

Consent, Capacity and Information Sharing

Consent and capacity

All decisions taken in the adult safeguarding process must also comply with the Mental Capacity Act. An allegation of abuse or neglect of an adult at risk who may have difficulty making one or more decisions about their own safety will always give rise to action under the adult safeguarding process and any decision made about someone who lacks capacity to make it themselves must be made in their best interests in line with the Mental Capacity Act and Mental Capacity Act *Code of Practice*.

The capacity of the adult at risk to give their informed consent to a concern being raised and to consent to action being taken under these procedures is a significant but not the only factor in deciding what action to take.

Assessor: Assume that the person has the capacity to make the necessary decisions unless there is evidence to the contrary. However, where there is concern that the adult at risk may not have capacity to make one or more relevant decisions, carry out and record a **mental capacity assessment** and index it in AIS. It is important that you offer them appropriate support to make each decision they can make as soon as possible. In the context of adult safeguarding, the vulnerability of the adult at risk is related to whether they have difficulty making and exercising their own informed choices free from duress, pressure or undue influence of any sort, and whether they are able to protect themselves from abuse, neglect and exploitation. It is therefore important to note that people with capacity can also be vulnerable.

Capacity assessment may be a lengthy process, as the person is supported gradually to understand as much as possible about the options being explored.

You do not need to wait until the capacity assessment is finalised to refer to an IMCA. However, you do need to provide a capacity assessment in order to instruct the IMCA fully. Instruct an IMCA where protective measures are being put in place that have an impact on the life of the adult at risk, even if they have family, friends and carers available to consult. Record on AIS.

The test of capacity in this case is to find out whether the adult at risk has the capacity to make specific informed decisions:

- about whether an enquiry should be undertaken in response to a concern
- about each action which may be taken under multi-agency policy and procedures
- about a decision affecting their own safety, including an understanding of longer-term harm as well as immediate effects and an understanding of the impact of their level of ability to take action to protect themselves from future harm
- about sharing information.



Assessor: Record on AIS whether the adult at risk consents to proceeding with the safeguarding enquiry, or whether they lack capacity to consent. Always record the result of a capacity assessment, including when you assess that the adult does have capacity, as this evidence may be required later in the process. Record clearly if you are proceeding without consent, and give the reason for doing so, such as that it is in the wider public interest or a serious crime has been committed.

If you assess that the adult at risk does not have capacity to make the necessary informed decisions, then make a best interests determination based on the evidence available.

If you have concerns about the actions of an attorney acting under a registered Enduring Power of Attorney (EPA) or Lasting Power of Attorney (LPA), or a Deputy appointed by the Court of Protection, contact the Office of the Public Guardian (OPG). The OPG can investigate the actions of a Deputy or Attorney and can also refer concerns to other relevant agencies.

Information sharing

Adults have a general right to independence, choice and self-determination including control over information about themselves. In the context of adult safeguarding these rights can be overridden in certain circumstances. Emergency or life-threatening situations may warrant the sharing of relevant information with the relevant emergency services without consent.

The law does not prevent the sharing of sensitive, personal information **within** organisations. If the information is confidential, but there is a safeguarding concern, sharing it may be justified.

The law does not prevent the sharing of sensitive, personal information **between** organisations where the public interest served outweighs the public interest served by protecting confidentiality – for example, where a serious crime may be prevented.

The Data Protection Act enables the lawful sharing of information.

Organisations need to share safeguarding information with the right people at the right time to:

- prevent death or serious harm
- coordinate effective and efficient responses
- enable early interventions to prevent the escalation of risk
- prevent abuse and harm that may increase the need for care and support
- maintain and improve good practice in adult safeguarding
- reveal patterns of abuse that were previously undetected
- identify low level concerns that may identify people at risk of abuse
- help people to access the right kind of support to reduce risk and promote wellbeing
- help identify people who may pose a risk to others, and where possible, work to reduce offending behaviour

- reduce organisational risk and protect reputation.

Practitioner:

- It is good practice to try to gain the person’s consent to share information. However, if you do need to share information without consent (for example, if it is necessary to prevent serious harm or it is in the public interest, in most cases inform the person and their family of what personal information will be shared and why. **Do not regard the refusal of consent as necessarily precluding the sharing of confidential information.**
- There are some circumstances where you should not seek consent or inform the person or their family that information will be shared – for example, if doing so would increase risk of serious harm to the adult at risk, or hamper the prevention or investigation of a serious crime, or lead to an unjustified delay in making enquiries about allegations of serious harm to an adult.
- Consider also the risk of sharing information. In some cases, such as domestic violence or hate crime, it is possible that sharing information could increase the risk to the person. Work jointly with safeguarding partners to provide advice, support and protection to the person in order to minimise the possibility of worsening the relationship or triggering retribution from the abuser.
- Do not share information with the adult at risk, their carer, advocate, attorney or deputy which:
 - is highly confidential and needs not to be in the public domain (for example, intelligence about possible terrorism under PREVENT)
 - may contravene the rights of a third party – for example, a member of staff under investigation.
- Carefully consider what information can be shared with the person causing harm.
- Check with your manager if you have any doubts or concerns about sharing information or issues about confidentiality.
- Always record your decision, and what information was shared with whom.



See also **SCIE’s Guidance on “Adult Safeguarding: sharing information”**