

**CASEWORK GUIDANCE STATEMENT**

**Complaints about Safeguarding Adults Boards**

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| Policy Reference | <i>CPF 150203 026</i> |
| Review Due       | October 2016          |
| Policy Owner     | Donna Campbell        |

## **The Care Act 2014**

Under the terms of the Care Act 2014, each local authority **must** set up a Safeguarding Adults Board (SAB), with core membership from the local authority, the Police and the NHS (specifically the Local Commissioning Group/s). The SAB has a strategic role, which is comprised of three core duties. It **must**:

- 1) Publish a strategic plan for each financial year setting out how it will meet its main objective. In developing the plan it must involve the community and it must consult the local *Healthwatch* Organisation.
- 2) Publish an annual report detailing the activities of the SAB.
- 3) Decide when a safeguarding adults review (SAR) is necessary, arrange for its conduct and if it so decides, implement the findings. SARs replace serious case reviews. The SARs are about learning lessons for the future. They are to make sure SABs get the full picture of what went wrong, so that all organisations involved can improve as a result.

The Local Authority remains the lead agency with responsibility for co-ordinating adult safeguarding arrangements, but all the members of the SAB should designate a lead officer. The SAB is a multi-agency group. Local SABs decide how they operate but they must ensure that their arrangements will be able to deliver the duties and functions under Sch 2 of the Act.

The Local Authority which establishes the SAB must ensure that the members of the SAB, collectively, have sufficient skills and experience to perform their role. The Local Authority should consider appointing an Independent Chair to the SAB, but this is not a requirement.

There is a new duty on relevant organisations to supply information to SABs on request (section 45). The Act is clear that if a SAB requests information from an organisation or individual who is likely to have information which is relevant to the SAB's functions, they must share what they know with the SAB.

The Local Authority has to arrange, where appropriate, for an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry or safeguarding adult review where the adult has 'substantial difficulty' in being involved in the process and where there is no other appropriate adult to help them.

The Overview & Scrutiny Committee and Health & Well Being Board will have sight of the SAB's strategy and annual reports so must have an understanding of how to interpret and challenge them.

## **Complaints about safeguarding investigations**

The LGO has jurisdiction to investigate complaints about safeguarding investigations for which Councils have coordinating responsibility.

Depending on the nature of the complaint, LGO's practice is to consider whether:

- the safeguarding investigation is proportionate
- the Council has taken appropriate action in response to the findings of the safeguarding investigation
- the Council continues to monitor the situation e.g. through its contracts and monitoring team or reviews

- the Council can provide evidence why the safeguarding allegations did not meet the safeguarding threshold
- there were any delays or other failures in the process
- the conclusions are consistent with the evidence
- the Council considered all relevant and available evidence.

Although safeguarding investigations are multi-agency in nature this does not preclude the LGO from investigating some matters that relate to the actions of professionals employed by organisations that do not fall within the LGO's jurisdiction. For example, if someone complains that a health professional did not properly investigate clinical matters as part of the safeguarding investigation we can still investigate the impact of this on the decision-making process (for which the Council has overall responsibility) if the complainant alleges that it affected the outcome of the safeguarding investigation.

### **Complaints about Safeguarding Adult Boards (SABs)**

Previously we have generally not investigated complaints about the actions or decisions of SABs on the basis that it is not clear that they constitute an administrative function of a local authority.

With the changes introduced by the Care Act we consider that we can now look at the actions of SABs, including – in some circumstances – actions of professionals who are not employees of the council. Please see Appendix 1 for a breakdown of when the LGO could investigate a complaint about a SAB.

### **Conclusions**

#### ***Can someone complain to the LGO about the actions of an SAB or SAR?***

YES. There is no legal bar preventing the LGO from investigating such complaints. SABs are an administrative function of a council for the following reasons:

- Local authorities are responsible for setting them up
- Overview & Scrutiny Committee and Health & Wellbeing Boards will monitor the work of SABs
- Local authorities have overall responsibility for coordinating adult safeguarding arrangements within their localities

A key test is whether the remedy could be achieved by the local authority rather than some other body participating in the work of the SAB.

#### ***Should the LGO expect someone to complain to the local authority, as the body responsible for setting up SABs, before asking the LGO to consider their complaint?***

YES. It follows that if we say that local authorities are responsible for SABs then we should allow a council to look at any complaint before it gets to us. Usual premature rules therefore apply.

## Appendix 1: Safeguarding Adults Boards and the LGO's jurisdiction

| Example of complaint  | Could the LGO investigate?   | Rationale  |
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| 1. <b>Complainant disagrees with SAB decision to not undertake a serious case review</b>  | Yes  | Councils have overall coordinating responsibility for SABs and for ensuring there are appropriate multi-agency policies in place. There should be policies about the circumstances in which a serious care review should be carried out. However, this may come down to merits.  |
| 2. <b>Complainant is unhappy with the conduct or decision-making of the Independent Chair</b>   | Yes  | The Independent Chair is appointed by the Council (requirement under No Secrets; optional under Care Act) so can be considered an administrative function of the Council. We could consider the process for selection and the suitability. The decision-making of the Chair may come down to merits.   |
| 3. <b>Complainant unhappy with decision of a SAB or outcome of a serious case review</b>  | Yes  | As Councils have coordinating responsibility, the decisions taken by SABs would fall under the Council's administrative functions. Again, the decision may come down to merits.  |
| 4. <b>Complainant is unhappy with a decision reached by a SAB because of the actions or omissions of a professional on the SAB, who is employed by a body that falls outside the LGO's jurisdiction</b> | Potentially (but we would not investigate the conduct of these individuals – see 13) | If the complainant alleges that the actions or omissions led to the wrong decision by the SAB the LGO can consider any failures by the SAB in the evidence gathering or decision making stages and whether those failures materially affected the outcome. Under the Care Act councils are responsible for ensuring the members of the SAB are sufficiently skilled and experienced to perform their |

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|  |  | <p>roles.</p> <p>Examples could be failure to interview key people or failure to undertake a proper assessment, or the sharing of inaccurate or incomplete information.</p> |
| <b>5. Complainant alleges the SAB has not followed its own policies and procedures.</b>  | Yes – assuming the complainant is claiming significant injustice | Councils are responsible for setting up and coordinating SABs. Such complaint would be considered an administrative function of a Council.                                  |
| <b>6. Complainant unhappy with the length of time taken by an SAB to conclude a case.</b>  | Yes  | As above.   |
| <b>7. Complainant says SAB failed to take account of all relevant evidence (including failure to involve the vulnerable adult/representative).</b> | Yes  | As above.   |
| <b>8. Lack of administrative support to SAB/SAR</b>  | Yes – assuming the complainant is claiming significant injustice | Council have the lead responsibility for the setting up and conduct of SAB/SAR  |
| <b>9. Complaint is about the makeup of the SAR and potential conflict of interest</b>  | Yes  | As above  |
| <b>10. Chair of the SAB is also the chair of the SAR</b>   | Yes  | We can investigate this in terms of conflict of interests. But in principle there is no reason why the chair of the SAB cannot be the chair of the SAR                      |
| <b>11. Not sharing the Terms of Reference of the SAR with the representatives</b>  | Yes  | Whilst SARs are usually convened because of the death of an individual, we could look at how information was shared with reps/family members                                |
| <b>12. Complainant says a body that falls outside the LGO's jurisdiction failed to</b>   | Potentially/in part  | Complainant will probably need to address this issue with the relevant organisation. However,   |

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| <p><b>provide the necessary evidence to a SAB.</b></p>   |           | <p>under the Care Act there is a duty on relevant organisations to share any evidence requested by a SAB that is relevant to the SAB's function. We could potentially investigate whether the SAB took sufficient steps to obtain the evidence and inform the organisation of its duty to share information. However, the LGO role would be very limited in such cases.</p> |
| <p><b>13. Complainant is unhappy with the conduct of a professional on a SAB who is employed by a body that falls outside the LGO's jurisdiction</b></p>   | <p>No</p> | <p>The complainant should address their concerns to the relevant organisation or professional body that regulates the particular profession. This could include an individual's behaviour (e.g. attitude or rudeness).</p>  |
| <p><b>14. Complainant is unhappy with a decision taken by a professional/organisation that does not fall within the LGO's jurisdiction e.g. the Police decide not to pursue a criminal investigation; NHS decides not to provide specific medical treatment.</b></p> | <p>No</p> | <p>These decisions do not relate to the functions of an SAB or a Council and therefore are outside the LGO's jurisdiction to investigate. The complainant will need to raise their concerns with the relevant organisation.</p>   |

