7.1 Introduction

This guidance has been developed to clarify which Safeguarding procedures should be following when abuse is alleged or occurs to 16 – 18 year olds and how partnership working between Adult services and Children’s service should work.

7.2 The Law

There is no single law that defines the age of a child across the UK. Specific age limits are set out in the legislation relating to different areas of policy and there are also differences between the UK nations.

According to the UN convention on the Rights of the Child, which the UK Government has ratified: “A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”

In England for Child protection/safeguarding “a child is anyone who has not yet reached their 18th birthday”.

Some people have their entitlement to services extended beyond the age of 18. For instance the Children (Leaving Care) Act 2000 states that local authorities in England and Wales must keep in touch with care leavers until they are at least 21, and they should provide assistance with education, employment and training. Young people with Learning Disabilities may also continue to be supported by Children’s Services after they reach the age of 18.

The Sexual Offences Act 2003 states the age of consent for sex is 16 in England and Wales.

Within the Mental Capacity Act 2005 - Code of Practice, ‘children’ refers to people aged below 16.

‘Young people’ refers to people aged 16–17. This differs from the Children Act 1989 and the law more generally; where the term ‘child’ is used to refer to people aged under 18.
The Act does not generally apply to people under the age of 16 but there are two exceptions:

I. The Court of Protection can make decisions about a child’s property or finances (or appoint a deputy to make these decisions) if the child lacks capacity to make such decisions within Section 2(1) of the Act and is likely to still lack capacity to make financial decisions when they reach the age of 18 (Section 18(3)).

II. Offences of ill treatment or wilful neglect of a person who lacks capacity within Section 2(1)* can also apply to victims younger than 16 (Section 44).

Most of the Act applies to young people aged 16–17 years, who may lack capacity within Section 2(1) to make specific decisions but there are three exceptions:

i. Only people aged 18 and over can make a Lasting Power of Attorney

ii. Only people aged 18 and over can make an advance decision to refuse medical treatment.

iii. The Court of Protection may only make a statutory will for a person aged 18 and over.

People carrying out acts in connection with the care or treatment of a young person aged 16–17 who lacks capacity to consent within Section2(1)* will generally have protection from liability (Section 5), as long as the person carrying out the act:

- has taken reasonable steps to establish that the young person lacks capacity
- reasonably believes that the young person lacks capacity and that the act is in the young person’s best interests, and
- follows the Act’s principles.

When assessing the young person’s best interests, the person providing care or treatment must consult those involved in the young person’s care and anyone interested in their welfare – if it is practical and appropriate to do so.

This may include the young person’s parents. Care should be taken not to unlawfully breach the young person’s right to confidentiality (see chapter 16 of the Code of Practice).

Nothing in Section 5 of the Act excludes a person’s civil liability for loss or damage, or his criminal liability, resulting from his negligence in carrying out the act.
Sometimes there will be disagreements about the care, treatment or welfare of a young person aged 16 or 17 who lacks capacity to make relevant decisions. Depending on the circumstances, the case may be heard in the family courts or the Court of Protection.

The Court of Protection may transfer a case to the family courts, and vice versa. This means that the choice of court will depend on what is appropriate in the particular circumstances of the case. For example, if the parents of a 17 year old who has profound learning difficulties cannot agree on the young person’s residence or contact, it may be appropriate for the Court of Protection to deal with the disputed issues as any orders made under the Children Act 1989 will expire on the young person’s 18th birthday.

It is therefore important that everyone is clear which Safeguarding Procedures should be implemented in situations involving 16-18 year olds and 18-21 year olds.

7.3 16-18 year olds

Safeguarding Children procedures must be implemented for 16 – 18 year olds. However Transition Services must be actively involved in the process as these individuals will be moving into adulthood imminently.

In some circumstances there will be adults – people aged over 18 years of age, still appropriately using a Children’s service.

For example: Young adults can remain in a residential special school, children’s home whilst they finish their education if have a “statement”.

7.4 18 years plus

Generally adult safeguarding procedures must be implemented for 18 year old plus and in these situations Children’s Safeguarding must be equal partners throughout the process so any issues that impact on the services which are Children’s services can be identified, addressed and monitored.

These situations may be complicated by the different procedures timescales and processes. The shortest timescales should be met.

In these situations the following issues will need to be considered:
• The Chair should be the Adult lead – however the children’s lead should be identified as a co Chair. The roles and responsibilities of the Chair and Co Chair are to ensure all the issues raise are considered under both procedures.

• Information sharing

• The law and Regulations which govern the adult victim (Mental Capacity) and those that govern the Children’s Service (Care Standards Act 2000)

• Investigations should be undertaken jointly between adults and children’s services so both aspects are considered.

7.5 Allegations from an adult about abuse when they were a child

Where an adult alleges they were abused as a child – Children’s Safeguarding will be the lead agency. However if the situation impacts on adults at risk then Adult Safeguarding MUST be involved. For example: an allegation about a previous foster carer who may now be working with adults at risk – must involve both children’s and adult services.

7.6 Cross Border Issues

The authority where the abuse occurs will have overall responsibility for co-ordinating the safeguarding arrangements. The placing authority [i.e. the authority with funding/ commissioning responsibility] will have a continuing duty of care and will maintain responsibility for the longer term care needs of that individual.

7.7 Serious Case Review

If a SCR is required Children’s SCR procedures must be followed if the victim is aged 16 – 18 years of age.

If a SCR is required and the victim is aged 18 years plus but they are using a children’s service the Children’s SCR procedures should be followed if issues relate to the children’s service.

If a SCR is required and the victim is aged 18 years plus but they are using a children’s service the Adult SCR procedures should be followed if issues are specific to the individual adult.
7.8 Useful websites

www.dcsf.goc.uk/everychildmatters for information on Every Child Matters.

www.opsi.gov.uk/acts for information on Acts and legislation


www.ofsted.gov.uk for information on the Children’s services regulator


www.adass.org.uk for cross boarder guidance.
7.9 Safeguarding for 16-21 year olds - Flowchart

- **16 – 18 years using children’s services**
  - Children’s safeguarding procedures
    - Transitions Team
      - Education services (if appropriate)
        - Ofsted (if appropriate)
          - Mental Capacity Act Capacity
            - Serious Case Review
              - Children’s if issues relate to the children’s service

- **18 years plus using children’s services**
  - Adult safeguarding procedures
    - Children’s Safeguarding Team
      - Education services (if appropriate)
        - Ofsted (if appropriate)
          - Mental Capacity Act Capacity
            - Serious Case Review
              - Adults if the issues are specific to the individual adult

MUST ensure Children’s & Adult’s learn from each other