

Section 42 Enquiries - Making Defensible Decision

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‘Unless people’s lives are improved, then all the safeguarding work, systems, procedures and partnerships are purposeless’.

New Language and New Focus

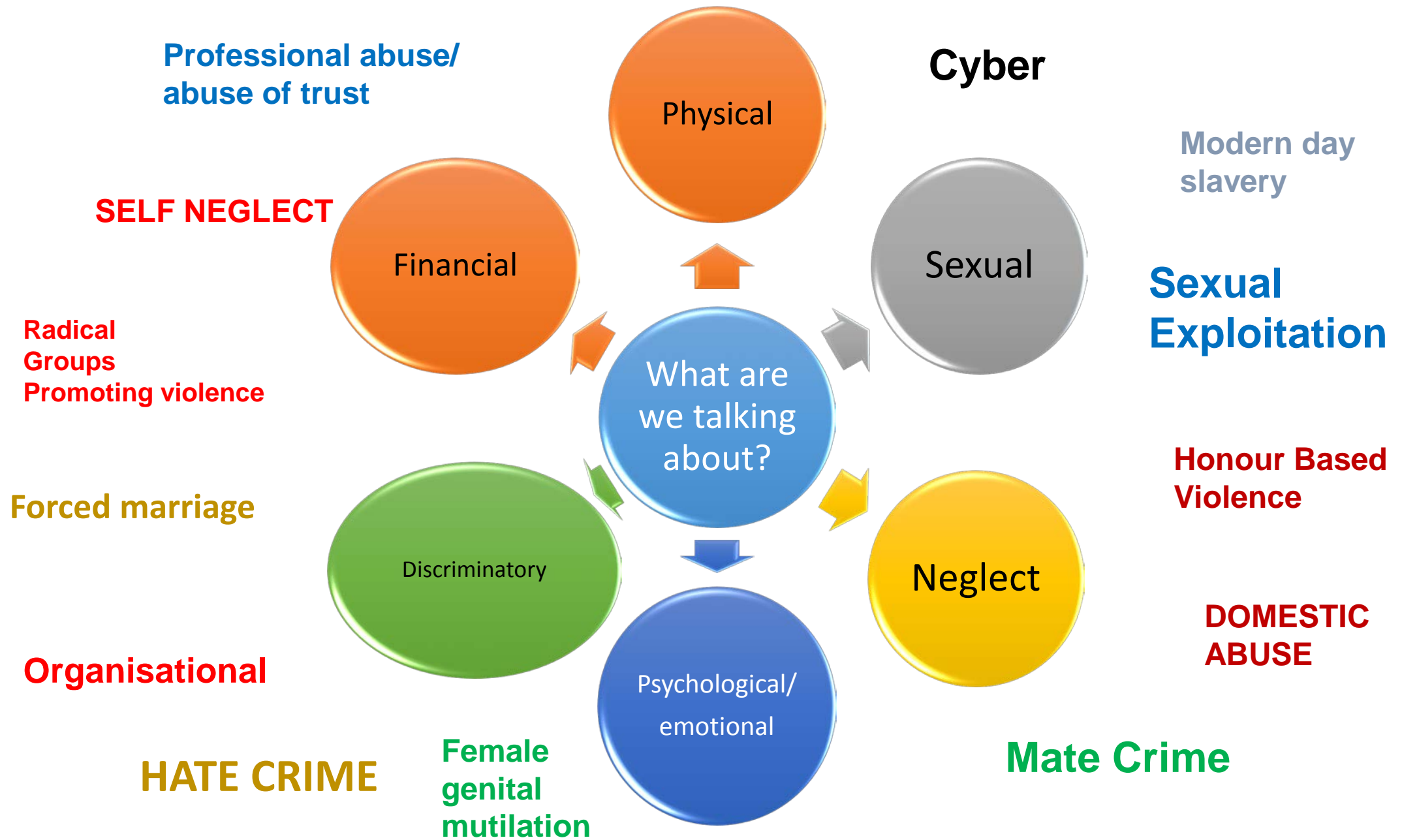
**Safeguarding
Concern**

Safeguarding Adults

**Making Safeguarding
Personal (MSP)**

Adult at risk

Section 42 Enquiry



Low Thresholds

- Enables transparency around decision making in response to concerns
- Gives a comprehensive picture of risks that come to the attention of the adult safeguarding board
- Improves the likelihood of better judgments being made about those risks
- Gives a means of identifying patterns of concerns
- Gives an environment in which preventative working may be more likely
- Helps to assess holistically and address concerns avoiding the screening out of situations in which significant risk is not readily apparent in first contact (serious case reviews such as Stephen Hoskin, Margaret Panting, and Winterbourne View).

Reasonable Cause

- Not all concerns that come to the attention of the local authority will require an enquiry. An important issue will be whether there is a “reasonable cause”.
- ***Clearly no reasonable cause:*** Sometimes people will bring concerns to the attention of the local authority that they, in good faith, think may be a safeguarding concern but the local authority is able to determine that they are not. This might be because it is clear to the local authority that the person is not someone in need of care and support, or that the concern does not relate to abuse or neglect.
- Going through the steps of naming a concern as a safeguarding adults issue and making an explicit decision that there is no reasonable cause for starting an enquiry can seem long-winded for some circumstances where those involved may believe it “is obvious” there is no need for a safeguarding adults enquiry.
- But we know from some cases where things have gone seriously wrong that a problem can arise when people have not recognised the risks in situations that have come to their attention.
- “is there another explanation for what is happening?” and “is there information I need that I am missing?”

6 Principles of Safeguarding

- **Empowerment** – People being supported and encouraged to make their own decisions and informed consent. *“I am asked what I want as the outcomes from the safeguarding process and these directly inform what happens.”*
- **Prevention** – It is better to take action before harm occurs. *“I receive clear and simple information about what abuse is, how to recognise the signs and what I can do to seek help.”*
- **Proportionality** – The least intrusive response appropriate to the risk presented. *“I am sure that the professionals will work in my interest, as I see them and they will only get involved as much as needed.”*
- **Protection** – Support and representation for those in greatest need. *‘I get help and support to report abuse and neglect. I get help so that I am able to take part in the safeguarding process to the extent to which I want.’*
- **Partnership** – Local solutions through services working with their communities. *“I know that staff treat any personal and sensitive information in confidence, only sharing what is helpful and necessary. I am confident that professionals will work together and with me to get the best result for me.”*
- **Accountability** – Accountability and transparency in delivering safeguarding. *“I understand the role of everyone involved in my life and so do they.”*

MSP...



**A shift from a
process supported by
conversations to a
series of
conversations
supported by a
process**

Making Safeguarding Personal Principles:

- Safeguarding practice has to be effective from the perspective of the person being safeguarded.
- Good practice will involve social care practitioners having conversations with adults who may be at risk of harm about how we might respond in safeguarding situations in a way that enhances their involvement, choice and control as well as improving quality of life, wellbeing and safety.
- Staff working alongside those adults will need to have a clear understanding of the outcomes people want from safeguarding.

What a Making Safeguarding Personal approach should include:

- **Conversations** which should happen with the adult, at the earliest opportunity, enabling them to identify realistic outcomes so that their views, wishes, feelings and beliefs are central in decisions about how they wish to proceed.
- **A flexible approach** is required because people are all individuals and want a range of differing options in response to their own lives and experience.
- **Keeping the adult informed** The adult needs to be kept informed through regular discussion about the factors which may have contributed to abuse and neglect occurring and of relevant information as the enquiry proceeds.
- **Undertaking a review** At the end of an enquiry it is an expectation that the responsible worker will undertake a review with the adult to see what difference the safeguarding process has made to their life, and whether the outcomes they hoped for have been achieved
- **Mental capacity** MSP is not only for people who have mental capacity. It is just as important for people who lack capacity, and some engagement is very often still possible to identify outcomes. Identifying representatives, independent mental capacity advocates (IMCA) and other advocates or Best Interests Assessors, where relevant, is a key part of working with people to enable their voice to be heard.

Independent advocacy

The local authority MUST arrange for an independent advocate to represent and support a person who is the subject of a safeguarding enquiry or a safeguarding adult review if:

They need help to understand and take part in the enquiry or review and to express their views, wishes, or feelings. (The Care Act 2014)

This provision relates to people with capacity. People lacking capacity will access advocacy support (e.g. an IMCA) via existing provisions under the Mental Capacity Act 2005.

- 1) Independent advocate (Care Act duty)
- 2) IMCA (MCA duty)
- 3) IMHA (MHA Act duty).

Safeguarding Concerns could be...

- **Assessed as not meeting the criteria for the safeguarding framework;** those concerns may be directed to an operational team for information and signposting or consideration of any ongoing Adult Social Care intervention or directed to an external agency as a referral or for ongoing support.
- **Assessed as safeguarding and requiring processing under the safeguarding framework but not requiring any further action;** following initial review and contact with the person subject of the concern or the individual or organisation who raised the concern, those concerns may be directed to an operational team for information and signposting or consideration of any ongoing Adult Social Care intervention, or directed to an external agency who may be supporting the individual already.
- **Assessed as safeguarding, but the concerns do not meet the Section 42 enquiry duty, but the adult is at risk, is able to safeguard themselves but would benefit from a **non statutory enquiry**.**
- **Assessed as safeguarding and requiring processing under the safeguarding framework and requiring further enquiry, which could be addressed at this stage or may go on to require a more formal safeguarding response.**

Safeguarding Enquiries

- If the adult **fits the criteria outlined in Section 42 of the Care Act**, then local authorities are required by law to conduct enquiries. These will be referred to as '**Statutory Safeguarding Enquiries**'.
- Local authorities will sometimes decide to make safeguarding enquiries for adults who do not fit the Section 42 criteria. These enquiries are not required by law and therefore will be referred to as '**Non Statutory Enquiries**'. (*Discretionary Enquiries Pan Hampshire 2015*)

Discretionary Enquiries could be triggered where....

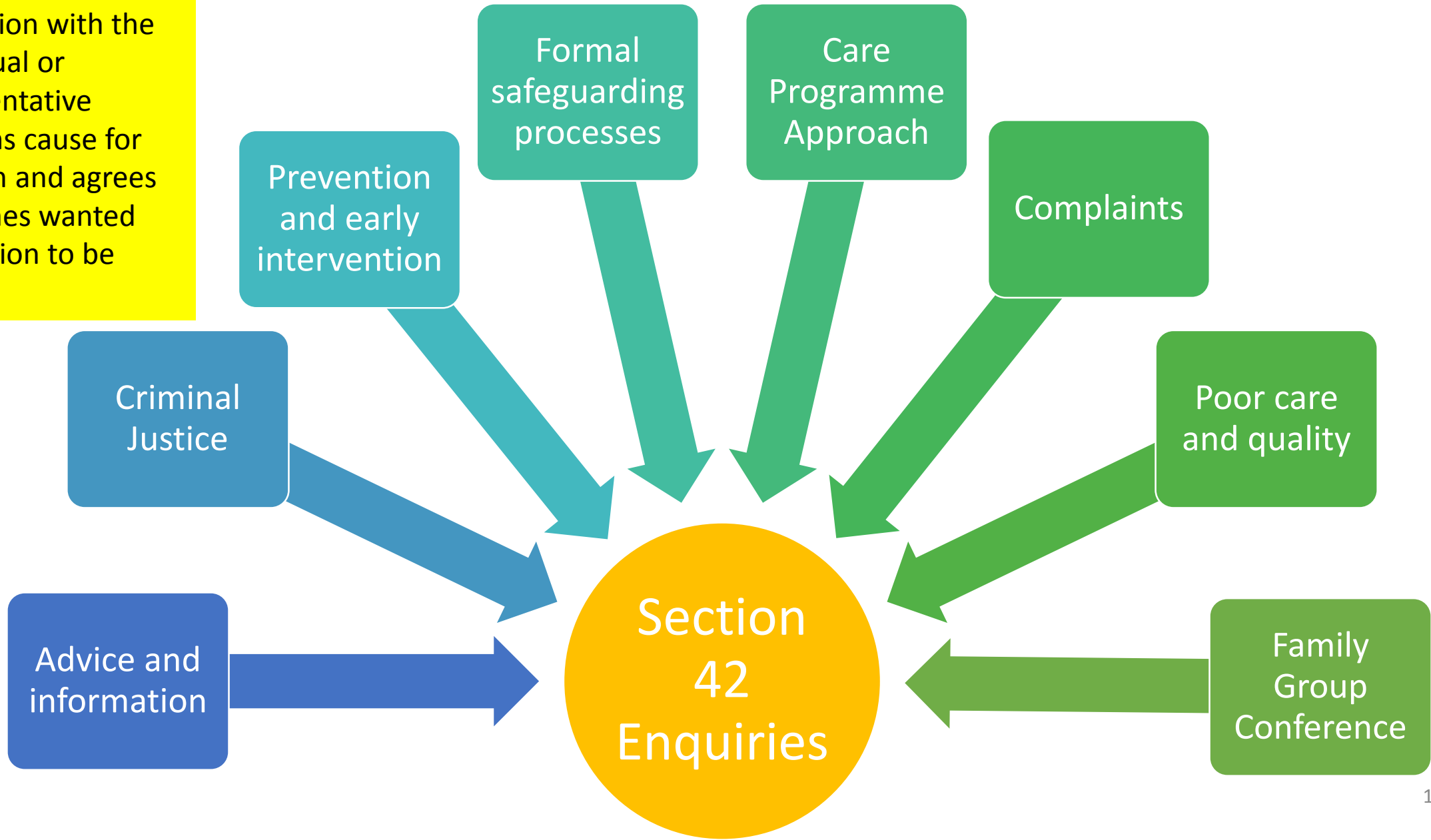
- The adult is at risk of abuse or neglect but does not have care & support needs
- The adult has care & support needs, may have experienced abuse or neglect in the past, but is no longer experiencing or is at risk of abuse or neglect
- The adult has care & support needs, is at risk of abuse or neglect, but is able to protect themselves from abuse or neglect should they choose to.

Purpose of an Enquiry

- Has the person experienced or been at risk of abuse or neglect?
- What need to happen to help the person achieve their outcomes
- What needs to happen to help the person protect themselves?
- What needs to happen to help the person secure justice or redress?
- What were the causes?
- What needs to happen to apply learning?

A Whole System Approach

Discussion with the individual or representative confirms cause for concern and agrees outcomes wanted and action to be taken.



Decision making process:

- Is the person at risk aware that the concern is being shared with adult services?
- What are the views and wishes and desired outcomes of the person who is at risk?
- Advocacy
- Is the person at risk in need of care and support?
- Background information from review of records
- Analysis of risk (assessment) /type of abuse or harm
- Does this alert trigger a section 42 duties?
- Should this information be shared with DASM?
- Information gathering / action plan
- Information sharing
- Team manager/ senior decision

Proportionate responses which are based on...

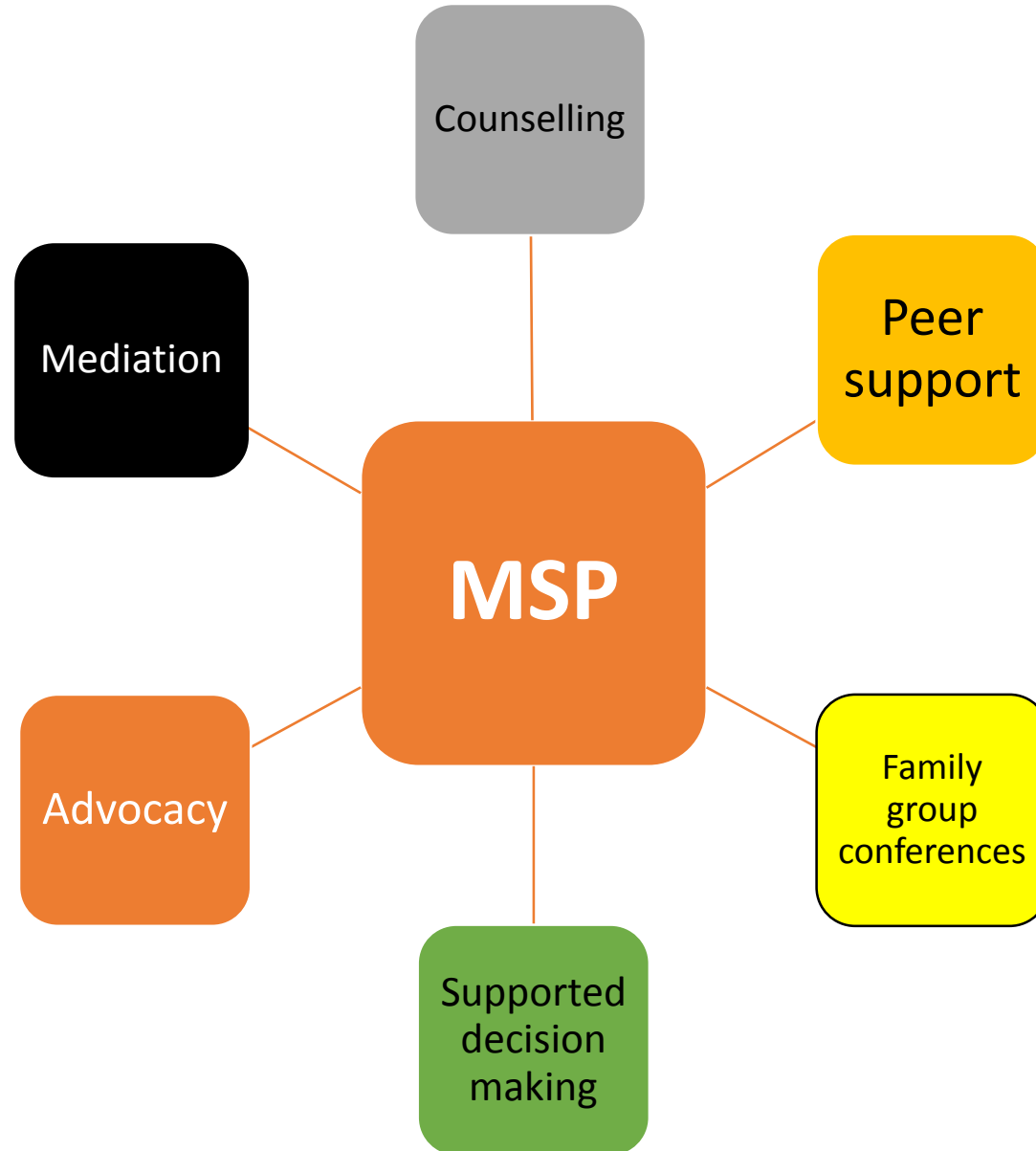
- the needs and wishes of the person
- Enabling prevention and early intervention
- Recognition that safeguarding work is carried out at different levels often day to day as part of an organisation's core business
- Fostering a 'whole system' approach
- Providing a gateway to mainstream community safety and crime prevention measures.

The Person Refuses Intervention

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

- the person lacks the mental capacity to make that decision – this must be properly explored and recorded in line with the Mental Capacity Act
- other people are, or may be, at risk, including children
- sharing the information could prevent a crime
- the alleged abuser has care and support needs and may also be at risk
- a serious crime has been committed
- staff are implicated
- the person has the mental capacity to make that decision but they may be
 - under duress or being coerced
 - the risk is unreasonably high and meets the criteria for a multi-agency risk assessment conference (MARAC) referral
 - a court order or other legal authority has requested the information.

What helps?





Recognition

Recognise my experiences

Tell me what and why you are concerned about me

Help me to think about how to keep myself safe

Listen to me

Don't judge me

Explain to me that you cannot keep secrets and why

Explain to me what could happen next.



Safeguarding Concern

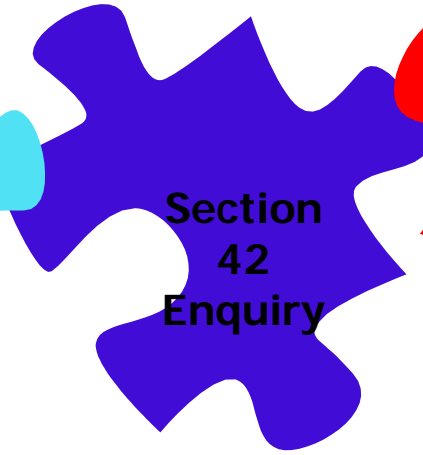
Assess my immediate support and safety needs

Provide me with advice, information and advocacy

Gather intelligence to assess the risks to me or others

Share the risks with me and with those important to me or for me

Share decision making with me.

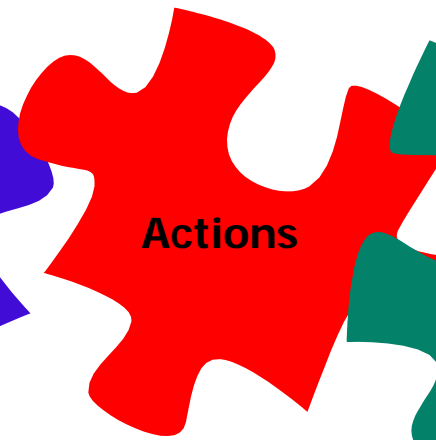


Section 42 Enquiry

Work with me and others on a plan to maximise my choices and safety

Respect my choices and my right to take risks as long as my decisions do not harm anyone else

Work with me and others on a plan to find out what is happening or has happened.



Actions

Put the plan into practice

Keep me informed and supported

Ensure that you are focused on my human and civil rights.



Outcomes

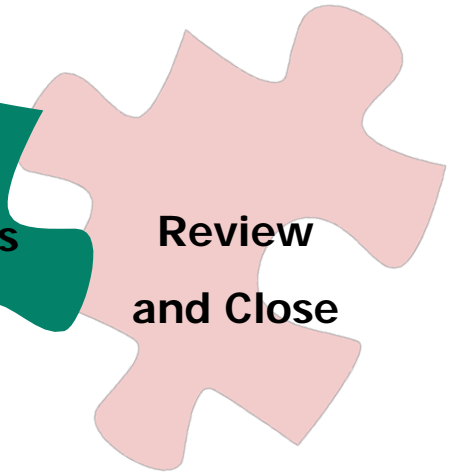
what you have found out

Help me to understand what my choices are

Discuss with me my support needs

Explain to me what support, information, advocacy and resources are available to me

Support me to access justice.



Review and Close

meet with me and others to see how it's going, and what needs to happen next

Monitor the situation to make sure that the plan is effective and stable.

Discuss with me

Explain to me

Evaluate with me

Evaluation

- Evaluating the outcomes achieved as part of the safeguarding process itself (before closing the process) so the person doesn't have to revisit their experience
- Drawing out key learning from the experience
- Inviting the person to participate, informing them of why the evaluation is being done and how it will improve practice in the future
- Using appropriate methods of asking questions according to the person's needs
- Ensuring the person has had the opportunity to prepare for the discussion and have an independent advocate available if needed.

Section 42 Duty

Make Safeguarding Personal

- Talk to individual & or representative, ascertain desired outcomes
 - Consider advocacy
 - Consider using others to make enquiry
 - See T.O.B.
 - Talk to relevant partner agencies
- ➔ Consider Data Protection



AIS

- Based on contact
- Safeguarding adult concern
- Workflow to SACU & Senior Pract or Team Manager
SACU
Open Safeguarding module & complete incident risk

No
Close Safeguarding module
Yes

Refer to contact
Complete initial questions
Advocate
ACP - desired outcomes
Information gathering record re strategy / threads / planning tool

No
Close Safeguarding module
Yes
Complete rest of safeguarding module

Investigated
Complete investigation risk if strategy planning takes place or record action requested for enquiry
At review meeting record in case conference risk

Close module
Refer to contact
complete evaluation question feedback

SMALL CHANGE ?



**What can you
get for 1p?**



**REMEMBER SMALL
CHANGE ADDS UP:
SAFEGURADING IS
EVERYONE'S
BUSSINESS**

Thank you for your time...

