**Who is this briefing for**: This briefing is for all Service managers / Team managers/ Senior Practitioners and staff who carry out duties on behalf of the Local Authority under the Care Act.

**Context of the briefing :** Recent learning from Safeguarding Adult Reviews has identified a gap in knowledge of Section 11 of the Care Act – regarding *an adult refusing an assessment*. This guidance has been developed to support practitioners with information regarding the legal framework within which we work and best practice principles.

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**What does the law say about an adult refusing an assessment ?**

**Section 11 (1) of the Care Act** says that where an adult refuses a needs assessment, the local authority concerned is not required to carry out the assessment. (for assessment, see Care Act section 9)

**BUT it MUST carry out a needs assessment if—**

(a)the adult lacks capacity to refuse the assessment and the authority is satisfied that carrying out the assessment would be in the adult’s best interests, or

(b)the adult is experiencing, or is at risk of, abuse or neglect.

Please see Annex 1 for further information

**What does this mean in practice?**

**a) Check out possible reasons for declining an assessment**

An adult or young person with possible care and support needs or a carer may choose to refuse to have an assessment. The person may choose not to have an assessment because they do not feel that they need care, or they may not want KCC support.

In such circumstance’s practitioners should:

* Ensure they have explained the benefits of an assessment to the person (by any means available to them, including sending them the “**guide to preparing for a needs assessment”** found on kent.gov.uk on the Social care and Health “Care and Support” page:<https://www.kent.gov.uk/social-care-and-health/care-and-support/how-to-get-help#tab-2>)
* Satisfy themselves that the person has made an informed decision and knows how to contact Adult Services at a later date should they change their mind.
* Consider if there is any evidence to indicate that mental capacity should be assessed
* Practitioners must keep a detailed record of how and when they have tried to engage the person. They should consider discussing their actions in supervision as appropriate to the presenting circumstances.

**b) If the person lacks capacity to refuse the assessment**

we must carry out a needs assessment if we are satisfied that to do so is in the adult’s best interests

**c) If the adult has capacity and is experiencing, or is at risk of, abuse or neglect**

**We must undertake an assessment so far as possible and document this**. This could mean completing a proportionate assessment (proportionate to risk and with due consideration of Article 8 of the Human Rights Act) by gaining information from others even if the adult will not engage and share information directly with us.

**Proportionality** is defined in the Care and Support Statutory Guidance (chapter 14: Safeguarding- section 14.13) as : “the least intrusive response appropriate to the risk presented”.

In this instance, a proportionate assessment means being able to think through the following questions and record our professional judgement:

What information is available at the time of assessment? Is there a need to get more information? Is there someone else who can assist eg friend/neighbour/ other professional?

Have I contacted other agencies involved to inform my understanding, share my concerns and make a professional judgement about the person’s care and support needs?

* Am I satisfied that person does not appear to have care and support needs? OR

If the person appears to have care and support needs, am I satisfied they are being met or managed? And if they are not met, do I need to consider whether self neglect policy and procedures apply? Have I reflected and considered if there is anything else that I can reasonably do?

Have I assessed the risk, as best I can, in the circumstances?

* Am I satisfied that the support network/ other organisations involved have plans in place to continue to minimise the risk?

When undertaking a care needs assessment, it is important that practitioners do not rely on other agencies informing them that the person does not want support without verifying this information first hand with the person themselves.

**d) If practitioners experience difficulties engaging with the person and have concerns, they should:**

* Consider if self- neglect protocols should be applied?
* and in line with section 7.5 of the ASCH Assessment policy :

“ If practitioners experience difficulties engaging with the person and have concerns, they should:

•Contact other organisations who may be involved in offering support to the service user

• Complete a risk assessment prior to discussing the case with their supervisor with a view to closing the case.

Practitioners must keep a detailed record of how and when they have tried to engage the person. Practitioners should consider discussing their actions in supervision as appropriate to the presenting circumstances.”

**Annex 1. What does the law/ statutory guidance say about this?**

**Section 11 of the Care Act :** [**https://www.legislation.gov.uk/ukpga/2014/23/section/11/enacted**](https://www.legislation.gov.uk/ukpga/2014/23/section/11/enacted)

*Refusal of assessment*

*This section has no associated Explanatory Notes*

*(1)Where an adult refuses a needs assessment, the local authority concerned is not required to carry out the assessment (and section 9*[*(1)*](https://www.legislation.gov.uk/ukpga/2014/23/section/11/enacted) *does not apply in the adult’s case).*

*(2)But the local authority may not rely on subsection* [*(1)*](https://www.legislation.gov.uk/ukpga/2014/23/section/11/enacted#section-11-1) *(and so must carry out a needs assessment) if—*

*(a)the adult lacks capacity to refuse the assessment and the authority is satisfied that carrying out the assessment would be in the adult’s best interests, or*

*(b)the adult is experiencing, or is at risk of, abuse or neglect.*

*(3)Where, having refused a needs assessment, an adult requests the assessment, section 9*[*(1)*](https://www.legislation.gov.uk/ukpga/2014/23/section/11/enacted) *applies in the adult’s case (and subsection* [*(1)*](https://www.legislation.gov.uk/ukpga/2014/23/section/11/enacted#section-11-1) *above does not).*

*(4)Where an adult has refused a needs assessment and the local authority concerned thinks that the adult’s needs or circumstances have changed, section 9*[*(1)*](https://www.legislation.gov.uk/ukpga/2014/23/section/11/enacted) *applies in the adult’s case (but subject to further refusal as mentioned in subsection* [*(1)*](https://www.legislation.gov.uk/ukpga/2014/23/section/11/enacted#section-11-1) *above).*

**Chapter 6 “Assessment and Eligibility” within the Care and Support Statutory guidance**

[**https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#first-contact-and-identifying-needs**](https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#first-contact-and-identifying-needs)

*6.20 An adult with possible care and support needs or a carer may choose to refuse to have an assessment. The person may choose not to have an assessment because they do not feel that they need care or they may not want local authority support. In such circumstances local authorities are not required to carry out an assessment. However, where the local authority identifies that an adult lacks mental capacity and that carrying out a needs assessment would be in the adult’s best interests, the local authority is required to do so. The same applies where the local authorities identifies that an adult is experiencing, or is at risk of experiencing, abuse or neglect.* ***Where the adult who is or is at risk of abuse or neglect has capacity and is still refusing an assessment, local authorities must undertake an assessment so far as possible and document this. They should continue to keep in contact with the adult and carry out an assessment if the adult changes their mind, and asks them to do so.***

*6.21 In instances where an individual has refused a needs or carer’s assessment but at a later time requests that an assessment is carried out, the local authority must do so. Additionally, where an individual previously refused an assessment and the local authority establishes that the adult or carer’s needs or circumstances have changed, the local authority must consider whether it is required to offer an assessment, unless the person continues to refuse.*