesses and facilities to enable their evidence to be given in court.

### Action that can be taken to prevent (further) abuse

The Police have the power to enter and search premises to save life or limb or prevent serious damage to property (section 17 Police and Criminal Evidence Act) and to arrest someone to prevent them causing physical injury to another person or to protect a child or others (section 25)

A person who has been **physically or sexually assaulted or harassed** may apply to the County Court for injunctions, restraining orders, non-molestation or ouster orders which may have the power of arrest attached. These orders stop a person making contact with another person and/or visiting named geographical areas/buildings. They therefore can be used to remove a perpetrator. If a power of arrest is attached then if the person breaks the order the police may arrest them immediately. Orders are granted under the Family Law Act 1996 (which applies to partners, x-partners, relatives and people sharing the same household) and the Protection from Harassment Act 1997.

Under Civil Law injunctions may be granted to prevent the perpetrator carrying out actions of assault, battery, nuisance, false imprisonment or trespass.

Injunctions restraining the perpetrator from contact with the adult may also be granted through the law of tort (e.g. Egan v Egan 1975, Patel v Patel 1988) where a person with a duty of care (see below) has assaulted or threatened another person

The Mental Health Act (1983) provides for an Approved Social Worker to make an application for the admission to hospital of someone with a mental disorder with a view to the protection of others. They may also apply for them to be received into Guardianship. Guardianship gives the guardian the power to decide where the person should live, to require them to attend for medical treatment, occupation, education or training and for specified people to have access to them at the place they are living.

Violence or causing nuisance towards other tenants is a breach of LCC Housing Department tenancy agreements. Tenants can be evicted from their home if they are violent or cause nuisance to other tenants, including those they share a property with.

### **Emotional Abuse**

Threats of physical or sexual assault and harassment are crimes of common assault (Criminal Justice Act 1988). Threats and false imprisonment are grounds for one person to sue another under civil law (see above).

Where there is a duty of care (see below) acts which cause psychological harm or nervous shock or which do not prevent it (e.g. witnessing abuse and not reporting it) are grounds for one person to sue another

**Racial violence abuse or harassment** are crimes under the Race Relations Act 1976

### **Improper medication**

It is an offence to administer drugs that have been prescribed for someone else (section 58, Medicines Act 1968).

### **Neglect**

There is no criminal offence of neglecting a dependent adult of sound mind. However, it is an offence under section 127 of the Mental Health Act 1983 for a member of volunteers or a carer to wilfully mistreat or neglect someone with a mental health disorder. It is also an offence under Section 44 of the Mental Capacity Act 2005 for a member of volunteers or a carer to wilfully ill-treat or neglect a person who lacks capacity or is reasonably believed to lack capacity. This would include people with dementia and people with learning difficulties.

### **Duty of Care.**

Under civil law the law of tort covers contracts and enables one person to sue another (or an organisation) if a contract is broken. Under civil law it is an implied term of any contract for care services that the person should be looked after to a reasonable standard, either at home or in a residential care or day-care setting. If care is consistently below that reasonable standard, the person receiving care may have a claim for breach of the implied term of the contract.

Vicarious liability may also arise e.g. the liability of a home owner for the negligent acts of his/her volunteers

Where care is provided without direct payment or payment at all there is no contract to enforce, however, there may still be a duty to care. A duty of care is owed to "persons who are so closely and directly affected by my act that I ought reasonably have them in contemplation as being so affected when I am directing my mind to the act or commission in question". The standard must be lower than would be expected of a paid

carer, however, where the court found that there was a duty of care serious deficiencies might constitute actionable negligence.

## Compensation

Financial compensation to people who have experienced abuse is the most common result of cases where an adult has sued successfully for breach of contract through the law of tort.

In the past cases against publicly funded agencies have not come to court as this has been seen not to be in the public interest. The implementation of the Human Rights Act (1998) and recent case law has opened up the possibility of public agencies being sued for failing to fulfil their duties. This could include failure to adequately protect individuals using the service from inhuman and degrading treatment. In such a case a service user or their next friend could sue an agency that had failed to protect.

The Criminal Injuries Compensations Scheme has the power to make payment to those who have suffered personal injury as a result of a crime of violence. The crime must have been reported to the police. The standard of proof is lower than that of the Crown Prosecution Service, i.e. "the balance of probabilities" is that the crime occurred. This means that people whose cases did not go to court may be eligible for compensation. The case must be presented within three years of the crime having occurred, except where the injury has been inflicted deliberately in which case the case must be presented within six years of the injury occurring.

## Appendix 4

### Legal actions that can be taken to protect an adult

Usually an adult must consent to any action taken to protect them. However, **under Common Law in situations of urgent, high risk, in order to save life, it is acceptable to intervene without consent**

**Where an adult does not have the capacity to consent to actions taken to protect them it must be clarified who, if any one has the power to act on their behalf.** This includes:

- A person who has been granted Power of Attorney at the request of the adult when they had capacity. This includes a general power of attorney (i.e. the person can act on behalf of the adult in all matters) as well as Power of Attorney over financial matters alone (see below)
- A person or agency acting as a Guardian under the Mental Health Act (1983) or a Designated Safeguarding Officer of a hospital or nursing home where a person is detained under the Mental Health Act (1983)
- An agency acting to pursue their responsibilities. e.g. their duty of care

## Declarations

Where the legal rights or duties of several people or agencies seem to be competing or unclear it is possible to seek a legal declaration from the High Court. In some circumstances an injunction may be granted to uphold the judgement.

This area of law is developing in relation to safeguarding adults cases

For example one court made a judgement that decisions about where a young woman with a learning disability lives should be made by the local authority. She had been experiencing abuse from her family with whom she had been living and did not have capacity to choose for herself where she should live.

## The following powers exist for agencies to intervene in specific circumstances

### Access to the adult

- The police have a power to enter and search premises in order to save life or limb or prevent serious damage to property
- Under the Mental Health Act (1983) s.115 an approved social worker has the power to enter an inspect premises (but not by force) if there is cause to believe a person suffering from or appearing to be suffering from a mental disorder is not under proper care. Where one co-owner gives consent to enter a property and another does not then the permission of the first co-owner is taken.

Under section 129 it is an offence to unreasonably obstruct an approved social worker or other person approved under the act from having access to and interviewing a person with a mental disorder

- Section 48 of the National Health and Community Care Act (1990) provides for a service user/resident to be interviewed in private for the purposes of investigating a complaint **N.B. this piece of legislation contravenes the Human Rights Act.**
- Under the Mental Health Act (1983) Guardianship can be used to require that Approved Social Workers and medical practitioners have access to an adult with a mental disorder (see below)

### Removal of the adult

- The National Assistance Act 1948 s.47 and the National Assistance (Amendment) Act 1951 s.1 gives the power for compulsory removal from their home of a person who is suffering from grave, chronic disease or who are aged, infirm or physically incapacitated and living in unsanitary conditions, where they are unable to devote proper care to themselves and are not receiving it from others. This is seldom used and the Law Commission has recommended it's abolition, however, it may be a solution in some situations
- Under the Mental Health Act (1983) s.135 an approved social worker may apply to a Justice of the Peace for a warrant for a police officer to remove a person suffering from a mental disorder to a place of safety if she/he is being ill-treated, neglected or is unable to care for him/herself
- Under the Mental Health Act (1983) a police office may remove a person with a mental disorder from a place to which the public have access (e.g. a day centre) in the interests of that person or for the protection of others, to a place of safety for up to 72 hours.
- Under the Mental Health Act an approved social worker may apply for a person who is suffering from a mental disorder to be admitted to hospital for their own health and safety
- An approved social worker can apply under the Mental Health Act for a person with a mental disorder to be admitted to hospital or to be received into Guardianship in the interests of their own health and safety.

Guardianship gives the guardian the power to decide where the person should live, to require them to attend for medical treatment, occupation, education or training and for specified people to have access to them at the place they are living.

### **Provision of services**

- There is a duty under the National Health Service and Community Care Act (1990) and the Carers Recognition and Services Act (1995) to provide an assessment and on the basis of the assessment offer services to people covered by the act and to their carers. A carers assessment may be particularly useful where carer stress is a key factor in the abuse that is occurring or if it is the carer that is experiencing abuse. The National Assistance Act (1948), the Chronically Sick and Disabled Persons Act (1970), the Health Services and Public Health Act (1968), the National Health Service Act (1977) and the Disabled Persons (Services Consultation and Representation) Act 1986 provide the basis for the provision of services to adults.
- Guardianship under the Mental Health Act (see above) can require that a person with a mental disorder can attend for occupation, education, training or medical treatment.
- The Housing Act 1996 places a duty to provide accommodation for homeless people with a priority need e.g. someone who has left their own home due to experience of violence or abuse and/or who is vulnerable because of old age, mental illness or handicap or physical disability or other special reason

### **Abuse occurring within a registered residential or nursing home (or other registered services) or hospital**

#### **Action against the home owner/service provider**

- The Registered Homes Act 1984 gives the Local Authority and the Health Authority powers to enter and inspect homes and provides for minimum standards of care to be set in homes registered to provide care. Section 10 provides for the cancellation of registration of a home if the owners fail to meet the minimum standards, section 20 provides for the granting of orders for the immediate closure of homes. The relevant inspection unit(s) should be contacted in any situation involving the abuse of a person who lives in or receives registerable services.
- Agencies that commission care services, for example Social Services, may have contracts that include stipulations about the level of care provided and also that organisations should have an safeguarding adults policy. Breach of contract by not providing adequate care can result in the contract being withdrawn and therefore to that agency no longer placing clients with the organisation.

### **Financial Abuse**

- An adult with capacity can apply under the Powers of Attorney Act (1971) (the donor) can apply to give another (the attorney) legal authority to manage their financial affairs. If the donor loses capacity the Power of Attorney becomes invalid.

Alternatively an adult with capacity can grant Enduring Power of Attorney to one or more people acting jointly or severally (it may give more protection from abuse by the attorney for someone to have more

than one attorney). Enduring Power of Attorney enables the attorney(s) to act on the donor's behalf if the donor has lost capacity to manage their own affairs. The Enduring Power of Attorney is made on a special form available from a solicitor or a law stationer. The EPA may be used as Power of Attorney whilst the donor has capacity (unless they specify that this should not happen). If the donor loses capacity the attorney must register the EPA with the Public Trust Office.

- These measures can be used to make sure that a person's finances are controlled by someone trustworthy. The powers of each attorney can be restricted, e.g. to control of money for specific purposes or of certain amounts of money.
- If the attorney misuses their power a complaint should be made to the Public Trust Office who will investigate. If the attorney is found to be unsuitable then the Court of Protection may then appoint a Receiver (see below)
- If a person who does not have mental capacity and has not appointed an attorney has income, capital or savings then the Mental Health Act (1983) and the Court of Protection Rules 1994 allow for the Court of Protection on medical evidence that the person no longer has capacity to appoint a Receiver to manage the person's financial affairs. The receiver may be a relative or a friend, the Local Authority or the Court of Protection itself. A "Short Procedure Order" gives a receiver to control a particular aspect of the person's finances for a limited period of time e.g. can be used if someone without capacity wins the lottery.
- A person may apply to the Benefits Agency to act as an Appointee for someone without capacity. This enables the appointee to collect and spend a person's benefits on their behalf, in addition they can use a small amount of the person's savings to meet unforeseen emergencies on the person's behalf, (£500 if the person is living in their own home, £1,700 if they are living in a residential or nursing home). The Benefits agency usually visit the person whose benefits are in question and the person who is applying to be appointee. The Benefits Agency has the power to revoke appointeeship and should be informed if an appointee is thought to be misusing their role