

Deafblind Scotland



Adult Support and Protection Procedures

Deafblind Scotland vision – “A society in which deafblind people have the permanent support and recognition necessary to be equal citizens”

Purpose

The current Deafblind Scotland Inter-Agency Procedures reflect collaborative work that has been undertaken across partner local authorities and agencies in the drafting of Inter-Agency Practice Guidance for Adults at Risk of Harm. The key elements of this overarching document are reflected within this procedural document for Deafblind Scotland and its partners.

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Introduction - Deafblind Scotland

Adults at Risk Procedures

1. Introduction

1.1. Historical Context

1.2. Deafblind Scotland Multi-Agency Procedures for the Protection of Vulnerable Adults has been reviewed over the years. This was to ensure that Deafblind Scotland was compliant with the work of Health Boards, Housing Services, Local Authorities, Integrated Joint Boards and Police Scotland.

1.3. The Procedures were drawn up within the context of growing awareness of issues of adult protection and potential harm to adults deemed to be at risk. Whilst recognising the primacy of sound professional judgement in the exercise of duty to care the Procedures were established and agreed to provide a rational framework within which such professional judgement may be best exercised and towards ensuring effective communication and collaboration in relation to measures of adult protection.

1.4. Current Context

1.5. Within a national policy context, the Adult Support and Protection (Scotland) Act 2007 was passed by the Scottish Parliament on 15 February 2007, receiving Royal Assent on 21 March 2007 and came into effect in October 2008.

- Recognises existing legislation to protect adults
- Focuses on the 2007 Act
- Contains information on the definition of harm and common indicators
- Outlines guidance for intervention
- Sets out guidance for, and emphasises the importance of, review of actions taken, indicators of good practice and final outcomes.
- Recognises existing systems to protect 'at risk' adults, such as the national Care Standards, sound recruitment practices and appropriate training and support of staff
- Is consistent with the European Convention on Human Rights and the Human Rights Act 1998

1.6. The policy intention behind this Act had evolved over a number of years including;

- Scottish Law Commission draft Vulnerable Adults Bill 1997.
- Scottish Executive Consultation 2001.

- Borders Inquiry and Recommendations 2002.
 - Scottish Executive Consultation 2005.
- 1.7. In relation to earlier legislation regarding Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care & Treatment) (Scotland) Act 2003 it was recognised there were already protective measures enshrined in legislation in respect of mental disorder and lack of capacity. However prior to the Adult Support and Protection (Scotland) Act 2007 there was no definition of “Vulnerable Adult” or “adult at risk” in law and it was the view of the then Scottish Executive that further legislative measures were required.

A summary of legislative powers and duties in respect of adults at risk and in need of protection is detailed in Part 3

- 1.8. The aim is one of prevention, wherever possible, to the incidence of abuse occurring to an adult seen to be at risk of harm, but also to have agreed processes in place to deal effectively and consistently with situations where incidents of harm have occurred. This can only be effectively achieved, in often complex and sensitive situations by good partnership understanding and working across statutory agencies, the voluntary and independent sector, family and carers and the adult at risk themselves.
- 1.9. **In addition the current Deafblind Scotland Procedures reflect collaborative work that has been undertaken across local authorities and agencies in the drafting Scotland’s Inter-Agency Practice Guidance for Adults at Risk of Harm.**
- 1.10. The procedures cover the following key areas:
- Part 2** – Definitions as outlined within the 3 key areas of legislation and definitions of harm to assist staff in the identification of incidents when protective measures in respect of an adult at risk may be required.
- Part 3** – Principles and legal framework maintained within the 3 key areas of legislation that should underpin any intervention in the affairs of an adult seen to be at risk.
- Part 4** – Multi-agency collaboration, roles, and responsibilities.
- Part 5** – Deafblind Scotland’s processes in relation to referral, inquiry, investigation and protection planning in respect of intervention within the inter-agency adult protection procedures.
- 1.11. In consideration of any intervention under **the following procedures cross-reference should always be made to the following:**
- Adult Support & Protection (Scotland) Act 2007
Code of Practice for Local Authorities and Practitioners exercising functions under Part 1 **of the Act** October 2008.

website www.scotland.gov.uk/Resource/Doc/259161/0076850.pdf

- Mental Health (**Care & Treatment**) (Scotland) Act 2003
Codes of Practice Vol 1 – 3 July 2005.
website www.scotland.gov.uk/Publications/2005/08/29100428/04295
- Adults with Incapacity (Scotland) Act 2000
Codes of Practice.
website www.scotland.gov.uk/Resource/Doc/46910/0031416.pdf

Definitions

2. Definitions contained within the legislation.

2.1. Within the **Adult (Support & Protection) (Scotland) Act 2007** adults at risk are adults (aged 16 and over) who:

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

2.2. In relation to the above **adults are at risk of harm** when:

- a) Another persons conduct is causing (or is likely to cause) the adult to be harmed or;
- b) The adult is engaging (or is likely to engage) in conduct, which causes (or is likely to cause) self-harm.
- c) The ability of deafblind adults to access information independently and in privacy is very limited. Their ability to communicate needs or concerns to the world is also restricted. This increases their vulnerability and requires this protection policy.

2.3. Within the **Adults with Incapacity (Scotland) Act 2000** “incapacity” is defined within the legislation only for the purposes of the Act as the law of Scotland generally presumes that adults (aged 16 or over) are legally capable of making personal decisions for themselves and managing their own affairs. That presumption can only be overturned if there is evidence that the adult’s capacity is impaired in relation to any **particular** matter in hand. For the

purposes of the Act incapable means incapable of:

- Acting; or
- Making decisions; or
- Retaining memory of decision; in relation to any particular matter by reason of mental disorder or inability to communicate because of physical disability.

2.4. **The Mental Health (Care & Treatment) (Scotland) Act 2003** defines **mental disorder** as any mental illness, personality disorder or learning disability, however caused or manifested. A person is not mentally disordered by reason **only** of the following;

- Sexual orientation.
- Sexual deviancy.
- Trans-sexualism.
- Transvestism.
- Dependence on, or use of alcohol or drugs.
- Behaviour that causes, or is likely to cause harassment, alarm or distress to any other person; or
- By acting as no prudent person would act.

2.5. **Definitions of Abuse**

2.6. In relation to the definition of harm or abuse the act of harm can take many forms and which, in practice, may not exist in isolation but may overlap. **The key issue remains the exercise of sound professional judgement set against individual circumstances.** Where there are acts of harm or potential for harm an unequal power relationship will exist. Some indication of harmful behaviour towards an adult at risk may include:

a) **Physical Abuse** – involving actual or attempted injury to an adult defined as at risk e.g.

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

- b) **Emotional/Psychological Abuse** – resulting in mental distress to the adult at risk e.g.
- Excessive shouting, bullying, humiliation.
 - Manipulation or the prevention of access to services that would enhance life experience.
 - Isolation or sensory deprivation.
 - Denigration of culture or religion.
 - **Financial or Material Abuse** – involving the exploitation of resources and belongings of the adult at risk e.g.
 - Theft or fraud.
 - Misuse of money, property or resources without informed consent.
- c) **Sexual Abuse** – involving activity of a sexual nature where the adult at risk cannot or does not give consent e.g.
- Incest.
 - Rape.
 - Acts of gross indecency
- d) **Neglect and acts of omissions** – including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life such as nutrition, appropriate heating etc.
- e) **Multiple forms of abuse** may occur in an ongoing relationship or service setting or to more than one person at any time. It is important therefore to look beyond single incidents and to consider underlying dynamics and patterns of harm.

Note

- a) **Random Violence** i.e. an attack by a stranger or strangers on an adult defined, as at risk is an assault, a criminal matter, and should be reported to the Police. However where there is the possibility that the violence may be part of a pattern of victimisation in a community or neighbourhood, Adult Protection Procedures may apply in respect of effective multi-agency intervention.
- b) **Domestic Violence** – Police Scotland define domestic violence as “any form of physical, non physical or sexual abuse which takes place within the context of a close relationship, committed either in the home or else where”.

In most cases this relationship will be between partners (married, co-habiting or otherwise) or ex-partners. The similarity between the above and acts of harm in relation to adult protection is recognised. However the key factor in relation to activating adult protection procedures in such situations is dependant on assessment of “adults at risk” as defined earlier.

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

2.7. There are of course many other factors, which may indicate abuse or neglect. These may include:

- Unusual, unexplained or suspicious injury.
- Dubious or inconsistent explanations of injuries or bruises.
- History of unexplained falls or injuries.
- Prolonged interval between illness/injury and presentation for medical care
- The adult at risk found alone at home or in a care setting in a situation of serious but avoidable risk.
- The adult at risk lives with another member of the household who is known to the police, social work or health agencies as likely to present a risk to the adult.
- Signs of misuse of medication, non-administration or over/under medicating.
- Unexplained physical deterioration in the vulnerable adult e.g. loss of weight
- Sudden increases in confusion e.g. dehydration, toxic confusion.
- Demonstration of fear by the adult at risk to another person within home or if returning home.
- Difficulty in interviewing the adult at risk of harm due to the insistence or presence of another.
- Anxious or disturbed behaviour on the part of the adult.
- Hostile or rejecting behaviour by a carer towards the adult.
- Indicators of financial abuse e.g. unexplained debts, reduction in assets, unusual interest in adult by family members, pressure from others to admit adult into care, misappropriation of benefits, fraud or intimidation in

connection with wills or assets.

- 2.8. Adults at Risk of Harm may be abused by a wide range of people. Agencies not only have responsibility to all adults subject to abuse but also may have responsibility e.g. towards agencies or people with whom the perpetrator is employed or works as a volunteer.

There is particular concern when abuse is perpetrated by someone in a position of power who uses his or her position to the detriment of the health, safety, welfare and general well being of a vulnerable person. The roles, powers and duties of the various agencies in relation to the perpetrator will vary depending on whether the latter is:

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

- 2.9. Abuse can take place in any context or setting, including:

- Where the adult lives alone or with a relative.
- Within a residential or day care setting.
- Hospital.
- Custodial settings.
- Support services into people's homes.

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

- 2.10. Abuse within institutional settings may feature one or more of the following:

- Poor care standards, lack of positive responses to complex needs, rigid routines, inadequate staffing and insufficient knowledge base within the

service.

- Unacceptable “treatments” or programmes which include sanctions or punishment such as withholding food or drink, seclusion, unauthorised use of control and restraint and over-medication.
- Failure of agencies to ensure that staff receive appropriate guidance on anti-discriminatory practice.
- Failure to access key services such as health care, dentistry, prostheses.

Principles and Framework for Legal Intervention

3.1. In general terms the following principles and values underpin any intervention in the affairs of adult deemed to be at risk and in need of protection under the multi-agency adult protection procedures.

- Every adult has a right to be protected from all forms of abuse, neglect and exploitation.
- The welfare and safety of the adult takes primacy in relation to any enquiry or investigation.
- Every effort should be made to enable the individual to express their wishes and make their own decisions to the best of their ability recognising that such self-determination may involve risk.
- Where it is necessary to override the wishes of the adult or make decisions on his/her behalf for their own safety (or the safety of others) this should be proportionate and be the least disruptive response to the identified risks to health, welfare, property or finances of the adult consistent with the current legislative framework
(see 3.3 below).

3.2. It is the expectation that all adults are entitled to:

- Live in a home like atmosphere without fear and free from abuse from their caregivers or fellow service users.
- Engage with their community without fear of violence or harassment.
- Make informed choices about intimate relationships without being exposed to exploitation or sexual abuse.
- Have their money and property treated with respect.

- To be empowered through support to make choices about their lives.
- As appropriate to be given information about keeping themselves safe and exercising their rights as citizens.

3.3. Legislative Principles

3.4. Where, as the result of inquiry, and investigation it is seen necessary to invoke legal measures towards effective protection planning the following principles, underpinning the legal options to intervene should be applied:

➤ **Adult (Support & Protection) (Scotland) Act 2007;**

- Whereby a person may intervene or authorise intervention in an adults affairs **only** when they are satisfied the intervention will provide benefit to the adult and that the action proposed is the least restrictive of those available.

In addition the public bodies or office holders must also have regard to the following principles:

- Honouring the adult's ascertainable wishes and feelings (past & present).
- Listening and acknowledging the views of adults nearest relative, primary carer, guardian or attorney and any other person who has an interest in the adults well being or property.
- The importance of the adult's participating as fully as possible in the performance of the function and providing the adult with such information and support as is necessary to enable the adult to participate.

Public Bodies or office holders must also have regard to:

- The importance of the adult not being, without justification treated less favourably than the way in which a person who is not an adult at risk of harm would be treated in a comparable situation.
- The adult's abilities, background and characteristics.
- That any self determination can involve risk, and that we will jointly ensure that such risk is recognised and understood by all concerned and minimised whenever possible.
- That we will ensure the safety of adult's at risk is achieved by integrating strategies, policies and services relevant to abuse within the legislative framework.

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

Where intervention should demonstrate;

- Benefit.
- Least restrictive option.
- Taking account of the wishes of the adult.
- Consultation with relevant others and;
- Encouragement to the adult to increase whatever skills he/she has and to learn new skills.

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

Where the principles require any decision or action under the Act takes into account the following;

- Present and past wishes and feelings of the patient.
- The views of the patients named person, carer or any proxy decision maker where relevant.
- Fullest participation of the patient in any decision-making.
- All options available in planning the patients care.
- Maximum benefit to the patient.
- The need to ensure the patient is not treated less favourably than the way in which a person who is not a patient would be treated.
- The patient's capabilities, background and characteristics.

3.5. Framework for Legislative Intervention -Adults with Incapacity (Scotland) Act 2000

The Act provides a hierarchy of measures to act or make decisions in relation to the welfare, property, or financial affairs of adults who are deemed incapable of doing so for themselves. In summary these are:

- **Powers of Attorney** (Part 2 of the Act) – where a person may appoint an attorney with powers over property and financial affairs or continuing on incapacity *and/or* an attorney with powers over personal welfare exercised only on the adult's loss of capacity.
- **Access to Funds** (Part 3) – where a person, or an organisation including a local authority may apply to the Public Guardian for authority to withdraw funds from the account of the adult to provide day-to-day care.
- **Management of Residents Finances** (Part 4) – where authorised establishments (Care Homes and Hospitals) may manage the funds of

resident adults up to a prescribed limit.

- **Medical Treatment & Research** (Part 5) – where medical practitioners are given a general authority to treat adults where there is a certificate of incapacity in relation to specific treatments or a medical treatment plan. In addition certain other health care practitioners, if accredited, have authority to provide treatments they are qualified to administer.
- **Intervention Orders & Guardianship** (Part 6) – where it is possible to apply to a sheriff for an intervention order to deal with defined “one off” financial, property or welfare matters or to make application for a guardianship order which can include powers over property, financial affairs or personal welfare or a combination of these.

3.6. Statutory bodies with responsibilities under the Act include

- **Sheriff** - where the sheriff court is the main forum for proceedings in relation to application for powers under Part 6 of the Act.
- **The Public Guardian** – who registers powers of attorney, intervention orders, guardianship orders and access to funds under Part 3 of the Legislation. The Public Guardian also has investigatory and supervisory functions in relation to property and financial affairs.
- **The Mental Welfare Commission** – who retain a general oversight of adults whose incapacity is due to mental disorder and also have investigatory powers in relation to those exercising welfare powers.
- **Health Boards** – In relation to management of resident’s finances and medical treatment as indicated previously and also in relation to a duty to co-operate with other statutory bodies e.g. local authorities in the discharge of their functions under the Act.
- **Local Authorities** – whose functions can be summarised as:
 - a) Provision of information and advice.
 - b) Supervision of guardians and attorneys (for attorneys where directed by the Sheriff).
 - c) Investigation where the welfare of an adult is seen to be at risk.
 - d) Investigation of complaints in relation to those exercising welfare powers.
 - e) Consultation with the Public Guardian and Mental Welfare Commission
 - f) Application for Intervention Orders and Guardianship Orders when no one else is doing so
 - g) To act as welfare guardian when no one else is doing so
 - h) To recall personal welfare powers of a guardian
 - i) To arrange for transfer of guardianship orders

3.7. **Mental Health (Care & Treatment) (Scotland) Act 2003**

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

- Provision of care and support services designed to promote well being, social development and social inclusion. There is a reciprocal duty on health boards to co-operate with their local authority partners in the discharge of these functions.
- Appointment of mental health officers (MHO's) who have specifically designated functions under the Act in relation to compulsory powers, review, renewal and care planning..
- A duty for local authorities to make inquiry into deficiencies of care treatment or support for people with a mental disorder living in the community.
- Assessment of needs for community care services.
- Provision of independent advocacy services in conjunction with health boards.
- Requirement to ensure all reasonable steps are made to reduce any adverse effects on child/parent relationships arising from actual measures taken under the Act.
- Collation of data for research purposes.

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

- Co-operation with the Mental Welfare Commission in the discharge of functions under the Act.
- Provision of approved medical practitioners (AMP's) who have specific duties under the Act, in relations to measures of compulsion, care planning, review and care management.
- Provision of services and accommodation for patients under 18.
- Provision of services and accommodation for mothers with post-natal depression.
- Co-operation with local authorities in the discharge of functions.
- Provision of independent advocacy services in partnership with local authorities.
- Provision of information to patients and assistance in relation to communication difficulties.

- Collation of data for research purposes.

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

- An emergency detention certificate, which grants an authority to detain a person in hospital for a period of 72 hours.
- A short-term detention certificate which grants authority to detain a person in hospital for 28 days.
- A compulsory treatment order, which grants authority to exercise a range of compulsory powers over a person either in hospital or in the community for a period of 6 months. This period can be extended by 6 months, then by periods of 12 months thereafter.

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

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

3.13. **Adult Support & Protection (Scotland) Act 2007**

3.14. There are various duties and functions that fall to local authorities under the Act. In summary these are:

- A duty to inquire about an adults well being, property or financial affairs where an individual falls within the definition of adults at risk of harm and the council believes it may have to intervene to protect the individual from harm.
- To carry out investigations as appropriate for the purposes of inquiry into the circumstances of the adult in order to protect them from harm.
- The power to apply to the Sheriff for an **Assessment Order** which authorises the council to take the adult from a place being visited under the duty to inquire to allow:
 - a)** the interview to be conducted in private and **b)** a private medical examination by a health professional nominated by the council.
- The council can make application to the Sheriff for a **Removal Order**, which would allow the removal of an adult at risk to another place for the purposes of investigation. A removal order can be effected within 72 hours of being granted and can last for a maximum of 7 days.

- Application can also be made by the council to the Sheriff for a **Banning Order** or temporary Banning Order on such person or persons considered to be placing or likely to place an adult at risk of serious harm. Various conditions can be placed on banning orders by the Sheriff including the length of time of the order (up to 6 months) and the power of arrest.

3.15. The Adult Support & Protection (Scotland) Act 2007 also establishes the requirement for all relevant bodies (**Local Authorities, The Mental Welfare Commission, The Office of the Public Guardian** and the **relevant NHS Board**) to co-operate in the provision of information and support to an adult at risk in participation of any proceedings under the legislation.

3.16. In addition to the duties and powers specified above the ASP Act also places an obligation on local authorities to establish an **Adult Protection Committee**

3.17. with the following functions:

- Review of practice and procedures relating to safeguarding adults at risk.
- Provision of information and advice.
- To encourage and assist in improving the skills and knowledge of officers and employees of such public bodies having responsibilities under the Act.
- Any other function as specified by Scottish Ministers.

The convenor of the Committee **must not** be a member or officer of the council and membership would include:

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

3.18. **The Protection of Vulnerable Groups (Scotland) Act 2007**

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

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

- Harmed a child or protected adult.
- Placed a child or protected adult at risk of harm.
- Engaged in inappropriate conduct involving pornography.
- Engaged in inappropriate conduct of a sexual nature involving a child or protected adult.
- Given inappropriate medical treatment to a child or protected adult.
- Been dismissed or transferred or would have or might have been dismissed or transferred if they hadn't resigned due to disciplinary action.

3.19. Vulnerable Witnesses (Scotland) Act 2004

Where a vulnerable person is due to appear in Court either for the defense or the prosecution additional support can be provided through this Act. A vulnerable witness is anyone where there is significant risk that the quality of their evidence may be diminished by reason of fear or distress in connection with giving evidence at trial. Special measures provided by the Act include:

- Live television link.
- Use of a screen so that the witness cannot be seen by the alleged perpetrator.
- Use of a supporter.
- Use of prior statements.
- Taking of evidence by a commissioner.

3.20. Human Rights Act 1998

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

3.21. Regulation of Care (Scotland) Act 2001

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

3.22. Community Care and Health (Scotland) Act 2002

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

ability to care.

3.23. Appropriate Adults Scheme

The appropriate Adult Scheme is managed through West of Scotland Stand-by Services who hold a register of trained Appropriate Adults. The scheme applies to persons with mental disorder (as defined in the MH Act) and persons with acquired brain injury who may require support and re-assurance when being interviewed by the police as a victim, witness or accused. The scheme provides an Appropriate Adult to

- Support the person being interviewed.
- Ensure the witnesses understands why they are being interviewed.
- Help the interviewee to understand the questions and implications of their response.

Ensure where the person themselves is suspected or accused of an offence that they are not disadvantaged by their mental disorder and understand their rights.

Responsibilities

4. Common Responsibilities

4.1. There are a number of responsibilities common to partner agencies including:

- The need to recognise adult protections concerns and the need to ensure all staff are familiar with multi-agency procedures and the definitions outlined within these. All staff across agencies should be aware, in their day-to-day practice, of how to initiate appropriate reporting of any concerns.
- The need to ensure, within the duty of care, that, in situations of extreme urgency, staff are aware of responsibilities in relation to the requirement to take immediate steps to protect the adult deemed to be at risk of harm. This may involve seeking urgent medical attention or contacting the emergency services. Where an offence may have been committed the Police should be informed without delay especially where evidence may be at risk of being lost, tampered with, or destroyed.
- The need to ensure full co-operation across partner agencies. This may include staff participation in the investigatory process or in ensuring staff time is made available for participation in case conferences, reviews etc.
- The need to share information. Partner agencies party to the Adult Protection Procedures will have their own policies, professional codes of conduct and procedures for handling sensitive and confidential information. Whilst staff should have due regard to their own agency's policies when dealing with issues of confidentiality, in relation to adult protection there is

clearly a requirement to ensure the free exchange of relevant information within partner agencies for the purposes of inquiry and protection planning. Staff should be aware that in many instances complete confidentiality cannot be offered particularly in cases where agency responsibilities to the public interest and/or the protection of the adult at risk or others outweigh the duty to protect the confidentiality of the individual.

- Ensure the need to have cognisance of child protection concerns. Where a child is believed to reside in the same household as an adult defined as alleged to have been harmed or at risk of harm, or in the same household as an alleged perpetrator, consideration must also be given to the safety and well being of that child. Where there is concern that the child may also be exposed to the same or other harmful acts reference should be made to **Deafblind Scotland Child Protection Procedures** and contact initiated with Children & Family Services in the authority where concern is raised.

4.2. Cross Agency Issues in Adult Protection

The protection of adults at risk of harm raises a number of issues and possible dilemmas that require consideration.

Duty to Report All staff, , have a duty to report suspicions or disclosures made about an adult at risk. While this may cause the individual worker difficulties, a failure to report is a failure in their duty of care – staff must report any concerns of suspected or actual harm to their line manager who will ensure that the guidelines are followed.

Rights/Self Determination There is a tendency for society to believe that vulnerable adults need to be protected and that their right to make choices is secondary to this. Adults are individuals in their own right and, if they are able, should be allowed to exercise these rights even if that means, for instance, they choose to remain in a situation which other people may consider to be inappropriate. Every effort should be made to inform the adult at risk of harm of the consequences of decisions they are making. Risk assessment and case discussion can be used to further explore the issues. Where there is a capacity issue, the “Adults with Incapacity Act” powers can be considered.

Consent to Inform/Confidentiality/Disclosure Staff who have contact with adults at risk have a responsibility to refer on concerns, anxieties, disclosures regarding possible or actual harm. This may pose a dilemma for staff who may feel that by so doing they could alienate the adult or their family and the potential for preventative work. Too do nothing or to promise confidentiality and then report the concern is not acceptable. The procedure is to openly and honestly discuss with the individual/family the intention to report the information.

Managing Risk Concern over managing risks has the potential to stifle and constrain the provision of care leading to an inappropriate restriction of the individual’s rights. There is a challenge for staff working in all care settings to examine a way forward where calculated acceptable risks are taken along with the service user. This will involve gathering of all relevant information and risk assessment involving multidisciplinary input.

Challenging Behaviour There are some adults who present challenging behaviour which requires to be managed either in their own home or in a range of care settings. In order for any action not to be misinterpreted it is important that procedures are carefully complied with and any incidents fully recorded.

Whistle Blowing Most organisations have a policy on whistle blowing which allows staff to report matters of suspected or actual malpractice. This will provide guidance and reassurance to staff in order to encourage such disclosures.

Allegations of abuse made against staff Deafblind Scotland's procedures will apply and would have to accord with any parallel investigation into the alleged abuse. The Care Inspectorate must be advised if the allegation is made in a registered setting.

What to do if you are accused of abuse

If any person whom you are working with accused you of abusing them or anyone else then report this immediately to a Service Manager. Write down as much information of the situation as you can remember and sign and date the document. A Senior Manager will talk through the incident with you and ensure that you have recorded the details accurately. You should cease any further contact with the individual immediately and allow the organisation to take appropriate action, including a report to the local authority. You will be appraised of the situation and any further repercussions or actions that may occur. Deafblind Scotland will keep in regular contact with you and if appropriate may provide counselling or legal advice. Anyone found guilty of abusing another would be dismissed from the work of the organisation through the disciplinary procedure for staff and dismissed from a volunteering role. The PVG scheme would be informed and could involve the individual being banned from working with children and vulnerable adults.

If a person were found not guilty, then no disciplinary procedure would ensue unless Deafblind Scotland's policies and procedures had been violated.

Domestic Abuse This has been defined as abuse or threat within the context of a close relationship. It is not specifically covered in these guidelines unless one of the individuals meets the criteria of being an "adult at risk".

4.3. Council Duties and Powers – Social Work Services

The Adult Support & Protection Act places a statutory duty on councils/local authorities to make inquiries about an adult's well being, property or financial affairs, where the person falls within the definition of an adult at risk, and to establish whether or not further action is required to stop or prevent harm occurring.

4.4. The Adult Support & Protection Act defines a council officer as a person appointed by a council under S64 of the Local Government (Scotland) Act 1973. Persons acting as council officers will be professionally qualified and registered, and have the knowledge, skills and experience necessary to

undertake the functions set out in the Act.

It is the responsibility of the local authority Social Work Services to lead on the adult protection enquiry and investigation. The lead officer (council officer) must be an officer of the local authority and a professionally qualified and registered social worker with 12 months post qualifying experience. This does not preclude direct participation, as appropriate, by professionals from other partner agency disciplines e.g. CPN, GP, District Nurse etc, on the investigative process under the lead of the local authority.

- 4.5. Social Work services also have lead responsibility for investigating and taking measures to protect individuals who have been abused or are thought to be at risk of abuse in commissioned services operated by voluntary or independent providers where these are **not** registered with the Care Inspectorate. This will be additional to any internal action taken by the provider organisation where the alleged perpetrator is a member of its staff.
- 4.6. Where abuse is reported within **registered** residential and day services the Care Inspectorate has a duty in relation to the overall enforcement of care standards. However where there is current or potential risk to the welfare of an adult at risk of harm Social Work Services should be immediately notified and consideration jointly be given to implementation of agreed multi-agency adult protection procedures.
- 4.7. Local authority Social Work Services retain key statutory duties and functions under the current legislative framework in relation to measures of adult protection i.e. Adults with Incapacity (Scotland) Act 2000, Mental Health (Care & Treatment) (Scotland) Act 2003 and the Adult Support & Protection (Scotland) Act 2007. This may require liaison and request for assistance from the following agencies in the discharge of such duties:
- Mental Welfare Commission.
 - Office of the Public Guardian.
 - Care Inspectorate.
 - Relevant NHS Health Board.
 - Police.

4.8. **Police**

The protection of Adults at Risk and prevention and detection of Adult Abuse are fundamental and statutory responsibilities of Scottish Police and partner agencies.

Any Adult Protection concerns reported to the Police will be thoroughly investigated, in addition, the Police are committed to working in partnership with other agencies, sharing information, and where appropriate taking action to

protect adults and to provide support and intervention where this is required.

4.9. Care Inspectorate

The Care Inspectorate will be involved both in referral and in supporting the investigation process where a registered care service is involved by sharing information. They may also participate in the actual investigation, by agreement, where it is considered there is a strong probability that action will be required under the Regulation of Care (Scotland) Act 2001 and that evidence gained will enable this to take place.

4.10. Office of the Public Guardian

The main functions of the Office of the Public Guardian are to:

- Receive and investigate complaints relating to any cases in which the property or financial affairs of an incapacitated adult seem to be at risk.
- Investigate complaints in relation to the exercising of functions relating to intromissions with property or financial affairs by attorneys, guardians and others authorised under the Act.
- Supervise any guardian or other authorised person in the exercise of his functions relating to the property and financial affairs of the adult concerned.
- Consult the Mental Welfare commission and any local authority on matters relating to functions under the Act where there appears to be common interest.

4.11. Mental Welfare Commission

The Mental Welfare Commission has specific powers under the Mental Health (Care & Treatment) (Scotland) Act 2003 in relation to the protection of patients and other people with a mental disorder who are subject to some order or direction under the Act.

Under S11 of the Mental health Act, where it believes someone is unlawfully or inappropriately detained or may have been subject to ill treatment or other deficiency in care, the Commission has the power to investigate the circumstances and make recommendations. Under S12 of the Act the Commission has a further power to formally conduct an inquiry into deficiencies in care in such circumstances.

The Commission's power to investigate sits alongside the "duty to inquire" placed on the local authority in similar cases where someone with a mental disorder is thought to be at risk.

The Commission is also expected to exercise a protective function in respect of adults subject to Guardianship or Intervention orders under the Adults with Incapacity (Scotland) Act 2000 and to consult with both the Public Guardian and the local authority where appropriate in the exercise of such functions. The

Commission also has a power to investigate where it feels that the local authority has not dealt appropriately with a complaint.

4.12. Deafblind Scotland

All voluntary, not-for-profit and private agencies should have internal procedures in place that set out action to be taken in the event of actual, disclosed or suspected abuse 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.

4.13. It is necessary 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.

4.14. The role of Deafblind Scotland is to:

- Take immediate steps required to protect the adult and any other service users thought to be at risk.
- Refer the allegation to Social Work and/or the Police.
- Inform the Care Inspectorate
- Take action under disciplinary procedures in respect of a staff member or volunteer.

4.15. The role of Social Work is to:

- Formally investigate such allegations in order to assess the risk to one or more individuals.
- Take appropriate action to protect adults at risk of harm.
- Link with the Care Inspectorate if the agency is registered with the Inspectorate to agree responsibilities in terms of the immediate protection of any adult currently at risk.

What happens next

Adult Protection Committee

5. Adult Protection Committees (APC's), as set out in Section 42 of the legislation have a significant role in ensuring co-operation and communication within and between agencies in the promotion of appropriate support and protection to adults at risk of harm, set against the principles of the Act.
- 5.1. The Act allows APC's to regulate their own procedures. However such procedures will reflect statutory duties and functions that fall to APC's under the Act, namely:
 - Reviewing adult protection practices
 - Improving co-operation across agencies and key partners
 - Improving skills and knowledge
 - Providing information and advice, and
 - Promoting good communication
- 5.2. Given its lead statutory role in undertaking inquiries and investigations the Act requires the convener of the Committee to be independent of the Council.
- 5.3. In relation to membership, it is for the council to appoint those who are nominated. The relevant health board and the relevant Chief Constable require to be represented whilst the Care Inspectorate has the option to nominate a representative. The Act gives councils discretion to appoint other representatives who can bring particular expertise to the Committee.
- 5.4. Good practice reflects positive information sharing, communication and co-ordination between both partner agencies and services for adults, children and family services and criminal justice services, and co-ordination between already existing oversight arrangements by Child protection Committees, Multi-Agency Public Protection Arrangements (MAPPA) etc and the APC will be required to ensure appropriate co-ordination across functions.
- 5.5. APC's will also need to ensure that there are effective arrangements in place for resolution of disagreement and dispute between agencies about decisions in individual cases and about respective roles and responsibilities.
- 5.6. The Act requires the convenor of the APC to produce, for approval by the Committee, a report for Scottish Ministers on a biennial basis. The report will summarise the work of the APC to date and key areas to be addressed would include:
 - Management information on activity, trends, inputs and outcomes
 - Details of support provided
 - The use of protection orders
 - Public information
 - Management of services and staff
 - Communication and co-ordination between agencies

- Workforce issues; and
- Progress with training.

Framework for Assessment and Intervention

Initial Adult Protection Referral

6. All Agencies – Referral Procedures

- 6.1. Towards effective care governance Deafblind Scotland should ensure their staff have an awareness of adult protection issues and a working knowledge of the system of reporting requirements.
- 6.2. The time frame for initial referral to Social Work Services is within **1 normal working day** where it is known or believed that a person is an adult at risk and that protective action is needed. Deafblind Scotland has a duty to report any suspected or actual harm to an adult defined by the ASP Act as seen to be at risk.
- 6.3. The collation of relevant information at point of referral is crucial in the application of sound professional judgement. Deafblind Scotland will comply with the particular Local Authorities procedure and paperwork. t Normally within 1 normal working day and forwarded to Social Work Services. In the absence of a local authority form use DBS form ASP 1
- 6.4. Wherever possible the following information should be sought and recorded at the point of referral:
 - Alleged suspected harm or abuse.
 - Name and address 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 learning disability, mental health or communication difficulties or whether there are concerns in respect of lack of capacity.
 - Whether the adult is subject to any proxy decision making powers under the Adults with Incapacity Act or subject to any order under the Mental Health Act.
 - Identity of any witnesses and where they can be contacted.
 - Whether or not the referrer is willing to be interviewed if required during the course of any possible future investigation.
- 6.5. The 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 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.

6.6. Referral should be made directly to the relevant duty/receiving service of the adults place of residence and the **responsible social worker** be advised immediately.

Referrals out of hours should be directed to local authority stand-by services.

7 Alteration of this policy

This policy will be subject to review, revision, change updating, alteration and replacement in order to introduce new policies from time to time to reflect the changing needs of the business and to comply with legislation. Any alterations will be communicated to you by your line manager.

Contact numbers

Police emergencies - 999

Police non emergencies - 101

Local Council Out of Hours

Local Authority	Phone Number
Aberdeenshire	08456 081206
Aberdeen	01224 693936
Angus	01382 307964
Argyll	0800 811505
Borders	01896 752111
Clackmannanshire	01786 470500
Dumfries & Galloway	0800 811505
Dundee	01382 307964
East Ayrshire	0800 328 7758
East Dunbartonshire	0800 811505
East Lothian	0800 731 6969
East Renfrewshire	0800 811505
Edinburgh	0800 731 6969
Falkirk	01786 470500
Fife	08451 550099
Glasgow	0800 811505
Highland	08457 697284
Inverclyde	0800 811505
Midlothian	0800 731 6969
Moray	08457 565656
North Ayrshire	0800 328 7758
North Lanarkshire	0800 121 4114
Orkney	01856 873 535
Perth & Kinross	0845 301 1120
Renfrewshire	0800 811505

Shetland	01595 695 611
South Ayrshire	0300 123 0900
South Lanarkshire	0303 123 1008
Stirling	01786 470500
West Dunbarton	0800 811505
West Lothian	01506 777402
Western Isles	01851 701702

Websites:

www.infoscotland.com/actagainststharm

www.scotland.gov.uk/Topics/Health/care/adult-care-and-support/legislation/Resources

Scottish Government

Adults with Incapacity (Scotland) Act 2000

[http://search1.scotland.gov.uk/Scotland?n=All&\\$rcexpanded=false&action=search&q=Adults+with+Incapacity+](http://search1.scotland.gov.uk/Scotland?n=All&$rcexpanded=false&action=search&q=Adults+with+Incapacity+)

Scottish Government

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

<http://www.scotland.gov.uk/Topics/Health/health/mental-health/mhlaw/home>

Scottish Government

Adult Support and Protection (Scotland) Act 2007

<http://www.scotland.gov.uk/Topics/Health/care/VAUnit/ProtectingVA>

Scottish Government Mental Health

<http://search1.scotland.gov.uk/Scotland?action=search&q=Mental+Health&n=All>

Scottish Government Adult Support & Protection

<http://search1.scotland.gov.uk/Scotland?action=search&q=Adult+Support+and+Protection&n=All>

Mental Welfare Commission for Scotland

www.mwscot.org.uk

Office of the Public Guardian

<http://www.publicguardian-scotland.gov.uk>

Scottish Independent Advocacy Agency

<http://www.siaa.org.uk>

Scottish Executive

Government Vulnerable Witnesses (Scotland) Act 2004

<http://www.scotland.gov.uk/Publications/2005/04/04143522/35246>

Appropriate Adults Scheme

<http://www.scotland.gov.uk/Topics/Justice/criminal/18244/Appropriate-Adult>

Additional information

Adult Support and Protection (Scotland) Act 2007

Summary of the Role and Function of Council Officer

Adult Support and Protection (ASP) Act Principles and Definitions

Any intervention under the Act should:

- provide **benefit** to the adult and
- be the **least restrictive** to the adults freedom

You must also have regard to:

- the wishes of the adult
- the views of others
- the importance of the adult participating as fully as possible
- that the adult is not treated less favourably
- the adults abilities, background and characteristics

Adults at Risk

Are aged 16 or over and:

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

Risk of Harm

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

Harm

Includes all harmful conduct and, in particular includes:

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

ASP Council Officer Role – Inquiries Stage

It is the responsibility of Deafblind Scotland Social Work Services to lead on the adult protection investigation. **The lead investigating officer (council officer) must be**

an officer of the council and a professionally qualified and registered Social Worker. This does not preclude direct participation, as appropriate, by professionals from other partner disciplines in the investigative process under the lead of the council officer.

Section 4 Duty to Inquire

The Council must make inquiries about a person's **well-being, property or financial affairs** if it knows or believes:

- that the person is an "adult at risk" **and**
- that it might need to intervene in order to protect the person's well-being, property or financial affairs

Common Responsibilities

Common responsibilities across partner agencies include the need to recognise adult protection concerns and to ensure effective co-operation across all agencies involved.

Under Section 5 of the ASP Act the following public bodies and office holders must:

- co-operate with the council making inquiries under Section 4 and each other where this will assist the council **and**
- where the public body of office-holder knows or believes:
 - a. that a person is an adult at risk and
 - b. that action needs to be taken to protect them from harm

they must report the facts and circumstances to the council.

ASP Council Officer Role – Inquires/Investigation Stage

Section 10 Examination of Records

To enable a council to decide whether action needs to be taken to protect an adult at risk, a council officer may require **any person** holding health, financial or other records (in any format) relating to an individual, whom the officer knows or believes to be an adult at risk to give records or copies of them to the officer

- during a visit or at any other time
- if at any other time requirement must be made in writing.

Records can be inspected by:

- the council officer or
- any other person the council officer considers appropriate

Health records can only be inspected by a health professional, a Doctor, Nurse, Midwife.

Written authorisation to entitle you to access records should be shown, and the request confirmed in writing.

Section 49 of the Act provides that it is an offence for a person to fail to comply with a requirement to provide information under Section 10 unless that person has a reasonable excuse.

ASP Council Officer Role – Investigation Stage

It is important that the adult at risk is provided with the right kind of support throughout.

Section 6 Duty to Consider Support Services

If after making inquiries under Section 4 a council considers that it needs to intervene in order to protect an adult at risk from harm, the council must have regard to the importance of appropriate services, including **Independent Advocacy Services** for the adult concerned.

Assessing and managing communication difficulties.

The adult should be provided with assistance or material appropriate to their needs to enable them to make their views and wishes known. Wherever possible the adult should be asked which form of communication they prefer, for example technical aids or translator services. A speech and language therapist may also be considered.

Appropriate Adult

In some circumstances, in relation to adults with mental disorder, learning disability or personality disorder (including dementia; autistic spectrum disorder and acquired brain injury) liaison, in conjunction with the Police, with the Appropriate Adults Scheme located within West of Scotland Standby Service, may be required.

Section 7 Visits

A council officer has the power to enter **any** place to make necessary investigations to:

- assist the council in conducting inquiries under Section 4 to decide whether the adult is an adult at risk of harm
- and
- establish whether the council needs to take any further action in order to protect the adult at risk of harm (under ASP Act, other primary legislation or assessment and care management)

Who?

A council officer with another person who could assist the inquiries, for example Police Officer, Care Manager or Key Worker, Care Inspectorate Officer, Health professional.

When?

At reasonable times only (unless for example it is considered there is a risk of immediate physical harm).

Where?

Any place for example where the adult normally resides, temporarily resides or spends part of their time:

- the adults home
- a relative or friend's home
- a care home

- a day centre
- a place of education, employment or other activity
- a respite unit or hospital/medical facility

The council officer can access all parts of the place visited, for example sheds, garages, out buildings and all areas used by or on the behalf of the adult, for example sleeping accommodation, facilities for hygiene, meal preparation areas and general living space.

A council officer must:

- produce their ID badge and evidence of the identity of anyone accompanying them
- state the object of their visit
- If entry is refused, force cannot be used – this should be progressed with the relevant Social Work Services Team Leader as a warrant may be required.

ASP Council Officer Role – Interview

Section 8

A council officer, and any person accompanying the officer, may interview, **in private**, any adult found in a place being visited under Section 7.

The adult at risk (and any other person interviewed) must be informed of their right not to answer any questions BEFORE the interview starts. The issues of consent and capacity must always be considered.

ASP Council Officer Role – Investigation Stage (Continued)

Interview

Formal investigation and interview should be a planned process with roles and remits of the investigatory team agreed beforehand. The objective is to establish the most positive environment possible in relation to the adult seen to be at risk of harm, towards allowing full assessment of the adult's circumstances, needs and wishes and whether direct assistance or some further action is necessary.

The purpose of the investigation is to:

- check the accuracy of any allegations of harm or potential harm clearly record the facts
- involve the adult as fully as possible in the process
- establish with the adult their views on professional intervention and assistance
- establish where possible the views of carers, agencies and relevant persons with an interest of the adult
- ensure where required appropriate action is taken in respect of alleged perpetrators
- determine what future protective action or other action is needed for the adult or any other in situ (**note** where any child protection concerns arise action must be taken under Deafblind Scotland Child Protection Procedures)

Section 9 – Medical Examination

Where a council officer finds a person known or believed to be an adult at risk in a place being visited under Section 7 **and** the officer or person accompanying them is a health professional (doctor, nurse or midwife) the health professional can conduct a private medical examination of the person.

The adult at risk must be informed of their right to refuse to be examined **before** a medical examination is carried out. Again issues of capacity and consent should always be considered.

The purpose can include:

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

ASP - Protection Orders

The terms of the ASP Act and Code of Practice in relation to definitions, principles, co-operation and support equally apply to any orders as inquiries and interviews. In particular any intervention should:

- provide benefit to the adult and
- be least restrictive to the adult's freedom

An **Assessment Order** allows a council officer to conduct and interview in private and/or a health professional to conduct a medical examination in private.

A **Removal Order** allows the council to remove the adult at risk to a specified place in order to assess the situation and to support and protect the adult.

A **Banning or Temporary Banning Order** can ban the subject of the order from a specified place. They may have other conditions attached, for example contact under certain circumstances, power of arrest.

Application may only be made for Protection Orders where the adult is at risk of serious harm.

Note: When the adult at risk does not consent to the making of any of the Orders guidance is required that the adult has been subject to "undue pressure" in this regard. The issue of both consent and capacity must be considered in all circumstances.