



# SAFEGUARDING IN PRISONS – WHAT ROLE DOES THE LOCAL AUTHORITY HAVE?

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1. A local authority must carry out its Part 1 Care Act 2014 (“CA”) functions in relation to adults in prisons save for limited specified circumstances as set out in section 76 CA.

2. Although the shorthand ‘prison’ is used in this document section 76 CA sets out the extent of its applicability.

*(11) “Prison” has the same meaning as in the Prison Act 1952 (see section 53(1) of that Act); and—(a) a reference to a prison includes a reference to a young offender institution, secure training centre or secure children’s home, (b) the reference in subsection (10) to the governor, director or controller of a prison includes a reference to the governor, director or controller of a young offender institution, to the governor, director or monitor of a secure training centre and to the manager of a secure children’s home, and (c) the reference in that subsection to a prison officer or prisoner custody officer includes a reference to a prison officer or prisoner custody officer at a young offender institution, to an officer or custody officer at a secure training centre and to a member of staff at a secure children’s home.*

*(12) “Approved premises” has the meaning given in section 13 of the Offender Management Act 2007.*

*(13) “Bail in criminal proceedings” has the meaning given in section 1 of the Bail Act 1976.*

*(14) For the purposes of this section—(a) a person who is temporarily absent from prison is to be treated as detained in prison for the period of absence; (b) a person who is temporarily absent from approved premises is to be treated as residing in approved premises for the period of absence; (c) a person who is temporarily absent from other premises in which the person is required to reside as a condition of the grant of bail in criminal proceedings is to be treated as residing in the premises for the period of absence.*

3. The exceptions to a local authority’s Part 1 CA functions that it is required to carry out in prisons include a prisoner’s entitlement to express a preference for particular accommodation pursuant to section 30 CA, to direct payments pursuant to section 31 to 33 CA as well as certain amendments relating to continuity of care pursuant to sections 37 and 38 CA. These are at section 76(4) – (6) CA.



4. In relation to safeguarding section 76 provides, so far as is relevant:

*(7) Sections 42 and 47 (safeguarding: enquiry by local authority and protection of property) do not apply in the case of an adult who is—(a) detained in prison, or (b) residing in approved premises.*

*(8) An SAB's objective under section 43(2) does not include helping and protecting adults who are detained in prison or residing in approved premises; but an SAB may nonetheless provide advice or assistance to any person for the purpose of helping and protecting such adults in its area in cases of the kind described in section 42(1) (adults with needs for care and support who are at risk of abuse or neglect).*

*(9) Section 44 (safeguarding adults reviews) does not apply to any case involving an adult in so far as the case relates to any period during which the adult was— (a) detained in prison, or (b) residing in approved premises.*

*(10) Regulations under paragraph 1(1)(d) of Schedule 2 (membership of Safeguarding Adults Boards) may not specify the governor, director or controller of a prison or a prison officer or prisoner custody officer.*

5. The Care and Support Guidance provides:

*17.61 Local authority and care provider staff must understand what to do where they have a concern about abuse and neglect of an adult in custody. The prison must ensure that it has clear safeguarding policies and procedures that are explained to all visiting staff. Prison and probation staff may approach the local authority for advice and assistance in individual cases although the local authority will not have the legal duty to lead enquiries in any custodial setting.*

*17.62 Local authorities should consider inviting prison and probation staff to be members of Safeguarding Adult Boards. The inclusion of prison and probation staff on safeguarding adult boards should be agreed with all statutory board members. The Safeguarding Adult Board can act as a forum for members to exchange advice and expertise to assist prison and probation staff in ensuring that all people in custodial settings are safeguarded. PSI 16/2015 Adult Safeguarding in Prisons contains guidance for prison governors on engaging with local Adult Safeguarding Boards.*



6. PSI 16/2015 Adult Safeguarding in Prison encourages Governors to engage with SABS on a strategic level and as a source of advice and assistance in safeguarding prisoners who are unable to protect themselves from abuse or neglect as a result of having care and support needs.

7. It provides:

*11.1 The Care Act 2014 includes a statutory duty for local authorities in England to establish Safeguarding Adults Boards (SABs). These are multi-agency partnership arrangements between the local authority, NHS and police, and such other members as these core members consider appropriate. There is no requirement for prisons to become members, but SABs with prisons in their area are encouraged to invite Prison Governors to become members. The main objective of SABs is to help and protect adults in its area who have care and support needs and face risks of abuse or neglect as a result of those needs. SABs are required to publish strategic plans and annual reports for each financial year setting out what each member has done and how they work together to achieve this objective. Accordingly, SABs will be a forum for the exchange of advice and expertise. In relation to prisons, SABs can provide advice and assistance in relation to safeguarding adults with care and support needs, and membership is likely to be helpful to Governors in ensuring that prisoners with care and support needs are safeguarded effectively. Governors are therefore encouraged to be proactive in engaging with the local SAB and to become a member (or to send a representative) if invited to do so.*

*11.2 Local authorities and SABs are not empowered to conduct safeguarding enquiries or reviews relating to prisoners*

*11.3 Local authorities and SABs may, however, take a strategic interest in the safeguarding work of the prison, and/or provide advice and assistance on how prisoners with care and support needs for whom there are safeguarding concerns are managed. For instance they may wish to be involved where an individual is about to be released and there is the potential for learning by those responsible for ensuring their safety in the community from the arrangements that have been put in place in prison. They may also wish to offer opportunities for prisoners with care and support needs to contribute to their work, for example by running prisoner consultation groups. Governors are encouraged to share relevant information and to facilitate access to prisoners as appropriate.*



8. PSI 15/2015 Adult Social Care provides:

*13. Safeguarding Adults 13.1 This Instruction should be read alongside PSI 16/2015 which sets out policy and requirements to Safeguard Adults in Custody. The availability and provision of social care services is an important part of ensuring that prisoners are protected from abuse and neglect. **Failures in care and support can lead to safeguarding issues for individuals.** If there are concerns in relation to the general availability of care and support services in a prison, this should be raised with NOMS Health, Wellbeing and Substance Misuse Co-Commissioners (see front page for contact details). Concerns in specific cases should be referred to locally agreed joint governance meetings in the first instance (emphasis added).*

9. The emboldened phrase is where some confusion may be generated – the action the prison determines would prevent neglect may be through the provision of care and support by the local authority.

#### Non-excluded Care Act functions

10. The responsibility for non-excluded Care Act Part 1 functions and responsibilities remains with the local authority.

11. However, it is able to delegate certain functions pursuant to section 79(1) CA: *A local authority may authorise a person to exercise on its behalf a function it has under— (a) this Part or regulations under this Part (but see subsection (2)), or (b) section 117 of the Mental Health Act 1983 (after-care services).*

*(2) The references in subsection (1)(a) to this Part do not include a reference to - (a) section 3 (promoting integration with health services etc.), (b) sections 6 and 7 (co-operating), (c) section 14 (charges), (d) sections 42 to 47 (safeguarding adults at risk of abuse or neglect), or (e) this section.*

12. It also remains open to it to enter into section 75 NHS 2006 partnership arrangements for the NHS to carry out health related functions and for it to commission, arrange or outsource procedural activities relating to a function (but not the function itself).

#### Which local authority?



13. The responsible local authority is the one in which the prison is located.

14. Section 76 provides, so far as is relevant,

*(1) In its application to an adult who is detained in prison, this Part has effect as if references to being ordinarily resident in an area were references to being detained in prison in that area.*

*(2) In its application to an adult who is residing in approved premises, this Part has effect as if references to being ordinarily resident in an area were references to being resident in approved premises in that area.*

*(3) In its application to an adult who is residing in any other premises because a requirement to do so has been imposed on the adult as a condition of the grant of bail in criminal proceedings, this Part has effect as if references to being ordinarily resident in an area were references to being resident in premises in that area for that reason.*

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