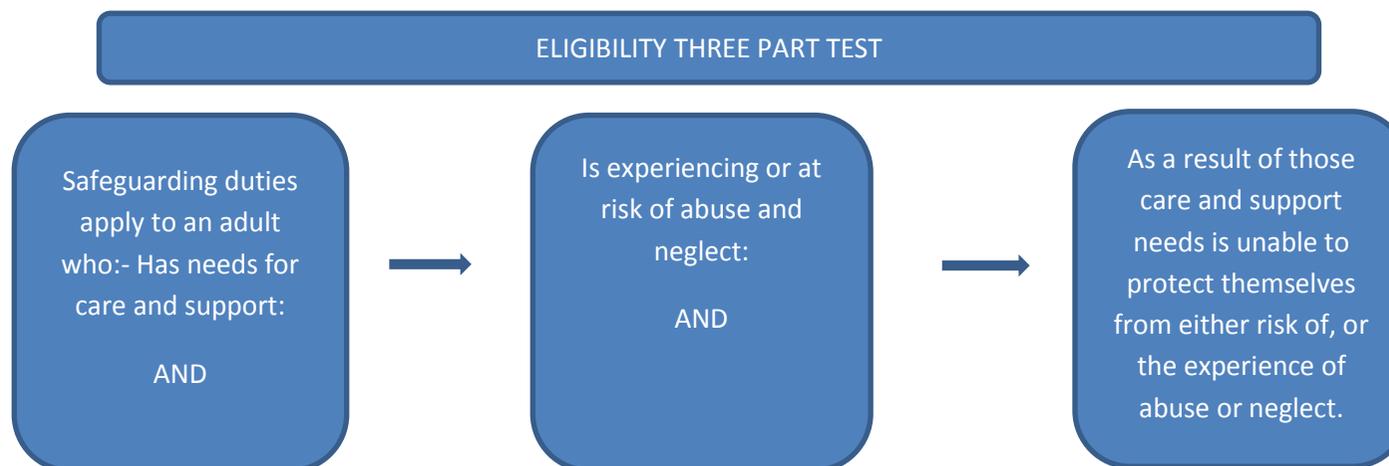


Safeguarding Adults and Consent

Do I need consent to make a safeguarding referral?

- Checking out the vulnerable person's consent is part of the HSC safeguarding assessment process; Escalating important adult safeguarding concerns at an early stage is important even when consent can not be obtained if the adult may be at risk of harm or a victim of crime.
- The adult safeguarding referral (alert) must be forwarded to the safeguarding advisor or safeguarding lead manager where the '3 part test' (below) is met. At that point further enquiries will be made about the issues, including whether the person consents or not.
- If the person does not consent, that simply means that HSC does not have the person's co-operation within the safeguarding process, but this does not stop HSC (together with partner agencies) from taking any supportive steps they can, such as meeting to consider managing risks.





Safeguarding Adults and Sharing Information

Guidance

Designated 'adult safeguarding leads' in HSC and partner agencies are responsible for ensuring that information shared about individuals alleged to have caused harm is in accordance with human rights, data protection and confidentiality requirements. Sharing information between organisations about known or suspected risks may help to prevent abuse taking place. Designated 'adult safeguarding leads' should also have a role in highlighting the extent to which their own organisation prevents abuse and neglect taking place'.

What if a person does not want you to share their information?

Frontline workers and volunteers should always share safeguarding concerns in line with their organisation's policy, usually with their line manager or safeguarding lead in the first instance, except in emergency situations where immediate help should be sought. As long as it does not increase the risk to the individual, the member of staff should explain to the vulnerable adult -that it is their duty to share their concern with their manager. The safeguarding principle of proportionality should underpin decisions about sharing information without consent, and decisions should be on a case-by-case basis.

Individuals may not give their consent to the sharing of safeguarding information for a number of reasons. For example, they may be frightened of reprisals, they may fear losing control, and they may feel that they can not trust Health & Social Care professionals or other partners. They may also fear that their relationship with the abuser will be damaged. Reassurance and appropriate support along with gentle guidance may help to change their view on whether it is best to share information.

If a person refuses intervention to support them with a safeguarding concern, or requests that information about them is not shared with other safeguarding partners, their wishes should be respected. However, there are a number of circumstances where the practitioner can reasonably override such a decision, including:

- The person lacks the mental capacity to make that decision – (this must be properly explored and recorded).
- other people are, or may be, at risk, including children
- sharing the information could prevent a crime

- the alleged abuser has care and support needs and may also be at risk
- a serious crime has been committed
- staff are implicated
- the person has the mental capacity to make that decision but they may be under duress or being coerced
- the risk is unreasonably high and meets the criteria for a multi-agency risk assessment conference referral
- A legal authority has requested the information.

If none of the above apply and the decision is not to share safeguarding information with other safeguarding partners, or not to intervene to safeguard the person:

- support the person to weigh up the risks and benefits of different options
- ensure they are aware of the level of risk and possible outcomes
- offer to arrange for them to have an advocate or peer supporter
- offer support for them to build confidence and self-esteem if necessary
- agree on and record the level of risk the person is taking
- record the reasons for not intervening or sharing information
- regularly review the situation
- try to build trust and use gentle persuasion to enable the person to better protect themselves.

If it is necessary to share information outside the organisation:

- explore the reasons for the person's objections – what are they worried about?
- explain the concern and why you think it is important to share the information
- tell the person who you would like to share the information with and why
- explain the benefits, to them or others, of sharing information – could they access better help and support?
- discuss the consequences of not sharing the information – could someone come to harm?
- reassure them that the information will not be shared with anyone who does not need to know
- reassure them that they are not alone and that support is available to them.

If the adult at risk cannot be persuaded to give their consent then, unless it is considered dangerous to do so, it should be explained to them that the information will be shared without consent. The reasons should be given and recorded.

If it is not clear that information should be shared outside the organisation, a conversation can be had with safeguarding partners in the police or with the HSC Adult Safeguarding Manager without disclosing the identity of the person in the first instance. They can then advise on whether full disclosure is necessary without the consent of the person concerned.

It is very important that the risk of sharing information is also considered. In some cases, such as domestic violence or hate crime, it is possible that sharing information could increase the risk to the individual. Safeguarding partners need to work jointly to provide advice, support and protection to the individual in order to minimise the possibility of worsening the relationship or triggering retribution from the abuser.

Domestic abuse cases should be assessed following the [CAADA-DASH risk assessment and referred](#) to a multi-agency risk assessment conference where appropriate. Cases of domestic abuse may also be referred to local specialist domestic abuse services.

The common law duty of confidentiality

Confidentiality is an important principle that enables people to feel safe in sharing their concerns and to ask for help. However, sharing relevant information with the right people at the right time is vital to good safeguarding practice.

All staff and volunteers should be familiar with their internal safeguarding procedures for raising concerns. They can also contact either the police or the HSC safeguarding lead for advice, without necessarily giving an individual's personal details, especially if they are unsure whether a safeguarding referral would be appropriate.

The duty of confidentiality however, is not absolute; it does not apply to information that is generally accessible, is useless or trivial or where disclosure is of "far greater importance" (i.e. where the public interest in maintaining confidence is outweighed by the public interest in the information being disclosed):

- Don't give assurances about absolute confidentiality.
- Try to gain consent to share information as necessary.
- Consider the person's mental capacity to consent to information being shared and seek assistance if you are uncertain.
- Make sure that others are not put at risk by information being kept confidential:

- Does the public interest served by disclosure of personal information outweigh the public interest served by protecting confidentiality?
- Could your action prevent a serious crime?
- Don't put management or organisational interests before safety.
- Share information on a 'need-to-know' basis and do not share more information than necessary.
- Record decisions and reasoning about information that is shared.
- Carefully consider the risks of sharing information in relation to domestic violence or hate crime.

The Caldicott principles

The sharing of information in health and social care is guided by the Caldicott principles. These principles are reflected in the Data Protection (Bailiwick of Guernsey) Law 2017 and are useful to other sectors:

- Justify the purpose(s).
- Don't use personal confidential data unless it is absolutely necessary.
- Use the minimum personal confidential data necessary for purpose.
- Access to personal confidential data should be on a strict need-to-know basis.
- Everyone with access to personal confidential data should be aware of their responsibilities.
- Comply with the law.
- The duty to share information can be as important as the duty to protect patient confidentiality.

The Human Rights (Bailiwick of Guernsey) Law 2001

The Human Rights Bailiwick of Guernsey law 2001 was brought into force on 1 September 2006. The law incorporates provisions set out in the [European Convention on Human Rights](#) into Bailiwick law. It also makes it unlawful for a public authority to act in a way which clashes with those provisions.

The law requires all public authorities to act in a way which is compliant with the European Convention on Human Rights. Public authorities who do not comply with the rights of the convention will be acting unlawfully.

- Under Article 8 of the European Convention on Human Rights, individuals have a right to respect for their private life.
- This is not an absolute right and can be overridden if necessary and in accordance with the law.
- Interference must be justified and be for a particular purpose.
- Justification could be protection of health, prevention of crime, protection of the rights and freedoms of others.
- A decision to share information and the reasoning behind it should be recorded.

Data Protection (Bailiwick of Guernsey) Law 2017

The Guernsey laws relating to data protection are contained in the Data Protection (Bailiwick of Guernsey) Law, 2017 (DPL). The DPL mirrors much of the UK Data Protection Act 2018 (the **Act**) and sets out the parameters for sharing information appropriately and safely.

The basic principles.

Any personal information should be shared on the basis that it is:

- necessary for the purpose for which it is being shared
- shared only with those who have a need for it
- accurate and up to date
- shared securely and in a timely fashion
- not kept for longer than necessary for the original purpose.

Vital interest

‘Vital interest’ is a term used in the Data Protection Law to permit sharing of information where it is critical to prevent serious harm or distress, or in life-threatening situations, to protect the vital interests of the data subject. If the only person that would suffer if the information is not shared is the subject of that information, and they have mental capacity to make a decision about it, then sharing it may not be justified.