

East Sussex Safeguarding Adults Board

Resolution Protocol

Introduction

This protocol provides a resolution process for disagreements between agencies or professionals in relation to safeguarding or mental capacity decision making. Disagreements can arise in a number of areas in both safeguarding matters and in mental capacity, but are most likely to be around:

- Adult safeguarding concerns or enquiries where the threshold for intervention is contested.
- Communication offered within safeguarding decision making and actions.
- Situations where there are concerns about an organisation's involvement in adult safeguarding arrangements.
- Whether to proceed with, or end, a section 42 enquiry.
- Professionals may disagree about whether an adult has capacity to make a decision.
- Professionals may have different views about what is in the best interests of an adult who lacks capacity.
- Professionals may object to a decision or an action another professional is making on an adult's behalf.

The process outlined in this protocol provides for the resolution of such disagreements where an agency or professional considers decisions made by other professionals or another agency is not a safe decision.

Matters relating to assessment for care and support needs fall outside the scope of this process. Individual practitioner performance also lies outside the scope of this process.

All professionals should feel able to challenge decision making and to see this as their right and responsibility in order to promote the best multi-agency safeguarding adults and mental capacity practice. This protocol provides professionals with the means to raise concerns they have about decisions made by other professionals or agencies by:

- Avoiding professional disputes that puts adults with care and support needs at risk or distract the focus from the adult.

- Resolving the difficulties within and between agencies quickly and openly.
- Identifying problem areas in working together where they may be a lack of clarity and to promote the resolution through amendment to protocols and procedures.
- Offering a way for resolution at practitioner level between agencies, if necessary with the involvement of their line managers.
- Offering a way to focus disagreements on whether a desired outcome has been achieved for an adult with care and support needs, this keeping Making Safeguarding Personal central to the outcome.

Working together effectively depends on an open approach and honest relationships between agencies. Problem resolution is an integral part of professional co-operation and joint working to safeguard adults.

Resolution should be sought within the shortest timescale possible to ensure the adult at the centre is protected. Disagreements should be resolved at the lowest possible stage, however, if an adult is thought to be at risk of immediate harm discretion should be used as to which stage is initiated.

Principles

- A timely resolution at the lowest level is the preferred approach to any disputed safeguarding concern or mental capacity disagreement.
- Any immediate risks should be addressed regardless of any ongoing disputes.
- It is every professional's responsibility to problem solve.

Context

Safeguarding enquiries

The duty to undertake an enquiry under section 42 of the Care Act 2014 begins at the point that the professional in the local authority confirms that the three key tests are met.

An enquiry begins when any action is taken by the local authority following receipt of a safeguarding concern. This could range from an informal conversation to more formal multi-agency discussions.

In adult safeguarding the threshold for enquiry is set out in the Sussex Safeguarding Adults Policy and Procedures and in the majority of cases this provides sufficient guidance.

However, there are situations where disputes over thresholds may emerge. In other situations, Adult Social Care & Health (ASC&H) may have concerns about the response of a professional colleague, for example:

- A poorly framed safeguarding concern.
- A failure to raise a safeguarding concern in a timely way.
- A failure to share relevant information needed by ASCH to make an adequate judgement as to how the safeguarding concern should be dealt with.
- A failure to discharge professional responsibility in relation to adult safeguarding, including providing reports where required in the context of a safeguarding enquiry.

The Winterbourne View Serious Case Review also highlighted the necessity of multi-agency challenges in helping to ensure the robustness of best practice in adult safeguarding.

Mental capacity

Capacity is always assumed, however, a mental capacity assessment begins when a person's capacity to make a specific decision is in question.

The decision maker will need to clearly demonstrate in their record keeping how a person meets the two-stage test of capacity based on all available evidence, and that they have taken into account conflicting views.

There may be situations where disputes arise between professionals where:

- The two-stage test has not been adequately evidenced.
- If there has been a mental capacity assessment by more than one professional and their outcomes are different whose assessment takes precedence.
- A professional feels an adult has not been adequately supported to make the decision.
- An Independent Mental Capacity Advocate (IMCA) has not been appointed when an adult has no one else to support them.
- The overall mental capacity assessment is perceived to be of poor quality.
- There is a disagreement between professionals about what is in an adult's best interests.

The resolution process

The following process should be followed by SAB partner agencies seeking resolution.

Stage One

Any professional who considers that a decision in relation to a safeguarding concern or safeguarding enquiry, or when a mental capacity assessment or best interests decision is not safe or is inappropriate, should initially consult a supervisor or manager in their own organisation.

When consulting with the supervisor or manager, the practitioner should be encouraged to:

- clarify their thinking in order to identify the problem,
- be specific as to what the disagreement is about,
- be clear about what they aim to achieve,
- be supported to discuss the issues with the other professional involved.

Initial attempts should be made to resolve the problem at practitioner level between agencies; this would normally be between the people who disagree. It should be recognised that differences in status and / or experience may affect the confidence of some workers to pursue this unsupported; however, all members of staff have a duty to raise concerns about the safety and wellbeing of clients, and act promptly.

Stage One

Professional to professional.

If issue resolved, no further action or mediation required.

Stage Two

If the problem is unresolved at stage one, the worker should ask the supervisor or manager within their own agency to raise the issue with the equivalent supervisor or manager in the other agency.

Stage Two

Manager to manager.

Line manager of individual liaises directly with the appropriate line manager in the other agency. The two managers will seek to resolve the dispute at this stage.

Stage Three

If the problem is unresolved at stage two, the supervisor or manager reports to their respective operations manager or named / designated safeguarding representative. These two managers must attempt to resolve the professional differences through discussion. Heads of Service must be prepared, where necessary, to intervene.

Stage Three

Senior manager to senior manager.

Stage Four

If the problem is unresolved at stage three, the senior manager raises the issue with their organisation's SAB member to seek resolution. Contact the SAB Manager, if necessary, in order to identify the service or sector's SAB member. At this stage, the SAB Manager should be notified who will keep a record of the ongoing disagreement and when resolution is reached.

Stage Four

If the issue remains unresolved, escalate to the organisation's SAB member for resolution.

Stage Five – The Final Stage

If the dispute continues, the final decision on conflict resolution rests with the Chief Officer for the local authority as the lead agency for adult safeguarding.

At all stages, actions or decisions must be recorded and shared with the relevant personnel.

What to do if the process highlights wider learning points or gaps in policies and procedures

Any general issues should be identified and referred to the agency's representative on the Safeguarding Adults Board for consideration by the Board Manager who will take forward via the relevant sub-group.