



# **Social Work Policy and Procedure**

## **Adult Support and Protection Procedures**

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## Foreword

Adult Protection is not new; it is core business to us all in social work. The Adult Support and Protection (Scotland) Act in 2007, provides a clear framework of powers and duties to enable us to protect those adults in Dumfries and Galloway who are at risk of harm.

Dumfries and Galloway Council is clearly committed to protecting vulnerable adults at risk of harm as reflected in the Council's priorities. Social Work Services have a clear strategic and operational remit as the lead agency in relation to the support and protection of adults at risk of harm.

It is therefore essential that all staff across our services recognise, understand and act upon the responsibility to protect adults who are less able to protect themselves from harm, either from the actions of others or by their own actions.

These procedures are aimed at providing all staff with a framework which supports the requirements of the legislation.

I trust that these procedures will provide you all with a robust foundation upon which to deploy your professional skills and judgement to ensure that all adults at risk of harm in Dumfries and Galloway are able to access the level of support and protection which not only keeps them safe from harm but also allows them to fulfil their potential and exercise choice and control of their lives.

As Chief Social Work Officer, I hold overall responsibility for the consistent operation of Adult Support and Protection to a consistent and high standard.

*Lillian Cringles*

Head of Social Work

## SECTION 1: CONTEXT AND GOVERNANCE

### Definition of Adults at Risk

Persons aged 16 or over who -

- are unable to safeguard their own wellbeing, 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 not so affected

All three of the elements of the definition must be met. A person cannot be classed as an adult at risk simply by virtue of the fact that they meet one element of the definition. An example of this is that of a person who has a disability. It is not intended that the definition of an "adult at risk" is so wide that it covers a disproportionately large part of the population.

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 or neglect
- If a person is seen to be attempting or threatening suicide, their personal well-being and safety is paramount.

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)
- a change in behaviour which may indicate that the person is acting out of character and places themselves at risk by their own actions such as attempted suicide)
- unlawful conduct which appropriates or adversely affects property, rights or interests (for example theft, fraud, embezzlement or extortion)
- conduct which causes self-harm

## **Introduction**

The protection of this group of people should be a priority for everyone involved in providing care and support for adults at risk of harm. Each of the partner organisations in Dumfries and Galloway must have their own internal procedures to guide all staff in relation to the incidence of adult protection measures. The duties and responsibilities set out in the Adult Support and Protection (Scotland) Act 2007, together with the information contained in the Code of Practice, the West of Scotland Inter-Agency Adult Support and Protection Practice Guidance, and these procedures will underpin any intervention and action required of the Social Work Service.

The purpose of these procedures is to provide a clear framework that will inform and assist all Social Work staff involved in the support and protection of adults at risk. To provide clarity on the roles and responsibilities of staff within social work in dealing with suspected or alleged harm of an adult at risk and defining how to deal with and respond appropriately to allegations or suspicions of harm wherever it occurs.

## **Adult Support and Protection Governance Arrangements**

Adult Support and Protection sits within the Public Protection arrangements and is governed by a multi-agency partnership overseen by the Chief Officers (Public Protection Group)

The ambition for Public Protection in Dumfries and Galloway is for individuals and communities across the region, particularly the most vulnerable, to be safe and protected.

## **Roles and Responsibilities of the Chief Officer Group**

The role of the Chief Officers Group (Public Protection) is to work collectively to identify and commission interagency activity with respect to supporting and protecting adults at risk in Dumfries and Galloway. This will be taken forward by the Public Protection Committee and monitored by the Chief Constable, Chief Executive (NHS), Chief Executive (Dumfries and Galloway Council), and the Chief Operating Officer Health and Social Care Partnership; with professional advice from the Chief Social Work Officer. The role of the Chief Officers Group will be to meet quarterly with the Chair of the Public Protection Committee in order to review progress and outcomes in line with the current Public Protection Plan.

## **Role and Responsibilities of the Public Protection Committee**

The Public Protection Committee assumes the functions for adult protection and support as set out in the

2007 Act as follows:

- a) to keep under review the procedures and practices of the public bodies;
- b) to give information or advice to any public body and officeholder 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 doing this, the Public Protection Committee performing these functions, each APC must have regard to the promotion and support of cooperation between each of the public bodies. The public bodies involved are the relevant council, the Care Commission, 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.

Councils are responsible for appointing the Independent Convener and committee members. While they may also appoint members to the Committee based on their relevant knowledge and skills, each committee must include nominated representatives from the relevant Health Board and Police Force. The Care Commission now known as Social Care and Social Work Improvement in Scotland (SCSWIS) also has the option to nominate a representative. Committee procedures must also allow representatives of the following bodies to attend meetings:

- the Mental Welfare Commission for Scotland
- the Public Guardian;
- the Care Inspectorate (where a representative has not already been nominated to be a member); or
- any other public body or office holder that Scottish Ministers may identify

### **Links with other areas of Public Protection**

There may be some areas of cross-over between child protection and adult protection information when dealing with families which have both children and adults at risk. Although they may be investigated separately, a link between the two would require to be maintained. An area of overlap may also exist where a person is aged 16 or 17 years and could be classed as both a child and an adult at risk. The duties outlined in the 2007 Act would require to be reflected in practice.

### **The Care Inspectorate**

Primarily, the role of the Care Inspectorate is a regulatory one in considering the safety of all service users in any registered care service. The Care Inspectorate's role as detailed in the legislation identifies a duty to co-operate and a duty to report any concern. Whilst the statutory requirement to undertake adult protection investigations lies with the local authority and the police, there will be circumstances where it would be appropriate for the Care Inspectorate to become involved.

### **Commissioned Services**

The service works with a range of commissioned services which are overseen and monitored by the Strategic Planning and Commissioning Team, Health and Social Care partnership.

The responsibilities of Commissioned Services in respect of Adult Support and Protection should be reflected in any Council Social Work Services contracts and reinforced through self-evaluation and contract monitoring. this includes the need to:

- Establish procedures for the protection of adults at risk which are consistent with Dumfries and Galloway protocol;
- Provide information and assistance to Council Officers;
- Participate in the joint working arrangements as defined in Dumfries and Galloway protocol.
- Report incidents of actual/suspected harm or [self-neglect](#) to Social Work Services and where appropriate to the Police and the Care Inspectorate.

Adults and carers need to be assured that where they are receiving care and / or support services, these will be compliant with current legislation and good practice for the protection of adults at risk of harm and that all allegations involving adults at risk of harm in care settings will be investigated.

Commissioned services are expected to follow rigorous recruitment practices in relation to both employing staff and in the selection of volunteers; provide supervision and monitoring of staff working with adults at risk and to have internal operating procedures and guidance for all staff that set out the responsibilities of all staff in respect of Adult Support and Protection as well as Adult Support and Protection awareness and procedure training for all staff and volunteers. This will include all roles within the protocol and procedures. Commissioned services should:

- Refer concerns about the adult at risk to the local social work department through the Single Access Point through an Adult Protection Referral form (AP1).
- Keep clear and accurate records.
- Undertake risk assessments
- Share relevant information in relation to any inquiry/ investigation under ASP legislation participate in the joint working arrangements as defined in this protocol.
- Implement preventative and/or supportive action to adults at risk.



## SECTION 2: SOCIAL WORK PROCEDURE FOR ADULT SUPPORT AND PROTECTION

### **Responding to Adult Protection Allegations or Concerns, Multi- Agency Discussion / Planning Meetings**

**Note:** During the conduct of an Adult Protection inquiry or investigation where any child protection concerns arise action must be taken under Dumfries and Galloway Social Work Services Child Protection Procedures to ensure the immediate and future safety and wellbeing of the child/children

It is important that clear and full information about any AP referral, inquiry and investigation is recorded at every stage. This should include relevant information from any source and should explain why decisions have been made and give information in relation to times when interventions have been considered and decided against.

All referrals will receive, within 5 working days of the referral, a response, in writing advising of the outcome of the inquiry. On receipt of any NHS referrals, the locality admin staff will forward copies to the NHS Adult Protection Co-ordinator at Dumfries and Galloway Royal Infirmary.

### **Screening and Triaging Referrals**

The detailed procedure for screening and triaging referrals is set out in the Single Access Team Operating Procedures and the MASH operating procedures.

All referrals are dealt with by the Single Access Point and screened on the basis of the level of concern. All high-risk concerns are directed immediately to the Multi-Agency safeguarding Hub (MASH). Where concerns do not require an ASP response, they will be directed to social work localities teams for social work support or closed if no further action is required.

Referrals received by the MASH will be triaged based on immediate risk of harm and level of concern and appropriate action taken to safeguard an individual or commence initial inquiries under a Duty to Inquire. If a concern is of an immediate serious nature an aIRD (Adult Initial Referral Discussion) may be called to ensure an early multi-agency discussion takes place to co-ordinate planning and share information as required. This is undertaken in MASH.

### **Duty to Inquire**

If the outcome of MASH screening is that further inquiries need to be made, then a Duty to Inquire will be opened. This is led by the MASH who will gather all available information and will complete the DTI within MASH if there is no visit required.

If a visit to the person is required, then this will be with the support of the relevant social work locality team, and it will be conducted by a Council Officer. The adult should be made aware that the visit is as a result of an ASP concern having been

raised and they should be made aware that they are not compelled to answer any questions or engage with the inquiry in any way if they so choose. If the adult does refuse to engage or answer questions, then this should be clearly recorded with the reasons as stated by the adult clearly noted.

As and when appropriate information should be shared with the adult about the possible progression of the inquiry and the potential outcomes. This should be tailored to the circumstances to ensure the adult is fully informed but without overwhelming with unnecessary information at this stage.

Once all relevant information has been gathered and the visit undertaken the Council Officer will complete the DTI, including the analysis, and this will be shared with the Senior Social Worker in the Locality who will then pass to MASH to consider the information available, and MASH will determine the outcome. If there are no adult protection concerns to progress, MASH will complete the DTI and close the inquiry stage. Where progression under ASP legislation has been decided against, other forms of intervention will be discussed, and if required risks addressed under alternative appropriate legislation or support needs addressed via the assessment and [Self Directed Support](#) framework.

If the decision is to progress to ASP Investigation this is tasked to the relevant social work locality team, Senior Social Worker and they will assign to a Council Officer as a priority.

The following initial decisions must be made in consultation with Social Work line Manager, MASH and, if immediate protective measures are required, with the Locality Manager and if required, Legal Services.

If a crime has been committed the police have to be informed immediately to ascertain their view of circumstances and to ensure non-contamination of any potential evidence.

If immediate protective measures under Adult Support and Protection (Scotland) Act 2007 are required, this will require consultation with a senior manager for authorisation to apply for a Protection Order.

All potential applications should be discussed with staff from the Legal Services who will act on behalf of the service in applying to Court. Council Officers may be required to go before the Sheriff to offer evidence in support of application.

- Where there is evidence of a criminal offence the Police (as in Family Protection Unit Manager) must always be contacted at the initial inquiry stage.
- If it is decided that a criminal investigation is to be undertaken this will be undertaken by the Police. The Police will decide if a referral to the Procurator Fiscal is appropriate. The Coordinating Manager and the Police should liaise over action necessary to protect the adult at risk during a Police investigation.
- Where the abuse or suspected act of harm has occurred in a registered establishment or NHS facility, relevant representation from The Care Inspectorate or NHS will be required. It must be acknowledged that each agency will have their internal ASP Procedures, and these will be followed in parallel process.

## If Emergency Action is Required

If the level of risk is such that immediate action is required, which cannot be achieved on a voluntary basis, the Co-ordinating Manager will discuss with the Police and/or Council Legal Services, to determine whether there are any statutory powers which can be invoked to protect the adult under the 2007 Act or other appropriate legislation.

If no immediate action is required but the need for formal investigation has been agreed the following points have to be addressed:

- **Consent** – Has the adult who has been referred given consent to referral being made? Remember, this is not the same as giving consent to being interviewed within the investigative process. We all have a duty to report any suspicion of harm i.e., refer with or without an adult's consent. If consent has not been given initial inquiries/interview should still take place. It may also be the case that good social work skills will prove successful in enabling the person referred to agree that some form of protection from harm/potential harm is required. This must be clearly recorded within the report.
  
- **Capacity** – If the threat of 'serious harm' (a term not defined in the Act) is not a factor, undue pressure is not apparent and the adult has the capacity to understand their circumstances as well as the level of risk to which they may be subject, the adult's refusal to cooperate in an adult protection inquiry should not automatically signal the end of any inquiry, assessment, or intervention. Whilst the adult has a right not to engage in any such process, the council and its partners should still work together to offer any advice, assistance, and support to help manage any identified significant risks. Where the level of capacity is unclear it is possible to override a person's refusal if it is assessed that the level of risk of harm or actual harm is such that protective measures are urgently required. The adult's capacity would then be decided in court via application for a protection order and psychiatric assessment. Consideration should always be given to whether intervention under the terms of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care & Treatment) (Scotland) Act 2003 would be the least restrictive option and of more benefit to the adult. Any professional views on capacity should be clearly recorded within the report.
  
- **Information Gathering** – Information should be gathered from as many sources as possible. Information sharing is crucially important to any formal investigation.

## Investigation

At an early stage of the investigative process Council Officers, under Section 6 of the Act, have a duty to consider the need for support services for the adult, particularly Advocacy Services. Advocacy support should be offered to the Adult and recorded in the ASP Investigation report; however, the adult is free to choose whether they wish to utilise this option or not and this should also be recorded. Where communication difficulties are apparent the adult must be provided with assistance or material appropriate to their needs to enable them to make their views

and wishes known. Wherever possible the adult should be asked which form of communication is preferred e.g., technical aids or translator services. The input of a Speech and Language Therapist may also be considered.

If the person is to be interviewed by the Police the support of an Appropriate Adult may be required if owing to a mental disorder, the person appears to the Police to be unable to understand sufficiently what is happening, or to communicate effectively. Appropriate Adults provide communication support to vulnerable victims, witnesses, suspects and accused persons, aged 16 and over, during police investigations. The Police will arrange for an Appropriate Adult to be available. Further information is available at Appropriate Adults: guidance for local authorities - gov.scot ([www.gov.scot](http://www.gov.scot)). Any offer of support should be clearly recorded and, if declined, reasoning given for this.

The adult has the right to have a person(s) of their choice present at interviews.

Section 8 of the ASP Act allows a Council Officer to interview an adult in private. This may be deemed necessary if:

- 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

## Visit

Under Section 7 of the ASP Act a Council Officer has the power to enter any place or any adjacent place for the purpose of assisting or enabling the Council conducting inquiries to establish whether action is required to protect an adult at risk of harm.

Visits must be made at reasonable times unless there is immediate risk to the adult. Visits to interview an adult can be made anywhere e.g., the adult's home, a relative or friend's home, a care home, a day centre, educational establishment, place of employment, respite unit, hospital, or other medical facility. The Council Officer can access all parts of the place visited e.g., sheds, garages, outbuildings, and all areas used by or on behalf of the adult e.g., sleeping accommodation, meal preparation areas and general living space.

Formal identification as a Council Officer is required at all visits. The accompanying person must also produce formal identification, and both must be shown to the adult. The purpose of the visit must also be explained at the outset.

If entry is refused, force cannot be used. The appropriate manager and Legal Services should be contacted for advice as a warrant may be required. If a warrant is applied for and granted, the Council Officer and his/her colleague will be accompanied by a Police Officer.

## **Interview**

Remember that an adult who is deemed to be at risk of harm is not obliged to answer questions or co-operate with the investigative interview. The adult should be advised of this at the outset of the interview. The right to withhold consent has been discussed above. Assessment of capacity is crucial as are the interviewing skills of the Council Officer and accompanying colleague. (Is it possible to consider that some people may need an interview carried out over more than one visit? Some people can only manage small pieces of information or may need time to think about things and may take time to develop a trusting ongoing relationship)

A Council Officer must be accompanied by a second person. Due regard should be given to who this person is, from the adult's perspective and from previous information gathered, as this could significantly influence the quality of the investigative interview. Together they may interview, in private if required, an adult found in a place being visited under the terms of Section 7 of the Act.

Prior to the interview – the Council Officer and Second Person should meet with each other and the Line Manager (where possible) in advance of the Interview to clearly discuss the concerns and the approach to be taken in relation to the Interview. Roles should be clarified.

## **Further Investigative Process**

Having regard to the overarching principles of the ASP Act is fundamentally important. Discussion with your line manager is essential. A formal ASP Case Conference should almost always be convened – if the decision is taken not to proceed to Case Conference the reason for this should be clearly recorded on Mosaic. A professional's meeting or professional's discussion should not be convened instead of an ASP Case Conference.

If the application for Protection Orders is discussed and a possibility it requires multi agency discussion. Clearly there may be circumstances where timescales cannot be adhered to. Any deviation from timescales should be justified in terms of good practice and this information should be recorded.

The decision to progress to an ASP conference is recommended by the Council Officer as part of the investigation report, the Senior Social Worker (line manager) will oversee this and once in agreement this will be passed to the Locality Manager for the decision to progress to an ASP conference.

An Investigative Report should always be completed and used as the report for the Initial Case Conference, this report will be sent to the Locality Manager for their decision making to proceed to conference.

A Conference invitation should always be given to the adult. The reason for the adult's nonattendance should be recorded in the Case Conference minute. The adult can be accompanied by a person of his/her choice – if they are not involved in the harm of the adult.

The Protection Plan is available at each point in the process for the Council Officer to complete, it should be completed at the ASP investigation stage and updated at subsequent case conferences.

If for any reason, the Protection Plan has not been an outcome of the Case Conference – the reason for this should be clearly recorded.

The adult protection investigative process can stop at any time and revert to Self-Directed Support, (SDS) management. Such decisions should always be recorded and justified, and it is best practice for this to be done at a formal ASP Review Case Conference, where a multiagency group can agree that this is the best way forward for the adult.

## **Medical Examination**

Section 9 of the Act allows a health professional to conduct a medical examination of the adult at risk of harm in private either at the time of the interview or at another time and place. A medical examination includes any physical, psychological, or psychiatric assessment or examination. At the present time, the only medical personnel given authority to undertake an assessment/examination are doctors (psychiatric and medical), nurses and midwives.

The primary reasons to conduct a medical examination are –

- to establish if injuries of any kind have been sustained,
- to establish the need or otherwise for immediate medical attention,
- to assess the degree of physical or mental illness,
- to assess level of capacity and
- to provide evidence of harm that will inform any future criminal investigation and/or risk assessment.

An adult has the right to refuse any medical examination even if subject to a Protection.

Order and must be advised of this right prior to the examination. An adult's right to withhold consent can be dispensed with only if –

- his/her life is in imminent danger and treatment is necessary to save life,
- to prevent significant deterioration to the point of endangerment to life and
- if consent or lack of consent cannot be given i.e., adult is unconscious.

Doctors are asked to respect any recorded valid indication of refusal. If the adult lacks capacity or has communication difficulties the Public Guardian should be contacted to ascertain whether anyone has powers under the Adults with Incapacity (Scotland) Act 2000, Power of Attorney or Guardianship. If not, consideration should be given to the use of the Adults with Incapacity (Scotland) Act 2000 and/or the Mental Health (Care & Treatment) (Scotland) Act 2003.



## Sharing Information and Consent

The Data Protection Act 1998 sets out the terms under which sensitive personal information can be shared without consent. All agencies should have an information sharing procedure in place and staff should follow this when disclosing information without consent.

Information sharing is permitted: -

- to protect the vital interests of the data subject or another person, for the administration of justice, or
- for the exercise of any functions conferred on any person by or under an enactment, or for medical purposes

NHS Boards are required to ensure that all staff members are aware of, and operate, local procedures for sharing of information with the police to promote the prevention and detection of crime, while respecting and safeguarding the interests of patients and the public in the confidentiality of personal health information

Whilst confidentiality is important, it is not an absolute right. Co-operation in sharing information is necessary to enable a council to undertake the required inquiries and investigations.

Information should only be shared with those who need to know and only if it is relevant to the particular concern identified. The amount of information shared should be proportionate to addressing that concern. Adults who may be subject to harm may be anxious about the information being shared with others. It is the record holder's responsibility to determine what information should be passed to the Council Officer.

There may be some areas of crossover between child protection and adult protection information, particularly when dealing with families, where there may be children and adults at risk.

## Capacity

The law in relation to adult capacity (i.e., anyone over the age of 16) makes a distinction between those who are capable of making decisions and managing their own affairs and those who are not. Social Work Services consider capacity and incapacity in every referral they receive including referrals relating to adults at risk of harm when deciding the most appropriate action to support or protect the adult. If there is a concern that the adult may lack capacity to make decisions about welfare or financial matters this should be detailed in the referral. Useful guidance on assessing capacity may be found at:

<http://www.scotland.gov.uk/Publications/2008/02/01151101/0>

A thorough assessment of capacity, whatever the outcome, can be crucial and may add to the complexities of an assessment. An adult may have capacity in one area of daily life and lack the capacity to make safe decisions in another. The worker would be looking at whether someone has the cognitive ability to understand the

decisions they are making (not taking action is also classed as a 'decision') and risks they may be taking in relation to keeping themselves safe from 'harm' as defined within the Act.

The Revised Code of Practice suggests that the following factors should be considered in relation to Interviews under ASP - where there is doubt about the adult's capacity:

- does the adult understand the nature of what is being asked and why?
- is the adult capable of expressing his or her wishes/choices?
- does the adult have an awareness of the risks/benefits involved?
- can the adult be made aware of his/her right to refuse to answer questions as well as the possible consequences of doing so?

A lack of capacity to consent to being interviewed is not an automatic bar on the adult participating in the interview process. The principle of the adult participating 'as fully as possible' through supported decision making should be considered. In addition, if the adult is thought to have been influenced to refuse consent, consideration should be given to whether there has been "undue pressure" applied and therefore a need to consider application for an Assessment Order.

Where capacity is uncertain and direct intervention is deemed necessary to protect an adult, an assessment should be requested from a psychiatrist.

Should the adult lack capacity, intervention under the Adults with Incapacity Act 2000 should be considered. Should there be a diagnosable mental illness present affecting an adult's ability to keep him/herself safe from harm, consideration should be given to intervention under the terms of the Mental Health (Care and Treatment) Act 2003. As stated above any intervention should be of benefit to the adult and the least restrictive to the adult's freedom. However, it should also be noted that even if an adult lacks capacity Protection Orders, under the terms of the ASP Act, can be applied for. There may also be circumstances where intervention is required utilising, concurrently, more than one piece of mental health legislation.

## **Duty of Care**

There are circumstances where an adult at risk declines to participate, an adult may appear to meet the criteria of an 'adult at risk' under the terms of the Act but indicates that he/she does not want support and/or protection. In effect, the adult refuses to cooperate with inquiries being undertaken. ([The Revised Code of Practice](#)).

Such a refusal to cooperate does not absolve the council and its partners of responsibilities to make inquiries about the adult's circumstances and the degree of risk. Any inquiries should consider the adult's capacity to understand the risks they are exposed to and the possible consequences of their refusal to cooperate; 'undue pressure' might have contributed to their decision to refuse cooperation, or the adult may not have had opportunities to see any changes to their situation.



Even if there are no concerns in relation to incapacity or undue pressure, the adult's refusal to cooperate in an adult protection inquiry does not automatically signal the end of an inquiry, assessment, or intervention.

Whilst the adult has a right not to engage in any such process, the council and its' partners should still work together to offer any advice, assistance, and support to help manage any identified significant risks. It is recognised the success of any intervention where an adult does not wish to cooperate may, by its nature, be limited in scope and effectiveness. Any assistance should be proportionate to the risk identified and any need to support carers' needs should be considered. It is the Council Officers role to gather information to record within the ASP, but it is a multi-agency role to offer advice and assistance and support.

Section 8(2) of the ASP Act states that any person who is to be interviewed in relation to adult protection concerns must give consent to being interviewed and to answering questions, and that this should be made explicit by the Council Officer throughout the ASP process.

The Code of Practice states: 'seeking the consent of the adult to be interviewed is a more proactive approach than simply advising the adult that he/she is not obliged to answer questions. The point is to ensure that the adult is given reasonable opportunity and encouragement to answer their questions whilst respecting their right not to'. The clear implication of this statement is that Council Officers should be able to use interpersonal skills, engagement skills, listening skills and analytical skills to reassure and enable the adult to discuss expressed concerns.

Where the adult withholds consent, a judgement must be made regarding undue influence by another person. If the view is taken that an adult has refused to give consent through fear and/or intimidation and there is evidence to suggest that an adult is at risk of, or subject to harm, an application for a Protection Order can be considered, either on the basis of urgency to protect an adult or an outcome from an ASP Case Conference. Consideration may be given to the use of a protection Order as defined within the legislation: [Assessment Order](#); [Removal Order](#) or [Banning Order](#)

## **Investigations in Host Authorities**

If an adult protection referral is received regarding a person who is residing in a care setting in another local authority but who is ordinarily resident in, and funded, by Dumfries and Galloway it is the responsibility of the 'host' authority to lead the inquiry and subsequent investigation, where required. It is the 'host' authority's responsibility to inform us of the adult protection referral at the earliest opportunity. Respective roles should then be discussed and clarified but it is expected that Dumfries's and Galloway staff will be actively involved in any formal adult protection investigation, case discussion/case conference if required and protective care planning to ensure the adult's safety and well-being. Whilst Dumfries and Galloway will not normally lead on the investigation, the participation of staff at the level of Council Officer or above would be considered best practice. Ensure that the Care Inspectorate has been informed of the referral and that its involvement in the investigative process is recorded.

## Investigations Within Care Settings in Dumfries and Galloway

When an adult protection referral is received from a care setting within Dumfries and Galloway checks should immediately be made regarding the funding arrangements for the resident. Should the resident be funded by Dumfries and Galloway Council, Council officers should proceed with inquiries, and if required, subsequent investigation. Council officers should advise the Care Inspectorate of the referral and negotiate appropriate involvement by Care Inspectorate staff.

Should the resident be funded by another council, contact should be made with the funding authority to advise of the referral. Dumfries and Galloway Council will remain the 'host' authority and Council Officers from Dumfries and Galloway should normally lead any investigation unless the funding authority negotiates transfer of this responsibility. Any agreement reached regarding which authority leads an investigation must be taken at the level of an Operational Manager or above.

## SECTION 3: PRACTICE GUIDANCE

The following guidance is intended to supplement the procedures to enable staff to consider how they might carry out their responsibilities and the key issues which need to be considered in doing this.

### Principles of Good Practice in Adult Protection

Checklist of Points to Remember:

- **Inquiry** - Whilst you may wish to see the adult as part of your ASP Inquiry – you must be very clear with the adult that you are there as a result of ASP concerns having been raised and ensure the adult knows they do not need to answer any questions or engage with the inquiry. You should also explain subsequent ASP processes that may be invoked – for example, a formal ASP Investigation (including ASP Investigative Interview) and/or Case Conference. This should be clearly recorded. The fact that a visit was undertaken as part of the Inquiry phase to help establish the best way forward, does not remove the necessity for a formal ASP Interview to take place (with a Council Officer, Second Person and formal note taken) during the Investigation phase of the ASP process.
- **Investigation** – Meet with the second person and Senior Social Worker before any Investigative Interview takes place – to go over the concerns, the focus of the interview and establish the roles people will take during the interview. Gather the views of all relevant individuals and agencies as part of your risk assessment and decision making as to the next appropriate step in keeping the adult safe.
- **Risk analysis:**

- Consider the reasoning for the ASP,
- risk factors,
- Protective factors,
- complicating factors,
- capacity,
- advocacy,
- any bail conditions,
- desired goals,
- diagnosis,
- The council officers view on whether the person meets the 3-point test,
- use of the risk matrix to identify and score each harm type,
- and the CO recommendations / person's view

**Note:** Where there is concern about self-neglect or hoarding, consideration should be made to our [self-neglect and hoarding strategy](#) and its procedures.

Due to the Covid-19 Pandemic, safe working procedures for visits have been put in place for the protection of staff and service users. Screening questions prior to any visit must be asked and recorded on Mosaic. Appropriate PPE must be used. (See links and Home Visit Practice Guidance). <https://www.hps.scot.nhs.uk>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/877599/T2\\_Recommended\\_PPE\\_for\\_primary\\_outpatient\\_and\\_community\\_care\\_by\\_setting\\_poster.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877599/T2_Recommended_PPE_for_primary_outpatient_and_community_care_by_setting_poster.pdf)

## Principles of the Legislation

The following principles and values must inform and guide any intervention under the Adult Support and Protection (Scotland) Act 2007 -

- The overarching principle of the guidelines is that the first priority is the safety and protection of adults at risk and that it is the responsibility of all staff to act on and report any suspicions or evidence of harm
- The adult should participate as fully as possible in any decision being made and must be provided with appropriate information and support to help that participation
- Any decision or course of action must have regard to the present and past wishes and feelings of the adult as far as they can be ascertained
- Any actions taken to fulfil the object of intervention must be the least restrictive to the adult's freedom

- Any actions taken must provide benefit to the adult which could not reasonably be provided without intervening in the adult's affairs
- The adult at risk must not, without justification, be treated any less favourably than any other adult in a comparative situation
- Regard must be given to the adult's abilities, background, and characteristics such as sex, age, race, or religion
- The views of the adult's nearest relative, carer or guardian, and any other person who has an interest in the adult's wellbeing or property, must be taken into account, if such views are relevant
- The principles provide a framework to - promote the wellbeing of adults at risk through the services provided
- work within the principles laid down by the Care Inspectorate namely those of dignity, privacy, choice, safety, realising potential, equality, and diversity
- work together within an interagency framework
- act in a way which supports the right to lead an independent life based on self-determination
- recognise that the right to self-determination can involve risk, and ensure that such risk is recognised by all and minimised as far as possible

## **Legislative Context**

The 2007 Act introduced measures to identify and to provide support and protection for 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.
- Places a duty on councils to have regard to the importance of the provision of Advocacy or other services, as appropriate to an adult at risk. 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, in Dumfries and Galloway this is delivered through the Public Protection Committee.

- A range of Protection Orders.

### **The Role of the Council Officer**

The 2007 Act defines a “Council Officer” as a person who is an employee of the Council and who is appointed by a Council under section 64 of the Local Government (Scotland) Act 1973. Within Dumfries and Galloway Council, Council Officers will be professionally qualified and registered social workers who have the knowledge, skills, and experience necessary to undertake the functions set out in the 2007 Act. A Council Officer will have at least 12 months experience and will undertake formal investigations and progress any application for protection measures as set out in the Act.

A Council Officer must have specific training for this role, which is provided by Dumfries and Galloway Council. This is available for Social Workers who are qualified for a year and will provide the training for the role and function of a Council Officer. Refresher training is also available for Council Officers. A Social Worker must have this training to undertake Council Officer functions.

In order to make inquiries, Council Officers may carry out visits, conduct interviews, and can request relevant records to be produced in respect of an adult at risk. They may undertake this activity along with an appropriate colleague or worker from a relevant agency.

### **The Importance of Advocacy**

The Council has a duty to have regard to the importance of the provision of appropriate services such as independent advocacy to the adult concerned which may assist a clearer understanding of the adult’s wishes and feelings, particularly in relation to the gathering of information at the Inquiry/ Investigation stage and to support at the Conference stage if required.

Advocacy services can also assist if there is a need for the services of a solicitor for the adult and that the adult has a difficulty in accessing local legal advice. The Law Commission in Scotland can be contacted to advise of the difficulty and if required, can identify a named solicitor/ legal firm to assist the adult.

### **Multi-Agency Working**

All partner agencies must ensure that the staff group has an awareness of adult protection issues and a working knowledge of the system of reporting requirements. Social Work Services, as the lead agency on behalf of Dumfries and Galloway Council will have overall responsibility for the co-ordination of Adult Protection Procedures and will be the central point for the receiving and logging of referrals.

All agencies working with adults must be mindful of the principles of benefit and the least restrictive option, seek to involve the adult in matters affecting him or her, including adult protection inquiries, taking into account any communication issues, of

the need to have support from relevant others and /or independent advocacy. The adult's views and wishes, both past and present and future must be acknowledged with due regard at all times.

### **Transition from Child Care to Adult Care**

The Dumfries and Galloway Child Protection Single and Multi-Agency Procedures offer staff a procedural framework within which to meet the needs of children, to be responsive and to involve children and their carers at all times in the process. The procedures allow for the exercise of professional judgement, to ensure that the protection and welfare of children is paramount.

The 2007 Act makes provision for adults aged 16 and over. Whenever a child aged 16 or over is subject to legislation under the Children (Scotland) Act 1995, then discussion between the relevant children and adult social work teams will identify the most appropriate service route.

### **Young People Aged 16 to 18**

For the purposes of transition, a child can be defined differently in different legal contexts -

- Section 93(2) (a) and (b) of the Children (Scotland) Act 1995 defines a child in relation to the powers and duties of the Local Authority. Young people between the age of sixteen and eighteen who are still subject to a Supervision Requirement by a Children's Hearing can be viewed as a child. Young people over the age of sixteen may still require intervention to protect them.
- The United Nations Convention on the Rights of the Child applies to anyone under the age of eighteen. However, Article 1 states that this is the case unless majority is attained earlier under the law applicable to the child.

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. The individual young person's circumstances and age will, by default, dictate what legal measures can be applied. For example, the Adult Support and Protection (Scotland) Act 2007 can be applied to a young person aged sixteen and over, where the criteria are met. Young people aged between sixteen and seventeen are potentially vulnerable in falling "between the gaps" and services must ensure that staff will offer ongoing support and protection as needed, via continuous single planning for the young person.

Where a young person between the age of sixteen and eighteen requires protection, services will need to consider which legislation, 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. Special 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.

If a child aged sixteen to eighteen is Looked After either on a Section 70 Supervision Order or under Section 25 of the Children (Scotland) Act 1995 planning should continue through the Looked After Child process, Leaving Care Services and Adult

Services should be involved where appropriate. In this case the lead would be Child Protection and the Child Protection process followed.

Where a child is subject to a Child in Need Plan before their sixteenth birthday and concerns about their safety increase following aged sixteen, consideration should be given to involving professionals who previously worked with the child, in this case any inquiry would be led by Adult Support and Protection.

Circumstances should be assessed on an individual basis between Children and Families, and Adult Care Managers.

For all children aged fifteen and a half and above, contact should be made between the Senior Social Workers who will have the responsibility to identify the appropriate member of the team to attend the Child Protection Planning Meetings and any subsequent Child Protection Conference. It is acknowledged that there will be overlap between Child and Adult Protection. Assessment and planning processes may need to be aligned and some investigations and assessments may be best undertaken jointly, for example when child and adult protection issues are identified within the same family.

## **Risk of Harm**

### **Adults at Risk**

Persons aged 16 or over who -

- are unable to safeguard their own wellbeing, 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 not so affected • All three of the elements of the definition must be met
- A person cannot be classed as an adult at risk simply by virtue of the fact that they meet one element of the definition. An example of this is that of a person who has a disability. It is not intended that the definition of an "adult at risk" is so wide that it covers a disproportionately large part of the population.

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 or neglect
- If a person is seen to be attempting or threatening suicide, their personal well-being and safety is paramount.



## Harm

This 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)
- or a change in behaviour which may indicate that the person is acting out of character and places themselves at risk by their own actions such as attempted suicide)
- unlawful conduct which appropriates or adversely affects property, rights, or interests (for example theft, fraud, embezzlement, or extortion)
- conduct which causes self-harm

Harm can take many forms. These forms, in practice, may not exist in isolation but may overlap.

Where harm results or there exists potential for harm an unequal power relationship may exist. Indication of harmful behaviour towards an adult at risk may include:

**Physical** – 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.

**Emotional/Psychological** – 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

**Financial or Material** – involving the exploitation of resources and belongings of the adult at risk e.g., theft or fraud, misuse of money, property, or resources.

**Sexual** – 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

**Neglect and acts of omission** – including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life such as nutrition, appropriate heating etc.



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

- Are children involved who could be at risk of harm? If so, referral should be made to Children and Families.
- Are there other adults involved who may be at risk? If so, their needs may need to be considered.
- Is medical intervention required?

**Random Violence** i.e., an attack by a stranger or strangers 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** – Domestic Violence can be defined as any form of physical, non-physical, or sexual abuse 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 and acts of harm in relation to adult protection is recognised. However, the key factor in relation to activating adult protection procedures in such situations is dependent on assessment of “adults at risk” as defined earlier.

**Trafficking** – the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation e.g., forced labour or prostitution.

**Prostitution** – engaging in sex acts for money or other payment (this may not be through choice).

Suspicious of acts of harm, resultant harm or neglect can come to light in a number of ways. The clearest indicator is a statement or comment by the adult themselves, by their regular carer or by others, disclosing or suggesting abuse or neglect. Such statements invariably warrant further action, whether they relate to a specific incident, and a pattern of events or a more general situation.

There are, of course, many other factors that may indicate abuse, harm, or neglect. These may include -

- Unusual, unexplained, or suspicious injury
- Dubious or inconsistent explanations or injuries or bruises
- History of unexplained falls or injuries
- Prolonged interval between illness/injury and presentation for medical care
- The adult found alone at home or in a care setting in a situation of serious but avoidable risk

- The adult lives with another member of the household who is known to the police, social work, or health agencies as likely to present a risk to the adult
- Signs of misuse of medication, non-administration, or over/under medicating
- Unexplained physical deterioration in the adult e.g., loss of weight
- Sudden increases in confusion e.g., dehydration, toxic confusion
- Demonstration of fear by the adult to another person within the home or if returning home
- Difficulty in interviewing the adult at risk of harm due to the insistence or presence of another
- Anxious or disturbed behaviour on the part of the adult
- Hostile or rejecting behaviour by the carer towards the adult
- Indicators of financial abuse e.g., unexplained debts, reduction in assets, unusual interest in adult by family members, pressure from others to admit adult into care, misappropriation of benefits, fraud, or intimidation in connection with wills or assets.

Adults may be at risk of harm from a wide range of people. Agencies not only have responsibility to all adults at risk of harm and subject to harm but also may have responsibility e.g., towards agencies or people with whom the perpetrator is employed or works as a volunteer. There is particular concern when abuse is perpetrated by someone in a position of power or trust who uses his or her position to the detriment of the health, safety, welfare, and general wellbeing of an adult at risk. The roles, powers, and duties of the various agencies in relation to the perpetrator will vary depending on whether the latter is –

- A member of staff or proprietor
- A member of a recognised professional group
- A volunteer
- Another person using the same service
- A spouse, relative or member of the adult's social network
- A formal or informal carer
- A neighbour, member of the public or stranger
- A person who deliberately targets vulnerable people to exploit them

Harm can occur in any context or setting, including –

- Where the adult lives alone or with a relative
- Within a residential or day care setting
- Hospital
- Custodial settings

- Support services into people's homes

Assessment of the environment or context is vital because exploitation, deception, misuse of authority or coercion may render the adult unable to make his or her own decisions or disclosing abuse even though they are deemed to have "capacity" or have not been assessed as lacking capacity.

Harm within institutional settings may feature one or more of the following -

- Poor care standards, lack of positive responses to complex needs, rigid routines, inadequate staffing, and insufficient knowledge base within the service
- Unacceptable "treatments" or programmes which include sanctions or punishment such as withholding food or drink, seclusion, unauthorised use of control and restraint, and overmedication
- Failure of agencies to ensure that staff receive appropriate guidance on anti-discriminatory practice
- Failure to access key services such as health care, dentistry, prostheses

### **Does the Adult Need to Consent to the Referral?**

If possible, the referral should be discussed with the adult at risk to advise of their view of the situation. It is preferable that the adult consents to further action being taken but even without the adult's consent public bodies have a duty to report under the 2007 Act. Voluntary and private sector agencies are expected to report actual or suspected harm to an adult at risk.

### **What is an Inquiry?**

An Adult Support and Protection Inquiry is the term applied to that phase of the adult support and protection process undertaken when the Council's Duty to Inquire further information is required to be gathered in respect of establishing an adult's welfare and circumstances. It may involve contact with other agencies and initial contact with the adult in question. An inquiry may determine that an adult is or is not at risk of harm or whether further actions are required to establish this.

### **Interviews**

**Introduction** - Show identification for Council Officer and Second Worker. Explain the purpose of the visit (be very clear that the interview is being requested as a result of Adult Support and Protection Concerns having been raised). Explain that the adult has the right to withhold consent to the interview, can choose to answer some but not all questions and can choose not to co-operate with entire investigative process if they so wish – but point out that it would be very helpful to be able to record their views in relation to the concerns that have been raised. Explain the reason for writing notes of the interview. How all this is conducted will have an impact on whether interview continues.

**Free Narrative** – Always use open questions e.g., *‘Do you know why we have come today?’ ‘What’s it like living here?’ ‘Tell me about your family’*. Try not to interrupt, tolerate long pauses. Encourage with open prompts such as ‘then what’ and ‘anything else?’ Reflect in the words of the adult ‘so you were saying...’

Questions - As per your council officers training, Again, open questions – *‘What...’ ‘Who...’ ‘When....’ ‘Where...’ ‘You said earlier..... tell me a bit more about that’*.

**Closure** – Try to summarise as closely as possible what was said by the adult. Check the accuracy of what you have said. Explain to the adult and any support people in place what happens next based on what has been discussed, give contact details, and try to re-establish a neutral ending. There are ‘easy-reads’ on the [PPP DG website](#) and a leaflet to leave with the adult, explaining ASP processes and providing a space for you to give your contact details and for the adult to write down any questions they might have after you have left. These leaflets can be obtained from the Senior Officer for Adult Support and Protection.

**Recording of Interview** – Whilst the interview notes do not need to be entirely ‘verbatim’ it is important to capture the words of the adult where possible and in relation to specific key points within the interview. The handwritten notes should be fully legible, and these require to be signed and dated by the two workers and retained in the adults file – in case they are required.

- Section 5 of the Act states that the Mental Welfare Commission for Scotland, the Care Commission, the Public Guardian, all Councils, the Police, and the relevant Health Board all have a duty to co-operate with a council making inquiries, and with each other where such co-operation is likely to enable or assist the council making those inquiries.

- Section 10 of the Act states that a Council Officer may require any person holding health, financial or other records (in any format) relating to an individual whose safety is deemed to be at risk, to give records or copies of them to the officer. This means that all relevant information can be gathered from partner agencies and public bodies via adherence to authorisation protocols. Requests for information, if not required immediately, should be made in writing, either by letter or email. It should be noted that health records can only be inspected by a health professional, but relevant information must be passed to Council Officer. If such requests are being made, advice should be taken from staff in Legal Services.

- Under Section 49 of the ASP Act, 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 justifiable reason not to do.

## Legal Requirements for Orders

To meet the legal test, there must be enough detail in the court application and that detail must come from the case notes and the caseworker.

**Banning Orders** - details of the Adult's and the Defender's background must be given, as well as a detailed plan of the exclusion area. This is particularly important as there will be a power of arrest attached to the Order. Given the criminal consequences of breaching the Order, the plan attached to the Order must be accurate so that the police are in no doubt as to the extent of the Order. Each of the reported incidents must be recorded in enough detail so that the sheriff can be satisfied that Adult is being seriously harmed by the Defender.

It is possible for the Sheriff to override lack of consent, where an adult is deemed to have capacity, if evidence is brought forward that the adult is at risk of 'serious harm' and that all voluntary avenues of intervention have been attempted without success, and there is evidence of undue pressure.

The issue of undue influence and/or intimidation by a person in the trust of the adult is central to shifting our assessment of 'harm' to 'serious harm'. If Protection Orders are being considered a solicitor from the council's Legal Services must be informed and actively involved in the process via attendance at an ASP Case Conference. If Protection Orders are not being applied for on an emergency basis, the need for application to the Sheriff should be evidenced and minuted within the multi- agency ASP Case Conference. Please note that the [Assessment Order](#), [Removal Order](#) and [Protection Order](#) do not have the power of detention.

## ADDITIONAL INFORMATION

### Legal Context

Human Rights Act 1998 [click here](#)

Social Work (Scotland) Act 1968 [click here](#) Chronically Sick and Disabled Persons Act 1970

Local Government (Scotland) Act 1973 [click here](#)

Housing (Scotland) Act 1987

Data Protection Act.1998 [click here](#)

Adults with Incapacity (Scotland) Act 2000 [click here](#) Race Relations (Amendment) Act 2000 [click here](#)

Regulation of Care (Scotland) Act 2001 [click here](#)

Mental Health (Care and Treatment) (Scotland) Act 2003 [click here](#)

Vulnerable Witnesses (Scotland) Act 2004 [click here](#)

Adult Support and Protection (Scotland) Act 2007 [click here](#)

Protection of Vulnerable Groups Act 2007 [click here](#)

Code of Practice ASP 2007 [click here](#)

Sexual Offences Act 2009 [click here](#)

Offences (Aggravation by Prejudice) (Scotland) Act 2009 [click here](#)

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011 [click here](#)

Social Care (Self Directed Support) (Scotland) Act 2013 [click here](#)

Carers (Scotland) Act 2016 [click here](#)

## **Framework for Legislative Intervention**

Social Work (Scotland) Act 1968 (as amended by the NHS and Community Care Act 1990) Under this Act social work authorities must provide advice, guidance, and assistance to people who are in need of care and attention arising out of infirmity or age and those suffering from illness or mental disorder. The Act identifies a general duty to assess needs in relation to the provision of community care services. This Act is further amended by the Carers (Recognition and Services) Act 1995 to address assessment of carers needs.

As the ASP(S) Act (Part 1) determines that intervention should take place only where the benefit to the adult could not otherwise have been provided and that the intervention should be the least restrictive consistent with achieving the object of intervention, 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.

## **Support for Unpaid Carers**

It may be that adult's carer requires support to enable them to continue to support the adult. The Community Care and Health (Scotland) Act 2002 amends the Social Work (Scotland) Act 1968 to give carers a right to have their carer needs assessed by the council. The Carers (Scotland) Act 2016 gives carers the right to an adult carer plan or young carer statement. 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.

## **Adults with Incapacity (Scotland) Act 2000**

This Act introduced a more flexible system of providing protection for the individual and their assets. The Act does not simply address the needs of people who are incapax but is concerned with incapable adults who are defined as being 'incapable of making decisions, communicating decisions, understanding decisions, or retaining the memory of decisions, by reason of mental disorder (mental illness/ learning disability/personality disorder) or physical disability', in relation to their welfare, property, or financial affairs.

An adult will not fall within this definition if their inability to communicate or understand communication can be made good by human or mechanical aid.

Any party with an interest in the welfare of an individual can make an application to the Court for an order to maximise the interests and protect the wellbeing of the



individual. An order must endeavour to provide for the ‘minimum intervention necessary’ as the purpose of the Act is not only to protect the individual but also to allow them as much autonomy in their lives as possible. Powers contained within the Act include the following -

### **Continuing and Welfare Power of Attorney**

- Where a person may appoint an attorney with powers over property and financial affairs or continuing on incapacity and/or an attorney with powers over personal welfare exercised only on the adult’s loss of capacity
- Can deal with an individual’s financial affairs and/or make decisions about their care needs and requirements
- Powers of Attorney have to be granted while an individual is ‘capable’ and the powers become active once the person becomes incapable – applications therefore need to be made to the Office of Public Guardian (OPG) in advance of any deterioration in capacity

Access to Funds (Part 3) – where a person or an organisation including a local authority may apply to the Public Guardian for authority to withdraw funds from the account of the adult to provide day-to-day care

- Authority is given by application to the OPG for the applicant to access the incapable adult’s funds for the purpose of meeting daily living expenses (application can be made by an individual or organisation. The Council can do so where no other person or organisation is willing or able to do so)
- A medical report certifying incapacity is needed.

Management of Residents Finances (Part 4) – where authorised establishments (care homes and hospitals) may manage the funds of resident adults up to a prescribed limit

- The manager of a registered care home may apply to the Care Commission to manage a resident’s finances providing the adult’s capital does not exceed £10,000

Medical Treatment & Research (Part 5) – where medical practitioners are given a general authority to treat adults where there is a certificate of incapacity in relation to specific treatments or a medical treatment plan. In addition, certain other health care practitioners, if accredited, have authority to provide treatments they are qualified to administer

- S47 of the Act allows for a medical practitioner primarily responsible for the medical treatment to do what is reasonable in the circumstances, to safeguard or promote the physical or mental health of the adult. This does not include placing an adult in hospital for the treatment of a mental disorder against their will.

Intervention Orders & Guardianship (Part 6) – where it is possible to apply to a Sheriff for an intervention order to deal with defined “one off” financial, property or welfare matters or to make application for a guardianship order which can include powers of over property, financial affairs or personal welfare or a combination of these.

## Intervention and Guardianship Orders

- An intervention order is a one-off order to deal with a specific financial or welfare matter. Application is made to the Court by anyone with an interest in the affairs of the incapable adult.
- The Council has a duty to apply for an order where it is necessary to protect the property, financial interests or personal welfare of the adult and the order is not being sought by others
- A Guardianship Order may be suitable where there is a need for ongoing intervention or where there are several issues to deal with
- The application requires two medical reports and a social work report regarding the welfare of the incapable adult
- The Council has a responsibility under S10 of the Act to 'Investigate the circumstances of any individual who appears to lack capacity and is at risk'

Statutory bodies with responsibilities under the Act include -

**Sheriff** - where the Sheriff Court is the main forum for proceedings in relation to application for powers under Part 6 of the Act.

**The Office of Public Guardian (PG)** – can request powers of attorney, intervention orders and guardianship orders and allows access to funds under Part 3. It has a duty to supervise functions in relation to property and financial affairs and a duty to investigate -

- complaints about the actions of those appointed under the AWI Act concerning financial issues (financial attorneys, Access to Funds Withdrawers, financial guardians or interveners) and also
- any concern raised where there appears to be a risk to an adult's property or financial affairs (i.e., there is no AWI appointment, but funds do not appear to be managed for the benefit of the adult)
- PG can only intervene when an adult is deemed by a medical professional to lack capacity to safeguard their own property or financial affairs

**The Mental Welfare Commission** – who retain a general oversight of an adult whose incapacity is due to mental disorder and also have investigatory powers in relation to those exercising welfare powers.

**Health Boards** – In relation to management of resident's finances and medical treatment as indicated previously and also in relation to a duty to co-operate with other statutory bodies e.g., local authorities in the discharge of their functions under the Act.

**Local Authorities** – whose functions can be summarised as –

- provision of information and advice.
- supervision of guardians and attorneys (for attorneys where directed by the Sheriff).
- investigation where the welfare of an adult is seen to be at risk.



- investigation of complaints in relation to those exercising welfare powers.
- consultation with the Public Guardian and Mental Welfare Commission
- application for Intervention Orders and Guardianship Orders when no one else is doing so
- to act as welfare guardian when no one else is doing so
- to recall personal welfare powers of a guardian
- to arrange for transfer of guardianship orders

### **Role of Council Officer**

The Council Officer will be required to visit the place of residence or other location to investigate whether any action is required to protect an adult at risk of harm.

The objective is to establish the most positive environment possible towards allowing full assessment of the adult's circumstances, needs and whether intervention or further action is necessary.

The purpose of the visit and interview is to obtain information about the source, nature, and level of any risk to the adult, to ascertain whether there are capacity issues, and to establish whether or not further action is needed to protect the adult.

The Council Officer is permitted to enter any place where the adult normally resides, e.g.

- the adults home
- 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 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

Access is also allowed to any adjacent places such as sheds, garages, and outbuildings.

These actions will be in line with principles of the 2007 Act, demonstrating consideration of the adult's wishes and adult and any person with an interest in the adult's well-being or property full inclusion in the process.

- When a visit is made during an investigation, the adult's consent to be interviewed must be sought, taking into account capacity and promoting the adult's participation as much as possible
- The adult must be informed before the interview begins that they can choose whether or not to answer any question put to them
- Involve the adult considered to be at risk as fully as possible within the investigative process, which may require use of independent advocacy, appropriate adult scheme, translation, speech therapy or sensory impairment services
- Establish with the adult whether they wish any professional intervention to take place
- The views of the adult regarding their safety and what action if any they would want should be sought
- The adult must be seen and spoken to in private, with appropriate support, where there is concern
- The adult's living arrangements must be seen
- Review the adult's situation in respect of current protective legislative powers in force such as AWI and/or MH Act as there are provisions in the Mental Health (Care and Treatment)

(Scotland) Act, in respect of inquiries regarding an adult who has a mental disorder, where an

MHO can apply to a sheriff or justice of the peace for a warrant for access to the adult

- Identify on assessment any significant risk factors or concerns arising from the adult's circumstances
- Consideration should be given as to who else may need to be interviewed in order to gain a greater understanding of the facts
- Establish where possible the views of nearest relative, family, carers, agencies and any other persons with an interest in the well-being or property of the adult considered to be at risk
- Ensure where possible, that appropriate action is taken in respect of alleged harm. If it becomes apparent during the investigation that a criminal offence has been committed, then the police must be contacted in order for them to gather and preserve evidence
- Determine whether the likely harm or the potential for harm is of serious concern and determine what protective action or other action is needed for the adult or any other in the circumstances.

## **Community Care and Health (Scotland) Act 2002**

This gives eligible carers the right to have an assessment of their needs and ability to care.

## **Human Rights Act**

In this Act the 'Convention Rights' are described and set out in the articles and examples include – right to life, right to privacy, prohibition of degrading treatment, freedom from discrimination, right to a fair trial. These are basic human rights, but they are limited by various exclusions - not all the rights are absolute.

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

This Act came into effect in October 2005. The Act affects people with a mental disorder, and this covers mental illness, personality disorder and learning disability. The Act is based on a set of guiding principles, and this includes for example that individuals should be provided with any necessary care, treatment, and support in the least restrictive manner and that they should be as fully involved in the process as possible.

The Act places a number of duties on local authorities in relation to the provision of services. Again, in summary these include -

- provision of care and support services designed to promote wellbeing, social development, and social inclusion. There is a reciprocal duty on health boards to co-operate with their local authority partners in the discharge of these functions
- appointment of Mental Health Officers (MHO) who like approved medical practitioners (AMP's) have specifically designated functions under the Act in relation to compulsory powers, care planning and on-going care management
- a duty on Councils under Section 33 to make inquiries where a person over the age of 16 with a mental disorder living in the community appears to be, subject to ill treatment or neglect, suffering from loss or damage to property, unable to look after them or their property, or the safety of some other person is at risk. An MHO may apply for a warrant to a Sheriff or Justice of the Peace where access to the subject of the inquiry is thwarted
- assessment of needs for community care services

- secure the availability of independent advocacy services in conjunction with health boards
- requirement to ensure all reasonable steps are made to reduce any adverse effects on child/parent relationships arising from actual measures taken under the Act
- collation of data for research purposes

The Act places a number of duties on health boards in relation to services to people with mental disorder, including services for mentally disordered offenders. These can be summarised as follows -

- co-operation with the Mental Welfare Commission in the discharge of functions under the Act
- provision of AMHP's (Approved Mental Health Professionals) who have specific duties under the Act, in relations to measures of compulsion, care planning, review and care management
- provision of services and accommodation for patients under 18
- provision of services and accommodation for mothers with post-natal depression
- co-operation with local authorities in the discharge of functions
- provision of independent advocacy services in partnership with local authorities
- provision of information to patients and assistance in relation to communication difficulties
- collation of data for research purposes

The Act contains a number of powers relating to the need for compulsory treatment. There are three principal civil orders under the Act. These are -

- an emergency detention certificate, which grants an authority to detain a person in hospital for a period of 72 hours
- a short-term detention certificate which grants authority to detain a person in hospital for 28 days
- a compulsory treatment order, which grants authority to exercise a range of compulsory powers over a person either in hospital or in the community for a period of 6 months. This period can be extended by 6 months, then by periods of 12 months thereafter
- Nurses Holding Power – if a patient in hospital needs to be held for up to 2 hours to allow for a medical assessment
- Place of Safety – If someone in a public place appears to have a mental disorder and be in need of care and treatment then the police can take the person to a place of safety for a period of up to 24 hours to allow an assessment to be carried out

In relation to compulsory powers the Act has established a new independent judicial body, The Mental Health Tribunal for Scotland. The Tribunal is the body that makes decisions on a wide range of issues in regard to the care and treatment of patients subject to the Act such as a) application for compulsory powers b) appeals and c) reviews.

The Mental Health Act also amends the Criminal Procedure (Scotland) Act 1995, which introduces a range of disposals available to the criminal justice system in relation to the care and treatment of mentally disordered offenders.

### **Adult Support & Protection (Scotland) Act 2007**

There are various duties and functions that fall to local authorities under the Act. The Code of Practice and the Act provide full information but, in summary, these are:

- a duty to inquire about an adult's wellbeing, property, or financial affairs where an individual falls within the definition of adults at risk of harm and the Council believes it may have to intervene to protect the individual from harm
- the Act establishes the role of Council Officer to carry out certain functions under the Act

- to carry out investigations as appropriate for the purposes of inquiry into the circumstances of the adult in order to protect them from harm
- the power to apply to the Sheriff for an Assessment Order which authorises the Council to take the adult from a place being visited under the duty to inquire to allow a) the interview to be conducted in private and b) a private medical examination by a health professional nominated by the council. An assessment order does not contain powers of detention
- the Council can make application to the Sheriff for a Removal Order, which would allow the removal of an adult at risk to another place for the purposes of investigation. A removal order can be effected within 72 hours of being granted and can last for a maximum of 7 days. A removal order does not contain powers of detention
- application can also be made by the council to the Sheriff for a Banning Order on such person or persons considered to be placing or likely to place an adult at risk of serious harm. Various conditions can be placed on banning orders by the Sheriff including the length of time of the order (up to 6 months) and the power of arrest

The ASP(S) Act also establishes the requirement for all relevant bodies (Local Authorities, The Mental Welfare Commission, The Office of the Public Guardian, The Care Commission, the relevant police authority and the relevant NHS Board) to co-operate in the provision of information and support to an adult at risk in participation of any proceedings under the legislation.

When making inquiries, the Council must have regard to the provision of appropriate services to the adult, particularly including independent advocacy.

In addition to the duties and powers specified above the ASP(S) Act also places an obligation on local authorities to establish an Adult Protection Committee with the following functions -

- review of practice and procedures relating to safeguarding adults at risk
- provision of information and advice
- to encourage and assist in improving the skills and knowledge of officers and employees of such public bodies having responsibilities under the Act

- any other function as specified by Scottish Ministers

The Convenor of the Committee must not be a member or officer of the Council and membership would include -

- The Council
- The Care Commission
- The relevant Health Board
- The Chief Constable of the police force of the Council's area.
- Any other relevant public body as specified by Scottish Ministers.

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

The Act takes forward the principal recommendations of the Bichard Inquiry Report which called for a registration system for all those who work with children and protected adults. The Act introduces a strengthened vetting and barring scheme for people who work with vulnerable groups. It will create a list of those barred from working with protected adults. Secondary legislation to support implementation is being developed.

The Act builds on and replaces the Protection of Children (Scotland) Act 2003 which created a Disqualifier from Working with Children List. The Act creates two lists: an extended Children's List and a new Disqualifier from Working with Adults List. A Child is defined as a person under the age of 18. A protected adult means any individual aged 16 or over receiving a range of social and health care services (section 94 of the Act details).

Employers will be able to refer people for consideration of listing where they have -

- harmed a child or protected adult
- placed a child or protected adult at risk of harm
- engaged in inappropriate conduct involving pornography
- engaged in inappropriate conduct of a sexual nature involving a child or protected adult
- given inappropriate medical treatment to a child or protected adult
- been dismissed or transferred or would have or might have been dismissed or transferred if they had not resigned due to disciplinary action

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

It established a system of care regulations. Its purpose is to provide greater protection for people in need of care services. The Care Commission are required by the Act to regulate certain care services. The Commission registers and inspects services against a set of national care standards.

**Vulnerable Witnesses (Scotland) Act 2004**

The Act aims to provide support and protection for child and adult vulnerable witnesses when they are giving evidence. The provision of special measures in court has the object of ensuring that they are able to give effective evidence in court proceedings.

A vulnerable witness is anyone where there is significant risk that the quality of their evidence may be diminished by reason of fear or distress in connection with giving evidence at trial. Special measures provided by the Act include –

- live television link
- use of a screen so that the witness cannot be seen by the alleged perpetrator
- use of a supporter
- use of prior statements
- taking of evidence by a commissioner

**Appropriate Adult Scheme**

The Scheme involves people with experience in communication with mentally disordered individuals and persons with acquired brain injury to act as a facilitator during any stage of police procedures to try and ensure that understanding takes place and that where the person themselves is suspected or accused of an offence that they are not disadvantaged by their mental disorder and understand their rights.

The appropriate adult is independent of the police. The responsibility for identifying when an appropriate adult is required rests with the officer who is dealing with the case. Access to an appropriate adult in office hours is via the duty system in the area offices and by contacting the West of Scotland Standby Service for out of hours.



## CONTACT DETAILS

### ADVOCACY CONTACT DETAILS

#### **Dumfries & Galloway Advocacy Service**

9 Church Crescent

Dumfries

DG1 1DF

01387 247 237

[www.dgadvocacy.co.uk](http://www.dgadvocacy.co.uk)

#### **Hear 4 U**

Children & Young Person's Advocacy Barnardo's Scotland

7 George Street Meuse

Dumfries DG1 1HH

Telephone – 01387264733

#### **Who Cares? Scotland**

5 Oswald Street

Glasgow G1 4QR

Telephone – 0141 226 4441

Email – [cssmith@whocaresscotland.org](mailto:cssmith@whocaresscotland.org)

Web – [www.whocarescotland.org](http://www.whocarescotland.org)

#### **Dumfries & Galloway Carers Centre**

2-6 Nith Street

Dumfries

01387 248600

[info@dgalcarers.org](mailto:info@dgalcarers.org)

#### **The Scottish Independent Advocacy Alliance (SIAA)**

Melrose House

69A George Street

Edinburgh EH2 2JG

Telephone – 0131 260 5380

Email

– enquiry@siaa.org.uk

Web – www.siaa.org.uk

## **HOUSING ASSOCIATION CONTACT DETAILS**

### **Abbeyfield Scotland Ltd**

Tel: 0131 225 7801

### **Cairn Housing Association Ltd**

Tel: 0131 556 4415

### **Dumfries and Galloway Housing Partnership**

Tel: 0800 011 3447

### **Hanover (Scotland) Housing Association Ltd**

Tel: 0141 553 6300

### **Home in Scotland Ltd**

Tel: 01387 255133

### **Irvine Housing Association Ltd**

Tel: 01387 270200

### **Key Housing**

Tel: 0141 342 1890

### **Loreburn Housing Association Ltd**

Tel: 01387 321300

### **Blackwood**

Tel: 0131 317 7227

## **Trust Housing Association Ltd**

Tel: 0141 227 1994

JUSTICE OF THE PEACE – contact Legal Services and they will advise.

Application for any of the Protection Orders or Warrants will be the responsibility of legal services. The worker will be guided by the Council's solicitors in this process.

## **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.

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

**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 (Section 53):** The Scottish Commission for the Regulation of Care (now replaced by the Care Inspectorate as of April 2011)

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

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

**Co-ordinating 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.

**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 where the person is currently located.

**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).

**Curator ad litem:** Person appointed by the sheriff to protect the interests of the person who is the subject of proceedings relating to an application.

**Disapply/Disapplication (Section 41):** To dispense with.

**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.

**Nearest relative:** Section 254 of the Mental Health (Care and Treatment) (Scotland) Act 2003, as applied by Section 53 of the Act, sets out a list of the people who will be considered in identifying a person's nearest relative.

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

**Primary carer (Section 53):** A primary carer is the individual who provides all or most of the care and support for the person concerned. This could be a relative or friend but does not include any person paid to care for the person. Section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003, as applied by Section 53 of the Act, defines primary carer.

**Proxy:** A continuing or welfare attorney, or a guardian under the Adults with Incapacity (Scotland) Act 2000. More commonly known as a proxy. Can have a combination of powers – welfare, property and/or finance.

**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 (Sections 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.

**Safeguarder (Section 41(6)):** Person appointed by the sheriff to safeguard the interests of the person who is the subject of proceedings relating to an application.

**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.