West of Scotland Inter Agency

Adult Support and Protection

Practice Guidance

Date of Review: October 2017-2019
Date of next review: October 2021

West of Scotland Inter Agency
Adult Support and Protection Practice Guidance

CONTENTS

Introduction	4-5

CHAPTER 1- CONTEXT

Aims of Guidance	6-7
Legal context of Adult Protection, relevant legislation, regulations, and strategies	7-8
Principles of ASP	8-9
Measures, definitions, cross-boundary practice, Council Officers	9-13
Protection Orders, Adult Protection Committee, Significant Case Reviews,	13-16
Chief Officers Group, Child Protection Committee and Multi Agency Public Protection	16

CHAPTER 2 – ADULT PROTECTION REFERRALS- DUTY TO REPORT

Duty to Report –Referral Procedure, Public Agencies	18-19
Voluntary and private sector	19
Emergencies or where a crime may have been committed	19
Is the Adult's Consent required before making a referral?	20
Confidentiality and information sharing	20
Harm from staff to an adult at risk, Reporting form (AP1)-timescales	21

CHAPTER 3 – ADULT PROTECTION INQUIRIES

Adult Protection Inquiries multi- agency approach	22
Children, Council duty to Inquire, emergency action	22
Care Inspectorate	23
Inquiry decision and possible outcomes	24

CHAPTER 4 – ADULT PROTECTION INVESTIGATIONS

Planned investigation, large scale investigations	26-28
Visits, Support Services- advocacy and communication,	28-30
Adult's rights, Access to records, Medical interventions and examinations	30-33
Risk assessment tool, Investigation decision and possible outcomes	33-35

CHAPTER 5 – ADULT PROTECTION CASE CONFERENCES

Case conference, Chair, exclusions	36-37
Process, Content , Minutes , Protection Plan (AP3)	37
Case Conference, Dissent/Dispute/Complaint/ Case Conference review/Closure	38

APPENDICIES

Appendix 1- Adult Protection Referral Form – (AP1)	40
Appendix 2 – Adult Protection Risk Assessment - (AP2)	45
Appendix 3 – Adult Protection Plan Form – (AP3)	54
Appendix 4 - Summary of relevant Legislation	57
Appendix 5 – Request for Information from Financial Institutions form	61
Appendix 6 – Indicators of Harm	67
Appendix 7 – Glossary of terms	74

West of Scotland Inter Agency Adult Support and Protection Practice Guidance

Introduction

Most adults, who might be considered to be at risk of harm, manage to live their lives without experiencing harm. Often this is with the assistance of caring relatives, friends, paid carers, professional agencies or volunteers. However, some people will experience harm such as physical harm, psychological harm, sexual harm or exploitation of their finances or property. The Adult Support and Protection (Scotland) Act 2007 was introduced to maximise the protection of adults at risk of harm.

The West of Scotland Inter Agency Support and Protection Practice Guidance provides an overview of the process to support and protect when harm happens to an adult at risk. It details the action to be taken by agencies when harm is identified; the timescales for referrals; the process of inquiries and investigations and case conferences. This guidance does not place any governance expectations on agencies in the same way as local procedures agreed by the multi agency Adult Protection Committees. However, what it does is bring together in one document, a process that follows the legislation, the relevant Code of Practice, and the actions that should be taken by the public agencies to meet their duties under the 2007 Act. It can be used by all agencies, especially the voluntary and private sector agencies, knowing that each Adult Protection Committee who signed up, has agreed in principle that it reflects local practice and local procedures.

The document:

- Recognises existing legislation to protect adults
- Focuses on the 2007 Act
- Contains information on the definition of harm and common indicators
- Outlines guidance for intervention

There are other relevant pieces of legislation designed to support and protect adults at risk of harm such as the: -

- Adults with Incapacity (Scotland) Act 2000 (the 2000 Act) click here
- Mental Health (Care & Treatment) (Scotland) Act 2003 (the 2003 Act) click here

The addition of the Adult Support and Protection (Scotland) Act 2007 (the 2007 Act) click here means there is a concise legal framework to facilitate further the protection of adults at risk of harm through the measures contained in Part 1 of the Act.

Report on Adults with Incapacity

The 2004 report into the Scottish Borders Council/NHS Borders Services for Learning Disability highlighted the need for procedures and guidance for interagency responses to adults at risk of

harm to be in place. Click here. This was to emphasise that the protection of adults at risk is the responsibility of all the statutory agencies, voluntary and private providers and that good communication is key to prevention. This report is still as relevant now as it was in 2004.

The Mental Welfare Commission has also published a number of reports which inform practice in protecting adults these can be found at the Mental Welfare Commission click here for Scotland website.

Our responsibilities

We all have responsibilities to ensure that adults who may be at risk of harm in our communities are safe, respected and included, with clear communication routes and fully involved in all decision making. Our aspiration, for all adults who may be at risk of harm in our communities in the West of Scotland, is that they are empowered, through support from the responsible public agencies, to be free from harm and enabled to make decisions and choices about their lives and to live as independently as possible in relation to their personal circumstances.

Changes in the way support is being provided, has resulted in a greater range of services available to those requiring help and assistance. The Social Care (Self Directed) Support Act 2013 click here has allowed people additional choice and increased participation in decision-making. These changes have resulted in a changing model of care, utilising both paid and unpaid assistance. The Self-Directed Support National Strategy for Scotland click here notes the shift to risk enablement and outcomes but acknowledges that this sits within the framework and principles of protective legislation.

It is vitally important to ensure that people who are involved with the support and protection of adults at risk of harm have a clear sense of what signifies harm and what should happen when harm is suspected or discovered.

Agencies are encouraged to use this guidance to inform their own procedures and ensure that their staff know how to recognise and report harm locally.

The introduction of the Public Bodies (Joint Working) (Scotland) Act 2014 click here establishes partnership arrangements for the governance and oversight of health and social care services.

CHAPTER 1 – CONTEXT

This document aims to:

Assist in the prevention of harm occurring to adults who may be at risk of harm in the West of Scotland through building on good practice and a common understanding of the issues.

To support adults who may be at risk of harm through having a joint understanding across each agency of:

- Their roles and responsibilities in responding to reports of criminality or identified concerns involving adults at risk.
- The duty of Public Bodies to cooperate
- The links between Child, Adult and Public Protection guidance.
- The lead role of Social Work in Adult Protection
- The roles and responsibilities of all agencies in protecting adults that may be at risk of harm.
- The role of each council where cross-boundary issues arise.

In addition this guidance:

- Supports existing local operating procedures by providing a framework for the overall interagency response in terms of referrals, inquiries, investigations, actions and case conferences.
- Provides Procedural Forms (Appendix 1, 2, 3) which can be used by all agencies across the West of Scotland.
- Explains the role of Chief Officers' Group and Adult Protection Committee.
- Provides an understanding of the legal basis for intervention.
- Provides an understanding of the terminology used in adult protection.
- Shares the principles of good practice in adult protection.

The West of Scotland Partnership consists of:

Argyll and Bute Adult Protection Committee
Dumfries and Galloway Public Protection Committee
East Ayrshire Adult Protection Committee
East Dunbartonshire Adult Protection Committee
West Dunbartonshire Adult protection Committee
East Renfrewshire Adult Protection Committee
Glasgow City Adult Protection Committee
Inverclyde Adult Protection Committee
North Ayrshire Adult Protection Committee
North Lanarkshire Adult Protection Committee
Renfrewshire Adult Protection Committee
South Ayrshire Adult Protection Committee
South Lanarkshire Adult Protection Committee

It is accepted that the partner agencies; Councils, Care Inspectorate, Police Scotland and NHS Boards will each retain their own more detailed Local Operating Procedures to guide their staff in relation to the actions required in adult protection within their agency.

The referral form (AP1, Appendix 1)) is available for use by any agency across the West of Scotland, however it is recognised that some agencies will use their own referral form.

Legal Context of Adult Protection

The West of Scotland Guidance focuses on the 2007 Act, its related Code of Practice (2014) and the Scottish Government Guidance for Adult Protection Committees. Other legislation is equally important in the protection of adults at risk and links have been provided to legislation, which may require to be referred to in the protection of adults at risk. Links to relevant national guidance and strategy can also be found in this section.

Appendix 4 contains more detail with regard to Adults with Incapacity (Scotland) Act 2000 and Mental Health (Care and Treatment) (Scotland) Act 2003. Additional information is available from The Scottish Government website click here or by using the following links

Links to Legislation and Regulations

Regulation of Care (Scotland) Act 2001 click here
Social Work (Scotland) Act 1968 click here
Human Rights Act 1998 click here
Data Protection Act.1998 click here (needs to be updated)
Adults with Incapacity (Scotland) Act 2000 click here
Regulation of Care (Scotland) Act 2001 click here
Community Care and Health (Scotland) Act 2002 click here
Mental Health (Care and Treatment) (Scotland) Act 2003 click here
Mental Health (Scotland) Act 2015 click here
Adult Support and Protection (Scotland) Act 2007 click here
Protection of Vulnerable Groups (Scotland) Act 2007 click here
Public Health etc. (Scotland) Act 2008 click here
Sexual Offences (Scotland) Act 2009 click here
Offences (Aggravation by Prejudice) (Scotland) Act 2009 click here
Equalities Act 2010 click here
Domestic Abuse (Scotland) Act 2011 click here

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011 click here
Self-Directed Support (Scotland) Act 2013 click here
Human Trafficking and Exploitation (Scotland) Act 2015 click here
Victims and Witnesses (Scotland) Act 2014 click here
Anti-social behaviour, Crime and Policing Act 2014 click here
Children and Young Persons (Scotland) Act 2014 click here
Mental Health (Scotland) Act 2015 click here)
Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (Part 2 – Duty of Candor & Part 3 – Ill-Treatment & Wilful Neglect**)** click here

Links to National Guidance

Adult Support and Protection (Scotland) Act 2007 -Code of Practice May 2014 click here
Adult Support and Protection (Scotland) Act 2007 - Guidance for Adult Protection Committees click here
Self-Evaluation of Adult Support and Protection Activity: resource handbook- click here

Adult Support and Protection (Scotland) Act 2007

Principles

The principles must be taken into account at all stages of any intervention and emphasise the importance of striking a balance between an adult's right to freedom of choice and the risk of harm to that person. Any intervention must be reasonable, necessary, proportionate and legal.

A public body or office holder must be satisfied that any intervention will provide:-

- Benefit to the adult which could not reasonably be provided without intervening in the adults affairs and

- Is, of the range of options likely to fulfil the object of the intervention, the least restrictive to the adult's freedom

In addition, in considering a decision or course of action, the public bodies or office holders must also have regard to the following:-

- The adult's ascertainable wishes and feelings (past and present).

- Any views of the adult's nearest relative, primary carer, guardian or attorney and any other person who has an interest in the adults well being or property.

- The importance of the adult participating as fully as possible in the performance of the function and providing the adult with such information and support as is necessary to enable the adult to participate.

- The importance of the adult not being, without justification, treated less favourably than the way in which a person who is not an adult at risk of harm would be treated in a comparable situation.

- The adult's abilities, background and characteristics.

Values

In general terms, the following values underpin any intervention in the affairs of adults deemed to be at risk and in need of protection under this multi agency guidance: -

- Every adult has a right to be protected from all forms of abuse, neglect and exploitation.
- The welfare and safety of the adult takes primacy in relation to any inquiry or investigation.
- Every effort should be made to enable the individual to express their wishes and make their own decisions to the best of their ability recognising that such self-determination may involve risk.
- Where it is necessary to override the wishes of the adult or make decisions on his/her behalf for their own safety (or the safety of others) this should be proportionate and least restrictive.

Partnership agencies subscribing to this guidance for the protection of adults at risk will also adhere to: -

- Actively working together within the value base of dignity, privacy, choice, safety, realising potential, equality and diversity.
- Actively promoting individual choice and the well being of adults at risk through service provision.
- Actively work together within an interagency framework to provide the best outcomes for adults at risk.
- Acting in a way which supports the rights of the individual to lead an independent life based on personal choice.
- Recognising people who are unable to make their own decisions and/or to protect themselves and their assets.
- Interventions should be legal, necessary and proportionate.
- Decisions should be defensible, recorded and have a clear rationale.

What measures, definitions and protection orders does the Act contain?

Measures

The 2007 Act introduces measures to identify support, and protect adults who may be at risk of harm whether as a result of their own or someone else's conduct. These measures include: -

- A requirement that specified public bodies must inform and co-operate with councils and each other about adult protection.
- Clarifying the roles and responsibilities of the public bodies in relation to adult protection.

- Placing a duty on councils to consider Advocacy or other services, as appropriate to an adult at risk. However, it is good practice that Advocacy be considered in all circumstances.

- Placing a duty on councils to make the necessary inquiries and investigations to establish whether or not further intervention is required to protect the adult.

- The establishment of Adult Protection Committees.

- A range of Protection Orders.

Definitions

The Council

Section 53 of the Act states "that references to a council in relation to any adult known or believed to be at risk, are references to the council for the area which the person is for the time being in".

ASP Cross Boundary Cases



18 March 23 Social Work Scotland Adult S

In relation to cross boundary cases best practice guidance has been developed and subsequently ratified by Social Work Scotland.

This document details a set of principles for each Adult Protection Committee/Integrated Joint Board/Local Authority. Their purpose is to ensure that an adult at risk in one local authority area will be provided with the same level of support and protection until the circumstances of any move are assessed, shared and reviewed and can indicate whether the risks are reduced or eliminated in the new setting.

In respect of local arrangements for the management of cross boundary cases Section 53 (1) of the Adult Support and Protection (Scotland) Act 2007 states that adult protection duties are held by the council in which the Adult at Risk of Harm *'is for the time being in'.* However it is for each Adult Protection Committee to ensure they have robust cross boundary procedures in place to mitigate any significant risk to the adult.

Where there are resource implications reference should be made to Scottish Government Ordinary Residence Guidance.

Council Officer

The investigating officer has been given, within the 2007 Act, the title of **Council Officer.** The definition of a Council Officer within the 2007 Act at Section 53(1) is an individual appointed by a Council under Section 64 of the Local Government (Scotland) Act 1973. Section 53(1) also enables ministers to restrict the type of individual who may be authorised by a council to perform Council Officer's functions.

The exact definition of a Council Officer is defined in Sections 3 and 4 of Scottish Statutory Instrument (SSI) regulation 2008 No 306 2007 Act (Restrictions on the Authorisation of Council Officers, Order 2008) and reads as follows: -

Section 3 (1) ‘A council shall not authorise a person to perform the functions of a Council Officer under sections 7 to 10 **(investigative functions)** unless that person meets the requirements set out in section 3, paragraph 2 of the SSI’.

Those requirements are– Section 3 (2) (a) The person: –

(i) is registered in the part of the SSSC register maintained in respect of social workers or is the subject of an equivalent registration;

(ii) is registered in the part of the SSSC register maintained in respect of social service workers;

(iii) is registered as an occupational therapist in the register maintained under article 5(1) (establishment and maintenance of register) of the Health Professions Order 2001(5); or

(iv) is a nurse; and

(b) The person has at least 12 months post qualifying experience of identifying, assessing and managing adults at risk.

Restriction on the authorisation of Council Officers to perform functions under sections 11, 14, 16 and 18 reads as follows: -

Section 4 states ‘a council shall not authorise a person to perform the functions of a Council Officer under sections 11 (assessment orders), 14 (removal orders), 16 (right to move adult at risk) or 18 (protection of moved person’s property) unless that person meets the requirements of article 3(2)(a)(i), (iii) or (iv) and (b)’.

Within these requirements, it will be for each council to determine who will act as a Council Officer within their area.

Adult at risk

Section 3(1) defines an ‘adult at risk’ as adults 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.

The first element of the above three-point criteria relates to whether the adult is unable to safeguard their own well-being, property, rights and other interests. 'Unable' is not further defined in the Act or guidance, but is defined in the Oxford English Dictionary as 'lacking the skill, means or opportunity to do something'. A distinction should therefore be drawn between an adult who lacks these skills and is unable to safeguard themselves, and one who is deemed to have the skill, means or opportunity to keep themselves safe, but chooses not to do so. An inability to safeguard oneself is not the same as an adult not having capacity. An adult may be considered unwilling rather than unable to safeguard themselves and so may not be considered an adult at risk.

The presence of a particular condition does not automatically mean an adult is an adult at risk of harm. Someone could have a disability but be able to safeguard their well-being, property, rights and other interests.

It is important to stress that all three elements of this definition must be met, or that there are grounds for believing all three elements may be met, for an adult to be deemed an adult at risk and for interventions to take place under the 2007 Act. It is the whole of an adult's particular circumstances that can combine to make them more vulnerable to harm than others.

Harm

Section 53 states 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.

Section 3(2) makes clear that an adult is at risk of harm if:

- another person's conduct is causing (or is likely to cause) the adult to be harmed, or
- the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

Serious Harm

There is no definition of 'serious harm' provided in the 2007 Act. Serious harm is the threshold that justifies compulsory intervention in an adult's life by the state. This can be a one off traumatic incident or event but it could also be a number of single events or a build-up of concerns over a period of time.

What constitutes **serious harm** will be different for different adults and is not defined in the Act. When assessing harm, areas that require to be taken into consideration are:-

- Impact of harm on the adult's physical or mental health.
- Injuries which are severe and/or life threatening.
- The adult's perception.
- Level of risk.
- The need for urgent action.
- The frequency, consistency and severity of harm.
- The intent of the perpetrator.
- History of harm.
- The probable consequences of non-intervention.

A council may apply to the Sheriff for one of the available Protection Orders (i.e. Assessment Order, Removal Order or Banning Order). The Sheriff may grant an order only if satisfied, amongst other things, that the person in respect of whom the order is sought is an adult at risk who is being, or is likely to be, seriously harmed.

Risk Assessment

The definition of an adult at risk requires an assessment to be made about the risk of harm to the person at the outset.

Risk is the possibility of beneficial and harmful outcomes and the likelihood of their occurrence in a stated timescale.

Risk assessment means making judgements about:

- The individual's capabilities and coping mechanisms (social, material and personal)
- The gains for the individual's physical, psychological and emotional wellbeing
- Possible disadvantages and harms
- The values placed on the outcomes
- The consequences for the individual of not going ahead with the activity
- The presence and impact of coercive control, disguised compliance or undue pressure

Undue Pressure

An adult at risk can be considered to be under undue pressure if they are refusing consent and:

- The person causing the harm, that the order or action is intended to prevent, is someone in whom the adult at risk has confidence and trust.

- Pressure applied by the person that the adult is afraid of, or threatening them and the adult does not trust them.

- Pressure applied by person not causing harm (e.g. a relative not suspected of causing harm) but does not want the council to intervene.

Protection Orders

What follows are the salient points of each of the Protection Orders. This does not replace the more detailed information contained within the Act and the Code of Practice (2014). These should be referred to if consideration is being given to an application under this part of the Act.

Any protection order under the Act represents a serious intervention in an adult's life, a sheriff must be satisfied that the council has reasonable cause to suspect the person in respect of whom the order is sought is an adult at risk who is being, or is likely to be, at risk of serious harm. Where the adult has the capacity to make decisions, the application cannot be granted by the Sheriff if the adult does not consent to the order unless it can be proved that the adult has been subject to undue pressure to refuse consent. This does not require to be proven where the adult lacks capacity. Each order may only be executed once.

Assessment Orders – Warrant for Entry

The purpose of an assessment order is to determine whether the adult is an adult suspected to be at risk; and whether there is reasonable cause to suspect that the adult at risk is being, or is likely to be, seriously harmed; and whether any action should be taken to protect the adult from serious harm.

Application for an assessment order must be made by the council's legal department, which authorises the council, if necessary, to take the adult from a place being visited under the order to allow:

- the interview to be conducted in private and /or
- a private medical examination by a health professional nominated by the Council.

When an assessment order is granted, the sheriff must also grant a warrant for entry under Section 37. 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 fulfil the object of the visit. Only the constable has a right to use reasonable force.

The date specified in the order may be different from the date the order is granted. The assessment order is valid for 7 days after the date specified in the order. For example, an order dated 13 November would expire at midnight on 20 November. An assessment order does not contain powers of detention. The adult can refuse to be interviewed or examined despite the assessment order.

Removal Orders

A removal order is primarily for protection and not for a council interview or a medical examination. It permits the person named in the order to be moved from any place to protect them from harm. For example, the place the adult at risk actually lives may however be a contributory factor in the harm and the move may provide "breathing space" for the specified person.

The council can make application to the Sheriff (or Justice of the Peace in certain circumstances) for a Removal Order, which would allow the removal of the adult to another place primarily for the purposes of protection.

There is a 72 hour period in which to enact the removal order. It expires 7 days (or such shorter period as may be specified in the order) after the day on which the person specified in the order is moved to the named place of safety.

A removal order does not contain powers of detention. The adult can refuse to be interviewed or examined despite the removal order.

Banning Orders or Temporary Banning Orders

These orders will only be granted where the adult at risk is in danger of being seriously harmed,

A banning or temporary banning order, which bans the subject of the order from a specified place, may have other conditions attached to it, and may last for a period of time not exceeding 6 months. The purpose of these orders is to better safeguard the adult at risk's well-being and property more effectively than would removing the adult from a place where they are at risk of harm from another person.

A banning or temporary banning order may:

- 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.

A condition specified in an order may authorise the subject of the order to be in a place or area from which they are banned, but only in specified circumstances, for example while being supervised by another person or during specified times.

An application for a banning order may be made by or on behalf of:

- an adult whose well-being or property would be safeguarded by the order; or
- any other person who is entitled to occupy the place concerned; or
- a Council.

Power of Arrest

The sheriff can make a decision to attach a power of arrest based on the facts and circumstances of the case presented. This would be based on the likelihood of the subject breaching the banning order or any of the conditions attached to the banning order.

Adult Protection Committee

The 2007 Act creates an obligation on councils to establish multi-agency Adult Protection Committees (APCs). The functions of the APCs include:-

a) to keep under review the procedures and practices of the public bodies;

b) to give information or advice to any public body in relation to the safeguarding of adults at risk within a council area, and

c) to make, or assist in the making of, arrangements for improving the skills and knowledge of employees of the public bodies.

In performing these functions, APCs must have regard to the promotion and support of co-operation between each of the public bodies. The public bodies involved are the relevant council, the Care Inspectorate, the relevant Health Board, the Chief Constable of the Police Force in the council area, and any other public body as may be specified by Scottish Ministers.

The Mental Welfare Commission and Office of the Public Guardian also have the right to attend and must be informed of Adult Protection Committee meetings, in line with local operational arrangements.

Significant Case Review

The Act does not require APCs to become involved in individual case reviews. APCs have a strategic and monitoring function rather than an operational role and therefore routine case review may well be seen as inappropriate. However, joint consideration of individual cases may help APC members to develop greater joint understanding of service user concerns and professional practice. While there is no duty to do so, APCs are encouraged to evaluate and learn from critical incidents.

To ensure that Adult Protection Committees are carrying out the designated functions, it is important that the agencies represented on the Committee, and who are subject to statutory duties

under the adult protection legislation, give consideration to notifying the Independent Chair of any significant incident or event.

Adult Protection Committees have responsibilities to have Significant Case Review Procedures in place. At the time of writing (June 2019) we await the Scottish Government National Guidance on Significant Case Reviews for adults which is expected in September 2019.

The Mental Welfare Commission has produced guidance which is intended to assist staff in the NHS, local authority, and independent sector services in determining whether an incident or issue should be notified to them and the form that notification should take. Any such notification is in addition to any other notification required by, for example, the Care Inspectorate, adult support and protection officer or Healthcare Improvement Scotland. click here

Chief Officers' Group

The guidance for Adult Protection Committees advises APCs will require to be given the authority by local agencies to be able to carry out their functions effectively and will need lines of accountability to local councils, health boards and police. To ensure that appropriate authority is delegated, it is good practice for there to be a Chief Officers Group. This would be expected to have a core membership at Chief Executive, Director or senior officer level from the council, NHS and police.

Public Protection

Public protection involves working with both victims and perpetrators to reduce the risk of harm to children, adults and the public. Public protection requires agencies to work together at both a strategic and operational level to raise awareness and understanding. Their role is also to coordinate an effective response that provides at risk individuals with the support needed to reduce the risk in their lives. Public protection also promotes effective partnership working between the adult and child protection committees, MAPPA and Gender Based Violence Partnerships at strategic and policy levels and will be reinforced through the structural arrangements of the Public Protection Chief Officers Groups.

Adult and Child Protection

The National guidance (click here) identifies that Child and Adult Protection Committees should have jointly developed procedures to ensure ongoing support for any young person about whom there are child protection concerns at the point where they move from children's into adult services. This will include determining if the young person is potentially an adult at risk or requires other statutory measures to be put in place.

An overlap may exist where a person is aged 16 or 17 years and could be classed as both a child and an adult at risk. The Adult Support and Protection Code of Practice click here makes reference to transitions and the need for practitioners to be aware of other legislation, which helps support young people. It reinforces a requirement for services to work together, to share information and ensure systems are in place to transfer responsibilities between agencies and services.

Where a young person between the age of 16 and 18 requires protection, services will need to consider which legislation or policy, if any, can be applied. This will depend on the young person's individual circumstances as well as on the particular legislation or policy framework.

The Children and Young People (Scotland) 2014 means that all adult protection interventions for 16 and 17 year olds are required to be managed through the statutory single Child's Plan. Consideration will need to be given to the issue of consent and whether an intervention can be undertaken where a young person has withheld their consent. The priority is to ensure that a

vulnerable young person who is, or may be, at risk of significant harm is offered support and protection.

Children and Young People (Scotland) Act 2014 ***Click here***

Adult Protection, MAPPA and Criminal Justice

Some offenders may be subject to MAPPA (Multi Agency Public Protection Arrangements) due to the nature of their offence but can also be adults at risk of harm e.g. have a learning disability and require a protection plan that supports and prevents harm to them. It is expected that the MAPPA meeting will consider whether there are any adult protection concerns. These concerns may relate to the offender being an adult at risk of harm or posing a risk of harm to other adults at risk. Confidentiality needs to be considered particularly if voluntary organisations are involved and local agreements should be established to ensure that adult protection matters are taken fully into account.

Capacity

The law in relation to adults (i.e. anyone over the age of 16) makes a distinction between those who are capable of managing their affairs and those who are not.

Mental Capacity means being able to make your own decisions – Someone lacking capacity because of illness or disability such as mental health problems, dementia or learning disability cannot do one or more of the following**:**

- Acting
- Making Decisions
- Communication Decisions
- Understanding Decisions
- Retaining memory of Decisions

The assumption in law is that all adults have the capacity to make decisions about their own affairs until or unless they are recognised, in law, as being incapable. Where an adult can make decisions, social work staff cannot make or impose decisions regarding how he or she should behave or regarding actions that may or may not be taken.

However Mental Welfare Commission, guidance highlights it is important to assess capacity in relation to the treatment decisions the person is facing ”presumption on favour of capacity” must be interpreted with care. It does not mean that a person is “assumed to have capacity unless there is a certificate that states otherwise”. A presumption of capacity can be challenged if there is evidence to the contrary. If the person has capacity, his/her right to refuse treatment must be respected, even if refusal is likely to lead to death”.

Useful guidance on assessing capacity can be found at: **Click here**

CHAPTER 2

ADULT SUPPORT AND PROTECTION REFERRALS

Commence processing within 1 Working day of the concerns being received

ASP Referral Process

Contact details for each authority can be found here: Click here

- Referrers should consider their own agency's referral procedures and consult with their local council.
- All referrals, including anonymous referrals, should be taken seriously. Cases must be considered with an open mind without assuming that harm has, or has not, occurred.
- Referrals should be sent to the local authority where the adult is currently present (host authority).
- Where harm has occurred out with the host authority it is still the host authority's responsibility to carry out all necessary inquiries. It is expected that the host authority will contact the local authority where the person normally resides to alert them to the adult protection referral.
- Following the initial inquiry both councils will enter into negotiations on how best to take forward the adult protection referral.

Duty to Report

Public agencies have a duty to report any suspected or actual harm to an adult at risk. This should occur within 1 working day of the concerns being noted.

The 2007 Act and Code of Practice (2014) states that certain bodies and office holders must, so far as is consistent with the proper exercise of their functions, co-operate with a council making inquiries under Section 4 of the Act.

The bodies and office holders listed in Section 5 of the Act are:-

- The Mental Welfare Commission for Scotland;
- Health Care Improvement Scotland
- The Care Inspectorate;
- Office of the Public Guardian;
- All Councils;
- Chief Constable of Police Scotland ;
- The relevant Health Board, and

- Any other public body or office-holder as the Scottish Ministers may by order specify. (Scottish Ministers have not specified any other bodies at the time of writing)

Where a named public body or office-holder knows or believes that a person is an adult at risk and action needs to be taken in order to protect that person from harm, then that public body or office-holder must report the facts and circumstances of the case to the council for the area where they believe the person to be located. Staff should also be clear who they have a duty to report to within their own organisations.

Voluntary and Private Sector

Whilst the 2007 Act does not give voluntary and private sector providers the same duty of *cooperation, the Code of Practice (2014) states:*

'While independent organisations do not have specific legal duties or powers under the Act, care providers have a responsibility to involve themselves with the Act where appropriate by making referrals, assisting inquiries and through the provision of services to assist people at risk of harm. These organisations should discuss and share with relevant statutory agencies information they may have about adults who may be at risk of harm. These providers and other service provider and user and carer groups may also be a source of advice and expertise for statutory agencies working with adults with disabilities, communication difficulties or other needs. Organisations will have a legal duty to comply with requests for examination of records. Councils may wish to review their contract agreements with the independent and third sector providers to ensure that their services are consistent with the principles of this Act.' (P-23)

Legislation allows information to be shared in specific circumstances and agency procedures should be clear on the procedures to follow where adult [or child] protection concerns have been identified.

Voluntary and Private sector agencies in the West of Scotland area are expected to report adult protection concerns within the same timescales as public bodies i.e. referrals should be made within 1 working day using the referral process. The organisation should also notify the Care Inspectorate and their council's contracts/commissioning section.

Reporting emergencies or when a crime may have been committed

If a person is in immediate danger contact emergency services on 999, particularly if an adult at risk appears to be in immediate need of medical attention or if there is evidence of physical or sexual harm:

- Report to the Police if you suspect a criminal act has taken place or is likely to take place
- Staff must be aware of the need to preserve evidence
- Staff should not put themselves at risk
- Follow up contact should be made with the Health and Social Care Partnership and an Adult Support and Protection referral form submitted within one working day.

Uncertainty about consent and capacity should not prevent the provision of urgent medical assistance or contact with the police. For all non-emergency inquires contact Police Scotland on 101.

Does the adult need to consent to the referral?

The adults consent is not required for you to make a referral under the Act. If possible, inform the adult that their concerns will be reported to your line manager and the police where a potential crime has been committed and that these will be recorded. While the adult's consent should usually be sought before the police are contacted, remember that adults at risk of harm are individuals in their own right and must be allowed to exercise their right to choose the way they live their life, unless:

- The adult is at immediate risk of significant harm.
- The adult does not have capacity to understand his/her choice or consequences.
- There is concern the person is being unduly pressured to withhold their consent.
- The situation involves a service provider and other adults may also be at risk of harm.
- There is a public safety concern and it is in the public interest to override consent because of the seriousness of the incident or allegation and/or risk to other people.
- Any member of staff from any agency witnessed a crime being committed.

Voluntary and private sector agencies are usually required to report actual or suspected harm of an adult at risk under their contractual agreement. When making a referral to the Police or Social Services they should be advised if the adult has consented to the referral or not.

Sharing information and General Data Protection Regulations

Where there is a concern about an adult at risk of harm or you are made aware of such a concern, agencies have a responsibility to share and exchange relevant information with other professionals. This should be done without delay (within 24 hours) and with confidence, following your own agency/service procedures.

All staff should be aware that their own agency will support them if they have shared personal information in these circumstances using their professional judgement. Recent reviews have highlighted misconceptions about information sharing. Existing legislation does not prevent the sharing and/or exchanging relevant information where it is believed there are concerns about the protection of adults at risk of harm. In addition, agencies are lawfully able to share confidential information where disclosure is necessary to protect the individual or another third party. This extends to all practitioners working with adults who may be self-harming or neglecting themselves.

It is important that we are open and transparent and make people aware that we will share information when we suspect an adult is at risk of harm. It is also important that staff record any decisions to share or not to share information and their reasons for doing so.

For further advice and guidance staff should speak directly with their supervisor/manager or with their organisation's Data Protection expert.

Harm from paid staff towards an adult at risk

All agencies should have an adult protection policy and/or disciplinary procedure that takes account of harm occurring from a paid [or volunteer] member of staff. In all cases agencies should follow this procedure while recognising that social work services / Care Inspectorate and/or the Police may also be involved dependent on the nature of the harm alleged or evidenced. Agencies should work together to ensure that information is shared and that actions taken are coordinated and managed appropriately.

Referral Form AP1

The collation of relevant information on a referral is crucial for the application of professional judgement. Wherever possible, information should be sought and recorded at the point of referral. If it is practical, describe the concerns as detailed by the adult.

While phone call referrals will be accepted from any agency, a written referral form should be completed within one working day and passed to Social Work Services. Agencies, should use the AP1 (**Appendix 1)** to make a referral to Social Work Services. However, some public bodies have their own nationally agreed ASP referral forms such as Police Scotland, Scottish Fire and Rescue Service and some NHS Health boards.

If you do not have all the information asked for in the form do not delay sending the referral to Social Work Services who will gather any further information as part of the ASP Inquiry process.

Referrers should follow their own agency procedures for case recording.

CHAPTER 3

ADULT SUPPORT AND PROTECTION INQUIRIES

Multi-disciplinary approach to Inquiries

Many different professionals in statutory agencies and other organisations have contact with adults at risk of harm including social workers, medical and nursing staff and other health professionals, staff delivering care services, Procurators Fiscal, the police and staff of voluntary organisations. A multi-agency and multi-disciplinary approach is therefore appropriate.

When should a council make inquiries?

Section 4 of the Act places a duty on councils to make inquiries about a person's well-being, property or financial affairs if it knows or believes:

- that the person is an adult at risk; and
- that it might need to intervene (under the Act or otherwise) in order to protect the person's well-being, property or financial affairs.

Inquiries under Section 4 of the Act will be carried out by the council's social work services and should follow adult protection procedures. The council may consult and/or work in partnership with other agencies to conduct inquiries. Other professionals, such as the police, the Care Inspectorate or health professionals may be asked to assist.

Are there any Children involved?

All agencies have a responsibility to consider the needs of any child who may reside or have contact with an adult(s) involved in any form of harm. The responsible social work manager will inform Children and Families Social Work Services and a decision made if child protection procedures should also be initiated.

Agencies with concerns that relate both to children and adults should state this at the point of referral.

Council's duty to Inquire under 2007 Act (Section 4)

On receipt of a phone call or adult protection referral Social Work Services are required to make inquiries under the Act. Timescales for the completion of an inquiry will be agreed locally. If there is an allegation of physical or sexual harm, or there are major concerns regarding the harm issues being raised, inquiries must commence immediately. The police must be contacted in the first instance if staff know or believe a crime may have been committed and agreement made on how best to proceed. Given that the adult must be visited, and if possible seen alone within 24 hours, it is important that this forms part of police discussions from the outset.

The responsible social work manager will review the referral to decide if**:-**

- Immediate action is required in relation to the adult deemed to be at risk to make them safe.

And/or

- If the case needs to progress to an investigation.

As part of this process Social Work Services should:-

- acknowledge receipt of referral. (This may be an automated return email receipt)
- decide if medical intervention is required
- maintain multidisciplinary liaison during inquiries
- inform other external agencies of the referral e.g. Care Inspectorate, Police etc. if appropriate.
- offer appropriate support to the external agency / referrer
- consideration must be given to other relevant legislation, where appropriate for example, Adults with Incapacity or Mental Health Care and Treatment Act.

Where there is subsequent Police involvement

Where it is decided that a criminal investigation is required the Police will undertake this. The Police will decide if a referral to the Procurator Fiscal is appropriate. Social Work Services and the Police should liaise over action necessary to protect the adult at risk during a Police investigation. However, Social Work Services will continue to support the adult at risk and any relevant others in coordinating and monitoring any agreed protection planning.

Care Inspectorate - Initial inquiries

Registered Care Services must separately notify the Care Inspectorate and the council's contracts department using an e-notification referral system or by telephone when an allegation or evidence of harm is received which may involve one or more service users. If a verbal referral is made this should be followed up with an e-notification to ensure an audit trail for tracking incidents.

The Care Inspectorate should discuss the outcome of any intervention or risk assessment they carry out with the responsible Social Work Manager and/or Contracts Section to clarify whether any regulatory action is required from the outset.

If considering possible regulatory action, discussion should be held with the council involved and where appropriate, the police and/or Procurator Fiscal to ensure that any Care Inspectorate activity will not interfere with ongoing investigations.

The Care Inspectorate will complete and submit an ASP referral to Social Work Services as required under the Act following ASP allegations and complaints that come to them. Social Work Services will undertake Inquiries and inform the Care Inspectorate of the outcome.

Conclusion of Inquiry – Social Work Services will decide how to proceed

The responsible Social Work Manager will decide - using information gathered from the Inquiry, professional judgement, liaison with other agencies and evidence based practice - on how best to proceed with the referral.

There are 3 possible outcomes of an inquiry

Inquiry Decision –

1. The adult is not at risk of harm and no further action under adult protection is required.

However, this does not absolve agencies of their responsibilities and other actions could be appropriate such as:

- Refer for assessment under care management.
- Consider other appropriate legislation.
- Where an open case review existing risk assessment and risk management plan.
- Refer to another more appropriate agency.
- Case closed as no further action required.

2. The adult at risk criteria are met under the Act and an investigation is required.

If a decision is reached that further action is to be undertaken under the Act then the following actions must be recorded and actioned by the responsible Social Work Manager:-

Agree who will be the 'Council Officer' to lead the Adult Protection Investigation, and who will be the second person involved.

Agree the plan and timing for the Adult Protection Investigation including consideration of Advocacy and other services, any communication needs, and involvement of other appropriate services e.g. health, children and families services, legal guardian, services for black and minority ethnic groups as well any other requirements that would facilitate the investigation.

3. The adult is an adult at risk of harm but declines intervention

Where an adult has capacity and meets the criteria of the Act but indicates that they do not wish support this does not absolve the council and partners of their responsibilities to cooperate and consider protective measures for the adult. While the adult has the right not to engage with the process, the appropriate partners should still meet to consider what action could be taken in the best interest of the adult at risk of harm; this could include a Care or Protection Plan or advice or support with the individual where possible, to manage identified risks. Therefore, it may be that social work services will continue further investigation without the adult's consent or involvement.

Planning Meeting

A planning meeting is an opportunity for professionals across the multi agency field to share information and agree on how best to support and protect the adult at risk. A planning meeting can occur at anytime in the adult protection process.

Outcomes

Best practice would be that referring agencies are notified of the outcome. Where the referrer is a member of the public they should be assured that concerns will be taken seriously and no further information would be provided without the adult's consent.

For professionals e.g. GPs - an outcome provides confirmation of action taken under the Act and the adult's current status i.e. is not an adult at risk, so that this can be recorded.

Self Directed Support

Self Directed Support aims to set out a cultural shift around the delivery of support and it recognises that people have the right to choice. This suggests that a care / support plan may aim to manage risk in as safe a way as is possible while still accepting that the adult has the right to self determine how he/she lives their life. In this case the support plan requires to be monitored and reviewed under Adult Protection Procedures to ensure that the plan is effective or if there is a need to revisit the risk/ harm to the adult again.

Escalation Process

For adults who meet the ASP three point criteria and who are subject to three repeat referrals in a six month period, the expectation is that council procedures will have robust systems in place to mitigate any identified risk to the adult.

If the local authority receives a referral for an adult concern but believes it to meet the three point criteria under the Act, each area should have clearly defined processes in place to trigger the consideration of escalation from a Concern to an ASP Referral.

For high risk, complex cases (e.g. extreme self neglect) where it has not been possible to effectively address risks (i.e. the service user will not engage and has refused offers of support) each area should consider the need to have an escalation process to ensure Senior managers within the Health and Social Care Partnership and other appropriate partners, are aware of the level of risk, and have the opportunity to discuss cases and potentially suggest alternative/additional approaches and /or release resources.

CHAPTER 4

ADULT SUPPORT AND PROTECTION INVESTIGATIONS

Timescales for the completion of an investigation will be agreed locally

Adult Protection Investigations

Social Work Services must commence an investigation within locally agreed timescales. An adult protection investigation will generally be necessary where the information gathered as part of the inquiry suggests the adult is an adult at risk of harm and the council may need to take action to protect them. In determining whether an investigation is required there should be regard to the principles and consideration of other relevant legislation (Appendix 4).

Investigations

It is the responsibility of the Council Officer to lead on adult protection investigations. Other agencies may be asked to become involved at this point if their action or contribution is required to forward the investigative process i.e. Housing/Health/Police or a Specialist Service.

If at any stage of the investigation it appears that a crime may have been committed the relevant information must be passed to the police at the earliest opportunity. While good practice is the adult at risk should be included in the process and given the opportunity to give their view this does not detract from the responsibilities of the public agencies to make a referral and the discussion and reasons for this recorded.

The adult protection investigation requires to be carefully planned to ensure that:

- all available information is gathered and considered
- the adult is fully supported to contribute
- any medical intervention is provided
- any medical evidence is captured
- the ethos of the ASP Act is upheld

Planning an Investigation

A visit to the adult and an interview with them is likely to be central to the investigation and will usually require careful planning and a sensitive approach.

It is the task of the responsible Social Work Manager to agree the format of the investigation.

The investigation must be a planned process and roles and remits of the investigating officers must be agreed beforehand as to:

- the time and place of the visit - the visit must be made at reasonable times
- whether to give notification of proposed visit and of the purpose (for both of the above there is a need to take into account level and nature of risk and the likelihood of being able to speak to the adult in private)
- who will ask the questions
- who will record the interview
- timescales for completion of each task
- the benefit of involving Advocacy Services
- support for the adult and any carer
- communication requirements
- is there a need to access other agency records
- involvement of medical staff in the investigation
- involvement of Mental Health Officer services in the process.
- any potential issues as to capacity ,consent and undue pressure
- risk assessment undertaken to ensure staff safety during any visit.

The content of interviews and any decisions made by the adult, including who attends, require to be appropriately recorded. Reference should be made to guidance given in local procedures.

Planning Large-scale investigations

The Code of Practice advises that multi-agency adult protection procedures should include a procedure for large-scale Investigations. There is West of Scotland large-scale investigation guidance which some, but not all local authorities, agreed to implement. It is advisable to contact your local Social Work Services to check their procedure and if appropriate obtain a copy for reference. Local guidance may also be available on council ASP webpages.

Circumstances for a large-scale investigation

A large scale Investigation may be required where there are two or more adults who are known or believed to be at risk of harm. This situation could arise within a care home, supported accommodation, an NHS hospital ward or other facility. This could include adults who receive services within their own home and are at risk from the same source of harm. The source of harm could be from another adult including a member of staff or relate to failings or deficits within the service.

The local authority will alert and involve the following agencies with due regard given to sensitivities and conflicts of interest:

- Health Boards /GPs

- Contracting and commissioning staff within purchasing authorities,
- Care Inspectorate or Healthcare Improvement Scotland (HIS),
- Care management for the local authority in which the establishment is sited or the service is delivered.
- Police Scotland – to allow a full assessment, to establish any criminality

Investigative Interview (Visit)

The Council Officer may be assisted in the Investigation by appropriately qualified and trained staff from either within the council or from other identified bodies or agencies.

Section 7 allows the Council Officer to enter any place to carry out necessary investigations. In many instances this will mean visiting the place where the adult normally resides, e.g.

- the adult's home including rented and owner occupied accommodation
- the home of any relative, friend or other with whom the adult resides
- supported or sheltered accommodation staffed by paid carers
- temporary or homeless accommodation
- a care home or other permanent residential accommodation

Any place can also be where the adult is residing temporarily, or spends part of their time, e.g.

- a day centre
- a place of education such as a school, college, university
- a place of employment or other activity
- temporary respite or permanent residential accommodation
- a hospital or other medical facility
- private, public or commercial premises

The Council Officer is allowed access to all parts of the place visited which might have a bearing on the investigation. This includes access to any adjacent places such as sheds, garages and outbuildings.

If this is where the adult normally resides, this could include all areas used by or on behalf of the adult such as sleeping accommodation, toilet and bathing facilities, kitchen areas and general living space.

Refusal of Entry - Warrant Application

Where a Council Officer is refused entry to the premises to conduct the investigation the council can make application to the Sheriff to seek a Warrant of Entry under section 37. In the first

instance and in accordance with the principles of the Act there is a need to consider how entry may be achieved without the need for an application for a warrant. An application should only be made where there is evidence of no suitable alternative or the alternative fails.

- A Warrant for Entry authorises a Council Officer to visit any place specified in the warrant accompanied by a Police Constable. If the Council Officer needs to open any lock fast place, it is the responsibility of the council, in most cases the Council Officer, to take all reasonable steps to ensure that the person's property and premises are left secured and consideration must be given to the use of a joiner to assist with entry and securing premises.

The Adult's Participation

The adult's views and wishes are central to the Act and every effort should be made at each stage of the process to ensure that barriers to participation are minimised. Good practice would be to check at each stage in the process that the adult's views are being actively considered. Where undue pressure is suspected the adult should be interviewed on their own.

Support Services

Section 6 places a duty on the council to consider the provision of appropriate services. This would include independent advocacy services or inclusive communication services to assist an adult or other person in the household to have their views heard.

Other services are not defined in the Act but consideration should be given to practical and emotional support provided by other professional workers.

Role of Advocacy Services

Independent advocacy aims to help people by supporting them to express their own needs, gain access to information, understand the options available and make their own informed decisions.

Unlike the Mental Health (Care and Treatment) Scotland Act 2003 where advocacy is a requirement - the ASP Act states that advocacy should be considered in every case. Good practice would be that the adult should be asked if they know about and would like access to advocacy services. Where advocacy is offered, declined by the adult or deemed inappropriate, the reasons for this should be clearly recorded.

A link to the Scottish Independent Advocacy Alliance webpage is included for further information. click here

Communication Difficulties

Social Work Services will ensure that the adult is provided with assistance or material appropriate to their needs to enable them to make their views and wishes known. The communication needs of the adult should be considered and the adult should be asked what support if any they wish. This may include:

- assistance from a relative or primary carer
- technical aids to support communication
- information being interpreted, translated or adapted
- taking account of environment e.g. noise levels, lighting

The Royal College of Speech and Language Therapists have developed a set of principles, standards and practical guidance for ensuring that an individual is enabled to understand and communicate effectively: click here

A leaflet explaining harm is available in symbol version click here

In addition the Office for Disability has guidance on accessible communication formats:
click here

Interviews during investigation

The purpose of an interview is to enable or assist the council with an Investigation under Part 1 of the Act, about the source, nature and level of any risk to the adult and also to establish whether action is needed to protect the adult. The aims the interview will be to:

- establish if the adult has been subject to harm;
- establish if the adult feels his or her safety is at risk and from whom; and
- discuss what action, if any, the adult wishes or is willing to take to protect him or herself
- ensure the adult knows why ASP measures have commenced
- explain to the adult what will happen next

Officers conducting interviews need to ensure appropriate recording of the content of the interview, the decisions and appropriate explanations as to who is present.

Adult's rights during an interview

Section 8(2) provides that the adult is not required to answer any questions, and that the adult must be informed of that fact before the interview commences. The adult can choose to answer any question put to them but the purpose of this section is to ensure that they are not forced to answer any question that they choose not to answer.

However, seeking the consent of the adult to be interviewed should not be a matter of simply advising that they are not obliged to answer. Good practice would be to ensure that the adult is clear regarding the purpose of the interview and is given reasonable opportunity and support to answer questions whilst respecting their right not to.

A lack of capacity to consent to being interviewed is not an automatic barrier to them participating in an interview. The principal of participating ‘as fully as possible’ should be adhered to. Where it is identified that the adult can contribute but may not fully comprehend the purpose of the interview and some or all of the possible consequences, the planning process needs to ensure that the adult can contribute - whilst protecting their rights. This would include consideration of support services such as independent advocacy or other appropriate representation.

Presence of others at interviews

It is good practice to ask the adult if they would wish another person to be present during an interview to support them. However section 8 allows a Council Officer and any person accompanying the officer, to interview the adult in private. Whether or not the adult should be interviewed in private will be decided on the basis of whether this would assist in achieving the objectives of the investigation. The Council Officer or persons accompanying them may decide to request a private interview with the adult where:-

- a person present is thought to have caused harm or poses a risk of harm to the adult
- the adult indicates that they do not wish the person to be present
- it is believed that the adult will communicate more freely if interviewed alone, or
- there is a concern of undue influence from others

Interviews with others

Section 8 allows a Council Officer to interview any adult found in a place being visited under Section 7. For example another person who shares their home with the adult or a paid carer in a regulated care setting if not implicated in the harm. Section 8(2) provides that persons interviewed on this basis have the same rights as the adult at risk. They are not required to answer any questions and must be informed of that fact before the interview commences.

As with the adult at risk, the consent of the person to be interviewed should not be a matter of simply advising that they are not obliged to answer. Good practice would be to ensure that the person is clear regarding the purpose of the interview and is given reasonable opportunity and support to answer questions whilst respecting their right not to.

Access to Records

Council Officers must take into account the principles of the Act and records should be accessed and information shared only where disclosure would provide benefit to the adult and can only be accessed using Section 10.

Where possible and practicable the adult's consent should be obtained. This may not be possible where the;

- adult lacks mental capacity
- person acting as proxy lacks capacity, is unavailable or unwilling to give consent; or
- situation is urgent and obtaining consent would cause undue delay
- consent would put someone at serious risk of harm
- purpose of disclosure would be undermined e.g. preventing or detecting of a crime

If you are unable to access records through the consent of the adult then section 10 gives authorised Council Officers a statutory right to seek and obtain records including medical records from any source including other local authorities/councils and council departments, NHS, public, voluntary, private, commercial during the time of a visit to the person holding the records or at any other time. The Council Officer must provide evidence of their identity and documentary evidence that they are authorised to access records. The Council Officer can inspect the records or arrange for any other appropriate person to inspect records e.g. someone with financial expertise. In the case of health records only a registered health professional e.g. a doctor, nurse, midwife can be given the authority to inspect records or copies of records. The appropriate information from the health records can then be shared with the Council Officer by the health professional.

Good practice would be for the council to nominate persons of a suitable seniority and have procedures, agreed with relevant bodies which hold records, regarding accessing and proper disposal of records. This decision should be made in discussion with the agency responsible for keeping the records.

If a request for information is made at a time other than during a visit, it must be made in writing; electronic requests are acceptable as long as they can be used for subsequent reference.

Usually, only the relevant parts of a record should be copied for access by the Council Officer and the use of original records is discouraged. Copy records should be treated with the same degree of confidentiality as the original records.

Section 49 provides that it is an offence for a person to fail to comply with a requirement to provide information under Section 10, unless that person has a reasonable excuse for failing to do so.

Councils should make reasonable efforts to resolve disagreements when record holders refuse to disclose them. Informal or independent conciliation might be considered, depending on the circumstances and reasons given for refusal.

For additional details on access to records please refer to:-

Adult Support and Protection (Scotland) Act 2007 Part 1 - Code of Practice April 2014 (Chapter 10) – **click here**

Agreed section 10 template for use with financial institutions is in Appendix 5

Medical Intervention

In most instances health professionals will respond to any request for medical examination under the auspices of their general duty of care towards their patient particularly where they have a current involvement with the adult at risk and are fulfilling their duty to cooperate with Inquiries and Investigation in respect of that adult. This is most likely to be where the adult requires medical treatment for a physical illness or mental disorder or assessment of their physical or mental health.

In some situations a formal request for a medical examination under Section 9 of the Adult Support and Protection (Scotland) Act 2007 may be viewed as necessary by the Council Officer or the health professional to which the request is being made.

Section 9 states a medical examination may only be carried out by a health professional as defined under Section 52(2) as a: -

- doctor
- nurse
- midwife

It is normally the case that doctors would carry out a medical examination, nurses and midwives would carry out an assessment of current health status.

Medical examination may be required as part of an investigation for a number of reasons including:-

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

The circumstances where medical examination should be considered include:-

- sexual harm and where there may be physical evidence
- physical injury which the adult states was inflicted by another person
- explanation is inconsistent with injuries
- neglect and self-neglect, ill or injured or where there are concerns around self-harm and no previous assessment or treatment has been sought

Where a crime has been committed or where criminality is suspected, the Police should be contacted immediately to discuss how best to progress the investigation of suspected criminality. If the adult concerned has been injured, the priority must be their immediate health and welfare. The police may arrange for a forensic medical examination to be carried out. This will be undertaken in a sensitive and professional manner with due consideration given to the needs or requirements of the complainer. This is essential in order to ensure no evidence is lost and to allow a criminal investigation to begin.

If medical intervention is required, wherever possible, all courses of action must first be agreed with the adult. In situations of extreme risk or urgency the Council Officer may need to take immediate action, i.e. involve emergency services without prior consent.

Consent to medical examination

Section 9 states the adult must give consent to medical examination and treatment unless he/she lacks capacity or it is an emergency situation and consent cannot be obtained.

Where the situation is not an emergency and it is not possible to obtain the adult's informed consent due to lack of capacity or they have difficulty communicating in order to provide consent, the council should contact the Office of the Public Guardian to ascertain whether a guardian or attorney has such powers. If not, 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) Act 2003.

If the adult has been subjected to sexual harm a medical examination may be necessary and this should be arranged by the responsible social work manager in consultation with the Police.

Where an emergency and where consent cannot be obtained doctors can provide medical treatment to anyone who needs it, provided that the treatment is necessary to save life or avoid significant deterioration in a patient's health.

For fuller details on medical examinations please refer to:-

Adult Support and Protection (Scotland) Act 2007 Part 1 - Codes of Practice April 2014 (Chapter 7) **– click here**

Completion of Risk Assessment Tool – Form AP2

The Council Officer in conjunction with others will decide when to undertake an ASP Risk Assessment. It is anticipated that this will be completed before a case conference in order to inform the Chairperson in advance.

The adult being assessed should always remain at the centre of the assessment and subsequent decision making.

The Risk Assessment (AP2) (Appendix 2) requires assessors to determine whether the adult assessed has specific communication needs or requires support from an advocacy service. The tool is designed to ensure that individual rights are recognised at the beginning of a risk

assessment and that capacity is considered at this stage. The question of information sharing is included both at the beginning and end of the risk assessment, to ensure that the adults views are sought where it is agreed that information sharing is required against the person's wishes the reasons for this should be clearly recorded.

The Risk Assessment provides a format for bringing together comprehensive, relevant information, the tool reflects an expectation that professional opinion/judgement is required about the risk and any protective action which might be needed.

Chronologies

It is widely recognised that service users are most effectively safeguarded when professionals work together and share information. Individual events may appear to be insignificant 'one-offs'. However, they should be recorded in the chronology as they may be part of a pattern, which would raise serious concern.

Chronologies provide a sequential list of dates of significant events in a service user's life. They enable practitioners to gain a more accurate picture of the whole case and detail the history of a service user and their family. They highlight gaps and missing details that require further assessment and identification. Chronologies can also highlight risks, concerns, patterns, themes, strengths, resilience and weaknesses of a service user and their family. Current information can then be understood in the context of previous case history and inform professional assessment.

If chronologies are to be of value they should be:-

- Set out in the risk assessment format, to ensure that information can be effectively merged and sorted.
- Succinct recordings of significant events including people involved and dates.
- In ascending date order i.e. earliest date first.
- Systematically and regularly shared with relevant professionals.
- Owned by professionals and used as a tool in assessing progress and the level of concern.
- Record both positive and negative significant events – positive events might increase protective factors and decrease risk
- Informing the decision-making process at any given point.

It is essential that all professionals and agencies understand that they should be active participants in preparing chronologies. Practitioners should ensure that information describing key incidents, events and facts are passed on to the Council Officer. The Council Officer's responsibility is to ensure that the chronology is collated, up to date and presented appropriately.

In the majority of ASP situations there will be no criminal investigation. The risk assessment is not about being able to prove beyond reasonable doubt that the harm happened or who is alleged to be the source of this harm, but about the probability the harm happened, that it is probable it was caused by the individual(s) suspected and the probability that the circumstances will reoccur. The risk assessment assists in considering the severity of the harm and the consequences for the adult if no action is taken to reduce the risk(s).

Decision making around any actions required therefore needs to be supported by objective evidence, user preference (wherever possible) and professional opinion.

Conclusion of Investigation

Following the investigation the Council Officer and second person will discuss with the agreed manager the further action to be taken. There are a range of possible outcomes and one or more of the following may be initiated. Please note that each adult's circumstance is different and may require an alternative measure not listed here.

Investigation decision:

1. Where the adult does not meet criteria as an adult at risk of harm - possible decisions are:

- no further action under adult protection procedures
- signpost to another appropriate service
- concerns dealt with through care management
- use of other relevant legislation

2. Where the adult at risk of harm criteria is met and harm is established or suspected then the possible decisions are:

- agree an interim protection plan
- proceed to case conference
- consider intervention under Adults with Incapacity (Scotland) Act 2000 or the Mental Health Care and Treatment (Scotland) Act 2003
- use of other relevant legislation

Where the adult does not engage

Where an adult has capacity and meets the criteria but indicates that they do not wish support, this does not absolve the council and partners of their responsibilities to cooperate and consider protective measures for the adult. While the adult has the right not to engage with the process, the appropriate partners should still meet to consider what action could be taken in the best interest of the adult at risk of harm; this could include a Care or Protection Plan or advice or support with the individual where possible, to manage identified risks.

Feedback to referrer

In all cases Social Work Services will inform referring individual/agencies of the outcome of the investigation. Where referred by a member of the public they should be assured that their concerns will be taken seriously and inquiries will be made however no other information will be given without the adult's consent.

CHAPTER 5

Adult Support and Protection Case Conference

Following the Investigation, if a decision is made to proceed to case conference the responsible manager should convene a case conference as soon as practical, but no later than locally agreed timescales from the date the initial referral was received by social work.

There are no statutory provisions relating to case conferences.

Purpose of a case conference

An Adult Support and Protection Case Conference is a multi-agency forum, held to share information and make decisions about how to support and protect an adult deemed to be at risk in circumstances where harm has occurred or is suspected. The adult should, where possible, be invited to contribute as fully as possible.

Case conference decisions will always seek to protect an adult by the use of informal protection measures but will also consider the need for statutory protection measures under the 2007 Act or other relevant legislation. All relevant reports should be submitted before the case conference and the AP2 Risk Assessment will have a completed chronology of significant events to inform the Multi-Agency meeting and assist with Protection Planning. The adult or their representative may also wish to submit a report or viewpoint for consideration at the case conference and the responsible manager should ensure that all information is passed to the Chairperson as soon as possible.

Responsibilities of the Chairperson

The Chairperson will be an experienced manager, with relevant knowledge and understanding of adult support and protection legislation and procedures. It is acknowledged that as social work services become part of HSCPs, operational managers may have different professional backgrounds. This may make it difficult to ensure that ASP case conferences are chaired by managers who are registered social workers/Council Officers. It is recommended that any manager chairing an ASP case conference should have completed the ASP level 3 training in line with local requirements (2 days minimum). They must have experience in risk assessment and protection planning, and have knowledge of the Adults with Incapacity (Scotland) Act 2000 and the Mental Health Care and Treatment (Scotland) Act 2003 to ensure that decision making is informed by an appropriate legislation knowledge base. Where the Chairperson lacks this knowledge then an appropriately trained team manager or member of legal services should be in attendance to give advice. Local Authorities may organise specific training in Chairing ASP Case Conferences to take account of local requirements.

Case conferences should be an inclusive process involving the adult at risk of harm and all relevant agencies with an interest where reasonable and practicable.

Invitations to Adult Support and Protection Case Conferences

The relevant manager will ensure that all appropriate people are invited e.g. GPs, Police, district nurses, care staff, and social workers and, where appropriate, the adult subjected to harm, their advocacy worker, and /or carer should be invited unless there are grounds to exclude them. If the chairperson is asked to exclude anyone this decision should be made prior to the meeting and decision recorded in the minute.

The adult at risk should be invited and encouraged to express their views. However they should not feel pressurised to attend. Should they choose not to attend, then they may wish to nominate someone to represent them or provide a written or recorded account of their views.

The process and content of the Case Conference

The case conference should assess, analyse and evaluate all available information and on the basis of identified risks and needs, develop a defensible action plan to address these.

Case Conference Minutes

The person who will take the minutes of the meeting should be identified in advance and should not be the Chairperson.

The Chairperson has the responsibility to ensure an accurate record of the discussion and key decisions are recorded and ensure appropriate administrative support is available for this purpose. Within 2 working days the decisions from the case conference should be circulated to all relevant agencies. Within 10 working days the Chairperson should ensure that the minute and any protection plan is distributed

The minutes of the meeting should be treated as confidential. The minutes should only be disseminated to those persons who have the authority and duty to consider what was discussed and decided. The minutes should therefore be kept safely and securely.

Protection Plan/Core Group

The Protection Plan (AP3) (Appendix 3) has been designed for use when allegations of harm/exploitation have been made and an Adult Support and Protection Case Conference has agreed that there is a risk of serious harm; or when high levels of risk cannot be managed within a generic support plan.

The format for the Protection Plan assumes that, reflecting good practice, there will be a Lead Worker to co-ordinate protection work and that, in most cases, there will also be a core group of workers from different agencies and services as appropriate. Core group meetings can take place between case conference and review and will be subject to local arrangements. These meetings are important and all members of the multi -agency group are expected to attend. Thus, a multi-agency approach is implemented throughout the whole process, including regular liaison between more formal review meetings.

As indicated earlier, the Protection Plan (AP3) can be used as a stand-alone document and updated as part of an ASP review process.

Case Conference Dissent/Dispute/Complaints

Any agency, adult or their carers have the right of access to complaints procedures should they disagree with any decision or outcome arising from the case conference process. Similarly all parties retain the right to request a review of their care provision at any time

Under the Adult Support and Protection case conference procedures any dissent/dispute or complaint occurring, within the proceedings of the case conference must be recorded in the relevant minute. The Chairperson holds ultimate responsibility for decision making within the Adult Support and Protection Case Conference and subsequent ASP Review Case Conferences. However, any serious dissent/dispute or complaint must be reported to senior management and local procedures followed to deal with disputes and complaints.

Adult Support and Protection - Review Case Conference

A Review Case Conference should be held within 3 months or less of the initial Adult Support and Protection Case Conference. Future reviews should be held as required and in line with council procedures.

The purpose of the Review Case Conference is to:-

- summarise support and outcomes to date and to confirm the current situation
- review risk management plans and establish current level of risk
- ensure agreed duties and responsibilities across partner agencies have been fulfilled and agree any remedial action where a shortfall has been identified
- review and if necessary up-date the Protection Plan and associated service provision
- ensure intervention or legal powers exercised in relation to the Principles remains proportionate and are the least restrictive option in terms of maximising benefit and offering effective protection to the adult.

Concluding the Adult Support and Protection Case Conference

The decision to end the adult protection process should be taken at either the initial or review case conference. The decision should be defensible and recorded in the minute.

For the meeting the initial investigation report or an adult protection review report should be available. Consideration should also be given to the need for an updated risk assessment at a review case conference in order to inform decision making.

There are three key elements that require to be considered before ending the adult protection process:

Current and future of risk:-

1. Is the adult still experiencing harm and/or is there a likelihood they will continue to experience harm if this process ends?
2. Have the actions of the protection plan been implemented and have they achieved their intended outcomes?
3. Has the individual(s) alleged to be causing the harm cooperated with the plan, including any protection orders?

4. Is the individual(s) alleged to be causing the harm still in contact and/or are they likely to re-establish contact if the adult protection process ends?
5. Have there been any significant issues in relation to the adult and/or relative, carer or significant other(s)?
6. What steps have been taken to overcome all or any of these issues?

Current views of all relevant parties:-

1. What is the view of the adult, have they been spoken to alone and have they been seen at home?
2. What is the view of the carer(s), relative(s) or significant other(s)?
3. Have the views of the relevant professionals be sought or considered within or out with the case conference processes?

Future planning and arrangements:-

1. Is there evidence that the adult at risks welfare will be safeguarded and promoted should the adult protection process end or the case closed?
2. What will be the ongoing care and support plan?
3. Are there risks how best managed via another process – care management, care programme approach, use of other legislation and processes?
4. If further adult concerns arise is the adult, carer(s), significant other(s), care provider(s), and any other agencies clear as to how to escalate.
5. If the case is to be closed is the adult, carer(s), significant other(s), care provider(s), and any other agencies clear as to how/who to refer back to?

APPENDICES

Appendix 1

ADULT PROTECTION REFERRAL FORM (AP1)

A word copy of this form suitable for typing and printing can usually be found on the Local Authority/HSCP and NHS Adult Support and Protection web page.

ADULT AT RISK DETAILS (please PRINT details, thank you)					
NAME		DOB			
HOME ADDRESS		CURRENT WHEREABOUTS			
POSTCODE		POSTCODE			
TEL NO:		TEL NO:			
GENDER		ETHNIC ORIGIN		RELIGION	
COMMUNICATION NEEDS (please provide details including communication aids by the adult and specify first language if not English)					
GP NAME / ADDRESS					

REFERRER DETAILS (please PRINT details, thank you)			
NAME		DESIGNATION	
AGENCY		DIRECT DIAL TEL NO:	
EMAIL ADDRESS			
RELATIONSHIP TO ADULT BEING REFERRED:			
SIGNATURE			
DATE			

IS IT SUSPECTED THAT A CRIME HAS BEEN COMMITTED AND HAVE POLICE BEEN INFORMED? (Include date, time, known action taken etc.)

DETAILS OF CONCERN (please PRINT details, thank you)	
1) IN YOUR OPINION IS THE ADULT	

ABLE TO SAFEGUARD THEIR OWN WELLBEING, PROPERTY, RIGHTS OR OTHER INTERESTS? (If **no**, please state reason)	
2) IN YOUR OPINION IS THE ADULT AT RISK OF HARM? (if **yes**, please state reason)	
3) IN YOUR OPINION IS THE ADULT AFFECTED BY DISABILITY, MENTAL DISORDER, ILLNESS OR PHYSICAL OR MENTAL INFIRMITY (if **yes**, please specify)	

GIVE DETAILS OF HARM (SUSPECTED / WITNESSED / DISCLOSED / REPORTED). DATES, PROTECTIVE ACTIONS TAKEN INCLUDE DETAILS OF ANY PREVIOUS CONCERNS. (please use separate sheet if required)	
HAVE YOU (OR ANY OTHER PERSON) TOLD THE ADULT THAT THIS INFORMATION WILL BE SHARED WITH SOCIAL WORK OR OTHER RELEVANT AGENCIES	YES / NO (delete as appropriate) If **NO** please state reasons

DETAILS OF PERSON SUSPECTED OF CAUSING HARM (If known) **(please PRINT details, thank you)**			
NAME		RELATIONSHIP TO ADULT:	
ADDRESS		TEL NO	

DETAILS OF MAIN CARER / RELATIVE / POA / GAURDIAN **(please PRINT details, thank you)**			
NAME		RELATIONSHIP TO ADULT:	
ADDRESS		TEL NO	

Social Work Contact Details

PLEASE ENSURE THAT YOU FOLLOW YOUR OWN ORGANISATION'S DATA PROTECTION PROCEDURES WHEN DECIDING WHICH ROUTE TO USE WHEN SENDING THE AP1 TO SOCIAL WORK.

Unless otherwise specified in details below: Out of Hours 0300 343 1505

Argyll and Bute

- **phone**: 01546 605517(Office Hours)
- **phone**: 01631 566491 or 01631 569712 (Out of Hours)
  (Sending AP1; e-mail address for correct team will be provided following information being provided by 'phone)

Dumfries and Galloway

- phone: 0303 333 3001 email adultforms@dumgal.gov.uk (Office Hours)
- phone: 01387 273660 email outofhours@dumgal.gov.uk (Out of Hours)

East Ayrshire

- **email:** socialworkcustomerfirst@east-ayrshire.gsx.gov.uk
- **phone:** 01563 576915
- **phone:** 0800 328 7758 (Out of Hours)

East Dunbartonshire

- **email:** AdultProtection@eastdunbarton.gsx.gov.uk
- **phone:** 0141 355 2200

East Renfrewshire

- **email**: adultprotectionreferral@eastrenfrewshire.gcsx.gov.uk
- **phone**: 0141 577 8631
- **fax:** 0141 577 8603

Glasgow City

- **email:** socialcaredirect@glasgow.gov.uk
- **phone:** 0141 287 0555
- **fax:** 0141 276 1201

Inverclyde

- **email:** adult.protection@inverclyde.gcsx.gov.uk
- **phone:** 01475 715010

North Ayrshire

- **email**: adultprotection@north-ayrshire.gcsx.gov.uk

- **phone**: 01294 225266 (Office Hours)
- **phone**: 0800 328 7758 (Out of Hours)

North Lanarkshire

Airdrie Locality
Email: Airdriesocialworklocality-AdultProtectionreferral@northlan.gov.uk
phone: 01236 757000
Coatbridge Locality
Email: Coatbridgesocialworklocality-AdultProtectionreferral@northlan.gov.uk
phone: 01236 622100
University Hospital Monklands
phone: 01236748748
Cumbernauld Locality
Email**:** Cumbernauldsocialworklocality-AdultProtectionreferral@northlan.gov.uk
phone: 01236 638700
Motherwell Locality
Email: Motherwellsocialworklocality-AdultProtectionreferral@northlan.gov.uk
phone: 01698 332100
Bellshill Locality
Email: Bellshillsocialworklocality-AdultProtectionreferral@northlan.gov.uk
phone: 01698 346666
Wishaw Locality
Email: Wishawsocialworklocality-AdultProtectionreferral@northlan.gov.uk
phone: 01698 348200
University Hospital Wishaw
phone: 01698 361100
North Lanarkshire Social Work Emergency Service (SWES)
phone: 0800 121 4114

Renfrewshire

- **Email**: adultservicesreferral.sw@renfrewshire..gov.uk
- **phone**: 0300 300 1380
- **fax**: 0141 886 3460
- **text / SMS**: 07958 010325

South Ayrshire Council

- **Email**: ASP@south-ayrshire.gov.uk
- **phone:** 01292 616102
- **phone**: 0800 328 7758 (Out of Hours)
- **fax:** 01292 616160

South Lanarkshire

Hamilton Local Office

- **E-mail:** swlohamilton@southlanarkshire.gov.uk
- **Phone:** 0303 123 1008 (select relevant locality or after 4.15pm and at weekends the Emergency out of Hours Service)

Rutherglen Local Office

- **E-mail:** swloruthergIen@southlanarkshire.gov.uk

- **Phone:** 0303 123 1008 (select relevant locality or after 4.15pm and at weekends the Emergency out of Hours Service)

Clydesdale Local Office

- **E-mail:** swloclydesdale@southlanarkshire.gov.uk
- **Phone:** 0303 123 1008 (select relevant locality or after 4.15pm and at weekends the Emergency out of Hours Service)

East Kilbride Local Office

- **E-mail:** swloeastkilbride@southlanarkshire.gov.uk
- **Phone:** 0303 123 1008 (select relevant locality or after 4.15pm and at weekends the Emergency out of Hours Service)

West Dunbartonshire

- **email**: wdadult@wdc.gcsx.gov.uk
- **phone**: 01389 737020

Appendix 2

Form AP2
Risk Assessment

(Core Information should be completed in all cases in which an assessment is to be carried out under Adults at Risk Procedures; Communication Requirements identifies who is to be involved in that risk assessment and confirms who has been informed of the outcomes; the Risk Assessment then follows; the Protection Plan form should be completed in cases in which an Adult Protection Case Conference agrees a Protection Plan and should be updated by Review)

CORE INFORMATION

DETAILS OF SUBJECT				
First Names:		Surname:		
Also known as:				
Date of Birth:				
Gender:		Ethnic group:		
Address: Postcode:				
Home Phone:		Mobile Phone:		
Housing Status:	Own home / Tenancy / Temporary / Homeless / Roofless / Care Home / Supported Accommodation / Lives alone / With family (underline as appropriate)			
ID Number:			CHI No:	
Legal Status (e.g. Adults with Incapacity Act Guardianship, Mental Health Act Compulsory Order) and Date of Order			Name of Guardian or Attorney?	
Care Programme Approach?		Y/N	Risk to workers?	Y/N (*Risk Alert flag?)*

ASSESSING WORKER

Name:			
Designation:			
Work Address: Postcode:			
Phone No:		E-mail Address:	
Date of Risk Assessment:			
Date of SSA:			

COMMUNICATIONS REQUIREMENTS

(Good risk assessment is a shared, multidisciplinary, multi-agency effort in which information must be shared to ensure informed, defensible, shared decisions)

Role	Name and Designation	Involved and aware of current situation?	Contributed to this risk assessment?	Informed of assessment outcome? (*date, or N/A*)
Care Manager				
Mental Health Officer				
Criminal Justice				
Social Worker				
Social Work Other				
Support Worker Support Agency				
Community Nurse/CPN/D/N				
Addiction services				
G.P				
Consultant				
Other health				
Police				
Housing/Landlord				
Nearest Relative				
Unpaid carer				
Named person				
Guardian/Attorney				
Care Inspectorate				
Other				
Other				

RISK ASSESSMENT

This form should be used when a Single/Specialist Shared (needs) Assessment (SSA), a Review, circumstances, or initial investigation of a significant incident reveals a risk of serious harm; or when needs interact to create serious risks; and when high levels of risk cannot be managed within a Care Plan. (See local Procedures for definitions and process)

Date:

1. COMMUNICATION, CAPACITY, AND INVOLVEMENT

First Names		Surname	
a) Has the person being assessed any particular communication and support needs? *(e.g. for interpreter, advocate, appropriate adult, Makaton, sign, speech and language therapist; or as a result of dementia, head injury etc?)*			
b) Comment on the person's ability to make his/her own decisions about risk and to safeguard his/her own well-being? *(Evidence any limitations, if possible; refer to any examples of undue pressure if relevant)*			
c) Has there been a recent formal Assessment of Capacity? Yes/No If yes, detail outcome in relation to identified areas of risk			
d) Is a formal assessment of capacity required in relation to specific risks identified? Yes/No Has this process been initiated? Yes/No			
e) Has there been a discussion with the person about information sharing Yes / No Any comments? *(See local procedures and local Information Sharing Protocols)*			

2. CHRONOLOGY OF SIGNIFICANT EVENTS

Chronology of relevant events/significant event history *(Attach if available; **or** list significant relevant events under: date, brief detail, agencies/people involved, and outcome/consequences)*

Date of event	Brief detail of event	Agencies/people involved	Outcome/consequences

3. CURRENT RISKS OR CONCERNS

Date:

Subject is considered to be at risk of serious harm from: (*Tick <u>all</u> you consider <u>may</u> apply)*	Risk of serious harm to <u>subject?</u>	Risk of serious harm to <u>others?</u> Whom?	Immediate danger/ Imminent crisis	Subject agrees? Yes/No	Carer agrees? Yes/No
Physical injury					
Violence/aggressive behaviour					
Sexual harm/exploitation/					
Sexual ill health					
Pregnancy					
Progressive illness					
Harassment/exploitation/racial harm/ homophobic harm					
Psychological/emotional distress					
Mental/cognitive impairment					
Mental health problem					
Alcohol use					
Drug use					
Suicidal intent					
Self harm					
Self neglect					
Reduced social functioning/isolation					
Financial harm/theft					
Homelessness					
Loss of employment					
Harm by omission					
Institutional harm					
Harm by paid carers					
Risk to/Concerns for Children					
Other (specify)					

4. CURRENT RISK DESCRIPTION **Date:**

What behaviour, allegation, complaint, circumstances or event has prompted this risk assessment? *(detail the nature of the behaviour or incidents which put the person at risk, e.g. the nature and extent of sexual/physical/financial harm; the specific areas of self neglect (eating, medication, wandering)*
Who is the source of concern, and who is involved in the risk events?
When does this/do these circumstances occur - and **how often**? *(Evenings/weekends/every day/mealtimes etc: rarely, frequently, occasionally, etc)*
Where does this/do these circumstances occur*? (Daycentre, at home, on the streets, travelling)*
Medical assessment and/or clinical diagnosis of mental or physical illness*, relevant to this risk assessment*
Particular triggers or risky circumstances that heighten the risks? *(e.g. when person is alone; if home carer is late; if relative makes contact/does not make contact; arrival of benefit; contact with specific person/staff member etc)*
Protective factors, or circumstances, that have protected the subject, or reduced the risk in the past? *(include here any change in subject's ability to manage these risks)*

Date

5. RISK ASSESSMENT

a) What is your assessment of the risk? How severe might the consequences/injuries/harm/damage be if no action is taken to reduce the risk, or increase protection? How probable is it that these circumstances will recur? What is your view and any agreed view about the degree of risk and urgency of action?
b) Your assessment will include the contributions of other agencies/services. Indicate here if there is any <u>disagreement:</u>
c) What is the adult's assessment of the risk? Does he/she agree with your assessment? (*if not - explain*)
d) What is the unpaid carers' assessment of the risk? (*explain if not available or not appropriate,)*

6. RECOMMENDATION/ACTIONS

a.) Is an Adult Protection case conference recommended? Yes/No
b.) Detail any <u>immediate</u> actions that <u>have already been taken</u> in order to protect, or reduce the risk *(include whether this situation/risk/concern been referred to another service, or agency, and if so, with what result)*
c.) What future action do you recommend is taken to reduce the risk, or protect the adult being assessed? *(e.g. increased support; review of Care Plan; further needs assessment; change of environment/ service, legal action etc*) Clearly indicate who should do what and when.

d.) What advantages and disadvantages, gains or losses to the adult's quality of life, or freedom, or independence might result from these actions (e.g. in the event of increased supervision, change of home, statutory intervention)
e) Risks to other people - Recommended Actions *(Consider risks to other adults, carers; children, alleged harmer. Consider actions such as police and/or Care Inspectorate investigation of allegations, Carer's Assessment, alert to Home or Centre management in respect of other service users, additional risk assessments, referral to child protection or criminal justice)*

Any further comment from the person being assessed? Does the person consent to share information in this assessment? (Yes/No) Any conditions or limitations? Signature of assessed person: Date: (If no signature, say why)	
Risk Assessment discussed with Manager?	Date:
Agreed immediate actions to be taken: Communication Requirements - Please ensure completion of final column of page 2 Signature: (Assessor) date Signature: (Manager) date	

Notification Requirements

Agency/Person	Requirement to notify?	Date notified
Care Inspectorate		
Mental Welfare Commission		
Office of Public Guardian		
Senior Manager/Director		
Critical Incident Review Group		

Appendix 3

AP3 - PROTECTION PLAN

This form (or a local version) must be used when allegations of harm/exploitation have been made and an Adult Protection Case Conference has agreed that there is a risk of serious harm; or when high levels of risk cannot be managed within a normal Care Plan. The Protection Plan should be completed within two weeks of an Adult Protection Case Conference.

DATE OF PROTECTION PLAN:

1. PERSONAL DETAILS – ADULT AT RISK

First Names:		Surname:	
Date of Birth:			
ID Number:		CHI No	

2. AGENCY/STAFF INVOLVEMENT

Agency/staff involved in risk management, co-ordination and review	
Lead Worker's Name	Post and Agency
Names of Core Group Members	Post and Agency

Date:

3. ACTIONS

SUPPORT AND PROTECTIVE SERVICES			
Actions and Roles, which define services to be in place and procedures to be followed, with responsibilities, timescales and outcomes identified involving service users, carers, members of the core group and all other agencies involved in the Protection Plan. These should include immediate or longer term actions; both benefit enhancing and harm reducing measures, and roles of services, the adult, advocates, unpaid carers attorneys and guardians, as appropriate.			
Actions and Roles	Responsibility	Timescales/ Deadlines	Intended Outcomes
a) Support, treatment, therapy *(specify services)*			
b) Control measures *(including any legal action)*			
c) Direct contact with person			
d) Risk management with perpetrator			
e) Information sharing arrangements			
f) Risk management coordination			
g) Other Actions			
h) Other Actions			

Date:

4. VIEWS AND ROLES OF ADULT AT RISK AND OTHERS

Adult's view of Protection Plan:
Advocate's view of Protection Plan:
Unpaid Carer/s view/s of Protection Plan:
Guardian/Attorney's view/s of Protection Plan:
Agencies dissenting from Protection Plan:

5. CONTINGENCY PLAN *(identify significant changes which might occur and what additional or alternative action should be taken in that event, such as case conference or legal action)*

Significant changes suggestive of additional risk/harm	Action if significant change occurs	Responsibility

6. DISTRIBUTION OF PROTECTION PLAN

(Distribution to be identified which takes account of confidentiality and third party information issues)

Person/Agency	Name and Designation	Sent copy of Protection Plan (*date, or N/A*)
Adult at risk		
Nearest relative/carer		
Named person		

Advocate		
Social Work staff		
Support Agency		
Community Health		
G.P		
Consultant		
Police		
Housing		
Legal Representative		
Attorney/Guardian		
Others		

7. REVIEW ARRANGEMENTS

Review Date:	Review Location (if known):

Protection Plan approved as accurate and confirmed copied to set agencies and Core Group members

Signed by Case Conference Chair:

Date:

Appendix 4

Legislation

The Social Work (Scotland Act 1968 (as amended by the NHS and Community Care Act 1990 and the Community care and Health (Scotland) Act 2002) **click here**

The Act identifies a general duty to assess needs in relation to the provision of community care services and to give carers a right to have their needs assessed by the Council. It is expected that wherever possible intervention will take place under the Social Work (Scotland) 1968 as amended or will revert to this legislation whenever practicable.

Adults with Incapacity (Scotland) Act 2000

The Adults with Incapacity (Scotland) Act 2000 is concerned with 'adults' aged 16 or over 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 with an inability to communicate which can be "made good" by human or physical aid does not fall within the definition of the Act.

Capacity is not an 'all or nothing' state: an adult may be able to make decisions relating to some aspects of their life, but not others.

The Local Authority has a responsibility to investigate the circumstances of any individual at risk who comes under the powers/functions of the Act and the Local Authority also has a duty to investigate any circumstance made known to them in which the personal welfare of an adult seems to them to be at risk.

Mental Health (Care & Treatment (Scotland) Act 2003 **click here**

The 2003 Act defines mental disorders as any mental illness, personality disorder or learning disability, however caused or manifested

For people who have a mental disorder.

Section 33 of the Act places a duty on the local authority to make inquiries where it appears that a person aged 16 or over in their area has a mental disorder and:

- The person may be or may have been subject or exposed to ill-treatment; neglect; or some other deficiency in care or treatment
  or
- the person's property may be suffering or have suffered loss or damage; or may be at risk of loss or damage
  or
- the person may be living alone or without care and unable to look after themselves or their property or financial affairs
  or
- because of the mental disorder the safety or some other person may be at risk.

Adult Support and Protection (Scotland) Act 2007 -Code of Practice October 2014 (Chapter 3) **click here**

Community Care and Health (Scotland) Act 2002 click here

It may be that adult's carer requires support to enable them to continue to support the adult. The above Act amends the Social Work (Scotland) Act 1968 to give carers a right to have their carer needs assessed by the council. It would be good practice to bring this assessment right to the notice of any carer providing a substantial amount of care where the carer appears to have unmet caring needs.

Vulnerable Witnesses (Scotland) Act 2004 click here

The Act provides support measures to help vulnerable adults participate more fully in court proceedings. A vulnerable witness is a witness in respect of whom there is a significant risk that the quality of their evidence may be diminished by reason of fear or distress in connection with giving evidence at a trial. Special measures are intended to help vulnerable witnesses by providing appropriate support when they give their evidence to reduce any anxiety and pressure. It should be noted however that the final decision on whether to use special measures rests with the sheriff in court.

The definition of vulnerability used in this Act goes beyond the definition used within Adult Protection procedures but is likely to include all those covered within these procedures.

The factors listed within the draft guidance in deciding if special measures are required include:

- Mental disorder (including learning disability)
- Communication difficulties
- Behavioural indicators
- Age and maturity (including old age and frailty);

As well as more general factors which may apply in adult harm cases, including?

- Risk of intimidation
- Harm against older adults
- Serious or repeated sexual offences or extreme violence
- Domestic violence
- Any power imbalance between the witness and the accused at the time of the offence
- Where the accused is a significant family member
- Where the witness was dependent on the accused

The special measures for which adult witnesses may be eligible are;

- Live television link from another part of the Court building or place outwith that building
- Prior statements as evidence in chief (in criminal cases only)
- Taking statements on commission
- Use of a screen
- Having a supporter present when evidence, or combination of the above.

Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011 **click here**

A forced marriage is one where one or both parties are coerced into a marriage against their will and under duress. A forced Marriage is recognised as a form of gender based violence.

Duress includes both physical and emotional pressure. Victims can suffer many forms of physical and emotional damage including being held unlawfully captive, assaulted and repeatedly raped.

Forced marriage is an abuse of human rights and cannot be justified on any religious or cultural basis. It is very different from arranged marriage, where both parties give their full and free consent to the marriage. The tradition of arranged marriages has operated successfully within many communities and many countries for a very long time.

The Forced Marriage Unit can provide information for victims click here, leaflets and support and may be contacted on **0207 008 0151**

Trained professionals offer confidential advice and assistance to:

- those who have been forced into marriage
- those at risk of being forced into marriage
- people worried about friends or relatives
- professionals working with actual or potential victims of forced marriage. click here for links to the Forced Marriage Unit

Scottish Government Multi agency guidelines for responding to Forced Marriage- click here

This guidance has a service specific guidance for different agencies including:

Adult Protection Staff; Children and Families Social Work Staff; Health Workers; Local Authority Housing staff; Schools College and University; and Police Officers.

Additional statutory guidance issued by the Scottish Government may be accessed by clicking here

Chapter 6 deals with the specific issues to be considered by agencies working with, or providing services, to adults and adults at risk.

The guidance states that the Adult Support and Protection (Scotland) Act 2007 sets out the roles and responsibilities of all agencies involved in protecting adults at risk and is the main point of reference for Adult Protection Committees. Each local Adult Protection Committee is responsible for developing its own guidance and training using the Adult Protection Code of Practice. This code of practice fulfils the obligation placed on Scottish Ministers by Section 48 of the 2007 Act, to prepare a code of practice containing guidance about the performance of functions by councils and their officers and health professionals under the Act.

It provides information and guidance on the principles of the Act, about the measures contained within it, including when and where it would normally be appropriate to use

such powers. The code should be used in conjunction with other relevant codes of practice as appropriate, such as the codes of practice for the:

- Mental Health (Care and Treatment) (Scotland) Act 2003,
- The Adults with Incapacity (Scotland) Act 2000
- Code of practice for Social Service Workers and Employers of Social Service Workers.

For further information on Forced Marriages issued by the Scottish Government click here

Victims and Witnesses (Scotland) Act 2014 **click here**

The Crown Office and Procurator Fiscal Service webpage contains information and guidance on the protections available to adults under the Victims and Witnesses (Scotland) Act 2014. click here

Victims Right to Review (Section 4) of the Act.

From the 1st July 2015 victims of a crime can for a review of a decision by the Fiscals Office not to prosecute or to stop or discontinue a case after it has started in court. This applies to decisions made after the 1st July 2015. Requests must be made within 1 month being notified of the decision.

It may be that an adult (or their proxy), who has been the victim of a crime and who has gone through the ASP process, but no action has been taken would like to request a review of the decision. Information is available on the Crown Office and Procurator Fiscal webpage click here. In some cases an adult may just wish to ask why a decision was made rather than request a review. In this case the Victim Information and Advice service can be contacted by telephoning the enquiry line on 01389 739 557.

Appendix 5

** This Section 10 document is currently under review (as at June 2019) and readers should ensure they are working with the latest version of this document.

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)

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. The professional title of the Council Officer may vary as per the definition of Council Officer in the attached information sheet. *If for any reason, you are unable to comply with this request, please contact the Council Officer immediately* **and** *advise them of your reasons in writing* as a person commits an offence by, without reasonable excuse, refusing or otherwise failing to comply with a requirement made under section 10. The Council Officer will then consider whether the request requires escalation.

All information provided will be managed within the terms of the Adult Support and Protection (Scotland) Act 2007 and the Data Protection Act 2018 (DPA).

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

Name of Adult (Customer)	

Date of Birth (if available)	
Address (if available)	
Account Names, Numbers and Sort Codes (if available)	
Brief Description of the ASPA Inquiry	
Financial Information that is required (please include any third party mandates relating to the accounts located)	
Information Format required	☐ *Hard Copy* ☐ *Electronic Copy to the stated email addresses above (where available)*
Information Required by	*Date Month Year*
Council Officer's Name, Contact Details and Signature	

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, Occupational Therapist or Nurse. 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] 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.* **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, data processing in relation to this request is necessary for compliance with a legal obligation [Section 10 of the Adult Support and Protection (Scotland) Act 2007] to which the data controller [the financial institution] is subject.[1] Financial Institutions could also rely on Article 6:1 (e) of GDPR for the performance of a task carried out on the public interest as a lawful basis for processing (i.e. passing on) personal data to a local

[1]If the records in question contain 'special category data' an additional condition under Article 9 of GDPR must also be met for the financial institution to share data lawfully. Special Category data includes: Racial or ethnic origin; Political opinions; Religious or philosophical beliefs; Trade Union Membership; Genetic data; Biometric data (when used for ID purposes); Health (physical or mental); and, Sexual life or orientation. If the financial institution is complying with a Section 10 request, the Article 9 condition will likely be: (b) Processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by member state law, as set out in Schedule 1 Part 1 of the DPA 2018: Employment, social security and social protection.

authority. This is based upon a public task relating to the task itself rather than the organisation which is carrying out that task.

Where data sharing is necessary to ensure safeguarding but is not specifically covered by ASPA, Schedule 1 Part 2 of the DPA 2018: Safeguarding of children and of individuals at risk may provide the Article 9 condition for processing. If relying on this basis for processing however, an appropriate policy document should be in place governing the process. Whatever the case the data controller must be clear which lawful basis they are relying on.

Should you be unfamiliar with the Adult Support and Protection (Scotland) Act 2007, you can view a copy of it at: click here

Council Officer Guidance Notes

The wording and ordering of this document has been approved by national agreement with Social Work Scotland. If issues arise with the structure of the form please advise your lead officer for adult protection 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.

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. Ascertaining the correct person, title and address will save time and allow the financial institution to provide you with the fullest level of detail.

The request should use the locally agreed logo or logos 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.

Where requests are made electronically the Council Officer must ensure that the information is sent and received securely.

Name of Customer	Full name and any known pseudonyms listed separately e.g. Mary McTavish May McTavish
Date of Birth (if available)	Please state in full e.g. 22nd July 1952
Address (if available)	
Account Names, Numbers and Sort Codes (if available)	
Brief Description of the ASPA Inquiry	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. **NB** Where you have concerns regarding a financial proxy do not state these, however do advise that your request should not be shared with them.
Financial Information that is required (please include any third party mandates relating to the accounts located):	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: • *the balance of Ms XXXX' account(s)* • *any current Standing Orders or Direct Debits (including to whom payable, regularity and amounts)* • *Statements covering the period …….*

	• *We should also wish to request similar information for any other account in her name of which we are unaware."* • *Whether …….holds a Bank or Building Society account with your bank?* • *If so, whether any other persons are signatories to his/her account(s)?* • *Please provide copy statements in relation to any accounts held by ……...either jointly or solely for the last ……..months* • *Similar information regarding any other account held in this name.* • *Any known liabilities/debts/mortgages etc.* • *Any relevant financial information held in wills* • *Any accounts in other names e.g. joint accounts*
Information Format required	It is likely that most institutions will only provide information in hard copy due to potential security issues with electronic transmission of personal information.
Information required by	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. In other circumstances please indicate in your request the required time frame e.g. 7, 14 or 21 calendar days.
Council Officer's Details and Signature	Name, position, organisation, address, email address, telephone number and signature. Please DO NOT provide a direct dial contact in the first instance.

Use of Information Received Under Section 10

It is essential to note that information received must not be distributed in its original form to third parties. It must only be used to inform protection planning. For example, bank statements obtained should not be distributed as this may not be relevant and propionate as others only need to understand that harm has been substantiated. However, sharing an assessment or actions required based upon the information received may be relevant and proportionate but should not refer to exact amounts or details. Where a crime has been committed this may not apply. If in doubt please check your local data protection policy.

Where a Section 10 Request is Refused

i. Request that the company/organisation provide their reasons promptly in writing if they have not done so
ii. Discuss the issue with your line manager and consider a request to your legal services department. This request should be based around the need to formally contact the organisation re-emphasising the legal basis of the request, the fact that inaction can lead to further harm and may be an offence under Section 49.
iii. Record the initial refusal, reasons given and the actions and outcomes thereafter.

Appendix 6

Some Indications of Harmful Behaviour towards an Adult at Risk

These can include one or a combination of the following harmful actions. The following indicators however can be used as a guide only as most of the signs could also be explained by a variety of reasons. It is important therefore not to make assumptions about the reasons for such signs and to place them in context of what is known about the individual and their particular circumstances.

Also the foregoing recognition and signs should not be used as a checklist or an arithmetical aid or a predictor kit. Using it in this way could be detrimental to adults at risk of harm and their carers. It is an aid to the exercise of professional judgement and assessment

Physical Harm – involving actual or attempted injury to an adult defined as at risk e.g.

- Physical assault of punching, pushing, slapping, tying down, giving food or medication forcibly, denial of medication.
- Use of medication other than as prescribed
- Inappropriate restraint

Bruises

- Black eyes are particularly suspicious if, both eyes are black (most accidents cause only one) there is no bruise to the forehead or nose or suspicion of skull fracture (black eyes can be caused by blood seeping down from an injury above)
- Bruising in or around the mouth
- Grasps marks arms – or chest
- Finger marks (e.g. you may see three or four bruises on one side of the face and one on the other)
- Symmetrical bruising (especially on the ears)
- Outline bruising (e.g. belt marks, hand prints)
- Linear bruising (particularly on the buttocks or back)
- Bruising on soft tissue with no obvious explanation
- Different age bruising (especially in the same area)
- Abrasions, especially around wrists and /or ankles

NB Most falls or accidents produce one bruise on an area of the body - usually on a bony protuberance. An adult who falls downstairs generally has only one or two bruises. Bruising in accidents is usually on the front of the body as most people

generally fall forwards. In addition, there may be marks on their hands if they have tried to break their fall.

The following are uncommon areas for accidental bruising, back of legs, buttocks (except, occasionally, along the bony protuberance of the spine), neck, mouth, cheeks, behind the ear, stomach, chest, underarm, genital and rectal area.

Bites

These can leave clear impressions of the teeth.

Burns and Scalds

It can be very difficult to distinguish between accidental and non accidental burns, but as a general rule burns or scalds with clear outlines are suspicious. So are burns of uniform depth over a large area. Also slash marks about the main burn area (caused by hot liquid being thrown)

NB: Concerns should be raised where a carer responsible for an adult at risk of harm has not checked the temperature of the bath.

Scars

Many adults have scars, but notice should be taken of exceptionally large numbers of differing aged scars (especially if coupled with current bruising), unusually shaped scars e.g. round ones from possible cigarette burns or large scars from burns or lacerations that did not receive medical treatment

Fractures

Should be suspected if there is pain, swelling, discolouration over a bone or a joint
The most common non accidental fractures are the long bones i.e. arms, legs, ribs

Emotional/Psychological Harm – (resulting in mental distress to the adult at risk e.g.

- Excessive shouting, bullying, humiliation
- Manipulation or the prevention of access to services that would enhance life experience
- Isolation or sensory deprivation
- Denigration of culture or religion, sex, gender status, sexuality and disability.
- Exploitation through prostitution

The following indicators should be considered by workers when concerns regarding emotional harm arise. In some situations the following will be applicable

- Carers' behaviour
- Carers' history

- Pressure exerted by family or professional to have someone committed to care
- Weight change- loss of appetite or overeating
- Withdrawal confusion (could be caused by dehydration which produces toxic confusion)
- Loss of confidence
- Extreme submissiveness or dependence in contrast with known capacity
- demonstration of fear of another person by the vulnerable adult
- Sudden changes in behaviour in the presence of certain persons.
- Rejection
- Denigration
- Scapegoating
- Denial of opportunities for appropriate socialisation
- Under stimulation
- Sensory deprivation
- Isolation from normal social experiences, preventing the adult at risk from forming friendships
- Marked difference in material provision in relation to others in the household
- Unrealistic expectations of the vulnerable adult
- Asking for an adult at risk to be removed from home, or indicating difficulties in coping with a adult at risk, about whose care there are already doubts
- Fear of Carers
- Refusal to speak
- Severe hostility/aggression towards other adults.

Financial or Material Harm - involving the exploitation of resources and belongings of the adult at risk e.g.:

- Theft or Fraud
- Misuse of money, property or resources without informed consent
- Important documents are reported to be missing

- Unexplained or sudden withdrawal of money from accounts
- Contradiction between known income and capital and unnecessary poor living conditions especially where this has developed recently
- Personal possessions of valuables going missing from the home without satisfactory explanation
- Someone has taken responsibility for paying rent, bills, buying food etc – but this is not happening
- Unusual interest taken by relative, friend, neighbour or other in financial assets, especially if little real concern shown in other matters
- Next of kin refuse to follow advice regarding control of property via continuing/welfare power of attorney
- Where care services, including residential care, are refused under clear pressure from or other potential inheritors
- Unusual purchases unrelated to the known interests of the adult at risk

Homophobia

NHSGGC in their campaign against homophobia note that "… people experiencing discrimination on the grounds of their sexuality have poorer health and that their recovery from health problems can be adversely affected". Stonewall provide information on recognising and reporting homophobic and transphobic hate crime. Click here

Sexual Harm – involving activity of a sexual nature where the adult at risk cannot or does not give consent e.g.

- Incest
- Rape
- Acts of gross indecency
- Sexual Harm can occur when adults at risk of harm are involved in sexual relationships or activities which they have not consented to or are pressured into consenting to or they cannot understand.
- Such activities could include unwanted sexual contact such as rape or incest, inappropriate touching including sexual harassment either verbal or physical, indecent exposure, displaying pornographic material and inappropriate sexual material
- Exploitation through prostitution. This includes women with a learning disability who may be subject to exploitation through prostitution.

Physical indicators of sexual harm:

The possibility that the following behaviour or injury could be as a result of the Adult at Risk of Harm normal observed behaviour over a substantial period of time should always be taken into account. It is noted changes in an adult at risk of harms out with their normal behaviour that is significant not the presence of the following in isolation

- Adult aversion to being touched.
- Tendency to withdraw and spend time in isolation
- Deliberate self harm
- Depression and withdrawal
- Wetting or soiling, day or night
- Sleep disturbances or nightmares
- Anorexia or bulimia
- Unexplained pregnancy
- Phobias or panic attacks

The following are more specific indicators:

- Recurrent illnesses, especially venereal disease
- Injuries in genital area
- Infections or abnormal discharge in the genital area
- Complaints of genital itching or pain
- Presence of sexually transmitted diseases
- Excessive washing

Neglect and acts of omission by others charged with care of adult at risk

Including ignoring medical or physical care needs. It is recognised from many recent reports that harm in care homes is an issue that should be recognised and that age discrimination by professionals and staff can contribute to risk and harm not being recognised.

Age discrimination is also a risk factor that may contribute to harmful conduct, and institutional harm can take many forms and the recent English report *Enquiry into Home Care* published in 2012 provides considers this in further detail. click here

The following indicators, singly or in combination, should alert workers to the possibility that adult at risk needs are being neglected:

- Failure to provide access to appropriate health, social care, or educational services
- Withholding necessities such as nutrition, appropriate heating etc
- lack of appropriate food or poor quality food
- lack of adequate clothing
- circulation disorders
- unhygienic home conditions
- lack of protection or exposure to dangers including moral danger, or a lack of supervision appropriate to the adults ability to manage harm or
- Failure or delay in seeking medical attention
- A adult at risk is found at home or in a care setting in a situation of serious but avoidable risk
- Unnecessary delay in staff responses to residents requests
- Serious or persistent failure to meet the needs of the adult at risk
- Non attendance at arranged care service
- Isolation
- Staff regularly change and/or poor management

Self-neglect and acts of omissions by adult at risk

This may be observed during regular contact with the adult but is not always easy to identify if the adult hides their actions or is isolated. Self- neglect is often reported as occurring in older people or is associated with mental ill health such as failure to east a proper diet or carry out personal care tasks. Acts of omission may include failure to take prescribed medication or ignoring medical needs.

Multiple forms of harm

This may occur in an ongoing relationship or service setting or to more than one person at a time. It is important therefore to look beyond single incidents and consider underlying dynamics and patterns of harm.

Random Violence

An attack by a stranger on an adult defined, as at risk is an assault, a criminal matter, and should be reported to the police. However where there is the possibility that the violence may be part of a pattern of victimisation in a community or neighbourhood, Adult Protection Procedures may apply in respect of effective multi-agency intervention.

Domestic Violence

Violence against women is wrong and women should be offered support and protection, but the key factor in relation to activating adult protection procedures in such situations is dependant on an assessment of “adults at risk” as defined earlier.

The Police define domestic violence as “any form of physical, non physical or sexual harm which takes place within the context of a close relationship committed either in the home or elsewhere”. In most cases this relationship will be between partners (married, cohabiting or otherwise) or ex-partners. The similarity between the above acts of harm in relation to adult protection is recognised.

Violence Against Women Safer Lives: Changing Lives **click here**

For the purposes of this approach, Scottish Government define violence against women as actions which harm or cause suffering or indignity to women and children, where those carrying out the actions are mainly men and where women and children are predominantly the victims. The different forms of violence against women - including emotional, psychological, sexual and physical harm, coercion and constraints - are interlinked. They have their roots in gender inequality and are therefore understood as gender-based violence.

Scottish Government’s approach is **informed** by the definition developed by the National Group to Address Violence Against Women based on the United Nations Declaration on the Elimination of Violence Against Women (1993) which follows:

Gender based violence is a function of gender inequality, and an abuse of male power and privilege. It takes the form of actions that result in physical, sexual and psychological harm or suffering to women and children, or affront to their human dignity, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. It is men who predominantly carry out such violence, and women who are predominantly the victims of such violence. By referring to violence as 'gender based' this definition highlights the need to understand violence within the context of women's and girl's subordinate status in society. Such violence cannot be understood, therefore, in isolation from the norms, social structure and gender roles within the community, which greatly influence women's vulnerability to violence.

Accordingly, violence against women encompasses but is not limited to:

- *Physical, sexual and psychological violence occurring in the family, within the general community or in institutions, including: domestic violence, rape, incest and child sexual abuse;*
- *Sexual harassment and intimidation at work and in the public sphere; commercial sexual exploitation, including prostitution, pornography and trafficking;*
- *Dowry related violence;*
- *Female genital mutilation;*
- *Forced and child marriages;*
- *Honour crimes.*

Activities such as pornography, prostitution, stripping, lap dancing, pole dancing and table dancing are forms of commercial sexual exploitation. These activities have been shown to be harmful for the individual women involved and have a negative impact on the position of all women through the objectification of women's bodies. This happens irrespective of whether individual women claim success or empowerment from the activity. It is essential to separate sexual activity from exploitative sexual activity. A sexual activity becomes sexual exploitation if it breaches a person's human right to dignity, equality, respect and physical and mental wellbeing. It becomes commercial sexual exploitation when another person, or group of people, achieves financial gain or advancement through the activity.

In recognising this definition, there is no denying or minimising the fact that women may use violence, including violence against a male or female partner. Although less common this is no less serious and requires to be addressed.

Scottish Government note that the definition they offer differs from the dictionary definition of violence which generally requires some form of exertion of physical force. Inclusion of these behaviours or activities as part of the spectrum of violence against women, and indeed the use of this term itself, is accepted internationally as evidenced by a number of definitions developed by the UN and EU, and, where necessary, Scottish Government will make clear the distinction between this definition and normal and legal usage of the term 'violence'.

Victims and Witnesses (Scotland) Act 2014 click here

As part of the supports offered under this Act victims, in a case reported to the Procurator Fiscal, have the right to request a Right to Review from the Crown Office and Procurator Fiscals Office click here where a decision has been made not to proceed or to stop or discontinue a case after it has started at court. This came into force on the 1st July 2015. This may be occasions when this might be a course of action that an adult who has been a victim of a crime wishes to pursue. Adults need to ask for this within 1 month of being informed of the decision. The Victim Information and Advice can provide information. Contact them on 01389 739 557.

Cuckooing

Cuckooing is a form of crime in which drug dealers take over the home of a vulnerable person in order to use it as a base for drug dealing. The crime is named for the cuckoo's practice of taking over other birds' nests for its young. Victims of ‘cuckooing’ can include older people, those suffering from mental or physical health problems and those living in poverty. The victim is at risk of domestic abuse, sexual exploitation and violence from the gang. It is common for gangs to have access to several addresses. They move quickly between vulnerable people's homes for just a few hours, a couple of days or sometimes longer. This helps gangs evade detection.

Signs that 'cuckooing' may be going on at a property include:

- An increase in people entering and leaving
- An increase in cars or bikes outside
- Possible increase in anti-social behaviour
- Signs of drugs use

Appendix 7

Glossary

Introduction

This glossary is for illustrative purposes only and is not intended to be prescriptive. Full statutory definitions of many of the terms are contained in Section 53 of the Act and it is those that should be used in any process or situation where precise definition is required.

Adjacent place: A place near, or next to any place where an adult at risk may be, such as a garage outbuildings etc.

Adult: (Section 53): An individual aged 16 or over.

Adult at risk: *(Please refer to Chapter 1 for further information for an explanation of the full definition)*

Adult Protection Committee: (Section 42) (APC): A committee established by a Council to safeguard adults at risk in its area.

Assessment order: (Section 11): 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.

Banning order: (Section 19): 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.

Care Commission (now Care Inspectorate): Section 53: The Scottish Commission for the Regulation of Care.

Child: (Section 53)**:** A person under the age of 16.

Conduct: (Section 53): Includes neglect and other failures to act.

Council: (Section 53): A council constituted under the Local Government (Scotland) Act 1994. References to a council in relation to any person known or believed to be an adult at risk mean the council for the area which the person is for the time being in.

Council nominee: (Section 11(1)(a) and 14(1)(a)): 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: (Section 53): An individual appointed by a council under Section 64 of the Local Government (Scotland) Act 1973 (c. 65) but the term must, where relevant, also be interpreted in accordance with any order made under Section 52(1).70

Court day: (Section 53): A weekday (Monday to Friday) unless it has been designated a ‘court holiday’ (usually a bank holiday or a local holiday).

Harm: (Section 53): 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: (Sections 52(2) and 53): The person is a doctor, nurse, midwife or other type of individual prescribed by the Scottish Ministers.

Inquiry: An inquiry is any process that has the aim of gathering knowledge and information. This could include inquiries of any relevant party and the co-operation of the public bodies and office holders under Section 5 of the Act. The purpose of making inquiries is to ascertain whether adults are at risk of harm and whether the council may need to intervene or provide any support or assistance to the adult or any carer.

Investigation: An investigation follows on from an inquiry. Investigations are carried out for the purpose of supporting or assisting the adult or making necessary interventions, whilst acting in accordance with the principles of the Act.

Parental responsibilities and rights: (Section 53): As provided for in Sections 1 and 2 of the Children (Scotland) Act 1995.

Power of arrest: (Section 25): Can be attached to a banning order at the time when the order is granted or at the same time as an application is made to vary the order.

Relevant Health Board: (Section 53)**:** In relation to any council, means any Health Board or Special Health Board constituted by order under Section 2 of the National Health Service (Scotland) Act 1978 (c.29) which exercises functions in relation to the council's area.

Removal Order: (Section 14): 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.

Responsible Social Work Manager: for the purposes of this guidance this term has been used as a generic term to describe the person charged with managing the adult protection procedures following a referral to a Council. (WOS Councils use various terms to describe this person i.e. Senior Social Worker/Team Leader etc.)

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: (Section 21): An order granted by a sheriff pending determination of an application for a banning order. The order may specify the same conditions as a banning order.

The 2007 Act: The Adult Support and Protection (Scotland) Act, 2007.

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

Warrant for entry: (Section 37): A warrant that authorises 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.