



# West of Berkshire Safeguarding Adults Board

## Constitution

April 2016

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# West of Berkshire Safeguarding Adults Board Constitution

The following SAB partner agencies have signed up to the West of Berkshire SAB Constitution:

- Berkshire Healthcare Foundation Trust
- Berkshire West Clinical Commissioning Groups
- Community Rehabilitation Service for Thames Valley
- Emergency Duty Service
- National Probation Service
- Reading Borough Council
- Royal Berkshire Fire and Rescue Service
- Royal Berkshire NHS Foundation Trust
- South Central Ambulance Trust
- Thames Valley Community Rehabilitation Company
- Thames Valley Police
- West Berkshire District Council
- Wokingham Borough Council

The Constitution will be reviewed annually.

## 1 PURPOSE

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The West of Berkshire SAB covers the three Local Authority areas of Reading, West Berkshire and Wokingham.

The West of Berkshire Safeguarding Adults Board (SAB) is established in line with duties set out in s43 and Schedule 3 of the Care Act 2014 as the statutory mechanism for agreeing how partner agencies cooperate to protect adults at risk, prevent neglect and abuse and promote the wellbeing of adults in its area.

Statutory safeguarding responsibilities arise where there is reasonable cause to suspect that an adult:

- a) Has needs for care and support (whether or not the authority is meeting any of those needs);
- b) Is experiencing, or is at risk of, abuse or neglect; and

c) As a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

The SAB's objective is to ensure that local safeguarding arrangements and partnerships act to help and protect adults at risk of, or experiencing, neglect and/or abuse, hereafter referred to as *adult*.

The SAB is a multi-agency strategic partnership made up of senior officers within adult social care, criminal justice, health, housing, community safety, voluntary organisations and service user representative groups. It coordinates the strategic development of adult safeguarding across the West of Berkshire and ensures the effectiveness of the work undertaken by partner agencies in the area.

In achieving the above, the following six key principles must be followed:

**Empowerment:** Presumption of person led decisions and informed consent.

**Prevention:** It is better to take action before harm occurs.

**Proportionality:** The least intrusive response appropriate to the risk presented.

**Protection:** Support and representation for those in greatest need.

**Partnership:** Local solutions through services working with communities.

**Accountability:** Accountability and transparency in delivering safeguarding.

## 2 FUNCTION OF THE BOARD

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The core duties of the SAB are set out in chapter 14 of the Care Act Guidance, issued under s78 Care Act 2014 which requires that Boards:

- Publish a Strategic Plan for each financial year detailing how it will meet its main objectives and what the members will do to achieve this.
- Publish an Annual Report detailing what the SAB has done during the year to achieve its main objectives and what each member has done to implement its Strategic Plan. The Annual Report will also set out the findings of any Safeguarding Adults Review completed during the year and the subsequent actions arising from the reviews.
- Conduct any Safeguarding Adults Reviews, in accordance with s44 Care Act.

The SAB has a unique statutory role in ensuring that partners have effective safeguarding arrangements in place and are cooperating and assisting with the planning and delivery of services for adults who may be in need of care and support. The Board must be able to form a view of the quality of local activity, challenge organisations as necessary and speak with an independent voice.

The key functions of the SAB are to:

- Offer advice and assistance regarding safeguarding responsibilities and promote the understanding that '**safeguarding is everyone's responsibility**'.
- Co-ordinate what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of adults in the area ; and
- Ensure the effectiveness of what is done by each person or body for that purpose.

In order to deliver these functions the SAB will *develop* policies and procedures and, where relevant, *oversee* the development of policies and procedures within partner agencies to:

- Establish ways of analysing and interrogating data on safeguarding notifications and completed enquiries which increases the SAB's understanding of the prevalence of abuse and neglect locally that builds up a picture over time.
- Hold partners to account and gain assurance of the effectiveness of its arrangements for safeguarding adults.
- Determine its arrangements for peer review and self-audit.
- Establish mechanisms for developing policies and strategies for protecting adults which should also take account of the views of adults who have needs for care and support, their families, advocates and carer representatives.
- Develop preventative strategies that aim to reduce instances of abuse and neglect in its area.
- Identify types of circumstances giving grounds for concern and when they should be considered as a referral to the local authority as an enquiry, including referral pathways and thresholds for intervention.
- Formulate guidance about the arrangements for managing adult safeguarding, and dealing with complaints, grievances and professional and administrative malpractice in relation to safeguarding adults.
- Develop strategies to deal with the impact of issues of race, ethnicity, religion, gender, sexual orientation, age, disadvantage and disability on abuse and neglect.
- Balance the requirements of confidentiality with the consideration that, to protect adults, it may be necessary to share information on a 'need-to-know basis'.
- Identify mechanisms for monitoring and reviewing the implementation and impact of policy and training.
- Carry out Safeguarding Adult Reviews and advise Board Partners on lessons to be learned.
- Publish a Strategic Plan and an Annual Report.
- Evidence how SAB members have challenged one another.
- The Board will engage in any other activity that facilitates the achievement of its objectives.

## **3 GOVERNANCE AND ACCOUNTABILITY**

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### **3.1 BOARD MEMBERS**

Board Members represent their agencies and must be of sufficient seniority to do so, and they also have a responsibility to ensure effective safeguarding within their agencies and across partner agencies. If there is any possibility of conflict of interest, the Board member should declare their interests.

### **3.2 RELATIONSHIP WITH OTHER STRATEGIC BOARDS**

In order to ensure an ongoing and direct relationship with other key strategic Boards and bodies the SAB will have in place protocols to outline its relationship with the LSCBs, the Health and Well Being Boards and the Community Safety Partnerships in the area.

The Chair will present the Board's Annual Report to these Boards on an annual basis. Similarly the chairs of other Boards and Partnerships or their representative will present their annual reports to the SAB.

The SAB Chair will raise any concerns the SAB may have regarding the effectiveness of the arrangements these Boards and Partnerships or their members in safeguarding adults.

### **3.3 ACCOUNTABILITY**

The SAB is accountable to the Chief Executives of the Councils and Lead Members for Adult Social Care in respect of its governance. However, the SAB will act independently in respect of monitoring safeguarding arrangements and it is within its remit to scrutinise the safeguarding arrangements of all responsible organisations within the West of Berkshire.

The Board is accountable to its core funding partners and as good practice the Strategic Plan, Annual Report and the Business Plan will be shared with all the executive bodies of partner agencies.

It is the responsibility of the Chief Executive Officer and the Lead Member for Adult Social Care, as well as of partner agencies to ensure that an effective local Safeguarding Adults Board is in place.

### **3.4 THE ROLE OF ELECTED MEMBERS AND NON-EXECUTIVE DIRECTORS**

The West of Berkshire SAB covers three Local Authority areas and as such has three Directors and three Lead Members of Adult Social Care. The Board is equally accountable to each of the three areas.

The Lead Members for Adult Social Care are politically accountable for ensuring the local authorities fulfil their legal responsibilities for safeguarding and promoting the welfare of adults and should provide the political leadership needed for the effective co-ordination of work with other agencies with safeguarding responsibilities and should be a 'participant observer' member of the SAB. As such, the Lead Member will attend meetings as an observer when the meeting is held in their area, receive all written reports, engage

in discussions, ask questions and seek clarity, but will not be part of the decision-making process and thus will have the independence to challenge when necessary from a well-informed position.

The Lead Member for Adult Social Care in each Local Authority will pay particular attention to how the Local Authority is fulfilling its responsibilities to safeguard and promote the welfare of adults.

Other Local Authority elected members and non-executive directors of other Board partners cannot be members of the West of Berkshire SAB.

The Lead Member for Adult Social Care can ask to speak to the Chair in order to seek the Chair's view on the Board's effectiveness and whether partners are fulfilling their responsibilities. The Lead Member should inform the Director of Adult Social Care of their intention to do so. The Chair may also contact the Lead Member and should likewise inform the Director of Adult Social Care.

### 3.5 THE FUNCTION OF CHALLENGE

One of the primary functions of the West of Berkshire SAB is to set in place quality assurance mechanisms to monitor the effectiveness of work carried out by the partners to safeguard and promote the well-being of adults. This covers not just the quality of the joint work that goes on between partner agencies, but also the quality of the work within individual agencies.

The West of Berkshire SAB will receive and scrutinise regular quality-assurance reports by individual agencies to identify good practice and highlight any shortcomings within those agencies. If shortcomings are identified, the SAB and the agency in question will agree a remedial action plan. The implementation and resulting impact of the action plan will be reviewed by the SAB.

If a Board partner is found not to be performing effectively in safeguarding and promoting the welfare of adults, and the SAB is not convinced of the adequacy of the planned action to improve practice, the Chair, in consultation with the relevant Director of Adult Social Care, will seek to provide support and ensure adequate action is taken to improve practice.

Whilst the West of Berkshire SAB has a role in coordinating and ensuring the effectiveness of work by local individuals and organisations in relation to safeguarding and promoting the welfare of adults, it is not accountable for their operational work. Each Board partner has their own existing lines of accountability for safeguarding and promoting the welfare of adults by their services. The West of Berkshire SAB does not have the power to direct other organisations.

### 3.6 DISPUTE RESOLUTION BETWEEN BOARD PARTNERS

The SAB always seeks to operate on a consensus basis. If it is not possible to reach a consensus, members will be required to undertake a formal vote on a simple majority basis which will be recorded. Each statutory agency's representative in attendance will have a single vote. In the event of a tied vote, the Chair will have the casting vote.

If there is a dispute between Board partners, dispute resolution procedures will be followed. Within 28 days of the Board determining that a dispute exists, the West of Berkshire SAB Chair, in consultation with the Directors of Adult Social Care, will convene a joint meeting of the parties in dispute. This should take place as soon as is reasonably practicable, but within three months. In most cases the Chair of the SAB will chair the meeting. The agenda will be agreed jointly by the Chair and the parties in dispute. The aim of this meeting is for both parties to agree a formula for resolving the dispute, or agree the issues that separate them and possible ways forward.

Where there is no agreement, either party may suggest to the Chair that an independent mediator be appointed to resolve the dispute; this course of action requires the agreement of the partners. If they cannot agree this within 28 days, the Chair, in consultation and agreement with the Directors of Adult Social Care may refer the dispute to a Chartered Institute for Arbitrators to be resolved.

If there is a dispute between a West of Berkshire SAB partner and the Chair similar dispute resolution procedures will be followed. The Director of Adult Social Care will convene a joint meeting of the parties in dispute within the same timescales and with the same aims as above. Where there is no agreement, either party may suggest to the Director of Adult Social Care that an independent mediator be appointed. If the partners cannot agree this within 28 days the Director of Adult Social Care, in consultation with the Chief Executive, may refer the dispute to the Chartered Institute for Arbitrators to be resolved.

### **3.7 ROLE OF INDEPENDENT CHAIR**

The Chair is appointed by the Chief Executive of the Local Authority following a recommendation from a panel made up of relevant partners from the SAB. There will be a clear role description for the Chair. The Chair's role will include the requirement to challenge partner agencies at a senior level where there are concerns about safeguarding performance or systems. The Chair will provide independent leadership and strategic vision to the SAB and ensure that the SAB has an independent, objective and authoritative identity.

The Chair is responsible for chairing all main West of Berkshire SAB meetings. The Chair will agree the agenda and correct and agree the minutes. The Chair will represent the Board at formal meetings with other Partnerships and scrutiny bodies.

The Chair will present an Annual Report of the West of Berkshire SAB's activities, including an assessment of the effectiveness of the local safeguarding arrangements and the challenges for the next year to relevant statutory bodies.

The Chair is also responsible for raising safeguarding issues with relevant statutory bodies as the representative of the West of Berkshire SAB and challenging the Board and its members if these are not addressed appropriately.

The Chair should be independent, either as a voluntary or paid position under contract. The Chair does not report to the Chief Executive or the Lead Member, but should liaise with them and brief them on a quarterly basis.



Board members will be consulted on the appointment of the Chair and with the Directors of Adult Social Care review the appointment annually to consider how effective the current arrangements are and whether the objectives of the Board are being met under the current Chair. The role of the Independent Chair is held for a period of 2 years to ensure consistency and continuity. Thereafter, a review of employment should be undertaken and members consulted on the continuation of the Chair.

## 4 STRUCTURE OF THE BOARD

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### 4.1 FREQUENCY OF MEETINGS

The SAB will adopt the financial year April 1st – March 31<sup>st</sup>. The full board will meet at least four times per year.

Extraordinary meetings may be called by the Independent Chair where a need arises. As much notice as possible will be given.

### 4.2 MEMBERSHIP

The full board will be chaired by the Independent Chair, who will agree the agenda. The SAB will elect a vice chair who will chair the meeting on occasions that the Independent Chair is unable to do so.

Organisations must designate particular, named people as their representative on the West of Berkshire SAB so that there is consistency and continuity in the membership of the Board. Members are required to nominate a suitable alternative representative in the event of them being unable to attend a meeting.

Membership should be from all key agencies or major service areas represented, and at as senior level as possible. The representative should hold a strategic position within their organisation with respect to safeguarding and promoting the welfare of adults. Board members and any suitable alternative representative must be:

- experienced in the work of their organisation;
- able to explain their organisation's priorities;
- able to promote the aims of the SAB;
- understand pressures facing front line practitioners;
- able to speak with authority within their organisation;
- hold their organisation to account; and
- commit their organisation on policy and practice and to agreed actions, including those with financial implications.

Members of the West of Berkshire SAB have a duty to contribute effectively to the work of the Board and its sub groups.

Board members will also be responsible for cascading information about the activity of the SAB as well as local and national developments to senior management teams and Executive Boards within their own agency.

In the event of a member no longer being able to represent their agency, reasonable notice should be given to the Independent Chair so that a replacement may be found.

Lay members will operate as full members of West of Berkshire SAB, participating in associated activities to:

- Support stronger public engagement in local safeguarding issues and contribute to an improved understanding of the West of Berkshire SAB adult protection work in the wider community.
- Challenge the West of Berkshire SAB on the accessibility by the public, adults and carers of its plans and procedures.
- Help to make links between the West of Berkshire SAB and community groups.

The Board regularly reviews membership to ensure it reflects those organisations that have a key role in safeguarding across the West of Berkshire and to ensure service users' views can be included within the voice of the Board.

The West of Berkshire SAB will include one senior representative from the organisations / services below:

- Berkshire Healthcare Foundation Trust
- Berkshire West Clinical Commissioning Groups
- Emergency Duty Service
- HealthWatch
- National Probation Service
- Reading Borough Council
- Royal Berkshire Fire and Rescue Service
- Royal Berkshire NHS Foundation Trust
- South Central Ambulance Trust
- Thames Valley Community Rehabilitation Company
- Thames Valley Police
- West Berkshire District Council
- Wokingham Borough Council

Three Safeguarding Forums in the West of Berkshire provide opportunities for providers and service users to help drive the work of the Board. The Chair of the Forum is invited to attend the Board meeting when it is held in their area to present on relevant issues.

The SAB will secure the involvement of other relevant organisations, either by inviting them to be representatives of subgroups or through invitation for specific issues for discussion at a SAB meeting or through some other mechanism. In addition, links will be maintained with the following:

- Joint Legal Team
- Healthwatch
- Public Health and substance misuse team
- Service user and carer forums
- MAPP
- MARAC
- Advocacy services
- Department for Work and Pensions
- Office of the Public Guardian
- Coroner's office
- Care Quality Commission

At the discretion of the Chair, advising officers and observers can attend Board meetings. Advising officers provide information and professional expertise. They and observers may, at the discretion of the Chair, address meetings but are not members of the Board and cannot vote.

### 4.3 ATTENDANCE

For the Board to be successful and to achieve its goals it needs to be truly reflective of all partner agencies. Attendance at the Board is essential to its success. Board members are expected to attend a minimum of 75% of Board meetings.

For some individuals in smaller organisations, it is accepted that a 'virtual membership' is the only way they can commit to the Board. Rather than lose their voice, the Board will list these individuals as members and they will receive all minutes and paperwork and be informed by the Business Manager of agenda items that may be of specific interest to them or issues that the Board would like them to comment on.

Attendance at Board and subgroup meetings will be monitored and reported as part of the SAB's Annual Report and any issues regarding attendance of agencies will be raised with the agency concerned.

### 4.4 QUORACY

A meeting of the West of Berkshire SAB requires at least five members, representing at least four separate agencies, to be quorate. This quorum should always include either the Independent Chair or Business Manager. No decisions can be made without the meeting being quorate.

## 4.5 RECORDS AND CONFIDENTIALITY

The minutes of the West of Berkshire SAB meetings will be entered as a permanent record and submitted for approval at the next meeting.

The meetings of the West of Berkshire SAB will not be held in public, although the minutes of the Board will, subject to issues of confidentiality and legal considerations, be a public document and posted on the website.

Minutes are also shared with the Independent Chair and Business Managers of the three Local Children's Safeguarding Boards in the area.

Documents relating to Safeguarding Adults Reviews are only shared with the SAR Panel members and anonymised summaries are provided to the Board.

## 5 SUBGROUPS

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There are four Subgroups which meet quarterly, usually in advance of the Board meeting, and provide a written report to the each Board meeting. Time limited tasks groups may be set up for individual pieces of work. These will be agreed and monitored by the Board.

### 5.1 EFFECTIVENESS SUBGROUP

The Effectiveness Subgroup assists the Board in promoting good quality safeguarding practice.

### 5.2 PERFORMANCE AND QUALITY SUBGROUP

The purpose of the Performance and Quality Subgroup is to oversee performance of adult safeguarding activity in the West of Berkshire, highlighting the effectiveness and risks of key processes and practices.

### 5.3 COMMUNICATION AND PUBLICITY SUBGROUP

The purpose of the Communication and Publicity Subgroup is to support the messages that safeguarding is everyone's business and that good communication is the responsibility of all partners sitting on the Safeguarding Adults Board. The overall aim of the Communications Strategy is to improve people's understanding of the work in relation to safeguarding adults in the area.

### 5.4 LEARNING AND DEVELOPMENT SUBGROUP

The purpose of the Learning and Development Subgroup is to develop, implement, review and update the multi-agency Workforce Development Strategy for the protection of adults at risk. The aim of this Strategy is to provide an effective, coordinated approach to learning in order to support all agencies to prevent abuse and respond to safeguarding concerns with timely, proportionate and appropriate action.

## 6 STRATEGIC PLAN

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The SAB will publish a Strategic Plan covering each financial year outlining its strategy for achieving its objectives and what each member is to do to implement that strategy. In preparing its strategic plan, the SAB will consult with Board members, Healthwatch and other stakeholders including the local community, specifically adults who have experienced the safeguarding process.

The Strategic Plan will outline a set of key priorities and objectives which the SAB will use as benchmarks to assess the performance and effectiveness of local services in relation to safeguarding related activities. The scope of the SAB includes a broad range of activities to improve outcomes for adults at risk by promoting awareness, improving practice and learning and the prevention of harm to adults across a range of areas of activity.

Individual partners are expected to use their own internal governance arrangements to seek wider endorsement of and contribution to the plan.

## 7 ANNUAL REPORT

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Each year the SAB will publish an Annual Report outlining the progress of safeguarding adults work in the West of Berkshire in the past year. The Annual Report will include reports from each sub-group in respect of progress within their areas of responsibility. The Chair will coordinate the production of the annual report, but this will be agreed by the Partner agencies and will detail:

- what it has done during that year to achieve its objective;
- what each member has done during that year to implement the objectives of its Strategic Plan;
- the findings of any safeguarding adults reviews which have concluded in that year (whether or not they began in that year);
- the reviews arranged by it under that section which are ongoing at the end of that year (whether or not they began in that year);
- what it has done during that year to implement the findings of any SARs; and
- where it decides during that year not to implement a finding of a review arranged by it under that section, the reasons for its decision.

The SAB will send a copy of the report to:

- The Chief Executive of all partner agencies.
- The Leader of Reading Borough Council, West Berkshire District Council and Wokingham Borough Council.
- The Chairs of the Health and Wellbeing Boards.
- The Chairs of the Local Safeguarding Children's Boards.
- Healthwatch.

The West of Berkshire SAB Strategic Plan, Business Plan and Annual Report will be public documents and will be published on the Board's website.

## 8 FUNDING

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The SAB's funding partner agencies will contribute annually, at an agreed payment level or, where previously agreed through services in kind to the funding required to meet the responsibilities, duties and objectives of the SAB. The members agree to the establishment and maintenance of a pooled fund which will be managed by the host Local Authority on behalf of Board Partners. The fund will be used for resourcing the Board to ensure it meets its responsibilities, duties and objectives. A transparent budget monitoring process will be employed by the host Local Authority, with regular updates provided to the Board. Any unspent funds will be carried over to the next financial year. The financial year will run from the 1 April to the 31 March the following year, with contributing agencies being invoiced by the 1 October each year.

## Memorandum of Understanding *Board Member Roles and Responsibilities*

### 1 IN RELATION TO THE BOARD MEETINGS:

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- To attend all meetings and for the whole meeting. The minimum expectation is to attend 75% of meetings in a year.
- To be punctual.
- To read all papers prior to the meeting and be prepared to contribute to the discussion.
- To nominate a named deputy who will attend on occasions when attendance is not possible who will be properly briefed to address the issues on the agenda, to present relevant agenda items and to make decisions on behalf of the agency.

### 2 IN RELATION TO THE BOARD MEMBER'S OWN AGENCY

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The key role is to champion and lead the safeguarding agenda within their agency, to include the following activities:

- To promote the need for a named lead for Safeguarding Adults within their agency.
- To ensure that relevant departments within their agency contribute to the safeguarding work of the Board:
  - Human Resources contribution to Safe Recruitment.
  - Finance contribution to the budget for safeguarding work.
  - Training contribution to single agency and multi-agency training programme for safeguarding.
  - Media and Communications Teams contribution to media management and publicity.
  - Data and ICT contribution to the Safeguarding Agenda.
  - Information systems.
- To bring to the SAB agenda, issues regarding safeguarding that relate primarily to their own agency but which have implications for the co-operation between agencies and the monitoring

role of the Board e.g. performance assessments, audits of practice, new guidelines either national regional or local.

### **3 IN RELATION TO THE BOARD'S BUSINESS**

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- To lead on key activities outlined in the Business Plan and work programmes of the Subgroups and any additional activities to deliver the key priorities and outcomes of the SAB.
- To be prepared to chair and participate in subgroups and task and finish groups and to resource these from their agencies where necessary, making sure that representatives are briefed about the strategic context and priorities of the SAB, attend regularly and make relevant contributions.
- To work within their agencies to ensure that information is communicated efficiently and that activities within the agency are coordinated.
- To communicate key messages about safeguarding within their own agencies.
- To complete required tasks within agreed deadlines.
- To share accountability for multi-agency work in safeguarding proactively.
- To be responsible for identifying poor performance in safeguarding practice within their agency and other agencies, and where responsible for that area of work, acting to address this or bringing it to the attention of the relevant person. Where poor practice continues despite intervention or due to circumstances beyond the individual's sphere of influence, to bring the concerns to the Board.
- Where required, be a member of a Safeguarding Adults Review Panel and carry out the responsibilities this entails or commission such membership from within their agency.

### **4 IN RELATION TO OTHER PARTNER AGENCIES:**

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- To know and understand the roles and responsibilities of other agencies and to hold them to account.
- To support other agencies by respecting and valuing their contribution and actively seeking to contribute to the work they are leading on, ensuring that activity is collaborative and avoids duplication or creating avoidable gaps in provision.
- To challenge attitudes, actions and practices that do not support the objectives of the SAB.
- To deliver on the Business Plan and work programme(s) and to contribute to the identification and review of priorities.



- To provide support to the agency representatives on the SAB subgroups in identifying and accessing sources of performance information in order to contribute to the performance management and priorities for the SAB.
- To adhere to the Board's Communication Protocol in the event of a Significant Safeguarding Incident.

## 5 THE SAB COMMITMENT TO MEMBERS

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The SAB is supported by an Independent Chair and Business Manager and the following processes are in place to support the work of the board, individual members and their agencies.

- All papers will be sent out a minimum of one week (5 working days) before each meeting.
- Minutes will be sent out 2 weeks after the meeting to ensure that actions can be completed.
- To ensure the effectiveness of the board, reminders on action points will be sent in a timely fashion.
- Board meetings are quarterly and will last for three hours.

I the undersigned confirm my role as member of the West of Berkshire SAB and agree to carry out my responsibilities as set out in the Board's Constitution.

Name and Position:

Signature:

Date:

I confirm membership of the above and welcome them to the West of Berkshire SAB.

Name and Position: Brian M Walsh SAB Independent Chair

Signature:



Date: 22 March 2016



## Appendix B

# Arrangements to Apply the SAB's Powers Under s45 of the Care Act

The Care Act introduces a new duty for Safeguarding Adults Boards. In essence section 45 of the Care Act means that:

- A person must supply information on request by the SAB if he/she is likely to have information relevant to the SAB's functions.
- The information can be about the person, or a function or activity they engage in, or a person in respect of whom they exercise the function / activity.

The power to request information could be used when carrying out a Safeguarding Adults Review, but might also assist in the context of an ongoing safeguarding investigation, particularly if issues are raised about the disclosure of relevant information. The request places the person it is made to under a duty to disclose.

It is the Board rather than Adult Social Care or any other agency which has the power to request disclosure.

The SAB has agreed an arrangement for requesting information in urgent cases, as outlined in the following procedure:

1. As the delegate of the Safeguarding Adults Board, the Chair or her nominee may request proportionate and relevant information which is required to assist in a safeguarding adults investigation.
2. A referral may be made to the Chair and should identify the agency or individual and the information sought from them, together with a brief statement of the reasons for seeking disclosure, and timescale. In specifying a timescale for disclosure, the Chair will consider both the urgency of the request and the time likely to be needed to make available the information requested.
3. The Chair will consider the referral and decide whether to make a request. Any individual or agency recipient will be given the opportunity to state any exceptional reasons for withholding information which has been requested. In deciding whether to make a request, the Chair will consider any exceptional reasons put forward for withholding some or all of the information and will balance these against the likely importance of the information to the achievement of the Board's functions. Any objections to a request under section 45 could be referred to an independent third party, whose decision on behalf of the Board would be final.

## Berkshire Safeguarding Adults Boards' Information sharing protocol

This Protocol has been adopted by the Safeguarding Adults Boards for the West of Berkshire, Bracknell Forest, Royal Borough of Windsor and Maidenhead and Slough. It covers all of the agencies that form the West of Berkshire Board in the three unitary authority areas of Reading, Wokingham and West Berkshire. It provides a framework for making decisions about sharing information in order to help protect vulnerable adults who may be at risk of abuse or neglect.

The Protocol offers guidance to front-line staff in assessing possible risk to adults, and in balancing the risk against the rights to confidentiality and privacy of those who may be a source of risk.

The key stages in the procedure set out in the Protocol are to:

- assess the risk a person is thought to pose;
- decide which (if any) agencies or individuals need to be told, and what they need to know;
- consult the person causing concern; and (if appropriate)
- share the information, subject to a rider of confidentiality.

### 1 INTRODUCTION

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**PARTIES**                      **1.1** This protocol is adopted by the Safeguarding Adults Boards for the West of Berkshire and the Boards covering Slough, Bracknell Forest and the Royal Borough of Windsor & Maidenhead. The composition of each Board is slightly different depending on local need.

**PURPOSE**                      **1.2 The purposes of this protocol are:-**

a) **to promote** the safeguarding of adults by the carefully considered sharing of information about identified risks, and

- b) **to help** front-line staff fairly and consistently to balance the risks of non-disclosure against the infringement of individuals' rights to privacy and confidentiality.

## STATUS

**1.3** This protocol comprises local policy and procedure for inter-agency work to safeguard vulnerable adults within the national framework provided by the law, and Departmental and other guidance – see sections 42 to 45 of the Care Act 2014 and, in the Care and Support Statutory Guidance<sup>1</sup> paras. 3.47 – 3.48 and chapter 14 on pages 189 – 224.

**1.4** This protocol should be read together with any individual agency procedure governing information sharing to safeguard vulnerable adults. Any conflict between local procedures and this protocol should be discussed with a senior manager within the agency concerned and a legal adviser; it should also be reported for information to the Safeguarding Adults Board.

## SCOPE

**1.5** This Protocol only covers inter-agency sharing of information for purposes of safeguarding adults. In particular, it does not cover information-sharing or disclosure which is addressed in the following:-

- a) for disclosure between Social Care, Police and Crown Prosecution Service, the Thames Valley Disclosure Protocol<sup>2</sup>;
- b) for patient- or service-user access to records, the Access to Records policy of the Agency concerned;
- c) for information-sharing or disclosure in connection with the Multi-Agency Public Protection Panel, the Panel's information-sharing or disclosure arrangements under MAPPA Guidance issued by the Ministry of Justice<sup>3</sup>;
- d) for information-sharing in connection with a Multi-Agency Risk Assessment Conference (MARAC), any protocol adopted by member agencies.

## PRINCIPLES

**1.6** The principles underpinning this protocol are as follows:-

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<sup>1</sup> Department of Health June 2014 - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/315993/Care-Act-Guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315993/Care-Act-Guidance.pdf)

<sup>2</sup> Copies obtainable from the Joint Legal Team, 0118 937 2986. See also the (national) 2013 [Protocol](#) and Good Practice Model - Disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings (October 2013).

<sup>3</sup> <http://www.justice.gov.uk/downloads/offenders/mappa/mappa-guidance-2012-part1.pdf>

- a) selective disclosure of information is crucial to the inter-agency and inter-disciplinary processes of assessing and addressing risks to adults;
- b) confidential information will not be shared unless there is a clearly articulated case for doing so, based on the individual case and situation;
- c) confidential information will not be shared without informed consent, unless there are exceptional circumstances which justify disclosure despite an absence or refusal of consent;
- d) information-sharing is not an end in itself, but can be a crucial component of a successful, comprehensive safeguarding plan.

#### GUIDANCE FROM KEY PROFESSIONAL BODIES ON INFORMATION-SHARING

- NHS England's [Confidentiality Policy](#)
- [Codes of Practice for Social Work](#)
- [Nursing and Midwifery Council Code of Professional Conduct](#)
- [CQC Code of Practice on confidential personal information](#)

## 2 OVERVIEW OF THE LAW

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*This is an outline of the law governing the sharing of confidential information.  
It is important to seek specific advice in the context of individual situations.*

### CONFIDENTIALITY AND PRIVACY

**2.1** Organisations holding personal information are under a common law duty of confidentiality which governs the way the information may be stored and disseminated. In addition, individuals have rights under the Data Protection Act 1998 and the Human Rights Act 1998 and European Convention on Human Rights.

DATA PROTECTION  
ACT 1998

**2.2** The Data Protection Act (DPA) covers the storage and dissemination of manually-recorded as well as electronic data. The DPA enables such information to be shared where this is “necessary” for a range of reasons. These include the legal duties of the person or body sharing or receiving the information; and where disclosure is necessary to protect the vital interests of another person (see schedules 2 and 3 DPA).

**2.3 This means that where disclosure is reasonably necessary to fulfil a statutory duty it is permitted.** This includes the sharing of information about risk to an adult in the context of assessment under the Mental Health Act 1983 or the Care Act 2014.

CONSENT TO  
DISCLOSURE

**2.4 Consent should be sought to disclose personal information unless the person lacks capacity to give informed consent** (Care and Support Statutory Guidance para. 14.55)

- “Informed consent” is consent based on a reasonable understanding of the implications of both disclosure and non-disclosure
- With an adult who lacks capacity to give informed consent, no-one can consent on their behalf, and the criteria in para. 2.5 below should be applied.

DISCLOSURE  
WITHOUT  
CONSENT

**2.5 Where consent to disclose has been refused, or the person has not responded when asked to consent or lacks capacity to give informed consent,** an assessment has to be made as to whether disclosure is “reasonable in all the circumstances”. This assessment should take into account:-

- a) any duty of confidentiality owed to the third party;
- b) the steps taken to obtain consent;
- c) whether the third party is capable of giving consent; and
- d) any express refusal of consent.

(See section 7 DPA <sup>4</sup>). Any reasons given for refusing consent should be recorded and carefully considered in deciding whether or not to disclose the information.

CRIME AND  
DISORDER ACT

**2.6 Section 115 of the Crime and Disorder Act 1998** contains a general power for anyone to disclose information to Social Services, Probation, the Police or Health. Such disclosure has to be “necessary or

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<sup>4</sup> Section 7 relates particularly to requests by individuals for access to information held about them. However its principles should also be applied when disclosing information for safeguarding purposes.

expedient” for one of the purposes set out in the Crime and Disorder Act, which include “preventing or reducing crime”. This power goes in tandem with the duty under the Data Protection Act to seek consent to disclosure if possible.

## CASE LAW

**2.7 The courts have also made clear that disclosure based on sufficient evidence and a specific risk assessment is permitted.** In the North Wales case<sup>5</sup>, the Court of Appeal held that it was lawful for the police to disclose information about a person’s convictions and history where they were assessed as posing a considerable risk to children and vulnerable adults. Disclosure should however only be made where there was a “**pressing need**” for it. The Court also considered that it would be important to forewarn people of the gist of the information held about them, and to give them the opportunity to comment before any information is shared.

**2.8** On the other hand, in R (A) v National Probation Service (2003)<sup>6</sup> the High Court held that the Probation Service were not entitled to inform the landlord of someone about to be released from prison (Mr A) that he had been convicted six years before of murdering his wife. Instead of addressing risk posed by Mr A to others and deciding if this warranted the exceptional step of disclosure, the Probation Service had assumed that the conviction should be disclosed unless there were reason not to.

**2.9** The case of A Local Authority v SK & HK<sup>7</sup> concerned proposed information-sharing with a care home for older people, one of whose staff had been found to have seriously and repeatedly assaulted her 8-year-old daughter. The mother denied responsibility and even forged a confession from a friend, whom the judge found did not exist. The court gave permission for this information to be disclosed to the care home and the local authority for the area. The judge stressed the links between abuse of adults and of children:-

*“ ... the standards to be expected of those looking after children may be no less than those looking after vulnerable adults.”*

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<sup>5</sup> R v Chief Constable of North Wales Police ex parte Thorpe [1998] 2 FLR 571.

<sup>6</sup> [2003] EWHC 2910 (Admin)

<sup>7</sup> [2007] EWHC 1250 (Fam) Sumner J.



## HUMAN RIGHTS

**2.10** In addition to rights to have information about them treated confidentially, individuals have the right to respect for their private and family life under Article 8 of the European Convention on Human Rights. Any disclosure of personal information is required to be “proportionate” to the risk involved and “necessary ... for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. The “rights and freedoms of others” would include the rights of others, including children and vulnerable adults under Article 3 of the Convention not to “be subjected to inhuman or degrading treatment ...”, which is likely to include most if not all forms of abuse and neglect.

**2.11** Potential victims and those giving rise to concern also have the right under Article 6 to be given a “fair hearing”. This includes being kept informed, having their views recorded and considered, and being given a reasoned explanation of any decision about disclosure.

## KEY LEGAL POINTS

1. The **disclosure** of personal information should be “the **exception not the rule**”<sup>8</sup>.
2. **Informed consent** to disclosure should be sought **unless** the person lacks capacity to give informed consent, or seeking consent would place a child or vulnerable adult at risk of significant harm.
3. **Personal information should only be disclosed where there is a “pressing need” to do so.** Deciding whether there is a pressing need to disclose will depend on properly balancing the infringement of the individual’s rights to privacy and confidentiality against the assessed risk and the extent to which disclosure is likely to help reduce that risk.

## 3 DISCLOSURE OF INFORMATION IN INDIVIDUAL CASES

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### APPROACH TO DISCLOSURE

**3.1 The process of deciding whether to disclose confidential information will involve the following steps:-**

- a) deciding the likely nature and degree of risk posed;
- b) deciding if this risk (and / or a duty on the part of the holder of the information or the proposed recipient) suggests a need to disclose;

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<sup>8</sup> Ex parte LM [2000] 1 FLR 612 at 622C.

- c) deciding if there is sufficient reason not to seek consent, and seeking any that is considered necessary; and
- d) if consent is refused or no response is received, deciding whether disclosure should be made in the absence of consent.

**3.2** These decisions will be made in accordance with the principles set out at para. 1.6 above.

**3.3** Decisions will be recorded by the agency holding the information, with reasons.

DISCLOSURE  
WITH  
CONSENT

**3.4** Generally, the informed consent to disclosure of all those affected (whether they have provided the information, or are its subject) – will be sufficient authority to disclose, even when no considerations of risk arise. Consent should be recorded in writing if possible. **The holder of the information should ascertain that the disclosure is lawful and necessary to the stated purpose, irrespective of any consent.**

DISCLOSURE  
WITHOUT  
CONSENT

**3.5** There are many types of information which should not be disclosed without consent in any event. Disclosure will only be made **without** the consent of the person causing concern where it is assessed that:

**EITHER a)** the person lacks the capacity to give an informed consent,  
**OR b)** the person has failed to respond despite reasonable attempts to obtain their consent,

**AND**

**EITHER c)** disclosure is necessary because of a legal duty on the part of the holder or recipient of the information,

**OR d)** the risk to an adult is such that the infringement of the person's rights to privacy and confidentiality is outweighed by the harm which would be caused by withholding the information.

FACTORS IN RISK  
ASSESSMENT

**3.6** The source, degree and type of risk should be spelled out using the following risk factors:-

- a) Any convictions or cautions against adults or children, particularly for violence

- b) Any civil court findings that the person (may have) perpetrated abuse in the past and / or posed an unacceptable degree of risk<sup>9</sup>
- c) The professional view (at the time, or since) of the plausibility of any serious allegations which did not result in convictions or court findings
- d) The passage of time since any convictions, findings or plausible incidents
- e) Any therapy undergone, and outcome if known
- f) The level of risk indicated by any risk assessment carried out in the past
- g) The subject's attitude towards past convictions, findings and plausible incidents – degree of insight, empathy towards victims, awareness of triggers to abuse
- h) Extent of contact the subject is likely to have with vulnerable adults, unsupervised in particular, and
- i) The capacity of carers or others to protect adults who may be at risk.

DISCLOSURE  
AFTER  
CONSULTING

**3.7** The person giving rise to the concern should usually be forewarned of the substance of the allegations against them and invited to comment before disclosure takes place. Such consultation should only be omitted in cases of serious, urgent risk where delay (or forewarning) will cause unacceptable risk. In such cases, the person should be informed after disclosure unless (very exceptionally) there is evidence that informing them even after the event will cause unacceptable risk.

EXPLAINING  
DECISIONS

**3.8 The reasons underlying any decision to disclose or not to disclose information under this protocol should be carefully recorded, and communicated to those who have been consulted prior to disclosure.** Lay recipients should be reminded that the information is confidential and should be informed of the reasons for disclosure to themselves. Decisions to refuse disclosure requests should also be explained.

**3.9** The range of decisions on disclosure is illustrated in the table below.

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<sup>9</sup> It is important to note that the findings of courts sitting in private should not be disclosed to non-parties without the court's permission: see Re V & L [1999] 1 FLR 267.

<u>Disclosure decision</u>	<u>Rationale for disclosing (or not)</u>	<u>Rationale in relation to consultation / consent</u>
<b>No disclosure even with consent</b>	Disclosure not considered necessary for assessment of needs and risks to adults	Consultation and consent do not arise
<b>Disclosure only with consent</b>	Disclosure likely to be helpful in assessing needs and risks BUT ... →	Risks do not justify overriding confidentiality
<b>Disclosure on notice</b>	Disclosure necessary to safeguard adults	Subject has opportunity to a) comment on concerns and b) take advice prior to disclosure
<b>Disclosure followed by informing the subject</b>	Disclosure urgently needed to avert risk to adults	Urgency precludes consultation
<b>Disclosure without informing the subject at any point</b>	Disclosure urgently needed to avert risk to adults, AND ... →	Informing the subject is likely to cause unacceptable risk