



# SAFEGUARDING VULNERABLE ADULTS POLICY

PLAY THERAPY UK

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## **Introduction**

Play Therapy UK (PTUK) is fully committed to safeguarding and promoting the physical and emotional well-being of vulnerable adults. Recognising that therapists often work with individuals who may be at risk of harm, exploitation, or radicalisation, PTUK aligns its safeguarding practices with its Prevent Duty Principles.

This policy supports PTUK members working therapeutically with adults by providing guidance on safeguarding within the framework of the PTUK/PTI Ethical Standards. Members are advised to refer to this policy alongside the PTUK Ethical Framework for comprehensive safeguarding practices.

## **Purpose**

The purpose of this resource is to provide information for therapists and placement providers in respect of legal issues relating to safeguarding in the context of therapeutic work with vulnerable adults in England and Wales. The law is different in Scotland and Northern Ireland.

Throughout the British Isles, including the Isle of Man, an adult is defined as anyone aged 18 years or older. The legal definitions of 'vulnerable' are more variable but typically regard an adult as vulnerable who is:

- dependent on others for care or support in their everyday life;
- at risk of or currently experiencing neglect or abuse;
- unable to protect themselves from significant harm or exploitation.

Some or all these elements are present in how the law identifies situations in which adults are regarded as vulnerable and therefore requiring additional protection.

## **Key Safeguarding Principles**

The six principles of safeguarding, defined by the Care Act (2014), underpins the behaviours of employers for ensuring the safeguarding of children and adults at risk.

The six principles of safeguarding are:

- Empowerment: Children and Adults at Risks being supported and encouraged to make their own decisions and give informed consent.
- Prevention: It is better to take action before harm occurs.
- Proportionality: The least intrusive response appropriate to the risk presented.
- Protection: Support and representation for those in greatest need.
- Partnership: Local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse.

- Accountability: having a visible policy and statement of intent helps everyone in the organisation recognise their own accountability in the protection from and avoidance of abuse or harm.

### **Mental capacity and consent**

The Mental Capacity Act 2005 regards mental capacity as a person's ability to make rational, informed decisions. It was developed to protect the rights of vulnerable adults to make decisions for themselves and has created responsibilities for professionals to help adults to overcome obstacles in making or communicating their wishes. The legal presumption has switched from making untested assumptions that someone is incapable of making decisions for themselves: instead, the assumption has become that everyone can make decisions for themselves unless there are strong grounds to indicate the opposite.

There is no single, definitive test for mental capacity to consent; however, the assessment of it is based on a set of principles in which it is situation-specific and depends upon the ability of the person to:

- take in and understand information, including the risks and benefits of the decision to be made;
- retain the information long enough to weigh up the factors to make the decision; and
- communicate their wishes.

Protection of adults with mental incapacity is governed in England and Wales by the Court of Protection. The law relating to mental capacity issues is different in Northern Ireland and Scotland. Orders in England and Wales may all be commenced by application to the Court of Protection. They may be ended by court order, variation or discharge and subject to additional provisions.

### **Client confidentiality**

Confidentiality is critically important in working with adult clients who are accessing therapeutic services. Clients need to feel able to play out or discuss sensitive thoughts and issues without worrying that their confidences might be communicated to others in ways that could harm them by damaging their reputation or upsetting others.

*'To confide in someone is to put your trust in that person.'*

Confidentiality presupposes trust between two people within a community of at least three people. For example, confidentiality occurs when two people decide to restrict the communication of information, keeping it between themselves to prevent it being communicated to a third person or to more people.

In a professional relationship, 'confidentiality' means protecting information that could only be disclosed at some cost to another's privacy to protect that privacy from being compromised any further.

All that is necessary is that the professional is aware, or a reasonable person in her position would have been aware, that the information is private to the subject of that information (Pattenden, 2003: 13; Mitchel's and Bond 2021).

The law is developing to provide increasing protection for confidentiality, and this principle applies equally strongly to vulnerable adults. If the adult has mental capacity to enter into a contract, then confidentiality must form part of the contractual agreement made.

### **Contractual agreements with vulnerable adults**

A contract is a legally enforceable agreement with terms that may be explicit or implied. It does not have to be in writing, but it helps to have some written or otherwise recorded evidence of what is agreed.

The parties contracting will include the therapist and the client. They may also include those holding responsibility for a vulnerable adult through guardianship or a power of attorney. In addition, the organisation providing therapy might be included if the therapist is an employee. Clients, carers, and therapists may have different expectations about confidentiality, and contract terms should clarify issues such as mutual expectations and limitations on confidentiality.

Some essential contract terms can be clarified by providing the client and/ or their guardian, attorney, or carer with a leaflet to read in advance, which sets out the basic terms of the therapy offered, or by careful discussion with new clients at their intake assessment or first session.

Be careful about reliance on verbal contracts reached at the first session: vulnerable clients might be anxious or not able to concentrate, so may be less able to reach a considered agreement with the therapists or may fail to recall what was agreed.

A vulnerable adult client will need the mental and legal capacity to enter into a valid contract for **therapy related services** (please seek information relating to mental capacity).

Contracts for therapy-related services need to make clear to the client the status of client records and the length of time that the clinical records will be kept. It is vital to be clear with the client at the outset about the status of their records, because confidentiality law and data protection legislation may permit and/or require client access to client records, or sometimes third-party access in the case of vulnerable adults.

The law may allow access to medical or social care records by order of a court, or access may be required by those who have legal responsibility for the affairs or wellbeing of a vulnerable adult, for example under guardianship or powers of attorney.

A client who has the mental capacity to make their own decisions but is vulnerable for other reasons, for example, physical illness or victim status, may wish to have their confidentiality protected. In such cases, the client is entitled to know of any limitations on their right to confidentiality that may be imposed by the law, or by the context in which the therapy service is provided.

Typically, confidentiality forms an important element of the contract, which is governed by both statute and case law.

### **Information sharing**

Inter-agency sharing of information is increasing to the extent that it has now become the norm. Therapists working in the context of social care, healthcare, education and other services may need to share information for the protection of the public or the safety and welfare of a vulnerable client or others, and to enhance the quality of the service provided.

Information will usually be shared with the full explicit consent of the client. In other situations, in the absence of client consent, the public interest may require the therapist to exercise their discretion in disclosing information, for example where there is an imminent risk of serious harm to the client or others.

In these situations, the therapist's discretion to disclose information in the public interest is protected by the courts, in that they will not enforce a client's right to confidentiality (i.e., the courts will not punish the therapists for disclosure) in cases where the therapists acted in good faith, and the public interest was protected by making the disclosure.

For discussion of ways to approach decision making when faced with dilemmas about confidentiality and disclosure, think about the importance of sharing with your supervisor: in addition, an anonymous 'what if' question can be posed to the PTUK clinical team at [dsl@ptukorg.com](mailto:dsl@ptukorg.com).

### **Data protection and case records**

Personal information (data) should be protected (i.e., treated with respect and confidentiality). In the UK the legal issues applicable to the holding of personal data are governed by the United Kingdom General Data Protection Regulation (UK-GDPR), the Data Protection Act 2018, the Freedom of Information Act 2000 and other relevant subsidiary legislation. Therapists will need to be familiar with their obligations under the current law. The UK-GDPR and data protection legislation apply to records containing personal data, and there are additional protections for sensitive personal data, whether the information is held electronically or in any other form.

The processing of personal data, including sensitive personal data, is protected under this law. The operation of the law relating to data protection in **England** is administered by the Information Commissioner, and the Information Commissioner's Office (ICO) provides

information, advice and support through telephone, email and postal contact with the office, publications and its website at <https://ico.org.uk>.

To contact the ICO for **Scotland**, email: [scotland@ico.org.uk](mailto:scotland@ico.org.uk); for **Wales**, email: [wales@ico.org.uk](mailto:wales@ico.org.uk); and for **Northern Ireland**, email: [ni@ico.org.uk](mailto:ni@ico.org.uk).

Failure to register with the ICO when required to do so is an offence of strict liability, punishable with fines. Therapists deciding whether or not to register, should consult the relevant ICO for assistance or answer the self-assessment questions on the website at [www.ico.org.uk](http://www.ico.org.uk) ([Registration self-assessment | ICO](#)).

Therapists working in the context of any government organisation are likely to be contractually bound to comply with the data protection legislation because of the content and the context of their work, irrespective of their own personal methods of data processing.

The manner of processing has an impact on payment, as the ICO's registration fee applies to digital processing, **but the data protection law applies to all forms of processing, including handwritten notes.**

'Processing' is wider than clinical notes, so communications within a therapy related service (in whatever context it takes place), particularly appointments or other data related to providing and receiving services, could constitute 'personal data and/or sensitive personal data'.

Under data protection law, vulnerable adults with capacity to make their own decisions have a right to see their own records, subject to certain safeguards. If the client does not have the capacity to make their own decisions, then those with legal responsibility for them (e.g. legal guardians or those with powers of attorney for the finances or the health and welfare of the client) may have the right to make decisions relevant to the counselling-related service, and under data protection law may also have the right to see all or part of the client's counselling records. There are certain exceptions to allow the therapists to maintain confidentiality to safeguard the health or safety of the client or others, or to safeguard a police or other investigation in the context of legal protection.

### **Confidentiality, managing risk and the therapist's duty of care.**

All clients take risks when seeking the help of any professional and do so in the hope that the benefits will outweigh any risks. Vulnerable adults are arguably exposed to heightened levels of risk because of their dependence on their therapists. When a client confides in a therapist the risk is that the confidence will be broken, and confidential material is communicated to others in ways that the client either does not want or has not agreed to.

From the therapist's point of view the responsibility to protect confidences may compete with other responsibilities to the client, for example a concern to protect them from preventable harm inflicted on themselves or by others. Therapists working with vulnerable adults may

experience these dilemmas more acutely because of the heightened vulnerability and dependence of their clients.

The therapists' duty of care to vulnerable adults as clients includes a duty of confidentiality to the vulnerable adult client, both professionally and in the law of contract and in Practical law/Tort.

Tort law is the body of laws that enables people to seek compensation for wrongs committed against them. When someone's actions cause some type of harm to another, whether it be physical harm to another person, or harm to someone's property or reputation, the harmed or injured person or entity may seek damages through the court. The Tort Law applies to the duty of care of a professional person to their clients, which includes both expertise and confidentiality.

Confidentiality for a vulnerable adult client may be limited by legal safeguards, which may impose a duty of disclosure where the therapist has a serious concern for the welfare and safety of their client or others. For further discussion, see Bond and Mitchels (2015) *Confidentiality and Record Keeping in Counselling and Psychotherapy*.

## **Referrals and disclosures**

Therapists practicing in Play and Creative Arts therapy have an ethical responsibility to act within their range of qualifications and expertise. PTUK's Ethical Framework should be referred to alongside this policy document.

On occasions therapists may receive a referral asking them to work with vulnerable adults, but they lack the expertise or experience to do so. When working with vulnerable adults, therapists can find themselves out of their depth unless they have been trained in this area of work. In these cases, an onward referral is ethically both appropriate and necessary.

Therapists may be working with a vulnerable adult client who discloses abuse or another safeguarding need. In this situation we have to assess:

- the seriousness of the likely harm;
- how imminent the risk is to the vulnerable adult or others;
- the effectiveness and impact of disclosure;
- whether we are referring with client consent or making a referral without consent in accordance with a legal responsibility (e.g. in obedience to statute or a court order), or a disclosure made to protect the client's vital interests or in the public interest.

Disclosures and referrals may be necessary in the interests of the vulnerable adult client, or for the protection of other vulnerable adults.

Where a disclosure has to be made in the public interest in the context of therapy, the mechanism is set out in *Information sharing – advice for safeguarding therapists* (DfE 2015, updated 2018). Wherever possible, disclosures should be made with the consent and co-operation of the vulnerable adult concerned.

However, if there is a serious risk to the client or others, or if the client is not competent to make their own decisions and the consent of those with legal responsibility for the client is required, there are some safeguarding situations where seeking prior consent from carers or others might put the client or others at greater risk of significant harm - or risk jeopardising a police investigation or social care enquiry. An example may be where the client's carers are the alleged perpetrators of abuse of the client or present a risk of harm to the client or to another vulnerable person. In these circumstances the therapist should first seek advice from the appropriate legal advisor, the police or the social care legal advisor of the local authority.

### **Working with vulnerable adults in the context of social care**

The term 'social care agencies' is used to mean inclusion of all those agencies working with, or providing community care for, or working with adult clients who are elderly or vulnerable, or who have special needs, mental illness or disability. This includes therapists working with individuals who are vulnerable for any other reason and may include clients who are socially vulnerable, for example those who are refugees or homeless.

### **Professional registration**

Clients may feel greater confidence in a therapist who is registered with an appropriate professional body. Membership of a professional body provides the public with the knowledge that the therapists adhere to a code of professional ethics and conduct, with redress in the form of complaints procedures and professional conduct and disciplinary procedures.

Registration provides a further level of confidence for clients, in confirming that the therapists has also achieved a certain level of qualification and expertise. For example, PTUK members registered with the Professional Standards Authority have achieved a certified level of professional competence.

### **Safeguarding Complaint about a PTUK Member**

PTUK members work in isolation unsupervised with vulnerable adults and follow and implement PTUK's Ethical Framework when working therapeutically with adults.

Where a member of the public reports concerns about the behaviour and/or treatment of a PTUK member towards a vulnerable adult, PTUK has a duty to act on this information by following their Complaints and Concerns Procedure. Further information is available in the PTUK Complaints and Concerns Procedure [Complaints & Concerns Procedure - Play Therapy UK](#).

### **Further information**

- The Care Act (2014) [Care and support statutory guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/care-act-2014-statutory-guidance)
- The Mental Capacity Act 2005 [Mental Capacity Act: making decisions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/mental-capacity-act-2005)
- W v Edgell and others [1990] 1 All ER 835 [Microsoft Word - W v Egdell.docx \(globalhealthrights.org\)](https://globalhealthrights.org/wp-content/uploads/2019/05/Microsoft-Word-W-v-Edgell.docx)
- Tort Law [Tort Law - Definition, Examples, Cases, Processes \(legaldictionary.net\)](https://legaldictionary.net/tort-law-definition-examples-cases-processes/)
- Bond and Mitchels (2015) *Confidentiality and Record Keeping in Counselling and Psychotherapy*. London, UK: Sage Publications
- Department for Education (2015, updated 2018) *Information sharing – advice for safeguarding therapists* [Information sharing advice for safeguarding practitioners - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/information-sharing-advice-for-safeguarding-practitioners)

**This policy links to:**

PTUK Complaints and Concerns Procedure  
PTUK Ethical Framework  
PTUK Prevent Duty

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