

## 14. LEGAL CONTEXT

### 14.1 LAW RELATING TO THE ABUSE OF VULNERABLE ADULTS

- 14.2 There is no legislation or body of common law that specifically relates to the protection of vulnerable adults against abuse. However, there are several pieces of legislation which seek to provide a considerable level of protection. The existence of such a diverse range of legislation provides a framework for action allowing practitioners and managers tasked with the care, support and protection of vulnerable adults, to interpret the rights, duties and powers available to them and apply these in an effective and positive way to individual circumstances.
- 14.3 Section 5, paragraphs 5.12-23 of these procedures outline specifically, the categories of abuse that you may be faced with during the course of your work with vulnerable adults. It is vitally important that you are able to place any incident of abuse into the context of a legal framework. By doing this, it will not only allow you to decide on what the appropriate response should be to the allegation but it will also enable you to provide the vulnerable person preliminary advice on their rights and remedies.

**You should note that the contents of this section should not be used as a definitive authority on the law but as a reference guide as to the law. Where there is any doubt concerning such matters, legal advice must always be sought from your respective legal department.**

- 14.4 Legal procedures can quite often be daunting and the involvement of the police will be vital in cases involving criminal allegations. Such legal procedures can cause great anxiety to vulnerable adults but in such circumstances, you should always consider the provision of counselling and support rather than disregarding the law. Police officers, Social workers and Health sector employees should ensure vulnerable adults have access to the appropriate legal advice. Victims of domestic abuse should also be provided with details of solicitors who specialise in civil law and whilst legal aid may be available, this may be means tested and many applicants may be asked to make a contribution to the costs. If any applicant is not able to make a decision about this, the Court of Protection could be asked to make a short order to authorise the use of the applicant's funds for this purpose.

#### 14.5 **The Criminal Law:**

The criminal law governs almost all types of behaviour that Parliament has decided are either anti-social, against public policy or at the very least not in the interests of the majority of people. Whilst there is no specific legislation that deals with abuse against vulnerable adults, there is a number of statutes that protect individuals including vulnerable adults from criminal abuse and allow for the criminal prosecution of offenders - details of these will be outlined later.

- 14.6 In the majority of instances where criminal offences are committed or disclosed, the Police are the criminal justice agency responsible for investigating crimes and apprehending offenders. However, in cases where there is a breach of health and safety legislation on industrial premises, the Health and Safety Executive would be responsible for the investigation and prosecution of offenders.
- 14.7 In all cases where a person has been charged with a criminal offence, the Police will on completion of their investigation, submit a file of evidence to the Crown Prosecution Service who will then decide whether there is sufficient evidence to instigate proceedings. A person charged with a criminal offence will be prosecuted in a Magistrate's Court. However, in cases where the charge is more serious, or the person charged wishes to elect trial by jury, the matter is likely to be transferred to the Crown Court.
- 14.8 The vulnerability of an adult either as a victim and/or a witness will always be taken into account. New legislation recently implemented (Part II of the Youth Justice and Criminal Evidence Act 1998) allows for the Court to decide whether it is appropriate to afford 'special measures' to vulnerable and intimidated witnesses. Such 'special measures' can be made available to any individual who is deemed vulnerable by reason of a physical disability (including sensory impairment) and/or mental disability (including those who are learning disabled) and has the capacity to understand and respond to questions put to them. (See section 10 Police Investigations into Criminal Allegations of Abuse).
- 14.9 If a Crown Prosecutor (CPS) or Counsel working on behalf of the Crown (this is normally in Crown Court cases) is to secure a conviction for a criminal offence, the Crown Prosecutor must prove the case against the alleged perpetrator **beyond all reasonable doubt**. This inevitably calls for a high standard of proof whereby the evidence to be given must be fairly substantial and capable of being proven.

14.10 If convicted of a criminal offence, there is a range of sentences that a Magistrate or Judge can impose, depending on the seriousness of the case and/or the person's previous convictions.

14.11 **The Common Law:**

Common Law allows for the intervention, without consent, to save life or avoid serious physical harm based upon the principle that the action is reasonable and can be professionally justified as immediately necessary for the purpose of saving life or preventing serious physical harm. Conversely, not to act in such circumstances of the utmost gravity could be deemed negligent.

14.12 In high-risk situations where both a physical injury and mental disorders may be present e.g. a drug overdose and/or a serious injury, the physical injury should always be given priority. The relevant action whereby the individual is removed to a Hospital Accident & Emergency Unit can be justified as being a **common law intervention**. When it is physically safe to do so, the adult should then be assessed for treatment/admission under the Mental Health Act 1983. Sections 135/136 of

14.13 **The Civil Law:**

The civil law governs our rights as private individuals. An example of this is where a person sustains an injury due to another's negligence, they may use the civil law if they decide to claim against the negligent party. Family proceedings are also governed by the civil law.

14.14 As the civil law governs private rights, no statutory agency can instigate or commence an action on a person's behalf. If an aggrieved person wants to pursue a case, they must begin proceedings in their own name. It is possible for vulnerable adults to have appropriate adults who are called 'litigation friends' to manage the litigation on their behalf. If an individual falls within the Court of Protection, a person can be nominated to represent the vulnerable person and act in their best interests. Consideration must also be given to the Charity organisations that regularly conduct litigation on behalf of their members with the appropriate consents given.

14.15 The courts that usually deal with civil matters are either the County Courts and/or High Courts. However, family proceedings are dealt with in the Family Protection Court that despite being part of the Magistrate's Court, is for this purpose a civil court. The person who instigates proceedings against another is referred to as the 'claimant' and in order for the claimant to succeed, they must prove their case **on the balance of**

**probabilities.** Whilst this again calls for substantial evidence, this can be of a lesser standard of proof than that required in criminal proceedings.

14.16 The remedies available in a civil case will depend on the nature of the claim that the claimant is pursuing. However, one of the most usual civil remedies is being awarded financial damages.

14.17 **Some terms commonly used in civil litigation are:**

- **Inherent Jurisdiction** – The High Court may use its inherent jurisdiction to make a declaration as to whether action which is proposed to be taken is in the best interests of a person or is unlawful.
- **The Law of Tort** – This is the civil law that allows one person to sue another complaining about a wrong that the other has committed vis-à-vis the complainant.
- **Negligence (duty of care)** – In cases where a person is owed a duty of care by another, any breach of that duty can make the person responsible for providing that duty of care liable to potential civil action. An example of this would be if a carer fails to act in a way that a reasonable carer would be expected to act, that carer has broken a duty of care. If such a breach causes an injury of which the person complains, negligence may well be established.
- **Trespass against the Person** -This includes Assault and Battery and False Imprisonment that are criminal offences, but also 'Actionable Wrongs' giving rise to civil liability. It is possible to obtain damages for past wrongs, and injunctions to prevent future ones.
- **Breach of Trust** - This refers to situations where property has, in good faith, been passed from one party into the hands of another, who then fails to fulfil their obligation, e.g. an Attorney who misuses or withholds cash or property.
- **Civil Wrongs** - These are tried on the basis of a 'balance of probabilities' which requires only a 51% burden of proof for the claimant to win their case, as opposed to the criminal court's requirement for a verdict which is 'beyond reasonable doubt'.

14.18 **CRIMINAL LAW OFFENCES**

14.19 **Offences against the person:**

- **Common Assault** -- An aggressive act preceding or including a physical assault leading to a minor, temporary injury.

- **Actual Bodily Harm** - An assault that causes a more than short-term injury but not long-term serious disfigurement or disability e.g. serious bruising, broken bones and lost teeth.
- **Grievous Bodily Harm** - An assault causing very serious or permanent disability or disfigurement.
- **Wounding** - An assault causing serious, long-term harm, often premeditated and often using a weapon.
- **Murder** - Deliberately causing death, usually as a premeditated act.
- **Manslaughter** - Causing death by a recklessness or seriously neglectful act.

14.20 Although these are common law offences, they are also covered by the Homicide Act 1957.

14.21 **SEXUAL OFFENCES ACT 2003** – This Act creates the following offences:

- **Rape** – Intentional penetration of mouth, vagina or anus by penis, without lawful consent.
- **Assault by penetration** – Intentional penetration of vagina or anus by another person with a part of his body or anything else (without lawful consent).
- **Sexual Assault** – Intentional sexual touching of another without lawful consent
- **Causing a person to engage in sexual activity without consent** where a person intentionally causes another to engage in sexual activity without consent

14.22 **Relevant considerations concerning the above offences:**

Generally, most offences involving persons suffering from a mental disorder will have common points of proof – namely:

- The victim is unable to refuse because of or for a reason related to a mental disorder, and
- The offender knows or could reasonably be expected to know that the victim has a mental disorder and that because of it or for a reason related to it is likely to be unable to refuse.
- The victim is unable to refuse if:
  - (a) They lack the capacity to choose whether to agree to the touching (whether because they lack sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason), or
  - (b) They are unable to communicate such a choice to the

offender

**14.23 Offences against persons where mental disorder impedes choice:**

- Section 30: Sexual activity with a person with a mental disorder impeding choice
- Section 31: Causing or inciting a person with a mental disorder impeding choice, to engage in sexual activity.
- Section 31: Engaging in sexual activity in the presence of a person with a mental disorder impeding choice.
- Section 32: Causing a person, mental disorder impeding choice, to watch a sexual act.

**14.24 Offences involving inducements to persons with a mental disorder**

- Section 34: Inducement, threat or deception to procure sexual activity with a person with a mental disorder
- Section 35: Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception
- Section 36: Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder
- Section 37: Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception.

**14.25 Offences committed by Care workers with persons with a mental disorder**

- Section 38: Care workers: sexual activity with a person with a mental disorder
- Section 39: Care workers: causing or inciting a sexual activity
- Section 40: Care workers: sexual activity in the presence of a person with a mental disorder
- Section 41: Care workers: causing a person with a mental disorder to watch a sexual act
- Section 42: Care workers: interpretation
- Section 43: Sections 38 to 41 marriage exception
- Section 44: Sections 38 to 41: sexual relationships which pre-date care relationships

**14.26 Offences involving sex with an adult relative**

- Section 64: Sex with an adult relative - penetration
- Section 65: Sex with an adult relative - consenting to penetration

**Please note:** The Mental Health Acts 1959/1983 also make it an offence for a male who is an employee of a hospital or similar institution to engage in a sexual act with a female patient detained under the Act.

**14.27 Domestic Abuse - Home Office Circular 19/2000 (Revision of HOC 60/90):**

Domestic abuse is a serious crime that is not acceptable, and should be treated as seriously as any other such crime. Accordingly, the Police are committed to taking positive action in all cases of domestic abuse. Criminal offences may be committed during incidents of domestic abuse and arrest of the perpetrator acts as a powerful deterrent.

**14.28 The South Wales Police definition of domestic abuse is:**

‘Any incident of violence or aggression, wherever it occurs. The violence may include physical, sexual, emotional or financial abuse of an individual by a family member, partner or ex-partner, in an existing or previous relationship, regardless of gender, culture or sexual orientation.’

**14.29 An explanation for the terms used are:**

- ‘Violence or aggression’ includes all assaults and/or threats of violence, where the victim is put in fear.
- ‘Sexual abuse’ means rape, sexual assault and other sexual offences.
- ‘Emotional abuse’ includes any harm deliberately or recklessly inflicted on another person’s emotional well being. This may not amount to a specific offence may be used to prove other offences such as under the Protection of Harassment Act 1997.
- ‘Financial abuse’ includes the abuse of power in a relationship where one party maintains control over another’s money.
- ‘Wherever it occurs’ means that the incident need not take place in the home. It could take place, for example in a public house or in the street.
- ‘Family member’ includes mother, father, son, daughter, brother, sister, grandparents, in-laws and step-family.
- ‘Partners and ex-partners’ includes cohabitees, ex-cohabitees, boyfriend, girlfriend, ex-boyfriend, ex-girlfriend.

#### 14.30 **Racist Incidents:**

The definition of a racist incident includes any incident that is perceived by the victim or any other person to be racist. This means that if any person feels it is a racist incident, then regardless of supporting evidence, it should be treated as such.

The policy of South Wales Police is that when a police officer, victim or any other person considers an incident has been racially motivated, it will be treated as such and the necessary procedures adopted. Any queries concerning incidents of this nature can be referred to South Wales Police Community Safety – Minorities Support Unit.

#### 14.31 **Homophobic Incidents:**

Homophobic incidents are usually motivated by hatred or fear of homosexuality. These incidents include all types of crime and victims need not be lesbians or gay men, but only perceived to be by the perpetrator.

**A 'homophobic' incident** is defined as 'any incident in which it appears to the reporting or investigating officer that the complaint involves an element of a homophobic nature or any incident, which includes an allegation of a homophobic nature, made by any person.

14.32 Any queries concerning incidents that are allegedly homophobically motivated can be referred to the South Wales Police Community Safety - Minorities Support Unit.

#### 14.33 **Criminal Justice and Public Order Act 1994**

This Act seeks to provide protection for any person who is a witness in criminal proceedings. Section 51 of this Act creates 2 offences for which the police can take action against the perpetrator:

- (i) Intimidating a witness and
- (ii) Harming or threatening to harm a witness.

#### 14.34 **Family Law Act 1996**

This enables an application to be made to a Magistrates Court in relation to any person who is a co-habitee in a family relationship, where there has been violent, abusive or exploitative behaviour by one of the co-habitees. Ousting Orders may be issued to eject the person from the home, and/or

can injunction to prevent them from returning. The application can be made by the police on behalf of the affected party, with their consent, or by the individual themselves. (Sections 33-41 of the Act refer to 'Occupation orders' and section 42 deals with 'non-molestation orders')

#### 14.35 **Protection from Harassment Act 1997**

This provides powers to deal with 'stalking' where the victim has been subject to persistent harassment of a serious nature, but which falls short of an offence under the Offences against the Person Act 1861. The prosecution has to prove that serious psychological harm has been caused to the victim, usually with strong medical evidence in support. The offender can then be sentenced in the same way as if they had physically assaulted the victim. Section 2 of this Act prohibits a person from pursuing a course of conduct that amounts to harassment of another, which he/she knows or ought to know amounts to harassment of the other. Section 4 of the Act creates an offence of putting people in fear of violence. Both offences have a power of arrest. More importantly, in both cases, the Court can impose a restraining order on the offender for an indefinite period of time, which if breached, can result in imprisonment of up to 5 years.

#### 14.36 **Crime and Disorder Act 1998**

This includes provision for an Anti-Social Behaviour Order which may be used to restrain individuals who are causing distress through intimidating or nuisance behaviour and where it is not possible to bring effective action against them for assault, harassment or more serious Public Order Offences.

#### 14.37 **FINANCIAL OR MATERIAL ABUSE:**

In 2003, further guidance on the Protection of Vulnerable Adults from Financial Abuse was developed by the Adult Protection Advisory Group and published by the Welsh Assembly Government. The guidance forms a supplement to *In Safe Hands* which was issued in September 2000 as statutory guidance under section 7 of the Local Authority Social Services Act 1970. Whilst the principles and intent of this latest guidance on financial abuse applies to all settings, the minimum standards set out in section 7 of the supplementary guidance only applies to care homes and supported accommodation settings. Detailed guidance for other settings will be published at a later date.

- **Theft** - To obtain property belonging to another with the 'intention to permanently deprive' them of it. This includes a wide definition of property, including objects of value, money, title documents, etc. It may also be theft to bring about the complete destruction of property (Contrary to sections 1 & 7 Theft Act 1968)

- **Fraud** – This is a generic term quite often used to describe offences involving the dishonest appropriation of property by means of a deception that can either be communicated verbally or in a written form. The term also covers offences of forgery where material gain is obtained dishonestly.
- **Criminal Damage** - To cause damage which brings about a loss of function, or which defaces property which might normally be on display e.g. by denting or burning or graffiti etc.

#### 14.38 **POLICE POWERS OF INTERVENTION, ARREST, SEARCH AND INTERVIEW:**

#### 14.39 **Common Law**

Under Common Law, a Police Officer has the power to enter premises to prevent or deal with a breach of the peace, and the power to arrest in order to prevent a breach of the peace.

#### 14.40 **Police and Criminal Evidence Act 1984**

This Act deals principally with the conduct of investigations by the Police, including the search for evidence and the interviewing of suspects of crime.

- Section 17 of the Act outlines powers for the police to enter any premises for the purpose of arresting a person for an arrestable offence, which includes assaults occasioning grievous or actual bodily harm or wounding. It also allows a Police officer to enter and search premises without a warrant for the purpose of saving a life or limb. (An 'arrestable offence' is an offence that attracts a maximum of five years imprisonment or more, or where the penalty is fixed by law, or for certain other specified offences including the indecent assault on a woman).
- Section 24 allows a police officer to arrest any person who is suspected of having committed, or is about to commit an arrestable offence.
- 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.

14.41 A vulnerable adult who becomes a suspect in a criminal allegation, may be arrested and formally interviewed by the

Police. In such cases, the vulnerable adult will be entitled to legal representation (a solicitor) and an 'appropriate adult.'

**Code C (Annex E) of the Codes of Practice** issued under the Police and Criminal Evidence Act 1984 (revised 1.4.03) states that an 'appropriate adult' means:

- (a) A relative, guardian or other person responsible for their care or custody;
- (b) Someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police;
- (c) Failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

14.42 The Appropriate Adult is responsible for ensuring the rights and welfare of a mentally incapacitated person during a police interview. They should ensure the following:

- That they are provided details in advance of the person to be questioned, including evidence of their incapacity, communication abilities, gender and culture. Whether their care is conducted under the Mental Health Act e.g. Guardianship or Supervision.
- That they know how long the interview is likely to last, if the individual has asked for a solicitor, if not, whether this should be arranged.
- That during the interview they assist communication, observe whether the conduct of the interview is fair, given advice to the individual and consider whether a Solicitor should now be present, if they have not been before (the Appropriate Adult has the right to insist upon this)
- That following the interview they should ask to see any written record that has been made and sign it, if they are satisfied with its accuracy.

#### 14.43 **The Criminal Procedure and Investigation Act 1996**

This Act was introduced to provide safeguards in relation to evidence gathered during the course of a criminal investigation. It sets out specific procedures to document such material evidence whether it is eventually used in a trial or not. It also introduces a code of conduct as to what material evidence is disclosed to the defence and highlights the importance of retaining all items that could later be used in evidence until the police 'Disclosure Officer' has assessed their relevant evidential value and advised in their retention or disposal. If these procedures are not followed, the accused person may be acquitted because of a breach of the Act or Code, or could even

be wrongly convicted if material evidence is withheld from the defence.

**'Material evidence'** can include records made by a staff member or manager during the course of the 'referral process' – This would include all VA documents completed during the course of the strategic process. It may also extend to confidential records kept in respect of an individual person, e.g. patient records. The Crown Prosecution Service will be ultimately responsible for deciding what 'material evidence' is disclosed to the defence and in cases where it is perceived a public interest immunity exists against such disclosure, the Crown Prosecution Service will in appropriate cases apply to a judge for direction.

#### 14.44 **Managing Sex and Violent Offenders:**

- **The Sex Offenders Act 1997** - allows for persons who have been convicted by the Criminal Courts or have received a reprimand or final warning (if young offender) in relation to a Sexual Offence to have their names and addresses entered on a register of sex offenders and a risk assessment made by the Police, Probation and other agencies.
- **Section 67 of the Criminal Justice and Courts Act 2000** - places a joint statutory duty on the Chief Officer of Police and National Probation Service to risk assess and manage sex offenders, violent offenders and any other offender who poses a serious risk to the public.

Since 2000, multi agency risk assessment and management has become normal practice. (See Section 15: Glossary of Terms for meaning of the terms MARAC and MAPPP in the context of multi-agency risk assessment processes). Offenders and persons who present a significant risk are identified by the statutory agencies who have a duty together to assess the risk and construct risk management plans. These can range from simple prohibitions as to where the person lives to disclosure of the person's identity to relevant authorised persons such as local school head teachers. Sex offenders in many cases have an obligation to register with their local police, and inform them of changes of address etc. Part II of the Sex Offences Act 2003 contains a number of civil orders aimed at curtailing the illegal activities of sex offenders. Any breach of these orders is punishable with imprisonment.

#### 14.45 **The Youth Justice and Criminal Evidence Act 1998**

Part II of this Act has introduced legislative changes in furtherance of an interdepartmental working group on the

treatment of vulnerable and intimidated witnesses in the Criminal Justice System. Its report entitled - 'Speaking Up for Justice' made a number of recommendations whereby 'special measures' should be introduced enabling vulnerable or intimidated witnesses in a criminal trial to give their best evidence. The recommendations made have now mostly been enacted in sections 16-33 of the Youth Justice and Criminal Evidence Act 1998. Whilst a number of the relevant sections of this Act are being phased, some sections may be the subject of 'pilot' trials before implementation takes place fully throughout England and Wales.

14.46 The reference made to 'special measures' applies to any witness, whether representing the prosecution or defence (but not the defendant). For a witness to benefit from any of the 'special measures', an application must be made to the Court. These applications may be made at the plea and directions hearing at the Crown Court or at a pre-trial review at the Magistrate's Court.

14.47 Vulnerable Adults who are witnesses in criminal proceedings, may be eligible for 'special measures' if they fall into one or more of the following categories:

- A witness who suffers from a mental disorder within the meaning of the Mental Health Act 1983, or who has a significant impairment of intelligence and social functioning, or who has a physical disability or disorder. In these cases, the Court must be satisfied that the quality of evidence given by the witness is likely to be diminished due to the mental disorder.
- A witness whose evidence, in the opinion of the Court, is likely to be diminished by reason of fear or distress about testifying.

**The fact that a witness is eligible for 'special measures' will not automatically mean that the measures will be made available at the trial. The reasons for this are:**

- That once eligibility is established, the Court must then determine whether any of the 'special measures' would be likely to improve the quality of the evidence given by the witness and if so, which of the 'special measures' would maximise, so far as practicable, the quality of the evidence of the witness; and
- The Court must then, before making a 'special measures' direction, consider all the circumstances of the case and in particular, the views of the witness and whether the measures might tend to inhibit the effective testing of the evidence by the defendant.

**14.48 The 'Special Measures' that can be provided (subject to their full implementation in the Courts) for Vulnerable and Intimidated Witnesses are:**

- Allowing a witness to give evidence from outside the Court via a live television link. *(Whilst such facilities now exist in most Crown Courts, this facility is unlikely to be available in Magistrates Courts until April 2005 at the earliest)*
- Allowing an interview with the witness, which has been video recorded before the trial, to be shown as the witness's evidence in chief at the trial. *(Whilst available to those witnesses who fall within section 16 of the Act, implementation for witnesses under section 17 (in fear/intimidation) is subject of piloting and if successful, is likely to be implemented in September 2005)*
- Allowing a witness to be cross-examined or re-examined before the trial regarding their evidence and a video recording of that cross-examination/re-examination to be shown at the trial instead of the witness being cross-examined/re-examined live at the trial. *(The workability of this special measure is currently being reviewed and as such, is not available to vulnerable adults at this time)*
- Allowing an approved intermediary to help the witness communicate with legal representatives at Court. *(This special measure is currently being piloted in some areas of the UK and will be subject of evaluation over 2004/5 before any decision made to implement)*
- Allowing a witness the use of aids to communicate at the trial. *(This special measure is available to those witnesses who fall within section 16 only)*
- Allowing a witness to give evidence in private by clearing people from the Court. *(This special measure is available in both Magistrates and Crown Courts)*
- Removal of wigs and gowns by the Judge, barristers and other court officers. *(This special measure is available in both Magistrates and Crown Courts)*
- Whilst giving evidence in Court, allowing the witness to be screened from the accused. *(This special measure is available in both Magistrates and Crown Courts)*

**14.49 Evidence Quality 'Test'** - It is intended that Courts will authorise the use of 'special measures' if the presiding Judge takes the view that the measure or combination of measures will be likely to improve a witness's evidence. Without the measures, the quality of the evidence given is likely to be:

- Range from being unintelligible (in that the witness would not meet the tests for competence and intelligibility given in Section 53 of the Act i.e. 'to understand questions put to him/her as a witness and give answers to them which can be understood')
- To being intelligible, but worse quality than it could be, because of the circumstances that make the witness eligible for help.

**'Quality'** means more than just intelligibility. The term 'quality' encompasses completeness, accuracy and being able to address the questions put and give answers which can be understood, both as separate answers and when taken together as a complete statement.

## 14.50 The Care Standards Act 2000

14.51 Implemented on the 1<sup>st</sup> April 2002, the aim of this part of the Care Standards Act is to protect vulnerable people from abuse and neglect as well as to promote the highest standards of quality in the care that people receive, wherever or whoever may be providing that care. It makes independent arrangements for ensuring that elderly and disabled people who rely on care services get a good standard of care and provides an additional level of protection for vulnerable adults.

14.52 The Act establishes arrangements for a list of people judged unsuitable to work with vulnerable adults in the care sector. The POVA scheme came into force on a phased basis on the 26<sup>th</sup> July 2004 and central to this scheme is the POVA list. The list will be maintained on behalf of the Department of Health by the Department of Education and Skills and is a joint England/Wales list. Initially the POVA scheme was implemented with regard to care workers employed by registered providers of care homes and domiciliary care agencies, including workers supplied by employment agencies and businesses to such care providers. It is planned that the POVA scheme will be extended in future to the NHS and independent health care sectors as outlined in the Care Standards Act. (For further detailed information on this – see DH 'Protection of Vulnerable People – A Practical Guide' July 2002).

14.53 The relevant sections of the legislation are:

- **Section 81 – Duty of Secretary of State to keep a 'List'.**
  - (1) The Secretary of State shall keep a list of individuals who are considered unsuitable to work with vulnerable adults.
  - (2) An individual shall not be included in the list except in accordance with this Part.

(3) The Secretary of State may at any time remove an individual from the list if he is satisfied that the individual should not have been included in it.

• **Section 82 – Persons who provide care for vulnerable adults: duty to refer.**

(1) A person who provides care for vulnerable adults (“the provider”) shall refer a care worker to the Secretary of State if there is fulfilled –

- (a) Any of the conditions mentioned in subsection (2); or
- (b) The condition mentioned in subsection (3).

(2) The conditions referred to in subsection (1) (a) are-

- (a) That the provider has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
- (b) That the worker has resigned, retired or been made redundant in circumstances such that the provider would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned, retired or been made redundant;
- (c) That the provider has, on such grounds, transferred the worker to a position which is not a care position;
- (d) That the provider has, on such grounds, suspended the worker or provisionally transferred him to a position which is not a care position but has not yet decided whether to dismiss him or to confirm the transfer.

(3) The condition referred to in subsection (1) (b) is that:

- (a) In circumstances not falling within subsection (2), the provider has dismissed the worker, he has resigned or retired or the provider has transferred him to a position which is not a care position;
- (b) Information not available to the provider at the time of the dismissal, resignation, retirement or transfer has since become available; and
- (c) The provider has formed the opinion that, if that information had been available at that time and if (where applicable) the worker had not resigned or retired, the provider would have dismissed him, or would have considered dismissing him, on such grounds as are mentioned in subsection (2)(a).

(4) If it appears from the information submitted with a reference under subsection (1) that it may be appropriate for the worker to be included in the list kept under section 81, the Secretary of State shall:

- (a) Determine the reference in accordance with subsections (5) to (7); and
  - (b) Pending that determination, provisionally include the worker in the list.
- (5) The Secretary of State shall:
- (a) Invite observations from the worker on the information submitted with the reference and, if he thinks fit, on any observations submitted under paragraph (b); and
  - (b) Invite observations from the provider on any observations on the information submitted with the reference and, if he thinks fit, on any other observations under paragraph (a).
- (6) Where:
- (a) The Secretary of State has considered the information submitted with the reference, any observations submitted to him and any other information which he considers relevant; and
  - (b) In the case of a reference under subsection (2)(d), the provider has dismissed the worker or, as the case may be, has confirmed his transfer on such grounds as are there mentioned, the Secretary of State shall confirm the worker's inclusion in the list if subsection (7) applies; otherwise he shall remove him from the list.
- (7) This subsection applies if the Secretary of State is of the opinion:
- (a) That the provider reasonably considered the worker to be guilty of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult; and
  - (b) That the worker is unsuitable to work with vulnerable adults.

#### 14.54 **Powers of the Care Standards Inspectorate for Wales**

The Care Standards Act 2000 ensures stronger protection to vulnerable adults and children from abuse and neglect as well as to promote and improve the quality and standard of care that people needing to be cared for can expect to receive.

The Care Standards Inspectorate is responsible for ensuring that all registered providers comply with the requirements imposed by Act.

#### 14.55 **Legal Power to Enter, Inspect and Seize:**

The Act provides the Care Standards Inspectorate with the power to enter and inspect premises at any time, which are used, or which it has reasonable cause to believe to be used, as an establishment, or agency.

- 14.56 Any person so authorised is entitled to:
- (a) Make any examination into the state and management of the premises and treatment of patients or persons accommodated or cared for there.
  - (b) Inspect and take copies of any documents or records which can include medical and other personal records, which are required to be kept in accordance with certain Regulations made under the Act and related legislation. It can also require the provision of copies of such documents or records and that computer records be produced in a legible form which can be taken away
  - (c) Interview in private the manager or the person carrying on the establishment or agency
  - (d) Interview in private any person employed or working there
  - (e) Interview in private any patient or person accommodated or cared for there who consents to be interviewed

14.57 The Care Standards Inspectorate also has power to seize and remove any documents or other material found which it has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement of the Act or related Regulations made under the Act.

14.58 **Enforcement:**

The Act provides for three broad kinds of regulatory action where providers are not fulfilling their legal obligations. They may:

- Prosecute, or where more appropriate a formal written caution those responsible for an offence committed
- Refuse or vary registration or impose new conditions
- Cancel a registration

14.59 **OTHER RELEVANT STATUTES RELATING TO THE RIGHTS OF INDIVIDUALS AND THE SHARING OF PERSONAL AND CONFIDENTIAL DATA:**

14.60 **The Disability Discrimination Act 1995**

This Act provides rights for disabled people who have or have had a disability that makes it difficult for them to carry out normal day to day activities. The disability could be physical, sensory or mental. It must also be substantial and have a long-term effect,

i.e. it must last or be expected to last for 12 months. Conditions that have a slight effect on day to day activities, but are expected to become substantial, are also covered. Severe disfigurement is also classed as a disability.

14.61 Employers and people who provide goods and services to the public have to take reasonable measures to make sure they are not discriminating against disabled people.

14.62 The Government has published two documents that provide further guidance on the meaning of the DDA; these are:

- Codes of Practice in relation to employment and service delivery;
- Guidance on the definition of disability;

Both documents can be used by tribunals or courts as guidance to interpret the law.

### **14.63 Human Rights Act 1998**

The Human Rights Act gives further effect in domestic law and requires all domestic law to be compatible with the Convention Articles. It also places a legal obligation on all public authorities to act in a manner which is compatible with the Convention. Should a public authority fail to do this then it may be subject of legal action under section 7 of the Act. This obligation should not solely be seen in terms of an obligation not to violate Convention Rights but also as a positive obligation to uphold these rights.

**14.64 A summary of the Articles contained within the Act are:**

- **Article 2 – Right to Life:** Everyone's right to life shall be protected by the law
- **Article 3 – Prohibition of Torture, Inhuman, Degrading Treatment:** No one shall be subjected to torture or inhuman or degrading treatment or punishment
- **Article 4 – Prohibition of Slavery and Labour:** No one shall be held in slavery or servitude and no one shall be required to perform forced or compulsory labour.
- **Article 5 – Right to Liberty and Security:** Everyone has the right to liberty and security of person.
- **Article 6 – Right to a Fair Trial:** In determination of their civil rights and obligations or of any criminal charge against them, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- **Article 7 – No Punishment without law:** No one shall be held guilty of any criminal offence on account of any act or

omission which did not constitute a criminal offence under national or international law at the time when it was committed.

- **Article 8 – Right to Respect for Private and Family Life:** Everyone has the right to respect for their private and family life, their home and their correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law.
- **Article 9 – Freedom of Thought, Conscience and Religion:** Everyone has the right to freedom of thought, conscience and religion.
- **Article 10 – Freedom of Expression:** Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- **Article 11 – Freedom of Assembly:** Everyone has the right to freedom of association with others, including the right to form and to join trade unions for the protection of their interests.
- **Article 12 – Right to Marry:** Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.
- **Article 14 Prohibition of Discrimination:** The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- **Article 17 – Prohibition of Abuse of Rights:** Nothing in this convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.
- **Article 18 – Limitation on use of the Restrictions on Rights:** The restrictions permitted under this convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

## The First Protocol

- **Article 1 – Protection of Property:** Every natural or legal person is entitled to the peaceful enjoyment of their possessions,
- **Article 2 – Right to Education:** (subject to UK reservation)
  - No person shall be denied the right to education.

- 14.65 One of the fundamental provisions in the Human Rights Convention is **Article 2** which states that everyone has a right to life. It also places on the state a positive duty to protect life.
- 14.66 **Article 8** states that everyone has the right to respect for their private and family life, their home and their correspondence and that there shall be no interference by a public authority with this right except as in accordance with the law and relative to:
- The interests of national security
  - Public safety
  - The economic well being of the country
  - The prevention of crime and disorder
  - The protection of health and morals
  - The protection of the rights or freedoms of others
- 14.67 **Proportionality** – The principle of proportionality is a common theme running through both the Convention rights and judgements of the European Courts. It is explicitly expressed in the limitations contained in Articles 8-11 where it is stated that any interference or restriction of those rights must be lawful and ‘necessary in a democratic society’. Any restrictions of rights must therefore, be justified in that a fair balance must be achieved between the protection of an individual’s rights with the general interests of society.
- 14.68 **The sharing of information between agencies** has the potential to infringe a number of Convention Rights. In particular, **Article 3** (Freedom from torture or inhuman or degrading treatment), **Article 8** (Right to private and family life) and **Article 1 of Protocol 1** (Protection of property). In addition, all Convention Rights must be secured without discrimination on a wide variety of grounds under **Article 14**.
- 14.69 In the context of information exchange, any disclosure of information should be restricted to a minimum and be the least damaging that is required in achieving the objective.
- 14.70 The Convention does allow limited interference with certain Convention Rights by public authorities under broadly defined circumstances known as legitimate aims. However, mere

reliance on a legal power may not alone provide sufficient justification and the following principles should be considered:

- Is there a legal basis for the action being taken?
- Does it pursue a legitimate aim (as outlined in the particular Convention article?)
- Is the action taken proportionate and the least intrusive method of achieving that aim?

#### **14.71 Data Protection Act 1998**

Any disclosure of personal data must be bound to both common and statute law, for example – the common law duty of confidence, the Data Protection Act 1998 and the Human Rights Act 1998.

- 14.72 The data protection principles require that such information is obtained and processed fairly and lawfully; is only disclosed in appropriate circumstances; is accurate, relevant and not held longer than is necessary; and is kept securely.
- 14.73 The Data Protection Act 1998 maintains the crime prevention exemptions of the Data Protection Act 1984. Disclosure of the personal data may be made where it is for the purpose of the prevention or detection of crime, apprehension or prosecution of offenders and where failure to disclose would be likely to prejudice those objectives, decisions must be made on a case by case basis.
- 14.74 Any request for information whose purpose is the prevention or detection of crime should specify as clearly as possible how failure to disclose would prejudice this objective. The request should make clear:
- Why the information is necessary, e.g. why proceedings might fail without the information; and
  - Why it is envisaged that a successful action would prevent crime, e.g. what is the projected effect of successful proceedings.
- 14.75 In the context of exchanging or sharing information between public authorities, the Information Commissioner (formerly the Data Protection Commissioner) states that public authorities may exchange data provided:
- The purpose for doing is to protect life and property, prevent or detect crime and to maintain good order in society.
  - That they have notified their intention to do so.
  - That the process of exchange is in accordance with the Act – particularly the eight principles in Schedule 1 of the Act.

- That there is a statutory or common law power to do so.

**14.76 Amongst offences that can be committed under the Data Protection Act 1998 are:**

- Failure to notify processing data, where required;
- Failure to notify changes to processing of personal data;
- Unlawfully obtaining personal data;
- Unlawfully selling personal data;
- Unlawfully offering personal data for sale;
- Unlawfully obtaining personal data by requiring someone to exercise their right to Subject Access in connection with employment or the provision of services (enforces subject access).

**14.77 Public Interest Disclosure Act 1998 (Whistle-blowing)**

Public interest disclosure or 'Whistle-blowing' as it is otherwise referred to concerns the disclosure or communication of information about possible malpractice by individuals or organisations, either internally or externally, to an outside authority. Supplementary guidance setting out the key principles of the Public Interest Disclosure Act and the relevant considerations and action to be followed is provided in Appendix 'B' of these procedures. (Further information and contact details for Public Concern at Work can be found in Section 16: Contact details)

**14.78 Criminal Injuries Compensation**

Compensation for personal injury sustained as a result of a criminal attack can be given in relation to the following situations:

- Injury sustained as result of being the victim of a crime of violence, including sexual offences.
- Injury sustained while trying to prevent a crime.
- The death of a close relative in one of the above situations.
- The injury is serious enough to warrant an award.

<p>To obtain further information on how to make a claim, claimants may contact: The Criminal Injuries Compensation Authority, 300, Bath Street, Glasgow (Tel. 0141- 3312726). For other information on the CICA including further details of the free helpline number and website – you should refer to the final section 16: 'Contact details'</p>
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**14.79 National Assistance Act 1948 (Section 47)**

This provides for the compulsory removal of a person from their home if:

- They are suffering a grave chronic disease, or being aged, infirm or mentally incapacitated, is living in unsanitary conditions and
- Are unable to devote to themselves or are not receiving from others proper care and attention and
- Their removal is necessary either in their own health interests or to prevent serious nuisance to other persons.

14.80 The Act requires an application from a Community Physician and responding order from a Magistrates Court. Seven days notice of execution are given to the individual before the order is carried out and once the person is removed to a suitable place for care (this can only be given with their consent) they can appeal against the Order after 28 days have elapsed.

#### **14.81 The National Assistance Amendment Act 1951**

Upon application from a Community Physician and another physician to an individual Magistrate the person can be removed immediately without notice. Here there is an initial detention period of 3 weeks, which may be renewed.

14.82 In each of the above cases removal is normally effected by the Police, who have powers to do so under the Police and Criminal Evidence Act.

#### **14.83 Public Health Acts 1936/1961**

These enable compulsory cleaning of a house by application to Magistrates Court by an Environmental Health Officer where there is a public health risk. This is normally preceded by an inspection, which can also be enforced by the Magistrates.

#### **14.84 Mental Health Act 1983**

- **Sections 2, 3 and 4** – These deal with the compulsory admission of people thought to have a mental health disorder requiring further assessment and, if required, treatment, where they are a danger to themselves or to others.
- **Section 115** – This empowers a Social Worker approved under the Act to enter premises to make an assessment where they believe the mentally disordered person is not receiving proper care.
- **Section 135** – This enables an Approved Social Worker to apply for a Magistrates Warrant to enter premises, accompanied by a Police Constable, where they have reason to believe that the mentally disordered person is being ill-treated or neglected by others, or if living alone, is neglecting themselves.

- **Section 7 - Guardianship:** This provides a framework within which the mentally disordered person may live in the community, under the broad supervision of a guardian. This individual is able to decide where the patient will live, who may have access to them and what education, therapy or medical assessment they should receive. However, all of these matters normally require the patient to recognise the authority of the guardian.
- **Section 127 –** This makes it an offence for a guardian or member of staff in a hospital or nursing home to mistreat or wilfully neglect a patient who is detained under the Act.

#### **New Mental Capacity Act:**

This new legislation is likely to be enacted in 2007. Whilst the Mental Capacity Bill is still subject of consultation and debate, the final elements of the Act are subject to confirmation. It is likely however that the new Act will create the following:

- A new single definition and ‘functional’ test for lack of capacity focusing on whether an individual is able to make a particular decision at the time when it needs to be made.
- An assumption that a person has capacity until shown otherwise.
- A new requirement that all decisions taken on behalf of someone who lacks capacity must be made in the person’s best interests
- Statutory pointers for assessing the best interests of a person lacking capacity in the form of a ‘checklist’ of factors that should always be considered
- The concept of a general authority to act which would clarify in statute the circumstances in which steps can be taken on behalf of others without the need for any formal authority
- Lasting Powers of Attorney to extend the current system for delegating decision-making powers to a chosen person
- A new single court for resolving disputes and appointing deputies to provide a single, integrated framework for the making of personal welfare, health care and financial decisions, a new Public Guardian would support the work of the new court.
- A new criminal offence of wilful neglect or ill treatment of a mentally incapacitated adult – punishable by up to 5 years imprisonment

14.85 **CIVIL REMEDIES FOR THE PROTECTION OF MONEY OR PROPERTY**

14.86 **Declaratory Relief**

It is now possible outside the regime of the Mental Health Act or guardianship to take steps to protect or improve the daily living arrangements of incapacitated people.

14.87 The law provides a mechanism for bringing disputes and concerns to a head without displacing anyone's nearest relative and without the need for a 'section 12 approved' diagnosis of mental illness disorder or impairment. The nature of the proceedings is a kind of 'ward ship' for adults, which is as extensive in terms of coverage as that jurisdiction used to be for the protection of children.

14.88 An applicant for a declaration can ask for an emergency injunction, without notice to a relative suspected of abuse using the Out of Hours Business telephone line to the High Court. A judge's clerk can contact a Judge and put him/her in touch with the person who is suggesting that an injunction is necessary.

14.89 An application for a declaratory relief requires the fulfilment of the following:

- A proposal for the daily living arrangements for the person, about which there is a dispute – either with the person themselves or the relatives or carers

And

- Cogent evidence as to the person's incapacity to make or communicate their own decision about the proposal

14.90 **An applicant for a declaration can ask for an emergency injunction, without notice to a relative suspected of abuse.**

The following case example helps illustrate this:

A case involving a London Borough Council (judgement 1.11.01) involved a declaration about the welfare of a 37 year-old woman with a significant combination of mental and physical disabilities. The defendant was the woman's mother, who held very strong views about her daughter's best interests, with which the authority simply could not professionally agree. Undertakings she had given on previous occasions to the authority had been broken and continued contact had become highly confrontational. A judge ordered an assessment of the woman, with which the mother failed to co-operate, leading to the attachment of a penal notice to the interim order for assessment. Eventually, this led to an application for committal to prison of

the mother, for removing the daughter again from the care setting in which she had lived for years.

After a full hearing, the judge made declarations intended to operate in the long term, not merely the immediate future but covering the following aspects of her care:

- An order for continued residence in the premises in which the woman was accommodated – where the care was of a generally high standard as far as the judge was concerned
- Any further medical examinations to be dependent upon the consent of the clinicians concerned with the woman's care, not at the behest of the mother
- An injunction against the mother video-recording her daughter
- The timing, location and extent of contact to the mother to be dependent on agreement in writing by the local authority concerned

The judge hoped that these orders would remove anxiety from the mother and enable her to stop behaving in what he saw as an apparently irrational or obstructive way. The judge recommended that in future, the mother channel complaints through an independent advocate for the client, not through the ordinary complaint's procedure.

<p><b>Please note:</b> Your legal department must always be consulted about the use of this method of protection.</p>
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#### 14.91 **Court of Protection (Receivership)**

Is responsible for making arrangements in relation to the property and income of people who are mentally incapacitated and who are unable to do this for themselves. An application (via the Public Guardianship office) for appointment as a receiver can be made to the court by a near relative, friend, solicitor or local authority. This application can be administered by the person who is making the application to become the receiver (they do not have to have a solicitor to administer the application for them). A recommendation from a physician who has seen the patient and is satisfied that they are mentally incapable of managing their financial affairs will be required in support of this application. The receiver is required to manage the estate with the same due care as they would devote to their own property. In practice, the estate usually has to be worth £10,000 or more although receivership can occasionally apply to sums of less than this amount. Charges are made for this process, both on initial registration and annually to cover administration costs.

14.92 **Power of Attorney**

This is an arrangement whereby a mentally competent person can appoint an Attorney or Attorneys to manage all or part of their property or to conduct specific transactions on their behalf. This ceases to be valid as soon as a person is no longer mentally capable of understanding the arrangement. While the person remains competent, they may also revoke the power.

14.93 **Enduring Power of Attorney**

This arrangement allows a mentally competent person to appoint an Attorney who can act on their behalf in financial matters, on a permanent basis, this power then continues after the person is no longer mentally competent. When the person loses their mental capacity to act for themselves, the Attorney must register the Enduring Power of Attorney with the Court, and inform any other interested parties. Again, this power may be revoked while the person remains competent.

14.94 **Appointee**

An individual may apply to become an Appointee under the Social Security Claims and Payments Regulations 1986. This makes them responsible for collecting and managing state benefits on behalf of a mentally incapacitated person. Appointees may include a senior manager in a social services department or the proprietor of a private home.

14.95 **Agent**

From early 2005, changes to the benefit system will mean Agents in their present format will become obsolete except for a small group of adults. It is intended benefits will now either be paid to adults, straight into a bank, building society, or post office account, accessible by using a personal card with personal identification number (PIN). For those adults who don't have, or want, one of these accounts, arrangements can be made for this to be paid with a giro cheque that can be cashed at a post office. The current Agent arrangements where the adult contacts the Benefits Agency and is issued with a card for an Agent can be used for this, with the adult signing the back of the cheque. The adult can cancel this arrangement at any time they see fit.

14.96 **The Official Solicitor to the Supreme Court**

The official Solicitor will assist, in certain respects (as to which, see below), an adult whose doctor signs either their medical certificate form or the CP3 Court of Protection form to the effect that the adult suffers from a mental disorder and, as a result, is not capable of managing and administering their property and affairs. It is important that the doctor who completes the form

understands the nature of the legal problem that the adult is facing.

14.97 If the adult does suffer from mental disorder and cannot manage their affairs, then the following are the sorts of problems with which the Official Solicitor can help:

- (i) Helping the adult put a case before the civil courts, e.g. if a Power of Attorney has allegedly been misused, or if the Adult has given away their house to the net door neighbour at a time when they did not appreciate what they were doing;
- (ii) Helping the adult if they are being sued in the civil courts, e.g. for alleged unpaid fees for residential accommodation;

14.98 It should be noted that the Official Solicitor is not expected to intervene in the above situations if there is someone else who is suitable and willing to act as the patient's 'Next Friend' or guardian ad litem, and arrange for the legal representation of the adult.

- (i) Representing an adult if an application has been made to the Court of Protection for a gift of the adult's money to be made to another person, or for a will to be made on another person's behalf. In these cases, the Court of Protection will insist that the Official Solicitor (and no-one else) fulfils this function;
- (ii) Sometimes the Official Solicitor is also asked to assist the civil courts when difficult questions arise in relation to where an adult should live, who should be allowed to visit them and what sort of medical treatment can lawfully be given to them. The Official Solicitor can be asked to make an independent report to the Court as to what would be in the best interests of the adult or to act as *amicus curiae*. The area of law is in the course of considerable change and development and the Law Commission have made a report concerning it.
- (iii) The Official Solicitor can be asked as Judicial Trustee in cases where an adult is the beneficiary of a trust fund and the existing trustee is not administering the trust in a satisfactory manner.

14.99 The Official Solicitor does not act as Appointee or Receiver although they can offer advice about both areas if necessary. Also, the Official Solicitor does not represent persons who wish to apply to the Mental Health Review Tribunal. However, if an application is made to a County Court to replace an adult as nearest relative under the Mental Health Act, they could be asked to represent that adult.

- 14.100 The Official Solicitor's office is funded by central government. They do not charge for offering advice over the telephone and if **a social worker is not sure whether they could assist or not, they can always be telephoned to clarify the position.** If they are asked to take over the representation of an adult in a court, they are expected to ensure that the costs of doing so can be funded from a source. If necessary they can apply for legal aid on behalf of the adult.

The Official Solicitor's office is part of the Lord Chancellor's Department which is a section of the Civil Service. The address of this office is – 81, Chancery Lane, London WC2A 1DD (Tel. No. 020 79117127) Further information on this may be found in final section of the 'Contact details' (Section 16).