CONCERN FOR WELFARE: MEDICAL SUPPORT (RIGHT CARE RIGHT PERSON)

Owning Department: Crime, Safeguarding & Incident Management Command

Governing Policy: Concern for Welfare Policy

Department SPOC: D/Supt Corporate Improvement & Innovation Team

Risk Rating: Medium High

Legal Sign Off: N/A

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Other Related Documents:

- Royal College of Emergency Medicine: Guidance on the Mental Capacity Act (MCA)

1. Summary

1.1 This procedure accompanies the Concern for Welfare policy and assists officers and staff to make operational decisions when responding to calls for service involving medical support, physical and mental health, to members of the public.

2. Aims

2.1 The overall aim of this procedure is to ensure police responses in respect of medical support are proportionate and in compliance with our legal duties. Legal powers are included at Appendix A. It is important to be robust and ensure that police are not missing critical information that would significantly change our assessment. As with all our calls for service, our risk assessment model THRIVE will be applied – for further information see the CCR Call Grading and THRIVE policy. A summary explanation of THRIVE is also provided in Appendix B.

2.2 The College of Policing Code of Ethics requires us all to do the right thing in the right way. It also recognises that the use of discretion in policing is necessary but in using discretion, states that you should, "take into account any relevant policing codes, guidance, policies and procedures into consideration."

2.3 All officers and staff must be aware of the content of the Code of Ethics. This procedure will enable contact officers and police officers within the Force Control Room (FCR) to determine the specific concern and ensure that the right person with the appropriate skills, expertise and knowledge

responds and that, where appropriate, police officers are acting within their police powers.

2.4 This procedure does not cover specific areas such as 'missing persons' or investigating crime, which have their own policy/procedure guidance.

3. Applicability

3.1 Unless otherwise stated, this procedure applies to all police officers (including officers of the Special Constabulary) and all members of police staff (including police support volunteers).

4. Introduction

4.1 The police service is being contacted by private citizens and partner agencies to assist them or others with a medical matter, both in relation to physical and mental health.

1.1 The police do not generally owe a duty of care at common law to protect individuals from harm, either harm caused by themselves or others, however:

- The police may owe a duty of care to protect persons from harm where the police have assumed responsibility to care for them, or where the police have created (directly or indirectly) the risk of harm.
- The police may owe responsibility to take reasonable steps to assist where there is a real and immediate risk to the life of a person, or a real and immediate risk of that person being subject to serious harm or other inhumane treatment. The risks of harm where a duty will arise on the police will generally, but not always, be from the criminal acts of a third party.

4.2 This procedure will provide clarity to the police and its partners on when a medical matter will, and will not, become a police responsibility to respond. The legal duties of care and liabilities towards an individual **cannot be passed to the police unless the Police accept that responsibility**. In such cases where responsibility is not accepted the duty of care will remain with any partner agency or individual concerned.

4.3 This procedure does not seek to avoid the police's responsibility to deal with core policing matters. These are:

- To prevent and detect crime
- To keep the King's peace, and
- To protect life and property.

4.4 However, these are not medical calls that give rise to a duty to act but are simply reflections of the usual business of policing. When the police do respond to a request for medical support that should be taken as an assumption of responsibility of care for an individual.

4.5 A request for medical support can be initiated by a private individual and this policy makes it clear that where an individual is unable, due to their circumstances, to seek the assistance of an ambulance or emergency healthcare provider, the police will assist. The calling of an ambulance by the Force Control Room (CCR) on behalf of someone does not create a duty of care on the police.

5. Police Powers

5.1 This procedure should be viewed in the context of ECHR considerations around individual's right to life, right to privacy, right to liberty, right to freedom of movement, freedom of expression, and right to protection of the law.

5.2 The duty to act will arise when police knew or ought to know of a real and immediate risk to life to a person or group of persons, even if that person, or group of persons, is not specifically identified. The fact that the person/group is/are known to exist might be enough to trigger the duty.

5.3 In accordance with what is set out above, the police will only attend a medical call for service if:

a) An ambulance has been called by the person themselves or the CCR, and
b) The ambulance service are unable to respond in a timely manner, and
c) An Article 2 Human Rights Act risk to life exists.

5.4 Unless this threshold is reached the police have no duty to take action and will not respond.

6. Implementing this Procedure

6.1 In order to continue to respond appropriately to medical calls that warrant our attention, we will adopt a robust system to clearly identify them. This will include our approach to attendance and legal duty of care and thereafter our process for discharging that duty of care in a lawful manner. The following approaches will be adopted:

- Call for service into the Force Control Room for a medical matter only.
- Police use of S136 Mental Health Act.
- Police attend mental health call, no injury and voluntary patient.
- Police attend mental health call, physical injury (self-harm) and voluntary patient.

6.2 These are explained in more detail below.

Call for Service into the Force Control Room for a medical matter only

6.3 Call to attend a medical matter received in the CCR. Caller or ambulance call the control room to inform no one attending or undue delay.

a) If Article 2 Human Rights Act (HRA) and no ambulance available, the police will attend.

b) If not Article 2 HRA the control room will escalate back to ambulance and re-THRIVE response. Police will not take responsibility to resolve. Ambulance informed and log closed.

c) In deciding on point b) above, the police will consider all the circumstances of the incident and in very serious cases of injury and for the safety and care of a person, the police can still attend following a THRIVE and use of the NDM. It is expected these situations will be rare. In cases of serious injury involving a third party, or industrial accident, the expectation is that we will attend.

6.4 Cases involving mental health issues can require the support of police officers using their powers under the Mental Health Act and the Mental Capacity Act, as well as following the guidance within Joint Agency Protocols for the Partnership Delivery of Mental Health Services across Suffolk.

6.5 Where a concern for welfare request is made, the RCRP concern for welfare toolkit is designed to assist decision making and should be utilised. The officer/staff member retains the ultimate discretion and should make a record of their decision-making and refer to a supervisor where appropriate to do so.

Police use of S136 Mental Health Act

6.6 Police attend mental health call for service – officer at the scene calls Mental Health Services to consult:

- Officers to let the person speak directly to Mental Health Services.
- If person is unable to speak to Mental Health Services, the police will do so.
- The police will always speak to Mental Health Services as well as the person to ensure correct understanding of the advice and guidance provided.
- The police will always create a duty of care through this process of consultation.

6.7 Police use S136 powers following consultation with Mental Health Services. Where practicable a supervisor should be consulted prior to use of S136 powers.

6.8 Where transport is required and ambulance called but no ambulance free within 30 minutes:

- Control room supervisor / Oscar 1 escalate to ambulance and re-THRIVE.
- If still no ETA or outside 30 minutes, Oscar 1 authority to use police vehicle.

6.9 Police arrive at a Mental Health Place of Safety (PoS) for handover – risk assessment cannot be agreed:

- NHS must expressly agree to accept the person.
- If no Mental Health Services staff to do handover with, the escalation process to be used after 30 minutes.
- If no agreement on risk assessment, the escalation process is to be used (see Appendix D).

<u>Police attend mental health call, no injury and voluntary patient</u>

6.10 Police attend mental health call for service (no physical injury) – officers at the scene call Mental Health Services for patient to consult:

- Officers to let the person speak directly to Mental Health Services.
- If patient unable to speak to Mental Health Services and police will do so.
- The police will always speak to Mental Health Services as well as the person to ensure correct understanding of the advice and guidance provided.
- The police will always create a duty of care through this process of consultation.

6.11 If mental Health Services advise the person should go home – following consultation with Mental Health Services and on their advice the duty of care can be discharged by leaving the person at home, alone if necessary.

6.12 This follows the principles of Right Care Right Person and ensures the mental health specialists provide expert guidance on the right way to support someone. Accurate record keeping of the circumstances must be documented.

6.13 Where an ambulance will not transport someone to take them home, a police vehicle can be used with Oscar 1 authority.

6.14 If mental Health Services advise the person should go to a suitable support location – transport required. No ambulance free within 30 minutes. No category applies so availability of ambulance dictates:

- Control room escalate to ambulance and re-THRIVE.
- If still no ETA or outside 30 minutes, authority to use police vehicle required from Oscar 1.

- Voluntary handover to be completed with ambulance crew if they attend the scene.
- Voluntary handover to be completed at location taken by police. Staff at the facility to be informed the police are leaving.
- If the person cannot be left unattended as they may come to harm or harm others prior to the handover, the police will remain until a member of staff is available.

Police attend mental health call, physical injury (self-harm) and voluntary patient

6.15 Police attend call for service (physical injury) – ambulance to be called to attend. No ambulance free within 30 minutes. No category applies so availability of ambulance dictates:

- Control room escalate to ambulance and re-THRIVE.
- If still no ETA or outside 30 minutes Sgt Oscar 1 authority to use police vehicle.
- Where ambulance crew attend scene, a verbal handover will be provided by officers.
- If no ambulance can attend the police will transport the person to the Emergency Department (ED) and complete the voluntary handover form. Inform staff that police are leaving.

6.16 In summary, Officers should not be routinely transporting patients. Officers should contact the Ambulance Service for triaging and where possible obtain their grading, expected attendance time and how many jobs are prioritised above them. Prior CCR Inspector authority MUST be sought and the request documented on the CAD using the ‘01 AMB AUT’ tag and question set.

Appendix A – Legal Powers

2a – Common Law

It is important to note that in the context of welfare checks **Police have no general common law responsibility for 'safety' or 'welfare' of members of the public**. The central principle is that police will respond to requests to carry out a 'welfare check' ONLY when they engage the core duties of police:

- To prevent and detect crime
- To keep the King's peace, and
- To protect life and property.

The carrying out of this type of check is simply the discharge of the general duty to investigate crime and perform other core policing functions. It is not an assumption of care for the safety of any particular individual.

2b – Article 2 ECHR (European Convention on Human Rights)

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law".

There are two main aims to this convention right – namely:

- A prohibition on the state from taking a life and
- A positive duty placed upon the state to protect life

And – Article 3 ECHR:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment"

Conduct qualifying under Article 3 may include being subjected to serious violence/serious injury, being the victim of sexual offending.

2c – PACE (Police and Criminal Evidence Act) 1984 – Section 17

17(1) Subject to the following provisions of this section, and without prejudice to any other enactment, a constable may enter and search any premises for the purpose –

e) of saving life or limb or preventing serious damage to property *(see notes iv and vi below).*

iv) Section 17(1)(e) life and limb refers to humans only but animals can be property.

vi) See below for the case of R v Syed which is an important case for any officer using the power under section 17(1)(e).

In the case of *Syed v DPP* *[2010]* the High Court ruled that this provision *did not justify entry where there was a general concern for the welfare of someone within the premises* and therefore officers were not in the execution of their duty when purporting to rely on s17 to force entry against the wishes of the person who answered the door.

Mr Justice Collins said:

"It is plain that Parliament intended that the right of entry without any warrant should be limited to cases where there was an apprehension that something serious was otherwise likely to occur, or perhaps had occurred, within the house….Concern for welfare is not sufficient to justify an entry within the terms of section 17(1)(e). It is altogether too low a test.

I appreciate and have some sympathy with the problems that face officers in a situation such as was faced by these officers. In a sense they are damned if they do and damned if they do not, because if in fact something serious had happened, or was about to happen, and they did not do anything about it because they took the view that they had no right of entry, no doubt there would have been a degree of ex post facto criticism. But it is important to bear in mind that Parliament set the threshold at the height indicated by section 17(1)(e) because it is a serious matter for a citizen to have his house entered against his will and by force by police officers."

Officers contemplating use of the power under section 17(1)(e) should ensure that they gather as much information as practicable in the circumstances to support their grounds that entry without a warrant is necessary to save life and limb or preventing serious damage to property. Appendix 5 & 6 provides suggestions of some reasonable enquiries in relation to this.

2d – Use of Force

S3 Criminal Law Act

> "A person may use such force as is reasonable in the circumstances in the prevention of crime, or in the effecting or assisting in the lawful arrest of offenders or suspected offenders, or of persons unlawfully at large"

Police powers do not extend to physical intervention with persons an officer considers having mental health issues (MCA 2005 – Officers cannot make this assumption). The exception is under s136, in a public place or police station.

S117 PACE

Power of constable to use reasonable force.

Where any provision of this Act –

(a) confers a power on a constable; and

(b) does not provide that the power may only be exercised with the consent of some person, other than a police officer, the officer may use reasonable force, if necessary, in the exercise of the power.

2e – Mental Health Act – Section 136

(1) If a person appears to a constable to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons –

a) Remove the person to a place of safety within the meaning of section 135, or
b) If the person is already in a place of safety within the meaning of that section, keep the person at that place or remove the person to another place of safety.

(1A) The power of a constable under subsection (1) may be exercised where the mentally disordered person is at any place, other than –

a) Any house, flat or room where that person, or any other person, is living, or
b) Any yard, garden, garage or outhouse that is used in connection with the house, flat or room, other than one that is also used in connection with one or more other houses, flats or rooms.

(1B) For the purpose of exercising the power under subsection (1), a constable may enter any place where the power may be exercised, if need be by force.

(1C) Before deciding to remove a person to, or to keep a person at, a place of safety under subsection (1), the constable must, if it is practicable to do so, consult –

a) A registered medical practitioner
b) A registered nurse
c) An approved mental health professional or
d) A person of a description specified in regulations made by the Secretary of State.

(2) A person removed to, or kept at, a place of safety under this section may be detained there for a period not exceeding the permitted period of detention for the purpose of enabling him to be examined by a registered medical practitioner and to be interviewed by an approved mental health professional and of making any necessary arrangements for his treatment or care.

(2A) In subsection (2), “the permitted period of detention” means –

a) The period of 24 hours beginning with -

i. In a case where the person is removed to a place of safety, the time when the person arrives at that place.
ii. In a case where a person is kept at a place of safety, the time when the constable decides to keep the person at that place, or

b) Where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.

(3) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the permitted period of detention mentioned in subsection (2) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(4) A person taken to a place of safety under subsection (3) above may be detained there for the purpose mentioned in subsection (2) above for a period ending no later than the end of the permitted period of detention mentioned in that subsection.

(5) This section is subject to section 136A which makes provision about the removal and taking of persons to a police station, and the keeping of persons at a police station, under this section.

2f – Mental Health Act 1983 – Section 138

S138 of the Mental Health Act 1983 – power to take a patient into custody if they have escaped from legal custody and a power to return the patient to hospital under s137 of the Mental Health Act 1983.

2g – Mental Health Act 1983 – Section 18

Section 18 of the Mental Health Act – power to take a patient into custody and return the patient to hospital if the patient is absent without leave.

2h – Mental Capacity Act 2005

Mental Capacity Act 2005 – where a person over the age of sixteen lacks capacity, an officer can act in the best interests of that person and do what is necessary to prevent that person suffering harm. **The Mental Capacity Act does not provide a power of detention**, it protects decision makers where they take reasonable steps to assess someone's capacity and then act in the reasonable belief that the person lacks capacity, and that such action is in their best interests.

2i – Children and Social Work Act 2017 – Section 16

Section 16 of the Children and Social Work Act 2017 – a statutory responsibility to partner with the local authority and clinical commissioning group to plan for safeguarding and promoting the welfare of children.

Appendix B – THRIVE

The THRIVE process should be *simple* and *fast* whilst remaining *effective* and *meaningful*.

It should not be *onerous*, *time consuming* or *meaningless* in its application.

The THRIVE principles are: Threat, Harm, Risk, Investigation, Vulnerability and Engagement, all of which are explained below:

Threat: What is the threat? Who is subject to the threat? Is it directed at a person, group, property, situation etc.? Do you feel the organisation has a duty to respond and a failure to do so would damage confidence in policing?

Harm: If the threat identified was carried out or realised what would the level of harm be?

Risk: What is the risk of the harm occurring? If a person is making a threat what is their capability to carry it out? If it is situational, what risk is there that it will happen?

Investigation: What investigative questions should be asked to help clarify the matter? Is a crime in progress/recently discovered? What evidence is available? What evidence could be lost if we do not attend? (forensic/CCTV/Suspect details) Does a crime need recording to comply with Home Office Crime Recording Standards?

Vulnerability: Vulnerability is defined as:
"A person is vulnerable if as a result of their situation or circumstances, they are unable to take care or protect themselves, or others, from harm or exploitation."

It may include age, disability, race, religion or belief, sex, sexual orientation, gender reassignment, marriage and civil partnership and pregnancy and maternity family circumstances, personal circumstances, intimidation, health and disability, economic circumstances or repeat victimisation.

Are the victim/people involved vulnerable? Are they able to protect themselves from harm or being exploited? Are they a repeat victim? Is this a domestic abuse situation? If so, consider vulnerability of the victim and children involved.

The call taker should ensure they assess the caller's ability to distance themselves from the risk as part of the vulnerability assessment as this might identify issues that have not been presented as part of the initial call.

Engagement: Can we highlight the local point of contact for further police information or provide reassurance or an explanation of how the police will use the information provided?

Even if no Threat, Harm or Risk factors identified – will there be an impact on Public Trust and Confidence if we do not attend? Does the informant/victim need support? (relatives/support worker/language line) Do they need referral to an appropriate agency? Are they part of a hard to reach/hear group?

T — THREAT

Threat

Of Violence to **any other** person
Of Damage or loss to property **belonging to another**
To the community trust and confidence in policing
Of Public Disorder
No Threat at all – **Therefore no Harm or Risk**

H — HARM

If the Threat is carried out, what is the likely level of harm?

Person - Threat to Life / Serious Injury / Minimal Injury / No injury
Property- High value Damage / Destruction / Theft / Minimal value / No damage
Community trust & confidence in policing- Reduction in Community Confidence / No Impact
Community Cohesion- Potential for Disorder / Minimal impact or No Impact

R — RISK

What is the likelihood that the Threat or Harm will occur?

High Risk - (Consider grade A/B)

Minimal Risk - (Consider grade C/ Diary/ QIF/ Referral

I — INVESTIGATION

Is there a potential Criminal or Road related investigation?

Crimes in progress/recently discovered
Is there a suspect or person of interest
Is there a Known Offender
Forensic Evidence, CSI
CCTV- (specify if speculative or confirmed)
Identifiable property (full description?)
Injury level; (what are they?)
Repeat Victim
Series of offences similar in nature to one reported or unusual M/O

V — VULNERABILITY

"A person is vulnerable if as a result of their situation or circumstances, they are unable to take care of or protect themselves or others from harm or exploitation"

Family Circumstances
Health & Disability
Coercion and Control
Personal Circumstances
Equalities/ Discrimination factors
Repeat Victimisation
Economic Circumstances
Consider Vulnerability of the person reporting in addition to any other parties involved

E — ENGAGEMENT

End every call for service appropriately and manage expectations

Consider signposting or referral to other appropriate agencies
Is there an opportunity to engage with a hard to reach group?
Consider other self-service options: e.g. 'Ask the Police', Action Fraud, Crimestoppers, etc.

A BRIEF RATIONALE SHOULD BE DOCUMENTED TO DEFINE THE GRADED RESPONSE OR COURSE OF ACTION

Appendix C – Governance and Decision-Making Structures

The force seeks to promote professional decision making based on a rationale and modelled approach (NDM – National Decision Making Model). Decision making is supported by Policy, Guidance, Experience and Leadership.

All those working within the force, from the Chief Constable to all levels of Officer (Staff or Police) should be open to challenge and where they think a decision is flawed they should challenge (appropriately).

Call Taker

When a call is received into the Force Control Room, the first decision made is that by the Call Taker. They are trained, have experience and employ a rationale decision making tool – THRIVE. This supports their decision making and ensures that calls that are non-police issues are dealt with appropriately.

Controller

The controller will receive the details of an incident from the call taker that will include an assessment in respect of response based on THRIVE. It is correct that the controller should assume the detail on the log is correct. The controller should then consider the decision and before dispatching a resource ensure the incident is appropriate and the deployment grade suitable. Controllers should always review an incident and be prepared to change it as necessary (again based on a rationale).

Supervisor

Controllers, if in doubt should share the decision making with their Supervisor or Oscar 1.

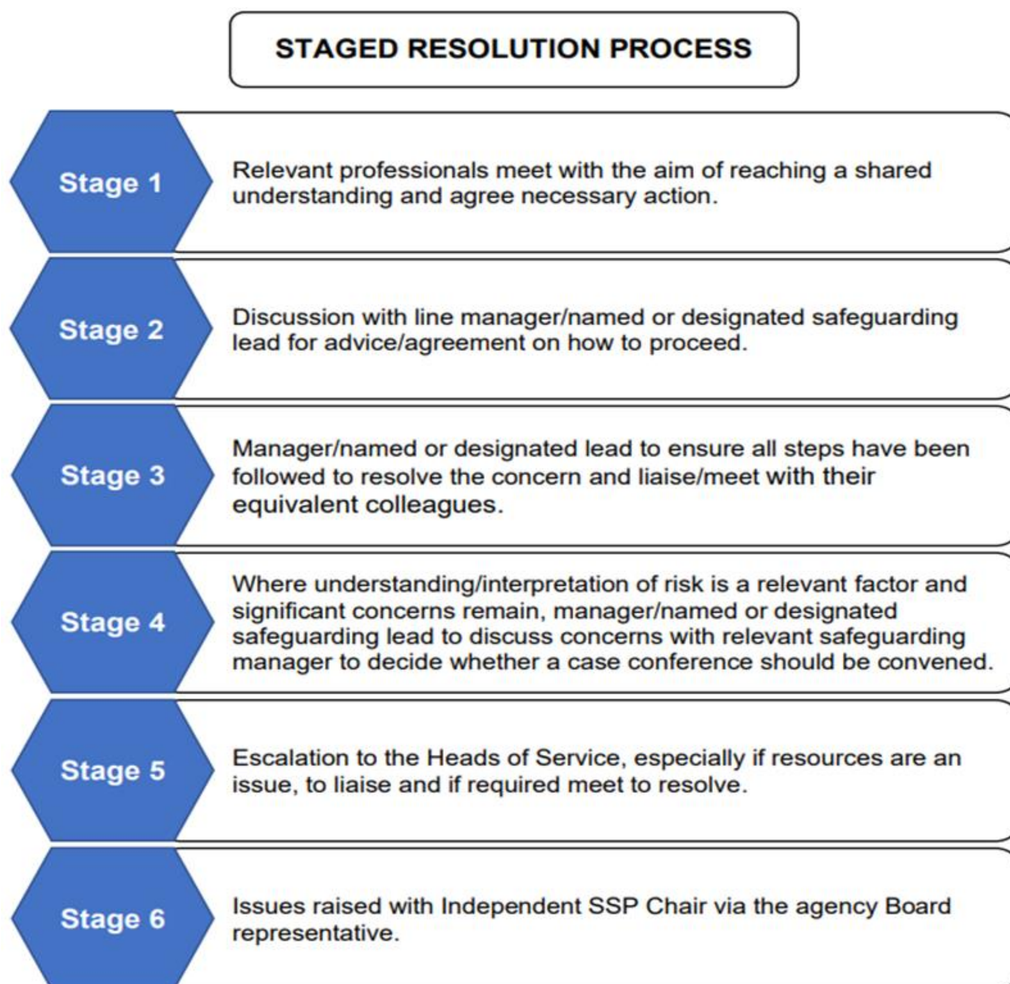
It is right and proper that that initial decision is scrutinised and challenged to ensure we resource incidents appropriately.

Staff should remember sending police officers to issues in which they have no powers; little training or understanding (i.e., Mental Health) creates a significant risk for the officer, the individual concerned, the call-taker and controller as well as the organisation. The presumption that to deploy if in doubt as a positive act is flawed. We should always seek to send the most appropriate resource.

Appendix D – Multi-Agency Safeguarding Escalation Process

Multi-agency work to keep a child or adult at risk protected from harm is often complex. From time to time, the judgement of staff from different professional backgrounds or processes followed may differ and can cause conflict. On most occasions professionals are able to resolve these issues, prioritising the safeguarding of the child or adult. On occasions where it is not possible to suitably resolve the situation, there is a clear escalation process which allows for issues to be raised with appropriate Heads of Safeguarding partners to resolve critical, repeat or long-term issues.

To provide a standardised approach there is a clear process:



Where situations are raised to stage 5, there is a requirement to:

- Complete the escalation request template (held on the W drive under CSIM detective weekend returns folder).
- Manage the critical risk, where possible in consultation with partners.
- Raise at DMM/FDMM.
- Inform the D/Supt Safeguarding.

D/Supt Safeguarding will maintain the escalation register, which will monitor the development around issues raised, raising this to the Suffolk Safeguarding Partnership where required.

The escalation register is accessible on the W drive here. (Only accessible to those with appropriate permissions. File Path: Suffolk\CPC\CPC Command\Shared Working\Senior Detective Weekend Review\Escalation of Safeguarding Issue)