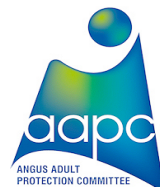


Protecting and Supporting Adults At Risk In Tayside

# Multi Agency Adult Support and Protection Protocol



**POLICE  
SCOTLAND**



## DOCUMENT VERSION CONTROL

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# Multi-Agency Protocol

## Introduction

This Multi-Agency Protocol represents the commitment of agencies within Tayside to:

- unite in the prevention of and protection from harm, mistreatment and neglect of adults at risk aged 16 years and over;
- ensure situations of actual or suspected harm, exploitation, mistreatment and neglect are identified, recorded and investigated; and
- provide services and support for adults at risk who are experiencing harm.

All agencies have an essential role to play in ensuring that adults at risk are protected from harm, mistreatment or neglect. Agencies have a responsibility to assess the risk of harm, mistreatment or neglect, to work together alongside the adult at risk and his or her family members and care givers, to identify actual harm and reduce the risk of harm. To achieve this requires a clear understanding of the roles and responsibilities of the organisations and agencies involved directly and indirectly in caring for adults who may be at risk. Good communication, co-operation and liaison between agencies are essential, as are clear procedures which promote the interests of adults at risk, their families and caregivers.

This Protocol will be used throughout Tayside to guide and inform local inter-agency procedures and practice concerning the protection of adults who may be at risk.

It provides a framework which will:

- put adults at risk at the centre of the protection process;
- enable workers to recognise when adults may be at risk of harm, mistreatment or neglect;
- explain how assistance and services can be provided;
- clarify the current legal position;
- ensure the use of appropriate channels for assessment of need and investigation;
- promote positive collaborative working;
- establish a framework for case conferences, protection plans, risk monitoring and review;
- set out requirements for recording and communicating information.

It acknowledges the complexity involved in the protection of adults at risk and is underpinned by the need to respect each adult's right to make decisions about issues such as where and with whom they live. It also recognises that assessments need to take into account the capacity of adults at risk to make decisions or exercise control to protect themselves.

This Multi-Agency Protocol has been developed to provide a framework that can be applied across all agencies working to support and protect adults at risk in Tayside. It is designed to ensure that there is common practice and will be supported by local procedures and guidance.

## Principles of Practice

In practice use of the guidance contained in this protocol means that agencies should:

- actively work within the principles defined in the Adult Support and Protection (Scotland) Act 2007 and the national care standards: dignity, privacy, choice, safety, realising potential, equality and diversity;
- actively work together within an inter-agency framework;
- actively promote the empowerment and well-being of adults at risk through the services they provide;
- act in a way which supports the rights of the individual to lead an independent life based on self-determination;
- recognise people who are unable to take their own decision and/or to protect themselves and their assets;
- recognise that the right to self-determination can involve risk and ensure that such risk is recognised and understood by all concerned, and minimised whenever possible;
- ensure the safety of adults at risk by integrating strategies, policies and services relevant to harm within the legislative and policy framework, which includes:
  - The NHS and Community Care Act 1990
  - The Regulation of Care (Scotland) Act 2001 and introduction of care standards
  - The Human Rights Act 1998
  - The Adults with Incapacity (Scotland) Act 2000
  - The Mental Health Care and Treatment (Scotland) Act 2003
  - The Vulnerable Witnesses (Scotland) Act 2004
  - The Protection of Vulnerable Groups (Scotland) Act 2007
  - The Public Interest Disclosure Act 1998
  - The Sexual Offences (Scotland) Act 2009
  - The Equality Act 2010
  - The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011
  - The Public Bodies (Joint Working) (Scotland) Act 2014
  - The Health (Tobacco, Nicotine etc and Care)(Scotland) Act 2016
  - The Data Protection Act 2018.
- ensure that, wherever possible, adults at risk are protected from criminal acts;
- ensure that when the right to an independent lifestyle and choice is at risk the individual concerned receives appropriate help, including advice, protection and support from relevant agencies (e.g. independent advocacy);
- ensure that the law and statutory requirements are known and used appropriately so that adults at risk receive the protection of the law and access to the judicial process.
- ensure the individual is able to understand and be able to communicate effectively and staff understand the communication support principles

- Principle 1** Recognise that every community or group may include people with communication support needs
- Principle 2** Find out what support is needed
- Principle 3** Match the way you communicate to the ways people understand
- Principle 4** Respond sensitively to all the ways an individual uses to express themselves
- Principle 5** Give people the opportunity to communicate to the best of their abilities
- Principle 6** Keep trying

[https://www.rcslt.org/cq\\_live/resources\\_a\\_z/asp\\_toolkit/toolkit\\_development](https://www.rcslt.org/cq_live/resources_a_z/asp_toolkit/toolkit_development)

## **Legislative Background**

Section 12 A of the Social Work (Scotland) Act 1968 and the NHS and Community Care Act 1990 gives legislative power and duties to the local authority to become responsible, in collaboration with other agencies, for the assessment of the needs of an individual for whom they may need to provide a community care service.

The Adults with Incapacity (Scotland) Act 2000 provides the means to protect those with incapacity, for example, through financial and welfare guardianship. The Mental Health (Care and Treatment) (Scotland) Act 2003 sets out duties in relation to people with mental disorders who are subject to ill-treatment or neglect. These acts cover people whose disability or illness is adversely affecting their ability to protect themselves and who are subject to harm, exploitation or neglect.

The Vulnerable Witness (Scotland) Act 2004 makes provision for the use of special measures for the purpose of taking evidence from adults who are deemed to be vulnerable witnesses. It increases the number of support mechanisms available to vulnerable witnesses to help them participate more fully in criminal and civil court proceedings.

The Adult Support and Protection (Scotland) Act 2007 (the Act) introduces measures to identify and protect adults at risk of harm. The measures contained in the Act complement measures in pre-existing legislation.

The Protection of Vulnerable Groups (Scotland) Act 2007 establishes a membership scheme for assessing suitability of people working with vulnerable groups.

The Public Bodies (Joint Working) (Scotland) Act 2014 provides the framework for the integration of health and social care services in Scotland.

The Health (Tobacco, Nicotine etc and Care)(Scotland) Act 2016

Wilful Neglect and Ill Treatment (Part 3) introduces a new offences of wilful neglect or ill-treatment in Scotland for adults receiving health care or social care.

Duty of Candour (Part 2) introduces a new duty is to ensure that organisations are open, honest and supportive when there is an unexpected or unintended incident resulting in death or harm, as defined in the Act

Further information on the legislative framework relevant to work with adults in need of support and protection is provided in Appendix 1 - Legislative Framework

## **Seven Elements of the Adult Support & Protection (Scotland) Act 2007**

The Adult Support and Protection (Scotland) Act 2007 seeks to address the issues of adult support and protection, through its seven key elements:

- Principles governing intervention in an adult's affairs
- Definitions of an "adult at risk" and of "harm" (see Sections 3 & 53 of the Act)
- Statutory duties on local authorities to enquire and investigate
- Duty of cooperation
- Offences (see Section 49 of the Act)
- Protection Orders (see Sections 11 - 28 of the Act)
- Duty to establish Adult Protection Committees (see Section 42 of the Act)

In Tayside Social Work Services in the three local authorities will be the lead agency for receiving referrals and determining the actions to be taken.

## **Principles underpinning the Adult Support & Protection (Scotland) Act 2007** (Section 1& 2 of the Act)

The principles underpinning the Act mean that:

- intervention must benefit the adult;
- actions should be supportive and least restrictive; and
- interventions must have regard:
  - to the wishes of the adult and relevant others,
  - to providing information and support to enable the adult to participate in the process,
  - to the adult's abilities, background and characteristics
  - to not treating the adult any less favourably than any other person in a comparable situation.

In addition agencies working to support and protect adults at risk in Tayside will work together to ensure that services provided value diversity and promote equality in terms of age, disability, gender and Transgender, sexuality, previous offending behaviour, cultural, racial and religious identities (Marriage and Civil Partnership, Pregnancy and Maternity).

## **Definitions**

(a) Who is an Adult at Risk?

Under section 3 of the Adult Support and Protection (Scotland) Act 2007

"Adults at risk" are adults over 16 years of age who:

- are unable to safeguard their own well-being, property, rights or other interests
- are at risk of harm, and
- because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

**All three elements of the definition must be met. The presence of a particular condition does not automatically mean an adult is an “adult at risk”.**

A person could have a disability, physical and/or mental health problem and be able to safeguard their well-being and interests. It is the whole of an adult’s particular circumstances which can combine to make them more vulnerable to harm than others.

An adult aged between 16 to 18, may still be legally defined as a child if they are subject to a current supervision requirement issued by a Children’s Hearing. It is essential that these young adults receive appropriate support from both Children’s Services and relevant adult based services.

(b) What is harm?

Under Section 53 of the Adult Support and Protection (Scotland) Act 2007 “harm” includes all harmful conduct and, in particular, includes:

- conduct which causes physical harm
- conduct which causes psychological harm (for example: by causing fear, alarm or distress)
- unlawful conduct which appropriates or adversely affects property, rights or interests (for example: theft, fraud, embezzlement or extortion)
- conduct which causes self-harm,

"conduct" includes neglect and other failures to act, which includes actions which are not planned or deliberate, but have harmful consequences.

(c) Types of Harm

The following are the main types of harm:

1. Physical Harm - actual or attempted physical injury inflicted non-accidentally to an adult at risk (including spitting, hitting, slapping, pushing, kicking), misuse of medication or drugs (including depriving someone of prescribed or non-prescribed drugs, or giving the person dangerously large amounts of drugs and/or alcohol) and inappropriate restraint or sanctions.
2. Sexual Harm - including inappropriate intimate contact, rape, sexual assault, sexual acts or human trafficking to which the adult at risk has not consented, could not consent or was pressured into consenting. It should be noted that it is a criminal offence<sup>1</sup> for someone to have sexual relations with an adult in their care who suffers from mental disorder.
3. Psychological Harm - including emotional harm, threats of abandonment or harm, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks.

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<sup>1</sup> The Sexual Offences Scotland Act 2009



4. Financial or Material Harm - including theft, fraud, exploitation, scams, pressure in connection with wills, property, inheritance, financial transactions, or the misuse or misappropriation of property, possessions or benefits. See Appendix 2
5. Neglect and Acts of Omission - including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, failure to share appropriate information, the withholding of the necessities of life, such as medication, adequate nutrition and heating. This includes self-neglect. See Appendix 3
6. Institutional Harm - repeated instances of poor care or unsatisfactory professional practice.

Any or all of these types of harm may be perpetrated as the result of deliberate intent, negligence or ignorance. This is not an exhaustive list of the types of harm which can affect adults at risk. Harm, mistreatment or neglect may occur as a result of specific incidents. However, concern may grow over a period of time and an accumulation of concerns may prompt a response in line with the contents of this protocol.

(d) Who is a Carer?

An unpaid carer is someone who provides care, help or assistance to someone else who is disabled, frail or unwell and may be a spouse, relative, family member, neighbour or friend. Carers have rights in equality legislation

This definition does not include or staff members who are contracted to work by an employer and includes:

- Home Care/Personal Care Workers
- Care Homes (Residential and Nursing Home Staff)
- Sitters
- People employed within the NHS, Day Centres etc
- Support worker employed by a Voluntary Organisation

(e) Who is a Council Officer?

Council Officers<sup>2</sup>, who undertake functions set out in sections 7 - 11, 14, 16 and 18 of the Act need, as a minimum need to be:

- registered with the Social Services Council (SSSC) as social workers in the register maintained under section 44 (1) of the Regulation of Care (Scotland) Act 2001; or
- occupational therapists registered with the Health Professions Council; or
- nurses registered with the Nursing and Midwifery Council; and
- have at least 12 months post qualification experience in identifying, assessing and managing adults at risk.

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<sup>2</sup> Appointed by the Council under s.64 of the Local Government (Scotland) Act 1973

The Community Care and Health(Scotland) Act 2002 (Incidental Provision) (Adults Support and Protection) Order 2012 allows for a council officer to be employed by the NHS when this function has been delegated by the local authority to the NHS.

## **Who may cause harm to adults at risk?**

Adults at risk may be harmed by a wide range of people including spouses, partners, relatives and other family members, professional staff, paid care workers, volunteers, other service users, neighbours, friends and associates, strangers and people who deliberately exploit people who may be at risk of harm.

There is often particular concern when harm is perpetrated by someone in a position of power or authority who uses his or her position to the detriment of the health, safety, welfare and general well being of an adult at risk.

Agencies have a responsibility to all adults at risk who may have been harmed or neglected. They may also have responsibilities to those with whom the alleged perpetrator is employed or works as a volunteer.

The roles, powers and duties of the various agencies in relation to the perpetrator will vary depending on whether the latter is:

- a member of staff, proprietor or services manager;
- a member of a recognised professional group;
- a volunteer or member of a community group such as a place of worship or social club;
- another service user;
- a spouse, relative or member of the person's social network;
- a formal, informal or unpaid carer;
- a neighbour, member of the public or stranger;
- a person who deliberately targets vulnerable people in order to exploit them; or,
- a person with mental health difficulties including behaviour or personality disorders and self harm.

## **In What Circumstances may Harm, Mistreatment or Neglect Occur?**

Harm, mistreatment or neglect can take place in any context. Harm, mistreatment or neglect may occur when an adult at risk lives alone or with a relative. It may also occur within nursing, residential or day care settings, in hospitals or custodial situations, as a result of support services provided in people's own homes, and other places previously assumed safe or public places.

What is done as a result of a suspicion or allegation of harm, mistreatment or neglect will be partly determined by the environment or the context in which the harm, mistreatment or neglect has occurred, is thought to have occurred or is likely to occur. Assessment of the environment, or context, is relevant because exploitation, deception, misuse of authority, intimidation or coercion may render an adult at risk incapable of making his or her own decisions. It may, therefore, be important for adults at risk to be removed from the

influence of the harmful or neglectful person, or setting, in order to be able to make a free choice about how to proceed. An initial rejection of help should not always be taken at face value.

Further information on where harm may occur is provided in Appendix 4- Harm in Various Settings.

## **Patterns of Harm, Mistreatment or Neglect**

Patterns of harm, mistreatment or neglect vary and include:

- serial abuse, in which the perpetrator seeks out and 'grooms' vulnerable individuals. Sexual harm often falls into this pattern as do some forms of financial harm,
- long term harm in the context of an ongoing family relationship such as domestic violence or harm between partners or generations;
- situational harm which arises because pressures have built up and/or because of difficult or challenging behaviour;
- neglect of a person's needs because those around him or her are not able to be responsible for his or her care. For example if the carer has difficulties attributable to such issues as debt, alcohol or mental health problems;
- institutional harm which features poor standards of care, lack of positive responses to complex needs, rigid routines, inadequate staffing and an insufficient knowledge base within the service;
- unacceptable 'treatments' or programmes which include sanctions or punishment such as withholding food and drink, seclusion, unnecessary and unauthorised use of control and restraint or over- medication;
- failure to access key services such as health care, dentistry, prostheses;
- misappropriation of benefits and/or use of the person's money by other members of the household;
- fraud or intimidation in connection with wills, property or other assets.

## **Signs of Potential Harm, Mistreatment or Neglect**

Suspicious of adult harm or neglect can come to light in a number of ways. The clearest indicator is a statement or comment by the adult themselves, by their regular carer or by others, disclosing or suggesting harm or neglect. Such statements invariably warrant further action, whether they relate to a specific incident, a pattern of events or a more general situation. There are of course many other factors which may indicate harm or neglect.

These may include:

- unusual or suspicious injuries;
- unusual or unexplained behaviour of carers including a delay in seeking advice, dubious or inconsistent explanations for injuries or bruises;
- an allegation of harm made by an adult who may be at risk
- an adult who may be at risk found alone at home or in a care setting in a situation of serious but avoidable risk;
- over-frequent or inappropriate contact with/referral to outside agencies;
- a prolonged interval between illness/injury and presentation for medical care;

- if an adult who may be at risk lives with another member of the household who is known to the Police or welfare agencies in circumstances which suggest possible risk to the life/ health or well-being of that person;
- signs of misuse of medication:
  - not administered as prescribed;
  - over-medication resulting in apathy, drowsiness, slurring of speech, under-medication resulting in lack of sleep, continual pain, etc;
- sudden increases in confusion (e.g. dehydration produces toxic confusion);
- unexplained physical deterioration in the adult at risk (e.g. loss of weight);
- demonstration of fear by the adult at risk to another person or demonstration of fear of going home;
- difficulty in interviewing the adult at risk (e.g. another adult unreasonably insists on being present);
- anxious or disturbed behaviour on the part of the adult at risk;
- hostile or rejecting behaviour by the carer towards the adult at risk;
- serious or persistent failure to meet the needs of the adult at risk
- signs of financial harm (e.g. a change in the ability of the adult at risk to pay for services, unexplained debts, or reduction in assets);
- carer as well as dependents showing apathy, depression, withdrawal, hopelessness and suspicion;
- unnecessary delay in staff responses to residents' requests;
- important documents are reported to be missing;
- pressure exerted by family members or professionals to have someone committed to care;
- a diagnosis of a sexually transmitted disease or infection, or a pregnancy, particularly where the adult at risk concerned is not known to be in an intimate or stable relationship

## **Dilemmas in Adult Support and Protection**

The protection of adults, like the protection of children, raises a variety of complex issues. There may be a number of conflicts which must be considered. Some of these are discussed in more detail below.

### **(a) Duty to Report**

Staff have a duty to report suspicions or disclosures made about any adults at risk. While this may cause the individual staff member difficulties, a failure to report is a failure in their duty of care. Staff **must** report any concerns of suspected or actual harm to their line manager.

### **(b) Rights and Self Determination**

There is a tendency for society to believe that adults at risk need to be protected and that their right to choose is secondary to this. Adults are individuals in their own right and, if they are able, must be allowed to exercise these rights even if that means they choose to remain in a situation which other people consider to be inappropriate or harmful. Every effort

should be made to inform the adults at risk of the consequences of the choice he/she may be making. Where appropriate, use should be made of the local appropriate adult scheme, an independent advocate, communication aids or interpretation services. Further information on the appropriate adult scheme is provided in Appendix 5 - Appropriate Adults Tayside Service.

Working with adults at risk of harm poses considerable dilemmas for staff involved. If it is thought that the adult may have been the victim of a crime, for example assault, then he or she is subject to common law and the matter should be reported to the police even if the adult does not wish to make a complaint. If an adult is at risk - there may be a legislative basis upon which to intervene if he/she refuses help. The Adult Support and Protection (Scotland) Act 2007 makes provision for the application of three kinds of protection orders and a warrant for entry.

Further information on the issues of rights and self-determination is provided in Appendix 6 - Capacity and Consent. Reference should also be made to the Mental Welfare for Scotland's Guidance for professionals and carers when considering the rights and risks in sexual relations involving people with a mental disorder. ('Consenting adults' - MWC July 2010) <https://www.mwcscot.org.uk/media/51782/Consenting%20Adults.pdf>

#### c) Managing Risk

Concern over risk taking can stifle and constrain providers of care leading to an inappropriate restriction of the individual's rights. There is a challenge for people working in all care settings to define a way forward where they are able to take calculated acceptable risks and to allow risks to be taken. Further information on assessment, risk assessment and risk management are contained in Appendices 7 (Assessment, Risk Assessment and Risk Management).

#### (d) Consent/Confidentiality/Disclosure

All professionals who have contact with adults at risk have a responsibility to refer concerns/anxieties/disclosures to the appropriate agency. However, it should be recognised that, at times, this may pose a dilemma for staff who may feel that by so doing this could alienate the individual and/or the family and the potential for preventative work. To do nothing or to promise confidentiality and then report the concern is not acceptable. If you have a duty to report, you do not ask for consent but inform the individual that the information will be reported.

#### (e) Whistle Blowing

All organisations must have a policy on 'whistle blowing' which allows staff to alert organisations to matters of suspected or actual malpractice. Such policies should provide guidance, protection and reassurance to staff in order to encourage disclosures. This protocol encourages such disclosures, which are supported by legislation and organisational policies and procedures. (For further details see the Public Interest Disclosure Act or visit Public Concern at Work's website at [www.whistleblowing.org.uk](http://www.whistleblowing.org.uk)) All of the partners are

committed to the concept of whistle blowing and to supporting staff who report unacceptable treatment of service users by managers or staff.

#### (f) Challenging Behaviour/Use of Restraint Techniques

There are some adults at risk who present challenging behaviour which requires to be managed either in their own home, day care setting, hospital or care home. This brings with it a number of dilemmas including issues of restraint and the administration of medication. Any action undertaken to manage an adult with challenging behaviour could be misinterpreted, potentially leading to an allegation of harm, therefore these issues require to be carefully assessed and recorded appropriately.

Organisations will have practice guidelines in place to assist staff members who work in settings where challenging behaviour is likely to be a feature. The decision to invoke any form of restraint should not be made by a single individual and as much collaboration as is appropriate should be undertaken.

There should also be formal recording, monitoring and reviewing of decisions to undertake any form of restraint. All agencies should have formal restraint procedures.

In the course of their duties, staff may be assaulted, and in these circumstances have a right to defend themselves. Appropriate training and support should be available to staff. Incidents of violence and aggression should be recorded using agency guidelines.

Further guidance about the issue of restraint can be found in the Mental Welfare Commission Guidance - Rights, Risks and Limits to Freedom.

[https://www.mwscot.org.uk/media/125247/rights\\_risks\\_2013\\_edition\\_web\\_version.pdf](https://www.mwscot.org.uk/media/125247/rights_risks_2013_edition_web_version.pdf)

#### (g) Allegations of Harm Against Staff Members

When an allegation of harm is made against a member of staff either formally by letter, or informally by telephone or in person, it is essential that organisations regard it seriously and initiate an investigation into the staff member's alleged behaviour through the organisation's own conduct procedures. The process would have to accord with any parallel investigation into the alleged harm. Consultation with the organisation's Human Resources/Personnel Section or equivalent and the line manager at an early stage is vital to determine the appropriate routes for such matters to be taken. It is the responsibility of each agency to investigate any allegations in relation to staff members and implement any formal disciplinary action if required.

#### (h) Domestic Abuse

The Adult Support and Protection (Scotland) Act 2007 does not specifically address domestic violence against women, domestic abuse or harm by a relative in a family home. It is, however, recognised that the use of the guidance may well be appropriate in certain cases of domestic violence or abuse. It will be particularly relevant when one of the partners meets the definition of an adult at risk. Further guidance can be sought by contacting Police

Scotland Domestic Abuse Officer or the lead officer of the local Violence Against Women Partnership.

## **What Degree of Harm, Mistreatment or Neglect Justifies Intervention**

### **Threshold of Harm Tayside.**

When agencies come into contact with adults who have suffered or likely to suffer from harm, there is a duty to report concerns

If a person is harmed, disadvantaged or suffers from detriment from the wilful or unintentional behaviour of another or themselves, this should be regarded as having met the threshold.

This may be from physical, sexual, emotional or financial harm or neglect.

Harm can arise as a result of one incident or a series of incidents or cumulative concerns over a period of time. The level of risk should be subject to continual review.

## **Information Sharing and Confidentiality**

All professionals and agencies offering support or services to adults at risk are required to keep confidential information given to them in the course of their work and as such all agencies should have in place a data protection policy which makes clear how issues of confidentiality are to be managed.

The processing of personal information, including information sharing with other agencies, is governed by the General Data Protection Regulation (GDPR), the Data Protection Act 2018, and statutory guidance issued by the Information Commissioner.

The GDPR, Data Protection Act 2018, and human rights legislation are not barriers to justified information sharing, but provide a framework to ensure that personal information about living individuals is shared appropriately. Not sharing more data than is necessary is a key element of the new legislation, and professionals should consider the impact of disclosing information on the individual and any third parties. Information must be proportionate to the need and level of risk. Never assume sharing is prohibited – it is essential to consider this balance in every case.

Personal information cannot legally be processed unless there is a legal basis for doing so. Under the previous legislation the informed consent of the individual was normally the only legal basis on which information could be shared with other agencies. This is no longer the case under the new legislation. This is because the requirements for “informed consent” are much narrower and are unlikely to be met in most circumstances by agencies or professionals involved with supporting adults at risk.

Under the new legislation personal information can be shared between agencies without the person’s consent where there is a legal duty to do so, where the sharing of the information is to protect the vital interests of the individual or any other person, and where the information is shared to enable the detection or prevention of crime or serious misconduct. These are likely to be more appropriate bases for sharing information in relation to public protection.

All agencies must provide persons about whom the process personal data with a privacy notice explaining what the information will be used for, how it will be managed, who it may be shared with, and their rights in respect of that information. This is particularly important where information is not being processed on the basis of informed consent.

Public bodies have a duty to co-operate under Section 5 of the Adult Support and Protection (Scotland) Act 2007, including the sharing of information. The Act allows for information sharing when there is a perceived risk of harm to adults at risk. It should also be noted that Section 10(1) of the Adult Support and Protection Act (Scotland) 2007 states that 'a Council Officer may require any person holding health, financial or other records on an individual the Officer knows or believes to be an adult at risk to give the records, or copies of them, to the Officer.'

Data Protection legislation requires that agencies must make sure that personal information is:

- Fairly, lawfully and transparently processed
- Collected for specific, explicit and legitimate purposes
- Adequate, relevant and limited to what is necessary
- Accurate and up to date
- Not be kept for longer than necessary
- Kept securely

All professionals and agencies must keep clear, legible and up to date records of:

- Contact with the adult at risk, and his/her family/ carer(s);
- Information held the legal basis for processing;
- Assessment and care planning, including adult protection plans, and any changes as a result of reviews of these;
- Contact with other agencies, including the date and content of information shared or discussions held; and
- Details of the person making the record with dates of recordings.

All agencies working with adults at risk must ensure the following:

- Open and honest communication with the individual (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, unless it is unsafe or inappropriate to do so. This should be done in writing through a privacy notice.
- Only share information where you have a legal basis for doing so. Only share the minimum information necessary to achieve the purpose for sharing the information, e.g. do not provide all a person's medical history if only their current mental health status is relevant.
- Seek advice from other practitioners, or your information governance lead, if you are in any doubt about sharing the information concerned, without disclosing the identity of the individual where possible.



Personal data covers both facts and opinions about a living individual, which might identify that person. The provisions of the Act ensure that personal information held about any individual cannot be used for purposes other than for which it was originally supplied without the individual's consent, unless the law specifically permits such a use (e.g. to prevent a crime). This prevents unauthorised disclosure of a wide range of information.

All agencies working with adults at risk must have in place data protection policy which makes clear how issues of confidentiality are to be managed. All agencies working with adults at risk must ensure that clients/patients/service users are informed of data protection policies and provided with a privacy notice.

When any professional or agency approaches another to ask for information they should be able to explain:

- what information they need;
- why they need it;
- what they will do with the information;
- what their legal basis is for processing the information; and
- who else may need to be informed, if concerns about an adult at risk persist.

If a professional or agency is asked to provide information they should never refuse solely on the basis that all the information held by the agency is confidential.

When determining whether to share information they should consider:

- whether there is a legal basis for providing the information;
- what information has already been lawfully shared with other professionals;
- whether they have relevant information to contribute - that is information which has, or may have, a bearing on the issue of risk to an adult at risk or others which would enable another professional to offer appropriate help, assist access to other services, or take other action necessary to reduce the risk to the adult at risk
- whether that information is already in the public domain or could be better provided by another professional or agency, or the adult at risk directly;
- how much information needs to be shared to reduce the risk to the adult at risk; and
- whether disclosure would be in accordance with the GDPR and Data Protection Act 2018.

It should be noted that the provision of personal information to public regulators such as the Care Inspectorate, Healthcare Improvement Scotland, the Information Commissioner, and the Mental Welfare Commission is permitted under the data protection legislation.

It should also be noted that Section 10(1) of the Adult Support and Protection Act (Scotland) 2007 states that 'a Council Officer may require any person holding health, financial or other records on an individual the Officer knows or believes to be an adult at risk to give the records, or copies of them, to the Officer.'

In addition to their duties under the data protection legislation, different professional groups are governed by their own professional codes of conduct which cover matters relating to confidentiality. Public bodies and other agencies may also have specific codes of conduct on confidentiality for employees and volunteers. These codes should always be followed unless it would be unlawful to do so.

Staff members should make themselves aware of the content of any information sharing/confidentiality policies, protocols and procedures produced by their own agency.

## **Sharing Information with Relatives and Carers**

Those involved in working with adults at risk may also have to consider whether or not to share information with carers or relatives of the adult at risk. In general terms information given to professionals by the adult at risk, or acquired during an investigatory process, should not be shared with others unless there is a legal basis for doing so. The professional should consider carefully all potential consequences for the adult at risk's welfare before making a final decision on whether or not to disclose information. All decisions, along with reasons, must be recorded. Careful consideration should be given when sharing information with welfare and financial attorney/guardians when they are the suspected harmers.

### **Information Sharing Checklist**

#### **When**

Is there a clear and legitimate purpose for sharing information?

- Yes – see next question
- No – DO NOT SHARE

Does the information enable an individual to be identified?

- Yes – see next question
- No – you can share but should consider how

Do you have consent to share?

- Yes – you can share but should consider how
- No – see next question

Have you identified a lawful reason to share information without consent?

- Yes – you can share but should consider how
- No – DO NOT SHARE

#### **How**

- Identify how much information to share
- Distinguish fact from opinion
- Ensure that you are giving the right information to the right individual
- Ensure where possible that you are sharing the information securely
- Where possible, be transparent with the individual, informing them that that the information has been shared, as long as doing so does not create or increase the risk of harm to the individual.

## **Ordinary Residence**

If the adult at risk lives, or is temporarily placed, out with Tayside's geographical boundary but Angus, Dundee City or Perth & Kinross Council have responsibility for the placement:

- The protocol that operates within the local authority where the harm, mistreatment or neglect occurred will apply; and
- Angus, Dundee City or Perth & Kinross Council must arrange for a social worker to be allocated to support the adult at risk.
- The same protocol would apply to the 3 Tayside authorities e.g. In the case where an Angus client is placed temporarily in Dundee and there are allegations of harm, mistreatment or neglect, a Dundee Council Officer will be allocated to investigate. Angus Council would be responsible for allocating a social worker to support the adult at risk.

If the adult at risk lives within Tayside but another local authority has responsibility for the placement:

- Tayside's Protocol will apply;
- a Council Officer will be allocated from the relevant investigating agencies within Tayside; and
- a referral will be made to the relevant social work team within the placing authority for a social worker to support the adult at risk.

Young adults who are care leavers, or who have been children with special needs, and are still in receipt of full time education remain the responsibility of the children and families service. Young adults, who are 16 -18, and are subject to statutory supervision, also remain the responsibility of the children and families service. Liaison should take place with the relevant children and families team and a decision taken as to who will investigate.

Since 2016 local health and social care partnerships have been created in the three partnership areas. Local ASP activity is reported to the Adult Protection Committee and to the Clinical care and Governance Group in each area. Any ASP activity relating to a hosted service e.g Mental Health Inpatient Services has to also report to the local partnership that has responsibility for hosting that service..

## **Transfer between Local Authorities.**

If while conducting initial inquiries, an investigation or when a protection plan is in place the adult moves to another area, action should be taken to establish the whereabouts of the adult.

A transfer case conference must be arranged with the local authority where the adult is now residing. The case conference will focus on the nature of the adult protection concerns and what action has been taken to address them.

Whether the adult is residing permanently or temporarily in another area the responsibility for adult protection lies with the local authority where the adult is located.

## **Notification of Critical or Significant Incidents and Sudden Death Inquiries**

When harm to an adult at risk meets the definition of a critical or significant incident, it is the responsibility of the Council to lead on this. The steps outlined in the relevant Local Authority procedure should be followed including, where appropriate, the submission of a report to the Mental Welfare Commission.

(See Appendix 10 Tayside SCR Protocol).

## **Links to Other Agencies Operational Procedures**

This protocol should be read in conjunction with localised policies and operating procedures used by agencies.

### **(a) Local Authorities**

All three local authorities have their own operating procedures. These are based on this protocol but allow for local structures, roles and responsibilities.

### **(b) NHS Tayside**

A procedure is available for NHS Tayside staff which identifies the steps to be taken by Health employees on the identification of harm. This procedure details the occasions when contact should be made with Local Authority Social Work staff and the steps to be taken. There is an understanding that, where the adult at risk is in a care home, hospital setting or based in the community, Social Work will be the lead agency responsible for any investigatory process.

### **(c) Police Scotland**

Police Scotland provide a service across Tayside. When police officers are alerted to suspicions of harm, mistreatment or neglect, an appropriate level of inquiry will be made into the suspicions or allegations. All investigations will be conducted in accordance with Police procedural guidance.

### **(d) Scottish Fire and Rescue Service**

This Service was established on 1st April 2013, bringing together the collective skills and experience from across Scotland's previous eight fire and rescue services.

Scottish Fire and Rescue Service work in close partnership with local communities to deliver crucial safety prevention messages in the fight against fire. They also alert social work

services to concerns they encounter while doing home visits and locally they deliver home/fire safety training for staff members.

(e) Social Work Out of Hours Service

There is Out of Hours Service provision in the three Local Authority areas in Tayside. When Out of Hours Staff are alerted to harm reference should be made to this protocol and the relevant Local Authorities Operational procedures.

(f) Disciplinary Procedures

All agencies will have specific disciplinary procedures which will be instigated whenever a staff member is suspected or accused of harm.

(g) Codes of Practice/Conduct

All agencies covered by this protocol have their own codes of practice or conduct. Those who provide services, which require to be registered by the Care Commission, will also be governed by the Codes of Practice for Employers and Employees of the Social Services Workforce. A code of practice/conduct will usually include the expectations of the agency as an employer and of its staff as professional service providers or practitioners. Staff members should ensure that they carry out their duties in line with their professional code of practice/conduct. Voluntary and private providers will have their own procedures but will be bound into this Protocol by agreement and contract.

The Scottish Government published updated National Codes of Practice for Adult Support and Protection in 2014 <https://www.gov.scot/Resource/0044/00449622.pdf>

## **Resolving Disagreements**

Angus, Dundee City and Perth & Kinross Councils along with the Police and NHS Tayside will ensure multi-agency and multi-disciplinary co-ordination of complex cases at a sufficiently senior level to provide appropriate management oversight, effective information sharing and accountable practice. Arrangements should include a mechanism for the articulation and resolution of disputes among staff.

## APPENDIX 1

## LEGISLATIVE FRAMEWORK

### The Legal Context

The distinction in law is made between those adults who are capax (capable of managing their affairs) and those who are not. Until a person is recognised in law as being incapable of managing their affairs or making decisions in their own best interests no care agency can forcibly intervene in a relationship because they deem it to be unsuitable or harmful. The statutory powers and duties of any care agency are underpinned by Human Rights legislation and this works both ways so that, as well as protecting an individual's right to live his or her life peaceably and without fear, an authority must also (within reason) respect the manner in which the individual chooses to live his/her life. Where an individual has the capability to express their free will, care agencies can do no more than give information about services and where appropriate, help the adult at risk to take up those services/options. They should not try to direct an individual to use these services in a manner that might be regarded as coercive.

Therefore, when approaching the kind of situation where there is a suspicion of harm, mistreatment or neglect of a type which may appear to require legal intervention (civil or criminal) the preliminary issue to be settled in every instance is whether the alleged victim has capacity.

### Adults With Incapacity (Scotland) Act 2000

The Adults With Incapacity (Scotland) Act 2000 is a significant piece of legislation in the protection of adults at risk. The Act addresses the question of how to proceed when faced with the gradual decline in an individual's capacity.

The Adults With Incapacity (Scotland) Act 2000 offers various means of intervening in the lives of adults (over 16 years of age) who due to incapacity, however caused, are incapable of protecting their own welfare or financial well-being. This includes power of attorney arrangements, guardianship, issues related to medical interventions and access to funds for day to day money management. The local authority has a duty to act under this legislation where a need is identified and no one else is willing or able to do so.

It introduces a more flexible system of providing for care as well as protecting the individual and their assets. It can also provide assistance for adults who are incapable. It is important to note that the 2000 Act does not simply address the needs of individuals who are incapax but is concerned with incapable adults who are defined as being:

'incapable of acting, making decisions, communicating decisions, understanding decisions, or retaining the memory of decisions, by reason of mental disorder or physical disability.'

An adult will not fall within this definition if their inability to communicate or understand communications can be 'made good by human or mechanical aid'. For example, an adult with speech difficulties may have an inability to communicate his wishes or desires but if this can be overcome by the use of a computer or other mechanism, he will not fall within

the terms of the Act. Likewise, where a family member is able to interpret the wishes of an adult who is otherwise incapable of communication he will likely not fall within the terms of the act.

Any party claiming an interest in the welfare or financial affairs of an individual can make an application to the Court to make an order to maximise the interests and protect the well-being of that individual. The Court has a broad discretion in hearing evidence and is not limited to considering only evidence proffered by the applicant. The Court has an equal discretion in making any order and is bound to make its order not necessarily in accordance with the terms of the application but rather in accordance with how it sees the best interests of the subject of the application might be served.

Any order must endeavour to provide for the minimum intervention necessary as the purpose of the Act is not only to protect the individual but also to allow them as much autonomy in their life as is possible.

### **Powers of Attorney**

Under Part 2 of the Adults with Incapacity Act 2000, an adult may appoint an attorney with powers over property and financial affairs commencing or continuing on incapacity (referred to as “a continuing attorney”); or an attorney with powers over personal welfare exercisable only on his or her own loss of capacity (referred to as “a welfare attorney”).

### **Intervention Orders and Guardianship**

Under Part 6 of the Act, it becomes possible to apply to the Sheriff for an intervention order to deal with clearly defined financial, property or personal welfare matters in relation to an adult. Guardianship under the Act includes powers over property, financial affairs or personal welfare or a combination of these. A guardian with powers over financial affairs and property is referred to as a “financial guardian” and a guardian with powers over personal welfare is referred to as a “welfare guardian”.

The Sheriff can make an interim order, if it seems appropriate, pending final disposal of the application, which may result in an interim Guardian being appointed.

The Act confers a wide range of functions and responsibilities on local authorities. Key areas include:

- to investigate circumstances where personal welfare of an adult seems to be at risk (Section 10).
- to provide information and advice to those exercising welfare powers.
- to investigate complaints in relation to those exercising welfare powers.
- to supervise attorneys and guardians
- to apply for an intervention order when no-one else is doing so (Section 53 (3)).
- to apply for guardianship order where no other means would be sufficient to safeguard the adults interests (Section 57 (2))
- to provide reports to the Sheriff relevant to applications for intervention orders or guardianship orders relating to personal welfare. Note: Where someone other than

the local authority applies for welfare guardianship, he or she must give notice of the application to the Chief Social Worker Officer who must arrange for the relevant reports within 21 days. This time limit is important (Section 57 (4)).

- to act as welfare guardian where no-one else is applying to do so (Section 59 (1))
- to recall the personal welfare powers of a guardian (Section 73 (3)).
- to arrange for transfer of guardianship where adult changes habitual residence.
- to consult with the Public Guardian and Mental Welfare Commission.

After a Guardianship Order or Intervention Order has been granted it is the responsibility of the Sheriff Clerk to notify the Public Guardian. The Public Guardian will issue a certificate of appointment notify the local authority, and, where the reason for incapacity relates to mental disorder, the Mental Welfare Commission. The Public Guardian will maintain a register of all Intervention Orders and Guardianship Orders. The Public Guardian or Intervener should communicate directly with the Adult and the nearest relative, carer or care provider informing them of their role.

The Act imposes a statutory duty on the Public Guardian, Mental Welfare Commission and local authorities to investigate any circumstances made known to him or them where an adult is at risk. The Public Guardian must investigate any circumstances made known to him in which the property or financial affairs of an adult seem to him to be at risk. With regards to the Mental Welfare Commission and local authorities they must investigate any circumstances made known to them in which the personal welfare of the adult seems to them to be at risk.

In consequence of any investigation carried out, the Public Guardian, Mental Welfare Commission or local authority, as the case may be, may take such steps as are deemed to be necessary. These include the making of an application to the sheriff, as seems to him or them to be necessary to safeguard the property, financial affairs or personal welfare of the adult.

For the purpose of any investigation the Public Guardian, Mental Welfare Commission and local authority must provide each other with such information and assistance as may be necessary to facilitate the investigation.

## **Other Relevant Legislation**

### **Mental Health (Care & Treatment) (Scotland) Act 2003**

Mental Health (Care & Treatment) (Scotland) Act 2003 covers four main areas:

- it places a range of duties, and gives a range of powers, to organisations involved in mental health law, including mental health service providers, the Mental Welfare Commission, and the new Mental Health Tribunal for Scotland;
- it defines clear procedures for decision making on the compulsory treatment and/or detention of people with a mental disorder. It sets criteria which have to be met before compulsion can be authorised;
- it amends existing criminal justice legislation to give courts more effective ways of assessing and dealing with a person with mental disorder who comes before them.



And, it defines procedures for the review of orders made by a court in relation to a person with a mental disorder;

- it provides a range of new rights for people with a mental disorder, such as a right of access to independent advocacy services; and,
- it provides safeguards on the use of certain medical treatments.

### **Section 33**

**Duty to inquire:** This requires the local authority (and health as a delegated duty) to make inquiries into an individual case where there appears to be a person of 16 years and over that has a mental disorder and where any of a number of other conditions apply. See Section 33(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

### **Section 35**

**Warrant to obtain entry:** This section authorises an MHO to apply to a Sheriff or Justice of the Peace for a warrant if this is seen as necessary, to obtain entry into the premises of an individual. The purpose of obtaining entry is to carry out the duty to inquire under Section 33.

### **Section 293**

**Removal order:** This section gives an MHO authority to apply to a Sheriff or Justice of the Peace for an order to remove an individual to a place of safety for a period not exceeding 7 days. The order can be sought when it is considered that the individual has a mental disorder and is subject or exposed to ill-treatment, neglect or some other deficiency in care, or treatment or because of their mental disorder their property is suffering loss or damage or is at risk of suffering loss or damage, or where the person is living alone or without care and is unable to look after themselves, property or financial affairs.

### **Section 297**

Under Section 297 the police can remove a person from a public place, who appears to be in immediate need of care or treatment and is placing themselves or others at risk by virtue of mental disorder. The police can remove this individual to a place of safety for up to 24 hours. A place of safety can include a hospital, care home or may even include a police station, though guidance is clear that a police cell would be a last resort. This will allow for an assessment of the person's mental state and the possibility of further detention where required.

## **Human Rights Legislation**

The European Convention on Human Rights was drawn up in 1950 and ratified by the UK in 1951. The Convention rights, which are binding on statutory agencies include:

- The right to life (Article 2)
- Prohibition of torture and inhumane or degrading treatment or punishment (Article 3)
- The right to liberty and security of person (Article 5)
- The right to respect for private and family life, home and correspondence (Article 8)
- Freedom of thought, conscience and religion (Article 9)
- The right to freedom of expression (Article 10)
- Prohibition of discrimination in the enjoyment of Convention rights (Article 14)
- Prohibition of Abuse of Rights (Article 17)
- Protection of property (Article 1 of the First Protocol)

The Convention rights recognise that there is a balance to be struck between the general interests of society and the protection of the individual's rights. The rights and freedoms set out in the Convention cannot be properly understood without reference to the substantial body of case-law which Strasbourg institutions have developed since 1950. Even then, the European Court of Human Rights has emphasised that the Convention is a living document and must be interpreted in the light of changing attitudes and values in society generally.

## **The Regulation of Care (Scotland) Act 2001**

The Regulation of Care (Scotland) Act 2001:

- establishes a new independent body to regulate care services in Scotland. This is known as the Scottish Commission for the Regulation of Care (the Care Commission); and
- establishes a system of care regulation, encompassing the registration and inspection of care services against a set of national care standards and the taking of any enforcement action.

The Act also establishes a new independent body, to be known as the Scottish Social Services Council ("The Council") to regulate social service workers and to promote and regulate their education and training.

## **The Vulnerable Witnesses(s) Act 2004**

Under this Act, vulnerable adults giving evidence in court may have special provision made to allow them to do so. These special measures are provided to reduce anxiety and distress in order that the vulnerable witness is more able to give evidence and the quality of that evidence is enhanced. The special measures available are:

- the use of a live television link from within or outwith the court building

- the use of prior statements of vulnerable witnesses as evidence in chief (for uncontested evidence)
- the court can appoint a commissioner (usually a solicitor) to take evidence under oath from a vulnerable witness unable to attend court
- a screen for the vulnerable witness to sit behind while giving evidence
- the vulnerable witness can be accompanied by a supporter.

### **The Protection of Vulnerable Groups (Scotland) Act 2007**

In 2010 the Scottish Government introduced a new membership scheme that replaced and improved upon disclosure arrangements for people who work with vulnerable groups. The scheme aims to ensure those working with children and vulnerable adults (paid or unpaid) do not have a history of harmful behaviour and makes it easier for employers to determine who they should check to protect their client group. The scheme is intended to be quick and easy to use, reducing the need to complete a different application for each time a disclosure is required.

### **The Public Interest Disclosure Act 1998**

This act applies across the private and voluntary sectors as well as public bodies.

The Act sets out a framework for public interest whistleblowing which protects workers from reprisal because they have raised a concern about malpractice.

The Act emphasises the important role whistleblowing can play in determining and detecting malpractice and in building public trust.

### **The Sexual Offences (Scotland) Act 2009**

This Act was implemented in stages from Autumn 2010 onwards.

The Act defines a person as incapable where due to mental disorder they are unable to understand what a sexual act is, to decide whether to take part in the sexual act, or communicate such a decision.

Incapacity should therefore not be assumed without ensuring the person has had the opportunity to access appropriate information and education and assistance in understanding this information and its relevance to them.. Capacity is however not the only test. When a person has capacity to consent to sexual relations but is at risk and likely to come to serious harm, the LA may have responsibilities under the Adult Support and Protection (Scotland) Act 2007.

There are a number of statutory sexual offences specifically relating to mentally disordered persons in the Mental Health (Care and Treatment) (Scotland) Act 2003 (s.311 - 313) which were repealed and replaced by the Sexual Offences (Scotland) Act 2009 (s.17 and s.46).

s.311 of the 2003 Act (to be replaced by s.17 of the 2009 Act) creates an offence when there is a non consensual sexual act with a person with a mental disorder when the person does not consent or is incapable of consenting.

s.313 of the 2003 Act (to be replaced by s.46 of the 2009 Act) created an offence of engaging in a sexual act with a mentally disordered person when the offender provides care services, or is employed in a hospital providing medical treatment to the victim. This applies whether the victim has capacity to consent or not.

### **The Equality Act 2010**

The UK Government's Equality Act 2010 provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The Act restated and simplified 116 separate pieces of earlier equality legislation into one Act, the bulk of which came into force in October 2010.

Prior to the Act coming into force, there were 3 separate public sector equality duties covering race, disability and gender. The Equality Act 2010 replaced these with a new single equality duty covering different 'protected characteristics'; race, sex, disability, sexual orientation, religion and belief, age, gender reassignment and pregnancy and maternity. People themselves do not need to have the characteristic in order to be protected from discrimination. People can be protected from discrimination because of their association with someone who has a protected characteristic e.g. the carer of a disabled person. People are also protected from discrimination if they are 'perceived to' have a protected characteristic. This protection extends to areas such as employment, education, access to goods and services and the exercise of public functions, and membership of clubs and associations. There is also a duty to make reasonable adjustments for disabled people. The legislation sets out enforcement procedures to help people assert their rights.

In addition to individual rights, equality legislation introduced a public sector equality duty to ensure public authorities are proactive in tackling discrimination. The intention is to prevent discrimination happening in the first place by changing the culture of public authorities so that they think about, and take action on, equality as part of their mainstream business.

Violence Against Women is a continuing inequality between men and women, and it is also a barrier to achieving equality. The approach adopted by the Scottish Government is set firmly within the context of the Gender Equality Duty and tackling domestic violence is therefore essential in meeting that duty.

### **The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011**

This act was passed by the Scottish Parliament on 22 March 2011 to provide a specific civil remedy to protect people being forced into marriage against their will and those already in such a marriage. The Act came into force on 28 November 2011.

The Act makes it a criminal offence to breach the law and could lead to a two year prison sentence, a fine up to £10,000 or both. Scottish courts have the power to issue Forced Marriage Protection Orders, to ensure people are taken to a place of safety or help those in danger of being taken abroad for marriage.

NB A forced marriage is a marriage in which one or both parties do not (or, in the case of some adults with learning or physical disabilities, cannot) consent to the marriage and duress is involved. Duress includes both physical and emotional pressure. It is very different from arranged marriage, where both parties give their full and free consent to the marriage. For information and advice there is a 24 hour helpline: 0800 027 1234.

### **The Public Bodies (Joint Working) (Scotland) 2014**

The Act provides the framework for the integration of health and social care services in Scotland. It will put in place nationally agreed outcomes, which will apply across health and social care, and for which NHS Boards and Local Authorities will be held jointly accountable, a requirement on NHS Boards and Local Authorities to integrate health and social care budgets and a requirement on Partnerships to strengthen the role of clinicians and care professionals, along with the third and independent sectors, in the planning and delivery of services

Partnerships will be jointly accountable to Ministers, Local Authorities, NHS Board Chairs and the public for delivering the nationally agreed outcomes.

### **The Social Care (Self-Directed Support) (Scotland) Act 2013**

This establishes a duty on local authorities to provide adults, children and families with choice over their care and support arrangements through the general principles of involvement, informed choice, collaboration, participation and dignity.

The Scottish Government, local authorities and providers are committed to significant expansion of opportunities for adults to take greater control over their support, either through a direct payment, individual service fund (or similar 'notional budget' option), directly provided services or any combination of these.

Local authorities are subject to the same duties and powers under the 2007 Act where a person chooses to direct their support, or elects to ask the Council to arrange support on their behalf. The responsibility to assess risk, inquire, investigate or, where necessary, intervene to protect remains the same. The statutory guidance accompanying the 2013 Act includes a section on the development of links between adult protection and social care assessment arrangements. It reinforces the point that enablement through self-directed support rests on a return to the core principles of social care and social work practice. It emphasises the need to support adults to identify their personal outcomes as part of the assessment process and to decide how they wish to meet those outcomes. Effective self-directed support arrangements rest on good quality assessment, support, planning and review. They depend on the individual and where appropriate, their circles of support and any children living in the household, being fully involved in identifying, assessing and managing risks. In some instances, the subsequent choices made by an

individual may increase risk but by providing the individual with greater control over their support and supporting them to make informed choices regarding potential risk, an individual can also develop and improve their ability to protect themselves.

### **The Health (Tobacco, Nicotine etc and Care)(Scotland) Act 2016**

Wilful Neglect and Ill Treatment (Part 3) introduces a new offences of wilful neglect or ill-treatment in Scotland for adults receiving health care or social care. This consists of two offences, one applying to care workers and the other applying to care providers.

Duty of Candour (Part 2) introduces a new duty is to ensure that organisations are open, honest and supportive when there is an unexpected or unintended incident resulting in death or harm, as defined in the Act.

Scottish legislation and associated regulations can be found at:

[www.legislation.gov.uk](http://www.legislation.gov.uk)

## Appendix 2

### Chronology Guidance

The purpose of a chronology is to record **significant** concerns, events or incidents that impact (positively or otherwise) on an adult's wellbeing.

A **single agency chronology** provides a brief description and summarised account of significant events relevant to the adult. It should be used as an analytical tool to support the understanding of the impact of life events. A single-agency chronology is created when there are concerns about an adult that will impact on their wellbeing.

A **multi-agency chronology** is produced as part of a specific multi-agency intervention and will include information extracted from single agency chronologies that is **relevant, necessary, legitimate, appropriate** and **proportionate**.

#### **A chronology:**

- ✓ is an essential tool for best practice in assessment, analysis, and decision making
- ✓ is an aid to effective partnership working and discussion with the adult, carers and families
- ✓ is factual, accurate and evidence based;
- ✓ supports workers to maintain focus on the adult.
- ✓ is in a neutral language, suitable for practitioners, adult and families to understand;
- ✓ is presented in time and date order starting with the earliest available information;
- ✓ is concise – if every concern, event or milestone and circumstance is recorded then the chronology loses its value and impact
- ✓ provides an early indication of an emerging pattern of need, concerns, and/or risks.

All columns should be completed within the chronology template.

## Chronology of Significant Events

*(Start at the most relevant point in family history.)*

Date or period of event	Significant Event	Source	Impact/Outcome
<p>The date the event occurred (if this differs from date informed or reported – include this in the narrative)</p>	<p>A brief description of the event should be recorded here. The language should be in plain English, non-judgemental, clear and concise. Entries could be a summary of a pattern of behaviour e.g. failure to attend/rearranged appointments or services; school exclusions; refused access to child/household.</p> <p>An entry may include significant changes (both positive and negative) in:</p> <ul style="list-style-type: none"> <li>• the adult’s wellbeing;</li> <li>• the carer’s wellbeing which impacts on the adult;</li> <li>• the family household/housing circumstances, e.g. separation, divorce, bereavement, new partner, house move;</li> <li>• the adult’s legal status e.g. Welfare Guardianship, Power of Attorney Community treatment order, sectioned under Mental health Act</li> <li>• professional staff or services accessed by the adult or family</li> </ul> <p>An entry may also include information received from other services e.g. Police Vulnerable Person Report (record the reference number of VPR).</p>	<p>Record who/where the information has come from.</p>	<p>Note the impact on the adult. This could be updated at a later date if the impact is not immediately apparent.</p> <p>Include what happened as a result of the event and actions taken</p>



## Appendix 3

## Financial Harm

### 1. Legislative Basis

Adult Support and Protection (Scotland) Act 2007  
Mental Health (Care and Treatment)(Scotland) Act 2003  
Adults with Incapacity (Scotland) Act 2000  
The Trading Standards

### 2. Background

National consultation exercises undertaken consider how best to develop guidance for financial harm. These consultations have highlighted that financial harm appears to have increased steadily and gave rise to questions about how to respond most effectively to this challenge. Increased awareness and better levels of reporting may explain the perceived increase but it is still thought that much of this type of crime goes undetected. Welfare reform, unemployment and static wages mean that more people are experiencing financial hardship which may increase targeting of those more vulnerable due to their own situations.

Many types of financial crime can go unnoticed and factors, such as the economy, technology and social change, are diversifying the threat. In an increasingly connected world, it can no longer be assumed that adults at risk are safe in their own homes.

The diversity of financial crime against vulnerable adults makes it difficult to provide a single, all-embracing solution to the problem. Prevention and responses need to take into account the nature of the alleged perpetrator, the detail of the crime and the level of vulnerability of the adult.

Harm can range from not acting in the person's best interests, to persuasion or coercion in respect of gifts or loans, misappropriation of property or allowances, theft, rogue trading, or mass-marketing fraud. Regardless of the nature of such harm, or the methods used by perpetrators, the resulting impact on adults at risk can be significant.

#### 2.1 Definition of financial harm

Financial or material abuse, including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits. (DH/Home Office, 2000)

Financial harm includes:

- feeling under pressure to hand over money or possessions
- misuse of property or welfare benefits
- stopping someone getting their money or possessions
- stealing
- cheating or fraud
- misuse of bankcards
- putting someone under pressure to re-write a will or take out a loan
- withholding information about entitlements
- SCAMS
- Computer hacking

## **2.2 Impact of financial crime and harm**

Even small losses have the potential for significant impact when considered in context with a person's overall wealth/income and whether or not they have access to the right support.

The impact of financial crime should not be underestimated and can be every bit as significant as physical harm

- Deem (2000) suggests that victims of financial crimes can suffer as much as those who are victims of violent crime.
- Spalek (2007) suggests that anger and outrage, as well as anxiety, stress, fear and depression, were experienced by victims of the Maxwell pension fraud.
- Social care practitioners describe the distress and betrayal experienced by adults at risk who are victims of financial crime perpetrated by a person they have trusted. They suggest that it can leave such victims unsettled and without the confidence to live independently.

The negative impact of financial harm, regardless of the source, can cause an adult who previously coped well to lack confidence and find it difficult to cope with daily living.

## **3. Indicators of financial harm**

If you are a family member, carer or someone who works with adults who may be at risk, there are certain things which might trigger you to think about financial harm:

- a lack of food in the house
- unexplained disappearance of funds or valuable possessions such as art, silverware or jewellery
- unexplained debt
- withdrawing lots of money from the bank or post office
- numerous unpaid bills, or overdue rent, when someone else is supposed to be paying the bills
- another person using the adult's possessions, bank account or property without his or her informed consent
- work getting done on the house or garden which is unusual
- someone taking out extra loans
- always accompanied by people to make withdrawals
- lack of access to own money
- poor accommodation. Lack of repairs etc

In relation to older people additional indicators may be;

- Signatures on cheques etc that do not resemble the older person's signature, or signed when the older person cannot write.
- Sudden changes in bank accounts, including unexplained withdrawals of large sums of money by a person accompanying the older person
- The inclusion of additional names on an older person's bank account
- Abrupt changes to, or the sudden establishment of, wills.
- The sudden appearance of previously uninvolved relatives claiming their rights to an older person's affairs or possessions

- The unexplained sudden transfer of assets to a family member or someone outside the family
- Unusual concern by someone that an excessive amount of money is being expended on the care of the older person.
- Lack of amenities, such as TV, personal grooming items, appropriate clothing, that the older person should be able to afford
- Deliberate isolation of an older person from friends and family, resulting in the caregiver alone having total control

Many people who are not receiving services, or considered eligible for them, may lack the ability to protect themselves from financial exploitation or harm. Such vulnerabilities or risk factors may include the following:

- Lack of capacity to know what's happening.
- Dependency on others to manage care or finances.
- Cognitive impairment having an impact on decision-making.
- Low levels of financial capability (ability to deal with financial products & services).
- Bereavement/social isolation/loneliness, which may provide an opportunity for exploitation.
- Gullibility/over-trusting nature.
- For older people in particular, potentially increased assets coupled with low cost lifestyles and a lack of awareness of the modern world may make them more susceptible.
- Physical and/or mental disability, illness or impairment
- History of poor family relationships/violence
- Family member with alcohol/drug misuse

Particular factors, such as age, social isolation and/or declining/variable mental health, may lead adults at risk to become chronic or repeat victims.

#### **4. Who does it?**

It could be anyone:

- a relative
- a husband, wife or partner
- a friend
- a professional
- a carer
- a neighbour
- a stranger
- a volunteer
- bogus workmen
- bogus companies
- internet hackers

## **5. Where does financial harm happen**

Financial Harm can happen anywhere.

- in the family home,
- in a hospital ward,
- in a care home,
- at a social club or day centre,
- at work,
- on the internet
- in a public place

## **6. Protective factors**

Identification of risk factors can be balanced by the existence of protective factors that can ensure that adults at risk have the right support to make informed decisions and help empower them to make own choices and live as independently as possible.

Protective factors may be;

- Trusted person with legal powers – financial attorney/guardianship
- Supportive, wide family network
- Good social network
- Ability to recognise risks
- Technology (CCTV, Community Alarm)

## **7. Who do I tell**

Organisations that can help include Police (101), Citizens Advice Bureau and local Trading Standards

## Appendix 4

## Self Neglect

Self-neglect differs from the other forms of harm as it does not involve a perpetrator. Self-neglect is included in the Adult Support and Protection (Scotland) Act 2007 which places a statutory duty to make inquiries if it is suspected that someone may be at risk of harm.

### 1. What is Self-Neglect ?

**Self-Neglect** is the inability (intentional or unintentional) to maintain a socially and culturally accepted standard of self-care with the potential for serious consequences to the health and well-being of the individual and potentially to their community.

Extreme self-neglect can be known as Diogenes syndrome.

**Diogenes syndrome** is a disorder characterized by extreme self-neglect, domestic squalor, social withdrawal, apathy, compulsive hoarding of garbage, and lack of shame. Sufferers may also display symptoms of catatonia.

### Self-Neglect

An individual may be considered as self-neglecting and therefore maybe at risk of harm when they are

- either unable, or unwilling to provide adequate care for themselves
- unable to obtain necessary care to meet their needs
- unable to make reasonable or informed decisions because of their state of mental health, or because they have learning disability or acquired brain injury.
- Refusing essential support without which their health and safety needs cannot be met and the individual does not have the insight to recognise this.

### 2. Causation/Associated Factors

There is recognition that self-neglect can have complex causes and manifestations.

It is seen as predominantly occurring in older people but it may be that older age represents a time when behaviours that earlier had been functional have now become dysfunctional as individuals become less able to manage their consequences.

There is no clear causation but associated factors include

- Diminished social networks
- Poor physical health
- Poor mental health
- Impaired physical functioning
- Impaired cognitive functioning
- Lack of access to social or health services
- The economic resources available
- Living in grossly unsanitary conditions
- Suffering from malnutrition to such an extent that, without intervention, the adult's physical or mental health is likely to be severely impaired.

### 3. Perception of people who self-neglect

Research (Braye, Orr, Preston-Shoot 2011) show emerging themes of people who self-neglect which are

- pride in self sufficiency
- sense of connectedness to place and possessions
- exhibit behaviour that attempts to preserve the continuity of identity and control

### 4. Professional response

Professional responses are challenging as there is no certainty in research of the understanding how the range of factors involved might lead to particular behaviours or be amendable to intervention.

Professional response can based on varying factors

- differentiation between the inability to care for oneself and the perceived capacity to understand the consequences of one's action.
- Professional tolerance is higher when seen as a lifestyle choice rather than arising from physical and mental health impairment
- Mental competence in that people are unwilling to meet basic daily living needs
- Executive dysfunction which is
  - the inability to perform activities of daily living even though the need for them may be understood
  - not only having the ability to understand the consequences of a decision but also the ability to execute the decision and adapt plans.
- Inability of the person to recognise unsafe living conditions

In situation of self-neglect there is little evidence of effective interventions but some clear signposts do emerge

#### a) Assessment

A comprehensive assessment is essential that assists practitioners in identifying capabilities and risk .

Equally relationships and professional judgement remain valued as effective means of conducting assessment that includes interviewing technique, cultural expectations an individual personality characteristics.

The guiding principles in cases of self-neglect should be

- **Assessment of capacity does not negate the duty to act for an individual's well being**
- Value of beneficence in contributing to dignity stress principle of doing least harm
- Balance between respect for autonomy and perceived duty to preserve health and well being

## b) Intervention

Absence of capacity opens up various legal options.

However when a person has decision making capacity, practitioners have to rely on negotiation and relationship building skills.

Consensus and persuasion respects a person's autonomy and seeks to avoid counterproductive alienation when intrusion is likely to be resented.

Intervention should not address self-neglect specifically but deal with those concerns expressed by the individual themselves which might include health issues, lack of support networks or various activities of daily living.

This approach may assist people to manage risk in their lives and might address practitioner concerns about avoiding paternalism and promoting choice and Human Rights.

## c) Multi-agency framework

Because of the complex issues involved multi-agency involvement, collaboration and shared responsibility is essential.

**Assessment of capacity does not negate duty of care. No case should be closed until a multi-agency meeting has been held to explore options for intervention that will improve outcomes.**

## d) Law

Knowledge of legal frameworks for intervention, either when the individual lacks capacity or where expressed wishes are overridden because grounds for lawful removal are met is important. The legal rules on intervention, involving mental health and mental capacity, human rights and information sharing, public health and social care legislation can be complex and may require consultation with legal department.

### Legislation that may apply

Adult Support and Protection (Scotland) Act 2007

Mental Health (Care and Treatment)(Scotland) Act 2003 – Section 33

Adults with Incapacity (Scotland) Act 2000

Public Health etc (Scotland) 2000 Act

Housing (Scotland) Act 2006 if house in owned by LA

Anti-Social Behaviour etc (Scotland) Act 2004 - ASBO may be applicable but hard to enforce

Environment Protection Act 1990 has an abatement order but this is more aimed at commercial premise not individuals and hard to enforce.

**Hoarding** can result in self neglect

**Hoarding** is the excessive collection and retention of any material to the point that it impedes day to day functioning. Pathological or compulsive hoarding is a specific type of behaviour characterised by:

- Acquiring and failing to throw out a large number of items that would appear to hold little or no value and would be considered rubbish by other people.
- Severe cluttering of the person's home so that it is no longer able to function as a viable living space;
- Significant distress or impairment of work or social life (Kelly 2010).

### **There are 3 Types of Hoarding**

- **Inanimate objects** - This is the most common and could consist of one type of object or a collection of a mixture of objects such as old clothes, newspapers, food, containers or papers.
- **Animal Hoarding** - Animal hoarding is on the increase. This is the obsessive collecting of animals, often with an inability to provide minimal standards of care.
- **Data Hoarding** - This could present with the storage of data collection equipment such as computers, electronic storage devices or paper. A need to store copies of emails, and other information in an electronic format.

Other distinctive features include:

- **Fear and anxiety:** compulsive hoarding may have started as a learnt behaviour or following a significant event such as bereavement. The person hoarding believes buying or saving things will remove the anxiety and fear they feel. The hoarding effectively becomes a safety blanket
- **Long term behaviour pattern:** possibly developed over many years or decades of “buy and drop” and an inability to throw away items without experiencing fear and anxiety.
- **Excessive attachment to possessions:** people who hoard may hold an inappropriate emotional attachment to items.
- **Indecisiveness:** people who hoard struggle with the decision to discard items that are no longer necessary, including rubbish.
- **Socially isolated:** some hoarders will typically alienate family and friends and may be embarrassed to have visitors. They may refuse home visits from professionals, in favour of office based appointments.
- **Large number of pets:** people who hoard may have a large number of animals that can be a source of complaints by neighbours. They may be inclined to take in strays.



- **Mentally competent:** people who hoard are typically able to make decisions that are not related to the hoarding. That said, hoarding is now considered a standalone mental disorder and can also be a symptom of other mental disorders.
- **Extreme clutter:** hoarding behaviour may prevent several or all of the rooms being used.
- **Self-care:** a hoarder may appear unkempt and dishevelled, due to lack of usable toileting or washing facilities in their home. Some hoarders will use public facilities, in order to maintain their personal hygiene and appearance.
- **Poor insight:** hoarders typically see nothing wrong with their behaviour and the impact it has on them and others

### **Mental health issues.**

Hoarding disorder used to be considered a form of obsessive compulsive disorder (OCD) but is now considered a standalone mental disorder. It can also be the symptom of other mental disorders. Hoarding Disorder is distinct from the act of collecting, and is also different from people whose property is generally cluttered or messy. It is **not** simply a lifestyle choice. The main difference between a hoarder and a collector is that hoarders have strong emotional attachments to their objects which are well in excess of their real value.

Hoarding does not favour a particular gender, age, ethnicity, socio-economic status, educational/occupational history or tenure type.

### **Scottish Fire and Rescue**

Hoarding is a fire hazard. Many occupants die in fires in these homes and this can have a devastating impact on neighbours and the wider community.

As part of a commitment to building a safer Scotland, the Scottish Fire and Rescue Service offers a free home safety visit to all people in Perth and Kinross and will work closely with the council to promote fire safety, and intervene in cases of hoarding and other fire safety issues.

### **Issues identified with hoarding**

- Forced clean-up is not an optimal response and rarely works in the longer term
- Meaningful engagement is the most effective tool - Trusted person to engage with to affect change
- Where animal hoarding is involved, psychiatric assessment is usually needed.
- Diogenes syndrome is linked to brain injury, anxiety and depression so assessment needs to be thorough.

- Recognition of impact on other people
- Multi-agency response required and appropriate sharing of information
- Multi-agency policy needed
- Hoarding may be included in the ICD (International Classification of Diseases) in 2017

**Assessment of capacity or non-engagement does not negate duty of care. No case should be closed until a multi-agency meeting has been held to explore options for intervention that will improve outcomes.**

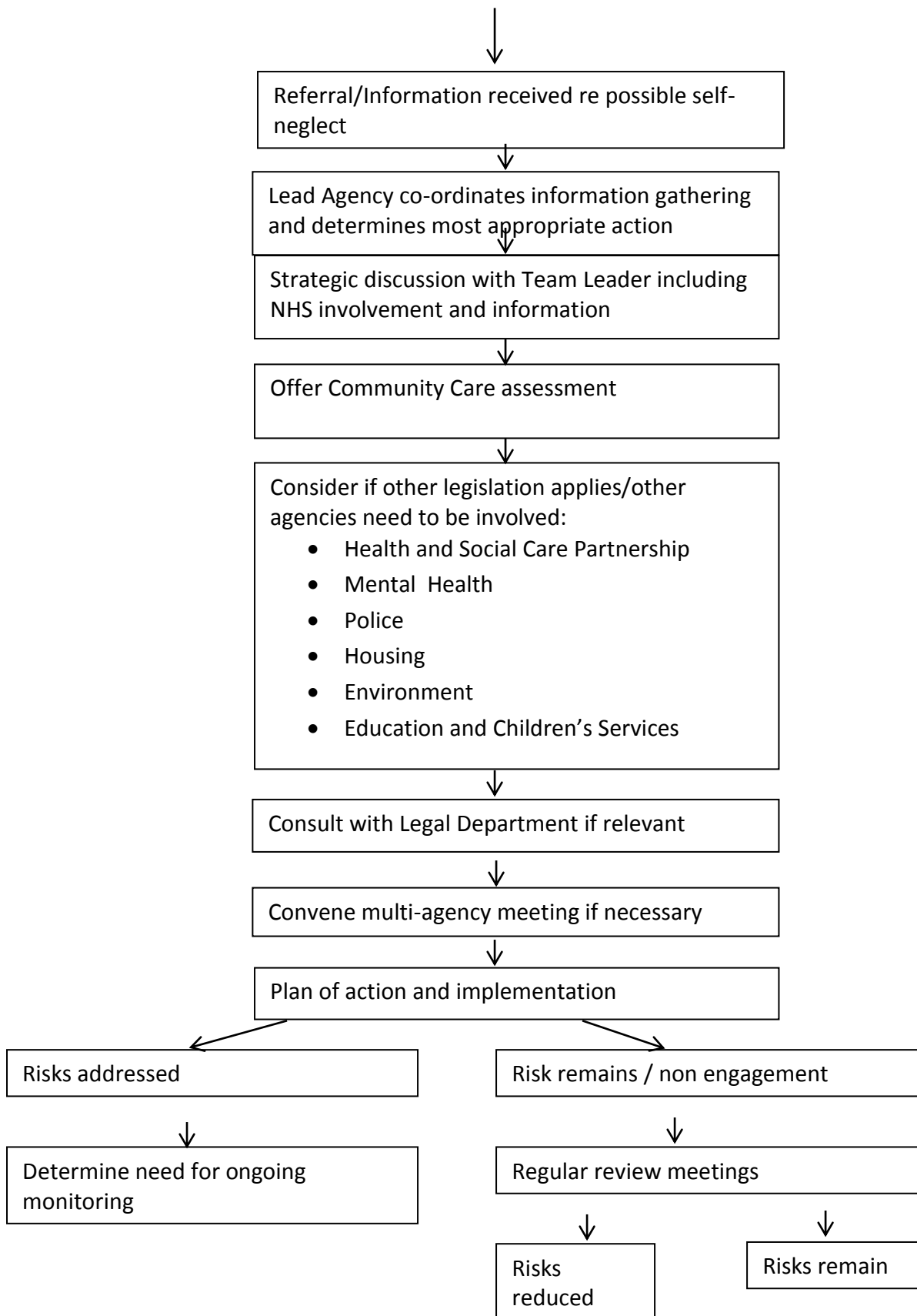
### Information Sources

Sussex Multi-agency Procedures to Support People who Self Neglect  
 Conceptualising and responding to self-neglect: the challenges for adult safeguarding  
 (Suzy Braye, David Orr and Michael Preston-Shoot 2011)

### Contacts

- Scottish Fire & Rescue Service – Home Fire Safety Visit:  
<http://www.firescotland.gov.uk/your-safety/hfsv-form.aspx>
- SAMH (Scottish Association for Mental Health)  
 Tel: 0141 530 1000 / Email: [enquire@samh.org.uk](mailto:enquire@samh.org.uk)
- Life – Pod CIC  
 Tel: 07421 329380  
 Email: [linda@life-pod.co.uk](mailto:linda@life-pod.co.uk)  
[www.life-pod.co.uk](http://www.life-pod.co.uk)

**SELF-NEGLECT**



### **Harm in a Regulated Care Setting**

Local authorities have been given powers and duties in relation to adult protection concerns but managers of care services have a responsibility to ensure that care provided within their setting meets national care standards, the requirements of national care contracts and of local service level agreements.

The responsibility for informing the Commission for the Regulation of Care in Scotland (the Care Commission) of any adult protection concern lies with the registered service but Council staff should ascertain whether or not this has been done.

Issues of concern may arise because of the behaviour of one client towards another, behaviour of visitors to the care setting towards a client, behaviour of staff towards a client, or an organisational culture of poor practice due to systemic issues related to management processes and style.

If any client in a registered care setting is subject to harmful conduct by another client, visitor to the care setting or staff member, it must be reported to the Council with responsibility for the geographical area. The Council will make enquiries to decide if any action needs to be taken, and what it should involve.

The actions outlined here are in addition to the normal adult protection process.

### **Harm within Local Authority Establishments**

An appropriate enquiry will be undertaken by the Unit Manager/Care Home Manager who will discuss findings with the Service Manager and a decision will be taken whether to proceed with an adult protection investigation according to operational guidance. The usual parameters about involvement/discussion with Police will apply.

Consideration will be given to the immediate safety of the service user and the suspension of staff where necessary.

The Care Inspectorate will be informed by the Unit Manager/ Care Home Manager.

Depending on the outcome of the investigation, appropriate disciplinary procedures will be implemented.

Where systemic and organisational cultural issues have been identified as contributing to the harm, an action plan will be put in place which will be monitored by the Service Manager until there is evidence of improved practice.

The Contract Compliance Officer will be informed.

**Harm Within External Agencies including NHS, Private and Voluntary Care Harm within external agencies including private and voluntary care settings**

When information is reported to the Council, a discussion will take place between the appropriate Council Team Leader and the referrer where appropriate.

If the referral has been received from the Care Inspectorate a discussion will take place on how to proceed in relation to the responsibilities of each organisation.

If the referral has been received from the care setting, a discussion with the manager will consider the immediate safety of the client, they will be advised to contact the Care Inspectorate and informed of likely interventions by the Council.

The Council Team Leader will inform their Service Manager (strategic discussion) of the adult protection concern and the usual parameters about involvement/discussion with police will apply.

It may be necessary to discuss with Head of Service if admissions/referrals to care setting require to be suspended and whether this is to be notified nationally. Care Home Owner /Organisation should be kept fully informed of all actions taken.

Other Councils who have placed clients in the care setting will be notified of the situation. Investigation would be initiated where necessary.

As part of the investigation, discussion will take place with the manager of the care setting about implementation of the HR procedures if staff are implicated in allegation(s).

Where systemic and cultural issues have been identified as contributing to the harm, an action plan will be put in place and monitored by the Care Inspectorate/Service Manager until there is evidence of improved practice. Council should consider if all clients using the service require to have their care plan reviewed. When practice reflects satisfactory standards, moratorium on admissions should be lifted.

Contract compliance officer will be informed

### **Harm within NHS settings**

When information is reported to the Council, a discussion will take place between the appropriate Council Team Leader and the referrer where appropriate.

When the referral has been received from the NHS setting, a discussion with the relevant NHS manager will consider the immediate safety of the person and others in the same setting

The Council Team Leader will inform their Service Manager of the adult protection concern and the usual parameters about involvement/discussion with police will apply.

Discussion with Senior Manager should take place to determine the level of seniority of the investigating officer.

If it is believed that more than one person has been harmed, the Large Scale Investigation Protocol will apply.

As part of the investigation, discussion will take place with the NHS manager about implementation of the HR procedures if staff are implicated in allegation(s).

A copy of the report/findings should be forwarded to

- Charge Nurse/ Ward Manager
- Director of nursing, NHS Tayside
- Medical director, NHS Tayside

If the inquiry shows poor culture of care involving people with mental disorder, the MWC should be informed.

## **APPENDIX 6 SERVICE**

## **APPROPRIATE ADULTS TAYSIDE**

Whatever the age, background, abilities or position of people within our communities, everyone is entitled to the same level of service. In particular, if a person becomes a victim of crime, witnesses a criminal act, or even finds themselves accused of committing a crime, each individual has the same rights as anyone else even though their needs may be different.

It is essential that all people who come into contact with the police fully understand both their rights and what is being asked of them. It is equally essential that the police understand what is said in reply.

Appropriate Adults Tayside is a partnership managed jointly between Angus, Dundee & Perth and Kinross Councils, NHS Scotland and Police Scotland. Appropriate Adult Tayside use self-employed 'appropriate adults' who have been specially selected based on experience or working and communicating with people who have a mental disorder.

The term mental disorder includes people who are mentally ill, people with a learning disability, those with an acquired brain injury and people who have dementia.

The role of the Appropriate Adult is to act as a facilitator during any stage of police procedures. They will try to ensure, as far as is possible, that a person with a mental disorder is at no more of a disadvantage than any other member of the community when they are involved in police enquiries.

### **Who should be an Appropriate Adult?**

In Tayside the services of an appropriate adult can only be provided by individuals who are contracted to the Appropriate Adults Tayside service and have undertaken nationally approved training. Appropriate Adults are utilised during any police procedure and this applies equally for victims, witnesses, not officially accused or accused persons.

Appropriate Adults may be required to be present for the following procedures:-

- Voluntary Attendance
- Arrest
- PIROS (Police Interview Rights of Suspect) procedures
- Caution and Charge
- Police interview or statement with a victim, witness, not officially accused or officially accused person
- Medical examination
- Taking of evidential samples e.g. DNA, fingerprints
- Photographs
- Intoximeter (drink driving procedures)
- Video Identification Parade Electronic Recording (ViPER)
- House or body search
- Traditional identification parades

## **When is an Appropriate Adult required?**

The responsibility for identifying when an appropriate adult is required rests with the police officer who is dealing with the case, whether the person with the mental disorder is a victim, witness, not officially accused or officially accused person.

It should be emphasised that appropriate adults are now available for those with all types of mental disorder, for example:

- Learning disability
- Mental illness
- Alzheimer's disease/other forms of dementia
- Acquired brain injury

The police officer should also take into consideration the presence of any of the following in order to make their judgement as to whether or not an appropriate adult may be required:

- Excessive anxiety
- Unusual mood level
- Incoherence (other than that associated with controlled drugs/alcohol)
- Inability to understand
- Unusual behaviour
- Agitation leading to physical activity not in keeping with the current situation

When a police officer believes the services of an appropriate adult are required they will follow local Police procedure to make the necessary arrangements.



**Issues of capacity and Consent**

If the adult at risk has a welfare or financial guardian or attorney (a proxy) under the Adults with Incapacity Act, it may be that the adult is unable to give or withhold consent to being interviewed or to an investigation. In such cases consent from the proxy should be sought. Alternatively, it may be that the adult has capacity to decide on some aspects of their life and not others and may be able to consent to being interviewed or to an investigation.

The Office of the Public Guardian holds information about guardianships/welfare and financial attorneys and is obliged under the Adult Support and Protection Act to assist in adult protection procedures.

**Assessing Capacity**

There is no statutory requirement for a formal psychiatric assessment of capacity in relation to adult protection procedures. Assessments of whether a person has capacity can be made by professionals who know the adult, including a person's GP or care/case manager or case holder.

The ability to give informed consent involves:

- understanding in simple language what is involved;
- understanding in simple terms the potential consequences of consenting or not consenting;
- forming a decision about whether to consent;
- being able to communicate their decision; and
- making a decision without coercion, fear or intimidation.

It is good practice to discuss on a multi-professional basis whether an adult has capacity in relation to specific decisions. In the event of disagreement about whether a person has capacity a formal assessment should be sought unless the urgency of the situation requires immediate action.

If the urgency of the situation requires immediate action then a judgment may need to be made about a person's capacity without an assessment or multi-disciplinary consultation. If the person is unconscious, seriously injured or unwell they clearly lack capacity (and cannot give consent) and immediate medical and if appropriate police intervention should be sought.

If the person is considered to be under undue pressure from another person not to consent then legal advice must be sought from the department of law and administration before proceeding with the investigation, unless the urgency of the situation precludes consultation.

## **Investigations where a person lacks capacity to consent**

If a person lacks or is found to lack capacity to consent or withhold consent to an investigation then an investigation under these procedures may proceed.

Should a proxy be in place (attorney or guardian) they should be asked to give consent and be involved in the investigation unless this would cause unreasonable delay. This does **not** apply if they are the perpetrator or suspected perpetrator of harm or if they are suspected to have negligently failed to protect the adult.

## Rights, Risk and Self-determination

In Scots Law, people aged 16 years and over (adults) are presumed to have legal capacity unless it can be shown otherwise. This means that adults are generally entitled to live as they choose and to make decisions as they wish unless their choice amounts to a criminal offence (in which case criminal law will intervene) or there are restrictions imposed through civil law (e.g. interdicts).

The exception to this is where an adult lacks capacity either temporarily or permanently to make decisions to safeguard their own interests or wellbeing because of mental disorder or an inability to communicate their decision. An adult is regarded as having capacity unless it can be shown otherwise.

Intervention without consent into the lives of people who have capacity in the aspect of their lives that is considered potentially harmful would contravene that person's human rights. People who are in care homes, supported accommodation and/or are users of services retain their full human rights, unless these have been restricted by a legal process and then only to the extent allowed by the law. Adults must be allowed to exercise their rights even if that means they choose to remain in a situation that other people consider inappropriate or harmful.

However, every effort should be made to inform the adult at risk of the consequences of the choice he/she may be making. Where appropriate, use should be made of an independent advocate, communication aids or interpretation services.

Despite these efforts there will be occasions where adults at risk choose to remain in dangerous situations. Professional staff may find they have no statutory powers in cases where the adult is judged to have **sufficient capacity** to make his or her own choices, refuses the help or treatment which staff and/ or carers feel is needed and is making those choices freely without undue pressure from another person.

Where there is a likelihood that the adult may suffer serious harm an adult protection case conference should be convened:

- to consider how the situation should be managed and
- to consider issues of public interest.

An accurate record should be made of the decisions taken at the adult protection case conference including:

- the decision of the adult at risk
- evidence of capacity
- the advice or information they were given
- any further work that will be undertaken to support the adult (including referral to services such as advocacy services),
- where indicated, a date at which the decision should be reviewed with adult at risk, and
- consideration of the public interest

In order to demonstrate “defensible decision making” staff should ensure that:

- there is evidence the operational instructions have been followed
- any criminal act has been addressed
- every effort has been, and continues to be made in collaboration with other agencies to intervene positively to protect the adult at risk
- legal advice has been obtained.

If an adult at risk has made their wishes known whilst they have capacity and has subsequently lost capacity it will be necessary to assess whether the previous wishes of the adult at risk should be respected, particularly if these wishes have exposed the adult at risk to situations which could be potentially harmful. In such cases an adult protection case conference should be convened where these issues can be explored and a decision taken about the way forward. Legal advice should always be sought in such circumstances from the department of law and administration.

### **Capacity to consent to sexual activity**

One aspect of adulthood which most of us take for granted is the right to be sexually active. All human beings are sexual beings with sexual needs, feelings and drives. Practitioners must strike a balance in working people with disabilities and mental disorder to enable them to get pleasure and enjoyment from their close personal relationships and provide them with protection from encounters which are exploitative or to which the person is unable to consent. This right is applicable to all adults, including:

- people with learning disabilities
- people with brain injury
- people with a physical disability, sensory impairment or communication difficulty
- people with dementia
- people with mental illness such as schizophrenia or bi-polar disorder

Adults may need support and information to enable them to form healthy relationships between themselves and others. They should be given appropriate information about sex and relationships in order to help them:

- keep themselves safe
- form informed consensual sexual relationships if they wish to do so
- act in a manner which is respectful towards others and themselves
- avoid unwanted effects such as sexually transmitted diseases and unplanned pregnancy
- express their sexuality which reflects their personal preference
- express their sexuality safely and within the limits of the law
- access help with sexual problems
- have privacy to develop their relationships

The above information must be in a format which is understood by the individual.

### **Concerns about capacity to consent to sexual activity**

Assessments of capacity to consent may be undertaken by a professional who preferably knows the adult and has the necessary skills to do so. Good practice is for issues of capacity to consent to sexual activity to be discussed in the multi-agency arena.

The ability to give informed consent involves:

- understanding in simple language what is involved
- understanding in simple terms the potential consequences of consenting or not consenting
- forming a decision about whether to consent
- being able to communicate their decision, and
- making a decision without coercion, fear or intimidation

Where there are doubts or differences of opinion about whether a person has capacity to consent to a sexual relationship that is ongoing then these adult protection procedures should be followed and an investigation under the Adult Support and Protection Act take place. The adult protection investigation may include a formal assessment of the person's capacity by a consultant psychiatrist.

Should there remain significant doubt as to the person's capacity to consent and sexual contact is ongoing, or has the potential to occur again, an adult protection case conference must be called.

Until further decisions are made immediate steps must be taken to protect the adult whilst an investigation is ongoing.

### **Where a person lacks capacity to consent to sexual activity**

Where it is suspected that an adult lacking the capacity to consent to sexual activity has had sexual contact this must be notified to the police. It is a criminal offence for someone to have any sexual activity with someone who is not capable of consenting to sex due to mental disorder s.17 of The Sexual Offences (Scotland) Act 2009.

There must be immediate steps to protect the adult whilst an investigation under the Act is underway.

Indications that sexual activity has or may have taken place include:

- pregnancy
- sexually transmitted disease
- unexplained urinary tract infections or repeat oral, anal or vaginal infections such as candida
- injury or swelling around the genital or anal area
- fear, pain or distress when undergoing personal care

## **Where a person has capacity to consent but does not consent to sexual activity**

Where a person meeting the criteria of adult at risk has the capacity to consent but is under duress to have a sexual relationship or has not consented to a sexual act that has been alleged to have taken place the police must be notified immediately and thereafter involved in any investigation under the adult protection procedures.

It should be noted that a person may consent to sexual activity with a regular or occasional partner on some occasions but not others. Their right to say no to sexual activity must be encouraged and upheld. Any force or coercion must be regarded as a police matter and reported immediately.

If an alleged or suspected unlawful sexual act has occurred it is essential that evidence is not destroyed. There should be no attempt to help the person to wash even if asked to do so and it would reduce the person's distress.

The responsible case holder will make an assessment of what immediate steps need to be taken to protect the adult at risk, if this has not already been done, and will arrange what is necessary, including possible urgent action under the Adult Support and Protection Act.

For further information and guidance regarding this issue reference should be made to the Mental Welfare Commission for Scotland's document 'Consenting Adults' - July 2010. This document considers legal and ethical considerations for professionals and carers in relation to safeguarding rights and risks of individuals with a mental disorder, learning disability in sexual relations.

<https://www.mwscot.org.uk/media/51782/Consenting%20Adults.pdf>

## **APPENDIX 8 ASSESSMENT, RISK ASSESSMENT AND RISK MANAGEMENT**

This appendix summarises the principles, content and practice of assessment, risk assessment and risk management. Each agency will have risk assessment policies and procedures in place and their own necessary forms, which should be taken into account in practice.

### **Assessment**

An assessment is a structured, in-depth assessment of a person's needs. It provides a structured framework to record information gathered from a variety of sources to provide evidence for professional judgements, to facilitate analysis, decision making and planning.

Irrespective of work settings, assessment:

- Is a core professional skill
- Provides an in depth analysis of the situation
- Makes the process of assessment transparent for the service user
- Increases accountability

Staff managing the process can match the depth of the assessment to the complexity of the situation.

### **Definition of risk**

Risk is the likelihood of an event happening with potentially harmful or beneficial outcomes for self and others. Possible behaviours include suicide, self harm, neglect, aggression and violence with an additional range of other positive or negative service user experiences.

### **Risk assessment**

Risk assessment is about identifying the types of benefits and harms which may occur in particular circumstances and their likelihood. Risk assessment can be defined as:

- the systematic collection of information to try to determine level of risk
- decision making processes to determine uncertain outcome
- the possibility of beneficial and harmful outcomes and the likelihood of their occurrence in a stated timescale.

Elements of good risk assessment include:

- Seeking the views of all interested parties including the views of the adult in need of support/protection (involve advocacy if indicated)
- Collecting full information concerning the adult in need of support/protection
- Being specific about the range of factors which affect the likelihood or probability of certain kinds of outcomes.
- Identifying dynamic factors which may increase or decrease risk (e.g. fluctuating health, accommodation difficulties, access to formal or informal support network, staffing levels in care homes)

- Identifying historical factors which may indicate increased or decreased risk (e.g. past events, patterns of behaviour)
- Identifying situational/environmental triggers which may increase risk (e.g. substance use, presence or absence of particular people, challenging behaviour, stressors for carer)
- Sharing information regarding risk in multi-agency setting
- Ensuring clear communication and understanding
- Seeking multi agency agreement and record and dissent
- Moving on from risk assessment to risk management.

### **Collecting necessary data**

It is essential to take account of all relevant information, whatever its source. Sources may include:

- relatives, friends & carers
- housing, police, social work, CJS
- neighbours, members of the public

Too often it has been proved that information indicating an increased risk existed but had not been communicated and acted upon

### **Prime indicators**

There are a number of prime indicators which have to be considered in any risk assessment. These include:

- Previous history – violence, self harm
- Substance misuse
- Communication of intent / access
- Instability of home environment / accommodation
- Dissatisfaction with family relationships
- Chaotic lifestyles
- Lack of activity / interest/ employment
- Current state of health – mental, physical
- Other stress factors - financial

### **Analysing data**

The collection of information is only a part of any assessment process. The activity which forms the foundation of any assessment, including risk assessment, is analysis.

The analysis of the available information includes:

- Specific description of risk
- Statement of who is at risk
- Possible consequences of taking / not taking action
- Timescale for the risk
- Strengths/resilience of the individual(s)
- Conditions under which risk is greater
- Review date / when circumstances change(d)
- Actions to minimise hazards & enhance strength



## **Risk management**

A life without risk would be a life without meaning or interest. Risk is an essential and unavoidable part of everyday life. It involves choice and risk management should help promote the dignity and rights of the individual.

The complete avoidance of any harm would not maximise benefit to the individual and would be overly restrictive. The purpose of risk management is to balance risk and benefit to optimise the quality of life of people.

Due to the complex balance between avoidance of harm and maximising benefit, having a risk management plan in place does not guarantee elimination of harmful outcomes. However effective risk management is based on good practice and defensible decision making. An effective risk management process will help to ensure accountability, clarity and support for staff involved in the risk decision.

### **Basic Principles for the Assessment and Management of Risk**

The following basic principles can be applied to effective risk assessment and management:

- Risk is dynamic, constantly changing in response to altered circumstances.
- Risk can be minimised, but not eliminated.
- Identification of risk carries a duty to do something about it, that is manage the risk (risk management).
- Confidentiality is a right, but may be breached in exceptional circumstances when people are deemed to be at serious risk of harm.

### **What is risk management?**

Risk management includes all the activity connected with a plan that uses the information gained from the assessment process to implement, control and learn from risk decisions

These key elements of an effective risk management process include the need to:

- fully record the decision making process and the reasoning behind it
- involve all interested parties, including the adult at risk
- make risk management decisions through a multi-agency group where possible (usually at case conference)
- identify area(s) of risk
- systematically address each risk in turn and agree if action needs to be taken and if so what action is required and by whom
- decide which risks are acceptable and/or provide benefits for the individual and identify action to minimise harm
- list potential positive and negative outcomes
- identify the benefits of each decision to the individual and consider the justification of any restrictions on freedom - balance the outcomes
- implement the risk decision
- agree a risk management or protection plan, which includes a contingency plan for certain occurrences

- agree a monitoring group (core group) and frequency of meetings
- agree a review timescale
- agree a communication strategy with all interested parties
- monitor the plan and allow for changing circumstances
- review and make changes to the risk management plan as required.

### **The risk management or protection plan**

A risk management or protection plan should include clear statements on:

- who has been consulted
- who is responsible for planning and implementation
- the steps that will be taken to minimise possible hazards and harms
- the steps to be taken to enhance possible benefits
- the steps to be taken to enhance strengths
- what actions have been agreed, who is to carry out these actions and when
- the desired outcome of each action
- the consequences of taking no action
- agreed timescales
- the details of any contingency plan - the points at which exceptional intervention would be indicated and how this will happen
- the milestones for measuring success or failure
- arrangements for record keeping

### **The Risk Management Process**

Risk assessment and management are not single activities but form part of a continuous process. The dynamic nature of risk means that it is crucial that assessments and plans are reviewed and updated using the following process:

- Assess and plan
- Implement
- Monitor
- Review

### **Defensible decision making**

A defensible decision has been defined as a decision that will withstand ‘hindsight scrutiny’ should the case ‘go wrong’ and negative outcomes have occurred” *Carson, D. (1996)*

“A decision is defensible if, in spite of a negative outcome, it can be demonstrated that all reasonable steps had been taken in its assessment and management. This is particularly important for those agencies that carry out risk assessment in the public eye, and where risk assessment and management failures can be very costly for victims, and to organisational credibility”

*Kemshall, H and Pritchard, J (1998)*

### **What to consider when making a defensible decision.**

- Can you evidence that you have collected, verified and evaluated all the information made available to you for the purpose of making a decision.
- Have you communicated with relevant others in relation to making this decision
- Is your decision based on the use of a risk assessment which informs a risk management plan
- Does your decision comply with agency policies and procedures
- Is your decision grounded in evidence
- Have taken all reasonable steps to gather all the necessary information to make a defensible decision within the time frame made available to you
- Can you account for their decisions, choices and courses of action chosen.
- Does the decision respond to escalating risk, deteriorating behaviour and non-compliance, and how does this relate to the proposed risk management plan?
- Can you evidence that this decision is recorded in a manner expected by your organisation?

### **Risk or dilemma**

A dilemma exists when there are no harm free options and it is necessary to make a decision immediately. In such circumstances, analysis is also important.

## **APPENDIX 9 ACCESS TO RECORDS (SECTION 10 OF THE ACT)**

### **1. Accessing Records**

- 1.1** Existing procedures relating to the sharing of information should be followed wherever possible. Where appropriate, 'Consent to Share Information' forms should be signed by the adult. If the adult lacks capacity to make informed decisions about their future, their Welfare Guardian or Welfare Power of Attorney should sign the form. If the adult lacks capacity and there are no details of a Welfare Guardian or Power of Attorney, the Office of the Public Guardian should be contacted to check whether or not one exists. Where there is no Welfare Guardian or Power of Attorney, consideration should be given to using the provisions in the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, or to sharing without consent if required to protect the adult or others.
- 1.2** If there is reasonable concern that an adult at risk is being harmed or is at risk of harm, this will always override a professional or agency requirement to keep information confidential. If it is not possible to obtain consent from the adult, for example, if the situation is so urgent that obtaining consent would cause an unacceptable delay or where the adult cannot consent, the adult should be informed about the information sharing wherever possible. If the adult lacks capacity, their Welfare Guardian or Welfare Power of Attorney should be informed about the information sharing unless it is felt that this may be detrimental to the adult. The Council has discretion regarding whether or not a Welfare Guardian or Power of Attorney is informed.
- 1.3** Section 10(1) of the Adult Support and Protection Act (Scotland) 2007 states that 'a Council Officer may require any person holding health, financial or other records on an individual the Officer knows or believes to be an adult at risk to give the records, or copies of them, to the Officer.'
- 1.4** Any decision to access records under the 2007 Act should be made by the relevant Community Care Team Manager to admin staff to arrange retrieval of record. File location should be logged on K2/event recording. When a Council Officer requests access to records he or she should explain:
- what information is needed;
  - why it is needed;
  - what will be done with the information;
  - with whom the information will be shared; and
  - how long the records will be kept and whether or not they will be returned or destroyed.
- 1.5** Information should only be shared with those who need to know and only if it is relevant to the particular concern identified. The amount of information shared should be proportionate to addressing that concern.

- 1.6** Records can be requested from a variety of agencies and this should be undertaken in writing in all practicable circumstances. Written requests can also be made electronically. The designated Council Officer must have appropriate identification with him or her when requesting and accessing records from other agencies. Examples of records that may be useful in an investigation include bank statements, employers' records, records held by Department of Work and Pensions or records held by voluntary agencies. This is not an exhaustive list. All formats of records such as computer, audio and visual are covered by the legislation.
- 1.7** If it appears an offence may have been committed, the police should be contacted and a joint investigation carried out. Only original documents or certified copies can be used in court. If computer records are to be submitted as evidence, they must be printed off and signed by the holder to confirm they are a certified copy. It is the responsibility of the police to gather evidence in a criminal investigation. The designated Council Officer should request copies of the records and ensure that original documents remain with the source of the information.
- 1.8** Section 49 of the Act states it is an offence of obstruction for a person to fail to comply with a requirement to provide information under Section 10 of the Act. Reasonable efforts should be made to resolve disagreements through informal means, initially, before considering any legal action.

## **2 Accessing Health Records**

- 2.1** If the designated Council Officer knows or believes an adult is at risk under the 2007 Act, he or she has the right to request any person holding health records to give access to the records or copies of them. Health records are any record made by or on behalf of a health professional relating to an individual's physical or mental health. Records include notes written by GPs, occupational therapists, physiotherapists and nurses, either written or electronic.
- 2.2** Health records may only be inspected by a registered health professional for example doctor, nurse or midwife.
- 2.3** If possible, an appointment should be made in advance to allow the author of the record time to gather the relevant information. It is best practice for the designated Council Officer, with the assistance of the health professional reading the records if appropriate, to interview the author. However, it may not always be possible to interview the author especially if records contain entries made by a large number of different Health professionals. During the interview, the designated Council Officer should record any statements made by the health professional inspecting the records. In certain circumstances, it may be appropriate to request the records or copies of them e.g. for inspection by another health professional for a second opinion.
- 2.4** In some cases it may be sufficient for a health professional to provide a written summary of his or her involvement and of the adult's physical and mental health along with any relevant documents or reports. However, it should be noted that

Section 10 of the Act refers to existing records held by a professional or an organisation rather than information created specifically to meet a request.

## **ADULT SUPPORT AND PROTECTION**

### **Local Authority application for disclosure of information from the Department of Works and Pensions under the Adult Support and Protection (Scotland) Act 2007**

#### Overview

DWP's policy for disclosure of personal information for "vulnerable adults" is that as long as a requester can provide sufficient informative detail as to the indicators of the person's vulnerability and risk to DWP we can disclose factual and relevant information in order to ensure the safety of the person. DWP is able to share data on a case-by-case basis when disclosure is deemed to be in the public interest.

In Scotland, the Adult Support and Protection (ASP) (Scotland) Act 2007 Act gives councils and other public bodies working with them various powers to support and protect adults at risk (as defined by the Act).

Section 10 of the Act requires any person holding health, financial or other records relating to a particular individual to give the records, or copies of them, to a council officer. Information requested under section 10 of the Act is used to allow the council to decide whether the individual is an adult at risk of harm and whether it needs to do anything to protect them from harm. An adult protection investigation may also lead to criminal action, depending on what the information reveals. Under section 49(2) of the Act it is an offence to fail to comply with a requirement made under section 10, without reasonable excuse.

While the ASP Act is not recognised as an enactment by the Social Security Administration Act 1992, it is a key tool for safeguarding adults at risk in Scotland. Co-operation between organisations which hold information about people who may be adults at risk is central to the ethos of the Act, and is necessary to ensure that steps can be taken to support and protect adults from harm.

#### Request for information under section 10 of the ASP Act

I would like to request disclosure of information under section 10 of the Adult Support and Protection (Scotland) Act 2007 as follows:

Name of person	
National Insurance Number * and/or Date of Birth & Address (* National Insurance Number preferred identifier)	

Brief reason why the information is requested and the use that will be made of it	
Information that is requested	
Requestor's name, position, organisation, address and telephone number.	

**TO BE USED WITH THE LOCAL AUTHORITY OR DELEGATED BODY'S LOGO OR LOGOS FOR SUCH REQUESTS AT THE TOP OF EACH PAGE**

Dear

**Re: Request for Information from Financial Institution  
Section 10 Adult Support and Protection (Scotland) Act 2007 (ASPA)**

Following contact with your (name, title, phone number and location of financial institution staff) by telephone and having confirmed the correct legal entity to make this request to. I, (name), in my role as Council Officer for [insert relevant organisation name and where the power is delegated from the local authority state 'with delegated authority and powers in relation to this request from [ENTER LOCAL AUTHORITY NAME] formally request disclosure of information from (company name and address). The request is made under Sections 4 (Inquiry) and 10 (Examination of Records) of the Adult Support and Protection (Scotland) Act 2007 (the Act) on the basis that we know or believe the below named to be at risk as defined by the Act.

Please contact the Council Officer named above upon receipt of this request to discuss the provision of the information requested. A copy of their ID or other formal proof of identity is attached as confirmation of their authority to act on behalf of [insert agency]. The professional title of the Council Officer may vary as per the definition of Council Officer in the attached information sheet. The ID provided therefore indicates their Council Officer status either directly or by way of professional or agency title and as such is considered proof of their legal authority to make this request. This is confirmed by the countersignature of their line manager *confirming the applicant's status as a Council Officer and that the request is required by the named agency in the performance of its duties under the Act. If for any reason, you are unable to comply with this request, please contact the Council Officer immediately* as a person commits an offence by, without reasonable excuse, refusing or otherwise failing to comply with a requirement made under section 10

All information provided will be managed within the terms of the Adult Support and Protection (Scotland) Act 2007 and the Data Protection Act 1998.

Please see the *Information Sheet* attached regarding the legal context of this request and provide the information below:



<b>Name of Customer</b>	
<b>Date of Birth (if available)</b>	
<b>Address (if available)</b>	
<b>Account Names, Numbers and Sort Codes (if available)</b>	
<b>Brief Description of the ASPA Inquiry</b>	
<b>Financial Information that is required (please include any third party mandates relating to the accounts located)</b>	
<b>Information Format required</b>	<input type="checkbox"/> <i>Hard Copy</i> <input type="checkbox"/> <i>Electronic Copy to the stated email addresses above (where available)</i>
<b>Information Required by</b>	<i>Date Month Year</i>
<b>Council Officer's Name, Contact Details and Signature</b>	
<b>Line Manager's Name, Contact Details and Signature</b>	

Yours faithfully

## Information Sheet

### Designated Agency Application for Disclosure of Information under Sections 4 and 10 of the Adult Support and Protection (Scotland) Act 2007

The Adult Support and Protection (Scotland) Act 2007 (the Act) gives councils and other public bodies working with them various powers to support and protect adults at risk (as defined by the Act).

*The Adult Support and Protection (Scotland) Act 2007, (the Act) confers on 'Council Officers' a duty to investigate cases of suspected harm to an 'adult at risk'. As part of this investigation, financial records pertaining to the adult at risk can be requested. Bodies holding these records have a legal duty to co-operate with the investigation. Failure to do so can amount to the commission of an offence under the Act making the individual liable on summary conviction to a fine or imprisonment.*

“Council Officer” means an individual appointed by a council (local authority) under section 64 of the Local Government (Scotland) Act 1973 to properly discharge the council’s functions. The Council Officer submitting this request is registered with the appropriate professional body as a Social Worker, Social Service Worker, Occupational Therapist or Nurse. In addition they will have at least 12 months’ post qualifying experience of identifying, assessing and managing adults at risk as per article 3 of the Act (Restriction on the Authorisation of Council Officers) Order 2008. In addition we expect such officers to have undertaken additional specialist training in Adult Support and Protection. Based upon these factors they have been delegated the statutory responsibility of Council Officer by the Chief Social Work Officer of [insert agency].

**Section 4** of the Act states that a council [or delegated agency as per Section 1(7) of and Schedule 1 to the Public Bodies (Joint Working) (Scotland) Act 2014] and associated relevant regulations i.e. SSI 2014/345 and SSI 2014/282 must make inquiries about a person’s wellbeing, property or financial affairs if it knows or believes that the person is an adult at risk, and that it might need to intervene to protect their wellbeing, property or financial affairs. As part of this process, **Section 10** of the Act stipulates: *A Council Officer may require any person holding health, financial or other records relating to an individual whom the officer knows or believes to be an adult at risk to give the records, or copies of them, to the officer.* This requirement can be made during a visit to the record holder or thereafter in writing. Where there is any dubiety about the identification of the council officer the financial institution will verify this.

Section 3 of the Act defines an ‘adult at risk’ as someone who is unable to safeguard their own well-being, property, rights or other interests and is at risk of harm. In such instances and where the person is more vulnerable because of a disability, disorder, illness or infirmity, the Act can be used to protect them.

The request does not require the consent of the individual, any financial power of attorney or financial guardian before the requested information is provided, as in some circumstances the adult in question may be placed at greater risk of harm. *Under section 49(2) of the Act it is an offence for a person or an organisation to fail to comply with a requirement made under section 10, without reasonable excuse.*

**Whilst you will be concerned about customer confidentiality, it is important to note that NOT sharing this information may place the adult at further risk of harm. Please refer to your internal guidance.**

Any information received in the course of an investigation is treated with the utmost confidence and will not be disclosed to any third parties other than in accordance with the provisions of the above Act. For the avoidance of doubt, Section 35 (1) of the Data Protection Act 1998, concerning disclosures required by law or made in connection with legal proceedings, states that personal data are exempt from non-disclosure provisions where it is required under enactment or to protect legal rights. Section 29 of the Data Protection Act may also be relevant in any case where the disclosure is for the prevention or detection of crime, the apprehension or prosecution of offenders.

The attached request is countersigned by the Council Officer's line manager to ensure probity, assuring the record holder that the request is being made in accordance with the requesting agencies procedures and powers. Should you be unfamiliar with the Adult Support and Protection (Scotland) Act 2007, you can view a copy of it at: <http://www.legislation.gov.uk/asp/2007/10/contents>

### **Council Officer Guidance Notes**

The wording and ordering of this document has been approved by national agreement between Social Work Scotland and the National Banking Support Group under the auspices of the Financial Sector Resilience Group (Scottish Business Resilience Centre/Police Scotland). If issues arise with the structure of the form please contact: [napc@stir.ac.uk](mailto:napc@stir.ac.uk) in order that any amendments can be considered at national level.

Please use this template in conjunction with the Adult Support and Protection (Scotland) Act 2007 Code of Practice (April 2014) especially noting chapter ten.

Prior to making a written request a telephone call should be placed with a staff member whose name, title and contract details are noted on the request. ***It is essential at this point that you identify the correct legal entity to address your request to.*** The name of the legal entity may be different to that of the company you are contacting and may also change over time. Some financial institutions may provide a central point and others local or regional contacts. However, obtaining the correct person, title and address will save time and allow the financial institution to provide you with the fullest level of detail in relation to your request.

The request should use the locally agreed logo or logos for such requests and be accompanied by the Information Sheet. Where the functions of a local authority have been delegated to your agency under Section 1(5) of the Public Bodies (Joint Working) (Scotland) Act 2014 please indicate in your request which local authority has delegated that power to your agency.

Requests may be made electronically where they can be sent and received securely.

<b>Name of Customer</b>	Full name and any known pseudonyms listed separately e.g. Mary McTavish May McTavish
<b>Date of Birth (if available)</b>	Please state in full e.g. 22 <sup>nd</sup> July 1952
<b>Address (if available)</b>	
<b>Account Names, Numbers and Sort Codes (if available)</b>	
<b>Brief Description of the ASPA Inquiry</b>	Basic information only to demonstrate that there is a risk or potential risk which has triggered an ASPA inquiry. This may assist the financial institution in locating the type of information required.
<b>Financial Information that is required (please include any third party mandates relating to the accounts located):</b>	<p>The information requested must be specific as opposed to generic. Ensure you emphasise the need to provide any information about third party mandates. Requests for 'all statements' will not be accepted. Consider the issues the service user is facing and what material over what period may support your inquiry. Where you are unclear about the types of information the financial institution may hold use the 'verbal' option to seek advice as to what may be available to support your inquiry. Examples include:</p> <ul style="list-style-type: none"> <li>• <i>the balance of Ms XXXX' account(s)</i></li> <li>• <i>any current Standing Orders or Direct Debits (including to whom payable, regularity and amounts)</i></li> <li>• <i>Statements covering the period .....</i></li> <li>• <i>We should also wish to request similar information for any other account in her name of which we are unaware."</i></li> <li>• <i>Whether .....holds a Bank or Building Society account with your bank?</i></li> <li>• <i>If so, whether any other persons are signatories to his/her account(s)?</i></li> <li>• <i>Please provide copy statements in relation to any accounts held by .....either jointly or solely for the last .....months</i></li> <li>• <i>Similar information regarding any other account held in this name.</i></li> <li>• <i>Any known liabilities/debts/mortgages etc.</i></li> <li>• <i>Any relevant financial information held in wills</i></li> <li>• <i>Any accounts in other names e.g. joint accounts</i></li> </ul>
<b>Information Format required</b>	It is likely that most institutions will only provide information in hard copy due to potential security issues with electronic transmission of personal information.
<b>Information required by</b>	<p>In some circumstances this will be urgent and it may be useful to state the reasons the information is required quickly and facilitate a verbal information exchange.</p> <p>In other circumstances please indicate in your request the required time frame e.g. 7, 14 or 21 calendar days.</p>

<p><b>Council Officer's Details and Signature</b></p>	<p>Name, position, organisation, address, email address, telephone number and signature. Please DO NOT provide a direct dial contact in the first instance.</p> <p>All applications should be accompanied by a copy of both sides of the Council Officers ID badge or other form of authorisation which either directly states or intimates through professional title that the person making the request is a Council Officer in terms of ASPA.</p>
<p><b>Counter Signatory's Details and Signature</b></p>	<p>This should be your line manager or the delegated counter signatory for your agency. Please provide; Name, position, organisation, address, email address, telephone number and signature. Please Do NOT provide direct dial contact in the first instance. <b><i>The counter signatory is confirming the applicant's status as a Council Officer and that the request is required by the named agency in the performance of its duties under the Act.</i></b></p>



# Tayside Significant Case Review Protocol



January 2019

**POLICE  
SCOTLAND**

## DOCUMENT VERSION CONTROL

<b>Version Number</b>	<b>Version Information</b>	<b>Date</b>	<b>Approved By</b>
1	Significant Case Review	March 2013	Tayside ASP group
2	Content checked and logos updated	January 2019	Tayside ASP steering group

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## 1 INTRODUCTION

### 1.1. Authority of the Adult Support and Protection Committee

The Adult Support and Protection (Scotland) Act 2007 was implemented in October 2008. The Act made it a statutory requirement for adult protection committees to be formed to lead on the implementation of the Act and have a significant role in ensuring co-operation and communication within and between agencies to promote appropriate support and protection for adults.

In response to this requirement of the Act, an Adult Support and Protection Committee (APC) was formed. The functions of the committee are determined by the relevant sections (Sections 42-47) of the Adult Support and Protection (Scotland) Act 2007, developed in response to local circumstances and the requirements of the Chief Officers of the Council, Police and NHS Tayside.

Although there is no requirement in the legislation to undertake significant case reviews, this protocol has been developed in order that serious incidents are learned from and that learning will influence the development of future policy, practice and service development.

### 1.2 Purpose of the Protocol

The purpose of the protocol is to provide a systematic and transparent approach to the process of SCR. The overarching objectives of a review are to:

- Establish whether there are lessons to be learnt about how better to protect adults at risk and help ensure adults get the help they need when they need it in the future - reviews should be understood as a process for learning and improving service as well as a means of recognising good practice;
- If and when appropriate, make recommendations for action (albeit that immediate action to improve service or professional shortcomings need not await the outcome of a formal review);
- Consider how any recommended actions will be implemented;
- Address the requirement to be accountable, both at the level of the agency/agencies and the occupational groups involved;
- Increase public confidence in public services, providing a level of assurance about how those services acted in relation to a significant case about an adult; and
- Identify national issues where appropriate including good practice.

The protocol supports these objectives by helping those considering undertaking a review, or actually doing so, to;

- Undertake the review at the level which is necessary, reasonable and proportionate;
- Adopt a consistent, transparent and structured approach;
- Identify the skills, experience and knowledge that are needed in the review process and consider how these might be obtained;
- Address the needs of the many different people and agencies who may have a legitimate interest in the process and outcome; and
- Take account of the evidence bases.

### **1.3 Individual Performance**

A review may reveal staff actions or inactions which are of sufficient seriousness that they need to be brought to the attention of the employer. The APC, in conducting an SCR, has a duty to do this. It is solely a matter for the employer to decide what, if any, action it takes as a result.

### **1.4 The Status of an SCR Relative to Other Linked Investigations**

Whenever the APC Lead Officer is informed of a case that might require an SCR (see section 2) he or she shall be responsible for ensuring that good liaison is immediately established with those who may be responsible for linked investigations, particularly the Procurator Fiscal and Police. The purpose shall be to ensure that:

- a) the actions required under this protocol do not interfere with linked investigations that take primacy and,
- b) there is agreement in relation to the processes and timescales that can be applied to carrying out the actions required under this protocol.

## **2 CRITERIA FOR IDENTIFYING WHETHER A CASE IS SIGNIFICANT**

### **2.1 A 'Significant' Case**

A significant case need not comprise just one significant incident.

### **2.2 Criteria**

Any of the circumstances below could suggest that a SCR may be required. An Initial Case Review (ICR) should first determine whether an SCR is merited. The detail and level of review will depend on the individual case and circumstances. A review should not be escalated beyond what is proportionate taking account of the severity and complexity of the case.

What is provided in this section is a guide for helping the APC, professionals, and all agencies make judgements about the way forward. The list should not be seen to exclude cases that may not precisely fit the criteria but which have nevertheless clearly triggered significant professional concern. These cases should be left to professional judgement and an APC decision on how to proceed.

### **2.3 When an adult dies and:**

- The adult meets the definition of an adult at risk as defined by the Adult Support and Protection (Scotland) Act 2007;
- Harm or neglect is known or suspected to be a factor in the adult's death; **and**, in addition to this, the incident or accumulation of incidents gives rise to serious concerns about professional and/or service involvement or lack of involvement.

## **2.4 When an adult has not died but:**

- the adult meets the definition of an adult at risk as defined by the Adult Support and Protection (Scotland) Act 2007;
- has sustained serious harm or risk of serious harm, under one or more of the categories of harm and neglect set out in the Adult Support and Protection (Scotland) Act 2007 and in Section 2.8 of this guidance;

**and**, in addition to this, the incident or accumulation of incidents gives rise to serious concerns about professional and/or service involvement or lack of involvement.

## **2.5 Requests in other circumstances**

The APC shall consider any request made to them for a review, even if the case had been considered at the initial case review to require no further action (see Sections 3 and 4).

Any concerns raised by families, carers and similar interested parties shall be addressed through the normal complaints procedures for each agency involved.

## **2.6 Definition of an adult at risk**

For the purpose of this document an adult is a person over the age of 16.

An adult at risk meets the criteria set out in Section 3 of the Adult Support and Protection (Scotland) Act 2007, namely:

- They are unable to safeguard their own well-being, property, rights or other interests
- They are at risk of harm
- Because they are affected by disability, mental disorder, illness or physical or mental infirmity, they are more vulnerable to being harmed than adults who are not so affected.

## **2.7 Definition of harm**

Under section 53 of the Adult Support and Protection (Scotland) Act 2007, harm is defined as all harmful conduct.

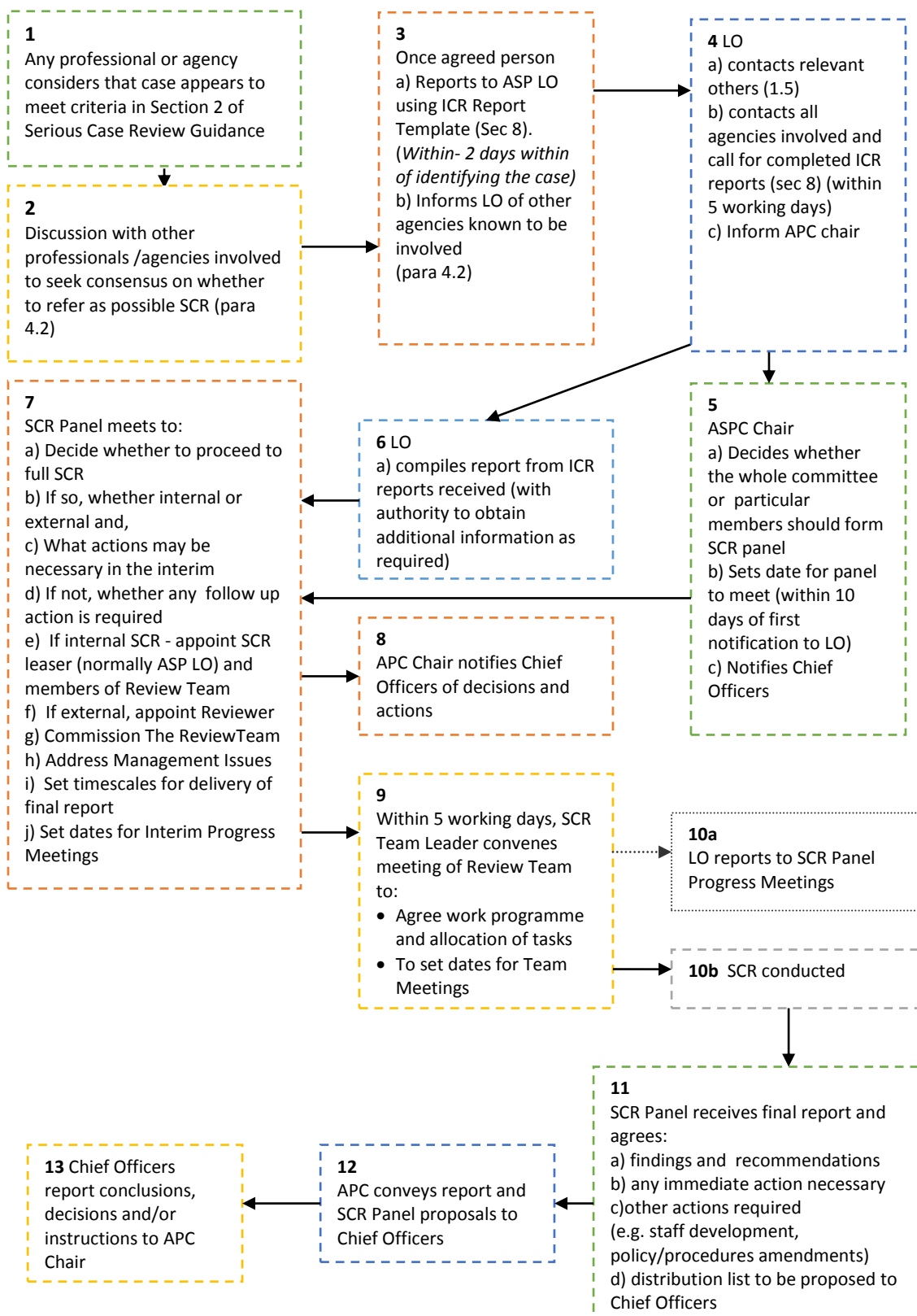
- Another person's conduct is causing or is likely to cause the adult to be harmed  
*or*
- The adult is engaging in conduct that is causing or is likely to cause harm

## **2.8 Categories of harm**

Harm can be:

- physical;
- sexual;
- emotional;
- neglect;
- financial;
- self harm

### 3. OVERVIEW OF THE PROCESS



## **4 INITIAL CASE REVIEW (ICR)**

### **4.1 The purpose of the ICR**

An ICR is carried out in order to inform a decision about the need for a full SCR.

### **4.2 Initiating the process**

Any agency can initiate an ICR. If a professional considers that the criteria for an SCR may have been met they should (as in Section 2), with the agreement of their senior manager complete an initial case review notification (*Appendix 1*). This should include a list of all the agencies known to be involved. This should be forwarded to the council's adult protection lead officer within one day of the case being identified as possibly meeting the SCR criteria. Any reason for it not being submitted within this timescale needs to be noted on the report.

### **4.3 Completing the ICR**

Acting with the authority of the adult protection committee, the adult protection lead officer shall instruct each agency to complete an ICR report. Agency representatives of adult protection committee practice sub committee shall provide these reports on behalf of their agency. Members of the practice sub committee shall be given adequate time by their agency to participate fully in the initial case review. Where an agency does not have a representative on the practice sub committee a representative will be co-opted for the purposes of completing the ICR.

The chairperson of the practice sub committee and the senior planning officer shall then prepare a report, which is agreed by members of the practice sub committee within 5 working days or other agreed timescale if appropriate. The adult protection committee convenor can extend the timescale to 15 working days, however any extended period thereafter must be agreed by the adult protection executive group. The report is then presented to the SCR panel, which shall be convened by the convenor of the adult protection committee in conjunction with the adult protection lead officer no later than 10 working days (or other agreed timescale depending on the initial deadline set for the completion of the initial case review report) from the time when the senior planning officer received the first report, as at above.

If the adult protection lead officer believes that an agency has submitted insufficient information to allow for a proper initial understanding of the case and a decision is to be made about the need for a full SCR, he or she has the authority of the adult protection committee to require further information from that agency.

## **5 SIGNIFICANT CASE REVIEW PANEL**

### **5.1 Purpose of the panel**

Whenever an ICR is conducted a panel shall be assembled, on a case by case basis depending on the nature of the case, for the purposes of:

- a) deciding whether a full SCR is should be undertaken and,
- b) if so, deciding whether that will be conducted internally or whether an external reviewer should be commissioned,
- c) considering what actions may be required immediately, whilst any review is being undertaken,
- d) if the decision is not to proceed to a SCR, the content and recommendations of the ICR report should be considered by the SCR Panel and conveyed to the adult protection committee and ultimately the adult protection executive group for endorsement.

If a full SCR is to be undertaken, the panel shall:

- a) if an internal review, appoint a review team and team leader, taking account of the skill set defined at para 66 of the national interim guidance and of the each agency's decisions about a single-agency review (see 6.1 below),
- b) if an external review, appoint a reviewer, agree costs, terms of reference, contract and confirm senior planning officer adult protection as primary point of contact,
- c) set a timescale for receipt of a final report from the internal review team or external reviewer, which will normally be no more than 3 months from the date of this first SCR panel meeting,
- d) be a governance board with responsibility for the timeous production of a final report,
- e) receive a final report and agree findings and recommendations and,
- f) agree other actions that may be required to promote the learning cycle; e.g. staff development activity; amendments to policy, protocols or procedures and,
- g) agree a proposed report distribution list for submission to the chief officers.

### **5.2 Assembling the SCR panel**

The convenor of the adult protection committee shall be responsible for assembling and convening the SCR panel where required. It shall be convened within 10 working days of the adult protection lead officer having received the first ICR report or other agreed timescale depending on the initial deadline set for the completion of the initial case review report.

Membership of the significant case review panel shall be decided on a case by case basis. This decision will be informed by the apparent circumstances of the case, the range of agencies that have been involved in the case and any other factors that the chairperson considers relevant.

## **6 CARRYING OUT THE SCR**

### **6.1 Single-agency review**

If an agency has decided to undertake its own single-agency review in addition to the SCR, it should ensure that this is done in tandem with the SCR. Normally, the officer(s) assigned to the SCR team should be the same person(s) carrying out the single-agency review. This allows the information and assessment to be easily fed into both processes and minimises the disruption to staff that may need to be interviewed.

### **6.2 Internal review**

#### **6.2.1 Leadership and authority**

In relation to the SCR, the members of the review team shall work under the direction of, and report to, the appointed SCR team leader.

Each agency that has an employee, or employees, on the review team shall ensure that the person has sufficient time to adequately carry out the SCR tasks assigned to them. Each agency is responsible for ensuring that relevant staff are informed of the SCR review team having authority to undertake whatever tasks are necessary to fulfill the remit set by the SCR panel and to meet the objectives of an SCR. Any difficulty in relation to these matters shall be reported to the SCR panel by the team leader.

#### **6.2.2 Setting the work plan**

Within 5 working days of the first meeting of the SCR panel, the review team leader shall convene a meeting of the review team. The purpose of this is to establish a detailed work plan and set key time points.

Should delays in the process begin to emerge, the team leader must immediately report these to the adult protection committee chairperson.

#### **6.2.3 Preparing the report**

Each member of the SCR team shall compile a written record in relation to that area of the review in which he or she has been involved. This shall document their activity, the evidence-base and their suggested findings and recommendations for inclusion in the SCR report. In the case of a member of the SCR team also preparing a single-agency report, that document, with the agreement of the agency, can suffice as input to the SCR.

The team leader is responsible for drafting the report to be presented to the SCR panel. This shall be compiled from the records made by the members of the SCR team, as above. The content, including the findings and any recommendations, should be agreed by all members of the SCR team. Should there be disagreement, this shall be noted in the report. Ultimate responsibility for the content of the report going to the SCR panel rests with the SCR team leader.

### **6.3 External review**

After the first SCR panel meeting, the adult protection committee convenor shall arrange a meeting between the person commissioned and relevant senior officers from the agencies whose involvement in the case is likely to be examined as part of the SCR. The purpose of this is set the SCR in motion and to establish clarity and understanding between those agencies and the person conducting the SCR. This meeting will also identify the officers who will work with the person conducting the SCR and/or support that work in terms of administrative and professional input. The meeting will also establish and agree on the provision of resource requirements.

The costs of an external review should be shared on the basis of 1/3 each to the local authority, NHS Tayside and the Police.

## **7 ACTING ON THE SCR REPORT**

### **7.1 Content, findings and recommendations**

Responsibility for the SCR report that is presented to the chief officers rests with the SCR panel. The adult protection committee convenor shall convene a meeting of the SCR panel to consider and agree the report received from the review team. Any dissent shall be recorded in the report.

In particular and to be incorporated in the final report submission to chief officers, the SCR panel shall:

- consider how any lessons to be learnt are to be incorporated and implemented within and across relevant agencies and their staff and define actions accordingly,
- consider whether the report misses any additions or amendments that are required to the Adult Protection Committee action plan
- formulate a proposal for dissemination of the report for the consideration of chief officers.

### **7.2 Dissemination of the report**

The circumstances of every case are different and the communication strategy for dissemination of the report and/or its findings and recommendations will differ. It is neither possible nor appropriate to adopt a 'one-size-fits-all' approach to dissemination. The matter is one for professional judgement on the part of the SCR panel members and, ultimately, the adult protection executive group who are:

- committed to serving the public and aware of their responsibilities to do so and,
- committed to promoting the highest standards of practice

The main reason for undertaking the SCR is to establish whether there are lessons to be learnt about how better to protect adults at risk, and to decide how those lessons will be learnt and applied.

In formulating its proposal for dissemination of the report, the SCR panel shall consider:



- that the group of professionals most closely linked to the case should, unless other proceedings or identifiable circumstances indicate otherwise, be provided with a full and detailed briefing on the report and its findings
- what it is that the wider body professionals need to understand in order to improve their practice and what the best means is of achieving that,
- what information, if any, from the report should be made available to a wider audience
- in doing so the panel shall refer to paragraphs 88 - 91 of the national interim guidance, which sets out dissemination options.

### **7.3 The Role of the chief officers**

The adult protection committee works on behalf of the chief officers of the local Council, the Police and NHS Tayside. In exercising their functions as chief officers, it is the chief officers who will 'sign-off' the report.

The report shall be presented to the chief officers by the adult protection committee convenor following consideration of the report by the adult protection committee.

Having considered the report, the chief officers shall issue any direction or instruction pertaining to the report that they believe necessary and, in particular, indicate:

- their agreement, or not, with the proposals that relate to how any lessons to be learnt are to be incorporated and implemented within and across relevant agencies and their staff,
- their wishes, having taken account of the proposals presented by the SCR panel, in relation to dissemination of the report.

## Appendix 1

### INITIAL CASE REVIEW REPORT

The person first concerned that the criteria for an SCR has been met , should notify the adult protection lead officer using this template within two working days of identifying a potential significant case for review. The adult protection lead officer shall contact all other agencies known to be involved who should, in turn, use this same template to submit their own reports to the Lead Officer within 5 working days.

Name of person completing this Report:	
Agency:	
Date form submitted to ASP Lead Officer:	
<b>The concern that the criteria for an SCR have been met has been discussed with relevant officers of the other agencies involved in this case, as per paragraph 4.2 of the protocol</b>	

Name of Adult at Risk	
Agency Identifier (CHI, URN etc)	

Names of Carers	
Others in Household (name & relationship)	

Other agencies know to be involved (please provide names & disciplines of various professionals within each agency, if known)	

Ground (s) on which the criteria for an SCR may have met (please see Section 2)

Has a case Review been initiated within your agency? (please tick)
Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know <input type="checkbox"/>

Brief description of the circumstances of the case

Key facts/Background to the case

Please give any details of any statutory proceedings you know are underway in relation to the circumstances: e.g. criminal investigation

**Appendix 2**

**SIGNIFICANT CASE REVIEW REPORT**

STRICTLY CONFIDENTIAL

INDIVIDUAL MANAGEMENT REVIEW (IMR)  
ON BEHALF OF (AGENCY)

**ADULT'S NAME**

**DATE OF BIRTH**

**DATE OF DEATH/SERIOUS INJURY**

**TITLE**

**AUTHOR**

***SIGNED OFF BY***

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CONCLUSIONS	
LESSONS LEARNED	
KEY RECOMMENDATIONS FOR ACTION	
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## **INTRODUCTION**

*Include the following*

*Name and job title of IMR author and why they are independent of the case*

*Terms of reference for the SCR*

*Source of information for the IMR i.e. which records were read and which staff interviewed*

*Any issues that made completion of IMR difficult – account for any missing information*

*Arrangements that were made for securing the agencies records when notified a SCR was to take place*

## **SUMMARY OF AGENCY INVOLVEMENT**

*Summarise the agency involvement with the adult at risk based on the chronology. If the agency had considerable involvement consider suitable subheadings e.g. time periods or involvement with individual family members.*

*Identify key turning points in the case*

*Include any significant organisation issues such as changes in workers, organisational change or times of key organisational pressures.*

*Identify whether the adult at risk was seen and their wishes views and feelings ascertained*

## **ANALYSIS OF KEY ISSUES**

*It is important to keep the facts of the case and the analysis separate. This section should not include new case details not covered in the previous section but should focus on analysis.*

*Ensure the analysis covers all the terms of reference. It might be useful to structure the analysis using the terms of reference as headings*

*Analyse the agency involvement with an emphasis on identifying lessons to be learned to improve practice. The analysis should demonstrate an open and self-critical approach on behalf of your agency to learning from the case.*

*The analysis should focus on both individual practice and organisational issues. Ensure a clear focus on organisational issues such as staff shortages or organisational change*

*Ensure that any critique of practice is based on what was known at the time – rather than what is clear with hindsight.*

*Analyse practice against the procedures in place at the time and against legislative or national requirements and professional standards*

*It can be useful to refer to research findings or the outcomes of previous serious case reviews or the summaries of national findings from serious case reviews*

*Ensure the analysis has a clear focus on outcomes for the adult at risk, their views wishes and feelings and that it addresses issues of equality and diversity*

*If poor practice or policy and procedure issues are identified that have been addressed by subsequent changes in policy or procedure ensure that this is explained.*

*Identify any changes that have already been implemented/planned as a consequence of this review*

*Identify any good practice – but ensure this is not just practice that complies with expected standards.*

*While it may be useful to identify briefly where practice in other agencies failed the adult at risk or made the work of your agency more difficult, the primary focus of the analysis should be on the work of your agency.*

*Refer to the guidance for IMR authors*

## **CONCLUSION**

*Draw together the conclusions from your analysis. This section should not introduce new issues not addressed in the analysis and should flow logically from the analysis.*

*Consider structuring this section around the terms of reference*

*This section should summarise where practice/policy/procedure needs to change*

*Don't leave any "loose ends". If issues have been identified in the analysis ensure they are addressed here. If these are not going to lead to lessons learned e.g. because practice has moved on.*

## **LESSONS LEARNED**

*This is the most important section of the report in that it will lead to recommendations and actions*

*Summarise the lessons learned from this review for your agency. This is the section that will lead to your recommendations. It should flow logically from the conclusions and not introduce new material.*

*Don't leave any "loose ends". If lessons learned are not leading to recommendations e.g. because remedial action has already been taken, then this should be made clear.*

*This section will be used in the overview report so should be "free standing". It will also be used for developing the action plan from the recommendations*

## **KEY RECOMMENDATIONS FOR ACTION**

*Please use the following format for recommendations*

Recommendation	Outcome and how it can be measured

*Recommendations must be specific measurable and achievable – see more detailed guidance on writing recommendations*

*All recommendations must flow logically from the lessons learned*

*Recommendations should focus on action for your agency. It may be helpful to identify a small number of recommendations for other agencies where this impacts directly on your work e.g. where a change in information sharing from a partner agency would support the work of your agency*

*IT is not necessary to address all lessons learned by a recommendation if, for example work is already in hand through another plan e.g. another SCR action plan, service plan etc. however this must be clearly explained. Lessons learned should not be left "hanging" without clarification how they will be addressed.*

## **ACTION PLAN**



## **APPENDIX 11 ROLES AND RESPONSIBILITIES**

### **Agencies' Roles and Responsibilities**

- Lead Agency/Council Responsibilities
- General responsibilities of Statutory Agencies
- Police
- All appropriate professionals in Health
- Scottish Commission for the Regulation of Care (Care Commission)
- The Office of the Public Guardian
- Mental Welfare Commission
- Independent providers of domiciliary, day care, residential care, nursing care and hospital care
- Other small groups and small providers (for example, Luncheon Clubs)

### **Lead Agency/Council Responsibilities**

- Identify lead Council Officers, Line Managers or Senior Managers.
- Chair Adult Protection Conferences/reviews, and meetings.
- Record and distribute accurate records and minutes.
- Co-ordinate and monitor actions arising from Case Conferences/reviews/meetings.
- Monitor and audit the outcomes of investigations carried out under the protocol.
- Co-ordinate the review of the Protocol;
- On an annual basis, collate and report to relevant stakeholder groups on the use of the protocol and the information gathered in the monitoring of its use.

### **General Responsibilities of Statutory Agencies**

- Rigorous recruitment practices in relation to both employing staff and in the selection of volunteers.
- Supervision and monitoring of staff working with adults at risk.
- Internal operating procedures and guidance for all staff relating to this multi-agency protocol that set out the responsibilities of all staff.
- Adult Support and Protection awareness and procedure training for all staff and volunteers. This will include all roles within the protocol and procedures.
- Keep clear and accurate records.
- Undertake risk assessments.
- Share information on a need-to-know basis when it is in the best interest of the adult at risk.
- Participate in the joint working arrangements as defined in this protocol.
- Implement preventative and/or supportive action to adults at risk.
- Contribute to investigations, acknowledging the requirements of confidentiality and data protection.

**In addition, the Police will:**

- pursue criminal proceedings when appropriate;
- provide information to adults at risk to help them protect themselves;
- protect people by referral to appropriate agencies

**All appropriate professionals in Health will:**

- refer all adult protection concerns to the relevant Council Social Work Service

**The Care Inspectorate will:**

- inform Social Work Services when reports are received that one or more service users may be or are at risk of harm or neglect within registered establishments or their own homes;
- work jointly with Social Work Services where residents require a response under these procedures;
- attend adult support and protection Initial Referral Discussions, Case Conferences and Reviews in respect of regulated services;
- keep other agencies informed of any enforcement action taken by the Care Inspectorate when inspecting any regulated service;
- participate in investigations where appropriate;
- pursue statutory action where appropriate.

**The Mental Welfare Commission for Scotland will:**

- investigate any complaint it receives concerning the welfare of anyone with a mental disorder including dementia, learning disability or acquired brain injury.

**The Office of the Public Guardian will:**

- receive and investigate complaints regarding the exercise of functions relating to the property and financial affairs of an adult
- investigate any circumstances made known in which the property and financial affairs of an adult seem to be at risk.

**Independent Providers of Domiciliary, Day Care, Residential Care, Nursing Care, Housing Support, Community Services and Hospital and Health Care will:**

- Establish procedures for the protection of adults at risk which are consistent with this protocol;
- Provide information and assistance to Council Officers;
- Participate in the joint working arrangements as defined in this protocol.

**Other Small Groups and Small Providers (for example, Luncheon Clubs) will:**

- Report incidents of actual/suspected harm or self-neglect to Social Work Services and where appropriate to the Police;
- Participate in the joint working arrangements as defined in this procedure when requested.

## **APPENDIX 12            LOCAL CONTACTS**

The following contacts can provide advice and guidance regarding action to be taken where there is a suspicion of harm to an adult at risk:

### **Angus Council**

Telephone: 03452 777 778

Email: [accessline@angus.gov.uk](mailto:accessline@angus.gov.uk)

Out of hours telephone: 01382 432 270

Web: [www.angus.gov.uk/info/20237/protect someone from harm/177/adult protection](http://www.angus.gov.uk/info/20237/protect_someone_from_harm/177/adult_protection)

### **Dundee City Council**

First Contact Team; 01382 434019

Email: [firstcontact.teamadmin@dundeecity.gov.uk](mailto:firstcontact.teamadmin@dundeecity.gov.uk)

Web: <http://www.dundeecity.gov.uk/socialwork/protecting/>

### **Out of Hours Service Dundee and Angus**

Operating Hours

Weekdays, 4.30 pm to 9.30 am

Weekends, 4.30 pm (Friday) to 9.30 am (Monday)

All public holidays are covered on a 24 hour basis.

Tel: 01382 307964 (answering machine 9.30 am to 4.30 pm)

### **Perth & Kinross Council**

Access Team

Tel 0345 3011120

Email: [accessteam@pkc.gov.uk](mailto:accessteam@pkc.gov.uk)

Web: [www.pkc.gov.uk/article/3576/Adult-support-and-protection](http://www.pkc.gov.uk/article/3576/Adult-support-and-protection)

### **Out of Hours Service for Perth & Kinross**

Tel 0345 30 111 20

### **Police Scotland Number: 101**

Or 999 in an emergency

For guidance relating to Adults With Incapacity contact:

The Office of the Public Guardian

Hadrian House

Callendar Business Park

Callendar Road

FALKIRK

FK1 1XR

Tel 01324 678300

Email [opg@scotcourts.gov.uk](mailto:opg@scotcourts.gov.uk)

The Care Inspectorate  
Compass House  
Riverside Drive  
DUNDEE  
DD1 4NY  
Tel 01382 207100.  
Fax 01382 207200  
Website [www.careinspectorate.com](http://www.careinspectorate.com)

Mental Welfare Commission for Scotland  
K Floor  
Argyle House  
3 Lady Lawson Street  
EDINBURGH  
EH3 9SH  
Tel 0131 222 6111  
Website [www.mwcscot.org.uk](http://www.mwcscot.org.uk)

**Advance Statement**

A statement made under the provisions of Section 275 of the Mental Health (Care and Treatment) (Scotland) Act 2003 setting how a person would, or would not, wish to be treated should they subsequently require care and treatment under that Act.

**Affected Person**

Term for an adult at risk when applying for Protection Orders.

**Alarm**

Sudden anxiety and fear, especially that something dangerous or unpleasant might happen.

**Allegation**

A statement which has not been proven to be true which says that someone has done something wrong or illegal.

**Appeal**

A request that a legal decision is changed.

**Appropriate Adult**

The role of the appropriate adult is to facilitate communication between a mentally disordered person and the Police and, as far as is possible, ensure understanding by both parties.

**Appropriate Services**

Suitable or right provision of services for a particular situation or occasion.

**Ascertainable Wishes**

To discover; to make certain of the person's views.

**Assessment Order**

Order granted by a Sheriff to help the Council to decide whether the person is an adult at risk and, if so, whether it needs to do anything to protect the person from harm.

**At Risk**

In a potentially dangerous situation.

**Attorney**

Means a continuing attorney or welfare attorney (within the meaning of the Adults with Incapacity (Scotland) Act 2000).

**Authorisation** (in relation to Council Officer)

Producible evidence that the Council Officer has permission from their Council to carry out duties in relation to the Act.

**Availability and Suitability**

Able to be obtained, used, or reached to be right for a particular person, situation or occasion.

**Banning Order**

Order granted by a Sheriff to ban a person from being in a specified place or area. The Order may have specified conditions attached. The banned person can be any age, including a child.

**Benefit**

A helpful or good effect, or something intended to help.

**Biennial Report**

Happening once every two years.

**Body Corporate**

A group of people relating to a large company.

**Breach**

An act of breaking a law, promise, agreement or relationship.

**Capacity**

See mental capacity.

**Care Inspectorate**

Scottish Care and Social Work Improvement Scotland.

**Case Conference**

A multi-disciplinary meeting of relevant people including the client and carer, and sometimes the alleged perpetrator at which all information about all aspects of the client situation will be shared leading to an Adult Protection Plan. The investigation report will be made available to the meeting and will be presented by the Council Officer.

**Children's Reporter**

Person who will decide if a child needs to be referred to a Children's Hearing which aims to provide a safety net for vulnerable children, and to work with partner agencies who deliver tailored solutions which meet the needs of the individuals involved.

**Civil Law**

Law relating to private arguments between people or organisations rather than criminal matters.

**Communication**

To share information with others by speaking, writing, moving your body or using other signals.

**Communication Difficulties**

When a person does not have clear verbal skills and needs the support of other aids or a person that knows them well to support them in sharing information, thoughts and feelings.

**Confidentiality**

Protection of information in an organisational situation within agreed parameters.

**Collaboration**

Joint working with other agencies for the benefit of the adult at risk.

**Comparable Situation**

To examine a specific case and circumstances in its own right and to take into consideration how a different person in a similar position would be treated.

**Conduct**

Includes neglect and other failures to act.

**Consent**

Permission or agreement.

**Convenor**

Person who arranges a meeting, or for a group of people to attend a meeting.

**Co-operation**

To act or work together for a particular purpose, or to help someone willingly when help is requested.

**Contingencies**

Something that might possibly happen in the future, usually causing problems or requiring further arrangements to be made.

**Council Nominee**

An individual who is not a Council Officer under Section 52 of the Act, nominated by the Council to either interview the adult under an Assessment Order or to move the adult under a Removal Order.

**Council Officer**

A professionally qualified Council employee who will lead the enquiry/investigation and completion of the report and risk assessment and have shared responsibility for implementation of the protection plan and ongoing monitoring. The Council Officer will be supported by the Team Leader and Service Manager.

**Detain/Detention**

To force someone officially to stay in a place.

**Disability**

An illness, injury or condition that makes it difficult for someone to do the things that other people do.

**Disapply/Disapplication**

To dispense with.

**Disclosure**

To make something known , or to show something that was hidden.

**Distress**

A feeling of extreme worry, sadness or pain.

**Duty of candour**

An act to ensure that organisations are open, honest and supportive when there is an unexpected or unintended incident resulting in death or harm

**Entitled**

To give someone the right to do or have something.

**Exhausted**

Tried without success.

**Fear**

An unpleasant emotion or thought that you have when the person is frightened or worried by something dangerous, painful or bad that is happening or might happen.

**Harm**

Includes all harmful conduct. This includes conduct that causes physical or psychological harm, unlawful conduct that adversely affects property, rights or interests possessions, conduct that causes self-harm.

**Health Professional**

The person is a doctor, nurse, midwife or other type of individual prescribed by the Scottish Ministers.

**Health Records**

Records relating to an individual's physical or mental health which have been made by or on behalf of a health professional in connection with the care of the individual.

**Hoarding**

The excessive collection and retention of any material to the point that it impedes day to day functioning.

**Impaired Mental Capacity**

Reduced ability to effective thought processes.



### **Independent Advocacy Services**

Services of support and representation made available for the purpose of enabling the person to whom they are available to have as much control of, or capacity to influence, that person's care and welfare as is, in the circumstances, appropriate.

Independent Advocacy Services are provided by a person who is none of the following:

- (a) a local authority;
- (b) a Health Board;
- (c) a National Health Service trust;
- (d) a member of:
  - (i) the local authority;
  - (ii) the Health Board;
  - (iii) a National Health Service trust,

in the area of which the person to whom those services are made available is to be provided with them.

### **Initial referral Discussion**

A sharing of information between key professionals involved in the enquiry or investigation of an adult protection concern which will result in documented decision making on how to proceed by attributing responsibility for decision making and actions to named individuals.

The issues that are likely to be considered will be:

- adherence to the principles of the Act;
- if intervention is necessary;
- if an MHO is required;
- if Police should be consulted;
- other relevant legislation;
- level of risk;
- duty to consider advocacy and other services;
- worker's safety;
- need for Case Conference;
- any undue pressure;
- need for medical examination;
- need to access records;
- Protection Orders.

This will take place as often as necessary to ensure robust management of case and support of staff.

### **Information Sharing**

Process of effective exchange of relevant details and specific circumstances of an individual within professional agencies and confidential boundaries.

**Inquiry**

In general, after notification of an adult protection concern, there is an initial information gathering phase by the Council Officer which may involve a visit and will indicate the likelihood of harm being perpetrated or if there are unexplained/complex issues that need to be further explored. This will either proceed to an investigation, be dealt with using other legislation or not require any further action.

**Inventory**

A detailed list of all the items in a place.

**Intervention**

To intentionally become involved in a difficult situation in order to improve it or prevent it from getting worse.

**Interview**

A meeting in which someone asks you questions to ascertain the facts of which an accurate record is kept.

**Investigation**

In general, following an adult protection enquiry, the multidisciplinary process led by the Council Officer in which all aspects of the situation are examined and reported on using appropriate risk assessment. This will usually culminate in an Adult Protection

Case Conference. Occasionally when the adult protection notification clearly indicates that harm has been perpetrated, the investigation will be initiated from the outset. Where there is a need to use any powers under the Act, this would be regarded as an investigation.

**Justification/Justifiable**

You give a good reason for what you have done which is documented.

**Least Restrictive**

To intervene only as much as is necessary in order to achieve the desired outcome.

**Legal Representative**

Person connected by law to speak, act or be present officially for another person or people.

**Liable**

Having legal responsibility for something.

**Medical Examination**

Assessment related to the treatment of illness and injuries.

**Mental Capacity**

Relating to the mind, or involving the process of thinking: condition of thinking process.

**Mental Disorder**

Person with a mental illness, learning disability or personality disorder.

**Mental Infirmity**

Relating to the mind, or involving the process of thinking in relation to a person who is ill or needing care, especially for long periods and often because of old age.

**Mental Illness**

A disease of the mind or involving the process of thinking.

**Mental Welfare Commission**

The Mental Welfare Commission for Scotland is an independent organisation working to safeguard the rights and welfare of everyone with a mental illness, learning disability or other mental disorder.

**Movable Property**

An object or objects that belong to someone that can be moved.

**Multi-Disciplinary Assessment**

Gathering of information that is analysed by multi-disciplinary team members application of professional knowledge.

**Multi-Disciplinary Plan**

Inter-agency joint agreement of tasks to be carried out by named individuals within specified timescales.

**Neglect**

To give insufficient care or attention to vulnerable people to their detriment.

**Obstruction**

To prevent something from happening correctly by putting difficulties in its way.

**Occupancy Rights**

Legal entitlement to the use of a room or building for the purposes of living or working.

**Parental Responsibility**

As provided for in Section 1 and 2 of the Children (Scotland) Act 1995. Subject to Section 3(1)(b) and (3) of this Act, a parent has in relation to his child the responsibility:

- (a) to safeguard and promote the child's health, development and welfare;
- (b) to provide, in a manner appropriate to the stage of

development of the child:

- (i) direction;
- (ii) guidance to the child;
- (iii) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis
- (iv) to act as the child's legal representative.

### **Power of Arrest**

Power attached to a Banning Order (or temporary Banning Order) granted to the Police by a Sheriff which allows a Police Officer to arrest, without warrant, a person who the Police Officer reasonably suspects to be breaching, or to have breached an Order, and considers arrest necessary to prevent further breaches of the Order. Person may be detained in Police custody and then be brought before a Sheriff on the next court day.

### **Prejudice**

An unfair and unreasonable opinion or feeling, especially when formed without enough thought or knowledge.

### **Procurator Fiscal**

The public prosecutor in Scotland, also carrying out functions broadly equivalent to the coroner in other legal systems.

### **Proxy**

A continuing or welfare attorney, or a guardian under the Adults with Incapacity (Scotland) Act 2000. Can have a combination of powers - welfare, property and/or finance.

### **Public Body**

According to Section 5 of the Act:

- (a) the Mental Welfare Commission for Scotland;
- (b) the Care Commission;
- (c) the Public Guardian;
- (d) all local authorities;
- (e) Chief Constables of Police forces;
- (f) the relevant Health Board, and
- (g) any other public body or office-holder as the Scottish Ministers may by order specify.

### **Public Guardian**

Government department that has legal responsibility to ensure the people who are appointed to take care of someone who cannot take care of themselves fulfil their statutory obligations.

### **Reasonable Time**

To arrange visits at a suitable period of the day taking into account how long it takes for someone to do something.

**Recall**

An authorisation by the Court to cancel a Removal or Banning Order.

**Removal Order**

An Order granted by a sheriff authorising a Council Officer or Council nominee to move a named person to a specified place within 72 hours of the Order being made and the Council to take reasonable steps to protect the moved person from harm. The Order can be for any specified period for up to 7 days.

**Representations**

To articulate views on behalf of another person.

**Review**

To consider something in order to make changes to it, give an opinion on it or study it.

**Risk**

The possibility of something happening that has either positive or negative consequences.

**Risk Assessment**

Judging the relevant impact and likelihood of particular actions.

**Risk Management**

Making arrangements to minimise the negative impact of particular actions and reduce frequency.

**Safeguard**

To protect something from harm.

**Safeguarder**

Person appointed by the Sheriff to safeguard the interests of the person who is the subject of proceedings relating to an application.

**Self Harm**

Injuries done to oneself.

**Self Neglect**

Not giving enough care or attention to oneself.

**Serious Harm**

Any action or series of actions that has ongoing consequences for physical or psychological health.

**Statutory Interventions**

To intentionally become involved in a difficult situation in order to improve it or prevent it from getting worse because there is a legal duty to act.

### **Strategic Discussion**

A sharing of information between key professionals involved in the enquiry or investigation of an adult protection concern which will result in documented decision making on how to proceed by attributing responsibility for decision making and actions to named individuals.

The issues that are likely to be considered will be:

- adherence to the principles of the Act;
- if intervention is necessary;
- if an MHO is required;
- if Police should be consulted;
- other relevant legislation;
- level of risk;
- duty to consider advocacy and other services;
- worker's safety;
- need for Case Conference;
- any undue pressure;
- need for medical examination;
- need to access records;
- Protection Orders.

This will take place as often as necessary to ensure robust management of case and support of staff.

### **Subject**

The person suspected of harming the adult at risk when applying for a Protection Order.

### **Subordinate Legislation**

Statutory legislation (usually in the form of regulations) which may be made by Ministers under enabling powers within an Act of the Scottish Parliament to clarify and implement the details of an Act.

### **Temporary Banning Order**

An Order granted by a Sheriff pending determination of an application from a Banning Order. The Order may specify the same conditions as a Banning Order.

### **Timeous Investigations**

To examine a crime, problem, statement, etc carefully, especially to discover the facts within a suitable time frame.

### **Undue Pressure**

The ability to have an unacceptable or unreasonable influence on how a person behaves or thinks because of their perception of possible consequences.

**Variation**

A submission to the Court to change or cause something to change in relation to a Removal or Banning Order.

**Visit**

A visit by a Council Officer under Sections 7, 16 or 18 (including warrant entry) unless the contrary intention appears.

**Vulnerable**

Able to be easily physically, emotionally, or mentally hurt, influenced or attacked.

**Vulnerable Witness Scheme**

An Act of the Scottish Parliament to make provision for the use of special measures for the purpose of helping vulnerable adults participate more fully in court proceedings.

**Warrant for Entry**

Authority for a Council Officer to visit any specified place under Section 7 or 16 together with a Constable. The Constable may do anything, including the use of force where necessary, that the Constable considers to be reasonable towards fulfilling the object of the visit

**Wellbeing**

State of physical, emotional and mental health relative to one's own personal circumstance.

**Wilful neglect and ill treatment i**

An offence under which there is criminal liability where a person has been placed under the care of health and social care services and is neglected or ill treated

## **UNDUE PRESSURE (SECTION 35 OF THE ACT)**

### **1. Undue Pressure**

**1.1** The provisions relating to undue pressure do not apply where the adult at risk does not have capacity or if it has not been possible to ascertain the view of the adult at risk e.g. access has been denied.

**1.2** No protection order can be granted where the court knows that the adult at risk has refused consent to this unless the Sheriff reasonably believes that:

- a) the adult at risk has been unduly pressurised to refuse consent to the action;  
and
- b) there are no steps which could reasonably be taken with the adult's consent which would protect the adult from harm which the order or action is intended to prevent.

**1.3** 'Undue Pressure' applies in situations where the harm is carried out by a person in whom the adult has confidence and trust and where the adult at risk would consent to the granting of the protection order if the adult did not have confidence and trust in that person. A relationship founded on trust and confidence may be with a family member, neighbour, or other person who may provide support in order to exploit or harm, or a person upon whom the adult at risk is very dependent.

**1.4** There may be other situations where it could be shown that there has been undue pressure. There may be grounds which evidence undue pressure where the adult may not wish to upset the person by giving consent because of:

- anticipation of threats or intimidation;
- belief that the consequences of giving consent will result in the adult at risk experiencing negative consequences;
- fear of abandonment and or loneliness;
- fear of withdrawal of practical and emotional support;
- being worried about talking when certain people are present;
- not being allowed time alone with the worker;
- lack of eye contact; and/or
- personal presentation.



**1.5** Act says that if there has been undue pressure, a refusal to consent can be ignored:

(a) by the Sheriff in determining whether to grant a protection order; or

(b) by any person taking action to carry out or enforce a protection order.

However a refusal of consent cannot be ignored where it relates to the interview or medical examination of the adult. Therefore an interview or medical examination cannot take place where the adult refuses consent, even if the Council Officer thinks there has been undue pressure. In these circumstances much will depend on the evidence which has been gathered for the application from sources other than the adult themselves.

**1.6** The burden of proof of establishing that there has been undue pressure on an adult at risk of harm rests with the Council in court applications.

**1.7** Where the Council considers that, after making enquiries under Section 4 of the Act, it needs to intervene, it has a duty to ensure that the adult's past and present wishes are represented and that the adult is assisted to participate as fully as possible in proceedings.

## **MEDICAL EXAMINATIONS**

### **1. Introduction**

1.1 Section 9 of the Adult Support and Protection (Scotland) Act 2007 allows health professionals (i.e. doctors or nurses) to carry out medical examinations on adults who are known or are believed to be at risk. A medical examination can take place either at a place being visited under Section 7 of the Act or at the premises where an adult has been taken under an Assessment Order granted under Section 11 of the Act. A medical examination includes any physical or psychological assessment or examination.

1.2 A medical assessment may be a necessary component of an Adult Protection Investigation for a number of reasons including:

- the adult's need of immediate medical treatment for a physical illness or mental disorder;
- to provide evidence of harm to inform a criminal prosecution under police direction or application for an order to safeguard the adult;
- to assess the adult's physical health needs; or
- to assess the adult's mental capacity.

Some medical examinations can be arranged by the Council Officer with the adult's GP. This would be appropriate if, for example, an adult has been injured and there is no evidence at that stage that the injury is non accidental. The consent requirements remain. If, after examination, the GP believes that injuries are non accidental, the police should be contacted immediately for further discussion.

1.3 Examples of circumstances where a forensic medical examination should be considered include:

- the adult has a physical injury which he or she states was inflicted by another person;
- the adult has injuries where the explanation (from the adult or other person) is inconsistent with the injuries and an examination may provide a medical opinion as to whether or not harm has been inflicted, or whether there are concerns around self-harm;
- there is an allegation or disclosure of sexual abuse and the type of assault may have left physical evidence (following local procedures for liaison with the police);
- the adult appears to have been subject to neglect or self-neglect; and is ill or injured and no treatment has previously been sought.

1.4 Subjecting an adult to a medical examination requires serious consideration especially if they lack capacity to make informed decisions about their future care. The guiding principles governing intervention should be the current safety and well being of the adult and their future safety and development.

## **2. Consent**

2.1 Consent must be obtained from the adult prior to a medical assessment by the G.P. If the adult lacks capacity to make informed decisions about consenting to an assessment, consent should be obtained from their Welfare Guardian or Welfare Power of Attorney. If there are no details of Welfare Guardian or Power of Attorney, the Office of the Public Guardian should be contacted to confirm whether or not one exists. If there is no Guardian or Power of Attorney, a Mental Health Officer should be consulted and consideration should be given to using provisions in the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003.

2.2 If there is no Welfare Guardian or Welfare Power of Attorney, or they are not available or they are alleged perpetrators or are suspected of colluding with alleged perpetrators, an Assessment Order may be applied for. An Assessment Order may also be applied for if there is a Welfare Guardian or Power of Attorney and they are refusing permission for a medical examination to take place or if it is suspected that the adult has made the decision not to participate in a medical examination due to undue pressure.

2.3 A person is not obliged to answer any questions put to him or her in an interview and must be informed of his or her right to refuse prior to a medical examination being carried out. If there are concerns that an adult has not understood the question, inquiries should be made to ensure whether there is a Welfare Guardian or Power of Attorney who should be contacted for consent. In a forensic medical examination police may consider the use of an Appropriate Adult who could inform regarding consent. Regardless of whether the medical examination is carried out by a police doctor or a G.P. it is the responsibility of the medical practitioner to be satisfied that the adult at risk has consented or at least has no resistance to the examination.

## **3. Procedure**

3.1 If an adult at risk requires immediate medical treatment, this must be sought without delay. The medical staff should be informed of any known history and that their findings may have forensic significance.

Council Officers and other non medical staff must not carry out medical examinations. However it is acceptable, when injuries and/or bruises are obvious, to assess whether these are consistent with any explanation provided. Absence of physical signs should not be taken as conclusive evidence that no harm has taken place.

3.2 If an adult at risk has an injury that does not require immediate treatment, he or she should be subject to an interview prior to any medical examination. This will enable the investigating officers to assess whether or not a medical is necessary.

3.3 A joint decision will be made regarding the necessity for a medical examination except where a crime is thought to have been committed. Decisions will be made in relation to:

- the need for the medical examination;
- the purpose of the medical examination;
- the type of medical examination;
- who should conduct the medical examination; and
- where it should take place.
- when it should take place

3.4 If, after a joint investigation, the Police decide not to commission a specialist medical examination, but the Council Officer believes one is necessary, the Council Officer should discuss this with the designated Team Manager or Service Manager immediately.

#### **4. Forensic Medical Examinations**

4.1 It is the responsibility of the Police to co-ordinate forensic medical examinations. In cases of serious sexual offences police officers should follow the 'Scottish Investigators Guide to Serious Sexual Offences.'

4.2 Sexual harm medical assessments will only be conducted by registered medical practitioners who are appropriately qualified and skilled. They will be forensic medical examiners contracted by the Police.

It is appropriate for the investigating Council Officer to accompany the adult for both sexual harm and physical harm medical examinations. This is in order to provide support and assessment and management of risk. The council officer will not be present when the adult is being examined. The adult may have someone else accompany them during a forensic medical examination as long as that person is not an alleged or suspected perpetrator.

4.3 Following a forensic medical examination, the forensic medical examiner should provide a hand written interim report of their findings.

## **ORGANISING AND CHAIRING AN INITIAL REFERRAL DISCUSSION**

### **Initiating the Initial Referral Discussion**

What is an Initial Referral Discussion?

An IRD is defined as 'an inter-agency strategy discussion that involves the early sharing and exchange of information between practitioners from health, social work, police and other agencies'

An Initial Referral Discussion (IRD) may be convened if further information is required to determine whether the case meets the legislative criteria or where information needs to be shared across agencies. Where there is enough information to determine that the individual clearly meets the 'three point test' for Adult Protection, then an ASP case conference should be arranged.

Adults at risk are adults, aged 16 years of age and over, who:

- (a) Are unable to safeguard their own well-being, property, rights or other interests,
- (b) Are at risk of harm, and
- (c) Because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

When a referral is made to the Health and Social Care Partnership expressing concern that a person may be an adult at risk then the relevant social work Team Manager will:

- Immediately assess the information provided and consider this alongside any other information they have immediate access to; and
- Discuss with Service Manager whether or not the person may be at risk of significant harm and, therefore, whether an Initial Referral Discussion should be convened.

If it is decided that an IRD should take place, this should happen in accordance with this Guidance. If it is decided that an IRD is not required, then this must be recorded, with the reasons and alternative actions clearly noted.

When an IRD is to be convened in the case of a person already involved with social work, the staff already involved from all agencies shall come together at an IRD to consider the additional concern now made known and decide what, if any, further action may be required.

When an IRD is to be convened in the case of a person not known to social work, the staff member who received the concern, along with the allocated Council Officer and their Team Manager should come together with any known other service provider or agency with relevant information to share at an IRD to consider the concern made known and decide what action may be required.

## **2 Criminality**

Where a criminal offence may have been or is believed to have been committed, a referral must be made to the police.

Where the adult at risk of harm does not wish to make a complaint to the police a discussion with the police will assist in deciding on the most appropriate action, If attendance of police is required contact should be made to the Public Protection Team in the first instance. If in an emergency assistance is required immediately contact should be made with Force control.

Details of initial discussions should be recorded and attributed.

## **3 Timing of an IRD**

How quickly an IRD is convened following a referral is a matter for professional judgement on the part of the Service Manager involved. The overarching consideration must always be the need to act to protect a person from significant harm.

In all cases, an IRD must be held within 5 working days unless there are extenuating circumstances, which must be recorded within the minute of the IRD.

It is possible that, due to the urgency of the situation requiring immediate action to protect an adult, the IRD process commences after the safety of the person is secured.

## **4 Attendance at IRDs**

The IRD is a key part of the adult support and protection process and there is a duty on those with information and responsibilities in the process to attend, fully participate and understand their role and contribution.

The Social Work Service Manager/Team Manager responsible for initiating the meeting will decide who needs to attend. Agencies which have current and direct involvement with the person (or other associated children or adults) should normally be present. Police Scotland and NHS Tayside should also normally be present.

It may not be possible for everyone to attend within the timescale the circumstances demand therefore other means of joining the IRD should be considered, such as tele or video conferencing. Attendance at an IRD should be prioritised and every effort to ensure relevant agencies are able to participate.

When an adult, against whom an allegation is being made, is a member of staff of a service involved in care, health, public protection or education services, then a senior manager of that agency or service should be asked to attend the initial referral meeting. This will allow them to consider any personnel matters that may require their attention.

## 5 Decision Making at an IRD

The IRD aims to:

- Establish if the individual meets the 'three point test' criteria
- agree any immediate measures which might be needed including whether a medical examination is needed
- identify which agencies need to be involved, what they will do, and by when
- ensure the adult and their family/carers are involved, informed and supported during any further investigation including the need for advocacy
- agree what further information is needed to reach a conclusion
- decide who may need to be interviewed
- ensure appropriate early intervention plans are put in place
- if alternative action is appropriate, and Adult Protection Procedures are not to be followed, agree what is to happen next

An IRD will make and record decisions on a number of issues including:-

- The need for immediate legal measures (see Protection Orders);
- The setting of clear timescales and sequence of actions, with roles and responsibilities assigned to named individuals. This will include coordinating communication, actions and setting out responsibilities and ;
- Whether the appropriate action is to continue intervention under Adult Support and Protection procedures and conduct an adult protection investigation, or in cases where an investigation is not required, to recommend an adult protection case conference. Advocacy services should be offered at this point;
- What alternative action is appropriate if Adult Protection Procedures are not to be followed; referral to another agency or no further action;
- How to secure additional information and who is responsible for doing so, how that will be shared between meetings of those involved, and how actions might be modified in the light of such information;
- The risk to any other adults and/or children connected to the person in question;
- Consideration of any matter of consent from Guardians (if necessary), who is to obtain this and how;
- The provision of information and support to the person and their family/carers during and after the adult protection investigation

All IRD's will be minuted with details noting the discussion, decisions taken and who is responsible for actions agreed. The minute will be provided to each person attending the meeting, those invited to attend, and those who made a contribution

by other means, such as the submission of a written report. There may also be an IRD review meeting at a later date.

There may be cases where a cluster of concern has been noted and considered and there is no need to carry out further investigation, neither for legal purposes nor to further inform the assessment. In such circumstances the IRD can recommend to the appropriate Service Manager that the case should proceed directly to an Adult Protection Case Conference.

Those involved will act as core group for the purpose of the interim protection plan and **collectively** carry the responsibility of implementing and monitoring the implementation on the plan. One identified professional will have a lead coordinating role.

If the Service Manager decides against convening an Adult Protection Case Conference, s/he must specify how the interim protection plan is to be managed beyond the time of his/her decision.

When the IRD has decided to pursue an adult protection investigation, then it must agree **actions with timescales** to protect the person during the investigation and up to the time of any Adult Protection Case Conferences that may be arranged. Action may develop and change as the investigation proceeds. If so, those directly involved with the adult and carers/members of the family should be part of the decision-making, implementation and management of the interim protection plan. Advocacy services should be offered to the adult at risk at this stage in the process.

## **6 Resolving Disagreements**

If a referrer disagrees with the decision of the core agencies not to convene an IRD, then that person should request that the relevant Service Manager, liaise with the other core agencies (Police and Health), and make a binding decision.

If those involved in an IRD process disagree with the decision of a Service Manager about whether or not to convene an Adult Protection Case Conference, the matter should be referred to the Head of Health and Social Care Partnership, who shall consult with the senior Police and Health colleagues and make a binding decision.

## **7 Feedback to the Referrer**

Feedback should be provided to the referrer. This responsibility rests with the person who received the initial information. This should also be recorded in case records.

Whilst action to secure the safety and well-being of the adult is the priority, there should be no unnecessary delay in ensuring that feedback is provided. The timing and nature of the feedback must take account of the role and status of the person to who it is being given. Data Protection legislation requirements and principles must be applied.



## **8 Information to the Person At Risk and his/her Carers**

The provision of information to the person at risk and those caring for him/her must always be a central part of planning and action.

If a carer is believed or suspected to be responsible for any significant harm that the adult may be suffering, then particular attention must be paid to what information can be shared with him/her. The plan resulting from an IRD and any subsequent updates must set out what information is to be shared, with whom, when, by whom.

## **9 Harm by Organised Networks and/or cases involving Multiple Victims or Perpetrators**

In such cases, it is particularly relevant that management of the decision-making process and of the conduct of any adult protection inquiries is clearly established, agreed and recorded. Senior Officers from Police Scotland and the Health and Social Care Partnership should be involved in the Initial Referral Discussion.

Recording also assumes particular importance in such inquiries. Other agencies should be guided by Police Scotland in relation to the collation and analysis of information,

## NOTES ON JOINT INVESTIGATIVE INTERVIEWING

### 1. The Reasons for and Objectives of Joint Investigative Interviews

Interviewing a person who is suspected of having been harmed is an important task which may have far reaching consequences for a number of people. Such an interview must be carefully planned in all aspects and must be conducted in a manner that will stand scrutiny. The interview may prove to be an extremely important part of an investigation and can often determine the outcome of an enquiry.

Consequently, it is crucial that the processes adopted when planning, preparing and conducting a joint investigative interview are transparent, accountable and sensitive to the needs of the adult at risk.

To this end, interviewers must be clear why they are conducting an interview jointly with a police officer or a Designated Council Officer or an allocated support worker/social worker.

The reasons for and the objectives of the interview are outlined below:

#### 1.1 Reasons

- To reduce as far as possible the number of interviews to which the adult at risk of harm is subjected;
- To reduce as far as possible the trauma caused to both the adult at risk of harm and his or her family; and
- To ensure that any necessary support is provided for the adult at risk.

#### 1.2 Objectives

- To establish what, if anything, has happened;
- To gather best evidence regarding the matter under investigation for both criminal and civil proceedings;
- To allow a joint assessment of risk and needs to be undertaken; and
- To inform any decision to be taken in relation to the best way to proceed with an investigation.

At all times when planning, preparing and conducting a joint investigative interview the needs and well-being of the adult at risk are of paramount consideration, e.g. consider the presence of an Appropriate Adult<sup>3</sup>, an advocate or a carer.

All considerations and decisions taken with regard to the planning, preparation and conduct of a joint investigative interview must be clearly and accurately recorded by both agencies.

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<sup>3</sup> An Appropriate Adult will be allocated by police to provide a service to adults who have a mental disorder or learning disabilities to facilitate communication between such an adult and a police officer in an interview situation where the adult is a victim, witness, suspect or accused.

## **2. Recording The Interview Checklist**

It is imperative that when recording the details of a joint investigative interview that the recording is an accurate and true reflection of the interview. The recording must include the actual words of significant statements made by the interviewee in relation to the event of harm. It must also be recorded in chronological order as it takes place in the interview.

**It is best practice to record the following details:**

### **2.1 Prior to commencing the interview:**

- A full description of the interview environment
- Details of who has given consent if applicable e.g. Welfare Guardian
- Details of those present during the interview
- The demeanour of the person
- The start time of the interview

### **2.2 During the interview:**

- Any changes in the interviewers' roles
- Any changes in the adult at risk's demeanour
- Description of any props used
- Details of any drawings made by the person
- Time and length of, and reason for, any breaks during the interview
- Attribution of statements
- Any non verbal communication
- Finish time

### **2.3 After the conclusion of the interview**

- Interviewers must review the written record of the interview to ensure that it is an accurate account of the interview.

- Any omissions should be discussed and, if appropriate, entries made to reflect the omission – any such entries must be highlighted.
- The record should be signed and dated by the interviewers.
- Any drawings or other items written by the person should also be signed and dated by the interviewers.
- All records and drawings, etc will be retained by the police, and where appropriate, copies made available for Adult Social work Services Services.

Please remember that the above list is not exhaustive and any other information that the interviewers feel is relevant should be recorded.

#### **2.4 Points to consider when preparing the person for interview**

During a joint investigative interview, interviewers must remember that the adult at risk of harm may perceive the interviewers as 'figures of authority' and may, therefore, answer questions in a way that he or she may think will please the interviewers. The adult at risk may also be under the misapprehension that the interviewers are aware of what may have happened to them and may therefore assume that they do not need to tell them everything. The adult at risk must also be made aware that when they are unable to provide an answer to a question, then they should tell the interviewer that they 'don't know' or do not understand the question. So the interviewers should explain that:

- If he or she does not know the answer to any question, it is okay for him or her to say so.
- If he or she does not understand any question that is asked, he or she should tell the interviewers.
- In situations where something has happened to the person, he or she must be reminded that the interviewers were not there at the time and he or she should try to tell the interviewers everything that happened.
- If the interviewers misunderstand something that the person has said, then he or she should not be afraid to tell them.

### **3. Interviewing People with Individual Needs**

Planning for an interview shall be carried out with particular attention to individual needs of the adult and the interview should take into account if the adult is a person with dementia, learning disabilities, sensory impairment or communication difficulties. In all cases they should be offered the opportunity to have someone present to support them, possibly a family member, key worker or advocacy worker, unless they

are the alleged perpetrator. If the person at risk of harm has capacity and refuses this, his or her choice must be respected.

If the person is under a Guardianship Order, the Guardian must be notified and be present, unless they are the alleged or suspected perpetrator.

Attention should be given to:-

- Individual communication needs
- Environmental factors to minimise the likelihood of triggering upset or challenging behaviour.
- Particular routines that must be maintained to aid their management of the situation.

***It should also be noted that evidence gathering does not only involve verbal exchanges. A great deal of information and potential evidence gathering can take place by careful observation. Clear and detailed notes of observations should also be made.***



# TAYSIDE LARGE SCALE INVESTIGATION PROTOCOL



## **LARGE SCALE INVESTIGATION PROTOCOL**

### **DEFINITION OF LARGE SCALE INVESTIGATION**

A large scale investigation is a multi-agency response to circumstances where there may be two or more adults at risk of harm within a care setting (this may be either residential care, day care, home based care or a healthcare setting).

### **PURPOSE**

The purpose of this protocol is to:

- Ensure that large scale investigations are carried out consistently by relevant agencies.
- Offer a framework for an alternative process to holding large numbers of individual Adult Support and Protection investigations and ensure that there is adequate overview / co-ordination where a number of agencies have key roles to play.
- Clarify responsibilities for following the protocol amongst partner agencies for overseeing large scale investigations in Tayside.

### **SCOPE**

All adults at risk of harm, as defined by the Adult Support and Protection (Scotland) Act 2007, in regulated care settings within Tayside.

### **LEGISLATION**

Adult Support and Protection (Scotland) Act 2007 and associated code of practice

Adults with Incapacity (Scotland) Act 2000

The Social Work (Scotland) Act 1968, section 12, section 6

Human Rights Legislation

Mental Health (Care and Treatment) (Scotland) Act 2003

Regulation of Care (Scotland) Act 2001

Criminal law

Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 – Part 3

Wilful neglect and ill treatment offence

### **RELEVANT AGENCIES**

Perth and Kinross Health and Social Care Partnerships (HSCP)

Angus HSCP

Dundee HSCP

NHS Tayside

Police Scotland

The Care Inspectorate

Health Improvement Scotland

## 1.0 INTRODUCTION

The Adult Support & Protection (Scotland) Act 2007 (The Act) introduces a duty for councils to make inquiries where it is known or believed that an adult may be an adult at risk of harm and that protective action may be required. The Act gives the council the lead role in adult protection investigations in all settings, including in NHS and care home premises.

This protocol has been agreed by Angus Council, Perth and Kinross Council, Dundee City Council, NHS Tayside, the Police and the Care Inspectorate who will be the key agencies involved.

A large-scale adult protection investigation would be indicated in a situation where a number of adults at risk have or may have been harmed:

- in a care home, hospital or receiving a service from a particular resource
- and the same perpetrator is suspected or
- a group of perpetrators are suspected
- where the nature or degree of harm or neglect raises questions about the standard of care and the possibility of multiple victims

Such situations will involve a wide range of agencies and possibly a number of individual adult protection inquiries and investigations. It is important that all aspects of the investigation are planned and all agencies and individual professionals are clear about their respective roles and responsibilities.

## 2.0 RECEIVING A REFERRAL

Concerns about an adult at risk being harmed in a care setting or resource can be raised from many sources including:

- Family/friends making a complaint about standards of care
- Whistle blowing within an organisation
- Procurator fiscal investigating a death
- Service user's admission to hospital
- Concerns highlighted via regulatory process
- The Care Inspectorate
- Visiting Professionals

In receiving information about individual cases of suspected and actual harm in a care setting, it is important to consider possibilities that other adults may be at risk. Data checks should be made and consultation held with other agencies. It is important to consider whether other service users may have been harmed and whether previous concerns have been raised.



### **3.0 INITIAL REFERRAL DISCUSSION**

- 3.2** If there are concerns that allegations relate to a situation in a care setting that may warrant a large scale investigation then the service manager will consult with the relevant manager responsible for the resource and the senior manager community care services. If the suspected harm is in an NHS setting then the general manager of the CHP should also be consulted.

The team manager should contact the detective inspector, public protection unit, Tayside Police and lead nurse clinician, CHP. This will be part of the initial referral discussion process and will agree an initial action plan which will consider:

- Whether any immediate protective action is required should individuals be at risk of imminent harm
- Whether a multi-agency large scale investigation is indicated
- Consider making a report to the police if an offence appears to have been committed (including ill treatment and neglect under the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016) if they are not already involved.

If the allegations relate to a registered service then the service manager must alert the Care Inspectorate.

All decisions taken at the initial referral discussion should be recorded.

- 3.3** If the decision has been to proceed to a large scale investigation a social work manager will be identified to co-ordinate the investigation. This manager will henceforth be referred to as “the co-ordinator”. The coordinator will normally be the manager of the service where the referral was received.

A service manager will be identified to chair the interagency Large Scale Investigation Meeting which will consider the findings of the investigation and make recommendations as to the protection of all service users. This manager will henceforth be referred to as “the chair”. The chair will not be the same manager as the co-ordinator.

### **4.0 IMPACT ASSESSMENT**

- 4.1** The managers identified should consider the impact of a large scale investigation. This will include consideration of:

- The ongoing management of the service involved.
- The impact on service users, families and staff, including any press interest.
- How information should be disseminated to service users and families.
- The need for a media strategy

- 4.2** Where any media interest is likely the appropriate communication officers from the relevant agencies should agree a joint media strategy. The director of social work and senior managers must be appraised as they will directly manage this process.

## **5.0 INVESTIGATION**

- 5.1** The co-ordinator will identify an experienced council officer and co-worker to conduct the investigation.

The co-ordinator will oversee the investigation and communicate with relevant agencies, including other local authorities which have funded service users within the particular resource.

Any staffing/resource issues to proceed with the investigation that cannot immediately be resolved should be discussed with the senior manager adult social work.

- 5.2** Identify key tasks to be undertaken, the persons who will undertake these tasks, and agreed timescales for completion. This will include any immediate protective measures for individuals (where not already addressed). These key tasks will be drawn together to form an action plan

Decide whether there will be any individual adult protection case conferences for adults considered to be at particular risk (it may not be necessary to do this if concerns/protection issues are adequately addressed by this protocol); and what sensitive information should/should not be considered at individual case conferences.

- 5.3** Service users suspected of being harmed must be offered independent advocacy and be given assistance to gain access to an advocate. It is especially important to involve an independent advocate if the adult does not have capacity and there is no welfare proxy (guardian or attorney) in place.

- 5.4** If the identified risks, to a number of adults, relate to the actions of a staff member (or staff members) within an organisation, then that organisation will be responsible for invoking its own disciplinary proceedings and ensuring that any immediate risks are removed or minimised.

- 5.5** If there is a criminal investigation this will take priority over any disciplinary proceedings and the organisation should be advised accordingly.

- 5.6** Agreement should be reached between the manager of adult social work services and the inspector manager from the Care Inspectorate in respect to the precise roles of investigating officers from the Care Inspectorate and the council.

The Care Inspectorate will investigate through the deployment of specialists where appropriate.

- 5.7** Once assessments/reviews have been undertaken by the appropriate professionals and any immediate risks have been addressed, then outstanding concerns should be discussed with the council officer.

**5.8** A report will be prepared by the council officer for the Large Scale Investigation meeting with findings from the investigation. This must be counter-signed prior to the meeting by the service manager.

## **6.0 MULTI-AGENCY LARGE SCALE INVESTIGATION MEETING**

**6.1** A multi-agency large scale investigation (LSI) meeting should be convened soon as practicable.

**6.2** The chair will identify the key professionals who are required to attend meeting in consultation with the co-ordinator. Those attending should be of a sufficiently senior level to contribute to decision making and resource allocation if necessary.

The following should routinely be considered for invitation:

- senior manager adult social work services
- team managers who are responsible for service users placed or funded within the service concerned
- adult protection review officer
- the council's communication and engagement officer
- lead nurse, CHP
- detective chief inspector, public protection unit
- Care Inspectorate inspector manager
- Contracts and commissioning officer
- senior manager of organisation involved
- representative(s) from any other local authorities who are funding service users within the service concerned
- the co-ordinator of the investigation
- the council officer
- independent advocates

If senior managers are invited they may delegate attendance to relevant managers.

As a minimum the local authority, police and health should be represented as well as the Care Inspectorate should allegations relate to a registered service.

**6.3** The LSI will:

- The investigating council officer will present the investigation report to the review meeting and the conclusions and recommendations contained therein.
- The representative of the Care Inspectorate will present any findings from any parallel investigation of the service involved in the investigation, where applicable.
- While it may not be possible to divulge the detail of any police investigation, any information out with this requirement which supports decision making to protect adults at risk should be shared by the police

- Consider the ongoing management of the service involved. If risks remain, an action plan to address these concerns and monitoring arrangements will be agreed and core group identified.
- Consideration should be given as to whether the outstanding concerns raised by the investigation(s) are serious enough to suspend admissions pending improvements in the service/care setting or resolution of an emergency situation. Consideration should be given whether other local authorities should be informed of concerns in this care setting.
- Decide whether all residents/care recipients need to be reviewed, the level and type of review and the professionals who need to be involved. Agree how information should be disseminated to service users and families
- Decide whether the relevant contracts and commissioning manager needs to be advised of the decisions of the meeting (if not in attendance).

**6.4** Where the concerns relate to criminal activity (or possible criminal activity) the LSI meeting must ensure that any agreed action plan will prioritise:

- the immediate protective measures required, and
- the need to avoid any action that may prejudice police investigations

**6.5** A core group may be identified to monitor the large scale action plan if necessary.

**6.6** The LSI meeting will agree a further review meeting date if necessary.

**6.7** The LSI meeting will be minuted and circulated to all agencies within 5 working days of the meeting. Head of Service, Adult Social Work Services will be informed of outcome. Independent Chair of Adult protection Committee is advised where appropriate.

## **7 CONCLUSION/CLOSURE**

**7.1** The lead council officer should provide the senior manager community care services with details of any completed investigation and ensure that those invited to the initial multi-agency meeting, and the local manager of the organisation (if the investigation concerned a registered service), are advised of the outcome in writing.

**7.2** When the risks have been addressed through the action plan and have been reduced or eliminated, the completed action plan should be counter signed by the co-ordinator and forwarded to all agencies involved. The manager community care services will agree to the cessation of adult protection activity and any action under this protocol.

## **Appendix 1 Agency Responsibilities**

### **LOCAL AUTHORITY**

Has a duty under the Adult Support and Protection (Scotland) Act 2007 to make inquiries about a person's well-being property or financial affairs if it knows or believes –

- a) that the person is an adult at risk
- b) that it might need to intervene in order to protect them

## **Appendix 1 Agency Responsibilities**

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- b) that it might need to intervene in order to protect them

### **NHS TAYSIDE**

Has overall responsibility for the healthcare of service users / patients. Under the Act they have a duty to co-operate with any inquiries about adults at risk of harm. Where required they will provide a nominated health professional to undertake any health assessments and/or read medical records.

### **THE POLICE**

Has responsibility to detect and investigate crime and subsequently report the facts and circumstances to the procurator fiscal. They have a duty to co-operate with any inquiries about adults at risk of harm.

### **CARE INSPECTORATE**

Has a regulatory role in considering the safety of all service users in any registered care service and can take enforcement action under the Regulation of Care (Scotland) Act 2001. They have a duty to co-operate with any inquiries about adults at risk of harm.

Whilst responsibility for carrying out initial inquiries rests with the local authority, and the police (where a crime may have been committed), other agencies may be asked to assist. ASPA allows for other persons to accompany a council officer carrying out visits under the requirements of the Act. The policy position of the Care Inspectorate is that this would only happen where it is considered there is a strong probability that action will be required under the Regulation of Care (Scotland) Act 2001 and that evidence gained will enable that to take place.

The Care Inspectorate may investigate complaints or inspect a service in parallel to other Adult Protection investigations being carried out.

## **PROTECTION ORDERS**

### **1. Procedures for applying for a Protection Order**

There are three kinds of protection order that can be applied for to protect adults from harm. These are:

- Assessment Order
- Removal Order
- Banning Order

The decision to apply for a protection order will be taken after discussion with the Team Manager, Legal Services and the relevant Service Manager. Legal Services are responsible for preparing and presenting all applications to court.

It is envisaged that in most cases initial enquiries and/or investigations will have taken place.

### **2. Definition of serious harm**

Protection orders will only be granted where there is reasonable cause to suspect that the affected adult is at risk of serious harm. What constitutes serious harm will be different for different persons and is not defined in the Act. When assessing harm, areas that need to be taken into consideration are:

- impact of harm on the adult at risk and the outcome on his or her physical and mental health;
- degree of vulnerability of the person
- personal perception;
- level of risk;
- injuries which are severe and /or life threatening;
- the need for urgent action;
- the frequency, consistency and severity of harm;
- The length of time the abuse or neglect has been occurring
- The risk of repeated or increasingly serious acts of abuse or neglect
- the intent by the alleged or suspected perpetrator;
- history of harm; and
- the probable consequences of non-intervention..

### **3 Assessment Order**

(For more information please see the Code of Practice 2014, Chapter 11)  
<https://www.gov.scot/Resource/0044/00449622.pdf>

Section 11 of the Act allows a council to apply to a sheriff for an assessment order. This allows a council officer to take a person from a place being visited under section 7 in order to allow a council officer, or any council nominee, to conduct a private interview, or a health professional to conduct a medical examination in private. This order would be necessary

only if it were not possible to carry out the interview or examination at the place of the visit. An assessment order will be granted only where there is reasonable cause to suspect that the subject of the order is an adult at risk of serious harm, and that the action specified is necessary to establish this and to identify what further action may be required. However the adult at risk must give their consent before the Order can be implemented. They must be advised that they are not obliged to answer any questions.

An application for an assessment order will be made by the council's legal department. Evidence must be made on oath with both the council's solicitor and the authorised council officer appearing before the sheriff to present evidence.

If it is likely that there will be a lack of privacy, the adult at risk can be taken elsewhere for the interview and the examination to be completed. The Sheriff can authorise a Council Officer to take an adult at risk from a place being visited under Section 7 to allow for an assessment. It may be necessary to consider an alternative place to undertake the assessment if someone is not allowing the interview to proceed or the adult is unwilling to talk freely and / or requires specialised equipment to facilitate the interview.

Before an Order is granted, the Sheriff must be satisfied that an assessment is necessary and meets the criteria (Section 12, Adult Support & Protection (Scotland) Act 2007) as follows:

- the council has reasonable cause to suspect the subject of the order is an adult at risk who is being, or is likely to be, seriously harmed;
- the order is required to establish whether the person is an adult at risk who is being, or is likely to be, seriously harmed; and
- the place at which the person is to be interviewed and examined is available and suitable.

### **3.1 Warrant for Entry**

When an assessment order is granted, the sheriff must also grant a warrant for entry under Section 37 in relation to a visit under section 7. The warrant for entry to accompany an assessment order will detail a specified place and only that place can be entered using the warrant. The warrant permits a constable to accompany a council officer and to do anything, including the use of reasonable force, where necessary which the constable considers to be required in order to fulfill the object of the visit. Only the constable has a right to use reasonable force.

The Warrant expires 72 hours after it is granted and the Assessment Order will expire after a seven day period.

*The following factors should be considered before applying for an Assessment Order:*

- Before the council or any person makes a decision or undertakes any function under the Act, they must have regard to the principles of the Act.

- Consideration must also be given to whether the adult should be referred to an independent advocacy organisation or provided with other services.
- The affected adult can be taken to the place specified on the order but whilst there, the adult still retains the right to refuse to answer all or some of the questions when interviewed. The adult may similarly refuse a medical examination. The affected adult must be informed of these rights before an interview or a medical examination takes place.
- The protection element of the assessment order allows the council to conduct an assessment in private. This could also be beneficial to the adult where the adult may be under undue pressure to refuse consent.
- If it is considered that the adult will refuse consent to the granting of the assessment order the council should re-consider the merit of the application. If the council decides to pursue an application where the affected adult has capacity to consent and their refusal to consent is known, then the council must prove that the adult has been “unduly pressurised” to refuse to consent to the granting of an order.
- Where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. However evidence of lack of capacity will be required by the Sheriff. Where the adult is incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney may consent on their behalf. Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use the provisions in the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003.
- The information gathered from the assessment order may point to further action being required, for example by providing the adult with support, advice or other services, or by taking further action under this Act or other legislation.
- Wherever practicable, the adult must be kept fully informed at every stage of the process, for example, whether an order has been granted, what powers it carries, what will happen next, whether they have the right to refuse, or what other options are available. It is also good practice to ensure that carers’ providing care and support are kept up-to-date with the proceedings. This is also important where a carer is a Guardian or has power of attorney.
- An assessment order does not have the power to detain the adult in the place they are taken to. The adult may choose to leave at any time.

The Council should re-consider the merit of the application if it considers that the adult will refuse consent to the granting of an Assessment Order, or compliance with any interview or medical examination.

### **3.2 Urgent Cases**

A Warrant for Entry under Section 37 of the Act may be applied for in an emergency. Therefore, there may not be sufficient time to arrange an Initial Referral Discussion meeting or Adult Protection Case Conference. In such instances, the application will be determined



through discussions with relevant professionals and appropriate managers. Discussion and decision making should be recorded and attributed in Detailed Records.

Section 40 makes provision for cases of urgency. An application can be made to a justice of the peace for a warrant to enter premises in cases of urgency where it is not practicable to make application to a sheriff and the adult at risk is likely to be harmed if there is a delay in granting the warrant.

Where someone has been hurt and sustained a physical injury, it may be necessary to contact the emergency services.

#### **4 Removal Order**

(For more information please see the Code of Practice 2014, Chapter 12)  
<https://www.gov.scot/Resource/0044/00449622.pdf>

The Act allows a council to apply to the sheriff for a removal order, which, if granted, allows the council to remove the adult at risk to a specified place. The purpose of a removal order is to assess the adult's situation and to support and protect them. This is a short-term order and, although effective for a maximum of seven days, it is envisaged that it will not be required to last that long in the majority of cases. A removal order will be granted only where the sheriff is satisfied that the adult is likely to be seriously harmed if not moved to another place and that there is a suitable place available to remove the adult to. The council must protect any property owned or controlled by an adult who is removed from a place under a removal order.

Before a Removal Order is granted, the Sheriff must be satisfied that it is necessary and meets the criteria (Section 15 of the Act):

- a) that the adult at risk is likely to be seriously harmed if not moved to another place; and
- b) that there is an available suitable place where the adult at risk can be moved to.

When a Removal Order is granted, the Sheriff also grants a Warrant for Entry.

A police constable will be in attendance and, if necessary, can use reasonable force to fulfil the object of the order. It is only the constable who can use reasonable force.

The warrant must be executed within 72 hours of being granted.

The Order expires seven days from when the adult at risk is moved, or after any shorter period that the Sheriff has decided upon when granting the Order.

#### 4.1 Consent of Adult at Risk:

When considering applying for a Removal Order, it is necessary to establish whether the adult at risk is able to consent to the action. The following steps should be considered:

- Step 1            Is the adult able to give consent?
- Step 2            If not, demonstrate the efforts made to try to gain consent and the reasons why this has not been achieved.
- Step 3            If the adult specifically refuses to give consent consideration must be given as to whether they have been unduly pressurised, unless the adult at risk does not have capacity.

*The following factors should be considered before applying for a Removal Order:*

- Action can only be considered where the person is an adult at risk who is likely to be seriously harmed if not moved and suitable accommodation is available to which that person can be moved.
- Before the council or any person makes a decision or undertakes any function under the Act, they must have regard to the principles of the Act. In particular, any action should be the least restrictive and should be necessary to provide a benefit to the adult. The adult's wishes and needs must always be considered.
- The use of other legislation may also be considered, for example, social work, child protection, mental health, civil law or criminal justice legislation.
- Consideration must also be given as to whether the adult should be referred to independent advocacy.
- It is good practice to ensure that wherever practicable the adult is kept fully informed at every stage of the process. For example, they should be made aware of what the order means for them, what powers it carries, what will happen next, whether they have the right to refuse, what other options are available.
- The council may also consider discussing with the adult at risk the need for some form of support plan. Another option would be to convene a multi-disciplinary meeting to discuss further care and protection issues.
- The information gathered may point to further action being required, for example, by providing the adult with support, advice or other services, or by taking further action under this Act or other legislation.
- Removal will need careful consideration by all practitioners. If it is considered that the adult will refuse consent to the granting of the removal order, the council should re-consider the merit of the application. This may be in the form of a multidisciplinary multi-agency meeting. Protection orders should be only used when all other options have been explored and exhausted.
- If the council decides to pursue an application where the affected adult has capacity to consent and has made known their refusal to consent, then the

council must prove that the adult has been “unduly pressurised” to refuse to consent to the granting of an order.

- Where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. However evidence of lack of capacity will be required by the Sheriff. Where the adult is incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney has powers to consent on their behalf. Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use the provisions in the Adults with Incapacity (Scotland) Act 2000 or Mental Health (Care and Treatment) (Scotland) Act 2003.

The Council should re-consider the merit of the application, if it considers that the adult will refuse consent to the granting of a Removal Order, or is not likely to remain in the place to which he or she has been taken. This is because a Removal Order only permits the removal of the adult. It does not authorise the keeping of the adult in the place for the duration of the order.

#### **4.2 Planning**

A Removal Order will expire after seven days or such shorter period as may be specified in the order from when the person is removed. This is a short period of time to complete an assessment and establish a plan.

In order to minimise distress and risk to the adult at risk, the procedure should be carefully planned and co-ordinated with all those involved in the process. Ideally, a multi-disciplinary plan would be prepared in advance on how to carry out the entry and removal of the person. The plan should include contingencies in case the adult or a person present does not respond as expected. Where it is anticipated that the use of force may be necessary to execute the order, a multi-disciplinary assessment of the risk should similarly be undertaken. In such circumstances, management of the process should be passed on to the police to enable them to address the issue of safety of all parties concerned.

The following factors will assist the planning stages when invoking a Removal Order.

- Why does the adult at risk need to be removed?
- How will the adult at risk be removed?
  - Has consideration been given to:
    - the means of accessing an adult at risk through attendance at day care?
    - transport needs?
    - the safety of Council Officers?
    - any immediate health needs?
    - the need for liaison with Police regarding the execution of a Warrant for Entry?
    - who will secure the property? (See Section 4.8 - Safeguarding of Property)

Where will the adult at risk be removed to?

Has consideration been given to:

- the availability of a specified place?
- the suitability of a place of safety?
- the need for specialised equipment?
- cultural needs?
- communication needs?
- care needs?

What conditions should be considered?

Has consideration been given to:

- who should have contact?
- the identification of any other relevant parties – guardian, relatives, etc?
- the need to consider a plan for those who should have access?
- the need to apply the principles of the Act throughout the decision making process when considering the proposed action?

### **4.3 Case Conference Procedures**

An Adult Protection Case Conference should be arranged within 24 hours of the adult being removed. The Case Conference should:

- Consider how the removal order was enforced and ensure any issues are addressed;
- Review the outcome of the removal order;
- Determine possible alternatives to returning home, if applicable;
- Determine what action is necessary to facilitate the person's return home;
- Ensure that a risk assessment is completed or reviewed;
- Ensure that a protection plan is established or reviewed;
- Establish the core group and a communication plan;
- Determine clear roles and responsibilities for the period that the adult is removed; and
- Consider the need for any other measures within the Act (e.g. Banning Order) or any other relevant legislation.

#### **4.4 Variation or Recall:**

Whilst there is no right of appeal, it is possible for the Order to be varied or recalled. The adult who is subject to the Order, the Council or any other person who has an interest can apply for the Order to be varied or recalled.

#### **4.5 Representation**

Council Officers should consider supporting the adult to seek representation through advocacy and a solicitor.

#### **4.6 Financial Implications**

It is envisaged that where an adult at risk is removed to a care home for the period of the Order, he or she will not be charged. The Council has an overriding responsibility to protect the adult at risk. The costs of securing the property of the adult at risk during the period of the Order will also be the responsibility of the Council.

#### **4.7 Warrant for Entry**

The sheriff (or justice of the peace) must grant a warrant that authorises a police constable to use reasonable force to achieve the purpose of the visit. Wherever possible, entry to premises should first be attempted without force.

The use of force is an absolute last resort, to be used in very exceptional circumstances, and only when all other options have been exhausted. It is only the constable who can use reasonable force.

#### **4.8 Safeguarding of Property**

Section 18 of the Act obliges the Council to take reasonable steps to prevent loss or damage to any property owned by someone removed under a Removal Order. Property could include the contents of a house, vehicles, animals, livestock, cash, credit cards and clothing.

The Act authorises entry to any place where the property that is owned or controlled by the adult at risk is known, or believed to be, for the purposes of preventing loss or damage.

Where a person is removed the Council must ensure that the property is locked fast, and that water and heating are safe in terms of the maintenance of the property. The Council should also make provision for animal welfare and ensure any valuables and monies are securely stored. There may be storage issues for the Council and there is no entitlement to recover any costs as long as the Order is in force (seven days).

This duty would allow Council Officers to remove any personal papers or bank books and adequate storage should be identified for these. The adult should be informed of their location if unable to take care of them.

The police should be advised that a property is vacant, particularly where the adult has been targeted.

## **5 Banning Orders**

(For more information please see the Code of Practice 2014, Chapter 13)  
<https://www.gov.scot/Resource/0044/00449622.pdf>

Banning orders and temporary banning orders will only be granted where the adult at risk is in danger of being seriously harmed, and where banning the subject of the order from a specified place is likely to safeguard the adult's well-being and property more effectively than would the removal of the adult at risk. Any decision to grant or refuse to grant a banning or temporary banning order can be appealed to the sheriff principal.

The subject may be banned from being in a specified place and in a specified area in the vicinity of the specified place.

A Banning Order can be made:

- by or on behalf of the adult whose well being or property would be better safeguarded by the Order;
- by any other person who is entitled to occupy the place concerned; and/or
- by the Council if there is no-one else to make the application and the grounds are met.

A Banning or temporary Banning Order which bans the subject of the order from a specified place may have conditions attached to it, and may last up to six months.

Section 21(4) of the Act provides that a temporary banning order expires on the earliest of the following dates:

- the date the sheriff determines the application for the related banning order; or
- the date the sheriff is required to determine the banning order within the period specified in Court Rules;
- the date on which it is recalled; or
- any specified expiry date.

## **5.1 What can a Banning Order or Temporary Banning Order do?**

A Banning Order or Temporary Banning Order can:

- ban the subject from being in a specified area in the vicinity of the specified place;
- authorise the summary ejection of the subject from the specified place and the specified area;
- prohibit the subject from moving any specified thing from the specified place;
- direct any specified person to take specified measures to preserve any moveable property owned or controlled by the subject which remains in the specified place while the order has effect;
- be made subject to any specified conditions; and
- require or authorise any person to do, or to refrain from doing, anything else which the sheriff thinks necessary for the proper enforcement of the order.

The subject of the banning order may not necessarily be living with the adult at risk. The point of the banning order is to put some distance between them to protect the adult at risk from further serious harm. A condition specified in an order may authorise the subject of the Order to be in a place from which they are banned for a specific reason e.g. supervised contact.

Section 25 permits the sheriff, at the time of granting the banning or temporary banning order, to attach a power of arrest. The sheriff will make such a decision based on the facts and circumstances of the case presented.

## **5.2 Consent of the affected adult (adult at risk)**

- Step 1            Is the adult able to give consent?
- Step 2            If yes - have they refused?
- Step 3            If they have refused – have they been unduly pressurised?
- Step 4            Has consideration been given to alternatives where the adult may agree to work with the Council under different terms?

## **5.3 Representation**

Section 19 (4) of the Act

The Council Officer should consider organising a representative for the adult at risk. The Council has a responsibility to support the adult to access advocacy.

## **5.4 Intimation**

It is the responsibility of Council Legal Services to formally notify the subject and any other relevant person that the application has been made.

## 5.5 Factors to consider before making an application

*The following factors should be considered before applying for a Removal Order:*

- Action can only be considered where an adult is an adult at risk for the purposes of the Act. In terms of the order, the adult in these circumstances becomes the “affected adult at risk” in terms of section 41 of the Act.
- Before the council or any person makes a decision or undertakes any function under the Act, they must have regard to the principles of the Act, in particular that any action will be the least restrictive option and be necessary to provide benefit to the adult. The adult’s wishes and needs must always be considered.
- Where a Council is applying for an order it must consider whether the adult at risk should be referred to an independent advocacy organisation or provided with other services.
- The use of other legislation may also be considered, for example, social work, child protection, mental health, civil law or criminal justice legislation.
- It would be good practice to ensure, wherever practicable, the adult is kept fully informed at every stage of the process e.g. whether an order has been granted, what powers it carries, what will happen next, whether they have the right to refuse, what other options are available etc.
- If it is considered that the adult will refuse consent to the granting of the order the council should re-consider the merit of the application. This may be in the form of a multi-disciplinary multi-agency meetings. Protection orders should be only used when all other options have been explored and exhausted.
- If the council decides to pursue an application where the affected adult has capacity to consent and has made known their refusal to consent, then the council must prove that the adult has been “unduly pressurised” to refuse to consent to the granting of an order.
- Where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. However evidence of lack of capacity will be required by the Sheriff. Where the adult is, or appears to be, incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney has powers to consent on their behalf. Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use the provisions in the Adults with Incapacity (Scotland) Act 2000 or Mental Health (Care and Treatment) (Scotland) Act 2003.
- Where consideration is being given to applying for an order which bans a child, this should include prior consideration of making a referral to the Children’s Reporter where it is believed there would be an effective case to answer. If the circumstances are such that there is a need to act urgently, then a referral to the Children’s Reporter should be made at the same time as the application for an order.

Consultation with all relevant agencies will be ongoing and documented.



## **5.6 Notifications**

If the application is granted, Legal Services will be responsible for notifying the subject of the Order, and the affected adult.

There may be occasions when it is in the best interests of the adult for the intimation of the application or Order to be dispensed with. The Sheriff needs to be satisfied that by doing so this will protect the adult from serious harm; or will not prejudice any other person.

## **5.7 Serving the Order**

This should be coordinated between the Council Officer, Legal Services and the police. Where necessary, Sheriff Officers can be involved in implementing an Order or serving court papers. Legal Services will make initial contact with them and organise the service of papers. If the person subject to the Order needs to be ejected, Sheriff Officers will need to be present. It may be appropriate for the police to be present too.

**5.8** An Adult Protection Case Conference should be arranged within 48 hours with regular Core Group meetings arranged to review the situation.

- If the adult at risk is dependent on the subject of the order for his or her care needs, this will need to be considered and appropriate support provided.
- Safety issues will need to be assessed and addressed; and
- A clear protection plan put in place.

## **5.9 Occupancy Rights**

The Banning Order does not affect the adult at risk's rights, as a non-entitled spouse whose name is not on the occupancy agreement, to occupy a home within the place from where the subject of the Order is banned, under the Matrimonial Homes (FP) (Sc) Act 1981.

Where the adult at risk is entitled to occupy a place, their rights are not affected if their husband, wife, partner, etc is banned from the place.

Where the adult at risk has no occupancy rights and the proposed subject of the Order does have these rights, the subject cannot be banned from the place.

If you are unsure about the position, then this should be discussed with Legal Services prior to making a decision to apply for an Order.

## **5.10 Variations of the Banning Order, once granted**

Section 24 of the Act makes provision for an application to be made to the Sheriff to recall or vary an Order. It is possible to vary or recall an Order if there has been a change in

circumstances where the Order is not required or it may be necessary to make a change to the Order either to add or delete conditions.

This can be carried out by:

- the person who applied for the Order;
- the subject of the order;
- the adult at risk; and/or
- any other person who has an interest in the adult at risk's well being or property.

### **5.11 Safeguarding of Property**

When a Banning Order has been made, the council's duties to protect relate only to moveable property belonging to the subject of the Banning Order which remains in the specified place, e.g. the adult at risk's home, while the Banning Order is in place. An inventory of such moveable items must be made and the best practice would be for the subject of the Banning Order to sign that this inventory is correct.

An inventory should be made and a copy given to the subject of the Order for signature. This will be carried out by the person delegated by the Team Manager. Costs incurred should be authorised by Team Manager / Service Manager (e.g. storage, pet care, locksmiths/joiners).

### **5.12 What happens if an order without an attached power of arrest is breached?**

Where the subject of the order breaches the order then this will be dealt with on the basis of a failure to comply with an order of court. As a result of this, if established, the subject of the order can be held in contempt of court. The applicant (and the adult at risk where not the applicant) may raise a normal action for breach of an order.

Where the person breaching the order has also committed a criminal offence, then this will be dealt with in the usual manner. Proceedings will be instigated by way of a petition by the procurator fiscal, following normal court procedures.

## ORGANISING AND CHAIRING AN ADULT PROTECTION CASE CONFERENCE

### 1 Organising and Chairing

The Adult social work service will take responsibility for the organising and chairing of case conferences. Different authorities will have different arrangements for the chairing of Adult Protection Case Conferences i.e a Service manager in Adult Services or a dedicated chair. He or she will ensure that time and venues are arranged and that all relevant people are invited.

Whenever possible, and where appropriate, the adult at risk should be invited to attend. He or she will have the right to be accompanied by an independent advocate or support worker of their choice, including family member(s). Before attending a conference, the adult at risk and, where appropriate, his or her relative(s) or carer(s) should be briefed about the purpose and format of the meeting and their views sought and represented.. The person who will take the minutes of the meeting should be identified in advance and should not be the chairperson.

#### 1.1 Guidance to Chairpersons

- Where there is dissent or concern, the chairperson will consider and rule on requests for a family member and/or a carer to be included or excluded from the case conference or requests that the adult involved should or should not attend the case conference. Decisions about who should or should not attend should be recorded in writing with reasons.
  - Provision should be made for the chairperson to ascertain if any professional needs to share information without the family being present. If so, this should be done prior to the family joining the case conference. It is expected that this will be exceptional and that the adult at risk and family or carer, will be able to attend for all of most meetings.
  - The chairperson will introduce him or herself to the adult involved and his or her family and/or carer immediately prior to the case conference and confirm their understanding of the purpose and process of the case conference.
  - Where the adult at risk (and/or his or her family or carer) has chosen not to attend or has been excluded from the case conference the chairperson must ensure that the reasons for this are clearly recorded in the minutes and the decisions of the case conference are fed back to them as soon as practicable after the case conference.
- 1 Wherever possible the views of the individual should be given to the meeting by an Independent Advocate who has met with them prior to the case conference. Where appropriate, the adult at risk should be consulted before details are passed to family or carer(s).
  - 2 The chairperson will ensure that the minutes of the case conference are accurate and that they are distributed to the appropriate agencies and,
  - 3 Where appropriate, the adult at risk and his or her family and/or carer within ten working days of the case conference.
  - 4 The chairperson should ensure that any necessary communication aids (e.g. loop system) are made available.

## **1.2 Involvement of the Adult at Risk:**

The wishes and needs of the adult at risk are central to the case conference process. It should be normal practice for the adult to be involved in discussions about them and their circumstances.

In making decisions about the adult at risk's involvement, the chairperson should be guided by:

- the capacity of the person;
- the information likely to be shared at the case conference;
- the likely effect on the adult, particularly when the person suspected of harm or mistreatment may also require to have some involvement; and
- the views of the family and carers.

## **1.3 Involvement of a Friend or Advocate**

There may be occasions when the adult concerned or a carer or family member may wish to be supported by the attendance at the case conference of a friend, other relative, professional person or member of an independent advocacy service. The attendance of such a person who may be able to assist the adult in clarifying the content of the discussion should be encouraged.

## **1.4 Independent Advocacy**

The use of an independent advocate should be considered in every case and decisions about referrals clearly recorded.

## **1.5 Involvement of Family and Carers**

If the adult at risk does not wish the attendance of a family member or carer and it is felt crucial to any protection plan that the family member or carer attend, the Council Officer should discuss the issue with the chairperson who will make a final decision on attendance. Decisions will be recorded in writing.

## **1.6 Exclusion of Family and Carers**

This will only occur where there are substantive grounds to believe that the involvement of family and carers would undermine the process and purpose of the case conference and they may need to be excluded throughout.

It is important that family and carers have a room in which they can wait and that, when necessary, the time spent on the initial part of the conference, from which they have been excluded, is kept to a minimum.

Grounds for exclusion would be:

- When a significant level of conflict or tension exists within the family and carers or
- When there is substantive evidence to believe that there is a likelihood of violent or serious disruption of the process of the case conference

- If frank discussion would be curtailed by the presence of a particular person

Family and carers may also be excluded when third party or sub-judice information is being presented to the case conference.

Being an alleged perpetrator is not sufficient reason in itself to exclude a family member or carer. This may be judged necessary by the chairperson if it is considered that their presence would seriously affect the consideration of the risk to the adult concerned.

### **1.7 Attendance of Professionals**

Conferences should be attended by individual professionals from caring agencies that have a direct contribution to make and a role to play. These may include:

- Council Officers/social work professionals carrying out the investigation or who already know the individual and/or their carer or family and their supervising senior social worker or team leader.
- Medical professionals who are involved in the investigation or who know the carers and family concerned (e.g. health visitor, GP, district nurse, community psychiatric nurse etc.)
- Police officers who are involved in the investigation
- Scottish Fire and Rescue Service if involved
- Voluntary or private sector staff who are directly involved with the carer/family
- Residential or day care staff involved with the adult
- Members of the interpretation/ services
- Power of Attorney or Welfare Guardian
- Independent Advocate

Consideration needs to be given to the number of people attending the case conference as the purpose is to enable the adult at risk to be fully involved in the discussion and the decision making process.

### **1.8 Information Sharing**

Confidentiality is required from each participant in a case conference and this should be made explicit at the beginning of the meeting by the chairperson. Information will be shared in line with the legislation on Data Protection.

Exceptionally, it may be considered that the disclosure of certain information in this kind of meeting could cause serious damage to the person it concerns and care needs to be taken on how this information is shared. Any professional who has concerns about the impact of information they may share at the Conference must discuss this with the Chairperson in advance of the meeting.

## **2 Conduct of Case Conference**

### **2.1 Introduction**

The chairperson introduces the case conference by confirming:

- The function of the case conference and the context of the adult protection guidelines
- The right to information of those present; clarifying that certain information may have to be restricted; giving the reason for that restriction
- The chairperson then asks participants to introduce themselves.

## **Fact Gathering**

The professionals are asked by the chairperson to share information:

- Beginning with the circumstances of the referral and conduct of enquiries
- Moving on to any relevant background information only once all the information relating to the current enquiry has been shared
- The chairperson briefly summarises each contribution at the time it is made to ensure that the contribution has been properly understood. This process should also facilitate the taking of the minute of the meeting.
- It is particularly important that the carers and family understand the information being shared and that they have an opportunity to make their own contribution. If there are disagreements about the information, then there should be an attempt to resolve these at the time. However, it may be that some disagreements can only be acknowledged.
- The unrestricted information shared at the case conference is summarised by the chairperson.

## **2.2 Interpretation and Assessment**

The chairperson should lead the discussion which focuses on:

- What are the strengths of the family and carers and what are the threats to the adult at risk's well-being?
- What are the specific dangers to the adult at risk and/or the carers and family members?
- What extended family, professional and community supports could be offered?
- How can the harm be minimised or prevented?

## **2.3 Decisions**

The case conference needs to decide whether the adult and/or any other person is believed to be at risk of being harmed, mistreated or neglected and if so:

- Consideration must be given as to whether or not a referral should be made to the police if it is believed that a crime may have been committed if this has not already been done.
- An adult protection plan must be agreed with a list of action points and timescales and details of who will be responsible and for what.
- A communication strategy should be included in the protection plan to ensure appropriate liaison between agencies. Contact between the Council Officer / Care Manager and the adult at risk will be weekly unless otherwise agreed by the case conference or review.
- The core group will meet monthly unless otherwise agreed by the case conference or review.
- A case co-ordinator must be appointed who should be a social worker/care manager

- Decide and document if this case continues under ASP process
  - Decide if ASP process can be discontinued. This can only be decided at an APCC meeting with agreement by all present
  - A review date must be agreed which must take place within three months
- 
- Any supplementary actions that may be required as a contingency in the event of a breakdown in care arrangements or other changes in circumstances.
  - Consideration of whether a Criminal Injuries Claim may be appropriate, along with the need for a referral to the Victim Support Agency.

## **2.4 Conclusion**

The chairperson will summarise the decisions made by the case conference and confirm with participants the roles that they will play in the adult protection plan.

## **2.5 Minutes of the Case Conference**

The minutes of the case conference should be completed and circulated to those attending and, where appropriate, with the consent of the adult at risk, to family and carers not present. The chairperson is responsible for making any alterations to inaccuracies noted by those in attendance and for ensuring that the minutes are circulated to all the relevant people as soon as possible but within ten working days.

The minutes should include as a minimum:

- Essential facts
- Details of the adult protection plan (if applicable)
- Whether the conference decided to refer the matter to the police
- Whether the conference agreed an independent advocate would be useful
- Recommendations for further action
- An account of the process of the discussion and the reasons for the recommendations.
- A note of any dissent
- Multi-agency follow up meetings – who attends and date of any meeting
- Date of the review conference

Where an adult at risk (and/or his or her family/carer) has chosen not to attend or has been excluded from the case conference, the chairperson must ensure that the decisions of the case conference are fed back as soon as practicable after the case conference.

Copies of the adult protection case conference minutes and review case conference minutes are sent to the Head of Community Care Services.

Distribution of the minutes can be sent by email internally in Council and to other agencies with secure email. Otherwise registered post should be used.





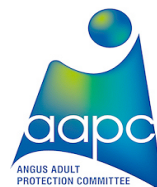
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