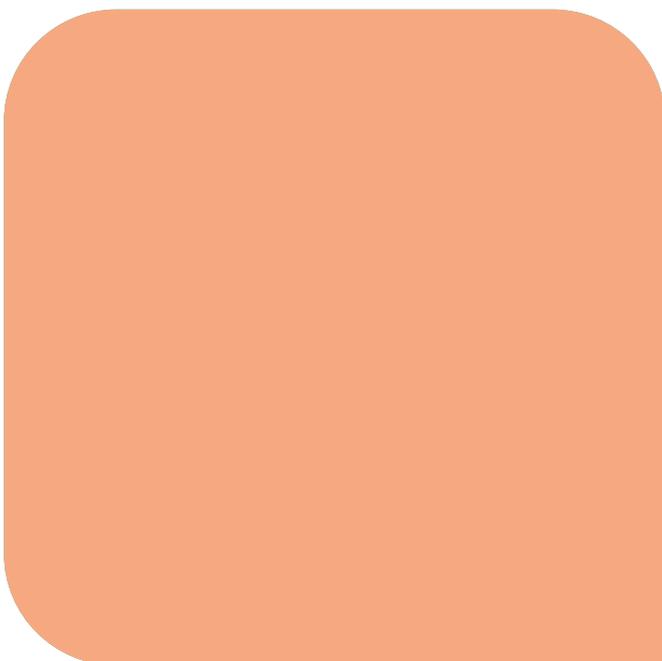


Gaining access to an adult suspected to be at risk of neglect or abuse: a guide for social workers and their managers in England



The aim of this guide is to clarify existing powers relating to access to adults suspected to be at risk of abuse or neglect.

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www.scie.org.uk

Social Care Institute for Excellence

Second Floor

206 Marylebone Rd

London NW1 6AQ

tel 020 7535 0900

fax 020 7535 0901

www.scie.org.uk

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Introduction

The aim of this guide is to clarify existing powers relating to access to adults suspected to be at risk of abuse or neglect. The safeguarding duties under the Care Act 2014 apply to an adult who:

- has needs for care and support (whether or not the local authority is meeting any of those needs)
- is experiencing, or at risk of, abuse or neglect
- as a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of, abuse or neglect.

The guide has been created to provide information on legal options for gaining access to people who fulfil the three criteria above where access is restricted or denied. It is intended as a source of ready reference in situations of uncertainty, rather than as a learning tool, laying out the potential routes to resolution. It is important that social workers and their managers are as clear as possible on which legal powers or options apply to which situations, and in cases of any uncertainty that they consult their senior managers and/or the legal department of the local authority.

Throughout the guide you will find links to information on the relevant legislation and case law, should you wish to consult this.

Key messages

- Under Section 42 of the Care Act 2014, local authorities have a duty to make, or cause to be made, enquiries in cases where they reasonably suspect that an adult with care and support needs is experiencing, or is at risk of, abuse or neglect, and, as a result of those needs, is unable to protect themselves from this actual or risk of abuse and neglect.
- This duty to make or to cause adult safeguarding enquiries to be made does not provide for an express legal power of entry or right of unimpeded access to the adult who is subject to such an enquiry. Instead, there are a range of existing legal powers which are available to gain access should this be necessary. The powers which may be relevant to adult safeguarding situations derive from a variety of sources including the Mental Capacity Act 2005 (MCA), the Mental Health Act 1983 (MHA) and the Police and Criminal Evidence Act 1984 (PACE), along with the common law including the inherent jurisdiction of the High Court and common law powers of the police to prevent or deal with a breach of the peace.
- Whether it is necessary to seek legal intervention and which powers would be the most appropriate to rely on in order to gain access to an adult to assess any safeguarding risk or otherwise protect an adult will always depend on the individual circumstances of the case.

Context and background

Under Section 42 of the Care Act, a local authority has a duty to make enquiries itself or cause others to make enquiries in cases where it has reasonable cause to suspect that an adult:

- has needs for care and support (whether or not the local authority is meeting any of those needs)
- is experiencing, or at risk of, abuse or neglect
- as a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of, abuse or neglect.

The purpose of a safeguarding enquiry is for the local authority to clarify matters and then decide on what course of action (if any) is required in order to protect the adult in question from abuse and neglect. If any action is necessary, then it is for the local authority to take the lead in coordinating what action is appropriate and by whom. A safeguarding enquiry may not necessarily result in what is typically considered to be a 'safeguarding response', such as an investigation by the police or a health and social care regulator, but it could result in other action to protect the adult concerned, such as providing a care and support package for either or both the adult and their carer.

Practical issues

The purpose of the safeguarding enquiry is to decide whether or not the local authority or another organisation, or person, should do something to help and protect the adult. In almost every case it is likely to be necessary to physically see and talk to the adult in order to be able to make that decision.

Good safeguarding practice begins with talking to the adult who there is concern about, unless there are exceptional circumstances that would increase the risk of abuse. That conversation will need to establish facts and, importantly, what the person wants to happen and how. Practitioners need to make personal contact with the people they are working with and establish a relationship. Therefore the issue of access and ability of the person to talk freely is critical.

If the adult has substantial difficulty in being involved, and where there is no one appropriate to support them, then the local authority must arrange for an independent advocate to represent them for the purpose of facilitating their involvement.

People must be assumed to have capacity to make their own decisions and be given all practicable help before anyone treats them as not being able to make their own decisions. Where an adult is found to lack capacity to make a decision then any action taken, or any decision made for them, or on their behalf, must be made in their best interests.

Organisations should always promote the adult's wellbeing in their safeguarding arrangements. People have complex lives and being safe is only one of the things they want for themselves. Professionals should work with the adult to establish what being safe means to them and how that can be best achieved. Professionals and other staff should not be advocating 'safety' measures that do not take account of individual wellbeing, as defined in Section 1 of the Care Act.

All safeguarding policies and practice should reflect the principles underpinning good safeguarding set out in the statement of government policy on adult safeguarding. [1]

The six principles of adult safeguarding

There are six principles of adult safeguarding:

- **empowerment:** presumption of person-led decisions and informed consent
- **protection:** support and representation for those in greatest need
- **prevention:** taking action before harm occurs
- **proportionate and least intrusive responses:** appropriate to the risk presented
- **partnership:** local solutions through services working with their communities
- **accountability:** accountability and transparency in delivering safeguarding.

Difficulties in gaining access

There will be a wide range of reasons why, and circumstances when, it may be difficult to gain access to an adult who is the subject of an adult safeguarding enquiry. Here are some examples:

- access to the premises is being denied altogether by a third party on the premises, typically a family member, friend or other informal carer
- access to the premises can be gained, but it is not possible to speak to the adult alone – because the third party is insisting on being present
- the adult at risk themselves (whether or not unduly under the influence of the third party) is insisting that the third party be present – clearly in such cases if the person is known to have capacity the issue of access in terms of the law does not arise.

However, the simple fact of access being refused should not automatically lead to consideration of the use of legal powers. Such situations are often complex and highly sensitive and, if they are to be resolved successfully and safely, will need sensitive handling by skilled practitioners. All attempts to resolve the situation should begin with negotiation, persuasion and the building of trust. Denial of access may not necessarily be a sign of wrong-doing by the third party; it may be an indication of lack of trust of authority, guilt about their inability to care or fear that the adult will be removed from the home. It is vital that until the facts are established the practitioner adopts an open-minded, not judgemental approach.

If all attempts fail then the local authority must consider whether the refusal to give access is unreasonable and whether the circumstances justify intervention. There will need to be a local authority-led discussion about what the perceived risks are, the likelihood of risk or neglect occurring and the potential outcomes of both intervening and not intervening. As in any other situation, any decisions and the reasons for them should be clearly and fully recorded and shared with others as necessary and lawful.

If the conclusion is that the use of legal powers is necessary and justifiable, the next step is to consider what powers would be most appropriate.

Therefore local authority managers and practitioners involved in safeguarding need to be aware of existing legal powers which can be used if necessary to gain access to make enquiries, or cause enquiries to be made, in order to assess what (if any) safeguarding action is needed to protect an adult thought to be at risk of abuse and neglect because of their care and support needs.

Recourse to the courts and legal powers should be considered carefully and only as a last resort. Local authorities must satisfy themselves that there are grounds to seek access and that the use of such powers will not be unlawful or leave an adult in a worse position. Clearly any unlawful intervention could lead not only to judicial criticism but also to liability (whether as a result of a breach of human rights or otherwise).

Proportionality

Any interference by the state (meaning public bodies, or sometimes private bodies carrying out functions of a public nature) must be lawful and necessary. The stipulation of necessity encompasses a requirement of proportionality – that is, not ‘taking a sledgehammer to crack a nut’. Where the use of any power of entry is thought necessary, it should be exercised proportionately, in relation to the risk and the apparent gravity of the situation.

If powers of intervention are to be exercised lawfully and proportionately, it follows that practitioners involved in safeguarding require a basic knowledge of what powers are available; in particular, when and how they can be used – and, just as importantly, when they cannot be – and whom to consult in cases of uncertainty.

Of course an emergency situation involving significant risk may justify the use of coercive powers – such as police entry to save life and limb – if there is clearly no time to attempt a negotiated, non-coercive approach.

Principle of necessity and proportionality linked to the principle of the least restrictive option

The principle of the **least restrictive option** helps to ensure that interventions are necessary and proportionate.

Section 1 of the MCA requires that, in respect of an act or decision done for a person who lacks capacity, consideration must be given to achieving the person’s best interests in a manner which is least restrictive of the person’s rights and freedom of action.

Likewise the least restrictive principle is a guiding principle in the statutory Code of Practice for the Mental Health Act 1983: it states that:

‘People taking action without a patient’s consent must attempt to keep to a minimum the restrictions they impose on a patient’s liberty, having regard to the purpose for which the restrictions are imposed.’

View: [Code of Practice: Mental Capacity Act 2005](#) [2]

Further, Section 1 of the Care Act 2014 states that a local authority, in exercising its functions under Part 1 of the Act in the case of an individual, must promote that individual’s wellbeing and have regard to a number of factors including the need to ensure that any restriction on the individual’s rights or freedom of action is kept to the minimum necessary for achieving the purpose for which the function is being exercised.

The duty to enquire arising during an assessment

If, when a practitioner is undertaking an assessment or a review of a care and support plan, they come to know or suspect that the adult is experiencing, or is at risk of, neglect or abuse, then this will trigger the duty to make enquiries under Section 42 of the Care Act. [3] Such a trigger can work both ways: an assessment for care and support can be during the course of a safeguarding enquiry.

The duty demands that either the local authority itself makes the enquiries, or (where appropriate) that it asks another person or agency to do so; for example, asking the

police to investigate where a crime is suspected or asking a health professional if they visit the adult regularly.

The duty to make enquiries (or to cause them to be made) does not hinge on a request by the adult or anybody else and is not negated by a third party's refusal to grant access to the adult, nor by the adult's refusal to participate.

Under the Care Act, there is no express legal power of entry or right of unimpeded access to the adult. However, where necessary, local authorities can apply to the courts or seek assistance from the police to gain access in certain circumstances under existing powers.

The law and gaining access

At some point during the making of enquiries by the local authority, legal powers may be required to gain access to the person known or suspected to be experiencing, or at risk of, abuse or neglect.

The following legal powers may be relevant, depending on the circumstances:

- **If the person has been assessed as lacking mental capacity in relation to a matter relating to their welfare:** the Court of Protection has the power to make an order under Section 16(2) of the MCA relating to a person's welfare, which makes the decision on that person's behalf to allow access to an adult lacking capacity. The Court can also appoint a deputy to make welfare decisions for that person.
- **If an adult with mental capacity, at risk of abuse or neglect, is impeded from exercising that capacity freely:** the inherent jurisdiction of the High Court enables the Court to make an order (which could relate to gaining access to an adult) or any remedy which the Court considers appropriate (for example, to facilitate the taking of a decision by an adult with mental capacity free from undue influence, duress or coercion) in any circumstances not governed by specific legislation or rules.
- **If there is concern about a mentally disordered person:** Section 115 of the MHA provides the power for an approved mental health professional (approved by a local authority under the MHA) to enter and inspect any premises (other than a hospital) in which a person with a mental disorder is living, on production of proper authenticated identification, if the professional has reasonable cause to believe that the person is not receiving proper care.
- **If a person is believed to have a mental disorder, and there is suspected neglect or abuse:** Section 135(1) of the MHA, a magistrates court has the power, on application from an approved mental health professional, to allow the police to enter premises **using force if necessary** and if thought fit, to remove a person to a place of safety if there is reasonable cause to suspect that they are suffering from a mental disorder and (a) have been, or are being, ill-treated, neglected or not kept under proper control, or (b) are living alone and unable to care for themselves.
- **Power of the police to enter and arrest a person for an indictable offence:** Section 17(1)(b) of PACE.
- **Common law power of the police to prevent, and deal with, a breach of the peace.** Although breach of the peace is not an indictable offence the police have a common law power to enter and arrest a person to prevent a breach of the peace.

- **If there is risk to life and limb:** Section 17(1)(e) of PACE gives the police the power to enter premises without a warrant in order to save life and limb or prevent serious damage to property. This represents an emergency situation and it is for the police to exercise the power).

More detail as to the application and limitation of these legal powers follows in the sections below.

Context of the Mental Capacity Act 2005 (MCA)

An assessment to establish whether a person lacks capacity should take place whenever there is concern that an individual might lack the mental capacity to make a proposed decision. A person must be assumed to have capacity unless it is shown that they lack capacity. [4]

Capacity must be assessed in accordance with Sections 2 and 3 of the MCA and decided on the balance of probabilities. Under Sections 2 and 3 of the MCA, it must be established that a person lacks capacity in relation to a specific and relevant matter at the material time. For example, a person lacks capacity to make a decision about whether or not to be admitted to a nursing home the following month for respite care.

In the context of this guide, the capacity in question could relate to, for example, the adult's capacity to make decisions about their situation or to cooperate with the local authority in undertaking the safeguarding enquiry.

An application may be made to the Court of Protection under the MCA to facilitate gaining access to an adult who lacks capacity or who there is a reason to believe lacks capacity, in a case of suspected neglect or abuse, where that access is being denied or impeded. The Court's permission to make an application will be needed. [5]

The Court of Protection must apply the fundamental principles in Section 1 of the MCA. The principles include:

- assuming that a person has mental capacity unless it can be shown otherwise
- not mistaking unwise decisions for decisions taken without capacity
- acting in the person's best interests
- considering less restrictive ways of achieving those best interests.

Personal welfare orders

The Court of Protection could make an order under Section 16(2) of the MCA relating to a person who lacks capacity's welfare, which makes the decision on that person's behalf to allow a third party (including local authority practitioners) access to that person.

Failure to comply with an order of the Court of Protection could be a contempt of Court. The Court can attach a penal notice to the order, warning that failure to comply could result in imprisonment or a fine.

Appointment of a deputy

The Court of Protection may appoint a deputy for a person who lacks capacity under Section 16(2) who can make the decision on that person's behalf to allow a third party (including local authority practitioners) access to that person.

Interim orders and directions

The Court of Protection could make interim orders and directions under Section 48 if an application to the Court of Protection has been commenced but not yet determined if:

- there is reason to believe that a person lacks capacity in relation to the matter
- the matter is of a type covered by the powers of the Court, and it is in that person's best interests to make an order or give directions without delay.

The pending application could be in relation to whether the person lacks capacity, what arrangements would be in that person's best interests, or an application to authorise a deprivation of liberty.

Interim orders/directions cannot be sought if there is no pending application.

Threshold for an interim order or directions

The Court may make interim orders or directions that include requiring immediate safeguarding steps relating to the adult's personal welfare to be taken.

Access under an interim order or directions

The interim order or directions may contain directions to permit a person entry to premises and access to that person. Obstruction by a third party of access to and assessment of that person may be a contempt of Court. A penal notice may be attached to the order or directions, warning that a breach could result in imprisonment. The order or directions may be against not just the third party but also that person.

Non-cooperation

The case of 'Re SA; FA' v. 'Mr A' (2010) EWCA Civ 1128, para 52 [6]

In this case, the mental capacity of a young woman needed to be determined. Both she and her mother denied that she lacked capacity. There were great difficulties in communicating with and obtaining the engagement, assistance and cooperation of both daughter and mother. An interim order was made by the Court against both, with a penal notice attached to the following effect:

The order ... should not merely contain the appropriate declaration as to the need for the further assessment (confined to the questions of capacity) but also the consequential directions requiring cooperation and facilitation by [the daughter] and her mother. In addition, the order should contain a liberty to apply as to implementation and enforcement, that is, liberty to apply by the local authority and/or the Official Solicitor in the event of difficulty, that application to be made to the Court of Protection.

It may be that the direction will simply be about obtaining appropriate and specialist evidence quickly so that the person's capacity can be reliably determined.

However, the Court will only make orders or directions against a third party if necessary. If the third party gives an undertaking to cooperate, which the Court believes is genuine, it will not be necessary to make the orders or directions.

The nature of any direction depends on the individual facts of the case, the circumstances of the adult and the seriousness of the urgent decisions in question.

All this will be balanced against the restriction of the adult's decision-making being kept to a minimum, consistent with his or her best interests.

Inherent jurisdiction of the High Court

'Inherent jurisdiction' is a term used to describe the power of the High Court to hear any case which comes before it unless legislation or a rule has limited that power or granted jurisdiction to some other court or tribunal to hear the case. This means that the High Court has the power to hear a broad range of cases including those in relation to the welfare of adults, so long as the case is not already governed by procedures set out in rules or legislation. It is 'common law' developed by the High Court to control the procedures before it and to stop any injustices arising from it being prevented from hearing any case.

It is not normally used in relation to people who lack capacity, because such cases are dealt with by the Court of Protection under the procedures established by the MCA.

However, inherent jurisdiction may still be relevant to an adult lacking capacity if the matter and intervention required are not covered by the MCA; for example, when making a declaration of non-recognition of a marriage or depriving a person of their liberty for the purpose of enforcing physical treatment.

It will also sometimes be necessary for a local authority to make an application to the High Court to ask the Court to exercise its inherent jurisdiction to protect an adult with mental capacity.

The order could in principle be directed against a third party and so relevant to a situation on which this guide focuses: the denial of access by a third party to a person suspected of experiencing, or at risk of, abuse or neglect.

Does the Mental Capacity Act or inherent jurisdiction apply?

The MCA only applies if a person lacks capacity within the meaning of Sections 2 and 3 of the MCA, subject to the Court of Protection powers under section 48 (see above) even if capacity has not been formally determined.

If, however, the person has capacity but cannot take a decision (freely) because of coercion, undue influence or constraint – or other circumstances – then an application can be made relying on the Court's inherent jurisdiction.

The case of London Borough of Redbridge v. G [2014] EWHC 485 (COP), para 1 [7]

In this case, a local authority made an application to the courts with a view to protecting an elderly woman from a live-in informal carer and her husband. The woman's mental capacity was at the outset uncertain. So at that point it was unclear whether the Mental Capacity Act or the inherent jurisdiction was applicable:

Before the case can proceed any further a decision has to be reached as to capacity; if G lacks capacity and if she does whether it is because of mental impairment within the meaning of the MCA Sections 2 and 3 or if not whether she is a vulnerable adult deprived of capacity by constraint, coercion or undue influence and so entitled to the protection of the Court under its inherent jurisdiction.

Inherent jurisdiction and safeguarding

The courts continue to develop and explore the extent and application of its inherent jurisdiction, which is protective in relation to adults in vulnerable circumstances, and they will endeavour always to avoid undermining the principles in Section 1 of the MCA that an adult can take unwise decisions without this necessarily indicating a lack of capacity.

Orders made under the Court's inherent jurisdiction may or may not be time-limited.

The courts will also be mindful that rash use of the jurisdiction would risk breaching Article 8 of the European Convention on Human Rights ('ECHR') ('right to respect for private and family life'). However, at the same time, so-called 'positive obligations' to protect an individual's rights under the ECHR may require the courts to intervene by exercising its inherent jurisdiction. This implies that in appropriate cases, local authorities should also be asking the courts to consider exercising its inherent jurisdiction on human rights grounds.

According to the courts, the inherent jurisdiction can be exercised for vulnerable adults, with or without capacity, who are 'reasonably believed' to be 'under constraint' or 'subject to coercion or undue influence', or for another reason 'deprived of the capacity to make the relevant decision', or prevented from making a free choice, or from 'giving or expressing a real and genuine consent'.

There has been no specific definition of what constitutes 'vulnerable' in such cases, and the jurisdiction is not confined to 'vulnerable' adults, but equally adults at risk of abuse and neglect do not automatically come under it.

Factors to consider when an adult can be considered 'vulnerable' have been suggested; for example, people unable to take care of themselves or protect themselves from harm or exploitation by others. Those suffering from mental illness or physical disability may also be considered vulnerable, depending on the circumstances. Clearly, it will be easier to make a case for exercising the jurisdiction in relation to apparently vulnerable adults than for those who do not appear vulnerable.

The important thing to remember when considering applying to the Court to use its jurisdiction to grant an access order is that its purpose is not to overrule the wishes of an adult with capacity, but **to ensure that the adult is making decisions freely**. In the context of this guide, constraint, coercion or the undue influence of a third party may be

preventing the adult's ability to make free decisions, and recourse to the Court's jurisdiction may be used to assist professionals in gaining access to assess the adult.

Orders against a third party

In situations such as those on which this guide focuses, it is possible that an order could be made against the person responsible for undue influence, constraint or coercion if this is also necessary to protect the adult in question. In one case, an order was contemplated against a son who was allegedly mistreating his parents. But even in such a case, the Court would want to scrutinise carefully any application for such an order, especially if the person(s) to be protected – in this case, the parents – do not support it. For instance, if the third party undertakes, plausibly, to cooperate on relevant matters, then the Court will not grant an injunction against them.

An order under inherent jurisdiction against a third party relating to access to an adult with capacity

The case of 'A Local Authority' v. 'DL' [2010] EWHC 2675 (Fam), Charles J, para 9 [8]

In this case, when a man was allegedly mistreating his elderly parents, GRL and ML (who, at the outset, both had mental capacity), the local authority sought an order from the High Court prohibiting him from acting unlawfully towards them.

Within the list of prohibitions sought, two stand out in relation to this guide: not interfering with care and support and refusing access to health and social care professionals. The courts confirmed that inherent jurisdiction did exist in principle for such orders (see 'A Local Authority' v. 'DL' [2011] EWHC 1022 (Fam), Theis J, para 53, and 'A Local Authority' v. 'DL' [2012] EWCA Civ 253, Court of Appeal, para 63).

The order sought was to prohibit the son from doing the following (emphasis in relation to access added):

- assaulting or threatening to assault GRL or ML
- preventing GRL or ML from having contact with friends and family members
- seeking to persuade or coerce GRL into transferring ownership of the current family home
- seeking to persuade or coerce ML into moving into a care home or nursing home
- engaging in behaviour towards GRL or ML that was otherwise degrading or coercive, including (but not limited to): stipulating which rooms in the house GRL or ML could use; preventing GRL or ML from using household appliances, including the washing-machine; 'punishing' GRL or ML, for example, by making GRL write 'lines'; shouting or otherwise behaving in an aggressive or intimidating manner towards them
- giving orders to care staff
- interfering in the provision of care and support to ML
- refusing access to health and social care professionals
- behaving in an aggressive and/or confrontational manner to care staff and care managers (see 'A Local Authority' v. 'DL' [2011] EWHC 1022 (Fam), Theis J, para 6).

Context of the Mental Health Act 1983

Section 115

Under Section 115 of the Mental Health Act 1983 (Powers of entry and inspection) an approved mental health professional (AMHP) may at all reasonable times enter and inspect any premises (other than a hospital) in which a mentally disordered person is living – if the professional has reasonable cause to believe that the person is not receiving proper care.

This power can only be used after the approved professional, if asked, has produced a duly authenticated document showing that he or she is such a professional.

Section 115 does not allow for forced entry, the use of force to override the owner's refusal to give permission to enter, or for force to be used to talk to a person alone in the dwelling. However, obstruction without reasonable cause by a third party of the approved professional acting under Section 115 could constitute an offence under Section 129 of the Act.

If entry is still refused, the AMHP may consider whether an application for a warrant under Section 135 is justified.

Section 135(1)

This section of the Act is relevant to the focus of this guide because it is one way of gaining access to a person reasonably suspected of being ill-treated or neglected. In addition, the 'reasonable cause to suspect' condition is mirrored in Section 42 of the Care Act ('making enquiries').

Under Section 135(1), a magistrate may issue a warrant authorising a police officer to enter premises specified in the warrant, using force if necessary, and if it is thought fit, to remove a person to a place of safety (defined in Section 135(6)) for a mental health assessment. The constable must be accompanied by an AMHP and a doctor.

Such a warrant may be issued only if it appears to the magistrate from information received on oath from an AMHP, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder (a) has been, or is being, ill-treated, neglected or not kept under proper control, or (b) is unable to care for himself or herself and is living alone. A person who is removed to a place of safety can be held there for a period not exceeding 72 hours. This would be with a view to making an application for detention under the MHA or other arrangements for care and treatment.

There also has to be a belief, but not a certainty, concerning the existence of a mental disorder – which is defined widely in Section 1 of the MHA.

Removal of the person to a place of safety is not inevitable. It should only take place 'if thought fit'. Having spoken to the person, it might be decided that removal is not necessary.

Once a person has been removed to a place of safety, this does not necessarily mean an application for detention will be made under the MHA. It may be that 'other arrangements' for care can be made instead, such as an informal hospital admission, or regular home visits from a crisis resolution or community mental health team.

In some cases, it may be decided to do nothing, once the person has been spoken to. In these instances, the legal authority to detain the person at a place of safety lapses.

Context of the Police and Criminal Evidence Act 1984

Powers of entry under the Act

'Saving life or limb'

Section 17(1)(e) of PACE gives the police the power to enter and search premises without a warrant, in order to **'save life or limb'** or prevent serious damage to property.

However, it is not enough that the police should have a general welfare concern about somebody in order to use this power of entry, which may only be used in cases of emergency, **not** general welfare.

Application of Section 17(1)(e)

View: [Police and Criminal Evidence Act 1984 Section 17\(1\)](#).

Serious bodily injury: the case of 'Baker' v. 'Crown Prosecution Service' [2009] EWHC 299 (Admin), para 25 [9]

In this case, the court held that the police would need to be concerned about serious bodily injury:

The expression 'saving life or limb' is a colourful, slightly outmoded expression. It is here used in close proximity with the expression 'preventing serious damage to property'. That predicates a degree of apprehended serious bodily injury. Without implicitly limiting or excluding the possible types of serious bodily injury, apprehended knife injuries and gunshot injuries will obviously normally be capable of coming within the subsection.

So, if the abuse suspected is of a type not related to seriously bodily injury, this section will be of no use.

Breach of the peace

There is a common law (i.e. not in legislation) power of entry to deal with a **breach of the peace**. It is in addition, and separate from, the powers of entry in Section 17 of PACE.

A breach of the peace occurs when harm is actually done, or likely to be done, to a person or their property in their presence. It also occurs in instances when a person is in fear of being harmed in this way through assault, affray, a riot or other unlawful disturbance. In such cases an arrest can be made without a warrant.

In general, the power of the police to enter premises to prevent a breach of the peace only applies in emergencies. It is therefore unlikely to be justified in the majority of welfare-related cases.

Saving a child or vulnerable adult/breach of the peace: the case of 'Blench' v. 'Director of Public Prosecutions' [2004] EWHC 2717 (Admin), para 21

View: [Blench v. Director of Public Prosecutions \[2004\] EWHC 2717 \(Admin\), para 21](#)

In this case, the power of entry was easily made out. A woman called the police, stating that a drunken man was trying to remove her baby. There was another voice in the background either prompting or interfering. However, by the end of the call, she had changed her mind and said she didn't want the police to come after all. The police attended, and attempted to force entry under Section 17(1)(e). The court was in no doubt that the police had acted lawfully:

An emergency call had been made, in which it was stated that a drunken man was trying to take a woman's child. Although at the end of the report to the police [the woman] claimed the man had gone without removing the child, and she did not want the police to attend, the original account by her was on any view a highly worrying one and, given there was a voice in the background during the second part of the call interrupting or prompting [the woman], the police were fully entitled, as an exercise of their discretion under the section, to enter on to the premises without a warrant to investigate.

This was for the purpose of 'securing (saving) the child' (para. 23), but would equally apply to an adult at risk in a similar situation.

Met with aggressive and bizarre behaviour by a man at the door, the police used their powers of arrest relating to breach of the peace (see below), which had just occurred and to prevent an imminent repeat (paras 22–26).

The woman had changed her mind on the phone about police attendance, but this fact did not undermine the lawfulness of the police exercising a power of entry. This is of interest in relation to adult safeguarding. For example, it is not uncommon for a vulnerable adult, suspected to be under the control of a third party, to ring social services or the police in great fear or distress – only for the adult, or the third party – to ring back or say at the door that the adult has changed their mind about what may have happened and about involving the police (see '[London Borough of Redbridge' v. 'G' \[2014\] EWHC 485 \(COP\), para 20.](#))

Arrest without a warrant for an indictable offence

However, if Section 17(1)(b) can be shown to apply (**arrest without a warrant for an indictable offence**), then the police do have the power to enter premises. An indictable offence is one that can or must be tried in a Crown Court. In relation to safeguarding, examples of this would be evidence of:

- ill-treatment or wilful neglect (see [Section 4 of the Mental Capacity Act](#) and [Section 127 of the Mental Health Act](#))
- causing or allowing a vulnerable adult to die or suffer serious physical harm (see the [Domestic Violence, Crime and Victims Act 2004](#))
- theft (see [Section 1 of the Theft Act 1968](#))

- fraud (see the [Fraud Act 2006](#)).

It is important to remember that because the police will need detailed information about the offence before being able to act under this section, it cannot be used to gain access to a dwelling simply to discover whether a crime is being committed or not. Therefore, any information a local authority can provide for the police would need to be sufficient for an arrest to take place in relation to criminal law. Always remember that this section relates to crimes, not welfare.

Power to arrest a person, without a warrant, who is committing, is about to commit, or has committed an offence

Section 24 of the Act deals with the **power to arrest a person, without a warrant, who is committing, is about to commit, or has committed an offence**. The police will need reasonable grounds for believing an arrest is necessary for one of the reasons listed in Section 24, before being able to act. Two key reasons that may be relevant in terms of safeguarding are:

- to protect a vulnerable person likely to be harmed or at risk of being harmed if the person in question is not arrested and other arrangements for the prevention of harm cannot be made
- to prevent a person from causing physical injury to another person.

In the context of this guide, if a local authority has reasonable cause to suspect that an adult is being subjected to abuse or neglect, the question will be whether this translates, under Section 24, into knowledge and reasonable grounds for suspicion; that the abuse constitutes a criminal offence; and whether it is therefore necessary to arrest the person for one of the reasons listed in Section 24.

Summary

This guide aims to clarify the different types of legal powers that can be called upon when access to an adult who is suspected to be at risk of neglect or abuse is required but, for whatever reason, is being denied or restricted. In this guide, such an access requirement is triggered by a local authority's enquiry duty under Section 42 of the Care Act 2014. Although there is no express legal power of entry or right of access contained in this Act, other existing powers can be drawn upon. Which existing power is most appropriate depends on the circumstances of the case. Therefore, knowledge of the relevant sections of the Mental Capacity Act 2005 (MCA), the Mental Health Act 1983 (MHA) and the Police and Criminal Evidence Act 1984 (PACE), along with an understanding of the inherent jurisdiction of the High Court and the common law powers of the police are essential tools for social workers. However, it is strongly advised that advice and confirmation be sought from senior managers or legal teams before any action is taken, unless it is clear that the situation is an emergency ('saving life or limb'). In such emergency cases, the matter should be referred to the police for immediate action under Section 17(1)(e) of PACE.

References

1. [Adult safeguarding: statement of government policy](#)
2. [Code of Practice: Mental Capacity Act 2005](#)
3. [Care Act 2014 Section 42](#)
4. [Mental Capacity Act Section 1\(2\)](#)
5. [Mental Capacity Act Section 50](#)
6. [Re SA; FA v. Mr A \(2010\) EWCA Civ 1128, para 52](#)
7. [London Borough of Redbridge v. G \[2014\] EWHC 485 \(COP\), para 1](#)
8. [A Local Authority v. DL \[2010\] EWHC 2675 \(Fam\), Charles J, para 9](#)
9. [Baker v. Crown Prosecution Service \[2009\] EWHC 299 \(Admin\), para 25](#)

Further reading

- [Mental Capacity Act 2005](#)
- [Police and Criminal Evidence Act 1984 \(PACE\) codes of practice](#)

Supporting implementation of the Care Act 2014



SCIE's Care Act work is part of a suite of resources commissioned by the Department of Health in partnership with the Local Government Association, Association of Directors of Adult Social Services and the Care Providers Alliance to support those commissioning and providing care and support in implementing the Care Act 2014.

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Social Care Institute for Excellence

Second Floor
206 Marylebone Rd
London NW1 6AQ
tel 020 7535 0900
fax 020 7535 0901
www.scie.org.uk