

Legal Framework – actions directed towards perpetrators and information sharing

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Aim: Refresher and update on the legal framework around actions directed towards perpetrators and around information sharing

Learning Objectives:

- To develop knowledge and understanding of potential options directed towards alleged perpetrators in Safeguarding work, including:
 - Criminal prosecution
 - Civil options
 - Options in particular situations
- To develop legal literacy around sharing and disclosing information in Safeguarding

What do we know about the use of options around alleged perpetrators in adult Safeguarding?

[National Analysis of SARs](#) shows criminal prosecution undertaken in approx. 18% of cases leading to a SAR (presumably the most serious cases)

Obstacles include:

- Adult safeguarding procedures compromising evidence
- Insufficient evidence, partly because of inadequate recording
- Insufficient use of special measures to support access to the criminal justice system.
- Inexperience of police and other staff, including a failure to seek specialist advice and consider the use of special measures (including advocates)
- Lack of support for victims, poor and inconsistent recording and advice
- Lack of understanding of the impact of coercive and controlling behaviour on a person's willingness to disclose abuse or neglect.

Earlier review of SARs:

- Interagency networks did not always consider together **relevant powers and duties** that could be of use
- Lack of awareness/consideration of **potential offences**



Criminal Prosecution



Criminal prosecution as a safeguarding option

“an offence should be seen to be aggravated by the victim’s vulnerability, not offset against it. Minimising offences against people with disabilities or other vulnerabilities is discriminatory”

[Hull SAB \(2014\) A decade of Serious Case Reviews](#)

“Not even 4% of all disability hate crimes investigated in 27 regions resulted in a successful charge or prosecution over three years”

[United Response \(2019\) Analysis of disability hate crime data](#)

[Adult at Risk: Police Referral Criteria](#)

Important to carefully consider and weigh up whether action should be taken without the adult’s consent/co-operation

[Guidance on prosecution of child sexual abuse](#)

[Guidance on prosecution of non-sexual child abuse](#)

[Guidance on prosecution of exploitation, modern slavery and trafficking offences](#)



Potentially relevant offences

- Mental Capacity Act s.44
 - Ill-treatment or Neglect of person (16+) who lacks capacity
- Criminal Justice and Court Act 2015
 - S20 Ill-treatment or Wilful neglect by paid care worker
Seems to be leading to many more successful prosecutions than s.44 MCA offence e.g. [Gateshead](#)
 - S21 Care Provider offence where worker ill-treats or wilfully neglects IF gross breach of duty of care made more likely or possible
- Domestic Violence, Crime and Victims Act 2004 s.5
 - Causing or allowing the death or serious physical harm to a child or vulnerable adult (member of same household only)



Prosecutions?

- CONVICTION FOR CORPORATE MANSLUGHTER (but guilty plea)
Ivy Atkin died after she was found dehydrated, malnourished and with an untreated bed sore at Autumn Grange, Nottingham, in 2012. Yousaf Khan, 47, of Nelson Road, Nottingham, admitted manslaughter and was sentenced to three years and two months at Nottingham Crown Court. His firm Sherwood Rise Ltd was fined £300,000 for corporate manslaughter - the first case of its kind in England.
- BUT CQC prosecuted a regulatory offence recently in case of elderly resident harmed by a radiator and tend to prosecute Health & Safety offences (which are likely to be easier to prove)



More potentially relevant offences

- Sexual Offences Act 2003
 - S38 Care workers: sexual activity with a person with a mental disorder
 - S39 Care workers: causing or inciting sexual activity
 - S40 Care workers: sexual activity in the presence of a person with a mental disorder
 - S41 Care workers: causing a person with a mental disorder to watch a sexual act
- Possession of extreme pornographic images (s.63 Criminal Justice and Immigration Act 2008)
- Child cruelty, neglect and violence (Children and Young Persons Act 1933 s. 1(1) as amended)
- Offences against the person Act
- Fraud by abuse of position of trust – Trading Standards [successful prosecution](#)



Even more potentially relevant offences

- **Harassment** including distressing messages, “revenge porn” and threatening to disclose private/intimate images (*s.33 Criminal Justice and Courts Act 2015 as amended by s.69 Domestic Abuse Act 2021*)
- **Controlling or Coercive behaviour** (including family as well as intimate relationships) and now also extends to post-relationship behaviour (*s.76 Serious Crime Act 2015 as amended by s.68 Domestic Abuse Act 2021*) – updated [CPS guidance](#) + [recent example of successful prosecution without victim cooperation](#)
- **Sexual and violent offences** where the perpetrator can no longer defend with ‘rough sex’ (*s.71 Domestic Abuse Act 2021*)
- **Forced Marriage** s.121 Anti-social Behaviour, Crime and Policing Act 2014. Sentences around 3 ½ - 4 ½ years, several successful prosecutions now e.g. [Both parents of 18 yr old](#)



Supporting Vulnerable Victims and Witnesses¹⁰

– Achieving Best Evidence Guidance

- For children and for adults (TSAB Guidance) with:
 - physical or mental disorder or disability or likely to suffer fear or distress + trafficking victims
 - likely to affect the quality of their evidence *Youth Justice and Criminal Evidence Act 1999*
 - statutory presumption that victims of domestic abuse are eligible *Domestic Abuse Act 2021*
- ‘Special Measures’ can include:
 - Screens
 - Video links
 - Communication aids
 - Registered Intermediary to assist witness in court and during investigation (approval sought retrospectively). Intermediary allowed to explain questions or answers to enable them to be understood but without changing the substance.
 - Evidence given in private (without public and only 1 pooled press)
 - Video recorded cross-examination (see Judicial Protocol)
- More generally – updated Equal Treatment Bench Book and The Advocate’s Gateway



Civil Options



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The use of civil orders and injunctions

- All require necessary and proportionate
- **Post-conviction Orders**
- “Prevention Orders”
 - During sentencing
 - Via free-standing application
- **Civil Orders with Criminal Penalties for breach**
- “Risk Orders”
 - Enhanced civil standard of proof relating to alleged actions
 - But hearsay admissible
- “Protection Orders”
 - Balance of probabilities



Successful use of Anti-Social Behaviour Injunction in Safeguarding

Brentwood BC v Mclvor [2018]

Mr Mclvor and Ms T long-standing friendship. Ms T an adult with care and support needs. Ms T reported physical abuse.

Brentwood obtained ASBI (support from Ms T and several neighbours) excluding him from Ms. T's building.

8 weeks custody for repeated breaches.

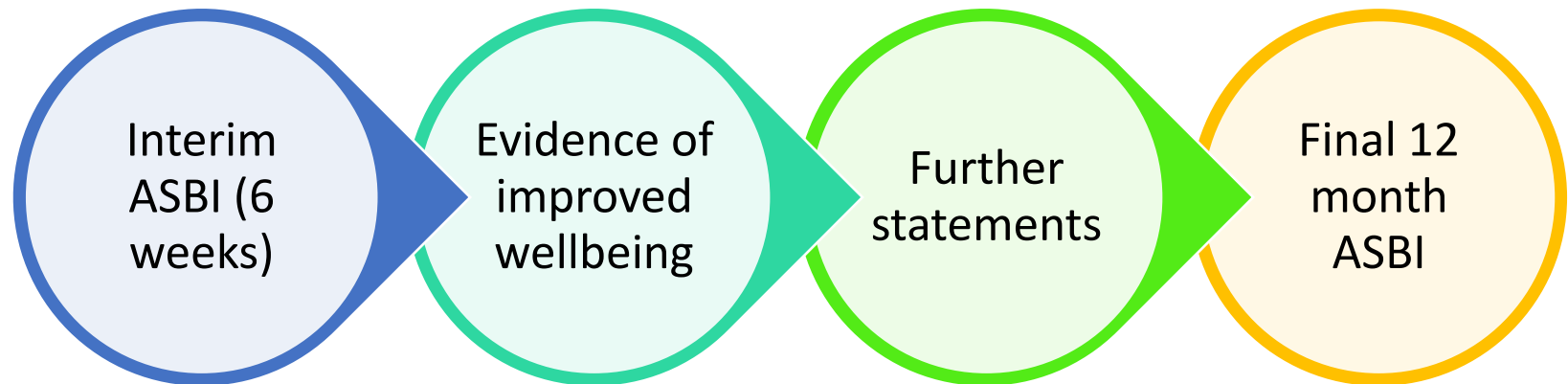
[Updated statutory guidance](#) – stresses proportionality and necessity

Another Case

- P, a physically vulnerable man in his 70s
- Long history of emotional, financial and physical abuse by the relative towards P, who would visit to extort money and P would fear reprisal if he didn't allow him access
- Assaulted by a relative in which he was punched, kicked and strangled
- P went to hospital, but discharged himself and refused to engage with statutory services because didn't want to get relative in trouble, but also in significant fear (genuinely believed that he and his pets would be killed and his house set on fire in retribution)
- DVPO used initially for 28 days
- P refused (with capacity) respite accommodation and was unwilling to seek a non-molestation order or an injunction under the Protection from Harassment Act 1997
- Inherent Jurisdiction considered, but decided seeking an ASBI would be easier and quicker



What then?



How to do it?

Requires the court to be satisfied (balance of probabilities):

- that the alleged perpetrator abuser has engaged or threatened to engage in anti-social behaviour, and
- it is just and convenient for the injunction to be granted.

Antisocial behaviour = “conduct that has caused, or is likely to cause, harassment, alarm or distress to any person”.

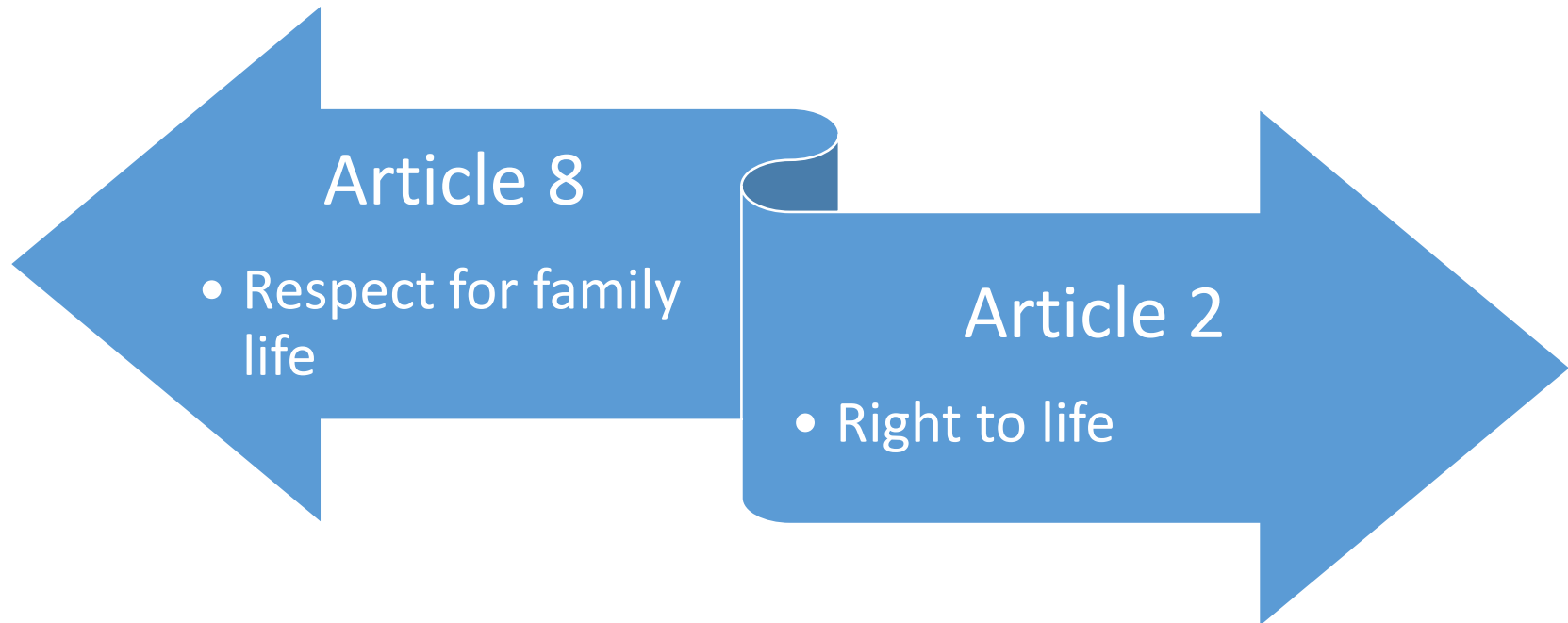
Further information:

At the point of the initial application, temporary injunction can be granted ‘if the court thinks it just to do so’.

- Injunctions can last for an indefinite or fixed period and can include a prescriptive element, for example, in ordering the respondent to attend a course.
- A power of arrest, allowing for an arrest without a warrant can be attached to the order for antisocial behaviour that involve violence or threats of violence or where there is a significant risk of harm to other persons. Breaches are punishable by up to two years’ imprisonment and/or an unlimited fine.



Proportionality



Child Abduction Warning Notices

- There is no statutory or other legislative provision dealing specifically with the issue of Child Abduction Warning Notices and a breach of a Notice is not a criminal offence. However, the Notices are part of an administrative process and if issued properly, can provide evidence to support the prosecution of other criminal offences and/or to support civil proceedings such as ASBOs, evictions or injunctions.
- There are two types of Child Abduction Warning Notices:
 - one for a child under 16, who is not in the care of the local authority; and
 - one for a child under 18, who is in the care of the local authority under section 31 Children Act 1989.



Public Spaces Protection Orders

- Ealing Council implemented a Public Spaces Protection Order (PSPO) around a Marie Stopes clinic to control behaviour of protestors (April 2018) – just upheld at appeal
- Potential use in Adult Safeguarding where Harassment/ASB in specific location (e.g. around victim's home/street) by unidentified individuals



Domestic abuse notices/orders

Currently:

Domestic Violence Protection Notice (DVPN) – issued by police for 48 hours

Domestic Violence Protection Order (DVPO) (s.24-30 Crime and Security Act 2010)

- Police apply to magistrate's court, on balance of probabilities
- for 14-28 days (temporary measures – designed to give victim thinking time)
- **don't require consent of the alleged victim** (though their views must be considered)

Coming early 2023

Domestic Abuse Protection Notice (DAPN)

Domestic Abuse Protection Order (DAPO)

Domestic Abuse Act 2021

- Third parties will be able to apply (relevant regs not yet published but likely to include local authorities)
- Can be issued by criminal, family or civil courts in other proceedings (even if not DA related)
- Can be used where non-physical abuse and controlling or coercive behaviour
- Flexible duration (designed to give victim thinking time)
- **don't require consent of the alleged victim** (though their views must be considered)



Forced Marriage

- Forced Marriage Unit dealt with 1,355 cases in 2019 (avoiding stats from Covid years)
- Two-thirds of cases involve adults. The biggest proportion, 22% (298 cases), related to victims aged 18 to 21.
- [Practice Guidance](#) and [Statutory Guidance](#)
- [My Marriage, My Choice](#) – Specialist resources on forced marriage involving adults with LD
- Forced Marriage Protection Orders – civil order with wide discretion to impose prohibitions, restrictions or requirements within or outside England and Wales. Breach is criminal offence. Forced marriage protection order (FMPO) [issued for male](#)
- Awareness of [predatory marriage](#) including [how to seek an annulment](#) if the person lacks capacity, supporting them to make new will if able and application to COP for statutory will if not.



Exploitation, Trafficking and Modern Slavery



- [8-point checklist for assessment and Victim Care Pathway](#)
- [Helpline](#)
- [Changing Face of Exploitation presentation](#)
- STPOs and STROs – [statutory guidance](#)
- Seek CPS advice on unusual or complex prohibitions

Sexual Abuse

- Sexual harm prevention orders (SHPO) (conviction/fact finding in criminal proceedings that lacks capacity required or insanity)
- Sexual risk orders (SRO)(without conviction but finding that act occurred on balance of probability)



CPS Guidance

- Notification requirements - the sex offender notification rules (sections 80 – 102 SOA 2003) follow automatically upon conviction for most sexual offences

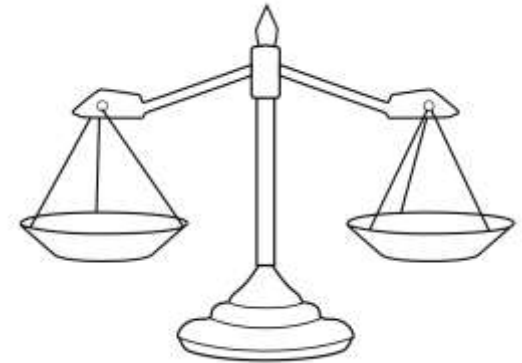


Barring

- Barring lists – be aware of **power** to refer, as well as duty to refer ([guidance](#))
- LA has power to provide information to DBS where:
 - It thinks a person has harmed or poses a risk of harm;
 - It thinks the person has been or might in the future work in regulated activity.
- Offence to employ barred person in regulated activity
- Offence to fail to check
- Offence to seek or offer to engage in regulated activity
- Beware the Direct Payments gap

The rights of alleged perpetrators

- Due Process (Article 6)
- Employment rights
- Tenancy/contractual rights
- Data protection, confidentiality and information sharing
- Other human rights e.g. Article 8 – respect for home, family and privacy
- DBS referral
- Weighing of these rights vs those of adult(s) at risk is key to good quality decision making



Alleged Perpetrators with needs for care and support

- Incidents between residents – [TSAB guidance](#)
- Appropriate adult
- Advocacy – IMCA rights – LA/NHS should instruct and IMCA (not just a Care Act advocate) to represent an alleged perpetrator who lacks capacity
- Tenancy/contractual rights and the impact of capacity
- Human Rights
- Achieving Best Evidence
- Special measures for defendants – not automatic but court can allow (However concerns about quality of non-registered intermediaries and Equality issues)



Information sharing, confidentiality and disclosure



What do we know about information sharing in adult Safeguarding?

Recommendations from [National Analysis of SARs \(2020\)](#):

- The importance of clear summaries when case responsibility is transferred between practitioners, teams or services
- Referrals must be very clear about risks and what is being requested
- Systematic co-ordination and handover in community → hospital and hospital → community moves
- Ensuring that record keeping is comprehensive, accurate and up-to-date, and referrals and concerns followed-up
- Timely, proportionate information sharing including being able to access records out of hours and/or in crisis situations



Information sharing amongst professionals for the purpose of Safeguarding Enquiries: summary

Lawful Basis

- Public Task – carrying out statutory duty - s.42 Care Act

Condition

- Necessary for the provision of health or social care

Third party information

- Assumed reasonable to share with professionals where necessary to carry out social work functions

Potential disclosure of information to member of the public for the purpose of safeguarding: summary

Lawful Basis

- Vital Interests or Public Task

Condition

- Substantial public interest (which includes ‘Safeguarding of children and individuals at risk’ amongst others) or Public Health
- + Proportionate

Third party information

- Reasonable – necessity and proportionality (balance of rights)

Disclosure of information

- Rarely considered and often cited in SARs and DHRs as something that should have been considered **not just in domestic abuse cases**
- Organisations that hold confidential information (for example about an alleged perpetrator) which could potentially inform relevant risk decisions being made by an adult who may be at risk who is (or is believed to be) unaware of the information

Should always proactively consider whether or not such information should be disclosed to the adult at risk (following GDPR lawful basis + condition) – see session 5 for more on GDPR

Essential balance: Article 8 right to privacy vs Article 2 right to life (or other relevant Article e.g. Article 4 freedom from slavery and forced labour)

- [ABC v St. George's Healthcare](#) [2020] – duty of care did NOT require disclosure of Huntingdon's to daughter in that case, **but** what was required was consideration of her rights vs his



Disclosure decision-making

- Local authorities can apply for disclosure of information to the adult – ‘Clare’s law’ Domestic Violence Disclosure Scheme (*Domestic Abuse Act 2021*)
– National guidance – TSAB guidance
- **But also** a lawful option in non-DV cases
- Ensure information is accurate
- Is disclosure necessary and proportionate
- “Even in emergency situations, the decision to disclose without the consent of the offender should wherever possible be made on a multi-agency basis. Single agency decision-making about the disclosure of information on offenders is strongly discouraged.” (*MAPP A Statutory Guidance Ch.10*)
- Seeking “representations” from the offender/alleged perpetrator



Concluding thoughts

Mental Capacity

Duties owed to

Criminal
prosecution
(familiar offences)

Prosecution of less
familiar offences

Criminal
prosecution

Civil Options e.g.
ASBI, DAPO

Consent to
information
sharing

Sharing
information
without consent

