

7. Criminal Law, the Police and Adult Safeguarding

7.1 Introduction

Everyone is entitled to be protected by the law and have access to justice. Although the local authority has the lead in making enquiries in adult safeguarding cases, where criminal activity is suspected involving the police as soon as possible is likely to be beneficial in many cases. Behaviour which amounts to abuse and neglect also often constitute specific criminal offences under various legislation, for example:

- physical or sexual assault or rape
- psychological abuse or hate crime
- wilful neglect
- unlawful imprisonment
- theft and fraud
- certain forms of discrimination

For the purpose of a court trial, a witness is deemed to be competent if they can understand the questions and respond in a way that the court can understand. Police have a duty to assist witnesses who are vulnerable and intimidated.

7.2 Staff Contact with the Police and Other Agencies

Staff contact with the police will fall mainly into four main areas:

- Reporting a crime – if an individual witnesses a crime, they have a duty to report it to the police.
- Third party reporting of a crime – if an individual is made aware of a crime, they should support the adult at risk to report to the police, or make a best interest decision to do so.
- Consultation with the police – seeking advice.
- Sharing intelligence and managing risk.

Where the safeguarding concerns arise from abuse or neglect intended to cause harm, then it will not only be necessary to immediately consider what steps are needed to protect the adult but also how best to report as a possible crime.

Early engagement with the police is vital to support the criminal investigation. A criminal investigation takes priority over all other enquiries, including safeguarding enquiries. However, it is important to agree a multi-agency approach to ensure that the wishes and interests of the adult are considered throughout, even if they do not wish to proceed with a criminal prosecution or to provide evidence.

7.3 Ill-Treatment and Wilful Neglect

The Mental Capacity Act 2005 created the criminal offences of ill-treatment and wilful neglect in respect of people who lack the ability to make decisions. The offences can be committed by anyone responsible for the adult's care and support such as paid staff, but also family carers as well as people who have the legal authority to act on that adult's behalf (that is persons with power of attorney or Court appointed deputies).

These offences are punishable by fines or imprisonment.

Ill-treatment covers both deliberate acts of ill-treatment and also those acts which are reckless which results in ill-treatment. Wilful neglect requires a serious departure from the required standards of treatment and usually means that a person has deliberately failed to carry out an act that they knew they were under a duty to perform.

The police must be fully involved in any safeguarding concerns / enquiries where there is a possibility or suspicion of ill-treatment or wilful neglect as they should take the lead in deciding whether to initiate criminal proceedings.

7.4 Special Measures

A range of special measures are available to aid gathering and giving of evidence by vulnerable and intimidated witnesses.

These should be considered from the onset of a police investigation, and can include:

- An immediate referral from adult social care or other concerned agency.
- Discussion with the police will enable the police to establish whether a criminal act has been committed. This will give an opportunity to determine if, and at what stage, the police need to become involved further and undertake a criminal investigation.
- The police have powers to take specific protective actions, such as Domestic Violence Protection Orders (DVPO).
- As a higher standard of proof is required in criminal proceedings ('beyond reasonable doubt') than in disciplinary or regulatory proceedings (where the test is the balance of probabilities), so early contact with the police may help to obtain evidence and witness statements.
- Early involvement of the police helps to ensure that forensic evidence is not lost or contaminated.
- Police officers need to have considerable skill in investigating and interviewing adults with different disabilities and communication needs, in order to prevent the adult being interviewed unnecessarily on other occasions. Research has found that sometimes evidence from victims and witnesses with learning disabilities is discounted. This may also apply to others such as people with dementia. It is crucial that reasonable adjustments are made and appropriate support given, so everyone can have equal access to justice.

- Police investigations should be coordinated with health and social care enquiries but may take priority. The local authority's duty to ensure the wellbeing and safety of the person continues throughout a criminal investigation.
- Appropriate support during the criminal justice process should be available from local organisations such as Victim Support and court preparation schemes.
- Some witnesses will need protection from the accused or their associates (see Section 3, Adults Witnesses who are Vulnerable or Intimidated, below).
- The police may be able to arrange support for victims.

Special Measures were introduced in the Youth Justice and Criminal Evidence Act 1999 and include a range of interventions to support witnesses to give their best evidence and to help reduce anxiety when attending court. These include the use of screens around the witness box, the use of live (video) link or recorded evidence and the use of an intermediary to help witnesses understand the questions they are being asked and to give their answers accurately.

Police officers need to have considerable skill in investigating and interviewing adults with a range of disabilities and communication needs if early involvement is to prevent the adult being re-interviewed unnecessarily. It is important that evidence from victims and witnesses with learning disabilities or dementia is not automatically discounted. It is crucial that reasonable adjustments are made and appropriate support given, so people can get equal access to justice.

Where a victim or witness meets the criteria for receiving special measures, prosecutors and police will need to have early discussions to determine which special measures should be applied for that will assist the vulnerable or intimidated person to give their best evidence. The views of that person (or, in appropriate cases, their carers or advocates) should be taken into account. In some cases, it will be useful for the prosecutor to meet the witness in a Special Measures Meeting to discuss what arrangements have been made with the court.

The use of remote video links under section 24 or an intermediary under section 29 or Aids to Communication under section 30 of the 1999 Act may be of particular relevance in appropriate cases.

7.4 Special Measures

Adults who are deemed as vulnerable witnesses have:

- a mental health disorder
- a learning disability and / or
- a physical disability

These witnesses are only eligible for special measures if the quality of the evidence that will be given by them is likely to be diminished because of their disorder or disability.

Intimidated witnesses are those whose quality of evidence is likely to be diminished because of fear or distress. In deciding whether a witness comes into this category the court takes account of:

- the nature and alleged circumstances of the offence
- the age of the witness
- the social and cultural background and ethnic origins of the witness
- the domestic and employment circumstances of the witness
- any religious beliefs or political opinions of the witness
- any behaviour towards the witness by the accused or third party

Also coming into this category are:

- complainants in cases of sexual assault
- witnesses to specified gun and knife offences
- victims of and witnesses to domestic violence, racially motivated crime, crime motivated by reasons relating to religion, homophobic crime, gang related violence and repeat victimisation
- those who are older and frail
- the families of murder victims

Registered Intermediaries (RIs) help communicate with vulnerable witnesses during the criminal justice process.

As noted above, a criminal investigation by the police takes priority over all other enquiries. However a multi-agency approach should be agreed, to ensure that the interests and personal wishes of the adult are considered throughout, even if the adult decides not to provide any evidence or support a prosecution.

Where a victim or witness is vulnerable or intimidated, prosecutors should look for evidence other than theirs so that, in appropriate cases and where possible, the case may proceed without relying on their evidence. This may involve seeking information or evidence from other agencies which may include Adult Social Care, health services, specialist charities or the Care Quality Commission. Therefore, care plans, visitor records, medication records may provide useful sources of information or evidence. Prosecutors will want to be aware of any other investigations or proceedings pending or concurrent, in which other agencies may be involved, for example, safeguarding enquiries.

The welfare of the adult and others including children, is paramount and requires continued risk assessment to ensure the outcome is in their interests and enhances their wellbeing. If the adult has the mental capacity to make informed decisions about their safety and they do not want any action to be taken, this does not prevent information being shared with relevant colleagues. This enables all professionals to assess the risk of harm and be confident that the adult is not being unduly influenced, coerced or intimidated and is aware of all the options available to them. This will also enable professionals to share decision making and risk management to ensure that decisions made are safe and valid. The adult should be informed of this action unless doing so would increase the risk of harm to them.