

# **Care Act 2014 – S42 and S44**

## **Pathway Guidance for Deceased and living People.**

### **When is it Section 42?**

The Care Act 2014, Section 42 (2) requires a local authority to make statutory enquiries, or cause others to do so, where it has reasonable cause to suspect that an adult with care and support needs is experiencing, or is at risk of, abuse or neglect and as a result of those care and support needs is unable to protect themselves against the abuse/neglect, or the risk of it.

A S42 (2) enquiry establishes whether any action needs to be taken to prevent or stop abuse or neglect, and if so, what and by whom.

The Care Act 2014 moved safeguarding adults to a preventative, proportional, outcome focused model where the person's wishes and feelings directly inform the outcomes for the adult. The purpose of safeguarding adult's enquiries is to prevent or stop abuse from occurring, and to safeguard adults in a way that supports them to make choices and have control over how they want to live.

### **When is it Section 44?**

The Care Act 2014, sections 44 (1), (2) and (3), requires that a Safeguarding Adult Review (SAR) is undertaken where an adult with care and support needs has died or suffered serious harm, and it is suspected or known that the cause was neglect or abuse, including self-neglect, and there is concern that agencies could have worked better to protect the adult from harm. Under section 44 (4) a SAR may be undertaken for other cases concerning adults with care and support needs (referred to as a discretionary SAR).

The purpose of a SAR is to seek to determine what the relevant agencies and individuals involved in a case might have done differently that could have prevented harm or death, so lessons can be learned from the case, and those lessons are applied to future cases to prevent similar harm from occurring again.

### **What happens when concerns are raised relating to deceased / living people?**

The principle behind S42 is the promotion of wellbeing and the prevention agenda and therefore does not apply to deceased individuals.

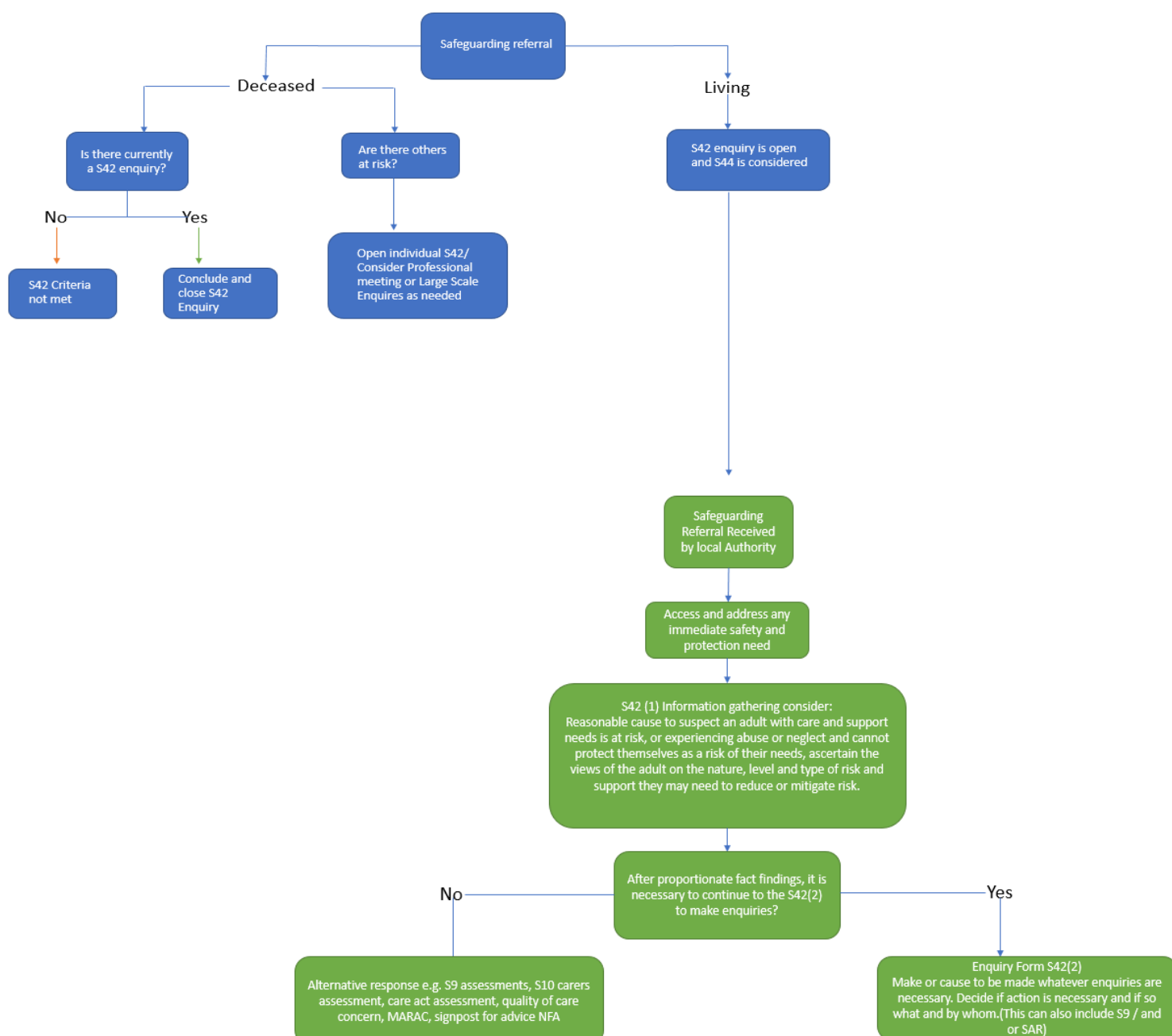
When an adult is living and there is a S42 enquiry opened then a S44 referral can also be made if a S42 enquiry has sufficient evidence that contributed to factors of serious harm occurred to an adult at risk where neglect or abuse is suspected or known to contributing factors of their abuse and neglect and this is escalated with a Service Manager for consideration of raising a SAR referral of the living adult. The same can be followed up once the completion of the safeguarding enquiry when there are several factors/ actions identified meeting the criteria for a living person to raise S44 SAR referral.

When an adult dies and there is suspicion, or it is known that they suffered from recent abuse or neglect, or that it was a contributory factor in their death, the agencies with immediate primary responsibility are the police and coroner. Coroners are independent judicial officers who are responsible for investigating violent, unnatural, or unexplained deaths. The police response will depend on whether criminal offences are suspected and on other factors such as whether anyone else is at immediate risk of harm.

Where an adult is already subject to S42 enquiries and subsequently dies, no new enquiries should be opened, and usual processes to complete and close the open enquiry should be followed. Where the death appears to be related to the original S42 enquiry, outcomes may include:

- Referral for an internal audit
- Referral for an external partner Serious Incident process
- Escalation to Service Manager for consideration of SAR

**In all cases, the risk to others should be considered and enquiries should be undertaken on behalf of those adults that fulfil the S42 criteria, but not that of the deceased.**



## **The relationship between Section 42 Enquiries and Section 44 Safeguarding Adults Reviews**

The purpose of Section 42 enquiries is to decide what action needs to be taken to protect the person. It therefore does not apply to the situation where someone has died and may have been abused or neglected before that. However, if the circumstances of the death suggest there are reasons to be concerned about risk to other adults, enquiries may need to be made to decide whether action needs to be taken to protect them.

Section 44 of the Care Act provides for Safeguarding Adult Reviews to be carried out after someone has died, if the statutory safeguarding partners know or suspect the death resulted from abuse or neglect, and there is reasonable cause for concern about how agencies or other persons with relevant functions worked together to safeguard the adult.

A SAR can also be conducted when an adult has not died, but the Board knows or suspects that the adult has experienced serious abuse/neglect. In the context of SARs this would include situations where a person would have been likely to have died but for an intervention or has suffered permanent harm or has reduced capacity or quality of life (whether because of physical or psychological effects) as a result of the abuse or neglect.

### **SAR Referral**

SAR referrals should be made to the Northamptonshire Safeguarding Adults Board. The statutory safeguarding partners will then consider whether the criteria for a Safeguarding Adults Review are met under S44.