

# Protecting and Supporting Adults At Risk In Tayside

## Multi Agency Adult Support and Protection Protocol

Final Draft November 2010

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## Foreword

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

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

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

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

It provides a framework which will:

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

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

It has been developed through a consultation process within Tayside and will continue to be reviewed to ensure that it remains relevant in promoting effective multi-agency working.

## **Multi-Agency Protocol**

### **Introduction**

Most adults and older people with mental illness, physical or learning disabilities or other special needs manage to live their lives comfortably and securely either independently or with assistance from caring relatives, friends, neighbours, professionals or volunteers. However, for a small number, dependence on someone may lead to harm, exploitation, conflict, mistreatment or neglect.

Harm presents a challenge to all agencies concerned with the support and protection of adults at risk. Effective joint working is essential if the welfare of an adult at risk is to be protected.

Safeguarding adults at risk is a high priority for all agencies in Tayside. The key to ensuring individuals who may be at risk are appropriately supported and protected lies with the empowerment of the individual and their carers. The introduction and implementation of Adult Support and Protection legislation, sound recruitment practices and the provision of appropriate training are also important factors in supporting and protecting adults at risk.

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

The guidance will also be supported by joint training which will help develop understanding and respect for individual professional roles, increase awareness of adult protection issues and contribute to effective intervention.

### **Principles of Practice**

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

- actively work within the principles defined in the Adult Support and Protection (Scotland) Act 2007 and the national care standards: dignity, privacy, choice, safety, realising potential, equality and diversity;
- actively work together within an inter-agency framework;
- actively promote the empowerment and well-being of adults at risk through the services they provide;
- act in a way which supports the rights of the individual to lead an independent life based on self-determination;
- recognise people who are unable to take their own decision and/or to protect themselves and their assets;

- recognise that the right to self-determination can involve risk and ensure that such risk is recognised and understood by all concerned, and minimised whenever possible;
- ensure the safety of adults at risk by integrating strategies, policies and services relevant to harm within the legislative framework, which includes:
  - The NHS and Community Care Act 1990
  - The Regulation of Care (Scotland) Act 2001 and introduction of care standards
  - The Human Rights Act 1998
  - The Adults with Incapacity (Scotland) Act 2000
  - The Mental Health Care and Treatment (Scotland) Act 2003
  - The Data Protection (Scotland) Act 1998
  - The Vulnerable Witnesses(s) Act 2004
  - The Protection of Vulnerable Group(s) Act 2007
  - The Public Interest Disclosure Act 1998
  - The Sexual Offences (Scotland) Act 2009
- ensure that, wherever possible, adults at risk are protected from criminal acts;
- ensure that when the right to an independent lifestyle and choice is at risk the individual concerned receives appropriate help, including advice, protection and support from relevant agencies (eg independent advocacy);
- ensure that the law and statutory requirements are known and used appropriately so that adults at risk receive the protection of the law and access to the judicial process.

## **Legislative Background**

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

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

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

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

The Protection of Vulnerable Groups (Scotland) Act 2007 introduces a new membership scheme replacing and improving upon disclosure arrangements for people working with vulnerable groups.

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

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

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

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

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

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

The principles underpinning the Act mean that:

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

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

## Definitions

### (a) Who is an Adult at Risk?

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

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

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

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

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

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

### (b) What is harm?

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

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

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

### (c) Types of Harm

The following are the main types of harm:

1. Physical Harm - actual or attempted physical injury inflicted non-accidentally to an adult at risk (including spitting, hitting, slapping, pushing, kicking), misuse of medication or drugs (including depriving someone of prescribed or non-prescribed drugs, or giving the person dangerously large amounts of drugs and/or alcohol) and inappropriate restraint or sanctions.
2. Sexual Harm - including inappropriate intimate contact, rape, sexual assault, sexual acts or human trafficking to which the adult at risk has not consented, could not consent or was pressured into consenting. It should be noted that it is a

criminal offence<sup>1</sup> for someone to have sexual relations with an adult in their care who suffers from mental disorder.

3. Psychological Harm - including emotional harm, threats of abandonment or harm, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks.
4. Financial or Material Harm - including theft, fraud, exploitation, scams, pressure in connection with wills, property, inheritance, financial transactions, or the misuse or misappropriation of property, possessions or benefits.
5. Neglect and Acts of Omission - including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, failure to share appropriate information, the withholding of the necessities of life, such as medication, adequate nutrition and heating.
6. Discriminatory Harm - actions, omissions and/or remarks of a prejudicial nature focusing on a person's age, gender, disability, race, colour, sexual or religious orientation.
7. Human Rights Abuse
  - including right to liberty and security (Article 5);
  - right to a fair hearing (Article 6);
  - right to respect for private and family life (Article 8);
  - freedom of thought, conscience and religion (Article 9);
  - freedom of expression (Article 10);
  - right to marry (Article 12)
  - prohibition of discrimination (Article 14);
  - prohibition of abuse of rights (Article 17) and
  - protection of property (Article 1 of the first protocol).
8. Institutional Harm - repeated instances of poor care or unsatisfactory professional practice.

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

#### (d) Who is a Carer?

A formal carer or care worker is contracted to work by an employer and includes:

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

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

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

(e) Who is a Council Officer?

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

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

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

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

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

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

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

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

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

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

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

What is done as a result of a suspicion or allegation of harm, mistreatment or neglect will be partly determined by the environment or the context in which the harm, mistreatment or neglect has occurred, is thought to have occurred or is likely to occur. Assessment of the environment, or context, is relevant because exploitation, deception, misuse of authority, intimidation or coercion may render an adult at risk incapable of making his or her own decisions. It may, therefore, be important for adults at risk to be removed from the influence of the harmful or neglectful person, or setting, in order to be able to make a free choice about how to proceed. An initial rejection of help should not always be taken at face value.

Further information on where harm may occur is provided in Appendix 2 - Harm in Various Settings.

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

Patterns of harm, mistreatment or neglect vary and include:

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

## Signs of Potential Harm, Mistreatment or Neglect

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

These may include:

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

## Dilemmas in Adult Support and Protection

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

### (a) Duty to Report

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

### (b) Rights and Self Determination

There is a tendency for society to believe that adults at risk need to be protected and that their right to choose is secondary to this. Adults are individuals in their own right and, if they are able, must be allowed to exercise these rights even if that means they choose to remain in a situation which other people consider to be inappropriate or harmful. Every effort should be made to inform the adults at risk of the consequences of the choice he/she may be making. Where appropriate, use should be made of the local appropriate adult scheme, an independent advocate, communication aids or interpretation services. Further information on the appropriate adult scheme is provided in Appendix 3 - Appropriate Adults Tayside Service.

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

Further information on the issues of rights and self-determination is provided in Appendix 4 - Capacity and Consent. Reference should also be made to the Mental Welfare for Scotland's Guidance for professionals and carers when considering the rights and risks in sexual relations involving people with a mental disorder. ('Consenting adults' - MWC July 2010)

### (c) Managing Risk

Concern over risk taking can stifle and constrain providers of care leading to an inappropriate restriction of the individual's rights. There is a challenge for people working in all care settings to define a way forward where they are able to take calculated acceptable risks and to allow risks to be taken. Further information on assessment, risk assessment and risk management are contained in Appendices 5a (Assessment, Risk Assessment and Risk Management) and 5b (Risk Assessment and Protection Plan).

### (d) Consent/Confidentiality/Disclosure

All professionals who have contact with adults at risk have a responsibility to refer concerns/anxieties/disclosures to the appropriate agency. However, it should be

recognised that, at times, this may pose a dilemma for staff who may feel that by so doing this could alienate the individual and/or the family and the potential for preventative work. To do nothing or to promise confidentiality and then report the concern is not acceptable. The recommended procedure is to openly and honestly discuss with the individual and/or family the intention to report the information given and to advise them of the possible consequences.

(e) Whistle Blowing

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

(f) Challenging Behaviour/Use of Restraint Techniques

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

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

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

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

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

(g) Allegations of Harm Against Staff Members

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

an organisation's own Human Resources section or equivalent, it is advisable to make contact with the relevant local authority's Human Resources/Personnel Section.

#### (h) Domestic Abuse

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

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

In determining what degree of harm treatment or neglect justifies intervention, The Law Commission suggests that:

“ ‘harm’ should be taken to include not only ill treatment (including sexual harm and forms of ill treatment which are not physical) but also the impairment of, or an avoidable deterioration in, physical or mental health; and the impairment of physical, intellectual, emotional, social or behavioural development”

The seriousness or extent of harm is often not clear when anxiety is first expressed. It is important, therefore, when considering the appropriateness of intervention, to approach reports of incidents or allegations with an open mind.

In making any assessment of seriousness the following factors need to be considered:

- the vulnerability of the individual;
- the nature and extent of the harm;
- the length of time it has been occurring;
- the impact on the individual; and
- the risk of repeated or increasingly serious acts involving this or other vulnerable adults.

Further information on assessment, risk assessment and risk management are contained in Appendices 5a (Assessment, Risk Assessment and Risk Management) and 5b (Risk Assessment and Protection Plan).

## Information Sharing and Confidentiality

All professionals and agencies offering support or services to adults at risk are required to keep confidential information given to them in the course of their work. All professionals and agencies should keep clear, legible and up to date records of:

- contact with the adult at risk, and his/her family/ carer(s);
- information held and consents on information sharing;
- assessment and care planning, including adult protection plans, and any changes as a result of reviews of these;
- contact with other agencies, including the date and content of information shared or discussions held; and
- details of the person making the record with dates of recordings.

Disclosure of personal information is governed by the Data Protection (Scotland) Act 1998 and its accompanying guidance.

Personal data covers both facts and opinions about a living individual, which might identify that person. The provisions of the Act ensure that personal information held about any individual cannot be used for purposes other than for which it was originally supplied without the individual's consent. This prevents unauthorised disclosure of a wide range of information.

There are several important exceptions to this set out in the Act and related guidance. These enable data to be disclosed to safeguard national security, to prevent or assist in the detection of a crime or to protect the vital interests of the person. This means that information given to professionals by their patient, client, or service user should not be shared with others without the person's permission unless the safety of the person or other people may otherwise be put at risk.

All agencies working with adults at risk should have in place an information sharing policy which makes clear how issues of confidentiality are to be managed.

All agencies working with adults at risk must ensure that clients/patients/service users are:

- informed of information sharing policies;
- asked what information they are willing to have shared freely;
- advised of the circumstances in which information will be shared without their consent, if necessary (where there is risk of death, serious harm or neglect)

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

- what kind of information they need;
- why they need it;
- what they will do with the information; and
- who else may need to be informed, if concerns about an adult at risk persist. If a professional or agency is asked to provide information they should never refuse solely on the basis that all the information held by the agency is confidential.

When determining whether to share information they should consider:

- whether there is any perceived risk to an adult at risk which would warrant breaking confidentiality;
- what information the service user has already given permission to share with other professionals;
- whether they have relevant information to contribute - that is information which has, or may have, a bearing on the issue of risk to an adult at risk or others which

- would enable another professional to offer appropriate help, assist access to other services, or take other action necessary to reduce the risk to the adult at risk
- whether that information is confidential, already in the public domain or could be better provided by another professional or agency, or the adult at risk directly;
  - how much information needs to be shared to reduce the risk to the adult at risk; and
  - whether disclosure would be in accordance with the Data Protection (Scotland) Act 1998.

Public bodies have a duty to co-operate under Section 5 of the Adult Support and Protection (Scotland) Act 2007, including the sharing of information. The Act allows for information sharing when there is a perceived risk of harm to adults at risk. When concerns about the safety and/or welfare of an adult at risk require a professional or agency to share confidential information without a person's consent, they should tell the person that they intend to do so, unless this may place the adult at risk, or others, at greater risk of harm. They should tell him or her what information they will disclose and to whom. The professional should consider carefully all potential consequences for the adult at risk's welfare before making a final decision about whether or not to provide information requested. He or she should record the information which has been shared, with whom and the reasons for the decision carefully. The professional or agency may subsequently have to justify their disclosure, or refusal to share relevant information, to a court, commission, professional body or other forum.

It should also be noted that Section 10(1) of the Adult Support and Protection Act (Scotland) 2007 states that 'a Council Officer may require any person holding health, financial or other records on an individual the Officer knows or believes to be an adult at risk to give the records, or copies of them, to the Officer.' Further information on this matter is provided in Appendix 6 - Access to Records.

The Cross Boundary Working Group representing all three councils who are signatories to this protocol, Tayside Police and NHS Tayside have agreed the contents of The General Protocol for Sharing Information. Staff members should make themselves aware of the content of the General Protocol for Sharing Information and any information sharing/confidentiality policies, protocols and procedures produced by their own agency.

Health staff are governed by particular guidance which places a requirement on staff to breach patient confidentiality under certain circumstances. 'The Code: Standards of conduct, performance and ethics for nurses and midwives provides the detail and guidance should be sought from the Director of Nursing.

It should be noted that, as a regulator, the Care Commission has exemptions under the Data Protection Act and may require information to be shared out with the stated parameters.

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

Those involved in working with adults at risk may also have to consider whether or not to share information with carers or relatives of the adult at risk. In general terms information given to professionals by the adult at risk, or acquired during an investigatory process, should not be shared with others without the person's permission unless the safety of the person or other vulnerable people may otherwise be put at risk. The professional should consider carefully all potential consequences for the adult at risk's welfare before making a final decision on whether or not to disclose information. All decisions, along with reasons, must be recorded.

## **Ordinary Residence**

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

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

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

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

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

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

Local Authority Social Work Services have procedures in place regarding the reporting of critical or significant incidents. When harm to an adult at risk meets the definition of a critical or significant incident the steps outlined in the relevant procedure should be followed including, where appropriate, the submission of a report to the Mental Welfare Commission.

A “sudden death” is regarded as a death resulting from violence, suicide and unknown or suspicious causes. All deaths of this nature must be investigated by the police and a detailed report of the circumstances submitted to the Procurator Fiscal.

The manager of any regulated service should provide information to the Care Commission under the “Notification of Serious Incidents” procedures. Failure to do so may be an issue of fitness affecting registration.

Agencies should also have in place procedures for supporting staff involved in critical or significant incidents. Such procedures should include reference to the establishment of Critical Incident Management Groups which should involve Chief Officers and Procurator Fiscal.

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

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

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

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

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

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

#### **(c) Tayside Police**

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

#### **(d) Social Work Out of Hours Service**

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

#### **(e) Local Authority Social Work Procedures – Disciplinary Procedures**

Each Local Authority Social Work Department will have specific disciplinary procedures which will be instigated whenever a staff member of the local authority is suspected or

accused of harm. Local authority members should make contact with their relevant Personnel Departments as soon as any accusation or evidence is identified.

(f) Codes of Practice/Conduct

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

### **Resolving Disagreements**

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

## Step By Step Guide

Steps 1 - 5 cover the actions to be taken by staff from any agency who have concerns about the welfare of an adult at risk. Steps 6 - 10 cover the actions to be taken after a referral has been made to the Community Care Services of the local authority. Further information on roles and responsibilities is provided in Appendix 7 - Roles and Responsibilities.

### Step 1

#### Concern or initial referral about an adult at risk<sup>3</sup>

- 1.1 Person Responsible** - The staff member who witnesses, suspects or receives information about an adult at risk allegedly being subject to harm, mistreatment or neglect. It should be noted that staff members of agencies have a duty to report suspicions or disclosures about adults at risk of harm.
- 1.2 Action to take**
  - 1.2.1** If the person requires urgent medical attention, go to Step 3.
  - 1.2.2** If the person does not require immediate medical attention and you suspect or have witnessed harm, mistreatment or neglect, speak to the person about your concerns. Ask the person what has happened (including whether it has happened before), who was involved, what the person thinks about the situation and what they want done about it. Also try to ascertain any potential risks to others.
  - 1.2.3** If the person chooses to disclose a previous incident to you, you must listen to what they have to say and obtain all the relevant information. It is important that sufficient information is obtained to allow your line manager to assess the situation without the need to re-interview the person.
  - 1.2.4** Record your conversation carefully and, if possible, ask the person to agree that you have made an accurate record of the conversation. Record the person's actual words in relation to their description of the event and their feelings about the outcome. Include the date and the time that the record was made.
  - 1.2.5** Tell the person that you are going to report the details of your conversation to your line manager. Go to Step 4.
  - 1.2.6** If the person does not give consent to your proposed actions, go to Step 2.

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<sup>3</sup> It should be noted that there may be more than one adult at risk

## Step 2

### When an adult at risk does not give consent to action being taken

**2.1 People Responsible** - The staff member and their line manager

#### **2.2 Action to be taken**

**2.2.1** If the adult at risk does not want any action taken, his or her wishes should be respected unless any of the following applies:

- it is not clear if the person has capacity (in such cases there should be an assessment of capacity);
- if the person has been shown to lack capacity;
- he or she or others are at risk;
- it appears likely that a criminal offence has been committed;
- it is a requirement of legislation;
- there are public health concerns; and/or
- it is suspected that the adult may be under undue pressure

Further details on undue pressure are provided in Appendix 8 - Undue Pressure.

**2.2.2** If there is a child at risk contact should be made with the local child protection team/service in accordance with Multi- Agency Child Protection Guidelines.

**2.2.3** If the person is a resident of a care home or a patient in a hospital, it is important that any suspected or alleged incidents of harm, mistreatment or neglect are reported in order to protect other residents or patients regardless of the adult at risk's wishes. In these circumstances, it must be explained to the person that the referral has to be passed to the Community Care Services. Further details of harm which occurs in regulated care settings is provided in Appendix 2 - Harm in Various Settings.

**2.2.4** Record your conversation with the adult at risk carefully. Record the person's **actual** words about what they want to happen. Include the date and time the record was made.

**2.2.5** Tell the person that you are going to report the details of your conversation to your line manager.

### **Step 3**

#### **When immediate medical assistance or police involvement is needed because a crime may have been committed**

**3.1 Person Responsible** - The staff member

#### **3.2 Action to be taken**

**3.2.1** Urgent medical assistance should be provided and issues of consent or capacity should not prevent this. Contact the appropriate emergency service particularly if an adult at risk appears to be in immediate need of medical attention or if there appears to be evidence of physical or sexual harm.

**3.2.2** Inform the Police if it appears that a crime may have been committed.

**3.2.3** Staff must be aware of the need to preserve evidence. This may include:

- Securing the scene and keeping area as sterile as possible until police arrival. Obviously this may not be possible if urgent medical attention is required.
- Do not clean up any blood stains or other body fluids.
- Preserving any clothing and bedding.
- Leaving any potential weapon in situ, unless it is causing a danger.
- Pointing out any potential CCTV evidence to police.

**3.2.4** All action taken must be recorded and discussed with a line manager or an alternative manager. (Go to Step 4).

**3.2.5** Staff members should not put themselves at risk and should follow their agencies procedures and guidance on safe working practices.

## **Step 4**

### **Consultation with a Manager**

**4.1 People Responsible** - The staff member and the line manager.

#### **4.2 Action to be taken**

**4.2.1** The staff member will discuss the suspected or alleged harm, mistreatment or neglect with his/her line manager as soon as possible. If his or her line manager is not available, the staff member will discuss the concerns with a suitable alternative manager. The full facts and circumstances of the situation, together with all available options and courses of action, should be identified and discussed.

**4.2.2** A plan of action should be the outcome of this meeting/discussion. The following points, amongst others, should be taken into account in decision-making and in the formulation of the plan of action:

- An immediate referral to the Community Care Services. Where it is known that there is a current worker involved with the adult at risk, a referral should be made to that worker.
- The person's level of capacity and consequent involvement in actions, choices and decisions.
- If the staff member's organisation is external to the Local Authority, contact should be made with the local access point for Adult Support and Protection in the Local Authority Social Work Service so that the concern can be discussed and appropriate action taken. Further information on local contacts are provided in Appendix 9 - Local Contacts.
- If the concern raised is from another service within the Local Authority, staff should report to the line manager, who should discuss the concerns with the Duty Social Worker or Team Manager in the Social Work Department so that the concern can be discussed and appropriate action taken.

## Step 5

### Referral to the Local Authority Community Care Service

**5.1 Person Responsible** - The staff member making the referral.

#### **5.2 Action to be taken**

**5.2.1** The staff member making the referral to the Community Care Service should include all the relevant details where known relating to the case:

- Name, address, date of birth, ethnic origin, gender, religion, type of accommodation, family circumstances, support networks, physical health, any communication difficulties, mental health and any associated statutory orders, or whatever information is available.
- The staff member's job title and the reason for their involvement.
- The nature and the substance of the allegation or concern.
- Details of any care givers and/or significant others.
- Details of the alleged perpetrator(s), where appropriate, and his/her/their current whereabouts and likely movements over the next 24 hours, if known.
- Details of any specific incidents (e.g. dates, times, injuries, witnesses, potential evidence, (such as, bruising).
- Background relating to any previous concerns.
- Any information given to the person, their expectations and wishes, if known.
- A record must be kept of all actions taken and decisions made.
- A referral can be made by telephone however, the person referring must confirm the referral in writing but this should not delay or impede action.

## Step 6

### Receiving a Referral into the Local Authority Community Care Service

#### 6.1 **Adult Protection referrals must take priority over all other work. Referrals must be the subject of an immediate assessment.**

The circumstances, in which the duty to make inquiries arise, vary. Concern that a person may be an 'adult at risk' can arise in relation to new referrals, reports or allegations including anonymous referrals, about a person who is not currently known to the Community Care Service. A person who is a current service user may, because of an incident or a change in circumstances, become an 'adult at risk' when previously they were not. By whatever means we come to know or believe that a person is an adult at risk, the statutory duty to make inquiries applies. The duty to inquire arises whether or not the adult is aware that concerns have been raised, and is not contingent on the adult consenting to a referral.

#### 6.2 **People Responsible** - The staff member receiving the referral and the Team Manager.

#### 6.3 **Action to be taken**

6.3.1 The staff member receiving the referral should ensure that the details in Step 5 are covered. In all cases where adult protection concerns have been expressed, deciding how to respond, and planning to do so is the responsibility of the allocated Council Officer and their Team Manager.

6.3.2 At the earliest opportunity after adult protection concerns have arisen, there must be an initial discussion between the allocated worker - the Council Officer - and their Team Manager. The Council Officer should discuss the situation with their Team Manager or with a suitable alternative manager **as soon as possible that day**. Consideration must be given to the mental capacity of the adult at risk. In cases where the adult at risk has a capacity issue and/or a mental health disorder, it may be appropriate to involve a Mental Health Officer (MHO).

Sufficient information must be gathered to establish that the person referred meets the criteria for an 'adult at risk' and that the circumstances constitute 'harm'. The local client information system should be checked to ascertain if the person or the alleged perpetrator is known to the Social Work Service. If known to Children's Services, Community Care Services or Criminal Justice Services the allocated social worker should be notified.

Relevant involved agencies (including the person's GP) should be contacted for more information. The Public Protection Team, Tayside Police should be contacted to check if the alleged perpetrator(s) is/are known to the police and to decide if a joint visit is appropriate.

6.3.3 The Team Manager should complete appropriate documentation and make one of the following recommendations:

- no further action;
- refer to appropriate agencies

- refer to/retain within Care Management services; or
- allocate Adult Protection Inquiry status.

If the criteria are met, there is a duty under the Act to inquire into the adult's wellbeing, property or financial affairs.

Recording the outcomes ensures that this information will be available for future data management purposes. The outcome must also be recorded on event recording and will contribute to the person's chronological history.

**6.3.4** If the recommendation is 'adult protection inquiry status' the Team Manager will establish:

- a) whether any action is needed immediately (e.g. does the adult at risk need to be removed to a place of safety and/or require medical assessment or attention?); or
- b) whether immediate action would cause more distress or would pose a greater risk.

Visits will be arranged depending on the situation:

- critical – visit the same day;
- urgent – visit within 48 hours; or
- non-urgent – visit within two weeks at the discretion of the manager<sup>4</sup>.

The Team Manager should consider the allocation of a second worker to support the Council Officer on the visit. If it is decided not to visit the adult at risk of harm that day then the reason for this decision must be recorded.

Further information on medical examinations is provided in Appendix 10 - Medical Examinations.

**6.3.5** The Team Manager will record the initial steps which are to be taken in pursuance of the inquiry, including a recommendation as to whether an initial referral discussion or Adult Protection Case Conference should be convened.

If it appears that a criminal offence may have been committed, the matter must be immediately reported to the police.

Further information on conducting an initial referral discussion is provided in Appendix 11 - Organising and Chairing Initial Referral Discussions.

**6.3.6** Any allegation concerning a member of staff, (employed by the Council, Health or a Private or Voluntary Organisation), whether in their personal or professional life, must be reported to the responsible line manager, Service Manager or Head of Service.

**6.3.7** If the alleged perpetrator is under 16 years of age or is a vulnerable adult, Children's Services or the appropriate locality or specialist community care team should be contacted, to check if he or she is known or if a worker is to be allocated to the alleged perpetrator in his or her own right. The Police will also

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<sup>4</sup> If at the 'outcome of initial referral discussion' stage a recommendation is agreed that an urgent visit is required, the visit need not be postponed until after an initial referral discussion is held.

decide if the services of an appropriate adult are necessary. Further information on the appropriate adult scheme is provided in Appendix 3 - Appropriate Adults Tayside Service .

If the alleged victim is thought to be pregnant and there are concerns about potential risks to the unborn baby a planning meeting should be arranged involving social work staff from Children's and Adults services and appropriate health staff. This meeting should ensure that a pre-birth risk assessment is completed in line with the relevant Child Protection Operational Procedures to determine the risk and the need to ensure the safety and well-being of the unborn baby

**6.3.8** If the alleged harm has occurred in a care home or in a day care establishment or is alleged to have involved someone from any other service which is registered with the Care Commission, contact should be made with the Care Commission by the Team Manager. The Team Manager is also responsible for informing the Mental Welfare Commission, the Office of the Public Guardian, the manager of the relevant service, Tayside Police and the Social Work Department Out of Hours Service, where appropriate. Further information on local contacts are provided in Appendix 9 - Local Contacts.

**6.3.9** Recording is mandatory and critical in all adult protection cases. In all cases which are accorded adult protection inquiry status after the 'outcome of initial discussion' stage, the allocated Council Officer shall complete all relevant paperwork.

If the agreed outcome of the initial discussion is 'no further action', a detailed record must be completed which will include an account of the circumstances which gave rise to the initial adult protection concerns, as well as a clear account of the reasons why the case has not been accorded adult protection inquiry status.

Any correspondence received or sent in relation to the case must be cross-referred to in the case records including any electronic correspondence.

**6.3.10** If, at the outset of an adult protection inquiry, or indeed at any stage of its progression, it appears that a criminal offence may have been committed, the matter must be immediately reported to the police. It is up to the Police to decide whether or not an investigation needs to take place.

The Team Manager, or if the manager considers it appropriate, the allocated Council Officer shall report the matter to the Force Duty Officer who will decide what action to take. It is essential to agree with the police what actions are to be taken, and by whom, including whether or not a joint visit would be appropriate in the circumstances and to ensure that clear arrangements are established for liaison between social work and police throughout the inquiry.

Further information on referrals to the police is provided in Appendix 12 - Notes on Referral Discussion with Police.

**6.3.11** When a case has been assigned 'adult protection inquiry' status in accordance with the procedure outlined in 6.3.4 above, the Service Manager in Angus, Team Manager shall decide whether to call an initial referral discussion meeting.

Initial referral discussion meetings are recommended where information, which will be pertinent to the inquiry is held, or likely to be held by a range of parties who have not had an opportunity to come together to share that information.

Initial referral discussion should identify, where necessary, an action plan based on the shared information, which will detail the next steps to be taken in relation to the case, the person(s) responsible for taking those steps and the timeframe within which it is envisaged they will be carried out. NB Practice and timescales may vary across Tayside therefore staff should refer to their own operational guidance. If the action plan includes the need to hold an Adult Protection Case Conference then details of the actions to be taken to protect the adult at risk of harm in the meantime must be agreed and recorded.

## Step 7

### Assessment and Decision Making

**7.1 People Responsible** - The allocated Council Officer, the Team Manager and the Service Manager

#### **7.2 Action to be taken**

**7.2.1** The Council Officer should undertake an investigation including an assessment of risk. This should involve staff from other agencies, as appropriate, in the gathering of information. Certain public bodies have a duty to cooperate under Section 5 of the Act. The investigation should take account of any previous concerns or reports about, or incidents involving, the adult at risk. Prior to the interview, consideration should be given to ensuring a safe interviewing environment, the use of communication aids and the use of an interpreter or of a support person. The person's living arrangements should be seen.

**7.2.2** A visit arranged under Section 7 of the Act will be made to the adult at risk to ascertain his or her views about the situation and to determine the level of risk.

A Council Officer may visit any place in pursuance of the council's duty to inquire. Accordingly, the purpose of a Section 7 visit is to:

- assist the Council to decide whether a person is an adult at risk of harm; and
- establish whether the council needs to take any action in order to protect an adult at risk from harm.

The place visited need not necessarily be the adult's own home and could be a place that the adult attends periodically such as a day care centre. Selecting an alternative venue will be desirable in cases of alleged or suspected familial harm, for example.

A Council Officer undertaking a visit may be accompanied by any other person. When planning a visit, the Council Officer and his or her Team Manager should consider whether the inquiry would be assisted by a joint visit with, for example, a health professional, police officer, or another person already known to the adult.

Further information on interviewing is provided in Appendix 13 - Notes on Joint Investigative Interviewing.

If a suspected crime is to be investigated by the police, the appropriateness or otherwise of a joint visit with the police will have been agreed when the matter was reported to them in accordance with paragraph 6.3.2 above.

If the adult at risk of harm is under a local authority administered Guardianship Order the worker to whom the Guardianship duties have been delegated cannot be involved in carrying out the investigation.

**7.2.3** The timing of visits needs to be considered. Section 36(1) of the Act states that a Council Officer may visit a place at reasonable times only. The expression 'reasonable times' is not defined in the Act. The Code of Practice states that it is recognised that the level of concern may be such that an immediate visit may

need to be undertaken at a time that might not otherwise be regarded as reasonable. It also states that Officers involved will need to use their professional judgement in this regard.

- 7.2.4** The Team Manager should ensure that the Council Officer has the support he or she requires during the investigatory process. Supervision should be ongoing throughout the investigation and decisions clearly documented and attributed.

### **7.3 If access is gained**

- 7.3.1** The Council Officer should interview the adult at risk and any other adult present, as appropriate. The adult at risk should be assisted to participate as fully as possible in the proceedings. He or she must be informed before the interview that they are not required to answer any questions (Section 8 of the Act).

- 7.3.2** The Council Officer should conduct the interview and the supporting worker should take detailed notes. Both workers should observe the reactions of the adult at risk and the dynamics of personal relationships. They should assess the environment. Depending on the circumstances, it may be appropriate to view the sleeping arrangements. It may be appropriate to consider independent advocacy and to discuss this with the adult at risk.

Adult Protection visits and interviews are expected to adhere to certain requirements stipulated in Sections 8 and 36 of the Act.

A Council Officer must, while visiting any place (or conducting an interview), produce evidence of his or her authorisation to visit the place (or conduct the interview). It is also essential that he or she explains clearly that the purpose of the visit is to assist with inquiries about the nature and level of any risk to the adult, and to decide whether action is needed to support and protect them. After this has been stated, the adult must be informed that they are not required to answer any questions. A Council Officer does not have the authority to ignore an adult's refusal to participate in an interview; however it is important to give them a reasonable opportunity to engage with the process while respecting their right not to do so.

- 7.3.3** The Council Officer should complete the relevant documentation which will include some professional analysis of the information gained in the process of the investigation.

At the earliest opportunity after the adult protection interview, the allocated Council Officer must report to his or her Team Manager. Consideration must be given to whether the findings during the visit confirm the adult protection concerns. Consideration should also be given to whether more information or any follow up interviews may be required, and what measures, if any, may be immediately necessary to support and protect the adult.

There are likely to be ongoing discussions with the Team Manager and with the Service Manager, as appropriate. These should be documented as a strategic discussion on detailed record sheets. The issues that are likely to be considered will be:

- adherence to the principles of the Act;
- if intervention is necessary;
- if a Mental Health Officer (MHO) is required;
- if the police should be consulted (see Appendix 12);
- other relevant legislation; (see Appendix 1)
- level of risk; (see Appendices 5a and 5b)
- duty to consider independent advocacy and other services;
- workers' safety;
- need for a case conference; (see Appendix 15)
- any undue pressure (see Appendix 8);
- need for medical examinations (see Appendix 10);
- need to access records (see Appendix 6); and/or
- Protection Orders (see Appendix 14);

The allocated Council Officer must then record the detail of the adult protection interview using relevant paperwork and present this to his or her Team Manager.

The Team Manager shall reassess and recommend:

- no further action;
- refer to/retain within care management; or
- continue with adult protection process

If the recommendation is to continue with the adult protection process, the Team Manager shall note clearly the next actions which are proposed, including a recommendation as to whether an Adult Protection Case Conference should be convened.

**7.3.4** The Service Manager will decide whether an Adult Protection Case Conference should be convened. Consideration should always be given to holding an Adult Protection Case Conference, particularly in situations where there is suspected harm, or the threat or opportunity of ongoing harm. This also applies where the individual concerned has little or no insight into the risk to which he or she may be placing him or herself or, indeed, others. The case conference should be held within ten days of the investigation being completed.

The Service Manager may make a decision not to hold a conference when sufficient information is available to indicate that there is no risk to the adult. He or she should record why this decision has been made.

When making a decision about whether or not to hold a conference, the Service Manager must take account of any previous referrals and/or concerns about the welfare of the adult at risk. If more than two previous referrals have been received, which have resulted in no conference being held, the Service Manager should hold an Adult Protection Case Conference to allow agencies to come together to share information and concerns.

**7.3.5** The alleged perpetrator should be informed<sup>5</sup> of the allegations and that the local Authority has and will retain personal information on him or her except in the following circumstances:

- where to disclose to the alleged perpetrator may put the client or any other person at risk; and/or
- where to disclose to the alleged perpetrator would be likely to jeopardise the prevention or detection of a crime.

The Service Manager should be part of the decision-making process where a decision is made not to inform the alleged perpetrator of the allegation. Such a decision should be recorded.

If the alleged perpetrator is employed in a managed care setting external to the Council, the Registered Manager should share in this decision-making process.

#### **7.4 If access is not gained**

The Council Officer should discuss other options for entry with the Team Manager e.g. through contacting relatives or other professionals.

If these other options are not successful, a Warrant for Entry, under Section 37 of the Act, should be considered.

Consideration should be given as to whether access can be gained under other legislation e.g. Mental Health (Care and Treatment) (Scotland) Act 2003.

If all options have been considered and have been exhausted, Legal Services should be contacted to discuss the scope of what further steps might be taken. Applications for Protection Orders will be made by the Local Authority Legal Services on the basis of the information that has already been gathered. Further information on protection orders and their use is provided in Appendix 14 - Protection Orders.

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<sup>5</sup> The Service Manager will make the decision about who should inform the alleged perpetrator and how this should be done.

## **Step 8**

### **Adult Protection Case Conference**

#### **8.1 Person Responsible – The Service Manager**

#### **8.2 Purpose of a Case Conference**

**8.2.1** A **case conference** is a multi-disciplinary meeting at which information relevant to concerns about harm or risk of harm is shared and considered. All Adult Protection Case Conferences and Review Case Conferences must be chaired by a Service Manager from within the Local Authority Social Work Department.

The purpose of a case conference is:

- to consider information obtained during the inquiry;
- to make a decision about the nature and level of risks; and
- to agree an adult protection plan.

Further information on protection case conferences is provided in Appendix 15 - Organising and Chairing Adult Protection case Conferences.

#### **8.3 Action to be taken**

**8.3.1** When deciding whether or not to hold a case conference, the Service Manager must take account of any previous referrals/concerns about the adult at risk. If more than two previous referrals exist which resulted in no case conference being held, the Service Manager should hold one to allow parties to share information and concerns.

An initial Adult Protection Case Conference should be held within ten working days of the completion of an investigation by Community Care Services.

The meeting assesses risk, makes decisions on the actions which will need to be taken, and, where appropriate, agrees an Adult Protection Plan or reviews a plan that is already in place. The plan will include details of who will do what and when.

**8.3.2** The attendance of relevant professionals at a case conference is crucial. Conferences should be attended by the social work staff involved in the adult protection inquiry and, where appropriate the police, and those professionals and voluntary or private sector staff who are directly involved with the adult and have a contribution to make. The Service Manager shall consider whether it would assist the decision making process to invite the attendance of others who can provide advice to the meeting, such as a member of the Legal Services Team or a Mental Health Officer.

**8.3.3** Consideration must also be given to the attendance of the adult, family and carers. Wherever possible, the adult who is the subject of the case conference should be invited to the meeting. On occasion however, it may be considered not to be in the adult's best interests to attend and a decision to exclude them may be made by the Service Manager, who shall record the reasons in the minute of

the meeting. Where the adult has been excluded, or has chosen not to attend, the chairperson must ensure that the decisions of the case conference are conveyed to them as soon as practicable after the meeting.

There may be occasions when the adult wishes to be supported by the attendance at the case conference of a friend or other representative or a person from an organisation providing independent advocacy services. Support from such sources should whenever practicable, be encouraged.

Family members and carers should be invited to attend unless there are compelling reasons to exclude them, for example if their presence would undermine the purpose of the case conference or increase the risk to the adult. Individuals can be excluded from part of the meeting. The decision to exclude family members and carers from all or part of the meeting shall be made by the Service Manager chairing the meeting.

- 8.3.4** Relevant paperwork should be made available to those attending the case conference. This should provide the meeting with a chronological account of events beginning with the circumstances which gave rise to the initial adult protection concerns and the actions taken to date. Copies of any written reports prepared by other agencies should also be made available. Where practicable, the paperwork should be issued prior to the case conference. Otherwise, time will be allowed at the start of the meeting for the papers to be read.

Before the start of a case conference, anyone who believes there is any information that should not be shared with the person and/or his/her family or carers should advise the chairperson. If this is the case, discussion of this information will take place prior to the person and his/her family or carers joining the case conference. If there is no restricted information<sup>6</sup> to be shared, then the person and his/her family or carers will participate in the whole conference.

A decision may be made by the Service Manager not to issue a copy of the relevant paperwork to the adult who is the subject of the case conference if serious harm might be caused to the individual or another person.

- 8.3.5** A minute of the case conference should be completed and should include an Adult Protection Plan and the agreed date of a Review Adult Protection Conference. If the adult had been invited to attend the meeting but chose not to do so, this must be recorded. Copies of the minute will be distributed within 10 working days to those present at the meeting and any other parties the meeting agreed should receive a copy. Any person disagreeing with the accuracy of the minute should notify the Service Manager in writing, and include a proposed amended text. The Service Manager must then decide whether to accept the proposed amendments. Any amendments should be made on the original copy of the minute. Amended papers will then be distributed to all those who received a copy of the original minute.

- 8.3.6** The Adult Protection Plan will list the actions agreed at the case conference which aim to remove or reduce the risk(s) to which the adult is exposed. The Plan

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<sup>6</sup> Restricted information includes information that would: disclose the identity of a third party; be likely to result in serious harm to the physical or mental health or emotional condition of the adult at risk of harm or any other person; be likely to prejudice the apprehension or prosecution of offenders.

will be completed by the Service Manager. The completed plan must be contained in the minute of the Adult Protection Case Conference.

The Adult Protection Plan will be based on the discussion and decisions made at the Adult Protection Conference. The Plan should cover:

- the assessed risks;
- actions proposed to address them, the individual(s) responsible for those actions as well as the timescale and desired outcomes;
- arrangements and supports in place;
- people's respective roles in the adult protection plan;
- the inclusion of weekly visits to the adult at risk by the allocated worker unless it is otherwise agreed and minuted;
- support for the adult e.g. victim support, independent advocacy;
- any legal steps to be taken to protect the adult; and
- a contingency plan - arrangements for immediate action for possible change in circumstances to be agreed.

The people responsible for the actions identified in the adult protection plan will be the core group who will work collaboratively towards achieving the outcomes identified as necessary to remove or reduce the risk.

For further information about organising, chairing and conducting Adult Protection Case Conferences, see Appendix 15.

## **Step 9**

### **Implementation of Adult Protection Plans**

#### **9.1 People Responsible**

Team Manager

#### **9.2 Action to be taken**

**9.2.1** As soon as practicable, after the Adult Protection Case Conference, a meeting of the Core Group<sup>7</sup> must be convened and chaired by the supervising Team Manager. The Core Group meeting shall agree how the work of the Core Group is to be co-ordinated and the timeframe for subsequent meetings at which progress will be reviewed.

**9.2.2** If significant changes to the adult protection plan appear to be needed, or if the group considers that the adult protection status of the case should be reviewed, the Service Manager must be asked to convene a Review Adult Protection Case Conference.

**9.2.3** The Team Manager will:

- monitor implementation of the Protection Plan to ensure that actions are carried out within timescales;
- ensure that ongoing Risk Assessment will be carried out to take account of changing circumstances and needs;
- chair the Core Group and is responsible for ensuring that the communication plan is adhered to. He or she will make sure that the core group meets monthly. The Core Group can be convened at any time following a request from any member of the group;
- ensure that the Communication Strategy is implemented; and
- will ensure that a copy of the Adult Protection Plan is held by every member of the Core Group. He or she will also ensure that Core Group meetings are recorded and minutes distributed.

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<sup>7</sup> The Core Group will include those Council and agency staff who are to be directly involved in the delivery of the protection plan. It may include others at the discretion of the case conference chair.

## **Step 10**

### **Adult Protection Case Conference Review**

#### **10.1 Person Responsible.**

Service Manager

#### **10.2 Actions to be taken**

- 10.2.1** All Adult Protection Plans must be considered at a Review Case Conference the date of which will have been agreed at the initial or subsequent review case conference. The meeting shall consider progress made in implementing the Adult Protection Plan and make a decision about the current nature and level of risks and agree changes to the detail of the Plan as appropriate.
- 10.2.2** Adult Protection Review Case Conferences should take place within 3 months of an initial Adult Protection Case Conference, or more frequently if required.
- 10.2.3** All relevant paperwork should be completed prior to Review Conference by the Council Officer.
- 10.2.4** The Review will consider the changes that have been made and will re-assess the level of risk for the adult at risk.

If there are still significant risks, the case will be monitored by Core Group meetings and regular Adult Protection Review Case Conferences.

If the risks are low the case does not need to remain under adult protection procedures. A decision that the adult protection status of the case should cease may be made at a review case conference if changes have taken place which significantly and demonstrably lower the risks. The Service Manager should ensure that essential recording takes place.

## Assuring Quality In Work With Adults At Risk

### When working with adults at risk

It is important that all agencies working with adults at risk assure the quality of the work undertaken by their agency and jointly with others. This guide may be used to help to set standards and to monitor the quality and effectiveness of work undertaken to protect adults at risk of harm.

Person responsible: A Senior Manager

- Senior managers should develop, maintain and review a framework for the inspection of case files, records (including supervision notes), and case conference minutes. Where appropriate, the framework should also include audits of clinical governance and clinical supervision.
- Senior managers should ensure that no open case which includes allegations of deliberate harm to a adult at risk is closed until the following steps have been taken:
  - The individual has been spoken to alone.
  - The individual's accommodation has been seen.
  - The views of relevant professionals have been sought and considered.
  - There is evidence that the individual's welfare will be safeguarded and promoted should the case be closed.
- A senior manager should ensure that when a professional from another agency expresses concern about its handling of a case, he/she reviews the file, meets and speaks to the professional concerned, and records in the case file the outcome of the discussion.
- A senior manager should ensure that all case conferences, reviews, meetings and discussions concerning adults at risk should involve the following four basic steps:
  - A list of action points must be drawn up, each with an agreed timescale and the identity of the person responsible for implementation.
  - A clear record of the discussion must be circulated to all those invited, whether or not they were present, and to all those with responsibility for an action point.
  - A mechanism for reviewing completion of the agreed actions must be specified, together with the date upon which the first such review is to take place.
  - Any supplementary actions that may be required as a contingency in the event of a breakdown in care arrangements or other changes in circumstances.

## **An Audit/Review Checklist**

The following checklist may be used to “audit”/review cases of adults at risk to assess the level of risk and determine the quality of service. It is indicative and not exhaustive.

- Is there an allocated worker with the necessary skills and experience to work with the complexities of the case?
- Has all the relevant information been gathered from agency files, police, health and other involved sources?
- Is there a chronology of significant events and are the implications of these events understood?
- Is there a comprehensive assessment of risk and need?
- Is there evidence that the experiences of family members/carers have been taken into account when assessing risk?
- Is there an appropriate care or protection plan that is being effectively implemented and that is demonstrably reducing the assessed risk?
- Has statutory intervention been considered and are the decisions in respect of this correct?
- Are copies of all minutes and records of decisions in the case files: have these been circulated to relevant individuals; and are the case records up to date?
- Is there evidence that the adult at risk is being seen and spoken to on his/her own on a regular basis by the allocated worker and have his/her living arrangements been seen?
- Is there evidence of good communication and collaboration between social work services, (eg community care, criminal justice and children’s services and between social work and other key agencies eg health, police, housing, education)?
- Has the case been reviewed in accordance with procedures and has the individual been supported in contributing effectively to the review?
- Is there evidence that the staff member’s handling of the case is subject to oversight/review by his/her line manager?

**A Glossary of Terms is provided in Appendix 16.**

**The Legal Context**

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

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

**Adults With Incapacity (Scotland) Act 2000**

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

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

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

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

An adult will not fall within this definition if their inability to communicate or understand communications can be 'made good by human or mechanical aid'. For example, an adult with speech difficulties may have an inability to communicate his wishes or desires but if this can be overcome by the use of a computer or other mechanism, he will not fall within the terms of the Act. Likewise, where a family member is able to interpret the wishes of an adult who is otherwise incapable of communication he will likely not fall

within the terms of the Act.

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

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

### **Powers of Attorney**

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

### **Intervention Orders and Guardianship**

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

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

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

- to investigate circumstances where personal welfare of an adult seems to be at risk (Section 10).
- to provide information and advice to those exercising welfare powers.
- to investigate complaints in relation to those exercising welfare powers.
- to supervise attorneys and guardians
- to apply for an intervention order when no-one else is doing so (Section 53 (3)).
- to apply for guardianship order where no other means would be sufficient to safeguard the adults interests (Section 57 (2))
- to provide reports to the Sheriff relevant to applications for intervention orders or guardianship orders relating to personal welfare. Note: Where someone other than the local authority applies for welfare guardianship, he or she must give notice of the application to the Chief Social Worker Officer who must arrange for the relevant reports within 21 days. This time limit is important (Section 57 (4)).
- to act as welfare guardian where no-one else is applying to do so (Section 59 (1))
- to recall the personal welfare powers of a guardian (Section 73 (3)).

- to arrange for transfer of guardianship where adult changes habitual residence.
- to consult with the Public Guardian and Mental Welfare Commission.

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

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

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

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

### **Other Relevant Legislation**

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

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

- it places a range of duties, and gives a range of powers, to organisations involved in mental health law, including mental health service providers, the Mental Welfare Commission, and the new Mental Health Tribunal for Scotland;
- it defines clear procedures for decision making on the compulsory treatment and/or detention of people with a mental disorder. It sets criteria which have to be met before compulsion can be authorised;
- it amends existing criminal justice legislation to give courts more effective ways of assessing and dealing with a person with mental disorder who comes before them. And, it defines procedures for the review of orders made by a court in relation to a person with a mental disorder;
- it provides a range of new rights for people with a mental disorder, such as a right of access to independent advocacy services; and,
- it provides safeguards on the use of certain medical treatments.

## **Section 293**

Under Section 33 it is possible for a Mental Health Officer (MHO) or medical commissioner to seek a warrant (Section 35) to allow a Police Constable to force entry to a house or other premises where they have reasonable cause to believe that the person is suffering from a mental disorder, has been or is being ill- treated or neglected or lives alone and is unable to care for themselves. The purpose of this is to allow assessment of the person's mental state and consequently to allow further detention if necessary.

Section 33 can be used where a person is either living alone and incapable of caring for themselves adequately or where a person is being kept in conditions which could be detrimental to his health and well- being and access has been refused.

## **Section 297**

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

## **Human Rights Legislation**

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

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

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

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

The Regulation of Care (Scotland) Act 2001:

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

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

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

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

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

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

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

## **The Public Interest Disclosure Act 1998 (came into force on 2/7/99)**

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

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

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

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

This Act is to be implemented in stages from Autumn 2010 onwards.

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

Incapacity should therefore not be assumed without ensuring the person has had the opportunity to access appropriate information and education and assistance in understanding this information and its relevance to them.. Capacity is however not the only test. When a person has capacity to consent to sexual relations but is at risk and likely to come to serious harm, the LA may have responsibilities under the Adult Support and Protection (Scotland) Act 2007. There are a number of statutory sexual offences specifically relating to mentally disordered persons in the Mental Health (Care and Treatment) (Scotland) Act 2003 (s.311 - 313) which will be repealed and replaced by the Sexual Offences (Scotland) Act 2009 (s.17 and s.46).

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

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

**Harm in a Regulated Care Setting**

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

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

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

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

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

**Harm within Local Authority Establishments**

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

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

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

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

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

The Contract Compliance Officer will be informed.

## **Harm Within External Agencies including NHS, Private and Voluntary Care Settings**

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

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

If the referral has been received from the care setting, a discussion with the care setting manager will consider the immediate safety of the service user, he/she will be advised to contact the Care Commission and informed of likely interventions by the Council.

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

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

Other Councils who have placed service users in the care setting will be notified of the situation. An investigation will be initiated where necessary.

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

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

The Contract Compliance Officer will be informed.

## **APPENDIX 3**

## **APPROPRIATE ADULT TAYSIDE SERVICE**

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

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

The Tayside Appropriate Adult Service provides specially trained appropriate adults who have experience in working and communicating with mentally disordered people.

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

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

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

In Tayside the services of an appropriate adult can only be provided by individuals who are contracted to the Appropriate Adults Tayside service and have undertaken nationally approved training. They are mainly utilised during a police interview; this applies equally for victims, witnesses, accused and suspects.

Other police activities where the use of an Appropriate Adult may be indicated are:

- Fingerprinting
- Photographs
- Premises search
- Identification parade
- Intimate body search
- Medical examination
- CD Fit/E Fit interview

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

The responsibility for identifying when an appropriate adult is required rests with the police officer who is dealing with the case, whether the person with the mental disorder is a witness, suspect or accused.

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

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

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

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

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

## **APPENDIX 4            CAPACITY AND CONSENT**

### **Issues of capacity and Consent**

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

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

### **Assessing Capacity**

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

The ability to give informed consent involves:

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

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

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

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

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

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

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

## **Rights, Risk and Self-determination**

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

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

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

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

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

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

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

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

- the decision of the adult at risk

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

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

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

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

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

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

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

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

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

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

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

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

The ability to give informed consent involves:

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

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

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

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

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

Where it is suspected that an adult lacking the capacity to consent to sexual activity has had sexual contact this must be notified to the police. It is a criminal offence for someone to have any sexual activity with someone who is not capable of consenting to sex due to mental disorder (Mental Health Care and Treatment Scotland Act 2003) soon to be replaced by s.17 of The Sexual Offences (Scotland) Act 2009.

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

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

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

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

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

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

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

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

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

## **APPENDIX 5 (a)**

### **ASSESSMENT, RISK ASSESSMENT AND RISK MANAGEMENT**

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

#### **Assessment**

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

#### **Value base**

The following principles apply to good practice in assessment:

- Listening to views of people about their needs and wishes for care
- Empowering service users to make decisions about their care and level of acceptable risk, and providing choices
- Ensuring people that are being assessed have every opportunity to consent to the assessment process, its outcomes & plans, or that their interests are represented when informed consent is not possible
- Promoting individual health and well being
- Promoting independence and care at home as far as is feasible and desired
- Recognising and supporting the contribution of family and other carers and ensuring their contribution and needs are considered either as part of the assessment of the cared for person, or as a separate carers assessment.
- Valuing the contribution of different professionals and supporting them to meet the needs of people who use services and their carers

Irrespective of where work settings, assessment:

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

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

#### **Definition of risk**

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

## **Risk assessment**

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

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

These are the elements of good risk assessment include:

- Seeking the views of all interested parties including the views of the adult in need of support/protection (involve advocacy if indicated)
- Collecting full information concerning the adult in need of support/protection
- Being specific about the range of factors which affect the likelihood or probability of certain kinds of outcomes.
- Identifying dynamic factors which may increase or decrease risk (e.g. fluctuating health, accommodation difficulties, access to formal or informal support network, staffing levels in care homes)
- Identifying historical factors which may indicate increased or decreased risk (e.g. past events, patterns of behaviour)
- Identifying situational/environmental triggers which may increase risk (e.g. substance use, presence or absence of particular people, challenging behaviour, stressors for carer)
- Sharing information regarding risk in multi-agency setting
- Ensuring clear communication and understanding
- Seeking multi agency agreement and record and dissent
- Moving on from risk assessment to risk management.

## **Collecting necessary data**

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

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

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

## **Prime indicators**

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

- Previous history – violence, self harm
- Substance misuse

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

### **Analysing data**

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

The analysis of the available information includes:

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

### **Risk management**

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

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

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

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

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

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

## **What is risk management?**

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

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

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

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

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

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

## **The Risk Management Process**

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

- Assess and plan
- Implement
- Monitor
- Review

### **Defensible decision making**

A defensible decision is a decision which will be judged to be acceptable, even if risk and harm has subsequently occurred. It is important to demonstrate that assessors/agencies:

- have used best available knowledge, assessments & information;
- have taken all reasonable steps; and
- can account for their decisions, choices and courses of action chosen.

### **Risk or dilemma**

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

### **Tayside Form**

The Scottish Executive Joint Improvement Team (JIT) commissioned an Adult Protection Shared Learning Initiative with two areas – Glasgow Health and Social Care Partnership and the three Tayside health and social care partnerships (Angus, Dundee and Perth & Kinross). This commission led to the development of risk assessment and protection plan form which has been implemented across Tayside. The form is included as Appendix 5b.



## RISK ASSESSMENT AND PROTECTION PLAN

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

### CORE INFORMATION

#### DETAILS OF SUBJECT

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

#### ASSESSING WORKER

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

## COMMUNICATIONS REQUIREMENTS

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

Role	Name and Designation	Involved and aware of current situation?	Contributed to this risk assessment?	Informed of assessment outcome? ( <i>date, or N/A</i> )
Care Manager				
Mental Health Officer				
Criminal Justice				
Social Worker				
Social Work Other				
Support Worker Support Agency				
Community Nurse/CPN/D/N				
G.P				
Consultant				
Other health				
Police				
Housing/Landlord				
Unpaid carer/named person				
Guardian/Attorney				
Advocate				
Appropriate Adult				
Other				
Other				

## RISK ASSESSMENT

*This form should be used when a Single/Specialist Shared (needs) Assessment (SSA), a Review, circumstances, or initial investigation of a significant incident reveals a **risk of serious abuse or harm**; or when complex needs interact to create **serious risks**; and when high levels of risk cannot be managed within a normal care plan. (see Tayside Protocol for definitions and process)*

### 1. CAPACITY, RECOGNITION AND INVOLVEMENT

Date:

First Names		Surname	
<p>a) Has the person being assessed any particular communication needs (<i>e.g. for interpreter, advocate, appropriate adult, Makaton, sign, speech and language therapist; or as a result of dementia, head injury etc?</i>)</p>			
<p>b) Comment on the person's ability to make his/her own decisions about risk? (<i>Evidence any limitations, if possible; refer to any examples of undue pressure if relevant</i>)</p>			
<p>c) Has there been a recent formal Assessment of Capacity? Yes/No If yes, detail outcome</p>			
<p>d) Is a formal assessment of capacity required? Yes/No Has this process been initiated? Yes/No</p>			
<p>e) Has there been a discussion with the person about information sharing Yes / No Any comments. (<i>See Tayside Protocol 1.5 and Information Sharing Protocols</i>)</p>			



### 3. CURRENT RISKS OR CONCERNS

Date:

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

#### 4. CURRENT RISK DESCRIPTION

Date:

**What** behaviour, *allegation, complaint or event has prompted this risk assessment? (detail the nature of the behaviour or incidents which put the subject at risk, e.g. the nature and extent of sexual/physical abuse; the specific areas of self neglect (eating, medication, wandering, etc)*

**Who** is the source of concern, and who is involved in the risk events?

**When** does this/do these circumstances occur - and **how often**?  
(*Evenings/weekends/every day/mealtimes etc: rarely, frequently, occasionally, etc*)

**Where** does this/do these circumstances occur (*Daycentre, at home, on the streets, travelling*)?

**Clinical diagnosis of mental or physical illness**, *relevant to this risk assessment*

**Particular triggers or risky circumstances** that heighten the risks ? (*e.g when subject is alone; if home carer is late; if relative makes contact/does not make contact ;arrival of benefit; contact with specific person/staff member etc*)

**Protective factors**, or circumstances, that have protected the subject, or reduced the risk in the past? (*include here any change in subject's ability to manage these risks*)?

## 5. RISK ASSESSMENT

Date:

a) What is your assessment of the risk? How severe might the consequences/injuries/harm/damage be if no action is taken to reduce the risk, or increase protection? How probable is it that these circumstances will recur? What is your view and any agreed view about the degree of risk and urgency of action?

b) Your assessment will include the contributions of other agencies/services. Indicate here if there is any disagreement?

c) What is the adult's assessment of the risk? Does he/she agree with your assessment?  
*(if not - explain)*

d) Unpaid carers' assessment of the risk *(if available - explain if not, e.g. if carer or family member may be abuser)*

## 6. RECOMMENDATION/ACTIONS

Date:

a.) Is an Adult Protection case conference recommended? Yes/No

b.) Detail any immediate actions that have already been taken in order to protect, or reduce the risk (*include whether this situation/risk/concern been referred to another service, or agency, and if so, with what result*)

c.) What future action do you recommend is taken to reduce the risk, or protect the adult being assessed? (*e.g. increased support; review of Care Plan; further needs assessment; change of environment/ service etc*) Clearly indicate who should do what and when.

d.) What **advantages and disadvantages, additions and reductions** to the adult's **quality of life, or freedom, or independence** might result from these actions (e.g. if increased supervision, change of home, statutory intervention)

e) Recommended Actions - Risks to other people (*Consider risks to other adults, carers; children, alleged abuser. Consider actions such as carer's assessment, alert to Home or Centre management in respect of other service users, additional risk assessments, police investigation of allegations, referral to child protection or criminal justice*)

Any further comment from the person being assessed?

Does the person consent to share information in this assessment? (Yes/No)  
Any conditions or limitations?

Signature of assessed person: Date:  
(If no signature, say why)

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Risk Assessment discussed with Manager? Date:

---

Agreed immediate actions to be taken:

**Signature:** **(Assessor)** **date**

**Signature:** **(Manager)** **date**

**Notification Requirements**

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

## PROTECTION PLAN

This form must be used when allegations of abuse/exploitation have been made and an Adult Protection Case Conference has agreed that there is a risk of serious abuse or harm; or circumstances or complex needs interact to create significant risks; and when high levels of risk cannot be managed within a normal Care Plan. The Protection Plan should be completed within two weeks of an Adult Protection Case Conference.

**DATE OF PROTECTION PLAN:**

### 1. PERSONAL DETAILS – ADULT AT RISK

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

### 2. AGENCY/STAFF INVOLVEMENT

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

### 3. ACTIONS

Date:

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

<b>Support And Protective Services (continued)</b>			
<b>Action</b>	<b>Responsibility</b>	<b>Timescales Deadlines</b>	<b>Intended Outcomes</b>
<b>e) Information sharing arrangements</b>			
<b>f) Risk management coordination</b>			
<b>g) Other Actions</b>			
<b>h) Other Actions</b>			

#### 4. VIEWS AND ROLES OF ADULT AT RISK AND OTHERS

Date:

<b>Adult's view of Protection Plan:</b>
<b>Advocates view of Protection Plan:</b>
<b>Unpaid Carer/s view/s of Protection Plan:</b>
<b>Guardian/Attorney's view/s of Protection Plan:</b>
<b>Agencies dissenting from Protection Plan:</b>

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

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

## 6. DISTRIBUTION OF PROTECTION PLAN

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

Person/Agency	Name and Designation	Sent copy of Protection Plan ( <i>date, or N/A</i> )
Adult at risk		
Carer/named person		
Advocate		
Social Work staff		
Support Agency		
Community Health		
G.P		
Consultant		
Police		
Housing		
Legal Representative		
Attorney/Guardian		
Other		

## 7. REVIEW ARRANGEMENTS

Review Date:	Review Location (if known):
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Protection Plan approved as accurate and confirmed copied to set agencies and Core Group members

Signed by Case Conference Chair:

Date:

## **APPENDIX 6 ACCESS TO RECORDS (SECTION 10 OF THE ACT)**

### **1. Accessing Records**

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

appropriate identification with him or her when requesting and accessing records from other agencies. Examples of records that may be useful in an investigation include bank statements, employers' records, records held by Department of Work and Pensions or records held by voluntary agencies. This is not an exhaustive list. All formats of records such as computer, audio and visual are covered by the legislation.

- 1.7 If it appears an offence may have been committed, the police should be contacted and a joint investigation carried out. Only original documents or certified copies can be used in court. If computer records are to be submitted as evidence, they must be printed off and signed by the holder to confirm they are a certified copy. It is the responsibility of the police to gather evidence in a criminal investigation. The designated Council Officer should request copies of the records and ensure that original documents remain with the source of the information.
- 1.8 Section 49 of the Act states it is an offence of obstruction for a person to fail to comply with a requirement to provide information under Section 10 of the Act. Reasonable efforts should be made to resolve disagreements through informal means, initially, before considering any legal action.

## **2. Accessing Health Records**

- 2.1 If the designated Council Officer knows or believes an adult is at risk under the 2007 Act, he or she has the right to request any person holding health records to give access to the records or copies of them. Health records are any record made by or on behalf of a health professional relating to an individual's physical or mental health. Records include notes written by GPs, occupational therapists, physiotherapists and nurses, either written or electronic.
- 2.2 Health records may only be inspected by a registered health professional for example doctor, nurse or midwife.
- 2.3 If possible, an appointment should be made in advance to allow the author of the record time to gather the relevant information. It is best practice for the designated Council Officer, with the assistance of the health professional reading the records if appropriate, to interview the author. However, it may not always be possible to interview the author especially if records contain entries made by a large number of different Health professionals. During the interview, the designated Council Officer should record any statements made by the health professional inspecting the records. In certain circumstances, it may be appropriate to request the records or copies of them e.g. for inspection by another health professional for a second opinion.
- 2.4 In some cases it may be sufficient for a health professional to provide a written summary of his or her involvement and of the adult's physical and mental health along with any relevant documents or reports. However, it should be noted that Section 10 of the Act refers to existing records held by a professional or an organisation rather than information created specifically to meet a request.

## **APPENDIX 7 ROLES AND RESPONSIBILITIES**

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

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

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

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

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

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

### **In addition, the Police will:**

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

### **All appropriate professionals in Health will:**

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

**The Scottish Commission for the Regulation of Care will:**

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

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

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

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

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

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

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

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

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

## **APPENDIX 8                   UNDUE PRESSURE (SECTION 35 OF THE ACT)**

### **1.       Undue Pressure**

- 1.1**    The provisions relating to undue pressure do not apply where the adult at risk does not have capacity or if it has not been possible to ascertain the view of the adult at risk e.g. access has been denied.
- 1.2**    No protection order can be granted where the court knows that the adult at risk has refused consent to this unless the Sheriff reasonably believes that:
- a) the adult at risk has been unduly pressurised to refuse consent to the action; and
  - b) there are no steps which could reasonably be taken with the adult's consent which would protect the adult from harm which the order or action is intended to prevent.
- 1.3**    'Undue Pressure' applies in situations where the harm is carried out by a person in whom the adult has confidence and trust and where the adult at risk would consent to the granting of the protection order if the adult did not have confidence and trust in that person. A relationship founded on trust and confidence may be with a family member, neighbour, or other person who may provide support in order to exploit or harm, or a person upon whom the adult at risk is very dependent.
- 1.4**    There may be other situations where it could be shown that there has been undue pressure. There may be grounds which evidence undue pressure where the adult may not wish to upset the person by giving consent because of:
- anticipation of threats or intimidation;
  - belief that the consequences of giving consent will result in the adult at risk experiencing negative consequences;
  - fear of abandonment and or loneliness;
  - fear of withdrawal of practical and emotional support;
  - being worried about talking when certain people are present;
  - not being allowed time alone with the worker;
  - lack of eye contact; and/or
  - personal presentation.

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

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

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

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

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

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

## **APPENDIX 9            LOCAL CONTACTS**

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

Angus Council ACCESSLine: 08452 777 778  
Email: [accessline@angus.gov.uk](mailto:accessline@angus.gov.uk)

Dundee City Council Social Work Department  
First Contact Team; 01382 434019  
Email: [firstcontact.teamadmin@dundeecity.gov.uk](mailto:firstcontact.teamadmin@dundeecity.gov.uk)

Perth & Kinross Council Access Team  
Tel 0845 3011120  
Email: [accessteam@pkc.gov.uk](mailto:accessteam@pkc.gov.uk)

Tayside Police number: 0300 111 2222

Out of Hours Service Dundee and Angus DD3 8PL Tel 01382 436430  
Out of Hours Service for Perth & Kinross – Tel 0845 301 1120

For guidance relating to Adults With Incapacity contact:

The Office of the Public Guardian  
Hadrian House  
Callendar Business Park  
Callendar Road  
FALKIRK  
FK1 1XR  
Tel 01324 678300  
Email [opg@scotcourts.gov.uk](mailto:opg@scotcourts.gov.uk)

Scottish Commission for the Regulation of Care  
Compass House  
Riverside Drive  
DUNDEE  
DD1 4NY  
Tel 01382 207100.  
Fax 01382 207200  
Website [www.carecommission.com](http://www.carecommission.com)

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

## **APPENDIX 10            MEDICAL EXAMINATIONS**

### **1.        Introduction**

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

**1.2**     A medical assessment may be a necessary component of an Adult Protection Investigation for the following reasons:

- in order to gather evidence of harm to inform a criminal prosecution or action to safeguard the adult;
- for health reasons only, physical and/or mental; and/or
- to establish mental capacity.

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

### **2.        Consent**

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

**2.2**     If there is no Welfare Guardian or Welfare Power of Attorney, or they are not available or they are alleged perpetrators or are suspected of colluding with alleged perpetrators, an Assessment Order may be applied for (see Appendix 14). An Assessment Order may also be applied for if there is a Welfare Guardian or Power of Attorney and they are refusing permission for a medical examination to take place or if it is suspected that the adult has made the decision not to participate in a medical examination due to undue pressure (see Appendix 8).

**2.3**     A person is not obliged to answer any questions put to him or her in an interview and must be informed of his or her right to refuse prior to a medical examination being carried out. If there are concerns that an adult has not understood the question, inquiries should be made to ensure whether there is a Welfare Guardian or Power of Attorney who should be contacted for

consent. In a forensic medical examination police may consider the use of an Appropriate Adult who could inform regarding consent. Regardless of whether the medical examination is carried out by a police doctor or a G.P. it is the responsibility of the medical practitioner to be satisfied that the adult at risk has consented or at least has no resistance to the examination.

### **3. Procedure**

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

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

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

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

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

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

## **4. Forensic Medical Examinations**

**4.1** Forensic medical examinations usually take place under the following circumstances if:

- it is believed that an adult has sustained a non accidental injury;
- there is concern regarding sexual harm and there is the likelihood that physical evidence may be present;
- the adult has injuries where the explanation (from the adult or other person) is inconsistent with the injuries and an examination may provide a medical opinion as to whether or not harm has been perpetrated;
- the adult appears to have been subject to neglect or self neglect; and/or
- the adult is ill or injured and no treatment has previously been sought.

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

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

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

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

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



## **APPENDIX 11**

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

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

When a referral is made to the Community Care Services Local Authority Social Work Department expressing concern that a person may be an adult at risk then the relevant social work Team Manager will:

- immediately assess the information provided
- consider the above alongside any other information they have immediate access to and discuss with Service Manager whether or not the person may be at risk of significant harm and, therefore, whether an initial referral discussion should be convened.

If it is decided that an initial referral meeting should take place, this should happen in accordance with this guidance. If it is decided that an initial referral meeting is not required, then this must be recorded, with the reasons stated. The person who receives notification of the concern must contact the person who relayed that concern, explain the decision reached and suggest alternative action that might or will be pursued.

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

When an initial referral meeting is to be convened in the case of a person not known to social work, the staff member who received the concern, along with the allocated Council Officer and their Team Manager should come together at an initial referral meeting to consider the concern made known and decide what action may be required.

#### **2 Timing of an initial referral meeting**

How quickly an initial referral meeting is convened after a concern is expressed is a matter for professional judgement on the part of the Service Manager involved. The factors he or she will have to balance are the need to act quickly, the time required to gather information and how quickly relevant people can be brought together. The overarching consideration must always be the need to act to protect a person from significant harm.

In normal circumstances, it will be desirable to have complete information upon which they base joint decisions, and there may be occasions when the core agencies need to make decisions informed only by the incomplete information available to them at the time.

If the initial information suggests the person is at immediate risk of significant harm, then the timing of an initial referral meeting must reflect this even though all the initial referral meeting will proceed with only the core agencies in attendance. Such an urgent meeting should also address the requirement of investigation planning.

It is also possible that, due to the urgency of the situation requiring immediate action to protect an adult, the initial referral meeting (Debriefing) process commences after the safety of the person is secured. Whether this is the case is a matter for professional judgement on the part of the Social Work Team Manager and Service Manager involved at the time.

However, in all cases, an initial referral meeting must be held within 5 working days of the decision to call it unless there are extenuating circumstances, in which case the Service Manager may agree a longer timescale. He or she must record the reasons for this in the Detailed Record and in the minute of the initial referral meeting when it is held

### **Attendance at initial referral meetings**

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

Not every person who provided information may be required to attend. Agencies that have current, direct involvement with the person and/or other connection to associated children or adults should be present. The Service Manager responsible for initiating the process must decide whether other providers of information should be present to provide interpretation or analysis of the information provided.

In some circumstances, it may not be possible for all of these to attend within the timescale the circumstances demand. When this is the case, arrangement should be made for as much information as possible to be shared. Participation via telephone conferencing or the submission of written information by e-mail or fax are alternative ways in which an agency representative can contribute.

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

If Police have been involved in the referral, or it is alleged or suspected that a crime may have been committed - police should be informed of the initial referral meeting and an invitation extended for their attendance where appropriate.

### **3 Decision Making at an initial referral meeting**

An initial referral meeting will make and record decisions on a number of issues including:-

- the need for immediate legal measures (see Appendix 14 - Protection Orders);
- the setting of clear timescales and sequence of actions, with roles and responsibilities assigned to named individuals. This will include coordinating actions; e.g. visits, contacts and feeding back outcomes of these to each other;

- whether the appropriate action is to continue intervention under Adult Support and Protection procedures and conduct an adult protection investigation, or in cases where an investigation is not required, to recommend an adult protection case conference;
- what alternative action is appropriate if Adult Protection Procedures are not to be followed; e.g. referral to another part of Community Care Services (e.g. Home Care); referral to another agency or no further action;
- how to secure additional information and who is responsible for doing so, how that will be shared between meetings of those involved, and how actions might be modified in the light of such information;
- the risk to any other adults and/or children connected to the person in question;
- consideration of any matter of consent from Guardians (if necessary), who is to obtain this and how;
- the provision of information and support to the person and their family/carers during and after the adult protection investigation

All decisions made an IRD must be minuted with details recorded, along with a summary of the discussion as consideration that led to the decision being made. This record should be provided to each person attending, those who were invited to attend but could not do so and to those who made a contribution by some other means; e.g. submission of written information, etc.

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

Those involved (including any professional involved but unable to attend the initial referral meeting) will act as core group for the purposed of the interim protection plan and **collectively** carry the responsibility of implementing and monitoring the implementation on the plan.

If the Service Manager decides against convening an adult protection case conference, he or she must specify how the interim protection plan is to be managed beyond the time of his/her decision.

When the initial referral meeting has decided to pursue an adult protection investigation, then it must agree **actions with timescales** to protect the person during the investigation and up to the time of any adult protection case conferences that may be arranged. Action may develop and change as the investigation proceeds. If so, those directly involved with the adult and cares/members of the family should be part of the decision-making, implementation and management of the interim protection plan.

## **4 Resolving Disagreements**

If a referrer disagrees with the decision of the core agencies not to convene an initial referral meeting, then that person should request that the relevant Service Manager, liaise and make a binding decision.

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

## **5 Feedback to the Referrer**

Whoever expressed the concern needs to know that they will receive feedback on the outcome. The responsibility to provide feedback rests with the person who received the information in the first place.

The purpose in providing feedback is not only to assure the person who expressed the concern that action has been taken, but so that they can play an appropriate role in supporting the person or family. Whilst action to secure the safety and well-being of the adult is the priority, there should be no unnecessary delay in ensuring that feedback is provided. The timing and nature of the feedback must take account of the role and status of the person to who it is being given. Data Protection legislation requirements and principles must be applied.

The person providing the feedback should ensure that the fact that it has happened is recorded in case records. The same person must ensure that the principles of *Information Sharing* have been explained to the adult and his or her family/representative/guardian.

## **6 Information to the Person and his/her Carers**

The provision of information to the person and those caring for him or her about what is happening, why and what is going to happen next must always be a central part of planning and action. Not only do these people have a right to be informed, but appropriate information sharing and involvement by those most directly affected is likely to lead to a more effective engagement and a better outcome for the person.

If a carer is believed or suspected to be responsible for any significant harm that the adult may be suffering, then particular attention must be paid to what information can be shared with him or her. However, intervention should proceed on the basis that sharing information does lead to better outcomes and make decisions accordingly.

The plan resulting from an initial referral meeting and any updates to it as the matter progresses must set out what information is to be shared, with whom, when, by whom.

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

In cases involving multiple victims or perpetrators or when there is a suspicion that harm might be happening within an organised network, all that is stated

above applies. In such cases, it is particularly relevant that management of the decision-making process and of the conduct of any adult protection inquiries is clearly established, agreed and recorded. Senior Officers from Tayside Police and the Social Work Department should be involved in the initial referral discussion. The command structure for the inquiry should be agreed, as should the time frames and formats for update and review meetings during the course of the inquiries.

Recording also assumes particular importance in such inquiries. Other agencies should be guided by Tayside Police in relation to the collation and analysis of information, given their expertise in gathering, storing and handling intelligence, and access to such resources as the Scottish Intelligence database (SID).

## **APPENDIX 12            NOTES ON REFERRAL DISCUSSION WITH POLICE**

### **1.        Person Responsible – Team Manager, Community Care Services**

#### **1.1      Action to be taken**

- Where a criminal offence may have been or is believed to have been committed, referral must be made to the police. This is likely to take the form of a telephone discussion.
- Where the adult at risk of harm does not wish to make a complaint to the police this telephone discussion with the police will assist in deciding on the most appropriate action, balancing the interests of the adult at risk against those of public safety.
- If attendance of police is required contact should be made to the Public Protection Team in the first instance. If in an emergency assistance is required immediately contact should be made with Force control.

### **2.        The telephone referral discussion will**

- Assess the level of apparent risk and therefore the need for immediate action.
- Require the sharing of all available information between agencies to assist in the planning of any investigation.
- Address the possible need to use the Appropriate Adult Scheme for interviewing adults at risk, witnesses or suspected persons.
- Examine the current available evidence, how best to obtain further evidence and the possible need for any medical/forensic examinations.
- Determine the manner of the investigation, the process and the agencies that need to be involved.
- Determine the need for an initial referral meeting
- Agree on personnel to be involved from the appropriate agencies and the level of communication to monitor the progress of the enquiry.
- Assess risk of further harm, mistreatment or neglect to the adult at risk and community safety issues.
- Agree a media strategy if deemed necessary.

Details of initial telephone discussions should be recorded and attributed.

The consultation and information sharing process should be ongoing and will involve agencies sharing, reviewing and evaluating information as it comes to light.

## **APPENDIX 13 NOTES ON JOINT INVESTIGATIVE INTERVIEWING**

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

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

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

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

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

#### **1.1 Reasons**

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

#### **1.2 Objectives**

- To establish what, if anything, has happened;
- To gather best evidence regarding the matter under investigation for both criminal and civil proceedings;
- To allow a joint assessment of risk and needs to be undertaken; and
- To inform any decision to be taken in relation to the best way to proceed with an investigation.
- To ensure that a plan is formulated and implemented to protect the adult at risk of harm, where necessary.

At all times when planning, preparing and conducting a joint investigative interview the needs and well-being of the adult at risk are of paramount consideration, e.g. consider the presence of an Appropriate Adult<sup>1</sup>, an advocate or a carer.

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<sup>1</sup> An Appropriate Adult will be allocated by police to provide a service to adults who have a mental disorder or learning disabilities to facilitate communication between such an adult and a police officer in an interview situation where the adult is a victim, witness, suspect or accused.

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

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

A Council Officer must, while visiting any place (or conducting an interview), produce evidence of his or her authorisation to visit the place (or conduct the interview). It is also essential that he or she explains clearly that the purpose of the visit is to assist with inquiries about the nature and level of any risk to the adult, and to decide whether action is needed to support and protect them. After this has been stated, the adult must be informed that they are not required to answer any questions. A Council Officer does not have the authority to ignore an adult's refusal to participate in an interview; however it is important to give them a reasonable opportunity to engage with the process while respecting their right not to do so.

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

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

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

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

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

- Any changes in the interviewers' roles
- Any changes in the adult at risk's demeanour
- Description of any props used
- Details of any drawings made by the person
- Time and length of, and reason for, any breaks during the interview
- Attribution of statements
- Body language
- Finish time

### **2.3 After the conclusion of the interview**

- Interviewers must review the written record of the interview to ensure that it is an accurate account of the interview.
- Any omissions should be discussed and, if appropriate, entries made to reflect the omission – any such entries must be highlighted.
- The record should be signed and dated by the interviewers.
- Any drawings or other items written by the person should also be signed and dated by the interviewers.
- All records and drawings, etc will be retained by the police, and where appropriate, copies made available for Community Care Services.

Please remember that the above list is not exhaustive and any other information that the interviewers feel is relevant should be recorded.

### **2.4 Points to consider when preparing the person for interview**

During a joint investigative interview, interviewers must remember that the adult at risk of harm may perceive the interviewers as 'figures of authority' and may, therefore, answer questions in a way that he or she may think will please the interviewers. The adult at risk may also be under the misapprehension that the interviewers are aware of what may have happened to them and may therefore assume that they do not need to tell them everything. The adult at risk must also be made aware that when they are unable to provide an answer to a question, then they should tell the interviewer that they 'don't know' or do not understand the question. So the interviewers should explain that:

- If he or she does not know the answer to any question, it is okay for him or her to say so.
- If he or she does not understand any question that is asked, he or she should tell the interviewers.
- In situations where something has happened to the person, he or she must be reminded that the interviewers were not there at the time and he or she should try to tell the interviewers everything that happened.
- If the interviewers misunderstand something that the person has said, then he or she should not be afraid to tell them.

## **3. Interviewing People with Individual Needs**

Planning for an interview shall be carried out with particular attention to individual needs of the adult and the interview should take into account if the adult is a person with dementia, learning disabilities, sensory impairment or communication difficulties. In all cases they should be offered the opportunity to have someone present to support them, possibly a family member, key worker or advocacy worker, unless they are the alleged perpetrator. If the person at risk of harm has capacity and refuses this, his or her choice must be respected.

If the person is under a Guardianship Order, the Guardian must be notified and be present, unless they are the alleged or suspected perpetrator.

Attention should be given to:-

- Individual communication needs
- Environmental factors to minimise the likelihood of triggering upset or challenging behaviour.
- Particular routines that must be maintained to aid their management of the situation.

It should also be noted that evidence gathering does not only involve verbal exchanges. A great deal of information and potential evidence gathering can take place by careful observation. Clear and detailed notes of observations should also be made.



## **APPENDIX 14 PROTECTION ORDERS (SECTIONS 11 - 28 OF THE ACT)**

### **1. Procedures for applying for a Protection Order**

There are three kinds of protection order that can be applied for to protect adults from harm. These are:

- Assessment Order
- Removal Order
- Banning Order

The decision to apply for a protection order will be taken after discussion with the Team Manager, Legal Services and the relevant Service Manager. Legal Services are responsible for preparing and presenting all applications to court.

It is envisaged that in most cases initial enquiries and/or investigations will have taken place.

### **2. Definition of serious harm**

Protection orders will only be granted where there is reasonable cause to suspect that the affected adult is at risk of serious harm. What constitutes serious harm will be different for different persons and is not defined in the Act. When assessing harm, areas that need to be taken into consideration are:

- impact of harm on the adult at risk and the outcome on his or her physical and mental health;
- personal perception;
- level of risk;
- injuries which are severe and /or life threatening;
- the need for urgent action;
- the frequency, consistency and severity of harm;
- the intent by the alleged or suspected perpetrator;
- history of harm; and
- the probable consequences of non-intervention.

### **3. Assessment Order (Sections 11 – 13 of the Act)**

An Assessment Order can be used in situations where there is concern that an adult may be at risk of serious harm and it has not been possible to undertake an assessment through informal means. An Assessment Order allows a Council Officer to interview the adult at risk in private and if necessary, arrange a medical examination. However the adult at risk must give their consent before the Order can be implemented. They must be advised that they are not obliged to answer any questions.

If it is likely that there will be a lack of privacy, the adult at risk can be taken elsewhere for the interview and the examination to be completed. The Sheriff can authorise a Council Officer to take an adult at risk from a place being visited under Section 7 to allow for an assessment. It may be necessary to consider an alternative place to undertake the assessment if someone is not allowing the interview to proceed or the adult is unwilling to talk freely and / or requires specialised equipment to facilitate the interview.

Before an Order is granted, the Sheriff must be satisfied that an assessment is necessary and meets the criteria (Section 12, Adult Support & Protection (Scotland) Act 2007) as follows:

- a) where the Council has reasonable cause to suspect that an adult at risk is being or is likely to be seriously harmed;
- b) that an Assessment Order is required to establish whether the person is an adult at risk who is being or is likely to be seriously harmed; and
- c) the availability and suitability of the place at which the person is to be interviewed.

A Sheriff may grant a Warrant for Entry in relation to a visit under Section 7 of the Act where the Council Officer has been, or reasonably expects to be, refused entry or to be unable to enter the place where the adult at risk is, or than an attempt to visit the place without a warrant would defeat the object of the visit.

When an Assessment Order is granted the Sheriff also grants a Warrant for Entry. The visit to implement the Assessment Order will be carried out in conjunction with the police. A police constable will be in attendance and if necessary can use reasonable force to fulfil the object of the Order. It is only the constable who can use reasonable force.

The Warrant expires 72 hours after it is granted and the Assessment Order will expire after a seven day period.

*The following factors should be considered before applying for an Assessment Order:*

- Has a risk assessment been completed?
- What type of harm might the adult be suffering or be likely to suffer?
- Is it of a serious nature?
- What steps have been taken to establish the extent of the harm or the likelihood of it?
- Why have these not been successful?
- Has there been non co-operation from the adult and/or their carer or relative or significant other?
- What steps have been taken to overcome this?
- What kind of assessment is needed?
  - Consider any communication difficulties
  - Consider any known health issues
- Where will the assessment take place?
  - At home or at an appropriate other place if it is not possible to interview the person in private
  - Need to establish the course of action if the adult at risk cannot be assessed at home
  
- Has the adult's capacity been assessed/established?
- If the adult at risk has a known mental disorder has a Mental Health Officer been consulted?
- Has consideration been given to any other legislation in order to intervene effectively? If so, why is it not appropriate?
- Has contact been made with the police?

- Has a referral to the Advocacy Service been considered?
- Have the principles of the Act been adopted throughout the decision making process when considering the proposed action?

The Council should re-consider the merit of the application if it considers that the adult will refuse consent to the granting of an Assessment Order, or compliance with any interview or medical examination.

### **3.1 Consent of Adult at Risk:**

It is also necessary to consider whether the adult has given consent or not to the action being considered. You must evidence this to the Sheriff. Therefore it may be helpful to consider the following steps;

- Step 1            Is the adult able to give consent?
- Step 2            If not, demonstrate efforts made to try to gain consent and the reasons why this has not been achieved.
- Step 3            If the adult specifically refuses to give consent, consideration must be given as to whether they have been unduly pressurised, unless the adult at risk does not have capacity.

### **3.2 Urgent Cases**

A Warrant for Entry under Section 37 of the Act may be applied for in an emergency. Therefore, there may not be sufficient time to arrange an Initial Referral Discussion meeting or Adult Protection Case Conference. In such instances, the application will be determined through discussions with relevant professionals and appropriate managers. Discussion and decision making should be recorded and attributed in Detailed Records.

Where someone has been hurt and sustained a physical injury, it may be necessary to contact the emergency services.

## **4 Removal Order (Sections 14 - 18 of the Act)**

A Removal Order can be used in situations where there is concern that an adult may be at risk of serious harm and it is necessary to move the person to a specified place and take reasonable steps to protect that person from harm.

Before a Removal Order is granted, the Sheriff must be satisfied that it is necessary and meets the criteria (Section 15 of the Act):

- a) that the adult at risk is likely to be seriously harmed if not moved to another place; and
- b) that there is an available suitable place where the adult at risk can be moved to.

When a Removal Order is granted, the Sheriff also grants a Warrant for Entry. A police constable will be in attendance and, if necessary, can use reasonable force to fulfil the object of the order. It is only the constable who can use reasonable force.

The warrant expires 72 hours after it is granted.

The Order expires seven days from when the adult at risk is moved, or after any shorter period that the Sheriff has decided upon when granting the Order.

#### **4.1 Consent of Adult at Risk:**

When considering applying for a Removal Order, it is necessary to establish whether the adult at risk is able to consent to the action. The following steps should be considered:

- Step 1            Is the adult able to give consent?
- Step 2            If not, demonstrate the efforts made to try to gain consent and the reasons why this has not been achieved.
- Step 3            If the adult specifically refuses to give consent consideration must be given as to whether they have been unduly pressurised, unless the adult at risk does not have capacity.

*The following factors should be considered before applying for a Removal Order:*

- Has a risk assessment been completed ?
- Has a network meeting, an IRD or case conference taken place or is one necessary? (The situation may not allow for this due to the immediacy of circumstances.)
- What type of harm might the adult be suffering or be likely to suffer?
- Is it of a serious nature?
- What steps have been taken to establish the extent of the harm or the likelihood of it?
- What attempts have been made to minimise the harm?
- Why have these not been successful?
- Has there been non co-operation from the adult and/or the carer/relative or significant other.
- What steps have you taken to overcome this?
- Have you tried to establish whether the adult at risk has capacity?
- If the adult at risk has a known mental disorder has an MHO been consulted?
- Have you considered any other legislation in order to intervene effectively? If so, why is it not appropriate?

- Have you contacted and liaised with the Police?
- Has a referral to the Advocacy Service been considered?
- Have you applied the principles of the Act throughout your decision making process when considering the proposed action?

The Council should re-consider the merit of the application, if it considers that the adult will refuse consent to the granting of a Removal Order, or is not likely to remain in the place to which he or she has been taken. This is because a Removal Order only permits the removal of the adult. It does not authorise the keeping of the adult in the place for the duration of the order.

## 4.2 Planning

A Removal Order will expire after seven days or such shorter period as may be specified in the order from when the person is removed. This is a short period of time to complete an assessment and establish a plan. It is therefore necessary to formulate a plan at the earliest point. This should be when you are considering your application. The following factors will assist the planning stages when invoking a Removal Order.

- Why does the adult at risk need to be removed?
- How will the adult at risk be removed?
  - Has consideration been given to:
    - the means of accessing an adult at risk through attendance at day care?
    - transport needs?
    - the safety of Council Officers?
    - any immediate health needs?
    - the need for liaison with Police regarding the execution of a Warrant for Entry?
    - who will secure the property? (See Section 4.8 - Safeguarding of Property)

Where will the adult at risk be removed to?

- Has consideration been given to:
- the availability of a specified place?
  - the suitability of a place of safety?
  - the need for specialised equipment?
  - cultural needs?
  - communication needs?
  - care needs?

What conditions should be considered?

- Has consideration been given to:
- who should have contact?
  - the identification of any other relevant parties – guardian, relatives, etc?
  - the need to consider a plan for those who should have access?

- the need to apply the principles of the Act throughout the decision making process when considering the proposed action?

### **4.3 Case Conference Procedures**

An Adult Protection Case Conference should be arranged within 24 hours of the adult being removed. The Case Conference should:

- consider how the removal order was enforced and ensure any issues are addressed;
- Review the outcome of the removal order;
- Determine possible alternatives to returning home, if applicable;
- Determine what action is necessary to facilitate the person's return home;
- Ensure that a risk assessment is completed or reviewed;
- Ensure that a protection plan is established or reviewed;
- Establish the core group and a communication plan;
- Determine clear roles and responsibilities for the period that the adult is removed; and
- Consider the need for any other measures within the Act (e.g. Banning Order) or any other relevant legislation.

### **4.4 Variation or Recall:**

Whilst there is no right of appeal, it is possible for the Order to be varied or recalled. The adult who is subject to the Order, the Council or any other person who has an interest can apply for the Order to be varied or recalled.

### **4.5 Representation**

Council Officers should consider supporting the adult to seek representation through advocacy and a solicitor.

### **4.6 Financial Implications**

It is envisaged that where an adult at risk is removed to a care home for the period of the Order, he or she will not be charged. The Council has an overriding responsibility to protect the adult at risk. The costs of securing the property of the adult at risk during the period of the Order will also be the responsibility of the Council.

### **4.7 Warrant for Entry**

A police constable will be in attendance and if necessary can use reasonable force to fulfil the object of the Order. It is only the constable who can use reasonable force.

#### **4.8 Safeguarding of Property**

Section 18 of the Act obliges the Council to take reasonable steps to prevent loss or damage to any property owned by someone removed under a Removal Order.

The Act authorises entry to any place where the property that is owned or controlled by the adult at risk is known, or believed to be, for the purposes of preventing loss or damage.

Where a person is removed the Council must ensure that the property is locked fast, and that water and heating are safe in terms of the maintenance of the property. The Council should also make provision for animal welfare and ensure any valuables and monies are securely stored. There may be storage issues for the Council and there is no entitlement to recover any costs as long as the Order is in force (seven days).

This duty would allow Council Officers to remove any personal papers or bank books and adequate storage should be identified for these. The adult should be informed of their location if unable to take care of them.

The police should be advised that a property is vacant, particularly where the adult has been targeted.

#### **5 Banning Orders (Sections 19 - 28 of the Act)**

A Banning Order or a temporary Banning Order can be considered where the adult at risk is in danger of being seriously harmed, and where it would be better for the adult to remain where they are than be removed.

Before a Banning Order can be granted, the Sheriff must be satisfied that it is necessary and meets the criteria under Section 20 of the Act as follows:-

- That the adult at risk is being or is likely to be seriously harmed by another person.
- That the adult at risk's wellbeing or property would be better safeguarded by banning the other person from a place occupied by the adult than it would be by moving the adult from that place.
- That the adult at risk is entitled or permitted by a third party to occupy the place the subject is being banned from (or that neither the person to be banned or the adult is entitled to occupy the place from which the subject is to be banned).

The subject may be banned from being in a specified place and in a specified area in the vicinity of the specified place.

A Banning Order can be made:

- by or on behalf of the adult whose well being or property would be better safeguarded by the Order;
- by any other person who is entitled to occupy the place concerned; and/or

- by the Council if there is no-one else to make the application and the grounds are met.

A Banning or temporary Banning Order which bans the subject of the order from a specified place may have conditions attached to it, and may last up to six months.

### **5.1 What can a Banning Order or Temporary Banning Order do?**

A Banning Order or Temporary Banning Order can:

- ban the subject from being in a specified place;
- authorise the summary ejection of the subject from the specified place and specified area;
- prohibit the subject from moving any specified thing from the specified place;
- direct any specified person to take specified measures to preserve any moveable property owned or controlled by the subject which remains in the specified place while the order has effect;
- be made subject to specific conditions; and
- require or authorise any person to do, or refrain from doing, anything else that the Sheriff thinks necessary for the proper enforcement of the Order

A condition specified in an order may authorise the subject of the Order to be in a place from which they are banned for a specific reason e.g. supervised contact.

### **5.2 Consent of the affected adult (adult at risk)**

- Step 1 Is the adult able to give consent?
- Step 2 If yes - have they refused?
- Step 3 If they have refused – have they been unduly pressurised?
- Step 4 Has consideration been given to alternatives where the adult may agree to work with the Council under different terms?

### **5.3 Representation**

Section 19 (4) of the Act

- The Council Officer should consider organising a representative for the adult at risk. The Council has a responsibility to support the adult to access advocacy.

### **5.4 Intimidation**

It is the responsibility of Dundee City Council Legal Services to formally notify the subject and any other relevant person that the application has been made.

## **5.5 Factors to consider before making an application**

*The following factors should be considered before applying for a Removal Order:*

- Does the adult meet the criteria for an 'adult at risk'?
- Have the principles of the Act been applied?
- The type and severity of harm.
- Have any other legislation or options been considered?
- Has a Risk Assessment been completed?
- Does the adult at risk have capacity?
- Is an MHO required?
- Is there anyone else applying for a Banning Order?
- Who will be the subject of this Order, what length of time is required and what area should it cover?
- Are there any other places where the subject may gain access to the adult at risk?
- What conditions should be considered e.g. power of arrest, no contact by telephone, internet, third party, etc?
- Will the banned person have supervised contact with the adult – is there a need to develop an access plan?
- If the subject of the order makes contact, what action needs to be taken?
- How will the Order be implemented – consider safety issues to the adult and to staff?
- Is the subject of a Banning Order a child? Where the subject of the Order is a child, Children's Services must be contacted to discuss appropriate action. It may be necessary to consider an application to the Children's Reporter.
- How will the subject remove their own property from the specified place?
- Are there any removable items of the subject's, which remain in the property? – i.e. take an inventory and check with the subject to verify.
- Does the banned person reside in the same place? Does banned person have a key to the property they are banned from?

- Will the banned person need to be re-housed? How will their property be secured?

Consultation with all relevant agencies will be ongoing and documented.

## **5.6 Notifications**

If the application is granted, Legal Services will be responsible for notifying the subject of the Order, and the affected adult

There may be occasions when it is in the best interests of the adult for the intimation of the application or Order to be dispensed with. The Sheriff needs to be satisfied that by doing so this will protect the adult from serious harm; or will not prejudice any other person.

## **5.7 Serving the Order**

This should be coordinated between the Council Officer, Legal Services and the police. Where necessary, Sheriff Officers can be involved in implementing an Order or serving court papers. Legal Services will make initial contact with them and organise the service of papers. If the person subject to the Order needs to be ejected, Sheriff Officers will need to be present. It may be appropriate for the police to be present too.

**5.8** An Adult Protection Case Conference should be arranged within 48 hours with regular Core Group meetings arranged to review the situation.

- If the adult at risk is dependent on the subject of the order for his or her care needs, this will need to be considered and appropriate support provided.
- Safety issues will need to be assessed and addressed; and
- A clear protection plan put in place.

## **5.9 Occupancy Rights**

The Banning Order does not affect the adult at risk's rights, as a non-entitled spouse whose name is not on the occupancy agreement, to occupy a home within the place from where the subject of the Order is banned, under the Matrimonial Homes (FP) (Sc) Act 1981.

Where the adult at risk is entitled to occupy a place, their rights are not affected if their husband, wife, partner, etc is banned from the place.

Where the adult at risk has no occupancy rights and the proposed subject of the Order does have these rights, the subject cannot be banned from the place.

If you are unsure about the position, then this should be discussed with Legal Services prior to making a decision to apply for an Order.

### **5.10 Variations of the Banning Order, once granted**

Section 24 of the Act makes provision for an application to be made to the Sheriff to recall or vary an Order. It is possible to vary or recall an Order if there has been a change in circumstances where the Order is not required or it may be necessary to make a change to the Order either to add or delete conditions.

This can be carried out by:

- the person who applied for the Order;
- the subject of the order;
- the adult at risk; and/or
- any other person who has an interest in the adult at risk's well being or property.

### **5.11 Safeguarding of Property**

When a Banning Order has been made, the council's duties to protect relate only to moveable property belonging to the subject of the Banning Order which remains in the specified place, e.g. the adult at risk's home, while the Banning Order is in place. An inventory of such moveable items must be made and the best practice would be for the subject of the Banning Order to sign that this inventory is correct.

An inventory should be made and a copy given to the subject of the Order for signature. This will be carried out by the person delegated by the Team Manager. Costs incurred should be authorised by Team Manager / Service Manager (e.g. storage, pet care, locksmiths/joiners).

## **APPENDIX 15**

### **ORGANISING AND CHAIRING AN ADULT PROTECTION CASE CONFERENCE**

#### **1 Organising and Chairing**

The Community Care Service will take responsibility for the organising and chairing of case conferences. The chairperson should be the Service Manager<sup>1</sup> involved. He or she will ensure that time and venues are arranged and that all relevant people are invited.

Whenever possible, and where appropriate, the adult at risk should be invited to attend. He or she will have the right to be accompanied by an independent advocate, Appropriate Adult or support worker of their choice, including family member(s). Before attending a conference, the adult at risk and, where appropriate, his or her relative(s) or carer(s) should be briefed about the purpose and format of the meeting. The person who will take the minutes of the meeting should be identified in advance and should not be the chairperson.

##### **1.1 Guidance to Chairpersons**

- Where there is dissent or concern, the chairperson will consider and rule on requests for a family member and/or a carer to be included or excluded from the case conference or requests that the adult involved should or should not attend the case conference. Decisions about who should or should not attend should be recorded in writing with reasons.
- Provision should be made for the chairperson to ascertain if any professional needs to share information without the family being present. If so, this should be done prior to the family joining the case conference. It is expected that this will be exceptional and that the adult at risk and family or carer, will be able to attend for all of most meetings.
- The chairperson will introduce him or herself to the adult involved and his or her family and/or carer immediately prior to the case conference and confirm their understanding of the purpose and process of the case conference.
- Where the adult at risk (and/or his or her family or carer) has chosen not to attend or has been excluded from the case conference the chairperson must ensure that the decisions of the case conference are fed back to them as soon as practicable after the case conference. Where appropriate, the adult at risk should be consulted before details are passed to family or carer(s).
- The chairperson will ensure that the minutes of the case conference are accurate and that they are distributed to the appropriate agencies and,
- where appropriate, the adult at risk and his or her family and/or carer within ten working days of the case conference.
- The chairperson should ensure that any necessary communication aids (e.g. loop system) are made available.

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<sup>1</sup> The Adult Protection and Review Officer may also chair cases conferences and reviews.

## **1.2 Involvement of the Adult at Risk:**

The wishes and needs of the adult at risk are at the heart of the case conference process. It should be normal practice for the adult to be involved in discussions about them and their circumstances.

In making decisions about the adult at risk's involvement, the chairperson should be guided by:

- the capacity of the person;
- the information likely to be shared at the case conference;
- the likely effect on the adult, particularly when the person suspected of harm or mistreatment may also require to have some involvement; and
- the views of the family and carers.

## **1.3 Involvement of Family and Carers**

If the adult at risk does not wish the attendance of a family member or carer and it is felt crucial to any protection plan that the family member or carer attend, the Council Officer should discuss the issue with the chairperson who will make a final decision on attendance. Decisions will be recorded in writing.

It is important that family and carers have a room in which they can wait and that, when necessary, the time spent on the initial part of the conference, from which they have been excluded, is kept to a minimum.

## **1.4 Exclusion of Family and Carers**

This will only occur where there are substantive grounds to believe that the involvement of family and carers would undermine the process and purpose of the case conference and they may need to be excluded throughout.

Grounds for exclusion would be:

- When a significant level of conflict or tension exists within the family and carers or
- When there is substantive evidence to believe that there is a likelihood of violent or serious disruption of the process of the case conference
- If frank discussion would be curtailed by the presence of a particular person

Family and carers may also be excluded when third party or sub-judice information is being presented to the case conference.

Being an alleged perpetrator is not sufficient reason in itself to exclude a family member or carer. This may be judged necessary by the chairperson if it is considered that their presence would seriously affect the consideration of the risk to the adult concerned.

## **1.5 Involvement of a Friend or Advocate**

There may be occasions when the adult concerned or a carer or family member may wish to be supported by the attendance at the case conference of a friend, other relative, professional person or member of an independent advocacy service. The attendance of such a person who may be able to assist the adult in clarifying the content of the discussion should be encouraged. The use of an independent advocate or the Appropriate Adult Scheme should be considered.

## **1.6 Attendance of Professionals**

Conferences should be attended by individual professionals from caring agencies that have a direct contribution to make and a role to play. These may include:

- Council Officers/social work professionals carrying out the investigation or who already know the individual and/or their carer or family and their supervising senior social worker or team leader.
- Medical professionals who are involved in the investigation or who know the carers and family concerned (e.g. health visitor, GP, district nurse, community psychiatric nurse etc.)
- Police officers who are involved in the investigation
- Voluntary or private sector staff who are directly involved with the carer/family
- Residential or day care staff involved with the adult
- Members of the interpretation/ services.
- Power of Attorney or Welfare Guardian

Consideration needs to be given to the number of people attending the case conference as the purpose is to enable the adult at risk to be fully involved in the discussion and the decision making process.

## **1.7 Information Sharing**

Confidentiality is required from each participant in a case conference and this should be made explicit at the beginning of the meeting by the chairperson. Information will be shared in line with the legislation on Data Protection.

Exceptionally, it may be considered that the disclosure of certain information in this kind of meeting could cause serious damage to the person it concerns and care needs to be taken on how this information is shared.

## **2 Conduct of Case Conference**

### **2.1 Introduction**

The chairperson introduces the case conference by confirming:

- The function of the case conference and the context of the adult protection guidelines

- The right to information of those present; clarifying that certain information may have to be restricted; giving the reason for that restriction
- The chairperson then asks participants to introduce themselves.

## **2.2 Fact Gathering**

The professionals are asked by the chairperson to share information:

- Beginning with the circumstances of the referral and conduct of enquiries
- Moving on to any relevant background information only once all the information relating to the current enquiry has been shared
- The chairperson briefly summarises each contribution at the time it is made to ensure that the contribution has been properly understood. This process should also facilitate the taking of the minute of the meeting.
- It is particularly important that the carers and family understand the information being shared and that they have an opportunity to make their own contribution. If there are disagreements about the information, then there should be an attempt to resolve these at the time. However, it may be that some disagreements can only be acknowledged.
- The unrestricted information shared at the case conference is summarised by the chairperson.

## **2.3 Interpretation and Assessment**

The chairperson should lead the discussion which focuses on:

- What are the strengths of the family and carers and what are the threats to the adult at risk's well-being?
- What are the specific dangers to the adult at risk and/or the carers and family members?
- What extended family, professional and community supports could be offered?
- How can the harm be stopped?

## **2.4 Decisions**

The case conference needs to decide whether the adult and/or any other person is believed to be at risk of being harmed, mistreated or neglected and if so:

- Consideration must be given as to whether or not a referral should be made to the police if it is believed that a crime may have been committed if this has not already been done.
- An adult protection plan must be agreed with a list of action points and timescales and details of who will be responsible and for what.

- A communication strategy should be included in the protection plan to ensure appropriate liaison between agencies. Contact between the Council Officer / Care Manager and the adult at risk will be weekly unless otherwise agreed by the case conference or review. The core group will meet monthly unless otherwise agreed by the case conference or review.
- A case co-ordinator must be appointed who should be a social worker/care manager.
- A review date must be agreed which must take place within three months
- Any supplementary actions that may be required as a contingency in the event of a breakdown in care arrangements or other changes in circumstances.
- Consideration of whether a Criminal Injuries Claim may be appropriate, along with the need for a referral to the Victim Support Agency.

## **2.5 Conclusion**

The chairperson will summarise the decisions made by the case conference and confirm with participants the roles that they will play in the adult protection plan.

## **2.6 Minutes of the Case Conference**

The minutes of the case conference should be completed and circulated to those attending and, where appropriate, with the consent of the adult at risk, to family and carers not present. The chairperson is responsible for making any alterations to inaccuracies noted by those in attendance and for ensuring that the minutes are circulated to all the relevant people as soon as possible but within **ten working days**.

The minutes should include as a minimum:

- Essential facts
- Details of the adult protection plan (if applicable)
- Whether the conference decided to refer the matter to the police
- Recommendations for further action
- An account of the process of the discussion and the reasons for the recommendations.
- A note of any dissent
- Date of the review conference

Where an adult at risk (and/or his or her family/carer) has chosen not to attend or has been excluded from the case conference, the chairperson must ensure that the decisions of the case conference are fed back as soon as practicable after the case conference.

Copies of the adult protection case conference minutes and review case conference minutes are sent to the Head of Community Care Services and to the Senior Officer Adult Protection, Strategy Performance and Support Services.

Distribution of the minutes can be sent by email internally in Council and to other agencies with secure email. Otherwise registered post should be used.



## **APPENDIX 16      GLOSSARY OF TERMS**

### **Advance Statement**

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

### **Affected Person**

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

### **Alarm**

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

### **Allegation**

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

### **Appeal**

A request that a legal decision is changed.

### **Appropriate Adult**

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

### **Appropriate Services**

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

### **Ascertainable Wishes**

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

### **Assessment Order**

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

### **At Risk**

In a potentially dangerous situation.

### **Attorney**

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

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

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

### **Availability and Suitability**

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

### **Banning Order**

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

**Benefit**

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

**Biennial Report**

Happening once every two years.

**Body Corporate**

A group of people relating to a large company.

**Breach**

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

**Capacity**

See mental capacity.

**Care Commission**

The Scottish Commission for the Regulation of Care.

**Case Conference**

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

**Children's Reporter**

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

**Civil Law**

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

**Communication**

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

**Communication Difficulties**

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

**Confidentiality**

Protection of information in an organisational situation within agreed parameters.

**Collaboration**

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

**Comparable Situation**

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

**Conduct**

Includes neglect and other failures to act.

**Consent**

Permission or agreement.

**Convenor**

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

**Co-operation**

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

**Contingencies**

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

**Council Nominee**

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

**Council Officer**

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

**Detain/Detention**

To force someone officially to stay in a place.

**Disability**

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

**Disapply/Disapplication**

To dispense with.

**Disclosure**

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

**Distress**

A feeling of extreme worry, sadness or pain.

**Entitled**

To give someone the right to do or have something.

**Exhausted**

Tried without success.

**Fear**

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

**Harm**

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

**Health Professional**

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

**Health Records**

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

**Impaired Mental Capacity**

Reduced ability to effective thought processes.

**Independent Advocacy Services**

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

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

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

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

**Information Sharing**

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

**Inquiry**

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

**Inventory**

A detailed list of all the items in a place.

**Intervention**

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

**Interview**

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

**Investigation**

In general, following an adult protection enquiry, the multidisciplinary process led by the Council Officer in which all aspects of the situation are examined and reported on using appropriate risk assessment. This will usually culminate in an Adult Protection Case Conference. Occasionally when the adult protection notification clearly indicates that harm has been perpetrated, the investigation will be initiated from the

outset. Where there is a need to use any powers under the Act, this would be regarded as an investigation.

**Justification/Justifiable**

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

**Least Restrictive**

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

**Legal Representative**

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

**Liabile**

Having legal responsibility for something.

**Medical Examination**

Assessment related to the treatment of illness and injuries.

**Mental Capacity**

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

**Mental Disorder**

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

**Mental Infirmity**

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

**Mental Illness**

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

**Mental Welfare Commission**

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

**Movable Property**

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

**Multi-Disciplinary Assessment**

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

**Multi-Disciplinary Plan**

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

**Neglect**

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

**Obstruction**

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

**Occupancy Rights**

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

### **Parental Responsibility**

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

- (a) to safeguard and promote the child's health, development and welfare;
- (b) to provide, in a manner appropriate to the stage of development of the child:
  - (i) direction;
  - (ii) guidance to the child;
- (c) if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis; and
- (d) to act as the child's legal representative.

### **Power of Arrest**

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

### **Prejudice**

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

### **Procurator Fiscal**

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

### **Proxy**

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

### **Public Body**

According to Section 5 of the Act:

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

### **Public Guardian**

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

### **Reasonable Time**

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

**Recall**

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

**Removal Order**

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

**Representations**

To articulate views on behalf of another person.

**Review**

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

**Risk**

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

**Risk Assessment**

Judging the relevant impact and likelihood of particular actions.

**Risk Management**

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

**Safeguard**

To protect something from harm.

**Safeguarder**

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

**Self Harm**

Injuries done to oneself.

**Self Neglect**

Not giving enough care or attention to oneself.

**Serious Harm**

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

**Statutory Interventions**

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

**Strategic Discussion**

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

The issues that are likely to be considered will be:

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

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

### **Subject**

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

### **Subordinate Legislation**

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

### **Temporary Banning Order**

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

### **Timeous Investigations**

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

### **Undue Pressure**

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

### **Variation**

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

### **Visit**

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

### **Vulnerable**

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

### **Vulnerable Witness Scheme**

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

### **Warrant for Entry**

Authority for a Council Officer to visit any specified place under Section 7 or 16 together with a Constable. The Constable may do anything, including the use of force

where necessary, that the Constable considers to be reasonable towards fulfilling the object of the visit

**Wellbeing**

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