

The Section 42 Criteria explained

This guide sets out key information for organisations and professionals who work with Adults at Risk, to explain in more detail about how decisions are made by the local authority, when a safeguarding concern is raised. It can also be used to understand when Safeguarding referrals should be considered and made into the Local Authority.

Section 42 of the Care Act 2014 states that safeguarding enquiries should be made by the local authority where:

- a) a person has needs for care and support;
- b) is experiencing, or at risk of, abuse or neglect; and
- c) as a result of their care and support needs, is unable to protect him or herself against abuse or neglect, or the risk of it.

A referrer has only to consider that there is reasonable cause to suspect that (a) and (b) apply, to raise a safeguarding concern to the local authority.

Lets look at this in more detail:

- a) **a person has needs for care and support-** The local authority will assess the person to see if they can achieve 10 different 'eligibility outcomes.' The criteria for 'care and support needs' would be met if a person is unable to achieve 2 of these outcomes listed below.

The table below explains what these are and what they mean.

***Please note these examples are not absolute and there are many factors which should also be considered in making judgements about a safeguarding concern and the eligibility criteria.**

Eligibility Outcome	Description	Things to consider?
a) managing and maintaining nutrition	<p>Does the person have access to food and drink to maintain nutrition and can they prepare and consume food and drink?</p> <p>If a person is unable to afford adequate and nutritious food this does not mean that they would not meet this eligibility need as they are capable of looking after themselves but they may benefit from support from other services to</p>	<p>Does a person's illness or the medication they take mean they do not eat and drink regularly?</p> <p>Do they forget to eat or drink?</p> <p>Do they need someone to remind them to eat or drink?</p> <p>Can they go shopping for food on their own?</p> <p>Can they make themselves something to eat without assistance?</p>

	access food and manage finances.	Does the person have capacity to understand what constitutes as nutritious food and the knowledge of how to prepare it.
b) maintaining personal hygiene	<p>Consider if they able to achieve the outcome independently and without assistance but if doing so causes the adult significant pain, distress or anxiety then this would meet the criteria.</p> <p>If the person is mentally and physically capable of taking care of himself and prefers their lifestyle, in which they live this would not meet the criteria however you should consider the self neglect pathway if there are concerns around personal hygiene or poor home conditions.</p>	<p>Does the person wash themselves regularly?</p> <p>Does the person need someone to remind them to wash or someone to help them wash?</p> <p>Does the person understand how to use a washing machine and do their own laundry?</p> <p>Does the person remember to wash their own clothes?</p> <p>Can the person wash themselves and their clothes without assistance?</p> <p>Do they have the motivation to care for themselves?</p>
c) managing your toilet needs	<p>Does the person have a toilet, and do they know how to use it? Can they use it independently?</p> <p>If they can not use the toilet safely due to a cognitive impairment or disability then this may meet this eligibility need.</p> <p>However, If the toilet is inaccessible because of poor home conditions this alone would not meet this eligibility criteria and they would likely benefit from support from other services.</p>	<p>Do they need any help to use the toilet?</p> <p>Do they have any issues with incontinence?</p> <p>Can they use the toilet safely and without pain or distress?</p>
d) being appropriately clothed	<p>Can the person dress themselves and do they wear the right clothes for the weather?</p> <p>If there are concerns around affording appropriate clothing then</p>	<p>Does the person need anyone to help them get dressed?</p> <p>Do they dress appropriately for the weather? Are there any issues with under or over exposure?</p>

	this would not be an eligibility need and support should be explored by other services.	Are their clothes and shoes in good condition?
e) being able to make use of the home safely	<p>If there concerns around anti social behaviour or cuckooing then it is important to consider if a persons disability or lack of capacity may impact on their ability to keep them safe. Anti social behaviour on its own would not meet this eligibility criteria.</p>	<p>Can they move around their house safely and use the kitchen and bathroom?</p> <p>Do they remember to turn to cooker off after use?</p> <p>Can they get in and out of their house easily?</p> <p>If there was an emergency, would they be able to leave their house safely?</p> <p>Is the person able to stay safe at home and keep themselves safe there?</p> <p>Is there a learning disability which may impact on their safety?</p> <p>Do they recognise risk and take steps to keep themselves safe, such as locking their door?</p>
f) maintaining a habitable home environment	<p>Is the persons home clean and safe? Do they have water, electricity and gas?</p> <p>Consider other adults who may visit. If there is a risk of exploitation or criminal activity that the adult can not recognise or protect themselves against due to a cognitive impairment or other care and support need, then this would meet the criteria.</p> <p>Does the person have the motivation to keep their home habitable? If their mental health or cognitive ability prevents this then this would meet this eligibility need.</p>	<p>Can the person keep their house free from clutter and mess?</p> <p>Do they find it difficult to do chores?</p> <p>Does the person find it hard to throw things away?</p> <p>Do they remember to put rubbish out to get collected?</p> <p>If they run out of gas or electricity, can they go and buy more if required? Can they pay bills independently?</p>

	<p>If the person is mentally and physically capable of taking care of himself and prefers their lifestyle, in which they live this would not meet the criteria however you should consider the self neglect pathway or a referral to the Fire Service if there are concerns around personal hygiene or poor home conditions.</p>	
g) developing and maintaining family or personal relationships	<p>Is the person isolated or lonely because their physical or mental health stops them from keeping personal relationships or making new ones?</p> <p>If there is coercion and control which prevents them from seeing family and friends, but they do not have any care and support needs, then they would not meet the criteria but would require support from specialist services.</p>	<p>Do they need more contact with people?</p> <p>Does their mental or physical health make it hard to meet people?</p> <p>Who does the person go to if they need help or support?</p>
h) accessing and engaging in work, training or volunteering	<p>Does the person have the opportunity to contribute to society through work, training, education or volunteering?</p> <p>Do they need support to do these things?</p> <p>If a person is not permitted to live independently because of coercion and control, they have capacity and no care or support needs then they would not meet the criteria but would require support from specialist services.</p>	<p>Does the person know where to access education, training or volunteering?</p> <p>Does their mental or physical health stop them from doing any education, training or volunteering?</p> <p>Do they feel connected to their community?</p> <p>Do they need help with learning or remembering information?</p>
i) making use of the necessary facilities or	Can the person get around safely using public transport?	Can they use public transport?

services in the local community. Including public transport and recreational facilities or services	Do they need support to get around?	Do they need help getting to appointments or attending events? Can they make new journeys on their own? Do they know how to access the hobbies and activities which they enjoy?
j) carrying out any caring responsibilities the adult has for the child	Does the person have any caring or parenting responsibilities? If their cognitive ability or health prevents them from carrying out these responsibilities, then they would meet this criteria.	Do the side effects of medication impact on their ability to care for someone? Does their mental or physical health make it difficult for them to carry out any caring responsibilities?

It is important that in all situations we display Professional Curiosity and do not accept things at face value, therefore the examples provided here only provide a small snapshot of a much wider picture. Other things to consider include:

- **The specific type/area of vulnerability of the adult at risk**
- **Seriousness of the risk of or actual abuse**
- **Patterns of abuse**
- **Impact of the abuse on the adult at risk, how do they feel about it.**
- **Impact on others**
- **Intent of the person causing the harm**
- **Illegality of actions**
- **Risk of repeated abuse to the adult at risk**
- **Risk of repeated abuse on others**

The Local Authority will assess each of these eligibility outcomes to see if the person:

- Needs help to do it.
- Can do it without help but it causes a lot of pain, distress or anxiety.
- Can do it without help but it puts them or other people at risk of harm to health or safety, or
- Can do it without help but it takes a lot longer than it would take other people.
- Their ability to do these things fluctuates.

If a person meets 2 or more of the eligible outcomes from the table above the local authority will ask about the impact this has on their wellbeing.

Wellbeing means:

- Being treated with respect and having self-respect,
- Good physical and mental health,
- Being safe from abuse or neglect,
- Being in control of day-to-day life and being independent,

- Being involved in work, training or volunteering if desired
- not being isolated and having enough money to live,
- a good home life and relationships, having somewhere to live, and being part of society.

Other things to be considered, are if a person may have:

- One need, but it impacts on one area a lot.
- Several areas of low need, which impact many areas.
- One need, but this is likely to change and impact on other outcomes.
- They have a number of areas if need but this does not impact on their wellbeing.

b)is experiencing, or is at risk of, abuse or neglect, and

c)as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

The table below lists the 10 categories of abuse as outlined by the Care Act 2014. 'Local authorities should not limit their view of what constitutes abuse or neglect, as they can take many forms, and the circumstances of the individual case should always be considered'. Care Act Support and Statutory Guidance 2018.

Types of abuse	Behaviours may include:
Physical	Hitting, slapping, pushing, kicking, misuse of medication, FGM restraint, or inappropriate sanctions.
Sexual	Rape, indecent exposure, sexual harassment, inappropriate looking or touching, sexual teasing or innuendo, sexual photography, subjection to pornography or witnessing sexual acts, indecent exposure and sexual assault or sexual acts to which the adult has not consented or was pressured into consent.
Psychological	Emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, cyber bullying, isolation or unreasonable and unjustified withdrawal of services or supportive networks.
Financial/ Material	Theft, fraud, exploitation, online scams, pressure in connection with wills, property, inheritance or financial transactions, or the misuse or misappropriation of property, possessions, or benefits
Neglect/ Acts of omission	Ignoring medical or physical care needs, failing to provide access to appropriate health, social care, welfare benefits or educational services, withholding the necessities of life such as medication, adequate nutrition and heating.
Discriminatory	Racism, sexism, or acts based on an adult's disability, age or sexual orientation or other characteristics protected by law. It also includes other forms of harassment, slurs, or similar treatment such as disability hate crime.
Domestic Abuse	Psychological, physical, sexual, financial, emotional abuse and so called 'honour' based violence by those who are or have been intimate partners or family members. Coercion and control are known to often be present within abusive relationships
Organisational Abuse	Neglect and poor care practice within a care setting such as a hospital or care home or in relation to care provided in

	someone's own home ranging from one off incidents to on-going ill-treatment. It can be neglect or poor practice as a result of the structure, policies, processes, or practices.
Modern Slavery	Encompassing slavery, human trafficking, forced labour, honour based abuse, forced marriage, cuckooing and domestic servitude. Traffickers and slave masters use whatever means they have at their disposal to coerce, deceive, and force individuals into a life of abuse, servitude, and inhumane treatment.
Self Neglect/ Hoarding	Covers a wide range of behaviour including neglecting to care for one's personal hygiene, health or surroundings and behaviour such as hoarding.

Using the above criteria (a, b and c) the local authority has the responsibility to make enquiries or ensure others do so, if it believes an adult is subject to, or at risk of abuse or neglect. It should establish whether action needs to be taken to stop or prevent abuse or neglect, and if so, by whom.

However, the views and desired outcomes of the adult at risk must be taken into account and so the meeting of the above three criteria (a,b and c) does not automatically result in the need for a formal safeguarding enquiry; other responses to the safeguarding concern may be appropriate and should be proportionate and tailored to individual needs, views and desired outcomes.

What other ways are there to respond to concerns of abuse and neglect of an adult who does not have care and support needs?

Partner Agencies are facing the challenge of supporting people who are at risk of abuse, but who do not have care and support needs and may be unsure of where to go next. There are agencies and organisations that can help, even if a safeguarding enquiry duty is not met. These include:

- Complex Dependency Team
- Police
- Trading standards
- Domestic abuse services
- The National Referral Mechanism for victims of modern slavery
- Community and voluntary sector organisations
- Organisations complaints procedures
- Resolution Policy

Here are some examples of scenarios which **do meet** the care and support needs eligibility criteria under Section 42 of the Care Act 2014

Example 1: Elderly Individual at Risk of Financial Abuse

Scenario: Mrs. Smith, an 82-year-old woman, lives alone and has been receiving frequent visits from a neighbour who offers to help with her shopping and finances. Recently, Mrs. Smith's bank has noticed unusual withdrawals from her account.

Eligibility Check:

- **Needs for care and support:** Mrs. Smith has needs related to her age and potential cognitive decline.
- **Experiencing or at risk of abuse or neglect:** There is a reasonable cause to suspect financial abuse due to unusual bank activity.
- **Unable to protect herself:** Due to her age and potential cognitive issues, Mrs. Smith may be unable to protect herself from financial exploitation.

The local authority must make enquiries to decide what action should be taken to protect Mrs. Smith

Example 2: Adult with Learning Disabilities Facing Neglect

Scenario: John, a 30-year-old man with learning disabilities, lives in a shared accommodation. His caregivers have reported that he often misses meals and appears unkempt.

Eligibility Check:

- **Needs for care and support:** John has learning disabilities that require support.
- **Experiencing or at risk of abuse or neglect:** There is a risk of neglect as John is not receiving adequate care.
- **Unable to protect himself:** Due to his learning disabilities, John may be unable to ensure his own well-being.

The local authority must conduct enquiries to determine the necessary actions to safeguard John.

Example 3: Person with Mental Health Issues at Risk of Self-Neglect

Scenario: Sarah, a 45-year-old woman with severe depression, has been found living in squalid conditions. She has not been taking her medication and has isolated herself from friends and family.

Eligibility Check:

- **Needs for care and support:** Sarah's mental health issues require care and support.
- **Experiencing or at risk of abuse or neglect:** Sarah is at risk of self-neglect due to her living conditions and lack of self-care.
- **Unable to protect herself:** Her mental health condition impairs her ability to seek help and maintain her well-being.

The local authority must make enquiries to decide on the appropriate interventions to support Sarah.

Example 4: Adult with Physical Disabilities Facing Domestic Abuse

Scenario: Mark, a 50-year-old man with physical disabilities, relies on his partner for daily care. Recently, he has shown signs of physical abuse, such as unexplained bruises.

Eligibility Check:

- **Needs for care and support:** Mark's physical disabilities necessitate care and support.
- **Experiencing or at risk of abuse or neglect:** There is a reasonable cause to suspect domestic abuse.
- **Unable to protect himself:** Due to his physical disabilities and dependence on his partner, Mark may be unable to protect himself from abuse.

The local authority must conduct enquiries to determine the necessary steps to protect Mark.

Example 5: Vulnerable Adult at Risk of Exploitation

Scenario: Emma, a 28-year-old woman with a mild intellectual disability, has been befriended by a group of individuals who have started using her home for illegal activities.

Eligibility Check:

- **Needs for care and support:** Emma's intellectual disability requires support.
- **Experiencing or at risk of abuse or neglect:** There is a risk of exploitation and abuse due to the illegal activities in her home.
- **Unable to protect herself:** Emma's intellectual disability may prevent her from understanding the situation and seeking help.

The local authority must make enquiries to decide on the appropriate actions to safeguard Emma.

Potential safeguarding scenarios under Section 42 of the Care Act 2014 that **do not meet** the care and support criteria:

Example 1: Financial Exploitation of an Independent Adult

Scenario: Mr. Brown, a 65-year-old retired teacher, is financially independent and does not require any care or support services. However, his neighbour has been coercing him into giving money under false pretences.

Analysis:

- **Needs for care and support:** Mr. Brown does not have any care and support needs.
- **Experiencing or at risk of abuse or neglect:** He is at risk of financial exploitation.
- **Unable to protect himself:** Mr. Brown is capable of protecting himself but may not recognise the exploitation.

Since Mr. Brown does not have care and support needs, this scenario does not meet the criteria for a Section 42 enquiry.

Alternative Actions:

- **Report to the Police:** Financial exploitation can be reported to the police as a potential crime.
- **Seek Legal Advice:** Mr. Brown can be advised to seek legal advice to protect his assets.
- **Community Support Services:** Engage community support services or local charities that offer advice and support to older adults.

Example 2: Domestic Abuse in a Self-Sufficient Household

Scenario: Mrs. Green, a 40-year-old professional, is experiencing domestic abuse from her partner. She is fully self-sufficient and does not require any external care or support.

Analysis:

- **Needs for care and support:** Mrs. Green does not have any care and support needs.
- **Experiencing or at risk of abuse or neglect:** She is experiencing domestic abuse.
- **Unable to protect herself:** Mrs. Green is capable of seeking help and protecting herself.

Although Mrs. Green is experiencing abuse, she does not have care and support needs, so this situation does not trigger a Section 42 enquiry.

Alternative Actions:

- **Domestic Abuse Services:** Refer Mrs. Green to domestic abuse services for support and advice.
- **Legal Protection:** Encourage her to seek legal protection, such as a restraining order.
- **Counselling Services:** Suggest counselling services to help her cope with the emotional impact of the abuse.

Example 3: Exploitation of a Mentally Capable Adult

Scenario: Ms. Black, a 30-year-old woman, is being exploited by her employer, who is making her work excessive hours without proper compensation. She is mentally and physically capable and does not require any care or support.

Analysis:

- **Needs for care and support:** Ms. Black does not have any care and support needs.
- **Experiencing or at risk of abuse or neglect:** She is experiencing exploitation at work.
- **Unable to protect herself:** Ms. Black is capable of seeking legal or other forms of help.

Although Ms. Black is being exploited, she does not have care and support needs, so this situation does not trigger a Section 42 enquiry.

Alternative Actions:

- **Employment Rights Advice:** Refer Ms. Black to employment rights organisations for advice and support.
- **Trade Union Support:** Encourage her to join a trade union for protection and advocacy.
- **Legal Action:** Suggest seeking legal action against the employer for exploitation.

Example 4: Harassment of an Independent Adult

Scenario: Mr. Blue, a 45-year-old man, is being harassed by a group of individuals in his neighbourhood. He is fully independent and does not require any care or support services.

Analysis:

- **Needs for care and support:** Mr. Blue does not have any care and support needs.
- **Experiencing or at risk of abuse or neglect:** He is experiencing harassment.
- **Unable to protect himself:** Mr. Blue is capable of seeking help from authorities.

Since Mr. Blue does not have care and support needs, this scenario does not meet the criteria for a Section 42 enquiry.

Alternative Actions:

- **Report to Authorities:** Encourage Mr. Blue to report the harassment to the police.
- **Community Mediation:** Suggest community mediation services to resolve the conflict.
- **Support Groups:** Refer him to support groups for individuals experiencing harassment.

Remember Consent is key

The Care Act emphasises the importance of involving the adult in safeguarding enquiries to ensure their views and wishes are considered. However, the Act does not mandate that an enquiry can only proceed with the adult's consent. The local authority must act if there is reasonable cause to suspect abuse or neglect, regardless of consent, to protect the individual's well-being.

When Consent Should Be Overridden:

There are specific circumstances where an enquiry should proceed without the adult's consent:

1. **Risk to Others:** If there is a risk to other vulnerable adults or children, the local authority must act to prevent harm.
2. **Coercion or Undue Influence:** If the adult is being coerced or unduly influenced, their ability to give genuine consent may be compromised.
3. **Public Interest:** In cases where the abuse or neglect is so severe that it is in the public interest to intervene, the local authority must proceed with the enquiry.
4. **Mental Capacity:** If the adult lacks the mental capacity to consent and it is in their best interests to proceed, the local authority must act.

Examples

Example 1: Risk to Others

Scenario: Mrs. Taylor, an elderly woman with dementia, lives in a care home. Staff suspect she is being financially abused by a family member. Other residents have also reported similar issues with the same family member.

Action: The local authority proceeds with the enquiry without Mrs. Taylor's consent due to the potential risk to other residents.

Example 2: Coercion or Undue Influence

Scenario: Mr. Johnson, a 70-year-old man, is being physically abused by his son. Mr. Johnson is afraid to report the abuse because his son has threatened him.

Action: The local authority overrides Mr. Johnson's lack of consent due to the coercion and fear influencing his decision.

Example 3: Public Interest

Scenario: Ms. Green, a 50-year-old woman with learning disabilities, is found living in squalid conditions with signs of severe neglect. The situation is reported by a neighbour.

Action: The local authority initiates an enquiry without Ms. Green's consent due to the severity of the neglect and the public interest in ensuring her safety.

Example 4: Mental Capacity

Scenario: Mr. Brown, a 60-year-old man with severe mental health issues, is being financially exploited by a neighbour. Mr. Brown lacks the capacity to understand the exploitation.

Action: The local authority proceeds with the enquiry in Mr. Brown's best interests, despite his inability to consent.

These examples highlight situations where safeguarding enquiries must proceed without the adult's consent to ensure their protection and well-being. The key is to balance the need for intervention with respect for the individual's autonomy and rights.

To raise a concern with Wigan Adult Social Care contact 01942 828777 or use the online form [here](#).

You can find out more about how we safeguard adults including our policies and procedures by visiting the [Wigan Safeguarding Adults Board](#)

Important things to consider within the Section 42 process:

- ✓ Harm – always take account of the individual's perception. What impact has it had on the person?
- ✓ The individual's capacity to understand what has happened and to make decisions in relation to the Safeguarding Adults concerns.
- ✓ Whether duress or coercion is an influence.
- ✓ Whether the incident is one of a pattern or trend in respect of the adult with care and support needs, the person causing the harm, the location of the abuse or the nature of the abuse. Consider whether it is indicating a systemic abuse issue.
- ✓ The relationship between the adult at risk and the person causing the harm. Does it involve a person in a position of trust?
- ✓ Whether any measures or actions have been put in place to minimise risk and protect the individual or other adults at risk.
- ✓ How likely is it that the abuse may re-occur?
- ✓ Is there a likelihood others were exposed or could be exposed to the harm or abuse?
- ✓ What evidence and information you have to inform you decisions.
- ✓ Ensure everything is fully recorded and have you evidenced Defensible Decision Making.
- ✓ Has a crime been committed against the adult at risk?