

Title: <i>Legal Framework</i>	
Business Area: <i>Devon Safeguarding Adults</i>	
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Related Legislation / Strategy / Policy: <i>Care Act 2014; Care Act 2014 Statutory Guidance; Police and Criminal Evidence Act 1984; Youth Justice and Criminal Evidence Act 1999; Sexual Offences Act 2003; Protection from Harassment Act 1997; Criminal Justice and Courts Act 2015</i>	
Related Practice Guidance: <i>Advocacy in Safeguarding; Managing HR Concerns with Safeguarding Adults; Operational Guidance; Recording and Preserving Evidence; Responsible Manager; Responsibilities of a Safeguarding Adults Investigator</i>	

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1. Legal Framework

- 1.1. Sections 42 to 45 of the Care Act and Chapter 14 of the Care Act Statutory Guidance is now the primary basis for Safeguarding Adults practice.

2. Criminal Law

- 2.1. The Police have responsibility to investigate criminal offences and will lead on any criminal Enquiries. This includes crimes against people with care and support needs. Multi-agency work in supporting the adult at risk and supporting the Police investigation may still be needed.
- 2.2. Evidence can be lost if referral to the Police is delayed, and advice should be sought early.
- 2.3. As potential witnesses to a crime, staff must make careful contemporaneous records.
- 2.4. Where adults with care and support needs are victims or witnesses of crimes, the procedures for “Achieving Best Evidence in Criminal Proceedings” may apply and they may be offered special arrangements in order to enable them to give evidence.

3. Police Powers and Criminal Investigation

- 3.1. The Police can advise where powers of entry into a property or separation of a person from their carer or family member may be considered necessary.
- 3.2. The police have general powers to keep the peace and safeguard the public. These include;
 - Powers of entry to a property for the purpose of saving life or limb, or to prevent serious damage to property
 - Powers of arrest where a person is suspected of committing or is about to commit an arrestable offence.
- 3.3. The Police should be informed of situations where a criminal investigation is warranted. The standard of evidence required for a successful prosecution will be “proof beyond reasonable doubt”, therefore the Police will need to obtain all possible evidence and include statements from both the victim and witnesses if available.
- 3.4. The ultimate decision of whether to prosecute lies with the Crown Prosecution Service. They will have to take into account the weight of the evidence and the potential for a prosecution going ahead.

4. Police and Criminal Evidence Act 1984 ([link](#))

- 4.1. **Section 17** – allows a Police officer to search and enter any premises without a warrant for the purpose of saving life or limb, or preventing serious damage to property.
- 4.2. **Section 24** – allows a Police officer to arrest any person who is suspected of having committed, or is about to commit, an arrestable offence.
- 4.3. **Section 25** – allows a Police officer, where there are reasonable grounds, to make an arrest of someone to prevent them causing physical injury to another person, or to protect a child or other vulnerable person.

5. Youth Justice and Criminal Evidence Act 1999 ([link](#))

- 5.1. This Act gives the Police and the Courts the ability to offer 'Special Measures' to vulnerable victims and witnesses to crime. The Special Measures are:
 - Video-recorded evidence
 - Evidence presented to Court by live link
 - Evidence in private
 - Screening witness from the accused
 - Removal of wigs and gowns
 - Aides to communication
 - Support from an intermediary

6. Sexual Offences Act 2003 ([link](#))

- 6.1. This Act repeals all previous legislation on sexual offences. Consent is a key issue in the Act, and the freedom to make choices. The main sexual offences are rape (now including penile penetration of the mouth, anus, or vagina), assault by penetration, and sexual assault by touching and causing sexual activity without consent. Sexual relations with certain adult relatives have been clarified. There are a set of offences in relation to mentally disordered adults where choice is impeded. This includes adults with mental health problems or learning disabilities. It is an offence for someone who is in a relationship of care to have a sexual relationship with the mentally disordered adult.

7. Protection from Harassment Act 1997 ([link](#))

- 7.1. This legislation can be used when matters fall short of a physical attack but where someone is being intimidated or harassed by an abuser. Injunctions can be sought. This is a civil law, but creates the offence of harassment.

8. Criminal Justice and Courts Act 2015 ([link](#))

- 8.1. Created two new offences (both either-way) of ill-treatment or wilful neglect of users of health and adult social care services (see sections 20 – 25 and Schedule Four).

The first offence is in relation to an individual care worker.

- Sect. 20(1) It is an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully to neglect that individual
- Sect. 20 (3) defines 'care worker' as including an individual who, as paid work, supervises or manages individuals providing such care or is a director or similar officer of an organisation which provides such care.
- The second offence in Sect. 21 applies to care provider organisations.
- Legislation section 20-25
<http://www.legislation.gov.uk/ukpga/2015/2/part/1/crossheading/offences-involving-illtreatment-or-wilful-neglect/enacted>

8.2. Schedule 4 <http://www.legislation.gov.uk/ukpga/2015/2/schedule/4/enacted>