

# Adult Safeguarding & Deprivation of Liberty safeguards (DOLs)

## The Challenges Ahead!

Nick Sherlock  
Head of Adult Safeguarding  
Kent County Council

22<sup>nd</sup> September 2015



# Key Safeguarding Sections of Care Act

- **Section 42-** Enquiry by local authority
- **Section 43-** The function of the Safeguarding Adults Board (SAB)
- **Section 44-** The management of Safeguarding Adult Reviews (Serious Case Reviews)
- **Section 45-** Supply of Information

# Aims of Adult Safeguarding (14.11)

- Stop abuse & neglect wherever possible
- Prevent harm and reduce risk
- Safeguarding to support choice and control
- Focus on improving life
- Raise awareness
- Provide information and support

# Safeguarding is Not a Substitute For: (14.9)

- Providers responsibility for safe quality care
- Commissioners ensuring services are safe / effective
- CQC ensuring that providers comply with standards
- Core duties of police to prevent / detect crime

# Principles (14.13)

- Empowerment
- Prevention
- Proportionality
- Protection
- Partnership
- Accountability
- *In addition* Making Safeguarding Personal (14.14)

# Abuse and Neglect (14.17)

- Physical Abuse
- **Domestic Abuse**
- Sexual Abuse
- Psychological Abuse
- Financial / Material Abuse
- **Modern Slavery**
- Discriminatory Abuse
- **Organisational Abuse**
- Neglect and acts of omission
- **Self Neglect**

# Safeguarding Enquiries

- Adult Safeguarding Procedures – SAB (14.40)
- Advocacy a must for those people who need it (14.43)
- Importance of Mental Capacity (14.44-50)
- Local Authorities must make enquiries or **cause others to do so (14.63 & 77)**
- Criminal Investigation by Police takes priority (para 14.75)
- Although LA lead Agency it may require others to undertake them (14.84)

# Key factors to be considered (14.83)

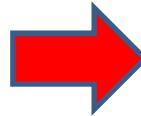
- Need for care and support
- Adult's risk of abuse
- Ability to protect themselves or the ability of their networks to increase support
- Impact on the adult , their wishes
- Impact on important relationships
- Potential of action and increasing risk to adult
- Risk of repeated or increasing serious acts of abuse neglect
- Responsibility of person / organisation that has caused abuse
- Research evidence to support intervention



# Outline of Safeguarding Enquiry Process – S42 Care Act

## 1. Contacts

From range of sources – public, voluntary & private organisations, statutory agencies.



## 2. Triage

Contacts come into:

- Contact Centre
- Area Referral Management Service
- Central Referral Unit

**If Case is Adult Safeguarding.**

**New Cases Go to Central Referral Unit / known Open Cases to Team involved.**

## 3. Initial Safeguarding Assessment

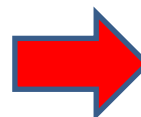
This includes:

- Further information gathering
- Risk assessment
- Strategy discussion to plan enquiry



## 4. Enquiry

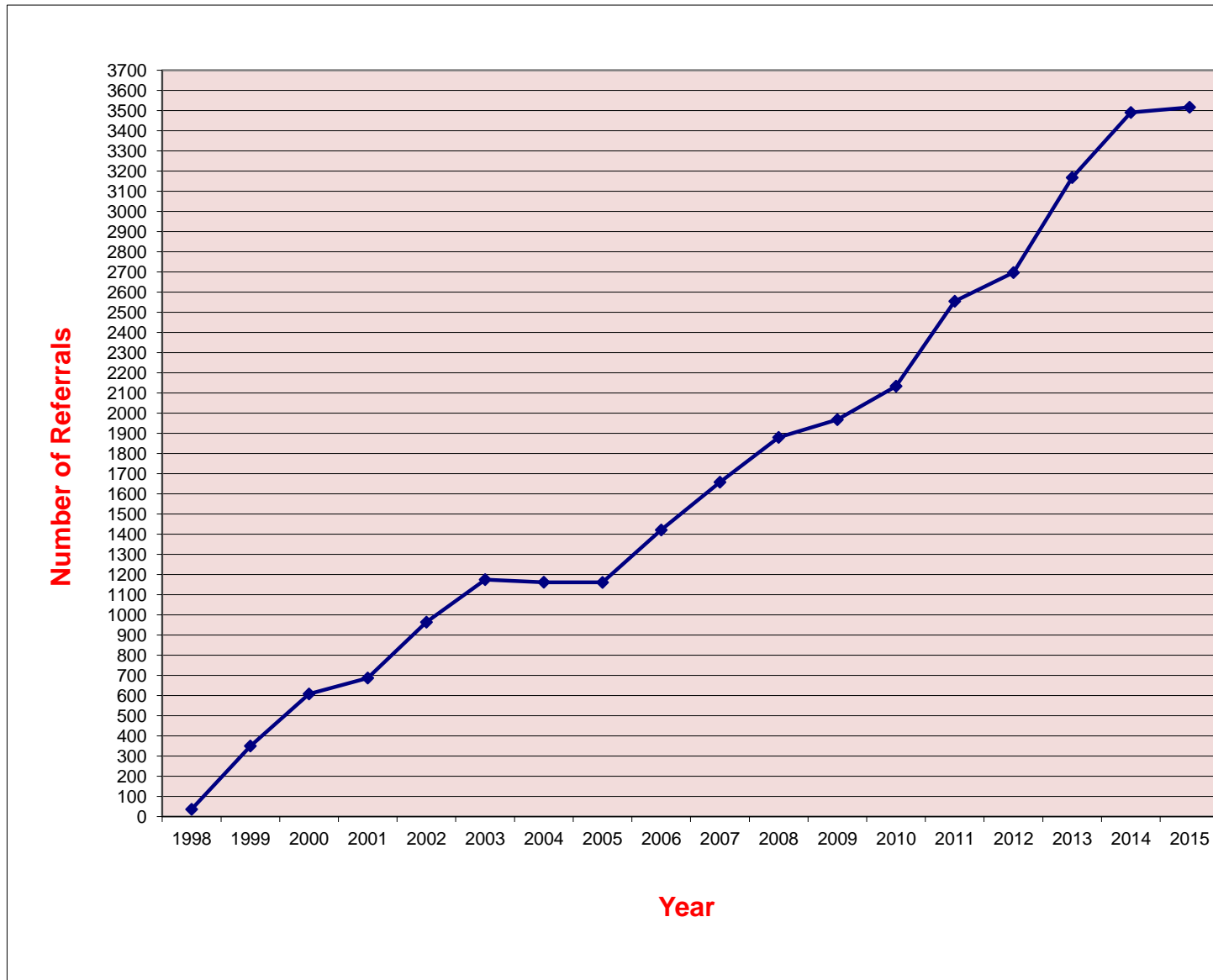
- Can be Single or Multi Agency
- Will involve asking the victim their preferred outcome
- Will involve more in depth assessments
- Can lead to criminal proceedings in regard to the perpetrator



## 5. Post Enquiry Plan

- Plan will be focussed on lessening the risk
- Plan needs support of the victim and family / carers

# Adult Safeguarding Activity



# Key Activity Facts

*Population KCC 1.5 million. Medway 256,00 (Total Kent 2.76 million)*

**Safeguarding Activity 2014-15 (1<sup>st</sup> April 2014 - 31<sup>st</sup> March 2015)**

- **3517** Adult Safeguarding Concerns (alerts)
- **60%** Were on Open Cases
- **40%** Were on new cases
- **2270** of **3317** (**68%**) Cases went on to be Investigations (now known as Enquiries)
- **38.6%** of all closed Incidents occurred in a Care Home setting
- **42.5%** of cases related to Physical Abuse
- **14.7%** of cases related to Financial Abuse
- 5 years ago the figure for Financial Abuse was **21.2%**.

# Deprivation of Liberty Safeguards (DOLS)

- DOLS provide protection for vulnerable people who are accommodated in hospitals or care homes in circumstances that amount to a deprivation of their liberty and who lack the capacity to consent to the care or treatment they need.

# Relationship between MCA and DOLS

- Any situation calling for a DOLS request must **first meet the general requirements of MCA**.
- Undertake capacity assessment and best interests process.
- Always consider a **less restrictive option** where practicable and appropriate.
- It is important to make an application if having considered above that some one is having their Liberty Deprived in some way.

# Core principles of the Mental Capacity Act 2005

- A person must be assumed to have capacity unless it is established that they lack capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- An act done or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- Least restrictive intervention to achieve goal

# Supreme Court judgement

## Cheshire West; P & Q

- A person is deprived of their liberty if they are (1) not free to leave and (2) under continuous supervision and control.
- The person's objection to, or compliance with, their living arrangements is irrelevant to the assessment.
- The purpose behind the placement is irrelevant. The fact that living arrangements are comfortable, and indeed make life as enjoyable as it could possibly be, should make no difference.
- The “relative normality” of the placement is now irrelevant.
- A deprivation of liberty can occur in a domestic or quasi-domestic setting.
- Incapacitated 16/17 year olds in accommodation under s20 Children Act 1989 may be being deprived of their liberty. Authorisation in this situation would need to be sought from the Court of Protection.

# The acid test

- Is the person subject to **continuous supervision** and **control**?
- Is the person **free to leave**? The person may not be saying this or acting on it, but the issue is about how staff would react if the person did try to leave.

**AND**

- The person **lacks capacity to consent** to these arrangements.



# continuous supervision & control?

- List your day-to-day personal care decisions.
- List your day-to-day healthcare / treatment decisions.
- Review staff supervision and control for each of these decisions.
- Who decides?
- What freedom does the Person have in decision making?
- What are the choices?
- What is the level of control?

# Adult Directors of Social Services (ADASS)

## Screening Tool for DOLS

High	Medium	Low
<ul style="list-style-type: none"><li>• Psychiatric or acute hospital and not free to leave</li><li>• Continuous 1:1 care during the day and/or night</li><li>• Sedation / medication used frequently to control behaviour</li><li>• Physical restraint used regularly – equipment or persons</li><li>• Restrictions on family/friend contact (or other Article 8 issue)</li><li>• Objections from relevant person (verbal or physical)</li><li>• Objections from family/friends</li><li>• Attempts to leave</li><li>• Confinement to a particular part of the establishment for considerable period of time</li><li>• New or unstable placement</li><li>• Possible challenge to Court of Protection, or complaint</li><li>• Already subject to DOL about to expire</li></ul>	<ul style="list-style-type: none"><li>• Asking to leave but not consistently</li><li>• Not making any active attempts to leave</li><li>• Appears to be unsettled some of the time</li><li>• Restraint or medication used infrequently</li><li>• Appears to meet some but not all aspects of the acid test</li></ul>	<ul style="list-style-type: none"><li>• Minimal evidence of control and supervision</li><li>• No specific restraints or restrictions being used e.g.in a care home not objecting, no additional restrictions in place</li><li>• Have been living in the care home for some time (at least a year)</li><li>• Settled placement in care home/ hospital placement, no evidence of objection etc. but may meet the requirements of the acid test</li><li>• End of life situations, intensive care situations which may meet the acid test but there will be no benefit to the person from the Safeguards</li></ul>

# Deprivation of Liberty Figures since Cheshire West Judgement (March 2014)

	Number of Applications	Number outside Statutory Framework
2013 – 2014 (March 31)	286	none
2014-2015 (March 31)	2875	1675

# Law Commission Consultation

- <http://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/#related>
- system of 'Protective Care'.
- Will Include Supported Living / Shared Lives
- Approved Mental Capacity Professional – instead of BIA and Authorising
- Hospitals different process managed by Health
- will apply for those people deprived of liberty in family homes or other domestic settings