

HARINGEY'S MULTI-AGENCY SECTION 42 ENQUIRY FRAMEWORK AND GUIDANCE

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The following forms are available from the website

Appendix 2: Inter-Agency Safeguarding Adults Concern Form

Appendix 3: Section 42 Enquiry Form

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1. Introduction

- 1.1 This document represents collaboration between the agencies on behalf of Haringey's Safeguarding Adults Board to provide a joint Section 42 Enquiry Framework by which we work in partnership to safeguard vulnerable adults from abuse.
- 1.2 The guidance is for use by all staff that manage or undertake a Statutory Safeguarding Adult Enquiry under [Section 42 of the Care Act 2014](#). It comes into effect once a decision has been reached by the Local Authority that the criteria for such an enquiry has been met. It is in addition to Chapter 4 of the London Multi-Agency Safeguarding Policy and Procedures (available at: <http://londonadass.org.uk/wp-content/uploads/2015/02/LONDON-MULTI-AGENCY-ADULT-SAFEGUARDING-POLICY-AND-PROCEDURES.pdf>) which has been adopted by Haringey Safeguarding Adults Board. Both documents should be followed when undertaking a Section 42 Enquiry.
- 1.3 When the Local Authority becomes aware of a situation that meets the criteria, it **must** make or arrange an enquiry under Section 42 of the Care Act 2014 - ***“The Local Authority must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult’s case (whether under this Part or otherwise) and, if so, what and by whom.”***
- 1.4 All adult safeguarding concerns referred to the local authority should be assessed to decide if the criteria for adult safeguarding are met. Keeping the person who raised the concern informed is an essential requirement.
- 1.5 An enquiry should establish whether and what action needs to be taken to prevent or stop abuse or neglect; and consider how the process can dovetail with any other relevant investigations that are running parallel, such as a children’s safeguarding matter or a criminal investigation.

2. Background to Safeguarding Adults Enquiries (S42 of the Care Act)

The Care Act 2014 sets out the statutory duties and responsibilities for safeguarding, these include the requirement to undertake Enquiries under Section 42 (S42).

2.1 S42 (1) Statutory Safeguarding

A local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there)

- I. Has a need for care and support (whether or not the local authority is meeting any of those needs);
- II. Is experiencing, or at risk of, abuse or neglect; and

III. As a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.

2.2 If based on the presenting information available, it appears that these stages are met then a safeguarding concern should always be raised with the local authority. In an emergency, the emergency services should be contacted. Whenever there is information which indicates that an adult may be, or is, at risk of experiencing abuse, neglect or exploitation, this should be shared with the local authority even when it is also shared with other agencies that may need to be advised, such as the Care Quality Commission or the police. In all circumstances and when safe to do so, the person contacting the local authority about a safeguarding concern would have had a conversation with the adult regarding their consent, views and wishes. The exception to this could be if the person contacting the local authority was unable to have a conversation because of concerns that it would have increased the risk for the adult.

2.3 Immediate actions to be considered by the person raising the concern:

- Make an evaluation of any risks and take steps to ensure that the adult or others are not in immediate danger. Ensure that other people are also not in danger.
- If a crime is in progress, or life is at risk, dial emergency services on 999.
- Encourage and support the adult to report the matter to the police if a crime is suspected and not an emergency situation.
- Safeguard any potential evidence. Do not tamper with, clean up or move any potential evidence if a crime is suspected. Expert advice may be needed from the police.
- If you believe a crime has been committed, contact the police via 999 in an emergency or 101 if less urgent. and then contact Adult Social Care.
- Contact Children's Services if a child or young person is also at risk.
- If you are a member of staff, inform your manager, unless your manager is implicated, then talk to an appropriate independent manager.

2.4 The S42 Duty is placed on the local authority from when the concern is received, there needs to be a degree of information gathering and fact finding to make a decision as to whether to progress to a S42(1) because the 3 criteria are met or S42(2) because it is necessary and a decision is made as to what action and who is best placed to undertake such actions.

The professional making the referral will need to be available to provide additional information or provide an alternative contact person. Where a crime is suspected and referred to the police, then the police must lead the criminal investigations, with the local authority's support where appropriate. The local authority has an ongoing duty to promote the wellbeing of the adult in these circumstances.

An enquiry is the action taken or instigated by the local authority in response to a concern that abuse, or neglect may be taking place. Its' purpose is to decide

whether the local authority or another organisation, or person, should do something to help and protect the adult.

- 2.5 An enquiry will usually start with asking the adult their view and wishes which will often determine what next steps to take. Everyone involved in an enquiry must focus on improving the adult's wellbeing and work together to that shared aim.

The local authority has a duty to consider whether the adult requires an independent advocate to represent and support them in the enquiry and, if so, appoint one. If there is no appropriate family member or other suitable person to represent and support them, the Local Authority must appoint an independent advocate.

- 2.6 The objectives of an enquiry into abuse or neglect are to:

- establish facts;
- ascertain the adult's views and wishes;
- assess the needs of the adult for protection, support and redress and how they might be met;
- protect from the abuse and neglect, in accordance with the wishes of the adult;
- make decisions as to what follow-up action should be taken with regard to the person or organisation responsible for the abuse or neglect; and
- enable the adult to achieve resolution and recovery.

- 2.7 What happens as a result of an enquiry should reflect the person's wishes wherever possible, as stated by them or by their representative or advocate.

- 2.8 The adult should always be involved from the beginning of the enquiry unless there are **exceptional** circumstances that would increase the risk of abuse.

- 2.9 The adult should experience the safeguarding process as empowering and supportive. Practitioners should wherever practicably seek the consent of the adult before taking action.

- 2.10 However, there may be circumstances when consent cannot be obtained because the adult lacks the capacity to give it, but it is in their best interests to undertake an enquiry. Whether or not the adult has capacity to give consent, action may need to be taken if others are or will be put at risk if nothing is done or where it is in the public interest to take action because a criminal offence has occurred.

3. Causing Enquiries to be made

- 3.1 Although the local authority is the lead agency for making enquiries, it may require others to undertake them where this is in the best interests of the adult. The specific circumstances will often determine who the right person or agency is to undertake an enquiry. In many cases a professional who already knows the adult will be the best person.

3.2 Where it causes another organisation to undertake a S42(2) enquiry, or a part of it, the local authority retains the responsibility for ensuring that the enquiry is referred to the right place and is acted upon.

3.3 If the local authority decides that another organisation should make the S42(2) enquiry, then it must make clear the enquiry's terms of reference. These should include:

- The scope of the enquiry,
- Who is responsible for commissioning the enquiry and receiving the report of its' outcome, and
- The timescale for reporting the enquiry outcome.

3.4 The organisation commissioned to undertake the S42(2) enquiry should confirm to the enquiry's commissioner the details of the person who will be responsible for undertaking the enquiry and ensure that it is undertaken within the required timescale.

3.5 Once enquiries are completed, the outcome should be notified to the local authority which will then determine with the adult what, if any, further action is necessary and acceptable, including consideration and recommendation for a Safeguarding Adults Review to the Board

3.6 The local authority, in its lead and coordinating role, should assure itself that the enquiry satisfies its duty under S42(2) of the Care Act 2014 to decide what action (if any) is necessary to help and protect the adult and by whom and to ensure that such action is taken when necessary. In this role the local authority must challenge the body making the enquiry if it considers that the process and/or outcome is unsatisfactory. In exceptional cases, the local authority may undertake an additional enquiry, for example, if the original fails to address significant issues.

3.7 For integrated teams or Services, the LA duty regards to Safeguarding applies and LBH employed staff member identities a safeguarding concern they will need to raise the concerns directly on MOSAIC and in conjunction with their team Manager manage the decision making and associated actions. For other team members they can continue to refer via FRT and the online referral form ensuring that any immediate protections actions have been taken and the views of the Adult at Risk have been sought and recorded

4. Process for Commissioning a S42(2) Enquiry from an Organisation outside the Local Authority

4.1 Duty of the Local Authority causing an enquiry to be carried out

4.1.1 Where the Managing Officer responsible for a S42(2) Enquiry within the Local Authority identifies that another agency is best placed to undertake that enquiry, or an element of it, they must:

- Inform the organisation of this responsibility.
- Explain to the organisation why they are best placed to undertake the enquiry.
- Be satisfied that the organisation being caused to undertake the enquiry is competent to do so and that there is no conflict of interest in this organisation (or the person they appoint as Enquiry Officer) fulfilling this role.
- Agree a reasonable timescale for receiving a report of its outcome. Enquiries must be completed in a timely manner. Enquiries will vary greatly in length and complexity, so prescribing a single target for all reports is not possible. However, only in exceptional circumstances should an enquiry report be received more than 48 days after it has been commissioned.
- Ensure the organisation knows how the Managing Officer can be contacted.
- Ensure the organisation knows of the appointment and contact details of any Independent Advocate or other person acting on the adult's behalf where they have substantial difficulty in taking part in the enquiry.
- Make any amendments to the terms of reference necessary as the enquiry progresses or the adult's desired outcomes change or develop;
- Ensure the enquiry report has addressed the terms of reference and required rectification to be made where it does not.
- Resolve any disagreement regarding the commissioning of the enquiry at the lowest level within the organisation, only escalating within the organisation and local authority where issues remain unresolved and proportionate to the disagreement (NB: where the organisation is the best placed to undertake the enquiry and its terms of reference are within the scope of its jurisdiction, the organisation has a legal duty under the Care Act 2014 to cooperate).

4.2 Duty of the Organisation identified to undertake an Enquiry

4.2.1 The organisation that is caused to undertake an enquiry under S42(2) must:

- Appoint an Enquiry Officer to undertake the enquiry and provide the enquiry report, ensure they are competent to do so, that they receive the support necessary to satisfactorily complete it, and that there is no conflict of interest in their undertaking this role.
- Satisfy them that the enquiry's terms of reference are clearly understood and within the remit of the organisation to undertake.
- Make the Managing Officer aware of any circumstances where the organisation is not the appropriate body to undertake the enquiry.

- Resolve any disagreement regarding the commissioning of the enquiry at the lowest level possible within the organisation, only escalating within the organisation and local authority where issues remain unresolved and proportionate to the disagreement (NB: where the organisation is the best placed to undertake the enquiry and its terms of reference are within the scope of its jurisdiction, the organisation has a legal duty under the Care Act 2014 to cooperate).
- Agree a reasonable timescale for receiving a report of its outcome. Enquiries must be completed in a timely manner. Enquiries will vary greatly in length and complexity, so prescribing a single target for all reports is not possible. However, only in exceptional circumstances should an enquiry report be received more than 28 days after it was commissioned.
- Conduct an enquiry in line with the principles of Making Safeguarding Personal, i.e., ensure:
 - The enquiry is person centre led and reflects the outcomes that the adult wishes to achieve
 - The adult (or their representative or Independent Advocate) is included as far as possible throughout the process. Therefore, promoting involvement choice and control
 - That if in the progress of the enquiry the adult alters their view of their desired outcomes, this is reflected in the enquiry and that the Enquiry's Commissioner is informed of this
 - The adult (or their representative or Independent Advocate) are informed of the outcome of the enquiry.
- Keep in contact with the Managing Officer and inform them of any changes or developments during the enquiry.
- Ensure the enquiry report has addressed the terms of reference and is delivered to the Managing Officer within the agreed timescale.
- The remit and authority of organisations need to be clear when considering how different types of investigations might support Section 42 enquiries.

5. Concerns identified during an enquiry about a person in a position of trust

- 5.1 Where during an enquiry that an organisation has been caused to undertake, information comes to light that a person in a position of trust may have behaved in a way that has harmed or may have harmed an adult with care and support needs, then appropriate action must be taken in line with Haringey's Peron in Positions of trust (PIPOT) Protocol and Practice Guidance.

See <https://www.haringey.gov.uk/social-care-and-health/safeguarding-adults/safeguarding-adults-policies-and-procedures#pipot>

The protocol and practice guidance provides an approach and process to follow when responding to allegations made against people who work in a Position of Trust with adults who have care and support needs. This relates to instances where

a relevant agency is alerted to information that may affect the suitability of a professional, or volunteer to work with an adult(s) at risk, where such information has originated from an activity outside their professional or volunteer role and place of work.

6. Appendices:

- **Appendix 1: Section 42 Enquiry Flowchart**
- **Appendix 2: Inter-Agency Safeguarding Adults Concern Form** - to be used by agencies reporting alleged or suspected abuse
- **Appendix 3: Section 42 Enquiry Form**

Appendix 1: Section 42 Enquiry Flowchart The following flow chart illustrates this.

