



counsel + care 
for older people, their families and carers

guide

Information from Counsel and Care: 20

Abuse: older people at risk

Unfortunately, abuse of vulnerable older people does occur and this guide gives advice on how to recognise abuse. It also illustrates the most vulnerable groups and provides advice, which may help prevent or stop the abuse.

Abuse can be physical, emotional, psychological, discriminatory, financial, sexual, institutional or neglect. Abusive behaviour can often be subtle and not obvious to people outside of the immediate situation. Reporting abuse is not straightforward for those involved, but the abuse of vulnerable older people is very serious. Older people who are being abused have the right to take action or to know that action is being taken on their behalf.

Counsel and Care is the national charity working with older people, their families and carers to get the best care and support. If you have found our service helpful, please consider making a donation or leaving a legacy in your Will. You can arrange either by telephoning 020 7241 8555 or using the secure service on our website www.counselandcare.org.uk.



www.counselandcare.org.uk
ADVICE LINE: 0845 300 7585 (local call rate)

Your donations, legacies and payroll giving enable Counsel and Care to get the best care and support for older people, their families and carers

Counsel and Care is a national charity; however the creation of the Scottish Parliament, and the Welsh and Northern Ireland Assemblies means there are differences in the ways each region cares for and supports older people. The information in this guide applies essentially to England although there may be similarities with Scotland, Wales and Northern Ireland.

We also produce five separate guides for both Scotland and Wales covering the community care assessment of need process; paying care home fees and making a complaint which are the key areas where the policy and legislation differ significantly to England. All of the guides we publish can be downloaded from www.counselandcare.org.uk/helping-you/guides or posted to you by calling our guide orderline on 020 7241 8522.

This guide contains the following sections:

1	What is abuse?	5
1.1	Types of abuse.....	7
1.3	Where does abuse occur?	11
1.4	Who commits abuse?	11
1.5	Who are the victims?	11
2	Difficulties in dealing with the abuse of older people	12
3	If you are being abused	14
4	If you see or suspect abuse	17
4.1	In a hospital	17
4.2	In a day centre	17
4.3	In a care home	17
4.4	If you are a visitor	18
4.5	If you are a registered employer	19
4.6	If you use Direct Payments to employ staff to help you at home	21
4.7	If you are a care worker	24
5	Regulating against abuse	26
5.1	Care homes	26
6	Meetings with professionals	28
7	The responsibilities of the local council adult social care department (“social services”)	29
7.1	<i>No Secrets</i> guidance	29
7.2	Safeguarding Adults teams	29
8	The law	33
8.1	Contacting the police	33
8.2	Using the courts	34

8.3	Using the law to help you	34
8.4	Mental Capacity Act 2005	34
8.5	Mental Health Act 2007	35
8.6	Human Rights Act 1998	36
8.7	Domestic violence legislation	37
8.8	Family Law Act 1996 and Protection from Harassment Act 1997	39
8.9	Fraud Act 2006	39
8.10	Scottish legislation	40
9	Advocacy	41
9.1	Independent Mental Capacity Advocate (IMCA)	42
10	Support once abuse has taken place	44

1 What is abuse?

According to Action on Elder Abuse, abuse is *"a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person."* This definition of abuse has been adopted by the World Health Organisation. Most carers or people who work or volunteer with older people do so for good reasons and with good motivations. But sometimes things go wrong, and older people experience abuse. It is not your fault if you are abused. It is against the law.

Sometimes only one person is abused, and sometimes it happens to more than one person at a time, for example, abuse of more than one resident of a care home. The abuse may be carried out by one person, or a number of people. It may happen as a result of negligence or ignorance, or it may be done deliberately. Abuse of older people may happen in your own home, and may be carried out by a relative, friend, carer, neighbour, volunteer or member of staff. It may also happen at a hospital, care home or a day centre. It can often feel difficult to report the abuse or stop it happening, sometimes because of the relationship that exists between the older person and the abuser, or because of threats that the abuser may have given the older person.

If you are a victim of abuse you should report it to the police or your local Council's Adult Protection Team or Safeguarding Adults Team. An organisation called Victim Support should contact you shortly after you

have reported the crime to the police to offer you advice and ensure you are well cared for. They can support you through any subsequent court action and help you to make a claim through the Criminal Injuries Compensation Authority (CICA), if you have been injured or suffered in some way. Victim Support (tel.: 0845 30 30 900; www.victimsupport.org.uk) can also provide assistance to people who have been subject to a crime that has not been reported to the police.

1.1 Types of abuse

Abuse might occur in any of the following ways. Someone may be subjected to more than one form of abuse.

Physical abuse

Physical abuse is most clearly identified in cases where there are signs of harm such as bruises, burns, broken skin or broken bones. However, there are less obvious types of physical abuse, for example, giving someone too much medication to make them drowsy and easier to look after, restraining someone by tying them to a chair or bed, or using furniture to stop them moving.

Psychological and emotional abuse

It is abusive to intimidate an older person by shouting, frightening, swearing at or ridiculing them. Other, subtler forms of abuse might include blaming an older person for actions or behaviour that they are not able to control or trying to make them feel humiliated, rejected or ignored.

The abuser may also isolate the older person by withdrawing care services, or stopping their friends from visiting them.

Discriminatory abuse

Discriminatory abuse may include racist or sexist harassment, ageist taunts or physical or verbal comments about a person's disability.

Financial abuse

Financial abuse includes illegal or improper use of a person's property, money, pension book, bank account or other valuables, as well as stealing money or property. If you are managing the finances of a person who does not have the mental capacity to do so for himself or herself, you should have legal authority, such as a Lasting Power of Attorney, Enduring Power of Attorney or court-appointed deputy to ensure that your actions are not misconstrued as financial abuse.

An Enduring Power of Attorney (EPA) (if set up before October 2007) is a legal document that can authorise one or more people to handle another person's financial affairs once they have lost the capacity to do so themselves, provided that they are registered with the Office of the Public Guardian (tel.: 0300 456 0300; www.publicguardian.gov.uk).

From October 2007, the Mental Capacity Act 2005 covering England and Wales introduced a new type of attorney called a Lasting Power of Attorney (LPA). From then on, people must apply for a LPA to be set up to organise someone else's financial affairs rather than an EPA. In addition, the LPA (if set up to do so) can also authorise someone to make care and welfare decisions on behalf of the person who lacks capacity. In order to be effective, the LPA has to be arranged before the person loses capacity. An LPA can be arranged by completing the official forms available from the Office of the Public Guardian (tel.: 0300 456 0300; www.publicguardian.gov.uk). If you had an EPA set up before October 2007, it can still continue to be used, but you cannot make any changes to an existing EPA or make a new one. Again, if the individual loses

capacity, then the EPA needs to be registered with the Office of the Public Guardian before it can continue to be used.

For more information, see guide **33: Money and Welfare: managing your affairs if you become ill**.

In Scotland, under the Adults with Incapacity (Scotland) Act 2000, it is possible to attain financial (and welfare) guardianship on behalf of an older person. Contact the Office of the Public Guardian (Scotland) (tel.: 01324 678 300; www.publicguardian-scotland.gov.uk) for more information on these provisions and others such as 'access to funds' and Continuing Power of Attorney.

Sexual abuse

It is abusive to force or pressurise an older person into any sexual activity that they do not want, including talking about sex or looking at books and videos.

Neglect

It is abusive to deprive a person of food, clothes, warmth and hygiene needs. Older people also have the right to have the healthcare treatment or medication they need. They also should not be isolated from social interaction or left unattended for periods of time if that puts them at risk or causes them distress or anxiety.

Institutional abuse

Neglect or poor care of an older person due to inadequate management and working practices in a care home or hospital.

1.2 Symptoms of abuse

If an older person feels frightened and intimidated as a result of being abused, they may not feel able to seek help. They may be unable to tell anyone about what is happening. **They may need someone to take action on their behalf.** The following may indicate that someone is experiencing abuse:

- Recurring or unexplained injuries
- The older person being isolated from friends or relatives and prevented from accessing key services, such as a GP or dentist, for example
- Untreated injuries and medical problems
- Being emotionally upset and agitated
- Inconsistency or difficulty in accounting for the cause of injuries
- The older person not being allowed to speak for themselves
- Poor personal hygiene, unchanged bedding and/or unsuitable clothing for the conditions or environment
- Untreated or longstanding pressure sores that do not heal
- Unexplained weight loss or gain, or evidence of dehydration noted by poor skin condition and/or frequent urine infections
- The older person appearing withdrawn, depressed, having irregular sleep patterns, low self-esteem, fearfulness, agitation, or loss of appetite
- Abrupt or unexplainable changes to bank accounts or Wills
- The older person justifying unacceptable or inappropriate behaviour of another person.

1.3 Where does abuse occur?

Abuse can happen anywhere, but is most likely to occur in:

- The person's own home
- A hospital
- A care home
- A day centre or other social care centre.

1.4 Who commits abuse?

It is possible for anyone in a position of control or authority to commit abuse, whether that is within a family situation or a statutory environment. This can include a spouse, male or female partner, child or relative; a friend or neighbour; volunteer; or a health, social care or other worker.

1.5 Who are the victims?

The majority of people who experience elder abuse are women over 81 years, but it can happen to all older people.

2 Difficulties in dealing with the abuse of older people

As with the abuse of any vulnerable person, there may be difficulties involved in the identification and resolution of the circumstances in which it occurs.

- Identification of abuse may be difficult because the older person may feel embarrassed that they have 'allowed' it to happen. Preventing or stopping the abuse may be complicated because the older person may feel reluctant to make a complaint against the abuser. This could be through fear of the abuser or because the older person still has a meaningful relationship with the abuser. They may feel that they will not be believed. It may be that they do not recognise they are being abused.
- A victim of abuse may feel traumatised by their experiences. These feelings may lead to a sense of low self-esteem with the older person quietly accepting the abuse.
- An older person is an adult and, therefore, has the right to take risks and make their own decisions. This means that it is often difficult for the authorities to intervene if abuse is suspected or even if they know that the older person is being abused, but does not want to do anything about it. Although if a person cannot make **any** of their own decisions at all (for example, if they have severe dementia), then the local council's Adult Protection Team or Safeguarding Adults Team and the police can intervene to support the older person.

It is difficult to know what effect the different types of abuse will have on a person. The effects are likely to differ depending on whether it is a one-off instance of abuse or a continued series of abusive acts, or if the person relies on the abuser to meet their care needs.

3 If you are being abused

The type of action you take may depend on the severity of the abuse. If you are not sure what to do, or do not want to act alone, you could:

- Speak to a friend or relative you are comfortable with and feel you can trust.
- Keep a diary. Write down the dates and times, what is happening or has happened, and who was involved. This information may be important if you decide to take things further. Any notes that you take should be kept in a safe place.
- Speak to another older person who may have experienced or seen something similar.
- Speak to your doctor or community nurse, if you feel comfortable to do so, and ask them for advice.
- If the abuse is being committed by a 'friend', relative or neighbour you may find it difficult to report because of your emotional bond with this person. However, you do not have to accept this treatment and may wish to raise this issue with them. This may resolve any misunderstandings and alert them to the fact that you are aware that their treatment of you is unacceptable. You may also wish to involve another person that you trust when you do this.
- If the problem does not improve or you feel too afraid to raise the issue with the person carrying out the abuse, contact your local council social services or a local independent advocate for support (contact Older People's Advocacy Alliance (tel.: 01782 844 036;

www.opaal.org.uk) or Scottish Independent Advocacy Alliance (SIAA) (tel.: 0131 260 5380; www.siaa.org.uk) to find an independent advocate, and see section 9 of this guide).

- If you feel the abuse amounts to a criminal act, for example, physical abuse or theft, you should contact the police who are trained to deal sensitively with all kinds of criminal or domestic abuse (see section 8.1 of this guide).
- If someone who is employed to care for you at home is abusing you, speak to the manager of the services. All home care services must have a complaints procedure and also procedures to prevent their clients from being abused. All home care services in England must also be registered with the Care Quality Commission (CQC) (tel.: 03000 616161; www.cqc.org.uk). If you are not happy with the response you receive from the manager of the service, report your concerns to CQC. If the service was arranged by your local council's Adult Social Care (social services), speak to your care manager or social worker.
- If you are employing them yourself (using Direct Payments, for example), see section 4.6 of this guide.
- If you are in a care home, you could speak to another resident you trust, or if you were supported by the council, contact the social worker who was in touch with you at the time you entered the home. If you feel able, you should voice your concerns to the manager of the home or a trusted member of staff. All care homes must have a complaints procedure that you or a relative or friend could use to voice your concerns. All care homes must also be registered with the CQC (tel.: 03000 616161; www.cqc.org.uk)

which will investigate any complaints you have. For more information, see below or see our guide **19: Care Homes: What to Look For**.

- If you live with a vulnerable older person, new legislation has been introduced to protect vulnerable older people from serious abuse (see section 8.3).
- Write or telephone for advice from an organisation like Action on Elder Abuse (tel.: 0808 808 8141; www.elderabuse.org.uk), Counsel and Care (tel.: 0845 300 7585; www.counselandcare.org.uk) or Witness (tel.: 08454 500 300; www.popan.org.uk) (see guide **24: Information: other useful organisations** for addresses).

4 If you see or suspect abuse

If you see or suspect abuse is occurring, it is in the best interests of the older person to try to resolve the issues by taking action. If you have concerns, speak to the relevant person about them. It is better that issues are investigated and resolved. If abuse is ignored it can have serious consequences for the older person.

4.1 In a hospital

Speak to the head of the department in hospital where the older person is receiving the care; for example, speak to the matron in charge of the ward to say you have a serious matter to report. If you are not satisfied with the outcome of the meeting with the person in charge, ask for a copy of the hospital's complaints procedure. For more information, see our guide **18: Complaints about community care and NHS services**. (If you live in Scotland, see guide **54: Complaints about community care and NHS services in Scotland**. If you live in Wales see guide **74: Complaints about community care and NHS services in Wales**.)

4.2 In a day centre

Speak to the head of the unit or to a senior worker in the day centre who you feel you can trust to say you have a serious matter to report. Ask for a copy of their complaints procedure if you are not happy with the outcome of the meeting.

4.3 In a care home

The fact that an older person is in a care home means that they can be

particularly vulnerable. You could ask for a private meeting with the manager of the home or another senior member of staff who you feel you can trust, telling them you have a serious matter to report (see section 6 of this guide).

If you are not satisfied with the outcome of the meeting with the manager of the home or senior member of staff, you can ask for a copy of the care home's complaints procedure and then decide whether you want to register a formal complaint. For more information, see our guide **18: Complaints about community care and NHS services**. (If you live in Scotland, see guide **54: Complaints about community care and NHS services in Scotland**. If you live in Wales see guide **74: Complaints about community care and NHS services in Wales**.)

For further help and advice, you can contact www.nursinghomeabuse.co.uk via their website or telephone them on 0870 998 9000. They provide free initial legal consultation and an online form for information on whether they can help if you or a loved one has suffered abuse in a nursing home.

4.4 If you are a visitor

- Challenge the person who is abusing the resident immediately and ask them to stop if you see abuse happening
- As soon as possible, report the incident to the manager of the care home or a senior staff member, or call the Police or the local council's Safeguarding Adults Team.

If you can, write down what you saw, with dates, times and names if

possible.

For more information, see section 6 of this guide.

4.5 If you are a registered employer

Criminal Records Bureau (CRB)

Ask for an Enhanced CRB Disclosure (“check”) for any employee before they start work with you. The care home or care home agency has an obligation to ensure this is carried out. If the employee will be working in England or Wales contact the Criminal Records Bureau (tel.: 0870 9090 811 or if you are a Welsh language speaker 0870 9090 223; www.crb.gov.uk). If the employee will be working in Scotland, contact Disclosure Scotland (tel.: 0870 609 6006; www.disclosurescotland.org.uk).

New Vetting and Barring Scheme (England and Wales)

From July 2010, with the introduction of the Safeguarding Vulnerable Groups Act 2006 (England and Wales) any person wishing to start work with vulnerable adults in England and Wales should apply for registration with the Independent Safeguarding Authority (ISA) (tel.: 0300 123 1111; www.isa-gov.org.uk) with a one-off registration fee of £64.00. When a person seeks employment within a care setting, there will be a legal requirement for the home care agency or care home to check the person is registered with the ISA (tel.: 0300 123 1111; www.isa-gov.org.uk), who will seek information from the Criminal Records Bureau (CRB) in making checks.

If a care worker is matched against the ISA Vulnerable Adults Barred list,

they have caused harm to a vulnerable adult in their care and it is against the law to offer them employment in a care position. It is also an offence for an adult on the Vulnerable Adults Barred list to apply for work with vulnerable adults, and the ISA **must** be notified of anyone who applies to work with you and is found to be on the list.

From October 2009, employers also **must** refer to the ISA, information about individuals working with vulnerable adults where they consider “them to have caused harm or pose a risk of harm”. Referral forms and referral guidance are available from the ISA (tel.: 0300 123 1111; www.isa-gov.org.uk). This applies whether or not the person is a current or former employee (e.g. an allegation of abuse is made after a staff member has left your employment). Under the Act / Order, if an allegation is made about a former employee, it would also be an offence not to pass this information on to the ISA to see if the person should be include on the Barred list. The aim of the list is to ensure that a known abuser does not rejoin the care workforce again.

Until July 2010, new staff or staff changing jobs will not have to apply to be registered with the ISA. ISA-registration does not become mandatory for these workers until November 2010. From then it will be illegal to employ new people who are not ISA-registered. Please note that existing staff will have to apply for registration on a “staggered” basis from 2011, so it is possible that some existing workers will not be registered with the Scheme for some time.

Until July 2010, you should continue to keep obtaining CRB Disclosures

("checks") for new members of staff. Contact the Criminal Records Bureau (tel.: 0870 9090 811 or if you are a Welsh language speaker 0870 9090 223; www.crb.gov.uk).

You should also report any suspected or actual abuse to the Police or the local council's Safeguarding Adults Team.

New Protecting Vulnerable Groups Scheme (Scotland)

In Scotland, the Protection of Vulnerable Adults (Scotland) Act 2007 seeks to protect all vulnerable adults from abuse. Towards the end of 2010, the Scottish Government will introduce a new membership scheme (the Protecting Vulnerable Groups Scheme – or PVG Scheme) that will replace and improve upon the current disclosure arrangements for people who work with vulnerable groups. The current arrangements are that a worker should apply for a Standard or Enhanced Disclosure, and you should carry on doing this until the new Scheme is in place. Contact Disclosure Scotland (tel.: 0870 609 6006; www.disclosureScotland.org.uk) is responsible for carrying out checks on social care workers and those who seek to work with vulnerable adults in Scotland. They will get their information from the Scottish Criminal Records (SCRO) office.

4.6 If you use Direct Payments to employ staff to help you at home

If you use an agency to find staff to help you, then you can check with them as to whether the person had had a Criminal Records Bureau (CRB) Disclosure (or "check"). For more information, see section 4.5.

If you have any concerns about the person or people the agency sends, or they behave inappropriately in any way, approach the agency directly. If this doesn't feel possible, approach the police, or your local council's Safeguarding Adults team.

If you are employing them yourself, then you cannot directly approach the CRB for a CRB Disclosure (or "check") into someone you wish to employ. You may ask an "Umbrella Body" to do this for you however.

You may find an Umbrella Body by contacting the Criminal Records Bureau, tel.: 0870 9090 811, or if you are a Welsh language speaker 0870 9090 223;

www.crb.homeoffice.gov.uk/umbrella_body_search.aspx, or your local council may be able to offer this service, as may your local Council for Voluntary Service (CVS). You may be able to find your local CVS in the 'phone book, or contact NAVCA (National Association for Voluntary and Community Action) for details of your local CVS, tel.: 0114 278 6636; www.navca.org.uk/liodir/.

The potential employee must apply for the Disclosure, not you. The resulting Disclosure will be sent to the person you are thinking of employing and a copy to the Umbrella Body. The Umbrella Body will then assess the individual's suitability for the position and advise you accordingly. You may not see the Disclosure, and it is an offence for the Umbrella Body to show it to you. However, the applicant may voluntarily show it to you if they choose to.

If you have any concerns about the person or people you have employed,

or they behave inappropriately in any way, depending on the seriousness of what happened, you could try talking to them first, or following a disciplinary procedure. If this doesn't feel possible, approach the police, or your local council's Safeguarding Adults team.

New Vetting and Barring Scheme (England and Wales)

For more information, please see section 4.5. If you receive Direct Payments and you use some of that money for employing someone to help you at home, this is classed as a "private arrangement". The person you employ does not **have** to be registered with the ISA before they can help you. However, if you would **like** to request that they have an ISA check, then you can ask them to apply to register with the ISA scheme, or, if they are already registered you can check the register.

The person you are thinking of employing would be liable to pay. If you are using a care agency to find you someone to help you, then ask the care agency to assure you that the person has been checked by them.

If you have any concerns about the person or people the agency sends, or they behave inappropriately in any way, approach the agency directly. If this doesn't feel possible, approach the police, or your local council's Safeguarding Adults team.

If you have any concerns about the person or people you have employed, or they behave inappropriately in any way, depending on the seriousness of what happened, you could try talking to them first, or following a disciplinary procedure. If this doesn't feel possible, approach the police, or

your local council's Safeguarding Adults team. You **may** refer your concerns to the ISA, but unlike a registered employer, you do not **have** to. Referral forms and referral guidance are available from the ISA (tel.: 0300 123 1111; www.isa-gov.org.uk).

4.7 If you are a care worker

- Challenge the person who is abusing a resident and immediately ask them to stop
- As soon as possible, report the incident to the manager of the care home or a senior staff member
- If you can, write down what you saw, with dates, times, and names if possible.

The safety of the vulnerable older person you care for is paramount. However, you may be reluctant to report your suspicions or knowledge of abuse because you are worried about losing your job. Employees now have some protection from dismissal or victimisation as a result of the Public Interest Disclosure Act 1998. If you do report suspected or actual abuse, the information will be treated confidentially if you request this, but if you are the only person able to speak up about the abuse, you may have to be identified before action is taken. For help with these considerations, you could:

- Consult your professional association, staff representative or trade union
- Seek advice for a solution from a solicitor
- Contact Public Concern at Work for advice (tel.: 020 7404 6609; www.pcaaw.org.uk).

If you know or suspect that abuse is being carried out by a registered nurse, you can speak to the Nursing and Midwifery Council (tel.: 020 7333 9333; www.nmc-uk.org). All nurses in the UK must be registered with the Council who will investigate any complaints about their work. If you know or suspect the abuse is being carried out by a health professional, (art therapist / drama therapist / music therapist, chiroprapist / podiatrist, dietitian, occupational therapist, paramedic, physiotherapist, psychologist, speech and language therapist) , you can speak to the Health Professionals Council (HPC) (tel.: 0800 328 4218; www.hpc-uk.org). They will also be able to refer you to other health regulators. If the abuse involves a social worker, you can contact the General Social Care Council (GSCC) (tel.: 01788 532 405).

5 Regulating against abuse

If the abuse takes place in a care home setting or while the older person is being cared for by a member of staff of a home care or nursing agency, and you are not satisfied with the way your complaint has been dealt with, you may wish to contact the Care Quality Commission (CQC) (tel.: 03000 616161; www.cqc.org.uk). CQC is the new independent regulator for all health, social care and mental health services that, amongst other things is responsible for ensuring that all care homes and home care agencies in England achieve and maintain standards set by Government. Inspectors from CQC will investigate complaints about abuse raised to their attention.

If you have concerns about abuse of an older person, and you live in Scotland, you can contact the Care Commission (tel.: 0845 603 0890; www.carecommission.com), who has a similar role in regulating care services as the CQC in England. If you live in Wales you can contact Care Standards Inspectorate for Wales (tel.: 01443 848450; www.csiw.wales.gov.uk).

5.1 Care homes

An inspector from the CQC will inspect the home at least once every three years, more frequently if the inspector feels this is necessary. The home will also be subject to unannounced inspections and themed inspections, for instance, where one aspect of the home is considered in depth. However, if you suspect abuse, you should report your concerns to the CQC immediately. Do not wait for the next inspection.

Inspectors welcome the chance to talk with residents during their routine visits and should arrange to meet individual residents to talk to them about their experiences in the home. The inspector can investigate complaints made by or on behalf of residents and has the power to ensure managers of homes take action where standards are low. In extreme circumstances, CQC may take steps to fine, suspend the registration or even close a home.

6 Meetings with professionals

It can feel intimidating to meet with inspectors, local council social services staff or managers of care services. Before you meet them, it may help if you consider the following things:

- Ask if a friend or relative or other person you trust could be present
- Asking an independent advocate to work with you, (see section 9)
- Outline the cause of your concern
- Ask what action will be taken and how long they will take to investigate the matter
- Ask how the older person will be protected whilst any investigation takes place
- Say that you would like to be kept informed about the progress of the investigation
- Ask for this information to be provided in writing
- Make a written note of what you said, with dates and times (or ask a friend or relative to do so)
- Ask for an interpreter to be present if English is an additional language for you.

7 The responsibilities of the local council adult social care department (“social services”)

Contact your local council Adult Social Care (“social services”) or Safeguarding Adults department if the abuse is taking place in the older person’s home, care home, or other community setting or if you have made a complaint but the abuse is continuing.

7.1 *No Secrets* guidance

Following a 2000 report by the Government called ‘No Secrets’ in England, (‘In Safe Hands’ in Wales), all councils have developed procedures for dealing with the abuse of vulnerable adults, including older people. This guidance does not carry the same weight as legislation, but local councils must have a very good reason not to follow it in all but the most extreme circumstances. All organisations working in the care of older people, for example, local council social services, health, welfare benefits and housing, must work together to prevent abuse or take action when it occurs. See section 8 of this guide for some examples of the current legislation protecting older people from abuse.

In Scotland, each local council has its own Protection of Vulnerable Adults policy. See section 8.10 of this guide for the new legislation that has been introduced in Scotland to cover abuse of vulnerable adults or groups.

7.2 Safeguarding Adults teams

Some councils have Safeguarding Adults teams in England and Wales

(Adult Protection Committees in Scotland), which are made up of staff from different bodies such as health and police, trained in investigating the abuse of vulnerable adults. Safeguarding Adults teams should investigate the abuse wherever it is taking place and regardless of whether the council Adult Social Care department are providing care or support services. If you have decided to contact the local council social services department for support, it would be helpful to ask the local council for a copy of their Safeguarding Adults policy and procedures.

Depending on the procedures of the local council, a safeguarding adults co-ordinator or a social worker may be in charge of supporting you during the investigation. The safeguarding adults coordinator or social worker carrying out the investigation should offer you the opportunity to express your concerns away from the alleged abuser so that you do not feel intimidated. Depending on where the abuse is happening, who the abuser is and the severity of the abuse, the Adult Social Care department may also involve the Care Quality Commission (CQC) and the Police in the investigation.

If it is felt that to leave whoever is being abused with the person who is abusing them would put them at further risk, they should be offered protection, for example, being moved to a safer environment.

Your local council Adult Social Care department should make sure that your report about the abuse is treated sensitively and in confidence. Information given by you should only be shared if it is felt that not to do so would put you or the person you are concerned about at further risk of

harm. Local council Adult Social Care department should tell you who they are going to talk to about your concerns. You, and /or the older person you are concerned about, should be informed about the outcome of the investigation, what steps are being taken to prevent the abuse occurring again, and how this will be monitored.

If you have contacted your local council Adult Social Care department and you are not satisfied with the way the investigation of the abuse is being conducted or the outcome of the investigation, you may need to use the complaints procedure to make your dissatisfaction known. For more information, see guide **18: Complaints about community care and NHS services** (if you live in Scotland, see guide **54: Complaints about community care and NHS services in Scotland** and, if you live in Wales, guide **74: Complaints about community care and NHS services in Wales**).

You could also contact an organisation like Counsel and Care (tel.: 0845 300 7585; www.counselandcare.org.uk) or Action on Elder Abuse (tel.: 0808 808 8141; www.elderabuse.org.uk) for advice (their full contact details are listed in guide **24: Information: other useful organisations**).

Depending on the severity of the abuse and the reason why the abuse has occurred, it may not always be necessary to get the police involved. For example, it may be that the carer who is the perpetrator has become agitated, angry or overwhelmed because they cannot manage the caring responsibilities. In this case, it may be that the carer requires a Carer's Assessment to help them manage the caring role better, and to prevent further stressful situations. This may mean providing more support

services, like respite breaks. Following a reassessment or review of the older person's care package, this can be increased to take some of the pressure away from the carer, with ongoing monitoring of the older person's care needs. For further information about support for carers, see **guide 10: Carers: what support is available.**

8 The law

At present there is no specific legislation that directly protects older vulnerable people in England, instead the duties and powers to assess and intervene are contained within a wide range of legislation. Action on Elder Abuse (tel.: 0808 808 8141; www.elderabuse.org.uk) is currently campaigning for primary legislation, which places a duty on agencies to protect older people from abuse. Counsel and Care is supporting their campaign, and other individuals and organisations can join in the campaign by registering their details.

The Department of Health, Home Office and Ministry of Justice launched a review of the *No Secrets* guidance on adult protection in October 2008 in order to strengthen the guidance, identify how it could be better implemented and whether there is a need for primary legislation. The Government is in the process of deciding the direction to take as a result of the consultation. While there is hope for new legislation similar to that of Scotland (see section 8.4), it may be that publication of stronger guidance is more likely.

8.1 Contacting the police

This step may feel very daunting. However, many types of abuse are classed as a criminal offence. The police now have 'domestic violence' or 'community violence' units, which have staff trained in dealing sensitively with issues of abuse in a domestic setting. If you feel you or someone else is in danger this may be the most appropriate route to take for immediate

protection.

8.2 Using the courts

Protection is available through the courts, both to prevent a person being abused, and to take action against the person carrying out the abuse. You should talk to a solicitor who specialises in this area of the law to see if this route is best for your particular situation. Solicitors for the Elderly will be able to help you find one (tel.: 0870 067 0282; www.solicitorsfortheelderly.com) or Community Legal Advice (tel.: 0845 345 4 345; www.communitylegaladvice.org.uk).

8.3 Using the law to help you

The legislative examples that are listed below are not definitive; therefore it does not include all the legislation that places a duty on statutory services. Whoever you approach for support with applying the law, will use the most appropriate law to help you, whether Criminal, Common, Mental Health, Community Care, Human Rights law or otherwise.

8.4 Mental Capacity Act 2005

The Mental Capacity Act 2005 (England) and the Adults with Incapacity (Scotland) Act 2000 provide a clear legal framework for protecting a person who lacks mental capacity and helps to ensure that fraud and abuse do not take place.

It is an offence to ill-treat or wilfully neglect a person who cannot make decisions for themselves. This covers restraining someone unreasonably

against their will and also the more commonly understood types of abuse such as financial, sexual, physical and psychological abuse. The new offence carries a sentence of up to five years imprisonment and/or a fine.

When protecting an older person who is unable to make decisions and is at risk from abuse and neglect, best interests decisions can be made in accordance with the Mental Capacity Act Code of Practice. This may be applicable in situations of high risk, where in order to save life or avoid serious physical harm, it is acceptable to intervene and in some cases to treat without consent.

The **Deprivation of Liberty Safeguards (DoLS)** amendment to the Mental Capacity Act 2005 aims to provide legal protection for people who lack capacity to consent to arrangements made for their care/and or treatment (in either a hospital or a care home). Under the new regulations, if, to protect them from harm, a person can only be cared for in a way that may deprive them of liberty, the care home or hospital must request an authorisation to do this. However, it is vital to ensure that as a result of the new system, older people are only deprived of their liberty where there is no other way to care for them or provide treatment to them safely and all other potential options have been considered and disregarded as unable to meet their needs. For more details, see guide **33: Money and welfare: managing my affairs if I become ill**.

8.5 Mental Health Act 2007

Guardianship under the Metal Health Act 2007 enables the police to obtain a warrant to search for and remove patients if there is reasonable

cause to suspect that a person is suffering from mental disorder *and*:
(a) is being ill-treated or neglected or not kept under proper control; *or*
(b) is unable to care for him or herself and lives alone.

A magistrate can issue a warrant authorising a police officer (with a doctor and Approved Mental Health Professional) to enter any premises where the person is believed to be and remove him or her to a place of safety.

8.6 Human Rights Act 1998

Human Rights Act 1998 imposes duties on local councils and public authorities, such as the police, to work in accordance with the Act. When local council social services departments investigate abuse against older people, they must bear in mind that the older person has rights to:

- Article 2: right to life – insufficient investigation or no investigation may mean that legal action can be taken against the local council.
- Article 3: right to be protected from torture, inhumane and degrading treatment – extremely poor treatment is required before this article can be used. A failure to investigate abusive situations could also warrant the use of this article.
- Article 6: right to a fair trial – This may relate to decisions to support an older person under the Mental Health Act 1983 (under section 131, informal admittance or otherwise, see section 8.5). The professionals taking this action must be able to strike a balance between the support that they provide and the older person's right to freedom.
- Article 8: right to respect for private and family life - This covers situations where decisions are made whether or not to interfere in the older person's life. Again, an example of this might be under

the Mental Health Act for removal from their property into a safer environment.

8.7 Domestic violence legislation

In March 2005, a new Act was introduced called the Domestic Violence, Crime and Victims (DVCV) Act 2004. This Act sets out the legal duty of those people living in a household in England, Wales and Northern Ireland where there is a child or vulnerable adult that they have frequent contact with, to take 'reasonable steps' to prevent the unlawful death of that child or vulnerable adult (see www.opsi.gov.uk/acts/acts2004/ukpga_20040028_en_1 for the text of the act). Taking reasonable steps could include:

- Reporting suspicions of abuse to the police
- Contacting the local council social services
- Making sure the child or vulnerable person is treated promptly for any injuries sustained
- Explaining concerns to the GP
- Contacting a relevant organisation such as Action on Elder Abuse (tel.: 0808 808 8141; www.elderabuse.org.uk).

The DVCV Act 2004 has been introduced to bring to justice those people responsible in the event of an unlawful death of a child or vulnerable person, and where it is clear one or more of the people living in the household are guilty of the death. This Act does not seek to criminalise members of a household when the death was accidental or could not have been anticipated. A member of a household will be considered to be guilty if they either caused the

death or if three conditions are met:

- They were aware or ought to have been aware that the victim was at significant risk of serious physical harm from a member of the household; and
- They failed to take reasonable steps to prevent that person coming to harm; and
- The person subsequently died from the unlawful act of a member of the household in circumstances that the defendant (the person charged with the criminal offence) foresaw or ought to have foreseen.

This Act defines a vulnerable adult (both temporarily or permanently) as *"any person aged 16 or over whose ability to protect himself (herself) from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through 'old age' or otherwise."*

The powers of the DVCV Act 2004 are not likely to include care homes as it is felt that the professional safeguards, standards and professional duties of care already in place would cover the situation of an unlawful death in a care home. However, a paid or voluntary carer, housekeeper or similar employee may be included within the definition of living in the 'household'.

If you are a carer living in the same household as a vulnerable older person, you may have concerns that you could be accused should the older person die whilst they are in your care. However, the DCVC Act 2004 has been introduced to cover domestic situations where members of a household may feel under pressure to remain silent when an

unlawful death has been proven in order to protect themselves or others in the household. It would not apply unless the death was proven to be unlawful.

8.8 Family Law Act 1996 and Protection from Harassment Act 1997

This Act can be used if the person abusing you is:

- your current or former husband, wife or civil partner
- someone you are or were in a relationship with, whether or not you were living together
- someone you are or have been engaged to marry or agreed to form a civil partnership with
- someone you live with or have lived with (but not your tenant or landlord, employer or employee)
- a relative, including half or step relatives
- the other parent or someone who shares responsibility for a child of yours
- an adoptive parent of a child of yours.

If the person abusing you doesn't fit into any of the above categories, the Protection from Harassment Act 1997 could be used to help you.

This Act gives the court power to impose restraining orders, which may mean that the person can only occupy certain parts of the house or has to leave the property.

8.9 Fraud Act 2006

This Act came into force in January 2007. It repeals all of the deception

offences in the Thefts Acts of 1968 and 1978 and provides a statutory definition of the single criminal offence of fraud. Section 4 of the Act is most significant for vulnerable older people as it provides an offence of Fraud by abuse of position.

8.10 Scottish legislation

In Scotland, there is new legislation protecting vulnerable adults from abuse: the Adult Support and Protection (AS&P) (Scotland) Act 2007 and the Protection of Vulnerable Groups (PoVG) Act 2007. These new pieces of legislation give local councils and Adult Protection Committees (see below) the authority to intervene in certain circumstances where they consider a vulnerable adult is at risk of, or experiencing abuse. The new AS&P Act:

- Places a duty on councils to investigate
- Places a duty on such bodies as the NHS and the police to cooperate in investigating abuse
- Establishes committees that oversee and monitor activities
- Has introduced protection orders including assessment, removal and banning orders.

Local councils and employers in Scotland will also be able to place people who have abused a vulnerable adult on the Safeguarding Vulnerable Groups (SVG) list (see section 4.5 of this guide for more details).

9 Advocacy

You may find in some situations that an independent advocate can help resolve issues, and help clarify or facilitate communication between you and social care and health professionals. An independent advocate will represent your views if you are unhappy about a situation or decision and can discuss with you in private and in confidence to establish what outcome you would like. With your permission, the independent advocate can speak on your behalf or support you to speak for yourself and to represent your views. This can be important, especially for people who feel unable to speak out themselves, who feel unable to challenge the people/professionals involved or who find it difficult to stay focused on the facts when emotions are running high.

The independent advocate will not make decisions for you, but will ensure that you have all the information you need to be able to make an informed decision. This includes making sure that you can understand some of the complicated information that some organisations provide. They can support you at meetings or attend them on your behalf.

Advocacy schemes will have their own elder abuse policy. Depending on their policy, if abuse of a vulnerable adult is disclosed to the advocate, absolute confidentiality may be unlikely.

You can seek an independent advocacy organisation by contacting the Older People's Advocacy Alliance (OPAAL) (tel. 01782 844036; www.opaal.org.uk) or the Scottish Independent Advocacy Alliance

(SIAA) (tel.: 0131 260 5380; www.siaa.org.uk) Alternatively, you could contact your local council Adult Social Care department or local Age UK (formerly Age Concern and Help the Aged) (tel. 0800 00 99 66 – England or 0845 125 9732 - Scotland). You could also refer to guide **25: (Independent) Advocacy** for more information.

9.1 Independent Mental Capacity Advocate (IMCA)

In cases where the older person is not clearly able to make their own decisions, and they have no family and friends to speak on their behalf, with the introduction of the Mental Capacity Act 2005, an Independent Mental Capacity Advocate (IMCA) can:

- Support the older person to make major decisions such as accommodation and medical treatment if they are able to, or
- try to make decisions in their best interest on past, present wishes, feelings, beliefs and values.

Generally an IMCA will be called in cases of suspected abuse of a person who lacks capacity, even where the older person has family or friends, especially if the family or friend is deemed to be the abuser. Whilst family members can make welfare decisions for the older person 'unofficially', this will only become 'official' where a Lasting Power of Attorney or deputy status has been obtained via the Court of Protection to make welfare decisions. However, where there is suspected abuse, this responsibility can be reversed.

See section 10 of guide **25: (Independent) Advocacy** for contact details for IMCAs. IMCAs are not available in Scotland but other advocates

trained in supporting people without mental capacity may be available
(see contact details for SIAA above).

10 Support once abuse has taken place

Once the abuse of the older person has been investigated and the urgent risk to the older person has been resolved, it is vital that long-term practical and emotional support for the person is considered to enable them to rebuild their lives. Depending on their individual needs, this might include ongoing independent advocacy, counselling, befriending and so on.

Contact Counsel and Care (tel.: 0845 300 7585; www.counselandcare.org.uk) for advice if you are concerned that an older person has been left without appropriate support after abuse has occurred.

Our advice workers can advise on a wide range of issues affecting older people, their relatives and carers. Counsel and Care produce a range of guides which can be downloaded from our website www.counselandcare.org.uk, or requested by calling our guide orderline on 020 7241 8522.

This guide is not a full explanation of the law and is aimed at people over 60.

Counsel and Care
Twyman House
16 Bonny Street
London NW1 9PG

Tel.: **0845 300 7585** (local call rate)
Email: advice@counselandcare.org.uk
Website: www.counselandcare.org.uk

Registered Charity No. 203429 Counsel and Care for the Elderly

We are a member of the Federation of Information and Advice Centres (FIAC)

As a charity we rely on donations

© Counsel and Care January 2010