

Kent and Medway Multi-Agency Policy, Protocols and Guidance Amendments for Publication 31st July 2010

The dates at the beginning of the documents have been updated.

Sections in Red have been Added or Altered

The following signatures have been updated:

- Kent Police has been updated to show **Ian Learmonth** as the new Chief Constable.
- Medway NHS Foundation Trust has been updated to show **Mark Devlin** as the new Chief Executive.
- Darford and Gravesham NHS Trust has been updated to show **Susan Acott** as the new Chief Executive.

Policy Section (blue)

4.11 Restraint (formally referred to as Physical Intervention)

It is illegal and unprofessional to use any form of physical, mechanical, **emotional or any other form of** restraint as a means of punishment. **This could also include chemical restraint i.e. the inappropriate use of medication to sedate or control behaviour.** Every employee has a professional and moral duty to protect all vulnerable adults and promote their welfare and safety.

Restraint may only be considered in those situations where there is a clear or perceived risk of an adult injuring him/herself or others, or seriously damaging property. Physical restraint is defined as 'the positive application of force with the intention of overpowering the adult in order to protect him/her from harming themselves, others or seriously damaging property' (On Restraint with Children and Learning Disabilities, Professor C Lyons HMSO). Any use of physical force may constitute an assault and therefore must be applied only as a last resort.

Section 6(4) of the Mental Capacity Act (MCA) 2005 states that someone is using restraint if they:

- **use force – or threaten to use force – to make someone do something they are resisting, or**
- **restrict a person's freedom of movement, whether they are resisting or not.**

Any action intended to restrain a person who lacks capacity will not attract protection from liability unless the following two conditions are met:

- **the person taking action must reasonably believe that restraint is necessary to prevent harm to the person who lacks capacity, and**
- **the amount or type of restraint used and the amount of time it lasts must be a proportionate response to the likelihood and seriousness of harm.**

If any form of restraint is carried out in an individual situation, it must be evident that without such action, injury would occur to the vulnerable adult or others or serious property damage may result. Before considering any type of restraint, all other possible alternatives must be explored in order to manage the behaviour and only the least restrictive and least detrimental alternative should be employed. Any restraint should be commensurate with the risk involved and should only be used as a short-term measure. Care plans developed with input from service user, family, health and social care professionals should clearly identify when and how any agreed restraint method can be used. This must be monitored closely **by the service** to ensure that agreed procedures are effective and not abusive, counter-productive **or unlawful**.

4.12 Deprivation of Liberty Safeguards (DOLS)

The Link between DOLS and Safeguarding Adults Processes

The majority of applications which result in an authorisation not being granted, is due to the Best Interests Assessor (BIA)'s conclusion that deprivation of liberty is not occurring. In cases where authorisation is not granted because the best interests assessment fails for other reasons, e.g. the deprivation is not considered to be in the relevant person's best interests, or mental capacity assessment fails because the person is assessed to have capacity, then it becomes a situation of unlawful deprivation of liberty and potential safeguarding concern.

When this happens, the relevant Supervisory Body (SB) signatory is immediately alerted by the DOLS office so that they are aware of the seriousness of the unlawful situation. The DOLS office will also immediately inform the Managing Authority that DOLS authorisation is not granted and the relevant person is now being unlawfully deprived of their liberty. The responsibility then falls on the individual SB to contact the MA and agree to take things forward as appropriate, so that action is taken to end the unlawful deprivation of liberty as swiftly as possible and safeguarding alerts raised where appropriate.

Protocols Section (yellow)

3 Lead Responsibility

3rd paragraph changes made:

The designated senior officer may delegate the task of assessment/investigation to an experienced practitioner **who has received an appropriate level of training and has relevant experience and knowledge, from whichever agency they work and they will then report back to the DSO**. This practitioner will be referred to as the investigating officer (IO). Where the nominated IO is not a representative of the social services agency, the coordination of the investigation /assessment will be the responsibility of

the DSO. The DSO or the social services agencies investigating officer will work with those charged with carrying out aspects of the investigation/assessment to coordinate the work to meet the terms of reference agreed for the investigation/assessment work.

It is important that the practitioner leading the investigation should be independent of the decision making within the safeguarding concerns, although the evidence they provide will support effective decision making.

The designated officer may be a police officer or a representative of the NHS.

4.8.1 Referral level 1 Internal

2nd and 3rd paragraph changes made:



Following internal discussion and consultation with the commissioning authority and the local social services agency, it may be agreed that a level 1 response is appropriate. (See guidance section 35, Framework for responding to adult protection concerns). The service provider must explain how they intend to investigate/assess the concerns raised in line with their discussions.

Following the providers internal investigation/assessment of the case, records must show what actions were taken and by whom, and the outcome, **for example, staff disciplinary procedures or staff training, supervision, and development.** Specific reference must be made to risk assessment and any additional protective responses necessary for both the victim and the perpetrator. Records should be available to the Regulatory Authority, Contract and Commissioning staff.

7 How Does Initial Information Gathering Take Place?

- i** Allocate an appropriately trained and experienced **person** to become involved in the case and to take any actions that may be required. The allocated **person** will be referred to as the investigating officer. The DSO will need to consider the communication, language, cultural, religious and gender factors when allocating the case. The DSO will also consider whether any conflict may arise if the client's care/case manager, community or district nurse carries out the investigation/assessment as this may compromise their normal relationship with the client and family/carers. (See protocols section 13.)



The allocated investigating officer(s) may be from the Social Services Agency, NHS, the Police or a service provider (level 1 case).

10 Proceeding to an Investigation

4th paragraph changes made:

If a criminal act is suspected then the police investigation will take precedence. It is however, important to ensure that the protection of the vulnerable adult(s) is not unduly delayed by their investigation. Agreement will be required regarding actions to be taken by others while the police investigation is being carried out. Police action may be supported by care/case management, health or regulatory staff but if this is not the case, liaison over the progress of the police investigation should be carried out by the **DSO or the** investigating officer.

10.2 Who is responsible for what?

3rd bullet point changes made:

- Where the alleged abuse has taken place in a regulated service **and formal statements are required under the Health and Social Care Act 2008.** The regulator is responsible for any action in relation to regulatory concerns is conducted within the requirements of the Act. (This work **may** be carried out in parallel with other investigatory activities).

13.1 What are my responsibilities as a designated senior officer (DSO)?

- r** As the chair of the planning meeting or case conference you should take responsibility for recommending that the employer makes a referral to Independent Safeguarding Authority (ISA) in appropriate cases. The local authority under the Safeguarding Vulnerable Groups Act 2006 and Vetting and Barring Scheme (VBS) also has a responsibility to make a referral to the ISA where they consider that the ISA may barr the person.

13.2 What are my responsibilities as the investigating officer?

The role of the investigating officer is central to the adult protection process. If you are asked to be an investigating officer for a case you should have an understanding of the multi agency adult protection policy and protocols and be appropriately trained and experienced to undertake the task.

**** Where the investigating officer is not a representative of the Social Services Agency, the Designated Senior Officer (DSO) will take responsibility for completing the CM31 and ensuring information is added to the database. They are also responsible for maintaining a complete record of contacts in relation to the case.***

The responsibilities of the investigating officer assigned to co-ordinate the assessment and the investigation are to:

- a. * Ensure that an appropriate alert/referral form has been completed by the professional receiving the initial information.
- b. * Ensure that the adult protection data has been entered onto the adult protection section of the client database.
- e. * Ensure that a complete record of contacts, meetings, phone calls, interviews and decisions is made and kept in the closed section of the client's file.

13.4 What are my responsibilities as a representative of the contracts team or the regulatory authorities? (Care Quality Commission)

- g Where an adult protection meeting has made a recommendation that the employer report their staff member to the ISA and the employer is reluctant or refuses to do so, the regulator should be informed. The regulator **may** address this issue with the employer. **The regulator may decide to make the referral for the worker but this will be in addition to the referral being made by the local authority under their duties under the Safeguarding Vulnerable Groups Act 2006.**

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Adult Protection Consultation/Referral Protocol
Between Police and The Social Services Agency

Please refer to flowchart:

Formal referral to police PPU by phone followed by referral form sent by secure email.
Discussion about process.
Police will attend planning meeting.

17 Guidance Notes for Adult Protection Protocol between Adult Social Services in Kent and Medway and Acute Hospital Trusts

5th paragraph changes made:

When the investigation/assessment has been completed the HAPLM should complete the monitoring information on the CM31. They should also complete a CM32 summarising the result of the investigation/assessment of the case and any actions to be taken. These forms together with copies of any evidence gathered should be passed to the Hospital Based Care Management Team. This team should ensure that the monitoring information is entered onto

SWIFT/RAISE. The papers should then be passed to the Community Based Adult Social Services Locality head of service /Senior Manager for the locality where the **alleged abuse occurred**. They will be responsible for countersigning the CM32 and ensure that the closure information is fully entered on the SWIFT/RAISE.

Guidance Section (green)

2 Legal Issues Relating to the Abuse of Vulnerable Adults

Sub-sections 2 and 3:

2 Deputyship

Under the Mental Capacity Act (MCA) 2005, the Court of Protection will appoint a deputy to manage a person's property and affairs in similar circumstances to those in which they would have appointed a receiver in the past, if a person who lacks capacity to make decisions about property and affairs has not made an attorneyship (see below). Receivers appointed by the Court before MCA commences will be treated as deputies, but they will keep their existing powers and duties.

Deputies for personal welfare decisions will only be required in the most difficult cases. Deputies must be at least 18 years of age. They have to follow the statutory principles and make decisions in the best interests of the person who lacks capacity, and must only make decisions the Court has given them authority to make. The Court of Protection has the power to remove deputies who act inappropriately.

3 Power of attorney (Under the Mental Capacity Act 2005 From October 2007 only Lasting Powers of Attorney can be made although existing Enduring Powers of Attorney continue see legal section 22 for further information)

3.1 A power of attorney is a legal document that allows one person to give another person authority to make a decision on their behalf. Under a power of attorney, the chosen person (the attorney or donee) can make decisions that are as valid as one made by the person (the donor). The Mental Capacity Act (MCA) 2005 replaces the Enduring Power of Attorney (EPA) with the Lasting Power of Attorney (LPA). It also increases the range of different types of decisions that people can authorise others to make on their behalf. As well as property and financial affairs (which EPAs cover), LPAs can also cover personal welfare (including healthcare and consent to medical treatment) for people who lack capacity to make such decisions for themselves.

3.2 An enduring power of attorney is a power of attorney that continues after the adult becomes mentally incapable of managing their own affairs. When the attorney believes that the adult is or is becoming mentally incapable, the attorney must apply to register the enduring

power of attorney with the Office of the Public Guardian (OPG) before they can act or continue.

- 3.3 Only adults aged 18 or over can make an LPA, and they can only make an LPA if they have the capacity to do so. Attorneys must be at least 18 years of age. An LPA must be registered with the OPG before it can be used. Section 9(4) of the MCA states that attorneys must meet the requirements set out in the Act. They have to follow the statutory principles and make decisions in the best interests of the person who lacks capacity, and must also respect any conditions or restrictions that the LPA document contains. The OPG's Compliance and Regulation Unit (0207 664 7734) deals with complaints in relation to registered LPAs, EPAs and Deputies. The Court of Protection has the power to remove attorneys who act inappropriately.

AP1 Form changes made:

Bottom of page 1:

Does the Service User have any problems with sight, speech, hearing, language, or mental capacity if known?

Please record if the Service User requires an interpreter, support with communication or an independent advocate.

18 Managing Confidential Information in Documents, Reports and Minutes of Meetings

Any decisions made by the social services agency to seek confidential information from another agency should be recorded on the alert form and/or in the minutes of any planning meeting, as well as on any individual record held for the vulnerable adult or the alleged perpetrator. Consent to the disclosure of third party information should be obtained when the information is provided if at all possible. This will enable third party information provided in the course of an investigation/ assessment or at planning meetings or case conferences to be marked 'Open for access' or 'Not to be disclosed beyond the remit of the adult protection process'. All confidential adult protection information marked 'Not to be disclosed' will be placed with all other adult protection information in the closed section of the client's file.

Minutes to be circulated should be marked 'Highly Confidential' and care should be taken to ensure secure storage and appropriate access controls are in place. The file copy of the minutes will show the full names of all of the attendees and those who sent apologies together with the authorities/ agencies/services they represent. Only the file copy will include the full names of the victims, vulnerable witnesses and vulnerable perpetrators. When the minutes are circulated, the initials should be substituted for the full names of the victims, vulnerable witnesses and vulnerable perpetrators.

The Data Protection Act 1998 (DPA) came into force in March 2000 and gives individuals a general right of access to the personal data that relates to them.

The social services 'data subject access request' procedures provides more details on what information can be disclosed and what is exempt from disclosure.

The DPA provides for sharing of information when required by other bodies as long as this is 'the minimum necessary to meet the requirements of the situation' and is necessary to enable the authority itself to discharge its statutory functions. Protection of vulnerable adults is one of those functions.

The formal minutes of planning meetings and case conferences are a record of the issues, outcomes, decisions and recommendations. They should be marked 'Confidential' and be available only to those participating in or invited to the meetings. **It is the responsibility of the local authority circulating the minutes to ensure that they are sent by secure email where available, secure fax or recorded delivery.**

22 Adult Protection Planning Checklist

A decision about how to proceed following the receipt of information that has caused an adult protection alert to be raised may be made in two ways:

- 1 Planning consultation with other relevant agencies, departments, services or people by phone or within the team. This **must be recorded**. If no formal planning meeting is to be held, it should be clear who made that decision and why e.g. sufficient information is already available to allow action to be taken. e.g. care management assessment.
- 2 Holding a formal planning meeting to share information and to aid decision-making. The meeting should involve all the people who may have information to contribute to the planning process. **This may include a provider who may be invited to all or part of the meeting. Exceptions will be where they may be implicated in the alleged abuse or where there are good grounds to believe that their presence may impede the sharing of information and/or the investigation.** In addition, invitations **may** be extended to the client, carers/family.

23 Aide - Memoire for Adult Protection Meetings

1st paragraph changes made:

If this meeting is an initial planning meeting it should involve professionals from relevant agencies and **may** include service providers who **may** have been contacted as part of the initial information gathering. Attendance from individuals with specific knowledge of the situation is recommended. It should not include anyone who may be implicated in the abuse. **(See Guidance Section 22).**



24 Investigation/Assessment Checklist
 (This section has been updated July 2010)

New 2nd paragraph:

Where the investigating officer is not a representative of the Social Services Agency, the Designated Senior Officer (DSO) will take responsibility for completing the CM31 and ensuring information is added to the database. They are also responsible for maintaining a complete record of contacts in relation to the case.

30 The Safeguarding Vulnerable Groups Act 2006 and Vetting and Barring Scheme (VBS)

1st paragraph changes made:

The Safeguarding Vulnerable Groups Act 2006 provides the legislative framework for the new Vetting and Barring Scheme. These new arrangements will be introduced in managed phases from 12th October 2009. The registration process which was due to start on 26 July 2010, has been halted to allow the government to remodel the scheme to what it calls 'common-sense levels'. However, the regulations introduced in October 2009 will still apply. Further announcements will be made later in the year.

Timetable for ISA Registration Process, changes made:

Registration for those engaged in regulated and controlled activities will take place over the next 5 years. **These dates are subject to changes as the government are re-modelling the scheme.**

July 2010	Individual registration has been halted to allow the government to re-model the scheme
November 2010	Mandatory registration of new starters and when moving jobs and so extends to current workforce
January 2011	Those workers who have never had a CRB
January 2012	Those workers with oldest CRB checks usually over 3 years old
January 2013	Those workers who have a more recent CRB of 3 or less years old
January 2014	Anyone else requiring regulated activity registration and commencement of all controlled activity registrations

Responsibility of the Social Services Agency and Police in relation to VBS

The local authority and the police have a duty to carry out an investigation if they receive information that a person, in the course of any regulated or controlled activity, has harmed or may have harmed a child or vulnerable adult. This investigation will be carried out through the safeguarding adults' arrangements.

At the conclusion of the AP process there will be a decision about the outcome of the investigation/ assessment. If the decision concludes that the worker was responsible for the abuse, there will be a need to consider referral by the employer to the ISA. The multi-agency meeting may recommend that the employer makes such a referral. Where the employer is a recipient of a direct payment, the local authority will assume the employer's responsibility in this regard.

In addition the local authority has a duty to make their own referral to the ISA where they consider that the ISA may barr the worker.

If the employer registered under the Health and Social Care Act 2008 is reluctant or refuses to make the referral, this should be reported to the Care Quality Commission who will take responsibility for following this up with the employer.

33 Good practice guidelines for organising and managing adult protection meetings/case conferences

Designated Senior Officer responsibilities

After the meeting - changes made to 6th & 7th bullet points:

- It is your responsibility to agree the final version of the minutes **which will be placed in the client's file. Please note that the names of the victims, vulnerable witnesses and vulnerable perpetrators must be replaced with initials only for all copies circulated.**
- **The distribution of minutes should be in line** with Guidance Section 18 Managing Confidential Information in Documents, Reports and Minutes of Meetings. Minutes for all adult protection related meetings should be sent out within 28 days of the meeting.

34 Good practice guidelines for organising and managing adult protection meetings/case conferences

Administrator's/minute taker's responsibilities

The Meeting – changes made to the 5th bullet point:

- The formal minutes **which will be placed in the clients file** should be written in the past tense and all names should be typed in full.

After The Meeting – changes made to the 5th, 6th and 8th bullet points:

- Try to have a short de-brief with the chairperson immediately after the meeting.
- Ensure that no papers related to the meeting are left in the meeting room.
- Aim to produce draft minutes as soon as possible after the meeting and pass them to the chairperson for approval. If the chairperson is not your line manager, agree with your line manager a timescale that reflects the urgency and priority that should be awarded to the task.
- If you are distressed by the content of the discussions during the meeting talk through the issues with the chair of the meeting or arrange to meet with your line manager to discuss the issues in confidence.
- The responsibility for the content of the minutes rests with the chair of the meeting and they rely on you to produce the draft and the final version of the minutes as soon as possible after the meeting has concluded. **The file copy of the minutes must contain the full names of all professionals and vulnerable people involved.**
- **The copies of the minutes to be circulated should be adjusted to show only the initials of the victims, vulnerable witnesses and vulnerable perpetrators.**
- Ensure that you know exactly who should have the minutes or part of the minutes and any additional papers that may have been agreed.
- Adult protection minutes should be sent out within 28 days of the meeting either by **secure e-mail or fax, or by recorded delivery.**
- If another meeting has been discussed ensure that an appropriate meeting room is booked.