



# Safeguarding Policy and Legal Framework

- A. Policy and Legal Statement**
- B. Appendix – Key Legislation**

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# A. Policy and Legal Statement

## 1. Aim

1.1. Business in the Community is committed to, and has a duty to, safeguard and promote the welfare of the children, young people and adults at risk who use its services or with whom it comes into contact. It is essential therefore that the working environment and culture within Business in the Community promotes that aim. The Safeguarding Framework aims to make clear what employees and volunteers must do when they have identified concerns with regards to a child, young person or adult who may be at risk of abuse. The Framework reflects current legislation, accepted best practice and complies with government guidance from Working Together to Safeguard Children 2015 and The Care Act 2014.

Business in the Community's safeguarding arrangements are underpinned by the following key principles:

Safeguarding is everyone's responsibility. For those children, young people and adults at risk that we work with to be safe and for our programmes of work to be effective each employee and volunteer must play their full part in safeguarding children, young people and adults at risk;

For this to be effective it must be based on a clear understanding that the needs and views of children, young people and adults at risk are paramount;

Ultimately, effective safeguarding of children and adults at risk can only be achieved by putting them at the centre of our work, and by each employee and volunteer playing their full part in working together to meet the needs of our most vulnerable children and adults that we work with;

Children, young people and adults at risk want to be respected, their views to be heard, to have stable relationships with professionals and volunteers which are built on trust, and to have consistent support provided for their individual needs.

All employees and volunteers working with children, young people or adults at risk must demonstrate respect at all times; listening to what they have to say; taking their views seriously; and working with them collaboratively when deciding how to support their needs.

1.2. Important: Users of this Policy should always be mindful of its application in relation to the children, young people and adults at risk that we work with. Always consider how best the child/young person/vulnerable adult can be supported and the potential effect the application this Policy may have on the life of a child/young person/adult at risk.

To ensure that we do the best we possibly can for the children/young people/ adults at risk that we work with we will embrace multi-agency working; where we work with other organisations who are key workers for our clients we will always discuss with them the best way forward to safeguard the child/young person/ adult at risk.

1.3. The principles underpinning this policy are developed with regard to UK legislation. They apply across the organisation, irrespective of location.

1.4. For our programmes that take place in countries outside the UK, they are delivered in partnership with local organisations and we expect our partners to apply the same safeguarding standards as our partners in the UK. Our partners in other countries develop their own organisational safeguarding policies to take local cultural context into consideration.

## 2. Legal and Policy Context

2.1 There are a number of key pieces of legislation and practice guides which set out the framework for all agencies working with children, young people and adults at risk. These vary according to the nation in which we are operating. In summary they are:

- The Children Act 1989
- The Sexual Offences Act 2003
- The Children Act 2004
- The Common Assessment Framework 2004
- The Children and Young Persons Act 2008
- Safeguarding Disabled Children: a practice guide 2009
- The Children and Family Act 2014
- Working Together to Safeguarding Children 2015
  
- Mental Capacity Act 2005
- Protection of Freedoms Act 2012
- The Care Act 2014
- Clinical Governance and Safeguarding, Dept. of Health 2010
- Counter-Terrorism and Security Act 2015
- The Prevent Duty

Where relevant, local legislation is applied in Northern Ireland, Scotland and Wales.

This policy is consistent with the relevant legislation.

## 3. Policy Statement

3.1. Business in the Community's values commit us to be focused, passionate, pioneering, collaborative and to act with integrity. We state that we will act with integrity, respect each other, respect our partners' commitments, be consistent and fair, and be honest and transparent. To ensure we are fulfilling our values we will ensure that all clients we work with are protected and listened to in regards to their safety.

We will also ensure that when we develop and deliver our programmes they will be set up in a way which protects children/young people and adults at risk from abuse.

We will act to empower, prevent and protect by working in partnership, ensuring that we recognise and take action in relation to our accountability to partners and clients. Business in the Community provides a range of services across the United Kingdom and employees and volunteers engage with children, young people and adults at risk who require extra support to be healthy and safe and to achieve their potential.

3.2. The Safeguarding Framework demonstrates Business in the Community's commitment to keeping children, young people and adults at risk safe. The set of safeguarding guidance documents within this Framework make it clear for employees and volunteers that children, young people and adults at risk must be protected and show that Business in the Community is taking safeguarding seriously.

3.3. The principles of safeguarding are given a high priority within Business in the Community. To reinforce this all employees and volunteers, including Trustees, at Business in the Community have an obligation and responsibility to safeguard and promote the well-being of children, young people and adults at risk by being responsible for the quality, efficiency and effectiveness of their work. All employees and volunteers should understand and be aware of their safeguarding duty as set out in this Framework and the associated guidance.

3.4. When employees or volunteers identify children, young people and adults who are not safe or at risk, they must:

3.4.1. act early

3.4.2. do not act in isolation - conversations with relevant managers and partners must take place and assessments made leading to shared understanding of decisions and actions to be taken, which are clearly communicated to relevant employees, managers and partners.

3.5. All employees and volunteers need to be aware of and report concerns related to protecting, safeguarding and promoting the welfare of the children/young people and adults at risk with whom they work or with whom they come in contact.

3.6. This Safeguarding Framework brings together guidance for the following areas of safe practice:

- Corporate Management Accountability
- Child Protection Processes / Making a Referral to Social Care
- Adults at Risk of Abuse / Making a Referral to Adult Social Care
- Allegations regarding employees and volunteers
- Technology and E-Safety Incidents
- Recording and Records Management

3.7. Other Policies, Flowcharts & Forms related to safe practice across the organisation which may also apply and should be considered are as follows:

- Recruitment and Selection Policy
- Disclosure and Barring Checks
- Induction, on-going training and development
- Code of Conduct
- Health and Safety
- Whistle Blowing
- Data Protection

## B. Appendix – Safeguarding Policy: Key Legislation

### 1. Children and Young People

Article 19 of the UN Convention on the Rights of the Child states that “every child should be protected from abuse”.

There are a number of key pieces of legislation which set out the UK framework for agencies working with children. Contained within these are specific regulations relating to England and Wales<sup>1 2</sup>. These are:

#### 1.1. The Children Act 1989

- 1.1.1. This Act is the foundation on which the protection of children is based. Of paramount importance throughout is the ‘welfare of the child’. In essence this means that the need to protect children comes before everything else and this principle needs to be at the forefront of all of our work. This may, at times, cause problems and raise questions for employees and volunteers. However, the principle remains that the protection of children from abuse overrides all other considerations (including confidentiality).
- 1.1.2. The Children Act 1989 introduced the concept of significant harm as the threshold which justifies compulsory intervention in family life in the best interest of children.
- 1.1.3. The salient points of the Act, which employees and volunteers need to be familiar with, are:

#### **Section 17:**

- (1) It shall be the general duty of every local authority:
  - (a) To safeguard and promote the welfare of children within their area who are in need; and
  - (b) So far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children’s needs.

#### **Section 20:**

- (1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of:
  - (a) There being no person who has parental responsibility for them;
  - (b) Their being lost or having been abandoned;
  - (c) The person who has been caring for them being prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care.

#### **Section 47:**

- (1) Where a local authority:
  - (a) Is informed that a child who lives, or is found, in their area is the subject of an emergency protection order, or is in police protection; or
  - (b) Has a reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer significant harm, the authority shall make, or

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<sup>1</sup> Relevant additional legislation for Scotland can be found in The National Guidance for Child Protection in Scotland 2014

<sup>2</sup> Relevant additional legislation for Northern Ireland can be found in The Children (Northern Ireland) Order 1995

cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.

### **Section 31 (9)**

- 'Harm' means ill-treatment or the impairment of health or development, including for example impairment suffered from seeing or hearing the ill-treatment of another;
- 'Development' means physical, intellectual, emotional, social or behavioural development.
- 'Health' means physical or mental health; and
- 'Ill-treatment' includes sexual abuse and forms of ill-treatment that are not physical

## **1.2. The Sexual Offences Act 2003**

1.2.1. The Act is split into two parts, the first devoted to sexual offences, creating new offences and widening the scope of existing ones, and the second covering offenders, with an emphasis on the protection of vulnerable individuals. The Act makes changes to the following:

- Rape and Consent;
- Child Sex Abuse;
- Prosecutions of persons under 18;
- How the law affects those who advise children;
- Abusive parents and carers;
- Sexual Offences involving the Internet and 'grooming';
- Monitoring convicted sex offenders.

1.2.2. There are a series of new offences and protections under the Act, which include:

- Trafficking persons for the purposes of sexual exploitation;
- The prevention of children being abused through prostitution and pornography;
- The protection of adults with a mental disorder from sexual abuse;
- and a new offence of voyeurism. (See also the **Sexual Offences Act Guidance**)

## **1.3. The Children Act 2004**

1.3.1. The Children Act, 2004 was a direct result of the findings by Lord Laming into the death of Victoria Climbié.

1.3.2. The salient points of the Act, which employees and volunteers need to know, are:

**Section 10** of the Act embodies:

- (a) The need for co-operation between local authorities and **all** agencies working with children to improve their well-being;
- (b) The duty of local authorities to take account of the views, wishes and feelings of children and young people involved in child protection investigations and when providing services to children in need.

**Section 11** of the Act states that:

- (a) Each person and body to whom this section applies (this includes Local Authorities, the NHS and the police) must make arrangements for ensuring that

- their functions are discharged having regard to the need to safeguard and promote the welfare of children; and
- (b) Any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need (this would include voluntary agencies).

1.3.3. Local Safeguarding Children Boards were established under this legislation.

#### **1.4. Common Assessment Framework (CAF) 2004**

1.4.1. All local authority areas are expected to implement the Common Assessment Framework (CAF).

1.4.2. What is the CAF?

Under the *Help Children Achieve More* initiative, the Common Assessment Framework for children and young people presents a key part of the strategy to shift the focus from dealing with the consequences of difficulties in children's lives to preventing them from happening by engaging in assessments and services at an early stage. The Department for Education (DfE) website states:

*"The CAF has been developed for use by practitioners in all agencies so that they can communicate and work more effectively together. Information will follow the child and build up a picture over time. The CAF will encourage greater sharing of information between practitioners, where consent is given."*

Once a child is seen to be in need of a CAF a lead professional, who has responsibility for co-ordinating the functioning of the CAF, will be appointed. Business in the Community's employees may be called upon to undertake CAF 'lead professional' roles; however, these should not be accepted without prior agreement between the practitioner and their line manager.

#### **1.5. Children and Young Persons Act 2008**

1.5.1. The purpose of the Act is to extend the statutory framework for children in care in England and Wales and to ensure that they receive high quality care and services which are focused on and tailored to their needs. It will be for the Secretary of State for Children, in conjunction with other relevant ministers, to decide how and when the provisions are enacted. (**Family Law Week Guidance**)

#### **1.6. Safeguarding Disabled Children: a practice guide published July 2009**

1.6.1. This document sits alongside Working Together and offers guidance to LSCBs and practitioners from all disciplines working with disabled children. (See also Safeguarding Disabled Children)

#### **1.7. Children and Family Act September 2014**

1.7.1. The Children and Families Act 2014 created changes to the law to give greater protection to vulnerable children, better support for children whose parents are separating, a new system to help children with special educational needs and



disabilities, and help for parents to balance work and family life. The Act introduced changes to:

- Adoption and contact
- Family Justice systems and processes
- Children and young people in England with Special Educational Needs or Disabilities (SEND)
- Childcare changes
- Welfare of children
- The Children's Commissioner
- Statutory rights to leave and pay
- Time off work. Ante-natal care etc.
- Right to request flexible working

1.7.2. The reforms for children in care have now be implemented, including giving children the choice to stay with their foster families until their 21st birthday

1.7.3. From the 1<sup>st</sup> September 2014 Statements of Special Education Needs and Learning Disability Assessments were replaced by Education, Health and Care Plans (EHCP). The plans aim to make sure that all the support that a child or young person with SEND, not just their education is agreed in one place. These plans will support young people up to 25 years old if they are still in education or training and would benefit from a plan.

### **1.8. Working Together to Safeguard Children 2015 <sup>3</sup>**

1.8.1. Working Together sets out how organisations and individuals should work together to safeguard and promote the welfare of children and young people in accordance with the Children Act 1989 and the Children Act 2004. It is important that all those working to safeguard children and young people understand fully their responsibilities and duties as set out in primary legislation and associated guidance.

1.8.2. Procedural advice and guidance contained in '*Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*' sets out the expectations of those working with children to ensure their safety. It should be seen as a day-to-day working statutory guidance document for managers and practitioners in the Children's Society's Children & Families Directorate, who should read and follow it so that they can respond to individual children's needs appropriately.

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<sup>3</sup> Subject to amendments, in line with The Children and Social Work Act 2017, elements of which apply to England, Wales and Scotland, further detail can be found at <http://www.legislation.gov.uk/ukpga/2017/16/notes/division/2/index.htm>

## 2. Adults at Risk of Abuse

There are a number of key pieces of legislation which set out the UK framework for all agencies working with adults at risk. Contained within these are specific regulations relating to England and Wales<sup>4 5</sup>. These include:

### 2.1. Mental Capacity Act 2005

2.1.1. The Mental Capacity Act (MCA) 2005 applies to everyone involved in the care, treatment and support of people aged 16 and over, living in England and Wales who are unable to make all or some decisions for themselves. The MCA is designed to protect and restore power to those vulnerable people who lack capacity. The MCA also supports those who have capacity and choose to plan for their future – this is everyone in the general population who is over the age of 18.

2.1.2. The Mental Capacity Act<sup>6 7</sup> sets out a number of basic principles that must govern all decisions taken in relation to adults lacking capacity. A brief list is given below:

- A presumption of capacity. Adults are assumed to have the capacity to make decisions on their own behalf unless it is proven otherwise
- Maximising decision-making capacity. Everything practicable must be done to support individuals to make their own decisions, before it is decided that they lack capacity
- The freedom to make unwise decisions. The fact that an adult makes a rash, unwise or impulsive decision is not in itself evidence of lack of capacity.
- Best interests. Where it is determined that an adult lacks capacity, any decision or action taken on his or her behalf must be in his or her best interests.
- Less restrictive alternative. Whenever a person is making a decision on behalf of an adult who lacks capacity, he or she must consider if it is possible to make the decision in a way that is less restrictive of that person's fundamental rights or freedoms.

### 2.2. The Care Act 2014

2.2.1. This Act has six guiding principles:

1. empowerment - presumption of person-led decisions and informed consent
2. prevention - it is better to take action before harm occurs
3. proportionality - proportionate and least intrusive response appropriate to the risk presented
4. protection - support and representation for those in greatest need
5. partnerships - local solutions through services working with their communities
6. accountability - accountability and transparency in delivering safeguarding.

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<sup>4</sup> Relevant additional legislation for Scotland can be found in The Adult Support and Protection (Scotland) Act 2007

<sup>5</sup> Relevant additional legislation for Northern Ireland can be found in The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

<sup>6</sup> In Scotland this is governed by The Adults with Incapacity (Scotland) Act 2000

<sup>7</sup> In Northern Ireland this is governed by The Mental Capacity Act (Northern Ireland) 2016

## **2.3. The Care Act 2014 Part 1**

- 2.3.1. Part 1 of the Care Act pulls together threads from over a dozen different Acts in a single, modern framework for care and support for Adults. It prioritises individual wellbeing for adults and care and support over the age of 18 years, with a particular focus on person-centred practice and outcomes, putting people more in control of their care and support.
- 2.3.2. The intended outcome of the legislation is that people's wellbeing, needs and goals are prioritised so that individuals will no longer feel like they are battling against the system to get the care and support they need. For disabled young people aged 18-25 years there will be an impact from both the Care Act and the Children and Families Act 2014. The Act:
1. Is outcomes-focused
  2. Includes a duty to promote wellbeing:
    - a) Control by the individual over day to day life
    - b) Participation in work, education, training or recreation
    - c) Social and economic wellbeing
    - d) Domestic, family and personal relationships
    - e) Suitability of living accommodation
    - f) The individual's contribution to society.
  3. Care and support works to actively promote people's wellbeing and independence, rather than waiting for people to reach a crisis point.
  4. Duty to provide or arrange for the provision of services, facilities or resources that contribute towards preventing or delaying the development of care and support needs.

### 3. Radicalisation

#### 3.1. **Counter Terrorism and Security Act 2015**

3.1.1. Counter Terrorism and Security Act 2015 outlines that authorities should place 'due regard' as used in the Act, which means that authorities should place an appropriate weight on the need to prevent people being drawn into terrorism when they consider all the other factors relevant to how they carry out their other functions. For Business in the Community this means that they will:

- prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support; and
- work with partners and sectors where there are risks of radicalisation that need to be addressed

#### 3.2. **The Prevent Duty**

Business in the Community has a duty to prevent and report any concerns regarding potential radicalisation. The UK government has developed The Prevent Duty guidance<sup>8</sup> to support individuals working with Children/young people/adults at risk across the UK in regards to dealing with concerns regarding radicalisation

3.2.1. The definition of radicalisation and extremism are given below and are from the 'Prevent Strategy':

3.2.2. Radicalisation – 'the process by which a person comes to support terrorism and forms of extremism leading to terrorism' (Prevent Strategy) extremism – 'vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect tolerance of different faiths and beliefs; and/or calls for the death of members in our armed forces, whether in this country or overseas (Prevent Strategy)

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<sup>8</sup> Prevent Duty Guidance <https://www.gov.uk/government/publications/prevent-duty-guidance>

In Northern Ireland this is covered by the Counter Terrorism and Security Bill

<https://www.gov.uk/government/collections/counter-terrorism-and-security-bill>

In Scotland this is covered by the Prevent Duty Guidance for Scotland

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/445978/3799\\_Revised\\_Prevent\\_Duty\\_Guidance\\_\\_Scotland\\_V2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445978/3799_Revised_Prevent_Duty_Guidance__Scotland_V2.pdf)