

## **Referrals to the Police of Vulnerable Adult Abuse.**

### **Abstract**

**Purpose** – *The purpose of this paper is to examine the outcome of referrals made to one police force in England by three local authorities between March 2010 and April 2011, in order to identify and understand the barriers to prosecuting suspects of abuse or harm against vulnerable adults, and improve inter-agency co-operation.*

**Methodology** – *All referrals to this police force are given a crime number when they are recorded on the Criminal Justice System database together with a vulnerable adult flag and a status code which indicates the outcome following a police investigation. A search of the database using the vulnerable adult flag identifies the total number of referrals and outcomes for the selected period. This can then be imported into a Microsoft Excel spreadsheet to allow further analysis to take place.*

**Findings** – *Over 87% of all referrals of alleged abuse to vulnerable adults made to this police force did not establish that a crime had been committed. Of those that did only 1% resulted in either a caution or court proceedings.*

**Research limitations** – *This is a small sample from one, predominantly rural, police force.*

**Originality/value** – *The benefit of this research is that it contributes to a greater knowledge of the outcomes of adult safeguarding referrals made, primarily, by local authorities to the police and how police disclosures, on Disclosure and Barring Service checks, are being used as a means of providing employers of regulated activities with information on individuals who have been suspected of abusing vulnerable adults.*

**Keywords** – *vulnerable adults, safeguarding, abuse, harm, referrals, police, suspects, prosecution.*

**Paper type** – *Research*

## **Introduction**

Consideration should always be given to safeguarding vulnerable adults from abuse; however, as individuals are living longer, the increasing number of people with dementia (Alzheimer's Society, 2012) and other age related illnesses is placing a greater responsibility on families and the state to care for them. Aligned with this responsibility is a requirement to understand the outcomes of referrals, primarily made by local authorities and the police, to identify the barriers to prosecuting suspects, safeguarding adults who as they grow older become increasingly vulnerable and to improving inter agency working.

Vulnerable adults are an increasingly 'at risk' group and acknowledging the complexities of taking positive action against suspects and perpetrators of abuse and making them criminally responsible for their actions provides a new dynamic to the safeguarding adult debate.

The Care Act 2014 confirms an adult is vulnerable when the 'local authority has reasonable cause to suspect that an adult in its area has needs for care and support, is experiencing, or is at risk of, abuse or neglect, and as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it'.

However, at the time of this research the Act had not received Royal Assent therefore the definition used to explain who would be considered a vulnerable adult is found in the document 'No secrets' - 'A vulnerable adult is a person[aged 18 years or over] who is or may

be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation' (DOH, 2000, p8).

This study examined referrals made by 152 local authorities in England from April 2010 to March 2011, as published by the National Health Service Information Centre. Those findings were compared to the outcome of referrals made to one police force by three local authorities, in the same county, over the same period. The data from the two studies differs slightly due to collection information variables.

As an example, the National Health Service collected details of referrals submitted to them from Councils with Adult Social Services Responsibilities (CASSRs), whereas the police data contained only those referrals which the local authority considered appropriate to refer onto the police. However, within both pieces of research the number of incidents when police action was taken can be established.

Both studies concluded that over 87% of all referrals made, either to the local authority or to the police, did not meet the threshold to bring a criminal prosecution. Therefore one method utilised to safeguard vulnerable adults was to consider police disclosure of relevant information on a Disclosure and Barring Certificate to employers in regulated activities such as care provision managers.

## **Background**

Under sections 5-7 of the Crime and Disorder Act 1998, Local Safety Partnerships were established with responsibilities that included delivering Safer Communities. The Department of Health 'No secrets' guidance document recommended that local agencies should work together to prevent the abuse of vulnerable adults and

that if prevention fails, they should 'ensure robust procedures are in place for dealing with incidents of abuse' (DOH, 2000, p.1).

A framework of good practice standards in relation to safeguarding adults, as recommended by the Association of Directors of Social Services (2005, p.3), developed the perpetrator prevention aspect further. It recommended 18 additional actions to checks made against the Protection of Vulnerable Adults list, enhanced Criminal Record Bureau (CRB) checks and information sharing in relation to suspects via the Multi Agency Public Protection Arrangements (NHSIC, 2005, p18-23).

Mansell *et al* (2009, pp.23-38) studied referrals of alleged abuse made in two local authorities in England between 1998 and 2005 and the outcomes in relation to victims, the type of abuse and perpetrator characteristics. Fyson and Kitson's paper (2012, pp.92-103) reported victim outcomes of adult safeguarding alerts from one local authority in England. Neither study, nor that of the NHS Information Centre in 2012, looked at the outcomes from a police perspective, particularly in relation to crimes, suspects and perpetrators of abuse or harm.

In 2007, a study of the abuse and neglect of older people in the UK by the Department of Health established that 4% of people aged 66 years or over reported mistreatment by a family member, close friend, care worker or acquaintance, who were being relied upon to provide care, with 53% of those family members living in the same household (DOH, 2007, pp8-37).

By March 2012, the National Health Service Information Centre had published a paper detailing the outcomes of safeguarding referrals of vulnerable adults at risk of, or being abused or harmed in England (NHSIC, 2012). Although the report states that the data is presented as experimental statistics 'undergoing evaluation', it was, at that time,

the most comprehensive information from which to establish the detail and outcomes of alleged abuse against vulnerable adults.

Despite recommendations from the Department of Health (2000, p.14) the Association of Directors of Social Services (2005, p.3) and practitioners (Collins, 2010, p.5) to develop a framework for responding to referrals, no agency has collected information relating to the outcome of referrals made to the police. Nationally, statistical information gathered by local authorities in relation to adult abuse is collected by client type and the age of the individual, whilst statistics produced by the police relate to the variables the force considers relevant.

In the 2012 annual Safeguarding Adults returns made to the NHSIC, local authorities reported 83,410 referrals had been made to them during the previous year from which it could be established that victims of physical abuse accounted for 30% of all referrals, with financial abuse recorded at 20%. Only 1% resulted in a caution or conviction and 5% in some form of non-specific police action. There are no recorded referrals for Multi Agency Public Protection Arrangements and no recorded 'action under the Mental Health Act' (NHS, 2012, p.47). Of all the completed referrals of alleged vulnerable adult abuse in England for the period of April 2010 – March 2011, only 6% resulted in any form of police proceedings.

The previous Labour government's strategy to 'narrow the justice gap' sought to tackle weakness in the criminal justice process, the difficulty, as Garside (2004, p.8) highlighted, is that 'different understandings of known crime lead to different conclusions about the attrition rate'. Similarly, to date, there is no standard definition of a vulnerable adult used by the 43 police forces in England and Wales. This study aims to establish an understanding of the outcomes of alleged abuse or harm and how the disclosure of referral

information by the police on enhanced Disclosure and Barring Service (DBS) certificates contributes to safeguarding measures.

### **Methodology**

Data stored on the Police Criminal Justice System data base has been collected for policing purposes and whilst this research was unobtrusive, it utilised the information as secondary data for research purposes. The aim of the data collection was to identify two specific variables: the first was the number of referrals received between April 2010 and March 2011 and the second was the outcome of those referrals.

A referral is made to the police either by local authority social services, a police officer during the course of routine enquiries or by a member of the public who believes a vulnerable adult may be at risk of harm or abuse. In all cases the incident is given an investigation number and a 'VA' flag. A safeguarding adult co-ordinator from the local authority will, in liaison with the police, determine if a single or joint agency approach should be taken and the police alone will determine whether a crime has been committed. A status code will also be added indicating the outcome following an investigation in compliance with the Home Office counting rules.

Using a structured query language tool in Microsoft Excel a data base was created which captured all vulnerable adult referrals. The data base was broken down into two data sets of outcomes: those where a crime had been established and those where a crime had not been established.

### Table 1

The 368 single agency referrals found that no police involvement was required as a crime had not been established. The incident was dealt with by way of a 'single agency' investigation by the local authority. The term single agency is used by this police force where

it has been agreed that there is no immediate role for the police, but where the physical, psychological, financial or emotional well being of the adult appears to have been affected by the incident.

Within the 367 undetected crimes category these included incidents where a crime had been committed a suspect identified but where the police were unable to bring a prosecution because of insufficient evidence, the physical or mental health of the victim/suspect or because either the victim or suspect had subsequently died. Undetected crimes also include crimes where there is no suspect (Home Office Counting Rules, section a–c, 2013).

In some undetected cases there may be a suspect but the crime failed the public interest test to bring a prosecution by the Crown Prosecution Service. Circumstance where this outcome is likely is where the suspect ‘has already been made the subject of a sentence’ or ‘the offence was committed as a result of a genuine mistake or misunderstanding’ (Home Office Counting Rules, annex b, 2013).

Conversely, 6 individuals were arrested on suspicion of committing a crime against a vulnerable person. However, they were released from police bail as there was insufficient evidence to charge them with an offence. Therefore the primary difference between an undetected crime and a suspect being released without being charged is that the police have arrested a suspect but did not have sufficient evidence to charge them.

A non custodial interview took place on four occasions as part of the police process of gathering information and whilst 1 crime remained recorded no additional verifiable information was found to conclude that a crime had taken place (Home Office Counting Rules, section c, 2013).

Table 2

Whilst the police will offer emotional and practical support to a victim of crime throughout the criminal justice process, the victim has the right to opt out under the Code of Practice for Victims of Crime.

Out of the 108 crimes investigated by the police force the following outcomes were recorded.

### Table 3

From those referrals where a crime was established but there was insufficient evidence to bring a criminal prosecution, a civil case could be considered if there was enough evidence that, on the balance of probabilities, an individual had committed a civil wrong upon another individual.

If a victim exists then a crime is recorded. However, not all crimes will be investigated, for example, when a vulnerable adult commits a crime against another vulnerable adult, the police are unable to prove *mens rea*, a guilty mind, or that the offender/victim has the mental capacity to undertake the criminal justice system process.

The Advocacy Training Council contends that 'any one single definition of vulnerability based on age, incapacity, impairment or medical condition may not reflect the nature of the vulnerability that a particular individual may face at different times and different environments'(2014). This argument is developed further by Steve Foster who contends that 'there are bound to be conceptual difficulties, especially when the primary offence embraces different states of mind' (2015).

In relation to the 20 referrals that were concluded 'victim did not wish to pursue a prosecution', in 13 cases the suspect was related to, and the carer for, the vulnerable adult where there was an expectation of

dependency and reliance. Barriers included fear of reprisal or abandonment, factors which contribute to how the abuse can remain hidden. In these cases the crimes could have been reclassified and investigated as domestic abuse. Consideration should also be given to abuse due to frustration and/or the inability of the carer to cope.

In 3 cases the suspect was employed in the residential care home where the vulnerable adults resided and in 1 case the suspect was a carer through a private arrangement with the vulnerable adult. In the remaining 2 cases the victim did not have an association with the suspect.

In the 11 crimes that were cancelled, 7 cases referred to adult females considered vulnerable due to mental health concerns. The females had made complaints to the police that they had been raped, however, an investigation into the complaint found evidence to confirm that sex had been consensual and subsequently the complaint was retracted.

Successful prosecutions were brought in 2 cases relating to abuse of position, 1 case of fraud by false representation where a cheque had been forged and 1 case of theft of money. Unsuccessful prosecutions related to rape, sexual assault and theft.

The Crown Prosecution Service guidance on prosecuting crimes against older people recommends that reference should be made to policy documents 'where the case involves issues of disability, hate crime or domestic violence' (nd. p.3) and contends that 'more disability hate crimes are being committed than are currently being identified' (2015, p.2).

### **Information on suspects**

Advice and guidance from the Association of Directors of Adult Social Services in 2005 recommended that directors are

'engaged with local criminal justice services to make sure victims get the same access to justice as everyone else (ADSS 2005, p.5). However the local authority's primary objective is in relation to safeguarding the vulnerable individual with considerations to the suspect as secondary.

Ms H, who worked as a domiciliary carer in a residential care home for the elderly, was reported to the police for slapping a male resident in an attempt to wake him up. The incident was witnessed by another member of staff, and denied by Ms H. However, no police action was taken as it was believed the witness was unreliable due to inconsistencies in her evidence. Ms H was dismissed from the care home, thus ensuring the safety of the residents.

Ms. H went on to apply for a domiciliary position in another care home. In her new position, Ms H came to the notice of the local Safeguarding Adult Team when an alert was raised in relation to her verbally abusing the vulnerable adults she was caring for in assisted accommodation. She was subsequently suspended pending an internal investigation. Together, these two pieces of information provide a pattern of behaviour which raises concerns when considering the contact Ms H. has, or will have, with vulnerable adults in her chosen occupation.

In another case, Mrs. M came to the notice of the police for shoplifting for which she was given a fixed penalty notice. However, Mrs M was known to the local authority Safeguarding Adult Team for verbally abusing a young person with mental health issues. Mrs. M subsequently applied to be a domiciliary carer in a local residential care home and, as the police had no knowledge of her behaviour towards vulnerable young adults, safeguarding concerns could not be considered for disclosure on her DBS certificate.

Processing suspects through the criminal justice system is made complex when a relative, friend or neighbour is the victim's carer. Frequently the vulnerable adult is prepared to forgive or ignore the abuser's behaviour in case their care is jeopardised. In addition, friends and/or family carers are not required by law to be vetted and, as a consequence, some familial carers are found to have previous convictions related to abuse.

### **Barring**

The Independent Safeguarding Authority (ISA) was established to make decisions on barring people who pose a risk when considering their employment with vulnerable groups. The Act was amended by the Protection of Freedoms Act 2012, which changed the responsibility on local authorities to make a referral to the DBS from a duty to a power.

However, the DBS can only bar an individual who has been or who may engage in regulated activity; that is the provision of community care services (DOH, 2012, p.3). If a connection cannot be made between the suspect and their engagement in service provision to a vulnerable adult then that person cannot be barred. The only exception to this statutory requirement is when automatic barring takes place following a caution or conviction for a 'relevant' offence, such as, the supply of controlled drugs, sexual offences and ill treatment or neglect (Disclosure and Barring Service, 2014).

In these circumstances an automatic disclosure will be made to the DBS from the police Criminal Records Office and the individual will be automatically barred as a higher standard of proof is required for criminal proceedings, to the extent that there is no 'reasonable doubt' that a crime has been committed. In contrast civil law places the

burden of proof based on the balance of probabilities, that an offence is likely to have been committed than not.

The DBS has no legislative investigatory powers and no power to call witnesses to a tribunal (DBS, 2015). If the employer, or police, have been unsuccessful in gathering supporting evidence to confirm that the allegation is founded, then it is unlikely that barring will take place. Concern is raised therefore, when the Crown Prosecution Service cannot bring a prosecution against a suspect and they are dealt with by the local authority. In these circumstances, Social Services often advise the employer to apply their policy in relation to mis-conduct and to take the appropriate action, such as suspension or disciplinary proceedings.

In general, the outcome from this course of action is that the employee is dismissed leaving them free to find work within the same care environment, or regulated activity, elsewhere. The only courses of safeguarding action available to the police following a referral where there is insufficient evidence or a prosecution could not be brought, is to make a disclosure under Common Law or on a DBS certificate.

### **Disclosures and Information Sharing**

In 1986, the Home Office circular 45/1986 introduced arrangements for checks on individuals working with children and expressed that 'police information should not be disclosed unless there are important considerations of public interest to justify departure from the general rule of confidentiality' and identified three exceptions, one of which was the protection of vulnerable members of society.

The Criminal Records Bureau, established under Part V of the Police Act 1997, formalised in legislation the procedure by providing employers with a certificate disclosing convictions, cautions,

reprimands and warnings. In the case of an enhanced check, information held by local police forces may also be disclosed if the Chief Officer considers it relevant to the post applied for and ought to be disclosed in order that safeguarding measures can be considered.

Following recommendations made by Lord Hope in *R v Commissioner of Police of the Metropolis* (2009, p.18), consideration should also be given to the impact a disclosure may have on the alleged perpetrator. Of concern is proportionality; the social need that vulnerable adults are protected against the risk of harm and the individual's right to respect for their private life under Article 8 of the European Convention on Human Rights (ECHR p.10). There is no presumption by Chief Police Officers to make a disclosure as this is a discretionary power, therefore information will only be disclosed for public protection and safeguarding purposes, even though this might negatively impact on the individual.

It must be noted that information provided by a police force on an enhanced DBS certificate is not a recommendation from the police to employ or not to employ, it is a means of providing information that might be relevant to that decision and for the employer and prospective employee to discuss the content and a decision made accordingly. In some cases this will lead to the employer putting in place measures to prevent and/or reduce the risk of harm or abuse to those persons in their care.

For example, if a fixed penalty notice has been issued by the police to an individual for theft and they are applying to be a domiciliary carer in the service user's own home, then consideration will be given to disclosing that information because it is believed to be relevant to the responsibilities of the role; a position of trust and honesty. Dishonesty, demonstrated by shoplifting, raises concerns when considering the unsupervised contact that carer will have with

vulnerable adults, and failure to disclose may place the service user in a position of risk from theft.

In some circumstances recruitment agencies consider dismissal to be a sufficient action to take. A cleaner, employed through an agency, by an 84 year old man frequently rang him outside her working hours causing him to experience alarm and distress. The matter was not reported to the police, who could have issued the cleaner with a harassment notice, but was dealt with by the agency who gave her a formal letter relieving her of her duties leaving her free to apply for similar roles with other recruitment agencies.

## **Conclusion**

These examples of referrals highlight a number of problems in relation to reporting incidents of suspected abuse or harm towards a vulnerable adult, not least of which is knowledge of the relevant legislation, which is extensive and complex, causing unclear expectations of the police.

Whilst financial, physical, discriminatory and sexual abuse is defined in legislation, psychological, emotional harm and neglect are more difficult to evidence and prosecute. It is worth noting that whilst the police are a law enforcement agency a comprehensive understanding of the Mental Capacity Act and risk is not widespread within the research force.

Stanley and Flynn, 2005, and Galpin and Parker, 2007, argue that a lack of understanding of mental health by practitioners has led to poor believability in relation to allegations of abuse. In addition, section 146 of the Criminal Justice Act 2003 places a duty on the courts to increase the sentence for any offence where it can be demonstrated the offender demonstrated hostility based on the victim's disability (CPS, 2015, p.2). Whilst a lack of a standard definition used by all agencies; health, social care and the police, for

a vulnerable adult has made assessing a victim of crime as 'vulnerable' a complex issue for police officers and therefore impacts on successful prosecutions.

Practitioner understanding would be raised if clarity in relation to what constitutes a criminal offence could be provided by the police as the circumstances of the victim will be significantly relevant. It is appreciated that organisational barriers such as silo working, confusion over roles and individual agendas prevents effective multi agency working however serious case reviews continue to suggest improvements can still be made.

Failure for agencies to share information and establish a joint response to abuse led to the murder of Steven Hoskin by individuals who deliberately targeted and abused him (SCIE, 2015). Whilst the subsequent Department of Health review into the abuse that took place at Winterborne View found that 'warning signs were not picked up or acted upon' (DOH, p.8). Policies need to provide clarity in relation to safeguarding and what constitutes hate crime.

Conversely the police would be assisted by an understanding of the local authority's legal responsibility to safeguard those individuals being harmed. Although there have been recommendations for the establishment of thresholds and pathways to determine which referrals should remain with the local authority or refer the alleged incident to the police (ADSS, 2005, p.25, Collins, 2010, p.5 and Ingram 2011, p.76), to date a national framework has not been established.

Improvements in responsiveness and effectiveness should begin with the development of co-ordinated, adequate multi-agency training to ensure professionals have the skills and knowledge required to support a quality assured safeguarding framework.

Where a Multi Agency Safeguarding Hub does not exist, consideration needs to be given to establishing a gatekeeper, a police officer, who will be located within the local adult safeguarding unit, who will identify offences, provide support in relation to evidence gathering and identify prevention measures. By having a gatekeeper, the quality of referrals and supporting evidence will improve and the prosecution of suspects should increase. A gate keeper would also enable the co-ordination of low level triggers distributed across a range of agencies, establish patterns of abuse and/or neglect and monitor investigations.

Popular discourse (Fyson and Kitson 2012, p.98 and Filinson *et al*, 2008, p.18) appears to be that the police are only looking to prosecute, this is not the whole picture, putting the victim first and safeguarding are paramount policing objectives with emphasis on the development of best practice between the police and other agencies to safeguard adults at risk of harm. However, if the police cannot prosecute an individual suspected of abuse and/or harm to a vulnerable adult, it leaves that individual with the belief that they are unaccountable for their actions and their offending behaviour will continue.

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### 750 referrals where a crime was not established

Referral Outcome	Volume
Single agency referral to local authority	368
Undetected crimes	367
Suspect released without being charged	6
Non-custodial interview	4
Duplicate Records	4
Verifiable information	1

Table 1

### 108 referrals where a crime had been established

Crime	Volume
Common assault - no injury	43
Sexual assault	11
Theft from the victims home	10
Actual bodily harm or other injury	10
Theft - not classified	9
Rape	8
Fraud by false representation	6
Abuse of position	3
Harassment	2
Grievous bodily harm without intent	1
Blackmail	1
Burglary – from the victims home	1
Threats to kill	1
Exposure and voyeurism	1
Other notifiable offences reported for statistical purposes	1

Table 2

<b>Conclusion of crimes</b>	<b>Volume</b>
Insufficient evidence to bring a prosecution	43
Vulnerable adult assault on a vulnerable adult	23
Victim did not want to pursue a prosecution	20
Crime was cancelled as created in error	11
Found Guilty	4
Found Not Guilty	3
Caution given	3
Harassment letter issued	1

Table 3