



# **Health and Social Care North Lanarkshire**

## **Social Work Services**

### **Adult Protection Procedures**

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## A - Introduction

Most adults, who may experience or become at risk of harm and less able to protect themselves due to such issues as frailty, dementia, physical or learning disabilities and impairments or mental health problems, manage to live their lives without experiencing harm. Often this is with the assistance of caring relatives, friends, paid carers, professional agencies or volunteers. For some, dependence or association with others may result in conflict, exploitation and actual or risk of harm. In addition some people with similar conditions can also experience self-harm.

There are a range of relevant pieces of legislation designed to support and protect adults at risk of harm such as the Adult with Incapacity (Scotland) Act 2000, the Mental Health (Care & Treatment) (Scotland) Act 2003 and the Adult Support and Protection (Scotland) Act 2007. The 2007 Act came into effect in October 2008 and augmented the legal framework to facilitate the protection of adults at risk of harm, as described in that legislation.

North Lanarkshire Council in conjunction with the West of Scotland Inter Agency Group developed Practice Guidance and Procedures for Adults at Risk of Harm which:-

- Recognise existing legislation
- Focus on the Adult Support & Protection (Scotland) Act 2007
- Contain information on the definition of harm and common indicators
- Outline the procedures and process for intervention
- Set out guidance for and emphasise the importance of, consideration of actions taken, establishing standards of good practice and outcomes for people's lives.
- Recognise existing systems to protect adults at risk, such as the national care standards, sound recruitment practices and appropriate training and support of staff.
- Are consistent with the European Convention on Human Rights and the Human Rights Act 1998.

North Lanarkshire Health and Social Care Partnership has responsibilities to ensure that all adults at risk are supported and are as safe as reasonable from harm and that they are respected, included, have their views considered and are fully involved in all decision making. The aspiration, for all adults at risk in our community, is that they are empowered, wherever possible to have as much say as they can through support from all the public partners in the North Lanarkshire Health and Social Care partnership and its associates, so that they can be free from preventable harm and are able to make choices about how to live as independently as possible in line with their personal strengths.

Changes in the way statutory and independent support services are being provided, has resulted in a greater range of options available to those requiring help and assistance. This has allowed people, who need services greater options, choice and participation in decision making. It is not just statutory agencies which should try to reduce risk to individuals but the aspiration is that wider partners and communities are encouraged and helped to take an appropriate role in reducing risks for individuals. Giving people and their carers more choice as to how they are supported brings the opportunity for potential risks to arise and this needs to be taken into account at all stages of assessment, planning and review. Use of direct payments, "brokerage of

support plans” and potential misuse of legal powers which control peoples welfare and financial arrangements all need to be taken into account, when support is being set up and reviewed.

The supports available can also be increasingly complex, as sometimes a variety of family and friends, statutory, voluntary and independent providers may be involved in supporting someone. This is why good communication, ongoing review and effective joint working is vital. Awareness of potential risk, early recognition and reporting of concerns need to contribute to preventing and reducing risk.

The Self Directed Support, (SDS), Guidance on risk enablement and protection notes that the work of Adult Protection Committees, guidance and procedures require to recognize the shift to self-directed support models. The document also makes reference to the Protection of Vulnerable Groups Act (Scotland) 2007, which provides measures for protection through employment practice and regulations governing the workforce.

*Section 2.1 from the SDS Guidance, on risk- enablement and protection notes that:*

*The shift to co-production, outcomes monitoring and risk enablement will require training for staff across the social care and health sectors, and leadership from all levels of management. It will be all the more important that individuals and families understand risk and the responsibility for accepting levels of risk, if a culture that focuses on the failure of social work to intervene is to give way to enabling people to have control.*

*As a result of some people or their carers having more choice there will be some individuals who are subject to harm and exploitation. SDS sits within the framework of social and health care in Scotland where the principles of legislation require a proportionate response in situations where a person may require some protection from the State.*

*Since 2000, such legislation has included Adults with Incapacity (Scotland) Act, the Mental Health (Care and Treatment) (Scotland) Act, the Adult Support and Protection (Scotland) Act, and the Protecting Vulnerable Groups (Scotland) Act.*

*All of this legislations underpin to social work’s duty of care.*

The aim is always to achieve a proper balance between working in partnership with adults and if appropriate their carers. Ensuring the adult’s right to be protected from harm remains paramount. At the same time, it is important that people are empowered and given as much authority and information as possible in respect of the supports they require and that services provide quality, meet required standards and respect the views and rights of those, who are or may become “at risk”.

All staff across the statutory agencies are expected to work within a clear procedural framework but to have the confidence to exercise judgement about the most appropriate responses in individual specific circumstances. Ensuring the protection and welfare of adults at risk is more important than rigid adherence to procedures. Where these responses involve departure from the normal procedures they should be defensible, recorded in the case file, showing why the decision not to follow procedures was taken and endorsed and approved by the supervisor or senior manager

With all of the above in mind, all the relevant statutory agencies in the West of Scotland of Social Work, Care Inspectorate, Police, Housing and Health have worked in

partnership to produce an Inter Agency Practice Guidance & Procedures document. The partners have established and agreed, on an inter-agency basis, to provide this framework within which professional judgement can be best exercised towards ensuring effective inter-agency communication and collaboration in relation to measures of adult protection. North Lanarkshire Social Work Services Adult Protection Procedures have been produced in reference to this guidance.

The Adult Support and Protection (Scotland) Act 2007 should be read in conjunction with other adult legislation which is of equal importance in the protection of adults at risk. The links below have been provided for all relevant legislation, which may require to be referred to or considered, either separately or in conjunction with one another, in the protection of adults.

## Legislation

Social Work (Scotland) Act 1968 [click here](#)  
Local Government (Scotland) Act 1973 [click here](#)  
Data Protection Act 1998 [click here](#)  
Human Rights Act 1998 [click here](#)  
Adults with Incapacity (Scotland) Act 2000 [click here](#)  
Race Relations (Amendment) Act 2000 [click here](#)  
Regulation of Care (Scotland) Act 2001 [click here](#)  
Vulnerable Witnesses (Scotland) Act 2004 [click here](#)  
Disability Equality Duty 2006 [click here](#)  
Mental Health (Care and Treatment) (Scotland) Act 2003 [click here](#)  
Adult Support and Protection (Scotland) Act 2007 [click here](#)  
Protection of Vulnerable Groups Act 2007 [click here](#)  
Gender Equality Duty 2007 [click here](#)  
Equalities Act 2010 [click here](#)  
Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 [click here](#)  
Sexual Offences (Scotland) Act 2009 [click here](#)  
Domestic Abuse (Scotland) Act 2011 [click here](#)  
Domestic Abuse (Scotland) Act 2018 [click here](#)  
Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011 [click here](#)  
Victims and Witnesses (Scotland) Act 2014 [click here](#)  
Anti-social behaviour, Crime and Policing Act 2014 [click here](#)  
Social Care (Self-directed Support) (Scotland) Act 2013 [click here](#)  
Criminal Justice (Scotland) Act 2016 [click here](#)

## Guidance for the 2007 ASP Act

Adult Support and Protection (Scotland) Act 2007 Part 1 -Codes of Practice October 2014 – [click here](#)

Adult Support and Protection (Scotland) Act 2007 Part 1 - Guidance for Adult Protection Committees - [click here](#)

## B – Part 1 - General principles and definitions

- 1.1 The Act is accompanied by a set of guiding principles, which must be borne in mind, by anyone taking or considering action under the legislation. These aim to ensure that the Act is interpreted correctly, and ensure that any action taken under the legislation is both necessary and proportionate.
- 1.2 The general principles set out in part one of the Act are that an intervention should provide **benefit** to the adult and should be the **least restrictive** option available to fulfil the aim of the intervention.
- 1.3 In North Lanarkshire the general overarching principles and values of good practice underpin all interventions to protect adults who may be at risk of harm and are as follows:
  - Every adult at risk has a right to be protected from all forms of harm, abuse, neglect and exploitation.
  - The welfare and safety of the adult takes primacy in relation to any inquiry or investigation.
  - Every effort should be made to enable the individual to express their wishes and make their own decisions to the best of their ability recognising that such self-determination may involve risk.
  - Every effort should be made by professionals involved to understand the risk of harm within the context of the adults' circumstances. This means obtaining detailed information relating to the risk of harm from the adults perspective and from those who have an interest in the adult.
  - Where it is necessary to override the wishes of the adult or make decisions on his or her behalf for their own safety (or the safety of others) this should be proportionate and be the least restrictive response to the identified risks to health, welfare, property or finances of the adult consistent with the current legislative framework.
  - The adult should not be treated less favourably than another adult in a comparable situation.
  - Consideration should be taken of the adult's abilities, background and characteristics.
  - The views of the adult's nearest relative, primary carer, named person, guardian or attorney and any other person who has an interest in the adult's wellbeing or property, must be listened to and acknowledged.
- 1.4 There are three main acts which provide a framework for protecting adults at risk of harm. These are; Adult Support and Protection (Scotland) Act 2007, Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care & Treatment) (Scotland) Act 2003. Where an intervention under these Acts is considered the above principles are set down in the legislation and accompanying Codes of Practice and should be followed. The Code of Practice for Adult Support and Protection was updated in April 2014. This is a working tool for practitioners and may be helpful to referenced at any time. For further guidance [click here](#).

### 1.5 Definition of an adult at risk

The Adult Support and Protection (Scotland) Act 2007 (Section 53) defines an adult as a person aged **16 years or over**.

Section 3(1) of the Act defines 'adults at risk' as individuals who:

- are unable to safeguard their own wellbeing, property, rights and 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 points of the above definition must be satisfied for a person to be deemed an adult at risk.**

It is important to note that the existence of a particular condition on its own does not mean that an adult is at risk. It is the interplay of how the adults condition impacts upon their ability to safeguard their wellbeing, property, rights etc resulting in a risk of harm. A person may have a disability and be perfectly able to safeguard themselves.

### 1.6 An adult is at risk of harm if:

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

### 1.7 Definition of harm

The definition of harm or abuse within the 2007 Act can take many forms which, in practice, may not exist in isolation but may overlap. It is common for adults to be experiencing multiple types of harm at the same time. **The key issue remains the exercise of sound professional judgement set against individual circumstances.**

Harmful or abusive conduct may consist of:

### 1.8 Discrimination

Discriminatory harm consists of abusive or derisive attitudes conveyed orally, or in writing or through behaviour aimed at denigrating a person's gender, sexuality, ethnicity, race, culture, religion, age, disability or any other characteristic of the person. Such harm is a violation of human rights and may constitute a hate crime. Examples include:

- Abusive name calling due to race, disability etc
- Abusive acts such bullying due to gender, sexuality etc
- Abusive communications such as graffiti, letters or social media communications

## **1.9 Physical**

Physical harm occurs when a perpetrator intentionally or recklessly causes the victim to believe he or she is about to be subjected to violence or is actually subjected to physical actions that result in distress or injury regardless of the degree of the consequences. Examples include:

- Physical assault e.g. punching, pushing slapping, mishandling, tying down, giving food or medication forcibly or covertly.
- Use of medication other than as prescribed.
- Inappropriate restraint e.g. using bed sides to prevent someone getting out of bed or locking doors to keep people in.

## **1.10 Emotional or Psychological**

Emotional or Psychological harm (in the absence of other forms of harm) is perpetrated when conduct leads to fear, loss of self-esteem, loss of dignity, humiliation, feelings of shame, isolation or impotence. This results in mental distress for the adult. Examples include:

- Swearing, shouting, bullying, humiliating.
- Playing on known anxieties
- Manipulation or the prevention of the use of services or facilities, which would aid or enhance life experience.
- Isolation or sensory deprivation.

## **1.11 Financial and Material**

Financial harm is caused by the illegal or improper use of the individuals resources (both financial and property) by another person without their informed consent or through the exercise of undue influence or pressure. Family members, neighbours or acquaintances can sometimes carry out such exploitation but it can also be done by paid or unpaid carers or volunteers. Examples include:

- Theft or fraud.
- Misuse of money, property or resources e.g. spending an adult at risk's benefit without their agreement or buying inappropriate goods from which the adult will not benefit
- The removal of objects or items that mean something to the adult. These objects or items can have emotional, monetary and practical value.

## **1.12 Sexual**

Sexual harm and abuse occurs when a perpetrator engages in physical acts of penetrative or non-penetrative contact sexual activity or non-physical sexual activity involving visual or auditory exposure to sexually explicit material with a victim who is unable to consent to or refuse such activity. Examples include:

- Incest.
- Rape, indecent assault e.g. inappropriate touching.
- Acts of gross indecency.
- Forcing an adult to observe indecent images or footage

#### 1.13 **Self Neglect**

Self-neglect entails the failure of the individual to meet his or her own personal, physical and health needs leading to deterioration in their condition. Self-neglect may arise due to a range of motivational or mental health conditions or a combination of both. Examples include:

- Failure to care for one's health needs, such as not looking after one's skin, teeth, feet etc.
- Failing to take prescribed medication
- Failing to recognise or limit behaviour which is putting oneself at risk, such as associating with people exploiting vulnerable adults or indulging in highly risky behaviours
- Failure to care for one's belongings, such as clothing and property
- Failure to care for one's environment, such as cleanliness within the home, hoarding issues or property falling into disrepair

#### 1.14 **Self-harm**

Self-harm is when the individual intentionally damages or injures their body. It's usually a way of coping with or expressing overwhelming emotional distress. Examples include:

- cutting or burning one's own skin
- punching or hitting oneself
- poisoning oneself with tablets or liquids, or similar

#### 1.15 **Neglect**

Neglect entails the failure of responsible individuals to meet the physical, psychological, emotional and social needs of an individual either intentionally or through omission leading to deterioration in their condition in one or more areas of their wellbeing. Neglect may arise from individual actions or omissions or result from systemic failures in provision by the responsible agency. Examples include:

- Denial of or lack of food, sleep, clothing.
- Failure to provide for warmth, shelter, medical treatment.
- Failure to provide for psychological wellbeing.
- Denial of medication.
- Failure to respect differences and resulting needs.

**Note: ill treatment and the wilful neglect of an adult could be a criminal offence**



[The Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act](#) was given Royal Assent on 6 April 2016 and includes offences of ill-treatment or wilful neglect. There are two main offences in this part: an offence that applies to care workers and an offence that applies to care providers (see definitions below). These offences came in to force on **1 October 2017**.

The new offences in the Act for ill-treatment or wilful neglect recognise the particular vulnerabilities of those receiving health and social care as well as the level of trust placed in those providing that care. The Act provides penalties which are at an appropriate level proportionate with the breach of trust in such crimes (see definitions below).

Presently, there are offences of wilful neglect and ill-treatment set out in section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and section 83 of the Adults with Incapacity (Scotland) Act 2000. These offences cover the neglect or ill-treatment of mentally disordered people and adults with incapacity.

On investigation, the police may decide that there is sufficient evidence to report the alleged offence to the Procurator Fiscal. In the course of such an investigation, it would be up to the police to question anyone they thought relevant, including former staff.

Section 29 of the Act amends the Police Act 1997 to insert the care worker offence. It contains a list of offences which must always be disclosed on all types of higher level disclosure. The inclusion of this offence on the 'Offences which must always be disclosed' list means that no matter how old the conviction is, it should always be disclosed by Disclosure Scotland on a higher level disclosure.

## **Definitions**

### **1.16 Care worker definition and care worker offence**

Section 26 sets out the care worker offence and the penalty for conviction. "Care worker" is defined in section 28(1) and covers care workers (employees and volunteers), their managers and supervisors, and directors or similar officers of organisations. The offence is committed where a care worker is providing care for another person and ill-treats or wilfully neglects that person.

### **1.17 Care provider definition and care provider offence**

Section 27 sets out the care provider offence that will apply to providers of health or social care services. Care provider is defined in section 28(3) and covers both legal persons (corporate bodies, partnerships and unincorporated associations) and individuals who have others working for them (see below). The care provider offence is committed if a three-stage test is met:

1. an individual is ill-treated or wilfully neglected by someone providing health care or social care on behalf of the care provider,
2. the care provider's activities are organised in such a way as to be a gross breach of the duty of care (see below) owed to the individual, and
3. Were it not for that gross breach, the ill-treatment or wilful neglect would not have occurred (or would have been less likely to occur).

### 1.18 **Relevant duty of care and ‘gross’ breach of that duty**

Section 27(3) a “relevant duty of care” means a duty owed in connection with providing, or arranging for the provision of, adult health care or adult social care, and a breach of a relevant duty of care is a “gross” breach if the conduct alleged to amount to the breach falls far below what can reasonably be expected of the care provider in the circumstances.

### 1.19 **Duty of Candour**

The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act was given Royal Assent on 6 April 2016 and includes a duty of candour on health and social care organizations. This creates a legal requirement for health and social care organizations to inform people (or their carers/families) when they have been harmed as a result of the care or treatment they have received. The duty of candour was implemented in Scotland on 1st April 2018.

The principles and ethical duty of openness apply to all incidents and any failure in care or treatment. The Duty of Candour applies to incidents whereby moderate harm, significant harm or death has occurred.

Providing health and social care services is associated with risk and there are unintended or unexpected events resulting in death or harm from time to time.

When this happens, people want to be told honestly what has happened, what will be done in response, and to know how actions will be taken to stop this happening again to someone else in the future.

There is a need to improve the focus on support, training and transparent disclosure of learning to influence improvement and support the development of a learning culture across services.

Candour is one of a series of actions that should form part of organisational focus and commitment to learning and improvement.

Transparency, especially following unexpected harm incidents is increasingly considered necessary to improving the quality of health and social care.

Being candid promotes accountability for safer systems, better engages staff in improvement efforts, and engenders greater trust in patients and service users.

The requirements of the Duty of Candour are as follows:

As soon as reasonably practicable after becoming aware that a safety incident has occurred that falls into the moderate harm or more serious categories the social work professional must, report the incident to their line manager, for escalation to the Head of Social Work or delegated person so that a decision can be made as to how to:-

- notify the ‘relevant person’ (this is usually the service user, but may in some circumstances be the relative, carer or advocate) that the incident has occurred and
- provide a reasonable support to the relevant person in relation to the incident.

## **Situations requiring particular consideration when assessing whether an adult is at risk of harm:**

### **1.20 Random violence**

Random violence i.e. an attack by a stranger or strangers on an adult is an assault and should be reported to the police. These assaults will not usually require the implementation of the adult protection procedures. However, there is a possibility that the violence may be part of a pattern of victimisation in a community or neighbourhood, and in this case adult protection procedures should apply. It could also result from a lack of appropriate support care which has placed the person in the situation where the assault occurred or the person themselves has put themselves in that situation due to issues of lack of self care. This too would require consideration.

### **1.21 Domestic Abuse**

The Domestic Abuse (Scotland) Act 2018 received Royal Assent on 9<sup>th</sup> March 2018. The legislation creates a specific offence of “abusive behaviour in relation to a partner or ex-partner”. This will cover not only physical abuse but other forms of psychological abuse and coercive and controlling behaviour that could not easily be prosecuted using the previous criminal law. The law allows the police and courts to pursue someone on a “course of conduct” offence – that is a single offence where physical, psychological and coercive behaviour can be prosecuted at once. This reflects a growing understanding that domestic abuse is often a course of behaviour that extends over a period of time and includes not only physical violence.

Police Scotland define domestic abuse as “any form of physical, verbal, sexual, psychological or financial abuse which might amount to criminal conduct and which takes place within the context of a relationship”.

"The relationship will be between partners (married, cohabiting, civil partnership or otherwise) or ex-partners. The abuse can be committed in the home or elsewhere including online."

There is a common misconception that domestic abuse is just physical abuse. This is not the case. Domestic abuse can be physical, sexual, and emotional or psychological.

Clearly, there are strong similarities within this definition and the definitions of an adult at risk. However, not everyone who experiences domestic abuse will satisfy the three point criteria that defines an adult at risk. **The key factor in activating adult protection procedures in situations of domestic abuse should be the presence of an adult at risk as defined within this guidance.**

### **1.22 Forced Marriage**

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act came into force on 28 November 2011. From September 2014, a forced marriage has become a criminal offence in Scotland.

A forced marriage is a marriage in which one or both spouses do not consent to the marriage and duress is involved.

It is also a forced marriage if it involves a child, or an adult who lacks the capacity to give free and full consent to the marriage, or is unable to understand the nature of marriage.

Duress can include physical, psychological, financial, sexual and emotional pressure, threatening conduct, harassment, threat of blackmail, or use of deception and other means.

Part 1 of the Forced Marriage act empowers the civil courts in Scotland to make a Forced Marriage Protection Order (FMPO) which can protect both adults and children at risk of being forced into marriage, and can offer protection for those who already have been forced into marriage.

If it is thought the person subject to a forced marriage, or a planned forced marriage, is considered to meet the three point criteria of being 'an adult at risk of harm', these procedures will apply.

**Note: The danger of involving the family and the community in cases of forced marriage may increase the risk of serious harm to an individual.** The family may deny that the individual is being forced to marry and they may expedite any travel arrangements and bring forward the wedding.

Always remember the 'one chance' rule: you may only have one chance to speak to a potential victim of forced marriage and, therefore, only one chance to save a life.

**To access North Lanarkshire Multi agency guidance [click here](#)**

### 1.23 Human Trafficking

Human trafficking involves recruitment, harbouring or transporting people into a situation of exploitation through the use of violence, deception or coercion and forced to work against their will.

People can be trafficked for many different forms of exploitation such as forced prostitution, forced labour, forced begging, forced criminality, domestic servitude, forced marriage, and forced organ removal.

Contrary to a common misconception, people don't necessarily have to be transported across borders for trafficking to take place. In fact, transporting or moving the victim doesn't necessarily define trafficking.

The effects of trafficking on its victims are wide-reaching and many will experience significant harm as a result of their situation. As traffickers seek to avoid contact with the authorities, care and access to universal services such as health and education often result in poor outcomes for those who are trafficked. Employees should be aware that:

- **The Adult Support and Protection (Scotland) Act 2007 may apply for trafficked children/young people who are age 16 or over**
- **The Adult Support and Protection (Scotland) Act 2007 may also apply to trafficked adults**

#### 1.24 **Problematic alcohol and drug use**

Adults have the right to make choices and decisions about their lives, including the use of alcohol and drugs, even if that means they remain in situations or indulge in behaviour which others consider inappropriate.

Vulnerability or a lack of ability to safeguard, which is due to temporary problematic alcohol or drug use, would not by itself result in an individual being considered an “adult at risk”. Without any additional vulnerability, such as an illness or disability, adult protection intervention would not normally be appropriate. Young people aged 16-18 can be particularly easily influenced and legislation places limits on children not in place for adults such as access to alcohol.

**To access the ASP Code of Practice guidance [click here](#)**

#### 1.25 **Context of harm**

For adults at risk, where harmful conduct and the potential for harmful conduct is from others, an unequal power relationship will often exist. This may be sexual, emotional, financial, material, physical, discriminatory or a combination of these. It is not uncommon for adults to be at risk of multiple harms at the same time.

##### **An unequal power relationship can potentially be found in:**

- Someone's own home.
- A carer's home.
- Care home.
- Work setting.
- Educational setting.
- Hospital or treatment setting.
- Social situations.
- Family situations
- A hostel or temporary accommodation.
- Accommodation with support.

Assessment of the environment or context is vital as exploitation, deception, misuse of authority or coercion may render the adult incapable of making his or her own decisions or disclosing harm or abuse, even though they are deemed to have ‘capacity’.

#### 1.26 **Harm can occur in any setting where someone:**

- Can tell another what to do.
- Provides intimate personal care.
- Has status or credibility.

- Meets essential needs whether material, practical, social, or emotional.

#### 1.27 **Institutional harm**

Institutional harm and abuse is a familiar concept and may involve conformity to routine, imposition of values and standards on users of the service to meet the needs of the institution and which may be to the detriment of the individual. It should be noted that it is possible for an adult at risk to personally experience harmful conduct in an institution without the institution as a whole being abusive.

Examples of harm and abuse within institutional settings would include:

- Poor management practice which promotes poor care standards, lack of positive responses to complex needs, rigid routines, inadequate staffing and insufficient knowledge base within the service.
- Unacceptable 'treatments' or programmes which include sanctions or punishment such as withholding food or drink, seclusion, unauthorised use of control and restraint and over medication.
- Failure of agencies to ensure that staff receive appropriate direction, supervision and guidance on anti-discriminatory practice.
- Failure to access key services such as health care, dentistry, prostheses.
- Lack of personalised and outcome focused care planning

#### 1.28 **Senior social workers, Managers and Council Officers should acknowledge that all types of harm have the potential for criminality to be present. In cases where criminality is suspected or known, the situation must be reported to the Police at the earliest opportunity and confirmation sought as to whether Police intend to fully investigate and when this will occur, so as not to leave an individual at ongoing risk.**

#### 1.29 **Data Protection and Information Governance**

In light of the new Data Protection legislation introduced in May 2018, guidance on matters pertaining to information governance can be accessed by [clicking here](#).

#### 1.30 **Capacity and Consent**

In relation to an adult's capacity the presumption in law is that all adults have the capability to manage their own affairs until or unless they are recognised, in a court of law, as being incapable.

Within the Adults with Incapacity (Scotland) Act 2000, the law makes a distinction between those who are capable of managing their own affairs and those who are not.

Under the Adult Support and Protection (Scotland) Act 2007 all public agencies have a duty to report concerns about a person who is or may be an adult at risk of harm, to the council. It should be noted that this is **not dependent on the adult's consent** (although this is always preferable) and there is no mention of capacity in the 3 point criteria, at the point of referral.

In relation to implementing the 2007 Act, some interventions are reliant on the adult's consent. Consent is required for example, to interview; undergo medical examinations; attend meetings and agree to a protection plan. Without the adult's consent and cooperation there are clear limits on the level of support and/or protection which can be offered or provided to an adult at risk of harm.

There are actions which can be taken to establish whether the adult is an adult at risk of harm which do not require consent, such as gathering information, sharing information with other relevant professionals, holding case conferences or protection planning. Wherever possible, the adult should be informed of these activities.

A case review noted that "The presumption of capacity does not exempt authorities and services from undertaking robust assessments where the person's apparent decision is manifestly contrary to his wellbeing".

Flynn, M. (2011) The Murder of Adult A. Stockport Safeguarding Adults Board. For more information [click here](#)

**1.31 Within the Adults with Incapacity (Scotland) Act 2000 (AWI) an adult means a person who has attained the age of 16 years;**

"Incapable" means incapable of:

- acting; or
- making decisions; or
- communicating decisions; or
- understanding decisions; or
- retaining the memory of decisions.

An adult will not be deemed incapable by reason only of lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid.

Incapacity is task specific and the person may be deemed capable of making decisions regarding some aspects of their life, but not in other areas. The test of capacity is a clinical decision and should be supported by medical evidence.

In all cases both new and open, social workers and managers must consider the skills and abilities of the adult to promote and safeguard wellbeing, property, rights and interests, including the capacity to understand the risks of harm, both actual and potential, and decide how to proceed having regard to the principles of the Act.

**For more information on Adults with Incapacity – Sexual Relationships and the Criminal Law please [click here](#)**

Where there are concerns and/or it has been established that an adult at risk lacks capacity, the 2007 Act recommends that other legislation including the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care &

Treatment) (Scotland) Act 2003 are considered in conjunction with the Adult Support and Protection (Scotland) Act 2007 to protect the adult.

**In these situations the Council Officer must discuss the case with the senior social worker and take guidance from a Mental Health Officer (MHO) before proceeding. If the adult is already subject to guardianship, the supervising officer and private guardian or attorney should be consulted, where appropriate.**

The ASP Code of Practice sets out some factors to consider:

- Does the adult understand the nature of what is being asked and why
- Is the adult capable of expressing their wishes and/or choices
- Does the adult have an awareness of the risks and benefits involved
- Can the adult be made aware of their right to refuse to answer questions as well as the possible consequences of doing so.

**To access additional information on capacity and consent within the ASP Code of Practice [click here](#)**

## **C – Part 2 – Council duties and role of other agencies**

2.1 The Adult Support & Protection (Scotland) Act 2007 places duties on councils to:

- Carry out inquiries to establish whether action is required, where it is known or believed that an adult is at risk of harm and that intervention may be necessary to protect the adult **(Section 4)**.
- Co-operate with other councils and other listed (or prescribed) bodies and office holders **(Section 5)**.
- Have regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services), where the council considers that it needs to intervene in order to protect an adult at risk of harm **(Section 6)**.
- Inform any adult interviewed that they may refuse to answer any question put to them **(Section 8)**.
- Inform an adult believed to be at risk that they may refuse to consent to a medical examination **(Section 9)**.
- Protect property owned or controlled by an adult who is removed from a place under a removal order. This may include moving property belonging to the adult from that place, where this is considered reasonably necessary in order to prevent the property from being lost or damaged. The council must ensure the property is returned to the adult concerned as soon as reasonably practicable after the relevant removal order ceases to have effect **(Section 18)**.
- Visit a place at reasonable times only, to state the object of the visit and produce evidence of authorisation to visit. Council officers may not use force



to facilitate, or during, a visit. However, a sheriff or justice of the peace may authorise the police to use force **(Sections 36 to 40)**.

- Set up an Adult Protection Committee to carry out various functions in relation to adult protection in its area, and to review procedures under the Act **(Section 42)**. The Adult Protection Committee may cover more than one council area.
- Local Authorities' Social Work Services are the lead agency and will have the overall responsibility for the coordination of adult protection procedures and will be the central point for the receiving and logging of referrals.
- The 'duty of care' in respect of adult protection is a corporate local authority responsibility incorporating all services of the council. Staff across a range of services within the council may, in the course of discharging their duties, encounter actual or suspected risk to an adult or have such information reported to them.

## **2.2 Health and Social Care Integration**

From the 1st of April 2016 a new legal entity, "North Lanarkshire Integrated Joint Board", (IJB), has responsibility for planning, commissioning and overseeing the delivery of community health and social care services. A Board drawn from North Lanarkshire Council, NHS Lanarkshire Board, professional Health and Social Work disciplines, user and carer representatives and third and independent sector organisations, plan and commission local support and care services. These will be delivered primarily by the Council and NHS Lanarkshire working together in teams in a new integrated way, to transform, re-design and improve the outcomes for those living in the 6 localities across North Lanarkshire. Integration means that the expertise and resources of health, social work and social care services are combined, shared, co-ordinated and planned jointly with other key partners in the third and independent sectors.

Adult Support and Protection, alongside a range of other services now sit within the Health and Social Care partnership arrangement, however as stressed throughout the body of this procedure, the legal duties to report and co-operate exist for all public body employees within NHS Lanarkshire e.g. within acute and general services and for employees within wider Council services e.g. Enterprise, Housing and Education.

It is the expectation that all services within North Lanarkshire Health and Social Care will have the necessary procedures and processes in place to ensure staff have an appropriate awareness of the issues in relation to "adults at risk of harm". The safety and protection of adults is a core task for everyone and all employees should be clear as to the appropriate action to be taken in such circumstances.

North Lanarkshire Integration Joint Board has confirmed, that "Council officers" will be Social Workers employed by North Lanarkshire Council.

## **2.3 Adult Support and Protection Council Officer**

The Adult Support and Protection (Scotland) Act 2007 defines a Council Officer as a person appointed by the Council under Section 64 of the Local

Government (Scotland) Act 1973. Within Health and Social Care North Lanarkshire, Council Officers will:

- Be a professionally qualified social worker with a minimum 12 months post qualifying experience of assessing and managing risk
- Be registered with the Scottish Social Services Council (SSSC)
- Complete the three day Adult Support and Protection training programme.

#### **2.4 Chief Officer's Group**

Each area in the West of Scotland has a Chief Officers' Public Protection Group. The role of the Chief Officers' Group is to oversee public protection activity, work collectively to identify issues for joint development and improvement and promote inter-agency activity with respect to public protection with regard to Child and Adult Protection, Domestic Abuse and MAPPA, in North Lanarkshire. The Chief Officers Public Protection group is chaired by the Chief Executive of NLC and attended by the Chief Executive of NHSL, a representative of the Chief Constable of Police Scotland, the Chief Accountable Officer of the North H&SCP and other Council Service Leads. It is also attended by the independent Chairs of the CPC and APC and MAPPA and Domestic Abuse leads and by senior officers of the Council and NHSL. The Chief Officers' Group meets quarterly.

#### **2.5 Adult Protection Committee**

Sections 42 – 47 of the Adult Support and Protection (Scotland) Act 2007 state that each council must establish an Adult Protection Committee to carry out the functions listed in relation to the safeguarding of adults at risk present in the council's area. The committee, in carrying out its functions, should also be seeking to improve co-operation and communication within and between each of the public bodies involved in order to better safeguard adults at risk.

The public bodies involved are the relevant council, the Care Inspectorate, the relevant Health Board, the Chief Constable of the police force in the council area, and any other public body as may be specified by Scottish Ministers. The Care Inspectorate, Mental Welfare Commission and Office of the Public Guardian also have the right to attend the Adult Protection Committee.

#### **2.6 North Lanarkshire Social Work Emergency Service (SWES)**

Practitioners working within Social Work Emergency Services (SWES) are bound by the same duties, responsibilities and principles of the 2007 Act as those within mainstream Social Work Services. SWES receive AP referrals from both fellow professionals and members of the public. Due to the nature of SWES practitioner's interventions in case situations, on occasion, it will be unlikely AP inquiries or investigations will be fully completed. Practitioners within SWES should generate and record AP referrals for new and existing cases using the appropriate paperwork (AP1) and mySWiS recording screens.

Senior Social Workers within SWES will review each AP referral and determine the proportionate response required to ensure that the individual referred is safe from immediate harm. Interventions such as visits to individuals and dialogue with partner agencies should be recorded on SWiS screens as Adult

Protection contacts. SWES practitioners should forward AP1 referrals to appropriate locality teams to conclude AP inquiries or investigations as per present local agreements. Localities must be made aware of the current situation, all tasks and interventions that have been completed and those that may be outstanding. Local admin staff will log the referral on the SWiS system and ensure the duty Senior Social Worker is notified.

## **2.7 Independent sector**

All voluntary, not for profit and private providers should have internal procedures in place that set out action to be taken in the event of actual, disclosed or suspected harm involving:

- A member of staff or volunteer in relation to a service user.
- A service user in relation to another service user.
- A person from outside the agency known to a service user.

## **2.8 Adult Protection Roles and Responsibilities**

**There is a need to distinguish between:**

- The role of independent and voluntary agencies in investigating allegations made against their own staff or volunteers; and
- The responsibility of social work to ensure the protection of individual service users.

**The role of Independent Providers is to:**

- Prevent harm and take immediate steps to protect the adult and any other service users thought to be at risk.
- Refer the concern to social work and or the police.
- Inform the Care Inspectorate (if a registered organisation).
- Take action under disciplinary procedures in respect of a staff member or volunteer.

**The role of North Lanarkshire Social Work Services is to:**

- Undertake necessary inquiries and formally investigate such concerns in order to assess risk of harm to one or more individuals.
- Take appropriate action to protect adults at risk of harm
- Link with the Care Inspectorate if the agencies are registered and agree responsibilities in partnership with the Inspectorate in terms of the immediate protection of any adult currently at risk of harm.
- Link with Social Work Service's Quality Assurance Team, when concerns arise relating to an independent sector or commissioned service.

It should be made clear to independent providers and voluntary agencies that social work services (if appropriate and in conjunction with the Police and or Care Inspectorate) **will** lead investigations into allegations of harm against an individual and that any other action taken by the agency should not delay or prevent such investigatory requirements.

## 2.9 Advocacy Services

Section 6 of the Act places a duty on the council, where intervention is required to protect an adult at risk of harm, to consider the provision of appropriate services, including independent advocacy services, to the adult concerned, after making inquiries under Section 4 of the Act.

Independent advocacy aims to help people by supporting them to express their own needs and express their own informed decisions. Advocacy services will support adults to access information and explore and understand the options available and to participate more fully in adult protection processes.

Advocacy can also provide support to a carer or service user to alleviate stressful or conflict situations and the potential for harm, in particular where the adult has capacity and does not wish any protective action to be taken.

Health and Social Care North Lanarkshire have invested in advocacy services for adults who may require support due to mental disorder or interventions under the ASP Act. They are:

- **Equals Advocacy – 01698 327772** for adults aged 65 years and over
- **North Lanarkshire Advocacy – 01698 358 245** for adults aged between 18 and 64 years
- **Who Cares Scotland – 0141 221 4441** for children and young people aged 16 and 17 years

## 2.10 Cross Boundary and Locality AP Case Transfer

Section 53 of the Act states the responsible council is the area where the adult is physically present. This means that North Lanarkshire Social Work Services have duties to undertake inquiries and/or investigations in the North Lanarkshire area, even if the “adult at risk” has been placed by another authority or has come to live in North Lanarkshire from another area. Section 5 of the 2007 Act places a duty upon public bodies to co-operate and share information.

In cases where adults are subject to ASP measures in another local authority area and have moved or are planning to move to North Lanarkshire, and additionally, those adults at risk who are moving between different localities within North Lanarkshire, the following principles and process should be followed at all times.

- An AP Case conference **must** be planned and held to fully discuss the risks of harm and any accompanying risk management plans (AP3)
- An AP2 risk assessment **must** be produced for the AP Case conference clearly identifying the risks of harm, both actual and potential and information shared as to how these risks of harm are to be managed
- Regular communication and co-operation should take place between the Council Officers and any other agencies involved

The above process should be led by risk of harm and the needs of the adult involved. There could be Ordinary Residence rules for those adults who are moving between local authority areas and Council Officers should contact NLC legal services for clarity of information in such cases.

## D – Part 3 - AP Referral process

### Introduction

- 3.1 Section 4 of the 2007 Act places a duty on local authorities to make inquiries about a person's wellbeing, property, rights or financial affairs if it knows or believes that the person is an adult at risk, and that it might need to intervene in order to safeguard and protect the adult.
- 3.2 Concerns may be brought to the attention of the local authority in a number of ways and all referrals/concerns should be treated seriously and co-ordinated in a consistent manner, that meets statutory responsibilities and prevents delay in risk assessment activity being carried out.
- 3.3 North Lanarkshire Council Social Work, as part of the Health and Social Care North Lanarkshire, are lead agency for adult protection work and will be the central point for the receipt and logging of referrals. Social work will have overall responsibility for the co-ordination of adult protection risk assessment and risk management.
- 3.4 North Lanarkshire Council Social Work and wider staff within Health and Social Care must be aware of adult protection procedures and other legislation that could better meet the needs of the adult who may be at risk of harm. Consideration of the main principles of **benefit** and the **least restrictive** option must be given.
- 3.5 The application of professional judgement is fundamental in deciding whether or not to progress to investigation and a decision should be made following the collation of relevant information on receipt of referral and thereafter necessary inquiries carried out.
- 3.6 Section 5 of the 2007 Act states “where a named public body or office-holder knows or believes that a person is an ‘adult at risk’ and action needs to be taken in order to protect that person from harm, then that public body or office holder ***“must report the facts and circumstances of the concern to the council for the area where the adult is at for the time being in”***.”
- 3.7 This means that ***all public body employees*** named within the 2007 Act have a legal duty to report and staff should be clear to whom they have a duty to report to within their own organisations.
- 3.8 North Lanarkshire Council Social Work staff should be mindful that this duty to report covers existing and open cases. It therefore follows that consideration must be given as to whether an open case meets the threshold for AP interventions.
- 3.9 Whilst the 2007 Act does not give voluntary and private providers the same legal duty to report and co-operate, the ASP Code of Practice states that such agencies should act within the spirit of the legislation and are expected to adopt and follow local adult protection guidance and procedures within the geographical area. The contractual framework for registered service providers in

North Lanarkshire contain a requirement to have and operate an adult protection policy in line with the Guidance for registered services in North Lanarkshire.

- 3.10 Adult protection referrals for adults who are not known to social work services will be forwarded to admin colleagues who in the first instance will log the referral details then send the adult protection referral to the AP senior social worker for further action.
- 3.11 Adult protection referrals for adults who are known to social work services will be forwarded to admin colleagues who in the first instance will log the referral details then send the adult protection referral to the AP senior social worker for further action. If the adult at risk is identified as already having an allocated worker the referral should be passed to the senior social worker and the allocated worker for action. If the allocated worker is not available the referral should be passed to the responsible community care manager to action.
- 3.12 **Where the referral agency or social work has concerns about the immediate safety and wellbeing of an adult they should advise the appropriate emergency service immediately e.g. police, medical practitioner**
- 3.13 The collation of relevant information on receipt of referral is crucial in the application of sound professional judgement. Wherever possible the following information should be sought and recorded at the point of referral:
  - Details of referrer and their relationship to the adult.
  - Whether or not it is likely that the referrer is willing to be interviewed if required during the course of any possible future investigation (This is not optional for employees of Public Bodies as determined by the ASP Act).
  - Person who is suspected of causing harm or abuse and their relationship to the adult (if any) and whether they have contact with any other adults at risk and/or children.
  - Name and addresses of adult and any persons with an interest e.g. family, carer etc where known.
  - Current whereabouts of the adult.
  - Date of birth of the adult.
  - Whether the adult has a physical disability, learning disability, mental health or communication difficulties.
  - Natures of harm caused or anticipated.
  - Whether the adult is subject to any proxy decision making powers under the Adults with Incapacity (Scotland) Act 2000 or subject to any order under the Mental Health (Care & Treatment) (Scotland) Act 2003
  - The identity of any witnesses and their contact details and whether any specific incident has been captured on CCTV.
- 3.14 These procedures should be followed even where referrers refuse to give their name or on receipt of anonymous letters. Where referrers do give their name, but request that their identity should not be disclosed, they can be advised that any information given will be treated with discretion and that their identity will not be revealed unless the protection of the welfare of the adult or any court proceedings arising requires this.

- 3.15 Where a member of the public or non-public body makes a referral for a service user who is not known to social work, this information should be placed on an AP1 referral form (**Appendix 2**) by the person receiving the information or who is identified by the social work manager. If an active case the allocated worker will undertake this role.
- 3.16 The AP1 form or referral details should then be logged onto social work information system (mySWIS) by admin support as either a new referral or an add allocation. This information must always be reported to the appropriate senior social worker for them to complete the AP inquiry screen and further action.
- 3.17 The Senior Social Worker is responsible to screen the AP1 referral information and assess whether the primary harm selection made by admin colleagues is accurate and make necessary changes where required.

### **Police Scotland involvement**

- 3.18 The Police Scotland Adult Protection HUB is based within the Police Offices in Campbell Street, Hamilton.
- 3.19 The HUB processes all Adult Protection referrals and 'Adult Concern' reports (**Appendix 3**) generated by Police Officers within and out with the North Lanarkshire area. Officers within the HUB are responsible for recording and referring adults at risk of harm to each Social work locality within North Lanarkshire.
- 3.20 In relation to inquiries and investigations of adults at risk, requests for involvement of police in adult protection planning meetings and case conferences should be referred to Officers within the Police Scotland HUB in the first instance.
- 3.21 In general, police involvement will come from the police office in the adult's home area. Should the local police officer require specific support from the Protection HUB, this will be coordinated by the Police Officers based within the HUB. **Police Scotland has a Standard Operating Procedure for responding to adults at risk of harm.**
- 3.22 In cases where there is suspected criminality, Social work services have a duty to inform the Police of any potential criminality within referral information at the earliest opportunity. If Police decide to investigate, Social work services will continue to support the adult at risk and his/her carer (where appropriate), in coordinating and monitoring any agreed interim protection plan.
- 3.23 If it is decided that a criminal investigation is required, this will be undertaken by the Police. During any Police investigation, the Council has an ongoing duty to safeguard and protect the adult at risk. Social work services and the Police should work in partnership to plan any actions or interventions, within timescales, necessary to protect the adult at risk. The Police will decide if a referral to the Procurator Fiscal is required and appropriate.
- 3.24 It is acknowledged that the person alleged to be causing harm may also be supporting the adult. In such cases social work services may need to take action

to ensure the adult's support needs continue to be met during any investigation by the Police.

### **AP Referral process for young persons, known to Children & Families Services**

- 3.25 In the event of a protection issue arising for a young person, aged 16 years and above who is not known to social work / not currently an allocated case the above process should be followed.
- 3.26 Where a protection issue arises for a young person 16 years and above who is an allocated case, a referral should be made under adult protection procedures, to the allocated worker (regardless of whether the worker is based in a children and families team or not) using AP1 paperwork (**Appendix 2**).
- 3.27 The allocated worker, in all instances, must discuss the referral with their line manager, who will liaise with the relevant managers within the locality to decide what action is required and who will progress/record the actions and decisions taken.
- For example, if the young person referred has an open case file to children and families, the senior social worker (children & families) must discuss and agree with the relevant community care manager what action requires to be taken.
  - Where community care receive a referral in the first instance and there is ongoing children and families involvement with the case, the community care manager must discuss with the relevant senior social worker what action requires to be taken.
- 3.28 In all instances, when considering who is best placed to investigate the matter, relevant managers should ensure that decisions are based on the needs of the young person, as well as the nature of the information involved in the referral.
- 3.29 At any stage of children and families involvement with a young person i.e. via the child protection or looked after away from home framework, etc. it may be that the young person is also an "adult at risk".
- 3.30 Equally, as part of the adult protection process, it may be identified that there are young children at risk of harm and employees must recognise and report all harmful situations, regardless of their roles.
- 3.31 The senior social worker (children and families / community care, depending on who is progressing the referral) must ensure that the referral/investigation etc is captured on the correct screens on SWIS. For children it would be the CP screens but if it is being pursued via adult protection, this would be the AP screens. The AP recording framework on **4.9 and 7.39** of this guidance **must** be used.



## **Transitional arrangements**

- 3.32 For young people currently involved with children and families, who have been identified and assessed as an “adult at risk” as part of the review of their plan, actions should be agreed on how to support and protect them during the transition from children and families to younger adults services.
- 3.33 Any decision/actions agreed must be based on assessment/ planning and reviewing activity, that have taken place for the young person and ongoing support must be clearly defined.
- 3.34 All relevant agencies must be represented at the review including a council officer from community care.
- 3.35 Where as part of the review, a decision is made that the young person is an adult at risk; the Adult Support and Protection (Scotland) Act 2007 applies and this should be recorded and an adult protection inquiry undertaken if appropriate.
- 3.36 As part of the review plan, an updated plan should be developed to ensure all relevant decisions/actions taken in support of the young person being an adult at risk are recorded. A minute of all decisions and reasons for decisions should also be recorded.
- 3.37 Any actions taken to support and protect the young person should be consistent with North Lanarkshire Council procedures, and any other relevant legislation should be taken into account i.e. Adults with Incapacity (Scotland) Act 2000; the Mental Health Care & Treatment (Scotland) Act 2003 etc.

## **AP Referral process for NLC / Independent Sector, Registered or Contracted Service [click here](#)**

- 3.38 North Lanarkshire Social Work Services, as lead agency on behalf of Health and Social Care North Lanarkshire have overall responsibility for the co-ordination of Adult Support and Protection and will be the central point for receiving and logging referrals.
- 3.39 Referrals for NLC services that also include staff conduct or complaints will be managed within North Lanarkshire Council internal procedures. Independent Services will manage their own staff conduct issues.
- 3.40 The manager responsible for the service should make a referral to the social work team in the area where the person is for the time being in, even if the adult is not known to North Lanarkshire social work services or they have been placed by another authority.
- 3.41 Section 53 of the Act states the responsible council is the area where the adult is at for the time being in. This means that North Lanarkshire Social work services are responsible for undertaking inquiries and/or investigations in the North Lanarkshire area, even if the “adult at risk” has been placed by another authority.
- 3.42 On receipt of the adult protection referral the senior social worker should alert the placing authority or care manager (if they are based in another locality) that an adult protection referral has been received and after inquiries or investigations have taken place, appropriate recommendations will be made, including whether

an urgent care review is required. Time delays should be avoided wherever possible, particularly in cases of potential or actual serious harm.

- 3.43 **It is not the role of the Council Officer to interview a member of staff from the service, who may be suspected of harming the adult. From the outset, relevant information relating to the incident should be gathered from the responsible manager of the service. A decision should be taken as to whether any member of staff who may have witnessed the incident, should be interviewed and by whom e.g. Police or Council Officers.**
- 3.44 **For Support at Home** and other service involving social work employees, the home support team leader, Senior or Manager, of the staff concerned, will discuss any referrals with the senior social worker and if there is disagreement then the locality social work manager will decide whether an adult protection inquiry should be undertaken. Discussions should take place between, the Locality Social Work Manager and Manager HR Business Partner in the Council if there are concerns regarding a staff member's conduct, with regard to their work situation, in line with HR processes. For staff not employed by the Council, the employing body should consider any HR action necessary. In both instances, HR Or Police processes should not delay ensuring the safety of any individual or other individuals, who may be at risk potentially.
- 3.45 For further guidance on conduct issues and adult protection procedures within Health and Social Care North Lanarkshire and independent service providers follow linked Guidance for the Protection of Adults within Registered and Contracted Services [click here](#) . **This procedure also contains detailed guidance on the AP Large Scale Inquiry (LSI) process in North Lanarkshire.**

## **E – Part 4 - AP Inquiry process**

- 4.1 Initial inquiries should be commenced within **24 hours** of receipt of referral. In cases where there is an allegation of physical and/or sexual harm inquiries should commence immediately and contact made with the Police to:
- identify any potential areas of criminality
  - confirm whether a Police investigation is required
  - establish roles and responsibilities within timescales
- If appropriate, attempts to visit the adult and speak to them alone should be made within **24 hours**
- In most cases it will be appropriate to make contact with the adult as soon as possible. By exception (determined by the senior social worker or equivalent manager) this time scale may be extended, however it should not go beyond **5 working days** and reasons must be recorded.
- 4.2 The person tasked with carrying out initial inquiries **does not require to be a qualified worker**. The purpose of the inquiry is to gather sufficient information to allow the senior social worker to confirm whether the adult may be an adult at risk of harm and if further action under the Act is required.
- 4.3 The person carrying out initial inquiries should gather details of the incident and identify the risks of harm, both actual and potential and consult social work records to ascertain if the adult is known.

- 4.4 If the adult is known, contact should be made with staff familiar with the adult for further information.
- 4.5 If the adult is known to have a mental disorder or intervention under the Adults with Incapacity (Scotland) Act 2000 and a Mental Health Officer (MHO) has already been identified, they should be contacted and, if appropriate considered as Lead Council Officer. Depending on the nature of the information available further information may require to be accessed via:
- Health staff, including General Practitioner (GP).
  - The Mental Welfare Commission.
  - Office of the Public Guardian.
  - Guardian or Proxy.
  - Any relevant source of information which may be relevant
- 4.6 Safeguarding the welfare of the adult remains paramount. Any urgent action deemed necessary should not be delayed by the need for further consultation and the arrangements for an AP Planning meeting.
- 4.7 If the level of risk is such that immediate action is required, which cannot be achieved on a voluntary basis, legal advice must be sought, to determine whether there are any statutory powers which can be invoked.
- 4.8 The senior social worker should consult with the locality social work manager (LSWM) to discuss the information available and subsequent action.
- 4.9 **Recording AP Inquiry actions**

When an appropriate range of inquiries have been carried out and the decision is to **progress to investigation** or to take no **further action (in relation to adult protection specifically – there may still be a need for ongoing contact for other reasons)**, the senior social worker will ensure that a mySWiS contact is entered with the following headings:

1. Reason for Referral
2. Inquiry Actions Taken
3. Other Agencies consulted
4. Evidence how the adult is un/able to safeguard wellbeing, property, rights, interests
5. Evidence how the adult is/not at risk of harm
6. Evidence how the adult is/not affected by disability, illness, mental disorder, physical and mental infirmity etc
7. Protective Factors
8. Recommendations

An analysis of risk is required in every case regardless of whether the inquiry has established harm is present or not. All inquiry recordings must include reference to the 3 point criteria and clear reasons given for the decision.

## F – Part 5 - AP Planning meeting process

- 5.1 Planning meetings must not delay any immediate action required to protect the adult at risk and an adult protection investigation may be initiated while additional information is being collated.
- 5.2 Planning meetings should be convened where there are complexities around the referral or initial inquiries and there is a need to share all available information and to agree a plan on how to investigate the concerns and protect the adult at risk.
- 5.3 The locality social work manager (or delegated manager) will decide if it is appropriate to convene a planning meeting in order to:
- Decide if an investigation is required.
  - Consider if an investigation under the Adults with Incapacity (Scotland) Act 2000 or Mental Health (Care & Treatment) (Scotland) Act 2003 should take place or if some other more appropriate course of action should be taken
  - Clarify the process of the investigation and who should participate or lead.
  - Clarify roles and responsibilities in relation to formal investigatory measures and to agree a time-scale for the completion of the investigations
  - Agree a robust communication strategy between agencies within timescales
  - Consider what further action, if any, is required to protect the individual.
- 5.4 Details of the Adult Protection Initial Report (**AP1**) should be made available to those attending the planning meeting to provide basic details.
- 5.5 The planning meeting forms part of the investigatory process and should be formally recorded. The senior social worker will co-ordinate the completion of the planning meeting pro forma and ensure that all information is recorded on the relevant adult protection screen (**Appendix 6**).
- 5.6 The Locality Social Work Manager is responsible to chair the AP Planning meeting and must be briefed by the Lead Council Officer and Senior Social Worker with the relevant information prior to the meeting taking place. If the locality social work manager opts to delegate the task the senior social worker should chair this meeting.
- 5.7 Planning meetings can be held at any time during the inquiry or investigation process, to clarify information and inform decisions. However it must not replace the need for an AP Case conference.
- 5.8 Where there is evidence of a suspected criminal offence, the police **must** be invited to the planning meeting to clarify roles and responsibilities, within timescales and decide who should lead the formal investigation. If the situation is urgent then there should be no delay in agreeing the process of investigation.
- 5.9 A referral made under the adult protection procedures may also relate to a person to whom adults with incapacity or mental health legislation applies, therefore consideration should be given, where appropriate, to using these adult protection procedures in conjunction with interventions under these Acts. See **Appendix 24** for legislation and interventions relating to the

Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003.

5.10 In deciding whether an AP investigation under these procedures is required, or some other approach is more appropriate, e.g. community care assessment, service provision, intervention under other legislation, the locality social work manager or senior social worker should take account of the following considerations:

- The extent and severity of the alleged harm.
- Whether the harm was a one off event or part of a long standing pattern and the impacts of this upon the adult
- The potential for harm on others.
- The need for protection or support for the alleged perpetrator if they lack capacity or also are at risk of harm.
- The intent of the person allegedly responsible for the harm.
- The legality of the actions involved, that is, does the adult meet the three point criteria
- The risk of harm being repeated against the person.
- The risk of harm being repeated against other adults and/or children
- The view of the adult against whom harm has allegedly been perpetrated.
- The capacity of the adult to understand their current situation.

**These formal tasks should be carried out within the context of assessment and planning and be focused on personal outcomes for example, being safe.**

5.11 Should the AP Planning meeting decide that no further action under Adult Protection Procedures is required the senior social worker leading on the inquiry will ensure that the decisions taken for this action are fully recorded upon a mySWiS contact.

5.12 Where an adult has capacity and meets the criteria of the Act but indicates that they do not wish support this does not absolve the council and partners of their responsibilities to cooperate and consider protective measures for the adult.

5.13 While the adult has the right not to engage with the process, the appropriate partners should still meet to consider what action could be taken in the best interest of the adult at risk of harm; this could include a Care or Protection Plan or advice or support to the individual where possible, to manage identified risk. All actions and decisions from any meetings and contacts with the adult must be clearly recorded to evidence defensible decision making.

5.14 If a decision is reached that further intervention is to be taken under the Adult Support & Protection (Scotland) Act 2007 then the following actions must be recorded and taken forward:

- Agreement on, who will support the 'adult at risk'.

- Consideration of the use of other adult legislation that could offer a level of protection more suitable to the presenting circumstances.
- Establish if the adult meets the 'three point criteria' under the 2007 Act
- Establish whether the case should proceed to a formal investigation and consider whether one of the AP Protection Orders may be required
- Agree a multi-agency plan, within timescales to undertake the formal adult protection investigation.
- Agree who will be the Lead Council officer, who will lead the investigation and who will be the Second Officer involved.
- Set a date for an initial AP Case conference **no later than 21 working days** from the date of referral.

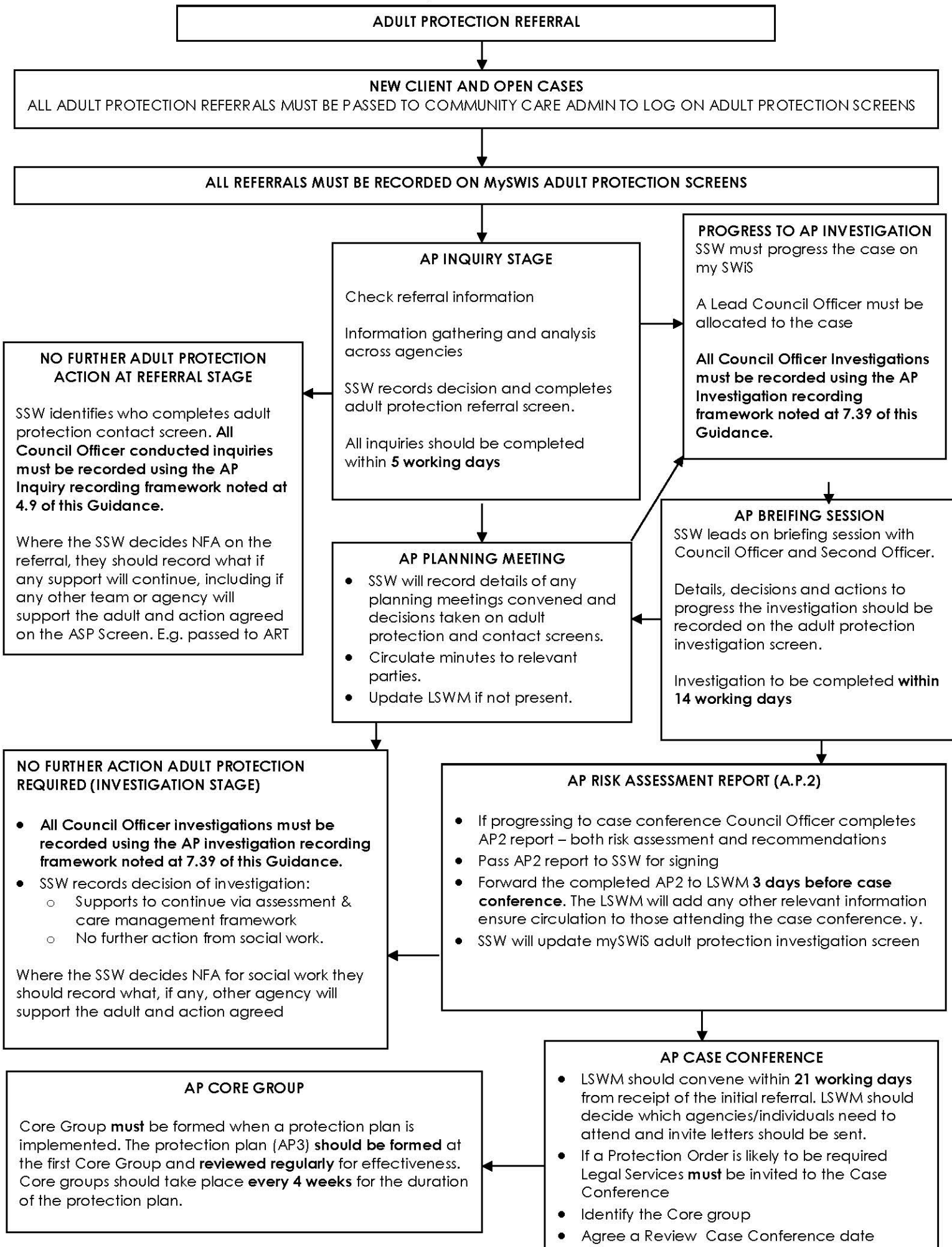
**5.15 Where the decision is to proceed to an adult protection investigation immediately on receipt of referral the senior social worker where they suspect a crime has been committed, must immediately contact:**

- The Police Concern HUB to ascertain their view on whether a criminal offence has taken place and whether this is of sufficient seriousness for the police to lead on the investigation and agree roles within timescales
- Any other relevant agency (including referral agency) to agree the level of co-operation and participation in the process of investigation.

## **Dissent**

- 5.16** If the referrer disagrees with the outcome of an AP referral / investigation they should contact the Locality Social Work Manager to discuss further. If there continues to be dissent the Health and Social Work Manager will consider all the information and professional opinions in order to make a final decision.

# ADULT PROTECTION PROCESS, PRACTICE AND TIMESCALES FLOWCHART



## G – Part 6 - AP Briefing and Debriefing Process

- 6.1 Where a decision is taken to proceed to investigation, whether it is a single or joint agency investigation, the senior social worker co-ordinating the investigation must brief the staff involved (**Appendix 7**).
- 6.2 The investigation should be a planned process with roles and remits of the investigating team agreed beforehand. The objective is to establish the nature of the risk of harm, the level of risk and the likelihood of the risk continuing or recurring. Within this context consideration should be made to identify the most positive environment towards obtaining a full assessment of the adult's circumstances, needs and whether intervention or further action is necessary. The process requires both preparatory and post interview considerations:-
- Gathering and collating the fullest information available prior to any formal investigative interview e.g. information known from the AP Inquiry and previous involvement
  - Considering the range of possible risks of harm and other possible risks
  - Agreeing where the investigative interviews will take place
  - Ensuring the time of the visit is at a 'reasonable time'.
  - Agreeing what areas will need to be addressed
  - Who will lead the interview
  - Who will record the interviews
  - How open questions will be asked to avoid leading the 'adult at risk'
  - Timescales for completion of each task
  - Considering employee health and safety
  - Agreeing how the outcome of the investigation will be reported to the Senior social worker
- 6.3 The relevant senior social worker should take cognisance of the potentially demanding nature of this work and ensure, in respect of the Lead Council Officer, and any other of their staff involved, that they are offered the appropriate time and support. Any associated work load management requirements should be met accordingly, and that expectations regarding feedback on progress of the investigation are clear.
- 6.4 Given the potential complexity of such investigative situations, requirements for corroboration and in the interests of support for staff and health and safety it is recommended that investigative visits **should always involve two workers**.
- 6.5 In North Lanarkshire the investigation will always be led by a Lead Council Officer. The relevant Senior social worker will be responsible to identify the Lead Council Officer and take responsibility for ensuring appropriate supports are in place.
- 6.6 The Lead Council Officer **must** be allocated to the case when it proceeds to investigation.
- 6.7 Section 8 of the Act allows the council, as lead agency, to request a co-operating body employee to accompany them on an investigative visit. It



therefore follows that the **Second Officer does not require to be a Council Officer.**

- 6.8 It will be the responsibility of partner agencies involved in any investigation to ensure the support and health and safety of their workers involved in investigation.
- 6.9 On completion of the AP investigative visit/s and interview/s, the Lead Council Officer and Second Officer should be debriefed by the senior social worker co-ordinating the investigation (Appendix 7). The purpose of this debriefing session is to discuss the outcome of the investigative interview and clarify whether any action is required, including urgent action e.g. police and/or health, consideration of an AP Protection Order see Best Evidence Gathering (**Appendix 28**).
- 6.10 In all cases that require an investigative interview, the Lead Council Officer must enter a recording upon mySWiS which offers a brief synopsis of the event. Council Officers are not required to record the investigative interview in verbatim terms (**Appendix 9**).
- 6.11 If the decision is to progress to an AP Case conference the Lead Council Officer will complete an AP2 risk assessment which should provide a balanced view between risk of harm, abilities of the adult at risk, including capacity and consent, strengths and protective factors (**Appendix 19**).

## **H – Part 7 - AP Investigation process**

### **Introduction**

- 7.1 As with all other interventions under the Act the general principles laid out in part one of the Act must be applied when undertaking any intervention.
- 7.2 It is the responsibility of North Lanarkshire Social Work Services to lead on adult protection investigations. Other agencies may be asked to become involved if their action or contribution is required to progress the investigative process under the lead of the local authority i.e. Police (if criminality is suspected or the safety of the Council Officer is compromised), Housing, Care at home, Health or other specialist services.
- 7.3 In North Lanarkshire all workers who lead on Adult Support and Protection Investigations **must** be an officer of the local authority and a professionally qualified and registered social worker. The senior social worker (or equivalent manager) will identify the Lead Council Officer who will investigate.
- 7.4 The investigation will be co-ordinated by the appropriate senior social worker (or equivalent manager) who will keep the locality social work manager informed of progress.
- 7.5 The Joint Improvement Team, Protection of Adults at Risk, Risk Assessment (AP2) and Protection Plan (AP3) will be adopted as the standard assessment, recording and care planning mechanism for all formal investigatory visits under multi-agency adult protection procedures (**Appendix 19 & 20**).

- 7.6 If the adult is known to have a mental disorder or intervention under the Adults with Incapacity (Scotland) Act 2000 and a Supervising Officer / Designated MHO is involved they should be contacted and if appropriate participate in the investigation.
- 7.7 If the adult is subject to private guardianship that guardian should be alerted (unless they are the alleged harmer) along with the guardian's local authority supervisor. This information can be accessed via Adults Team, Social Work Headquarters.
- 7.8 The senior social worker co-ordinating the investigation must record on mySWIS that an investigation has been initiated and input this decision (and date) on the system. This will trigger an alert (**Appendix 31**).

### **Purpose of the AP Investigation**

- To check the accuracy of any allegations of harm or potential harm.
- To establish and clearly record the facts about the circumstances, which have given rise to concerns.
- To involve the adult seen to be at risk as fully as possible within the investigative process (***this may involve use of independent advocacy, appropriate adults scheme, translation or sensory impairment services***).
- To review the adult's situation, in respect of current protective legislative powers in force e.g. AWI Act and MH Act.
- To identify on assessment any serious risk of harm and contributing factors or concerns arising from the adult's circumstances.
- To establish with the adult their views on the risks of harm they face and whether they wish professional intervention to take place (subject to their capacity to make such a decision).
- To determine whether harm or the risk of potential harm is likely and determine what protective action or other action is needed for the adult
- To establish where possible the views of carers, agencies and relevant persons with an interest in the adult considered to be at risk.
- To ensure where possible, appropriate action is taken to reduce the risk of harm e.g. in respect of alleged perpetrator(s).
- To ensure all options are considered as to how the perpetrator could be removed from the situation, (if this is the most appropriate desirable outcome), as opposed to the adult at risk having to leave their home.
- To consider any action necessary regarding any adult or any children at risk and to take appropriate to assess any need for action in relation to them.

**Note: During the conduct of an AP Investigation where any child protection concerns arise action must be taken under North Lanarkshire Council Social Work Child Protection Procedures to ensure the immediate and future safety and wellbeing of the child or children.**

**Guidance relating to Schedule 1 offenders to assist local authorities, Scottish Prison Service and others protect children when someone is sentenced to a Schedule 1 Offence (Criminal Procedure (Scotland) Act**

1995). Council staff involved in adult protection inquiries and investigations should ensure that information coming to their attention in the course of their duties relating to a Schedule 1 offender is recorded and shared with the relevant agencies. Please [click here](#). A joint operating protocol has been established in North Lanarkshire to provide a framework for MAPPA and ASP. Please [click here](#)

### AP Investigative Visit (Sec 7)

- 7.9 Under section 7 of the Act a Council Officer has a power of entry to enter any place or other property to investigate whether any action is required to protect an adult from harm. This power extends to allow the Council Officer to inspect any area of the building, including outbuildings that may be linked to the adults' welfare and risk of harm (**Appendix 8**).
- 7.10 In North Lanarkshire two members of staff **must** visit, one to conduct the interview and one to record information.
- 7.11 The Lead Council officer should consider the benefits of an advocacy worker being available to support the adult.
- 7.12 The Lead investigating officer **must identify as a Council Officer**, show their identification and explain the purpose of their visit to the adult and those with an interest in the adult where appropriate.
- 7.13 The ASP Code of Practice states that Council Officers should advise the adult and other concerned parties, they are visiting to investigate a risk of harm. Care must be taken by the Council Officer in not disclosing detailed information, pertaining to what has prompted the initial concerns.

### AP Investigative Interview (Sec 8)

- 7.14 Section 8 of the Act allows a Council Officer and any person accompanying the officer, to interview the adult in private. Whether or not the adult should be interviewed in private will be decided on the basis of whether this would assist in achieving the objectives of the investigation.
- 7.15 Section 8(2) of the Act provides that the adult is not required to answer any questions, and that the Council Officer must advise the adult of this before the interview takes place. The adult can choose to answer any question put to them but the purpose of this section is to ensure that they are not forced to answer any question that they choose not to answer.
- 7.16 This does not however prevent the Council Officer from gathering information in relation to the concerns which have been raised. For example, the Council Officer should use observational skills to identify the presentation of the adult and their immediate environment and consider this information in light of the concerns being raised. General questions could also be asked, however this should be carried out in a sensitive manner helping the adult to understand the Council Officer role while respecting the adults rights to refuse.
- 7.17 A similar process should be followed to an assessment of risk. In any interview, gaining the consent of the adult to be interviewed should also

consider the adult's capacity and promote the adult's participation in the interview.

- 7.18 In situations where it is either known or suspected the adult does not have capacity to consent to interview, principles of participation should be paramount and professional judgement demonstrated by the council officer in relation to proceeding.
- 7.19 There are several phases for investigative interviewing. For full guidance on this process see **Appendix 9**.
- 7.20 The interview, where possible, should be conducted in a safe, quiet, comfortable setting where interruptions are to a minimum.
- 7.21 The interviewer must keep an open mind and gather information without prejudice.
- 7.22 The second officer should record a summary account of the interview using the appropriate paperwork and noting significant comments, information and emotions and demeanour and responses of the adult etc. The recording should reflect any points which may support any legal action necessary e.g. dates, details of what and who is/was responsible for causing harm, **Note: If someone is describing harm they suffered this should be recorded as fully as possible in the adults own words (verbatim) (Appendix 10)**.
- 7.23 Should the investigation take place within a private or voluntary setting, the Contracted and Private Providers Guidance should be referred to and can be accessed by [clicking here](#). However the investigative interview should follow the same guidance as above.

## **AP Medical Examinations (Sec 9)**

- 7.24 Under Section 9 of the Act a Council Officer may request that a health professional conduct a medical examination in private, of an adult at risk of harm. Under Sec 52 (2) of the Act a health professional includes a doctor, nurse or midwife. NHS Lanarkshire has agreed this will be doctor.
- 7.25 A medical examination can include physical, psychological or psychiatric assessment or examination and may be required for a number of reasons e.g.
- The adult's need for immediate medical treatment
  - To provide evidence of harm to inform a criminal prosecution
  - To support an application for an order to safeguard the adult
  - To assess the adult's health needs
  - To assess the adult's mental capacity
- 7.26 Situations where a medical examination **must** be considered include:
- The adult has a physical injury inflicted by another person
  - The adult has an injury where the explanation is inconsistent with the injuries
  - There is an allegation of sexual abuse and the assault may have left physical evidence

- The adult appears to be injured due to neglect or self-neglect or self harm
  - The adult is ill or injured and no treatment has previously been sought
- 7.27 Section 9(2) of the Act states that the person to be examined must be informed by the Council Officer of their right to refuse to be examined before the medical examination takes place.
- 7.28 In an emergency and where consent cannot be obtained, doctors can provide medical treatment to anyone who needs it, provided the treatment is necessary to save life or avoid significant deterioration in the person's health. However, even in those circumstances, any advance notice that a person would have refused to consent to such treatment should also be taken into account.

### **AP Examination of Records (Sec 10)**

- 7.29 Section 10 of the Act allows Council Officers to require any person holding health, financial or other records relating to an adult at risk to give the records, or copies of them to the Council Officer, in order to assist them to decide whether further action is needed to protect the adult at risk from harm. Records are defined as those held in audio, visual or other formats
- 7.30 Whilst confidentiality is important it is not an absolute right. Nonetheless, the sharing of information must be proportionate to the harm it is being sought to prevent and where possible the consent of the adult should be sought.
- 7.31 Medical records such as those held in acute hospital records may only be inspected by a health professional. Council officers can nominate who they think is appropriate to inspect records on their behalf. NHS Lanarkshire has agreed that doctors take on this responsibility and request can be made using **Appendix 14**.
- 7.32 While a GP is not required to co-operate, the adult's medical records belong to the Health Board and they are required to co-operate. If a GP refuses to co-operate, the Lead Council Officer should contact the practice nurse manager for access to medical records. While any council officer may require health records or copies to be produced, health records may only be inspected by a health professional (other than to establish that they are health records, in the first instance (**Appendix 14**).
- 7.33 If there are any issues relating to the access of medical information or assessment this must be passed to the Locality Social Work Manager for them to liaise with senior health personnel.
- 7.34 Where there is a risk of financial harm and the adult has an appointee the Department of Works and Pension (DWP) should be alerted for them to pursue further investigation and action. The DWP have agreed a template for Council Officers to use in respect of Sec 10 information requests. **Appendix 13** outlines the process for making application to the DWP.
- 7.35 Social Work Scotland and the National Banking Support Group under the auspices of the Financial Sector Resilience Group (Scottish Business Resilience Centre/Police Scotland) have agreed a national protocol for Council Officers accessing information under Sec 10, from financial

institutions across Scotland. Council Officers should use this protocol and template when attempting to gather proportionate information from financial institutions, by carefully following the steps required (**Appendix 12**).

- 7.36 The principles of the Act must be adhered to and the purpose of any access to records or sharing of information must be proportionate and should be to further the best interests of the adult and otherwise unable to be achieved without such an intervention.
- 7.37 Section 49 of the Act provides that it is an offence for any person to fail to comply with a requirement to provide information under Section 10, unless that person has a reasonable excuse for failing to do so. **Note: This does not apply to the adult at risk themselves.**
- 7.38 When the information is gathered it will be the responsibility of the senior social worker (or equivalent manager) to decide, on information available, whether:
- immediate action is required in relation to the adult deemed to be at risk;
  - whether an initial AP Case conference is required with relevant staff and partner agencies;
  - no further action is required under adult protection procedures
  - Further action beyond the scope of the ASP Act is needed

### **Recording AP Investigative actions**

- 7.39 When an appropriate range of investigative actions have been carried out and the decision is to **progress to AP case conference** or **no further action**, the senior social worker will ensure that a mySWiS contact is entered with the following headings:
1. Reason for Investigation
  2. Investigative Actions Taken
  3. Other Agencies consulted
  4. Evidence how the adult is un/able to safeguard wellbeing, property, rights, interests
  5. Evidence how the adult is/not at risk of harm
  6. Evidence how the adult is/not affected by disability, illness, mental disorder, physical and mental infirmity etc
  7. Protective Factors
  8. Recommendations

An analysis of risk is required in every case regardless of whether the investigation has established harm is present or not. All investigative recordings must include reference to the 3 point criteria and clear evidence given.

### **Adult Protection Referral Acknowledgment**

- 7.40 Most Adult Protection referrals are sent to Social Work Services electronically. Within each locality, there are bespoke e mail baskets set up to facilitate this. This arrangement ensures that all electronic referrals will be issued with a notification that North Lanarkshire Social Work Service have received the AP referral and that an inquiry will take place. In cases where the AP referral has been submitted in paper form the senior social worker (or equivalent manager) must ensure, where appropriate, that a letter is sent advising the referring

agency that the AP referral has been received and that an inquiry will take place (**Appendix 5**).

- 7.41 Acknowledgement letters should be signed by the relevant lead senior social worker. It would not be normal practice to send an acknowledgment letter to a member of the public however, where this is agreed appropriate, the locality social work manager should write to the referrer outlining the decisions and actions taken.

### **Adult Protection Outcome of Inquiry and Investigation**

- 7.42 Sec 5 of the Act places a duty upon public bodies to co-operate with the council when undertaking inquiries and investigations. This duty extends to sharing proportionate information. Public bodies are encouraged to contact North Lanarkshire Social Work Services if an update or additional information is required as part of an AP inquiry or investigation.
- 7.43 On completion of AP Inquiries and Investigations the Council Officer is responsible to telephone the referrer and provide proportionate feedback in relation to the outcome of referral. This action **must** be recorded upon mySWiS with reference to the Inquiry and Investigation recording guidance at **4.9** and **7.39**. The Senior Social Worker is responsible to ensure this feedback is provided.
- 7.44 Information that is collated as part of an inquiry or investigation is sensitive and may include actual or potential risk of harm and plans to mitigate such risks. Council Officers must balance this with the need to share proportionate information to encourage effective inter-agency working, as many Significant Case Reviews have highlighted the importance of agencies co-operating and communicating effectively in order to safeguard and protect adults at risk.

### **Notification of a significant incident / referral for significant case review**

- 7.45 Where there are incidents of significant or serious harm, they will be reported to the chair of the Adult Protection Committee via the Head of Adult Social Work Services.
- 7.46 The Locality Social Work Manager or Service Manager if external to locality will liaise with Manager; Younger Adults to discuss concerns and agree what action will be taken.
- 7.47 A formal “notification of a significant incident form” will be produced by the Locality Social Work Manager and forwarded to the Manager, Younger Adults and the Head of Adult Social Work. The Head of Adult Social Work will consider the notification and add an opinion regarding whether a review should be conducted or not, for consideration by the Chair of the APC. Any Significant Case Review will be the decision of the Chair following a discussion of all the information.
- 7.48 The criteria and process of reporting a serious incident to the Adult Protection Committee can be accessed via the following link [click here](#)

## ADULT PROTECTION – COUNCIL OFFICER CHECKLIST

<b>SERVICE USERS NAME:</b>	
<b>SWIS NUMBER:</b>	
<b>LEAD COUNCIL OFFICER:</b>	
<b>SENIOR SOCIAL WORKER:</b>	

Action	TICK WHEN COMPLETED	DATE COMPLETED
AP1 to be passed to Community Care Admin for logging onto AP mySWIS screens and Adult Protection Spreadsheet for tracking purposes	<input type="checkbox"/>	
Ensure an AP1 referral form been received or completed by worker if a member of the public. (24 hours)	<input type="checkbox"/>	
AP1 passed to SSW (Inquiry to be completed within 5 working days)	<input type="checkbox"/>	
If progressing to investigation, have advocacy services been considered / contacted?	<input type="checkbox"/>	
If the adult is to be interviewed - provide ASP information leaflets to Adult/relevant others.	<input type="checkbox"/>	
Following inquiry or investigation complete recording framework Inquiry – 4.9 on this guidance Investigation – 7.39 on this guidance	<input type="checkbox"/>	
Following investigation – and progressing to case conference complete AP Risk Assessment (AP2) and pass to SSW / LSWM within 3 days before C.C. and update mySWIS	<input type="checkbox"/>	
Liaise with SSW / LSWM to arrange meeting date / share reports.	<input type="checkbox"/>	
Case Conference - notify admin of decision and complete invitation list and pass to admin within 2 working days	<input type="checkbox"/>	
Book room and notify admin section / Notify admin of any apologies if known	<input type="checkbox"/>	
Notify adult /carers to share report and establish support needs for attendance to case conference.	<input type="checkbox"/>	
Present AP2 risk assessment and recommend actions to mitigate risk of harm as part of proposed protection plan (AP3)	<input type="checkbox"/>	



## ADULT PROTECTION - SENIOR SOCIAL WORKER CHECKLIST

<b>SERVICE USERS NAME:</b>	
<b>SWIS NUMBER:</b>	
<b>SENIOR SOCIAL WORKER:</b>	
<b>LEAD COUNCIL OFFICER:</b>	

ACTION	TICK WHEN COMPLETED	DATE COMPLETED						
AP1 to be passed to Admin for logging onto AP mySWIS screens and Adult Protection Spreadsheet for tracking purposes.	<input type="checkbox"/>							
AP1 passed to SSW  SSW to check primary harm type selection on AP referral and change where required	<input type="checkbox"/>							
SSW NFA or discussed AP Referral with allocated workers:  <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">1</td> <td></td> </tr> <tr> <td style="text-align: center;">2</td> <td></td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Date of Investigation:</td> <td></td> </tr> </table>	1		2		Date of Investigation:		<input type="checkbox"/>   <input type="checkbox"/>	
1								
2								
Date of Investigation:								
AP Investigation screen updated on mySWIS and LSWM alerted of action.	<input type="checkbox"/>							
Investigation in process – AP2 completed and signed by SSW (copy to admin) <b><u>This must be completed within 13 days of initial referral.</u></b>	<input type="checkbox"/>							
Investigation outcome to be NFA – SSW to update ASP screens on swis and arrange for LSWM/ Adult/ Carers and Other Agencies to be notified. Or Proceed to Case Conference – Meeting to be arranged via admin and letters to be sent to agencies advising of current status.	<input type="checkbox"/>  <input type="checkbox"/>							
Case Conference has taken place, minute taker to inform relevant admin of date of next meeting and decisions.  AP3 to be completed at the first AP Core Group	<input type="checkbox"/>							

## I – Part 8 – AP Case Conference process

- 8.1 An AP Case conference is a multi-agency forum held to share information and make decisions about how to support and protect an adult deemed to be at risk of harm. Whilst there are no statutory provisions relating to case conferences, the arrangements for case conferences detailed in these procedures have been agreed by the agencies represented on the North Lanarkshire Adult Protection Committee and public body employees have a duty to co-operate under Sec 5 of the Act.
- 8.2 The Locality Social Work Manager will convene and Chair an initial AP Case conference within **21 working days** from the date of the initial adult protection referral.
- 8.3 Where the Locality Social Work Manager decides to convene an initial AP case conference out with the 21 working day timescale, he/she must record the reasons for this decision.
- 8.4 An AP2 - risk assessment will be completed by the Lead Council Officer and submitted to the Locality Social Work Manager approximately **three days** prior to the case conference taking place.
- 8.5 Where an AP Case conference has been arranged on an urgent basis, the Lead Council Officer should complete an AP2 – risk assessment at the earliest opportunity.
- 8.6 Links must be made with children and families services where the circumstances involve a young person who is known to them or where children may live in the same household.
- 8.7 Council legal services should be invited, as appropriate, in order to provide advice where there is likely to be an application for measures to a sheriff.
- 8.8 An MHO should be invited to case conference if it is deemed necessary to consider issues of capacity, consent and options under alternative legislation.

As with all other interventions under the Act the general principles set out in part one of the Act must be applied.

### The content and purpose of the AP Case Conference

- 8.9 The AP case conference should focus upon risk of harm, needs, strengths, protective factors, capacity and consent. The content of the meeting should include:

### Introduction

- 8.10 The chair person should introduce the case conference by confirming:
- The purpose and function of the case conference within the context of adult protection procedures under the ASP (S) 2007 Act

- That certain information pertaining to the adult at risk may have to be restricted and give the reason for that restriction (for guidance on matters pertaining to information governance please [click here](#))
- Who is present - the Chair person should ask participants to introduce themselves and identify their role
- The role of the minute taker and the need to clearly record discussion

## Reports and gathering of facts

- The professionals should be asked by the chair person to share information beginning with the circumstances of the referral and conduct of inquiries.
  - The content of any reports submitted e.g. report from Addiction Recovery Team (ART) should be shared and noted (**Appendix 4 & 17**).
  - There should be a consideration of the risks of harm, the nature and level of such risks and the likelihood of recurrence (AP2 Risk Assessment).
  - Potential relevant legislation should be considered
- 8.11 The risk assessment (AP2) (**Appendix 19**) is not intended as a substitute for consideration and decision making in an AP Case conference, rather the format is intended to provide a means by which such conferences can be fully informed about the findings and views of the assessor and the person being assessed, both in relation to past events and possible future actions.
- 8.12 The terms of the risk assessment are also intended to provide not only for a balanced response to individual rights and agency responsibilities, but also consideration and analysis of the potential impact from any future protective measures. In addition areas which need considered are:
- Whether any protection measures require to be sought or reviewed if they were established at the investigation stage.
  - Any relevant background information (following all the information relating to the current investigation been discussed).
  - What the strengths or weaknesses are in the current support arrangements and any need for advocacy to support the person at risk's views and wishes to be heard
  - The adult at risk's ability to consent and capacity to understand.
  - A history of any significant events
- 8.13 The Chair of the case conference should provide verbal summaries following each individual relevant contribution in order to ensure clarity and to assist the person at risk of harm and/or carer to be fully engaged and understand what is being said. This approach should also facilitate the taking of the minute. It is particularly important that the person and any carers or family have an opportunity to make their own contribution.

- 8.14 If there is disagreement about any facts or opinion presented there should be an attempt to agree a consensus at the time. In the event of this not being possible some disagreements may only be acknowledged.

### **Interpretation and Assessment**

- 8.15 The chair person should lead the discussion which focuses upon:

- What strengths the adult has and what are the strengths available to support the adult e.g. positive role of carers or family members?
- What are the threats to the adult at risk's wellbeing?
- What are the specific dangers, actual and/or potential to the adult at risk?
- What is the current or potential role of carers and family members?
- What extended family and other informal supports could be mobilised?
- Is there a need for community or professional supports to be offered?
- Is there a need for urgent protective action to be taken, including a formal ASP Protection Order?

### **Decision**

- 8.16 The case conference needs to decide whether the adult or any other person is believed to be at continuing risk of harm and if so:

- Decide if there is a need for formal measures to protect the adult e.g. ASP Orders, or, pursue further investigation
- Refer/not refer to the police, if this has not already been done in the course of the inquiry or investigation (i.e. where it is believed that a crime may have been committed).
- Consider if an adult protection plan is required
- Agree any decisions and/or actions that are required to safeguard and protect the adult at risk
- Identify and agree an AP core group who will work with the Council Officer
- Determine roles and responsibilities of the various professionals involved in the protection plan.
- Make arrangements for implementing and review of the AP3 Protection plan.
- Identify and agree a review date. (This must take place within **three months initially** and then every **six months thereafter**)

### **Legislation**

- 8.17 Consideration of current protective legislative measures may be required to implement the protection plan e.g. Adults with Incapacity (Scotland) Act 2000, Mental Health (Care & Treatment) (Scotland) Act 2003 and Adult Support & Protection (Scotland) Act 2007.

### **Note 1**

In considering legally protective measures of intervention due consultation **must** be given to the **Principles** underpinning the various Acts

### **Note 2**

Where it is anticipated that the use of the Mental Health (Care and Treatment) (Scotland) Act 2003 (MHCTA) or Adults with Incapacity (Scotland) Act 2000 (AWI) may be appropriate the chair person of the case conference should ensure that an MHO is present to give advice.

Where issues of lack of capacity are identified and intervention under the Adults with Incapacity (Scotland) Act 2000 is a decision from the AP Case conference, North Lanarkshire Council Procedures in relation to the AWI should be followed (**Appendix 25**).

The requirement for a separate AWI Case conference ensures when an MHO can be allocated to complete a summary report for the Case conference, setting out the Adult's circumstances; Adult and relevant others' views and making recommendations for the powers that require to be sought in order that the adult's care plan can be implemented.

In some urgent situations, the AP Case conference may identify that significant harm to the adult is likely if immediate action under AWI is not undertaken. In such cases, it would be appropriate to discuss all legal options open to the council to safeguard and protect the adult at risk. An example of this would be, where it has been determined that there is a need for a council solicitor to apply for a Removal Order under s293 or s294 of the Mental Health (Care and Treatment) (Scotland) Act 2003 in conjunction with an application for interim welfare guardianship. In such an instance, however, there is likely to be prior knowledge about the serious risks being posed to an adult and a locality based MHO should have been present at the Adult Protection Case conference.

Whilst the purpose of the Adult Protection Case conference is to consider the need for the implementation of an adult protection plan and to implement this, it will be the responsibility of the chair person to ensure that recording requirements and case conference outcomes are all made and met timeously.

## **Invitations to AP Case conference**

8.18 Invitations should be made to all appropriate partners and agencies (**Appendix 15**). The AP Case conference should:

- consider the fullest information possible
- be an inclusive process involving the adult at risk, family, carers and/or those with a legitimate interest
- involve multi agencies with an interest and/or involvement
- consider reasonable and practicable measures in line with the principles of the Act and any formal protective actions

8.19 Consideration should always be given as to how the **adult or relatives, carers** etc might most effectively participate. Consideration should be given to ensure that:

- The purpose and process of the case conference has been fully explained, the venue is not intimidating to the adult or carer and is accessible. It is the

role of the senior social worker (or equivalent manager) to ensure that a designated worker has discussed these issues with the adult and their supporters.

- When someone is unable to attend through lack of capacity, appropriate alternative representation, such as family, carers and/or independent advocacy services is considered
- Appropriate communication support systems (including translation and interpretation) are provided
- Attendance for part of the meeting is an option where agreed if there are areas an individual will find too distressing. There is the facility for the adult to be consulted out with the meeting and their views appropriately represented if preferred.
- Adults **must** not be required to meet with individuals who have or are suspected of placing them at risk and which may cause them distress.
- Where the alleged perpetrator is also seen as a person at risk, consideration should be given to holding a separate case conference re their needs.
- Attendance at the AP Case conference will be at the discretion of the Chair in partnership with the adult at risk. This should ensure the exclusion of any individual where there are substantive grounds for believing that their involvement in the conference would undermine the process or serious conflict is liable to emerge, or where sub judice information is being presented.

**Attendance at the AP Case conference should include (where appropriate):**

- Lead Council Officer and other investigating officers where appropriate
- The adult who is seen to be at risk of harm or their representative if they do not feel able to attend.
- Carer or relative (having regard to wishes of the adult). If the adult has identified a named person in relation to the MH Act, the adult may seek the attendance of their named person.
- General practitioner.
- Police.
- Staff from any regulatory bodies or care provider organisations directly involved with the adult.
- Legal services.
- Independent advocacy.
- Proxy decision makers (attorney or guardian).
- MHO for specialist advice in relation to any potential need for issues arising in relation to mental disorder or lack of capacity.
- Any relevant housing or homeless organisation.

Any further invitation should be as appropriate to the wishes of the adult at risk and the needs of the meeting. All attendees must be fully agreed in advance by the Chair.

## **Exclusion from AP Case conference**

8.20 Practice in this area should be characterised with a genuine wish for involvement and participation, wherever appropriate the adult at risk, carers or family being present. It is only where there are substantive grounds to believe that the involvement of carers or family would undermine the process and purpose of the case conference that they should be excluded throughout.

**Information which can be obtained without attendance should be gathered prior to the meeting if this allows the Chair to have the information (rather than risking information through non-attendance by someone e.g. a police officer etc).**

8.21 Grounds for exclusion may be when:

- A level of conflict or tension exists within the carers or family; or
- There is substantive evidence to believe that there is a likelihood of violent or serious disruption of the process of the case conference.
- There is third party or sub judice information is being presented to the case conference.
- It is judged necessary by the chair person that the presence of family or carers would seriously affect the risk to the adult concerned.

## **Role of the chair person**

8.22 The Chair will:

- Consider and rule on requests for a family member and or carer to be excluded from the case conference. Where possible the adult involved should attend the case conference along with their advocate, however if they are unable or do not wish to attend their advocate should attend on their behalf.
- Meet with the professionals attending the case conference prior to its commencement and before the family and or carer and adult involved are invited in, to confirm if any information needs to be shared without the family being present. If so, this should be done prior to them joining the case conference.
- Confirm that all professionals involved are aware of the facility to ask for an adjournment at any time during a case conference and to agree how this will be done.
- Introduce him or herself to the family and or carer and, where appropriate, the adult involved immediately prior to the case conference and confirm their understanding of the purpose and process of the case conference.
- Ensure that the decisions of the case conference are fed back to the person at risk or relevant family or carers, who have been unable to attend or excluded from the case conference as soon as practicable after it.
- Ensure that where the adult attends the case conference the appropriate worker meets with them after the case conference to ensure they

understand the outcome of the meeting and any actions planned. Where the adult is unable to attend they should be advised as soon as possible of the outcome of the case conference.

- Ensure that any communication support or systems (e.g. loop system or interpreter) are made available.
- Be responsible for leading the discussion and ensuring that all those invited are given the opportunity to participate and contribute to the discussions.
- Hold ultimate responsibility for decision making within the AP Case conference and subsequent review case conferences.
- Summarise all decisions, actions and who is responsible for carrying these out so that these decisions are recorded by the person taking the minute of the meeting and following these being typed up circulated to all relevant persons within one working day from the meeting
- Ensure that the decision is recorded on mySWIS after the case conference
- Ensure that the minutes of the case conference are accurate, do not include sensitive information that may jeopardise any ongoing investigations and that they are distributed to the appropriate agencies and, where appropriate, the family and or carer and the adult within **10 working days** of the case conference.

### **AP Case conference dissent, dispute, complaints**

- 8.23 Any agency, adult or their carers have the right of access to complaints procedures should they disagree with any decision or outcome arising from the case conference process. Similarly all parties retain the right to request a review of their care provision at any time.
- 8.24 Under the adult protection case conference procedures any dissent, dispute or complaint occurring, within the proceedings of the case conference **must** be recorded in the relevant minute. In the case of dispute, dissent or complaint that cannot be resolved within the case conference the chair person will require to refer to the Health and Social Work Manager to review the issues raised.
- 8.25 Where a further review case conference is deemed appropriate to be held to address the concerns raised this should be done within **15 working days** of the recorded concerns. This meeting **must** be chaired by an appropriately qualified Health and Social Work Manager or Headquarters Manager. Should there continue to be dispute or dissent then discussion should take place with the chief social work officer for further advice or guidance.
- 8.26 Complaints relating to procedural arrangements should be made via the Social Work complaints procedure.
- 8.27 Where service delivery is bound by legislative protective measures such as the Adults with Incapacity (Scotland) Act 2000 or Mental Health (Care & Treatment) (Scotland) Act 2003 legal review through the court or tribunal system or to the Mental Welfare Commission may be an option and relevant



procedures and Scottish Government Codes of Practice should be followed in such instances.

### **AP Case conference minutes**

- 8.28 The chair person has the responsibility to ensure an accurate record of the discussion and key decisions is made in a case conference minute (**Appendix 18**). The chair should ensure that appropriate administrative support in the form of a specialist minute taker is available for this purpose.
- 8.29 The person who will take the minutes of the meeting should be identified in advance and should not be the chair person.
- 8.30 It is important that an accurate record of the salient features of the discussions and of the decisions reached at the adult protection case conference is made and kept. These records will form part of the basis of defensible decision making. It is advisable for minutes to make clear:
- That they are a record of a meeting held under the auspices of Adult Protection & Support (Scotland) Act 2007 and North Lanarkshire Social Work Adult Protection procedures therefore that those attending understand the basis upon which the meeting is held including the confidential nature of the proceedings and the minutes.
  - Who attends the meeting and in what capacity.
  - The identity of the adult at risk.
  - Those issues which are relevant to the assessment and the management of risk.
  - For each risk factor identified there should be a corresponding response as to how that factor will be managed.
  - The actions that will be taken as a consequence of the discussion, who will take them, in what timescale and how these actions are intended to reduce or manage the risk.
  - Action points from the meeting will be reflected in a focussed and clear minute and completed protection plan (**Appendix 20**).
- 8.31 In cases where it is anticipated an ASP Protection Order could be required the chair person should refer to **Appendix 28** to ensure the legal requirements of obtaining an order are fully covered.
- 8.32 The minutes of the meeting should be treated as confidential. The minutes should be given only to those attending the meeting or who should have been present due to their role as a relevant public body to the circumstances of the case and should be seen only by those persons and those who have the authority and duty to consider what was discussed and decided. Sensitive information from other agencies should be screened by the chair and not be securely so that their confidentiality is preserved.
- 8.33 The chair person is responsible to meet with the minute taker directly after the AP Case conference concludes. This brief meeting will confirm the decisions reached by case conference attendees. These decisions **must be recorded upon mySWIS recording system the same day, or at the earliest opportunity and the summary of decisions confirmed, typed and circulated as above.**

## **Distribution of minutes**

- 8.34 The AP Case conference minutes must always be distributed in writing within **10 working days** of the meeting taking place, whatever the circumstances, and should be signed by the case conference chair. This is also the case for any subsequent review meetings.

## **J – Part 9 – AP Protection Planning process**

- 9.1 The **protection plan (AP3)** has been designed for use when allegations of harm or exploitation have been made and an AP Case conference has agreed that there is a risk of harm or serious harm; or when high levels of risk cannot be managed within a normal care or welfare plan (**Appendix 20**).
- 9.2 The format for the protection plan assumes that, reflecting good practice, there will be a lead worker to co-ordinate protection work and that, in most cases, there will also be a core group of workers from different services. The Lead Council Officer will be responsible to co-ordinate the protection plan.
- 9.3 Inquiries and audits have indicated that adult protection conference minutes may not fully reflect all of the elements of a full protection plan, and the completion of a full written protection plan seeks to separately identify all of those elements. It also seeks to ensure the definition of responsibilities, timescales and outcomes for whatever actions are necessary in the categories provided. It should be noted that there may need to be several actions under particular headings.
- 9.4 The terms of the protection plan format reflect certain key practice principles which are also evident in the risk assessment, particularly the need to identify and respond to the views of the adult at risk and significant others and the need for good communication both with them and between all of the professionals or agencies involved.

## **K – Part 10 - AP Core Group process**

- 10.1 Core group members must be identified during the initial adult protection conference or as soon afterwards as possible if relevant representatives are not in attendance and their names, along with delegated tasks and timescale recorded in the minute.
- 10.2 Core groups are small groups of interagency staff who are involved with individuals who are subject to adult protection.
- 10.3 Membership of the core group should be kept as small as possible without compromising the adult protection planning and protective process. Too many professionals in the core group can oppress and impair the adult and their carer's attendance.
- 10.4 The core group has delegated responsibilities to progress the adult protection plan and is answerable to the AP Review Case conference.

## AP Core group role

- 10.5 The senior social worker co-ordinating the adult protection case is responsible for chairing the core group.
- 10.6 It is the responsibility of the first core group meeting (within 1 week of the case conference) to consider the decisions and actions agreed by the initial case conference and develop the protection plan. The senior social worker should lead these multi-agency discussions (**Appendix 21**).
- 10.7 The Lead Council Officer is responsible for completing the details in the AP3 protection plan template (**Appendix 20**).
- 10.8 The protection plan should be outcome focused and clearly identify the roles and responsibilities of each core group member, within timescales. The actions should match the identified risks of harm, clearly identify how it is intended to mitigate and/or manage the risks and deliver the outcomes to be achieved for the adult.
- 10.9 Core group members should pay particular attention to those adults at risk who, due to their circumstances, will be returning to situations where they remain at continued risk of harm. As 10.8 above, the protection plan in such cases should clearly match the identified risks of harm but identify and record any assessment that mitigating the risk may be limited. This is particularly true when an individual's own actions constitute a major element of the risk. Sometimes in such circumstances, the plan may be restricted to limited objectives such as maintaining contact and attempting to intervene when the adult is willing to cooperate. This is not the same as saying that nothing can be done and does still require partners to continue to cooperate to the best of their abilities in the face of non co-operation from the adult.
- 10.10 Each core group must review the effectiveness of the adult protection plan being worked to, and as part of this review, consider:
- progress in implementation of the adult protection plan to date
  - any changes to protective/risk factors identified
  - if outcomes identified are being achieved/not being achieved (if not consider why not and what needs to be changed to meet the outcomes)
  - what tasks need to be undertaken (and by whom) in order to work towards agreed outcomes
  - if there is a need to recommend to the locality social work manager that a review adult protection conference is required because of a significant deterioration in the adults circumstances and likelihood of future harm.

With regards to 10.10 above, where the core group's recommendation that there needs to be a review adult protection conference convened as soon as possible, this in itself must not preclude action to safeguard the adult in the interim period e.g. AP Protection order.

- 10.11 Any changes to the adult protection plan as a result of the core groups review must result in the adult protection plan being updated to reflect the changes

agreed and copies of the new plan disseminated to core group members. The Lead Council Officer is responsible for this task.

- 10.12 The chairperson (senior social worker) of the core group must ensure that those in attendance at the core group meetings, and those invited but unable to attend, receive copies of the adult protection plan being worked to and a copy of the minutes (**Appendix 22**).
- 10.13 A copy of core group minutes must also be given to the locality social work manager.

### **Timescales**

- 10.14 The first core group should meet no later than 1 week from the initial AP Case conference being held. Thereafter core groups should be held 4 weekly for the duration of the protection plan.
- 10.15 Generally, the frequency of the core group meetings will be determined by the chair of the AP case conference in line with levels of risk, however they should not be less than the timescales set out in 10.14. At times, where risk has increased, more frequent core group meetings may be required.
- 10.16 Any member of the core group can also request an additional core group meeting to consider new information. The relevant locality social work manager should be notified of this request and decide on whether or not to grant this request. If the request is refused the core group member must be advised in writing that he/she can appeal this decision by writing to the health and social work manager.
- 10.17 The core group held 9 weeks after the initial AP Case conference (the third core group meeting) will be responsible to produce a short supplementary report on the effectiveness of the adult protection plan. This report will be submitted to the AP Review Case conference and should include a written update of the most up to date protection plan (**Appendix 23 and 20**).
- 10.18 The AP Case conference review should take place no more than two weeks after this core group meeting has taken place.
- 10.19 Any deviation from the above timescales must be justified and recorded fully

## **L – Part 11 - AP Review Case Conference process**

- 11.1 Where there is no immediate dissent, dispute or complaint the first AP Review Case conference should be held within **3 months** of the initial adult protection case conference and thereafter at not more than **6 monthly intervals** for the duration of the protection plan being in place.

The purpose of the review case conference is to:

- Review support and outcomes to date and to confirm the current situation.
- Consider the Supplementary Report produced by the AP core group

- Consider the recommendations of the core group, if one is appointed
- Review risk management plans and establish current level of risk.
- Ensure agreed duties and responsibilities across partner agencies have been fulfilled and agree any action where failure to implement the plan has been identified.
- Up-date the protection plan and associated service provision.
- Ensure any intervention or legal powers exercised in relation to the Principles remains proportionate and are the least restrictive option in terms of maximising benefit and offering effective protection.

## M – Part 12 – ASP Protection Orders

### Introduction

- 12.1 During the process of an adult protection investigation there may become need for protection measures to be considered in certain circumstances. It must be noted that there is no requirement under the 2007 Act for the council to have previously arranged a visit, an interview or medical examination prior to applying for any assessment, removal or banning order. Applications for Protection orders can be made at any time in the process, depending on the individual circumstances of the case (**Appendix 28**).
- 12.2 Any proposed action, including use of other legislation, in line with the principles, must be seen to be of **benefit to the individual** and the **least restrictive** to the adult's freedom.
- 12.3 The ASP 2007 Act places a duty on the council, if it considers that it needs to intervene in order to protect an adult at risk of harm, to consider the provision of appropriate services, including **independent advocacy services**, to the adult concerned, after making inquiries under Section four of the Act.
- 12.4 Other services are not defined in the Act but consideration should be given to practical and emotional support provided by social work, health, voluntary sector and private sector providers. For example the provision of mainstream health and social care services such as housing, independent living, financial, occupational therapy, counselling and support for carers.
- 12.5 Under Section 41(6) of the Act, the sheriff has discretion to appoint a person to safeguard the interests of the affected adult at risk in any proceedings relating to an application. It may be that the sheriff will instruct a safe guarder to report on the issue of consent.
- 12.6 It may be in the best interest of the adult for an appropriate adult to be considered. 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. The use of an appropriate adult is extended to all categories of interview - witness, victim, suspect and accused. It is the responsibility of the police to determine if someone is vulnerable and to initiate the appropriate adult scheme.

- 12.7 Consideration must be given to the use of the most appropriate legislation, and be of benefit to the adult.

### **Refusal of entry – warrant of entry application**

- 12.8 The Act allows a council officer to take entry to any place in order to enable or assist inquiries into whether an adult requires protection. If the council officer is refused entry to the premises, then, in accordance with the principles of the Act, in the first instance there is a need to consider how entry may be achieved without the need for an application for a warrant.
- 12.9 In order to minimise distress and risk to the adult, the procedure should be carefully planned and co-ordinated with all involved in the process.
- 12.10 Where it is anticipated that there may be a risk of violence, a multi-disciplinary assessment of risk should be undertaken. It may be more appropriate for the process to be passed to the police to enable them to address the issue of the safety of all parties concerned.
- 12.11 When considered necessary an application to a sheriff for a warrant for entry can be made. This authorises a council officer to visit any place specified in the warrant accompanied by a police constable. The constable is authorised to do anything, including the use of reasonable force where necessary, to fulfil the objective of the visit. If the constable needs to open any lock fast place, a joiner may be required. It is the responsibility of the council (i.e. the council officer) to take all reasonable steps to ensure that the person's property and premises are left secured which may also require the services of a joiner.
- 12.12 **This form of warrant expires 72 hours after it has been granted.** Once executed, it cannot be used again.
- 12.13 The council officer or senior social worker should liaise with legal services to discuss the areas of concern and further action and the council officer should complete the appropriate form (**Appendix 26 & 27**).
- 12.14 Legal services on behalf of the council will make the application to the sheriff to seek a warrant for entry. The council officer will also be required to attend.
- 12.15 In cases of urgency and where the criteria are met there may also be a need to consider application for any one of the three protection orders at the same time. This decision should be in consultation with your locality social work manager.
- 12.16 Where there is no access to a sheriff (out of hours) and an adult at risk is likely to be harmed if there is any delay a justice of the peace can be contacted for a hearing. **This form of warrant expires 12 hours after it has been granted.** Once executed the warrant cannot be used again.

## N – Part 13 – ASP Assessment Order

### Introduction

- 13.1 Any proposed action, including use of other legislation, in line with the principles, must be seen to be of **benefit to the individual** and the **least restrictive** to the adult's freedom.
- 13.2 Consideration must also be given to whether the adult should be referred to an independent advocacy organisation or provided with other services.
- 13.3 Section 11 of the Act allows councils to apply to a sheriff for an Assessment Order. This order would only be necessary if it were not possible to carry out an interview or examination at the place of the visit.
- 13.4 **Criteria for an Assessment Order** is
- The council has **reasonable cause to suspect** that the adult at risk is being, or likely to be, **seriously harmed**.
  - The order **is required to establish** whether the person subject to the order is an adult is at risk and is or likely to be, **seriously harmed**.
  - The place at which the person is to be interviewed and examined is available and suitable.
  - The proposed action is of benefit to the adult and reflects the principles of the Act.
- 13.5 If the council decides to pursue an assessment order where the affected adult has capacity to consent and their refusal to consent is known, then the council must prove that the adult has been '**unduly pressurised**' to refuse to consent to the granting of an order. Where the adult does not have capacity, then this requirement does not apply.
- 13.6 Undue pressure may be applied by any individual who may or may not be suspected of harming the adult but who does not want the adult to give consent to interview or examination for whatever reason. This may be a person that the adult trusts and has confidence in, but could equally be someone they are afraid of or who they do not trust.
- 13.7 If the adult is unable to consent any proxies or guardians should be approached, if appropriate, otherwise consideration should be given to alternative legislation.
- 13.8 Where practicable the adult and carers, if appropriate, should be kept fully informed at every stage of the process, whether the order is granted, what powers it carries, what will happen next, their right to refuse participation in medical examination, interview and other options available.
- 13.9 An Assessment Order does not have the power to detain the adult in the place they are taken to and the adult may choose to leave at any time.
- 13.10 It will be the responsibility of the council officer to return the adult to their place of residence.

- 13.11 It is the responsibility of the locality social work manager (or nominated person) to arrange a case conference, where possible, prior to this intervention taking place.

### **Purpose of an Assessment Order**

To determine whether the adult is an adult at risk; and whether any action needs to be taken to protect the adult from serious harm.

- 13.12 An Assessment Order allows a council officer to take an adult at serious risk to a more suitable place to conduct a private interview, or a health professional to conduct a medical examination in private. **An Assessment Order does not give any power to detain the adult.**
- 13.13 This order will be necessary **only** if it were not possible to carry out the interview or examination in the place of the visit and all informal options have been unsuccessful.
- 13.14 There is no requirement under the Act for the council to have previously arranged a visit under Section 7, an interview under Section 8, or medical examination under Section 9 prior to applying for an Assessment Order.

### **Application for Assessment Order**

- 13.15 An application for an Assessment Order must be made by North Lanarkshire Council Legal Services. Evidence of the concerns leading to the application may be required on oath and in writing, with both the council's solicitor and the authorised council officer appearing before the sheriff.
- 13.16 Council officers must inform legal services of any concerns not already documented in the AP2, information obtained and action to be taken following the granting of the order. A copy of the adult's protection plan should be provided and is sufficient for legal services to provide the court as evidence. Council officers should liaise with the solicitor drafting the application following the case conference making the decision to apply for an order, to ensure they have all information
- 13.17 The application should highlight the type of assessment and estimated length of time needed.
- 13.18 All relevant written reports will be served on the adult and their representatives and this should be taken into account by the report writer. The sheriff can also be asked to withhold reports or information that may jeopardise the safety or well being of the adult. Where such a request is thought necessary, legal services must be informed as soon as possible, to allow proper notice to be given to the court.
- 13.19 The Notification Form Appendix 10A must be forwarded to the senior officer adult protection for information.



## Court process

- 13.20 Section 41(3) and (5) of the Act provides that the applicant for an order (legal services) must notify the adult in writing of the application and should advise them of their right to be heard or represented before the sheriff and to be accompanied by a relative, friend or other representative.
- 13.21 It is the responsibility of the applicant (legal services) to serve the papers on the adult, either by registered post or via sheriff officers.
- 13.22 Section 41(2) provides that the **sheriff may dispense with the above requirements** where the sheriff is satisfied that by doing so this will protect the adult from serious harm or will not prejudice any other person affected by the application.
- 13.23 Where the council becomes aware that the person suspected of harming the adult may also attend the hearing this should be made clear to legal services, to allow them to inform the sheriff prior to the hearing.
- 13.24 Where the adult does not wish legal representation or does not appear to understand the process the council representative should advise the court.
- 13.25 The sheriff has discretion to appoint a safeguarder to safeguard the interests of the adult.

## Granting of an Assessment Order

- 13.26 When an Assessment Order is granted, the sheriff must also grant a warrant for entry under Section 38 of the Act. The warrant for entry accompanying the Assessment Order will detail a specific place and only that place can be entered using the warrant. Only the constable can use reasonable force to enter the premises.
- 13.27 The adult can be taken to a place specified in the order but whilst there, the adult retains the right to refuse to answer all or some of the questions when interviewed. The adult may similarly refuse a medical examination. Should the adult refuse to remain in the specified place the council officer must return the adult to their previous location or another location of their choice, within reason.
- 13.28 Where practicable the adult must be kept fully informed at every stage of the process of their rights and other options available.
- 13.29 Where the adult lacks capacity and there are no guardians or attorneys in place, consideration should be given to whether it is appropriate to use the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care & Treatment) (Scotland) Act 2003.
- 13.30 The Assessment Order is **valid for seven days** after the date specified in the order and there is **no ground for appeal**.
- 13.31 It would be good practice for a multi disciplinary plan to be in place when considering action under any protection order. Contingency plans should also be in place to help deal with situations where an adult does not respond as expected.

## O – Part 14 – ASP Removal Orders

### Introduction

- 14.1 Any proposed action, including use of other legislation, in line with the principles, must be seen to be of **benefit to the individual** and the **least restrictive** to the adult's freedom.
- 14.2 Consideration must also be given to whether the adult should be referred to an independent advocacy organisation or provided with other services.
- 14.3 Section 14 of the Act allows councils to apply to a sheriff for a Removal Order. This order will only be granted if the sheriff is satisfied that the adult is likely to be seriously harmed if not moved to another place.
- 14.4 The Removal Order is not for the purpose of interview or medical examination.
- 14.5 Before pursuing a Removal Order consideration should be given to voluntary approaches, use of other legislation, other options explored and exhausted.
- 14.6 **Careful consideration must be given to the impact on the adult's circumstances should they refuse consent to the granting of the Removal Order. A case conference should be held and consideration given to the benefit to the adult and a contingency plan put in place.**
- 14.7 If the council decides to pursue a Removal Order where the affected adult has capacity to consent and their refusal to consent is known, then the council must prove that the adult has been '**unduly pressurised**' to refuse to consent to the granting of an order. Where the adult does not have capacity, then this requirement does not apply.
- 14.8 Undue pressure may be applied by any individual who may or may not be suspected of harming the adult but who does not want the adult to give consent to being removed from the place for whatever reason. This may be a person that the adult trusts and has confidence in, but could equally be someone they are afraid of or who they do not trust.
- 14.9 If the adult is unable to consent any proxies or guardians should be approached, if appropriate, otherwise consideration should be given to alternative legislation.
- 14.10 Where practicable the adult and carers, if appropriate, should be kept fully informed at every stage of the process, whether the order is granted, what powers it carries, what will happen next, their right to refuse participation in medical examination, interview and other options available.
- 14.11 The council **must** protect the property owned or controlled by an adult who is removed from a place under a Removal Order.

## Purpose of a Removal Order

Allows the council to remove the adult at risk to a specified place in order to support and protect them.

### Criteria for a Removal Order is:

- The person in respect of whom the order is sought is an adult at risk who is **likely to be seriously harmed** if not moved to another place.
- A suitable place is available to which the adult at risk can be moved.
- The proposed action is of benefit to the adult and reflects the principles of the Act.

14.12 A Removal Order allows a council officer to take an adult at serious risk of harm to a more suitable place. This could be a private, public or commercial premise.

14.13 The adult is to be removed to the specific place named in the order however should the adult consent to be taken elsewhere (relative or friend's home) this does not invalidate the original terms of the order.

14.14 There is no requirement under the Act for the council to have previously arranged a visit under Section 7, an interview under Section 8, or medical examination under Section 9 prior to applying for an Assessment Order.

### Application for a Removal Order

14.15 An application for a Removal Order must be made by North Lanarkshire Council Legal Services. Evidence of the concerns leading to the application may be required on oath and in writing, with both the council's solicitor and the authorised council officer appearing before the sheriff.

14.16 Council officers must inform legal services of any concerns not already documented in the AP2, information obtained and action to be taken following the granting of the order. A copy of the adult's protection plan should be provided and is sufficient for legal services to provide the court as evidence. Council officers should liaise with the solicitor drafting the application following the case conference making the decision to apply for an order, to ensure they have all information required

14.17 Where a Removal Order is required, but it is not practicable to apply to the sheriff and the adult is likely to be harmed if there is any delay, the council officer should make the application to a justice of the peace.

14.18 Though the application must be made by the council, the council may choose to nominate another person, for example someone from one of the co-operating bodies to actually move the adult. This may be someone who is more familiar with the adult. This will be agreed at case conference.

14.19 The Removal Order will specify where the adult is to be removed to. Before the application is made it must be confirmed in writing or verbally that the specified place is available, suitable and agreement has been given by the owner for the adult to remain there for up to seven days.

## Court process

- 14.20 Section 41(3) and (5) of the Act provides that the applicant for an order (legal or council officer) must notify the adult in writing of the application and should advise them of their right to be heard or represented before the sheriff. The adult also has a right to be accompanied by a relative, friend or other representative.
- 14.21 **All relevant reports will be served on the adult and their representatives and this should be taken into account by the report writer.** The applicant may also ask the sheriff to withhold information if it would be detrimental to the safety or wellbeing of the adult. Where such a request is thought necessary, legal services must be informed as soon as possible, to allow proper notice to be given to the court.
- 14.22 It is the responsibility of the applicant (legal services) to serve the papers on the adult, either by registered post or via sheriff officers.
- 14.23 Section 41(2) provides that the sheriff may dispense with the above requirements where the sheriff is satisfied that by doing so this will protect the adult from serious harm or will not prejudice any other person affected by the application.
- 14.24 Section 15(2) provides that the sheriff may require the council to allow a specific person to have contact with the adult at risk subject to conditions; however the sheriff must consider the council's views and that of other relevant representatives before imposing such a condition.
- 14.25 Where the council becomes aware that the person suspected of harming the adult may also attend the hearing this should be made clear to legal, to allow them to inform the sheriff prior to the hearing.
- 14.26 Where the adult does not wish legal representation or does not appear to understand the process, the council representative should advise the court.
- 14.27 The sheriff has discretion to appoint a safe guarder to safeguard the interests of the adult.

## Granting of a Removal Order

- 14.28 When a Removal Order is granted, the sheriff will automatically grant a warrant for entry. The warrant for entry accompanying the Removal Order will detail a specific place and only that place and any adjacent place can be entered using the warrant. Only a constable can use reasonable force to enter the premises.
- 14.29 To minimise distress and risk to the adult, the intervention should be carefully planned and co-ordinated with all those involved in the process. Contingency plans should be in place in case of unforeseen circumstances and everyone should be familiar with them
- 14.30 Where it is anticipated that the use of force may be necessary to execute the order, a multi-disciplinary assessment of the risks should be undertaken. In such circumstances the process should be passed to the police to enable them to address the issues of safety.

- 14.31 Once a warrant has been executed it cannot be used again.
- 14.32 The adult must be **removed within 72 hours** and the **order will expire seven days** from when the adult has been moved, not counting the day the adult is moved, and it **expires at midnight on the final day**. The sheriff may specify that the order should expire after a shorter period.
- 14.33 The adult cannot return home and then be removed again within this period.
- 14.34 Where the order has been granted by a justice of the peace under the emergency procedures, the adult must be **removed within 12 hours** and the **order will expire after 24 hours from the granting of the order**. These timescales may be shortened by the justice of the peace at the time the order is granted.
- 14.35 The adult can be taken to a place specified in the order but whilst there, the adult retains the right to leave the place at any time and must be informed of this right. Should the adult refuse to remain in the specified place the council officer has a duty of care and should return the adult to their previous location or other place requested, within reason.
- 14.36 Where practicable the adult must be kept fully informed at every stage of the process of their rights and other options available.
- 14.37 Where the adult lacks capacity and there are no guardians or attorneys in place consideration should be given to whether it is appropriate to use the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care & Treatment) (Scotland) Act 2003.
- 14.38 If the adult has been removed or left the premises prior to the implementation of the order this may result in a number of options:
- If the order does not specify the place from which the adult must be removed, this means the person can be removed from the second place within the timescales of the order.
  - If a warrant for entry has been granted it will name the address the adult was to be removed from. This will require a new application for a warrant naming the alternative address.
  - If the order named the address the adult was to be removed from a new application will have to be made naming the alternative address.
  - Close liaison with legal services will be important throughout the process of applying for a protection order.

## **Protection of property**

- 14.39 The council must take reasonable steps to prevent any property owned or controlled by the person moved under a protection order from being lost or damaged. It also gives the council the right to enter and remove property and take all reasonable steps to safeguard the property (**Appendix 30**).

- 14.40 Property can include house contents, vehicles, animals, livestock, cash, credit cards and clothing.
- 14.41 The council is not entitled to recover any expenses it incurs in relation to property owned or controlled by the adult removed.

### **Variation and recall of a Removal Order**

- 14.42 Section 17 provides that an application can be made to the sheriff to recall or vary a removal order. This application may be made by either:
- The adult at risk.
  - Any person who has an interest in the adult at risk's wellbeing or property.
  - The council.
- 14.43 The sheriff must be satisfied that the variation or recall is justified. The Removal Order cannot be varied to allow the council to do anything at any time beyond seven days after the day on which the adult at risk is moved.
- 14.44 Where the sheriff has recalled the Removal Order, the sheriff may direct the council to:
- Return the adult to the place from which they were removed.
  - Take the adult to another place which the sheriff, having regard to the adult's wishes, may specify.

### **Recording and messaging**

- 14.45 It is important to consider all the issues when making an application for a Removal Order and this should be recorded in the protection plan and on the adult protection screens
- 14.46 In line with mySWIS being updated by the Senior Social Worker, when a protection plan is in place a message will flag up on mySWIS advising that there is a formal protection plan in place for ---- and that there will also be a note on mySWIS highlighting which protection order is in place for the adult at risk.

## P – Part 15 – ASP Banning Orders

### Introduction

- 15.1 Any proposed action, including use of other legislation, in line with the principles, must be seen to be of **benefit to the individual** and the **least restrictive** to the adult's freedom.
- 15.2 Consideration must also be given to whether the adult should be referred to an independent advocacy organisation or provided with other services.
- 15.3 Before pursuing a Banning Order consideration should be given to voluntary approaches, use of other legislation and other options explored and exhausted.
- 15.4 **Careful consideration must be given to the impact on the adult's circumstances should a Banning Order be pursued. A case conference should be held and consideration given to the benefit to the adult and a protection plan put in place.**
- 15.5 Where practicable the adult and carers, if appropriate, should be kept fully informed at every stage of the process, whether the order is granted, what powers it carries, what will happen next, their right to refuse participation in medical examination, interview and other options available.

### Purpose of a Banning or Temporary Banning Order

- 15.6 To better safeguard the adult's well being and property by banning a person from a place for up to six months. Banning Orders are a temporary solution and a means of enabling the care manager to implement a care package that will support the adult at risk and minimise future risk of harm. Forward planning is crucial to assisting the adult to manage their future needs on an informal basis.
- 15.7 The subject of the Banning Order may not necessarily be living with the adult at risk. The point of the Banning Order is to put some distance between them to protect the adult at risk of further harm.
- 15.8 There is no requirement under the Act for the council to have previously arranged a visit under Section 7, an interview under Section 8, or medical examination under Section 9 prior to applying for an Assessment Order.
- 15.9 **Criteria for a Banning or Temporary Banning Order is:**
- An adult at risk is being, or is likely to be, **seriously harmed** by another person;
  - The adult at risk's well being or property would be better safeguarded by banning the other person from a place occupied by the adult than it would be by removing the adult from the place; **and either:**
  - the adult at risk is entitled, or permitted by a third party; **or**
  - neither the adult at risk nor the subject is entitled, or permitted by a third party.

- to occupy the place from which the subject is to be banned.
- 15.10 In the terms of the order, the adult is referred to as the **‘affected adult’** and the person subject to the banning order is referred to as the **‘subject’**.
- 15.11 If the council decides to pursue a Banning or Temporary Banning Order where the affected adult has capacity to consent and their refusal to consent is known, then the council must prove that the adult has been **‘unduly pressurised’** to refuse to consent to the granting of an order.
- 15.12 Undue pressure may be applied by any individual who may or may not be suspected of harming the adult but who does not want the adult to give consent to the Banning Order for whatever reason. This may be a person that the adult trusts and has confidence in, but could equally be someone they are afraid of or who they do not trust.
- 15.13 Where the adult does not have capacity, then this requirement does not apply, however any proxies or guardians should be approached, if appropriate. Otherwise consideration should be given to alternative legislation

### **Application for a Banning or Temporary Banning Order**

- 15.14 An application for a Banning or Temporary Banning Order can be made by the adult, any other person who is entitled to occupy the place concerned or North Lanarkshire Council Legal Service.
- 15.15 Section 22 (2) places an obligation on the council to apply for a Banning Order if it is satisfied that:
- The council is satisfied that the criteria for granting a Banning Order are met.
  - No one else is likely to apply for a Banning Order.
  - No other proceedings to eject or ban the person concerned from the place concerned are pending in court.
- 15.16 The applicant may also apply for a temporary Banning Order at the same time as making an application for a Banning Order, or at a later date. This allows an order to be granted pending final determination of a Banning Order application and may be used when it is inadvisable to wait for a full hearing on the Banning Order application taking place.
- 15.17 Council officers must inform legal services of any concerns not already documented in the AP2, information obtained and action to be taken following the granting of the order. A copy of the adult’s protection plan should be provided sufficient for legal services to provide the court as evidence. Council officers should liaise with the solicitor drafting the application following the case conference making the decision to apply for an order, to ensure they have all information required.”
- 15.18 **Where consideration is being given to applying for an order which bans a child, this should include prior consideration of making a referral to the Children’s Reporter where it is believed there would be an effective case**



**to answer. In the case of urgency, a referral should be made to the Children's Reporter at the same time the application for an order is being made.**

- 15.19 Consideration should also be given to any conditions that may be attached to the order. This decision and any decisions relating to the involvement of a child should be taken at a multi disciplinary case conference and highlighted in the protection plan. Appropriate representation from children and families social work management needs to be present if a banning order relating to a child or young person is likely to be discussed. The Locality Social Work Manager Community Care should agree attendance at any planning meeting with the Locality Social Work Manager, Children, Families and Justice.
- 15.20 Notification form Appendix 10A must be forwarded to the senior officer adult protection for information.

### **Who can be banned from a property**

- 15.21 **Where the adult at risk is entitled to occupy a place, her or his occupancy rights are not affected** if husband, wife, partner etc. is banned from the property.
- 15.22 Where the adult at risk is a non-entitled spouse under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, they still have the right to occupy the home from which the subject of the order is banned.
- 15.23 If the adult at risk is not entitled to occupy a place, the Act does not allow a person who is entitled to occupy that place to be banned. (For example a person being cared for in a relative's home.)
- 15.24 Banning Orders may be used in respect of public places (day centre, care home).
- 15.25 Banning Orders may be used where neither the adult at risk nor the subject has a right to occupy a property (care home).

### **Court process**

- 15.26 Section 41(3) and (5) of the Act provides that the applicant for an order (legal services) must notify the adult in writing of the application and should advise them of their right to be heard or represented before the sheriff. The adult also has a right to be accompanied by a relative, friend or other representative.
- 15.27 It is the responsibility of the applicant (legal services) to serve the papers on the adult, either by registered post or via sheriff officers.
- 15.28 **All relevant reports will be served on the adult and their representatives and this should be taken into account by the report writer.** The applicant may also ask the sheriff to withhold information if it would be detrimental to the safety or well being of the adult. Where such a request is thought necessary, legal services must be informed as soon as possible, to allow proper notice to be given to the court.

- 15.29 Section 41(2) provides that the sheriff may dispense with the above requirements where the sheriff is satisfied that by doing so this will protect the adult from serious harm or will not prejudice any other person affected by the application.
- 15.30 Where the council becomes aware that the people suspected of harming the adult may also attend the hearing it would be good practice to inform the sheriff prior to the hearing.
- 15.31 Where the adult does not wish legal representation or does not appear to understand the process the council representative should advise the court.
- 15.32 The sheriff has discretion to appoint a safeguarder to safeguard the interests of the adult.

### **Granting of a Banning or Temporary Banning Order**

- 15.33 Once the Banning Order is in place the agreed protection plan and other support arrangements should be implemented and each agency fulfil their role.
- 15.34 To minimise distress and risk to the adult, all intervention should be carefully planned and co-ordinated with all those involved in the process. Contingency plans should be in place in case of unforeseen circumstances and everyone familiar with them.
- 15.35 The locality social work manager will oversee the implementation of the protection order in conjunction with other relevant agencies. Support services for the adult at risk should be identified in advance and implemented as soon as appropriate.
- 15.36 The length of the Banning Order will be specified by the sheriff and should be for the shortest period possible however it can last for a **maximum of six months**.
- 15.37 A **Temporary Banning Order** expires on the date the Banning Order is made, the date which it is recalled or any specific date the sheriff decides. Where a Temporary Banning Order is granted, the hearing in relation to the full Banning Order must be held within six months of that date.
- 15.38 Where it is anticipated that the use of force may be necessary to execute the order, a multi-disciplinary assessment of the risks should be undertaken. In such circumstances it is important that the police are part of this assessment to help address the issues of risk.
- 15.39 Legal Services should forward a notification form (App 10) to the Senior Officer, Younger Adults responsible for adult protection for information.

### **Rights of appeal**

- 15.40 **Banning Order** - There is a right of appeal against the sheriff's decision to grant or refuse to grant a Banning Order. An appeal must be made to the sheriff principal in the first instance. The sheriff principal's decision may be appealed to the Court of Session but only by those who were involved in the appeal to the sheriff principal.

- 15.41 **Temporary Banning Order** - There is a right of appeal against the sheriff's decision to grant or refuse to grant a Banning Order. An appeal can only be made to the sheriff principal with the leave of the sheriff. The sheriff principal's decision may be appealed to the Court of Session only with leave of the sheriff principal.

### **Powers of a Banning or Temporary Banning Order**

- 15.42 A Banning or Temporary Banning Order bans the subject of the order from being in a specified place. The subject of the order may be a child.

- 15.43 A Banning or Temporary Banning Order may:

- Ban the subject from a specified place or the vicinity within the specified place.
- Authorise the summary ejection of the subject from the specified place or the specified area.
- Prohibit the subject from moving any specified things from the specified place.
- Direct a specified person to take measures to preserve any movable property owned or controlled by the subject which remain in the specified place while the order is in effect.
- Be made to any specific conditions.
- Require or authorise any person to do, or to refrain from doing, anything else which the sheriff thinks necessary for the enforcement of the order.

- 15.44 The sheriff has the authority to attach conditions to the order as appropriate. A condition specified in the order may authorise the subject to be in the place or area they are banned from but only at specified times, for example supervised access to children, family members. They may also authorise supervised visits with the adult at risk as a first step to resolving the issues.

- 15.45 The conditions of this contact should be specified in a contact plan, showing dates, times and locations. (Appendix 17).

- 15.46 **Attaching a power of arrest** will be decided by the sheriff based on the facts and circumstances of the case presented and become effective only when the subject has been served with the order. This condition will expire at the same time as the order.

- 15.47 **The police, via the chief constable, must be notified as soon as a possible after any power of arrest attached to a Banning or Temporary Banning Order becomes effective. This will be completed by the applicant for the order (i.e. legal services if the council is applicant).**

- 15.48 Where a banning order is granted without powers of arrest the appropriate manager should inform the local police office of the order being granted.

- 15.49 The evidence for a power of arrest would be based on the likelihood of the subject breaching the banning order or any of the conditions attached to the banning order.
- 15.50 If any of these conditions were breached the subject may be arrested without warrant if a constable reasonably suspects them to be in breach of the order and that they may subsequently breach the order again if not arrested.
- 15.51 **If the subject of the Banning Order** is a child, then the officer must alert any person known to have parental responsibilities and rights in relation to the child. The responsible person must have reasonable access to the child. A referral to the Children's Reporter would also be expected to be made.
- 15.52 Where a Banning or Temporary Banning Order has been **granted without an attached power of arrest** and the circumstances of the case change, an application may be made to the sheriff to attach a power of arrest.
- 15.53 This decision would be made following a multi disciplinary review of the adult's circumstances police and legal services representatives should be invited to the meeting.
- 15.54 The review should be chaired by the locality social work manager or delegated officer and a formal minute of the meeting taken. Decisions should also be recorded on mySWIS.
- 15.55 If the subject breaches an order with no attached powers of arrest, this will be dealt with on the basis of a failure to comply with the order of the court and police should be notified. As a result the subject may be held in contempt of court.
- 15.56 If the person breaching the order also commits a criminal offence this will be dealt with via the police.

### **Protection of property**

- 15.57 The Act states that the banning order may direct any specified person to take measures to preserve any moveable property owned or controlled by the subject which remains in the property they have been banned from.
- 15.58 The applicant (who could be the council or another person) should obtain an inventory of the subject's property which remains in the premises they are banned from. It would be good practice to obtain the subject's signature to confirm the inventory is correct (**Appendix 30**).
- 15.59 The subject can formally request these measures be undertaken.

### **Variation and recall of a Banning Order**

- 15.60 An application can be made to the sheriff to vary or recall the order by:
- The subject of the order.
  - The applicant for the order.

- The adult at risk to whom the order relates.
- Any other person who has an interest in the adult at risk's well being or property.

15.61 The sheriff must be satisfied the request is justified by a change in the facts or circumstances under which the order was granted or, as the case may be, last varied.

### **Recording and messaging**

15.62 It is important to consider all the issues when making an application for a banning order and this should be recorded in the protection plan and on mySWIS.

15.63 Subject to the Senior Social Worker ensuring that the information has been updated on mySWIS (compulsory within one day of order being granted), and a protection plan is in place a message will flag up on mySWIS advising that there is a formal protection plan in place for ---- and that there will also be a note on mySWIS highlighting which protection order is in place for the adult at risk.