



# **North Ayrshire's Health and Social Care Partnership's Multi-Agency Adult Support and Protection Procedural Guidance**

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North Ayrshire's Health and Social Care Partnership's Multi-Agency Adult Support and Protection Procedural Guide

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# 1. Introduction

The aim of this practice guide is to ensure that all North Ayrshire Health and Social Care staff and partnership agencies undertaking duties and responsibilities under the terms of the Adult Support and Protection (Scotland) Act 2007 (ASP Act), have a clear understanding of the legislative framework within which they work. This Guide will also set out required practice standards and procedure in relation to the referral and inquiry with or without investigative powers process and beyond, to protect adults deemed to be at risk of, or subject to, harm.

This practice guide should be used in conjunction with [the West of Scotland Inter-Agency Adult Support and Protection Guidance, the Adult Support and Protection \(Scotland\) Act 2007](#) and the accompanying [Code of Practice 2022](#). Detailed and supplementary information and guidance is contained therein, some of which has been utilised in this document, particularly in relation to the responsibilities of partner agencies, other related legislation, definitions of 'harm' and practice standards expected in the protection of adults at risk or subject to harm.

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

- [Adults with Incapacity \(Scotland\) Act 2000](#)
- [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#)

The Mental Welfare Commission has also published several reports which inform practice in protecting adults. These can be found at [The Mental Welfare Commission](#) for Scotland website.

Our responsibilities:

We all have responsibilities to ensure that adults who may be at risk of harm in our communities are safe, respected, and included, with clear communication and full involvement in all decision making.

We want to ensure adults are empowered to be free from harm and to make decisions and choices about their lives to live as independently as possible. The [Social Care \(Self-directed Support\) \(Scotland\) Act 2013](#) offers more choice and increased participation in decision making with a focus on risk enablement and outcomes, within the principles of protective legislation. Those involved in the support and protection of adults need to have a clear sense of what signifies harm and how to respond when harm is suspected.

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

## **Chief Officers' Group**

The Chief Officers' Group comprises Chief Executive Officers or their nominees from the Health and Social Care Partnership, NHS Ayrshire and Arran, Police Scotland, Scottish Fire and Rescue, North Ayrshire Council, and The Alcohol and Drug Partnership. This group provides leadership, direction and accountability and ensures collective responsibility and collaborative working at all levels to ensure improved outcomes for adults (and others) at risk.

## **Adult Protection Committees**

The ASP Act creates an obligation on councils to establish multi-agency Adult Protection Committees (APCs).

The functions of the APCs under Section 42 are:

- (a) to keep under review the procedures and practices of the public bodies and office holders.
- (b) to give information or advice or make proposals to any public body and office holder in relation to the safeguarding of adults at risk within a council's area, and
- (c) to make, or assist in or encourage the making of, arrangements for improving the skills and knowledge of officers or employees of the public bodies and office holders.

In performing these functions, APCs must have regard to the promotion and support of co-operation between each of the public bodies and officeholders. The public bodies and officeholders involved are the relevant council, the Care Inspectorate, the relevant Health Board, the Chief Constable of the Police Force in the council's area, and any other public body or officeholder as may be specified by Scottish Ministers. The Mental Welfare Commission and Office of the Public Guardian also have the right to attend and must be informed of Adult Protection Committee meetings, in line with local operational arrangements.

APCs are now firmly located within local public protection governance structures that include reporting arrangements to Chief Officer Groups, and then through Integration Authorities and or Community Planning Partnerships.

The Chief Social Work Officer is important within public protection arrangements, advising and assisting local authorities and their partners in relation to governance and fulfilment of statutory responsibilities, including adult protection.

## Links to National Guidance

- [Adult Support and Protection \(Scotland\) Act 2007: Code of Practice](#)
- [The Adult Support and Protection \(Scotland\) Act 2007: Guidance for Adult Protection Committees](#)
- [Adult Support and Protection Learning Review Guidance](#)
- [Self-evaluation of Adult Support and Protection Activity in Scotland: Resource Handbook](#)
- [Trauma-informed practice: toolkit](#)
- [National Guidance for Child Protection in Scotland 2021](#)
- [Protecting Children and Young People: Child Protection Committee and Chief Officer responsibilities](#)

## 2. Principles and Definitions

**Sections 1 and 2 set out the general principles of the Act:** any public body or officer holder intervening or carrying out any functions under this legislation must work in line with the principles.

- Any intervention should provide **benefit** to the adult which could not reasonably be provided without intervening.
- Intervention should be the option which is **least restrictive** to the adult's freedom.
- Anyone performing a function or making a decision under the act must take account of the adults **past and present wishes and feelings**. Where the adult has an Advance Statement under Section 275 of the Mental Health (Care and Treatment) (Scotland) Act 2003 this should be considered. POA documents should be checked for the adult's view (some POA documents record wishes and feelings and advance directives).
- Where relevant, **the views of the adults nearest relative, primary carer, guardian or attorney and any other person who has an interest in the adult's wellbeing or property must be taken account of if such views are relevant**. (Undue pressure or increased risk must be considered when seeking the views of others). The adult should have the right to maintain family and social contacts where they choose to do so.
- The Act aims to provide support **additional to that of existent networks**. An adult who may be at risk might have neighbours, friends or other contacts who have an interest in their wellbeing and are willing to give support (noting the caveat that consideration should be given to undue pressure or risk from those contacts). Efforts should be made to ensure that action taken under the Act does not adversely affect the adult's relationships.
- The adult should be enabled to **participate as fully as possible** and should be provided with support and information in a way that aids **communication and participation**. Any needs the adult may have for help with communication (for example, translation services or signing) should be met. The input of a Speech and Language Therapist may also be considered. Any unmet need should be recorded. The adult should be kept fully informed at every stage of the process. This includes information about their right to refuse to participate. Where police interviews are required, an **Appropriate Adult** may be needed to facilitate communication between a person with mental disorder and the police. Not all individuals who may require Appropriate Adult support will have a formal diagnosis or may not share their diagnosis with the police. Where a diagnosis cannot be confirmed, but the individual cannot understand procedures or communicate effectively with the police, then the police will request Appropriate Adult support.
- Have regard to the importance of providing appropriate services to the adult, including, independent advocacy or services to assist the adult, or other

person in the household, to communicate. The ASP Act includes a **duty to consider the provision of advocacy** or other services after a decision has been made to intervene.

- The adult **should not be treated any less favourably** than the way in which a person who is not an 'adult at risk' would be treated in a comparable situation.
- **the adult's abilities, background, and characteristics** – including the adult's age, sex, sexual orientation, religious persuasion, racial origin, ethnic group, and cultural and linguistic heritage. Consider the wider protected characteristics list and definitions set out in the Equality Act 2010 for the purposes of that Act.

## 2.1 Duty to refer.

While Councils have the lead role in adult support and protection, effective intervention will only come about through productive cooperation and communication between a range of agencies and professionals. What one person or public body knows may only be a part of a wider picture. The multi-agency nature of Adult Support and Protection work is crucial to the work of protecting adults from harm. The Scottish Government has published revised [GP Practice Guidance](#) in tandem with the revised code of practice and revised [Guidance for APCs](#).

Section 5(3) of the ASP Act places a duty on all councils, other public bodies and office holders to make an ASP referral where you believe the criteria is met, (when you know or believe that a person is an adult at risk of harm and that action needs to be taken to protect them from harm) even if you do not have all of the information. It is not your responsibility as the referrer to confirm that the adult meets the three-point test; it is enough that you believe them to meet the criteria to warrant an ASP referral.

**Good practice would dictate that, even if in doubt, the referral should be made and should be counted as a referral by the Council.**

Any information that can be provided at the referral stage will assist the local authority in undertaking adult protection inquiries. As part of the inquiry process, it is possible that you will be asked to assist the council making the inquiries.

Every referral which is received under ASP is treated as such until an inquiry can establish whether the three-point test is met.

All referrals, including anonymous referrals, will be taken seriously. Cases will be considered with an open mind, without assuming that harm has, or has not, occurred.

The Referral Process for Adult Support and Protection referrals in North Ayrshire allows referrals to be made:

- over the phone on **01294 310300** during working hours or 'out of hours'



on **0800 328 7758** or

- via an online referral at [North Ayrshire Council Adult Support and Protection or Protect an adult – North Ayrshire Health & Social Care Partnership](#) or
- by completing a Referral Form (AP1) (to be submitted electronically) to [adultprotection@north-ayrshire.gov.uk](mailto:adultprotection@north-ayrshire.gov.uk)

If there is immediate danger to you or the adult at risk, do not hesitate to call 999. You can make a subsequent Adult Protection referral, if appropriate.

The [Act Against Harm](#) website carries lots of useful information, including how to recognise when an adult may be at risk of harm and examples of the type of support that can be provided once a concern has been reported.

### **The “Four Referral Rs”**

**Recognise** – be aware of adult protection issues and how an adult at risk of harm may present. Consider trauma, undue pressure, and the adult’s ability to safeguard themselves.

**Report** – where you have an internal adviser for adult protection, report the matter to them, discuss with appropriate colleagues the need to make a referral, but ensure this does not adversely delay referring.

**Refer** – Refer the individual and their circumstances through your local adult protection referral process, described above. Where the matter is urgent contact the relevant emergency services without delay.

**Record** – use the individual’s record to note the issues that arose, the circumstances, the decisions made and actions you took, and the rationale for your actions.

### **Reporting emergencies or when a crime may have been committed.**

If a person is in immediate danger or significant harm has happened, contact emergency services on 999.

- Report to the Police if you suspect a criminal act has taken place or is likely to take place.
- Be aware of the need to preserve evidence.
- Do not put yourself at risk.
- Follow up contact should be made with the Health and Social Care Partnership and an Adult Support and Protection referral form submitted, within 24 hours.

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

Whilst adults with capacity have the right to consent, or otherwise, there may be a lawful basis to share information under the ASP Act without consent, and therefore an adult's consent is not required for a referral to be made. Wherever possible the adult should be informed of the sharing of the information and the reasons why. Existing legislation, including the UK General Data Protection Regulation - UK GDPR and the Data Protection Act 2018 does not prevent sharing and/or exchanging relevant information where there is a concern about the protection of adults at risk. The information sharing must be necessary (i.e., proportionate, and targeted) for the purpose of carrying out the task. Detailed guidance around the required aspects of information sharing is available in the [Code of Practice 2022](#), including Data Protection information and a To Share or Not to Share – Checklist.

On receipt of referral from any source, if the adult referred is not known, information and personal details will be entered on CareFirst. This information will populate the start of the Care Assess form. The duty worker, assigned worker or other staff member who has responsibility for progressing the referral should then complete the Care Assess form.

## 2.2 The three-point test

[Section 3\(1\)](#) sets out the **three-point test** which defines 'adults at risk': as adults who are aged 16 and over and who:

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

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

If the three-point test is not met, you can make a referral as an adult concern if you believe the adult is vulnerable and in need of support. Good practice would be to gain consent for this referral.

**Capacity is not, and never should be, a consideration in the application of the three-point test:** an inability to safeguard oneself is not the same as lacking mental capacity. Therefore, an adult can have capacity and still meet the three-point test.

**'Unable to safeguard':** Unable should be understood to mean 'lacking the skills, means or opportunity to do something.' It also needs to be understood in the context of a **trauma-informed approach** and **considering undue pressure** – which may mean a person is 'unable' to make decisions to protect themselves.

All adults who have capacity have the right to make their own choices about their lives and these choices should be respected if they are made freely. However, for many the effects of trauma and/or adverse childhood experiences may impact upon both their ability to make and action decisions, and the type of choices they appear to make. In this context it is reasonable to envisage situations in which these experiences, and the cumulative impact of them through life, may have rendered some people effectively unable, through reliable decision making or action, to safeguard themselves.

**More guidance on the three-point test can be found in the revised [Code of Practice 2022](#) pages 15 to 20.**

## 2.3 Adult at risk of harm

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

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

Section 4 states that a 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 to protect the person's wellbeing, property, or financial affairs.

Section 53(1) states 'harm' includes all harmful conduct and includes:

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

## 2.4 Abuse/Harm

Abuse is a violation of a person's human rights. This happens through the misuse of power by someone in a dominant position. It also includes neglect where the misuse of power means that things are **not** done to ensure someone's wellbeing.

For more detailed information on types of harm please see the [West of Scotland Inter-Agency ASP Guidance and Act Against Harm](#).

### **3. Widening Relevance for those who might meet the three-point test.**

The revised Code of Practice 2022 highlights, that duties under the ASP Act are expected to have direct relevance to a broader range of people than originally anticipated including:

**People with problematic alcohol or drug use:** The concept of “executive capacity” is relevant. The Code of Practice highlights the importance of considering the adult’s ability to put a decision to safeguard themselves into effect (executive capacity) as well as their ability to decide (decisional capacity). The problematic use of drugs or alcohol may take place alongside a physical or mental illness or a condition such as Alcohol Related Brain Damage (ARBD). In this case, an adult may be considered an adult at risk under the ASP Act. The impact of dependency may render them subject to physical or mental infirmity and place them at risk of harm. There is a need to understand and recognise dependency as a symptom or sign of deeper challenges and of self-neglect itself.

Considerations of the impact of trauma on the individual’s ability to safeguard should be a thread throughout ASP activity. [Click here for the National Trauma Training Programme](#)

**People who are homeless** are increasingly being recognised as likely to be considered as adults at risk under the terms of the Act, as many will be affected by disability, mental and/or physical illness or infirmity, or may have problematic alcohol or drug use.

**Suicide:** Adults who are at risk of harm can present in complex circumstances such as an individual seeking to cause harm to themselves and showing suicidal ideation. Acute and immediate intervention may be needed to keep the individual safe at the time of crisis. Suicide prevention training courses and resource information are available in order to: recognise when someone may be at risk of suicide and how to effectively work with them, recognising social determinants leading to increased risk of suicide, and creating a plan to support their immediate safety, while further intervention is arranged. [Click here for information on suicide prevention training](#)

**Links with Child Protection:** Particular attention needs to be paid to young people in transition from youth to adulthood, who are more vulnerable to harm than others, perhaps due to [Adverse Childhood Experiences \(ACES\)](#). It is important to identify them at the earliest possible opportunity, and any children or young people that they are the parents or guardians of.

**The Prison Service:** The Prison Service will be aware of many adults who may be at risk of harm, both as new and existing inmates and those being readied for release. They, and ASP services should be alert to the need for links and local protocols to support ‘adults at risk’.

## 4. Capacity and Consent

[Section 8\(2\)](#) of the ASP Act states that a person to be interviewed is not required to answer any questions and must be informed of this fact before the interview starts. The council officer should seek consent to the interview and make clear that they have a right to refuse to answer some, or all of the questions.

If the adult is thought to have been influenced to refuse consent, consideration should be given to whether there has been “undue pressure” applied and therefore a need to consider an application for an Assessment Order.

[Section 35\(3\)](#) of the ASP Act allows for an individual’s refusal to give consent to a protection order to be ignored, only where the sheriff believes the adult has been unduly pressurised to refuse consent and where there are no other steps which reasonably could be taken with the adult’s consent which would protect the adult from risk of harm.

[Section 35\(6\)](#) does not permit a council officer or medical practitioner to ignore an adult’s refusal to be interviewed or medically examined, even after an assessment order has been granted.

The revised [Code of Practice 2022](#) and [Communication and Assessing Capacity](#) provides additional information on capacity and consent. While capacity or lack of capacity does not determine whether the three-point test is met, capacity is relevant in relation to the ability to consent; such as consent to a medical examination or to take decisions relating to care arrangements or financial dealings. Capacity applies to decision making and being able to implement decisions.

A person can have the capacity to make a particular decision but through illness, traumatic event, or infirmity may not have the physical or emotional capacity to retain a memory of a decision and/or to implement that decision. A person’s capacity can vary over time and in respect of different types of decision making. As capacity can change over time, it should be assessed at the time that consent is required.

When considering capacity, practitioners must also consider factors such as the adult’s mood or state of mind, lack of confidence - or lack of experience - in making decisions or carrying out decisions, and the individual’s ability to retain the memory of the decision.

[Please see Supported Decision Making Guidance from the Mental Welfare Commission 2021](#) which assists in supporting people to make their own decisions, where possible, and keeping a person’s rights, will and preferences at the centre of decisions concerning them.

Some or all the following factors may be considered where there is doubt about the adult’s mental capacity:

- does the adult understand the nature of what is being asked and why?
- is the adult capable of expressing his or her wishes or choices?
- does the adult have an awareness of the risks or benefits involved?

- can the adult be made aware of his or her right to refuse to answer questions as well as the possible consequences of doing so?

A lack of capacity to give informed consent to being interviewed is not an automatic bar on the adult participating in the interview. The principle of the adult participating 'as fully as possible' should be adhered to.

Where capacity is uncertain and intervention is deemed necessary to protect an adult, checks should be made with the Office of Public Guardian to ascertain whether the person has granted a welfare power of attorney or if there is a welfare guardian with the relevant powers to consent (or refuse to consent) on their behalf.

Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use provisions in the [Adults with Incapacity \(Scotland\) Act 2000](#) or the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) ([legislation.gov.uk](http://legislation.gov.uk)). However, it should also be noted that even if an adult lacks capacity, Protection Orders, under the terms of the ASP Act, can be applied for. There may also be circumstances where intervention is required utilising more than one piece of legislation.

When requesting an assessment of a person's capacity it is important that the request is specific in relation to which areas of decision making and executive action the person may lack capacity, rather than requesting an overall clinical judgement on capacity. Please see the Practice Guidance for Social Worker's Requesting Capacity Assessments for further information.

## 4.1 When an Adult Declines to Participate

The revised [Code of Practice 2022](#) makes clear that where an adult appears to meet the criteria of an adult at risk but does not want support and or protection and chooses not to co-operate, the responsibility to make inquiries about the adult's circumstances and the degree of risk remains.

Even if there are no concerns in relation to capacity or undue pressure, the adult's refusal to co-operate should not mean the end of any inquiry, assessment, or intervention. While the adult has a right not to engage in any such process, the Council and its' partners should still work together to offer any advice, assistance, and support to help manage any significant risks.

As with any inquiry, the adult's capacity to understand the risks and the possible consequences of not engaging with inquiries, risk assessment, or protective intervention needs to be considered. **A trauma informed approach and consideration of coercive control or undue pressure** is required when considering why an adult may not engage. It is still appropriate in these circumstances to proceed to a multi-agency ASP Case Conference, when the adult has declined to participate, for partners to discuss risk and agree supports to be offered. Offers of support should be creative – if an adult will not accept support from one agency – would they accept it from another? If they will not accept the recommended support, would they accept a different level of support? The adult should be kept informed of the processes underway throughout and be provided with

opportunities to participate in a way acceptable to them, where this can be accommodated. Intervention should be in line with the principles of the ASP Act and should be proportionate, whilst also recognising the needs of any carers.

## 5. Escalation Considerations

- Referrals that are made to Social Work not under Adult Support and Protection procedures, from any agency or member of the public must be reviewed and assessed on the presenting risk, including whether an Adult Protection Referral should be raised.
- Adult concern Referrals: If an Adult Concern referral is received for an adult and Social Work determine that the three-point test is met, this should be escalated from a concern to an ASP referral.
- Three-month trigger: If there have been 3 referrals, whether adult concern Referrals or Adult Protection Referrals or a combination of both, within a 3-month period, this meets the trigger point to consider whether responses to this individual's situation needs to be escalated; by considering escalation under Adult Support and Protection Procedures and/or convening an Adult Support and Protection planning meeting. A meeting should be held with the practitioner and the Team Manager. This meeting, and the decisions made, should be formally recorded on Carefirst under the heading Team Manager Discussion 3 Month Trigger.
- High risk, complex cases: In high risk, complex cases (e.g. extreme self-neglect) where it has not been possible to effectively address risks (e.g. the service user will not engage and has refused offers of support) this should be escalated to Senior Managers to ensure that they are aware of the level of risk and have the opportunity to discuss cases and suggest alternative or additional approaches and/or release resources.
- Large Scale Investigation (LSI): Consideration should be given as to whether an LSI is appropriate in consultation with the Team Manager, who will liaise with the Service Manager. An LSI is a multi-agency Adult Protection response to circumstances where there may be a risk of serious harm within a care setting (this may be either residential care, day-care, home-based care, or a healthcare setting). The circumstances of concern could have arisen during a short timeframe or have accumulated over a longer period. Additionally, there could be circumstances where the seriousness of the harm experienced by one individual and potential impact on others would merit an LSI. Further details on the criteria for a LSI can be found in [the West of Scotland Large Scale Investigation Guidance](#) and within the revised [Code of Practice 2022](#). Please make the Senior Officer for ASP aware of Large-Scale Investigations to enable notifications to be made to the Care Inspectorate.



## 6. ASP Inquiries (with or without investigative powers)

The revised Code of Practice 2022 emphasises that the ASP Act does not formalise a distinction between inquiries and investigations. An inquiry is the overarching process within which the investigatory powers set out in the ASP Act are used to enable the council to fulfil its obligation to conduct inquiries.

On receipt of an adult protection referral, Social Work Services are required to make inquiries under the ASP Act. Section 4 sets out our statutory duty to make inquiries about a person's well-being, property or finances, where we know or believe that a person is at risk and that we may need to intervene to protect them. This duty arises regardless of how we come to know or believe an adult is at risk.

All protection referrals must be viewed alongside the history to ensure incidents are not viewed in isolation, resulting in inappropriate responses. A Chronology should be consulted and added to for each referral for tracking and risk analysis.

**Adult Support and Protection Planning Meeting:** An Adult Support and Protection Planning Meeting is a workers multi-disciplinary/multi-agency meeting that can be held to ensure sufficient information is shared between relevant agencies to inform decision making about the level of risk and intervention. If a planning meeting is being convened, this should be held no later than 5 working days from the referral being received.

An inquiry with or without investigative powers will gather further information to make an informed decision as to whether the three-point test is met and to determine the next steps.

### 6.1 Timescales

The inquiry must begin within 24 hours from receipt of the referral. If there is an allegation of physical or sexual harm, or there are major concerns regarding the harm issues being raised, inquiries must commence immediately. The Police must be contacted, in the first instance, if staff know or believe a crime may have been committed, to allow agreement to be made on how best to proceed. The inquiry should be completed within 5 working days. On rare occasions, if there are circumstances where the timescale cannot be met, the practitioner should discuss this with their line manager and a revised timescale agreed, with reasons clearly recorded on Carefirst.

The purpose of an inquiry, with or without use of investigatory powers, is to determine whether adults are at risk of harm, and whether the council may need to intervene, provide support, or provide any other assistance to the adult or any carer. Any use of investigatory powers is triggered through the Section 4 duty to inquire.

The Adult should be informed that they are subject to an inquiry and that their views will be sought. The Code of Practice recommends that these initial conversations are by a council officer.



## 6.2 Desk Top Inquiries

An inquiry can be undertaken by a non-council officer, only as far as this includes a desk top inquiry i.e., collation and consideration of relevant materials such as previous records or consulting other agencies. For most cases, a visit is likely to be required, however, in some cases, the desk top inquiry will be enough to determine whether the adult is at risk of harm.

If desktop inquiries cannot establish whether an adult is at risk of harm, and further steps need to be taken by progressing to inquiry using investigatory powers and therefore, when specific actions need to be taken such as a visit and direct contact with the adult for interview or medical examination, or for the examination of records, this requires a council officer as per the ASP Act.

Where a non-council officer, is undertaking a desktop inquiry, their actions and findings should be recorded as case notes until a determination can be made as to whether investigative powers are required to inform the inquiry, this includes a visit. If investigative powers are not needed the practitioner will complete the AP1 inquiry report. Where a visit or other investigatory powers are required the AP1 will be reallocated to a council officer for completion.

Many different professionals in statutory agencies and other organisations have contact with adults at risk of harm including Social Workers, medical and nursing staff and other health professionals, staff delivering care services, Procurators Fiscal, the Police, and staff of voluntary organisations. A multi-agency and multi-disciplinary approach are imperative, and information should be gathered from as many sources as possible.

## 6.3 Actions as part of an inquiry (with and without investigatory powers)

**Actions as part of an inquiry can include:**

- Gathering information from the individual, the referrer and consulting with other agencies or services either via telephone, face to face, email communication, records-checks, and an ASP planning meeting to establish facts and evidence and to understand the circumstances around the Adult Protection Concern.
- Arranging a visit under [Section 4](#) of the Act to make the adult (and carer) aware of the concern and the inquiry, and to establish whether the adult meets the three-point test and offering advice, guidance and assistance as appropriate.
- Consideration of appropriate services/supports such as advocacy, communication supports and any other practical supports necessary.

To ensure robust risk assessment and decision making, the AP1 report should include all relevant information, informing the decision in relation to the three point test and a chronology should be updated.

**Please note that any visit carried out at inquiry stage is using investigatory**

**powers and as such must be carried out by a council officer.**

A visit being undertaken to determine whether the three point test is met, should not prevent the use of further investigative powers and risk assessment where the three point test has been met and further ASP action is required or when the complexity of the situation requires further investigation.

**Where investigative powers such as an investigative interview or medical examination are required, this should be recorded in an AP2 risk assessment.**

## **6.4 Initial considerations with Team Managers**

The following initial decisions must be considered in consultation with the Team Manager, and, if immediate protective measures are required, with the Operational Manager and Legal Services.

**Crime:** The Police must be contacted if staff know or believe a crime has been committed to reach agreement on how best to proceed and to ensure non-contamination of any evidence. Where it is decided that a criminal investigation is required, the Police will undertake this. Social Work and Police should liaise over action necessary to protect the adult at risk during a Police investigation. However, Social Work will continue to support the adult at risk and any relevant others in co-ordinating and monitoring any agreed protection planning.

**Consideration of immediate protective measures:** The Team Manager or a more senior officer must authorise any application for Protection Orders. All potential applications should be discussed with Legal Services who will apply to Court. Council Officers will be required to go before the Sheriff to offer evidence in support of the application.

**Consideration must be given to other relevant legislation:** where appropriate, such as the [Adults with Incapacity \(Scotland\) Act 2000](#) or the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#). Regard should also be given to the possible relevance of the [Social Work \(Scotland\) Act 1968](#), to ensure that assessments of need and promotion of social welfare are considered, where appropriate. The [Social Care \(Self-directed Support\) \(Scotland\) Act 2013](#) can offer more choice and control to enable an adult to meet their outcomes. If domestic abuse is a factor, consideration may also be given to the [Domestic Abuse \(Scotland\) Act 2018](#) and the relevance of a Multi-agency Risk Assessment Conference ('MARAC') (discussed further below).

**Children:** All agencies have a responsibility to consider the needs of any child who may reside or have contact with an adult(s). The responsible social work manager will inform Children and Families Social Work Services and a decision will be made if child protection procedures should also be initiated. Agencies with concerns that relate both to children and adults should state this at the point of referral. See [NAC - Child Protection North Ayrshire](#) for more information. Please view the [North Ayrshire Child Protection and ASP Interface Guidance](#) for more information.

**Other Adults at Risk:** Are there other adults involved who may be at risk? If so, their

needs will need to be considered and an ASP referral made where appropriate.

**Adults aged 16 – 18 years of age:** An overlap may exist where a person is aged 16 or 17 years and could be classed as both a child and an adult at risk. The revised [Code of Practice](#) makes reference to transitions and the need for practitioners to be aware of other legislation, which helps support young people. It reinforces a requirement for services to work together, to share information and ensure systems are in place to transfer responsibilities between agencies and services. Where a young person between the age of 16 and 18 requires protection, services will need to consider which legislation or policy, if any, can be applied. This will depend on the young person's individual circumstances and the legislation or policy framework.

**Medical Intervention:** Is medical intervention required? Where possible, all courses of action must first be agreed with the adult. In situations of extreme risk or urgency the council officer may need to take immediate action (i.e., involve emergency services without prior consent).

**MAPPA:** Due to the nature of their crimes, some offenders may be subject to MAPPA (Multi Agency Public Protection Arrangements). In most cases the MAPPA managed offender will present as a danger to the public which may include Adults at Risk of Harm. Victim issues are routinely discussed at MAPPA meetings and ways to protect victims identified. However, it is also possible that the offenders themselves may be Adults at risk of harm. If that is the case, the nature of any risks that are identified will be explored at the MAPPA meeting. Agencies across North Ayrshire must ensure a check across specialisms to ensure no relevant information is missed. Information will be shared as part of the MAPPA process, and workers in adult (or children's) services will be invited to MAPPA reviews where appropriate. If, during an inquiry, any person is identified that is subject to MAPPA, this must be reported to the MAPPA Coordinator and relevant justice and Police colleagues should be invited to ASP Case Conferences. For more information please see: [Multi-Agency Public Protection Arrangements \(MAPPA\)](#).

**MARAC:** Multi Agency Risk Assessment Conferences enable multi-agency information sharing about domestic abuse victims at risk of the most serious levels of harm to inform a co-ordinated action plan. An adult at risk of harm may be known to MARAC as a victim or perpetrator. All MARAC representatives must be aware of Adult Protection Procedures. If during MARAC preparatory work, it becomes clear that an adult is open under Adult Support and Protection procedures the MARAC representative must liaise with the allocated Social Worker. Where MARAC representatives know or believe the adult is at risk of harm as defined in the ASP Act, a referral must be made via the Adult Protection Referral procedure - see section 23 of this document. Care must be taken where a perpetrator is referred as an adult at risk but is unaware that the victim is involved in a MARAC process; information must not be shared that will place the victim at increased risk. Reciprocally, if during an ASP inquiry, any person is known to MARAC, as alerted on the individual's Carefirst record, the ASP concerns must be shared to the MARAC co-ordination team in line with agreed process. For further information and to refer, please see [Multi-Agency Risk Assessment Conference \(MARAC\)](#).

**Unpaid Carers:** The inquiry should also try to understand the carer's situation.

Practitioners will be aware that unpaid carers may also experience disabilities or ill health which may impact on their caring role. Caring, without appropriate support, can have a significant impact on carers' health, wellbeing, and quality of life. Inquiries will recognise and acknowledge strains on the carer and explore what could be provided to them or to the adult which may alleviate these. Additional complexities arise where a Guardian or similar proxy presents a form of risk, this will require consideration of consent and undue pressure.

**Contracts and Commissioning:** ASP referrals relating to paid care providers in the private or third sector should be alerted to contracts and commissioning. Inquiries involving paid staff can involve complexities in carrying out investigative powers. An ASP referral could be concerned with alleged harm caused by staff of a registered service or organisation. Challenges exist in coordinating involved agencies, considering all the legislation that may apply. The coordination of these investigations requires a mutual understanding of each organisation's statutory and legal responsibilities, effective communication, and cooperation. The focus should be on working in partnership and making the best use of each organisations skills and expertise to achieve safe, effective, and timely outcomes for adults who may be at risk of harm. For further information please view the [Investigations Involving Paid Staff Flowchart](#).

**Care Inspectorate:** Registered Care Services must separately notify the Care Inspectorate when an allegation or evidence of harm is received, which may involve one or more service users. The Care Inspectorate should discuss the outcome of any intervention or risk assessment they carry out with the responsible Social Work Manager and/or Contracts Section to clarify whether any regulatory action is required from the outset. If considering possible regulatory action, discussion should be held with the council involved and where appropriate, the Police and/or Procurator Fiscal to ensure that any Care Inspectorate activity will not interfere with ongoing investigations. The Care Inspectorate will complete and submit an ASP referral to Social Work Services, as required under the Act following ASP allegations and complaints that come to them. Social Work Services will undertake Inquiries and inform the Care Inspectorate of the outcome.

**Cross-boundary ASP** consideration needs to be given to, clear and efficient information sharing, to ensure that an adult at risk moving out of the local authority area will be provided with the same level of support and protection until the circumstances of any move are assessed, shared, and reviewed, to determine whether the risks are reduced or eliminated. This includes where adults are placed outwith their local authority area, are moving, or have moved, with or without notice, to relevant authorities and includes adults known or believed to be at risk of harm at any stage of Adult Protection procedures:

- Pre- inquiry screening or
- Inquiry without investigative powers or,
- Inquiries with investigative powers or,
- Protection Plan

The primary means for transferring information for adults believed to be at risk of

harm is via a transfer case conference. Cross-boundary transition arrangements should be in line with Social Work Scotland's [ASP Cross-Boundary Cases: Best Practice Principles – SWS](#). Please see the Cross-boundary ASP protocol for North Ayrshire for further information.

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

Investigations within Care Settings in North Ayrshire: When an adult protection referral is received from a care setting within North Ayrshire, checks should immediately be made regarding the funding arrangements for the resident. Should the resident be funded by North Ayrshire Council, council officers should proceed with inquiries, using investigative powers as appropriate. Council officers should advise the Care Inspectorate of the referral and negotiate appropriate involvement by Care Inspectorate staff. Should the resident be funded by another council, contact should be made with the funding authority to advise of the referral. North Ayrshire Council will remain the 'host' authority. Council officers from North Ayrshire Council should normally lead any inquiry with or without investigative powers unless the funding authority negotiates transfer of this responsibility. Any disagreement must be escalated to Senior Management level.

## 6.5 Duty to Cooperate

[Section 5](#) of the Act states that the Mental Welfare Commission for Scotland, the Care Inspectorate, the Public Guardian, all Councils, the Police and the relevant Health Boards and Healthcare Improvement Scotland all have a **duty** to co-operate with a council making inquiries, and with each other where such cooperation is likely to enable or assist the council making those inquiries. Any information received during an inquiry is treated with the utmost confidence and will not be disclosed to any third parties other than in accordance with the provisions of the Act.

[Section 5](#) outlines a further number of service providers who contribute to the protection of adults at risk. Bodies named in the Act have unequivocal responsibilities to cooperate with the local authority undertaking ASP inquiries; to notify the council of an adult who may be at risk of harm; and to cooperate with others named. Other organisations not specifically named should also cooperate with ASP processes where requested, to achieve the best outcome for the individual at risk of harm.



Data Sharing protection law enables organisations and businesses to share personal data securely, fairly, and proportionately. The Information Commissioner's Office (the "ICO") has a [Data Sharing Code of Practice](#) and the resources available at their Data Sharing Information Hub provide guidance and tools to aid data sharing in compliance with data protection law. The ICO provide a [step by step guide to data sharing](#).

[Section 10\(4\)](#) of the Act states that a council officer may require any person holding health, financial or other records (in any format) relating to an adult known or believed to be at risk, to give records or copies of them to the officer. This means that all relevant information can be gathered from partner agencies and public bodies via adherence to authorisation protocols. Requests for information, if not required immediately, should be made in writing, either by letter or email. It should be noted that health records can only be inspected by a health professional, but relevant information must be passed to a council officer. If such requests are being made, advice should be taken from staff in Legal Services [legaldiary@north-ayrshire.gov.uk](mailto:legaldiary@north-ayrshire.gov.uk)

When requesting information from financial institutions under Section 10 of the Act, the [Section 10 Proforma](#) can be used to guide and support the request. Under Section 49 of the ASP Act, it is an offence for a person to fail to comply with a requirement to provide information under Section 10 unless that person has a justifiable reason not to do so.

## 6.6 Outcome of Inquiry

**When the three-point test is met:** As soon as practitioners are satisfied that the adult meets the three-point test and further activity is required under the ASP Act, an AP2 investigation and Risk Assessment will be opened and assigned to a council officer and a second person will be identified. A plan and timing will be agreed with the Team Leader for the investigative interview, including consideration of advocacy, and any other services and communication needs, and involvement of other appropriate services e.g., health, children and families, legal proxies, services for black and minority ethnic groups, along with any other measures that would facilitate the interview.

Action must be proportionate to the level of risk of harm. Where there are serious or immediate concerns, a visit under [Section 7](#) should not be delayed. The level of risk and complexity may require an urgent initial case conference, or information gathered may determine that immediate action is required to protect the adult at risk. For example, the adult needs to be removed to a place of safety and/or requires a medical assessment. This must be discussed with the Team Manager/Senior Manager and Legal Services (where protective powers are being considered) and immediate action agreed and taken.

**The three-point test is not met:** Where it is determined that the adult does not meet the three-point test and no further action is required under ASP Legislation, other relevant legislation, local procedures, or alternative services should be considered. E.g., the Adult can continue with existing support, or support plans can be reviewed, or another agency might be best placed to offer the support the adult needs.

The practitioner will record the circumstances which gave rise to the inquiry, the actions taken and the decision and why they believe that action was not required under Adult Support and Protection with reference to the three-point test. The outcome of the inquiry should be recorded in the case note and AP1 and passed to the Team Manager.

**Sharing the Outcome of Inquiry:** It is the responsibility of the practitioner, completing the inquiry, to inform referring individuals or agencies about the outcome of the inquiry. This should be proportionate to the circumstances and respect the need to maintain confidentiality. For example, if a member of the public asks for the outcome of a referral, they would be advised that their concerns are being taken seriously. No further information would be provided without the adult's consent. For referrals from staff from any agency – they should be notified as soon as the inquiry is complete as to whether the case will proceed under ASP or not and whether the adult is at risk – standard wording to assist in giving appropriate feedback to the referrer can be provided by contacting ASP Central Admin staff.

Feedback to the Police should be sent to:

[AyrshireConcernHub@scotland.police.uk](mailto:AyrshireConcernHub@scotland.police.uk)  
[AyrshireARC@scotland.police.uk](mailto:AyrshireARC@scotland.police.uk)

If an inquiry finds that the alleged harmer has Power of Attorney or is a financial guardian, the Office of the Public Guardian (OPG) should be informed of a potential issue and of the outcome of the inquiry. If the inquiry finds that the alleged harmer is a welfare guardian, the local authority should address this and under their duties in the Adults with Incapacity (Scotland) Act 2000, consideration should also be given to making a referral to the Mental Welfare Commission (MWC).

An observation should be added to CareFirst to evidence that feedback was given to the referrer and where the OPG and MWC have been contacted.

## **7. Good Recording and Defensible Decision Making**

Even, if the adult does not meet the three-point test, the practitioner may still take further action. This should be recorded on the AP1 and CareFirst Observations. When information is recorded about ASP decisions, this will detail what action was taken and why, and any action considered and not taken, and why. Consultation with any others will also be recorded (including the name, designation, organisation and/or relationship to the adult) which helped the practitioner to arrive at their decision.

ASP Good Recording and Defensible Decision-Making Training Session can be booked by contacting: [ASPTraining@north-ayrshire.gov.uk](mailto:ASPTraining@north-ayrshire.gov.uk)

When recording any ASP activity on CareFirst under Observations – select Adult Support and Protection from the Context picklist and then choose the appropriate Subject Heading from the available 'pick lists' – anyone looking at Observations should be able to 'understand the story' of the ASP Referral from the referral coming

in - to the final decisions taken in relation to ASP. First entry should be about the ASP referral and there should be a clear narrative about the progress of the ASP referral to its conclusion – listed under the correct headings.

Any decisions taken in relation to ASP – whether the case is proceeding or not, should also be recorded on the Significant Life Events screen for the adult



## 7.1 Support Services

At an early stage of the investigative process, council officers, under **Section 6** of the Act, have a **duty to consider** the need for support services for the adult, particularly **Advocacy Services**. See the [Scottish Independent Advocacy Alliance](#). Where communication difficulties are apparent the adult **must** be provided with assistance or material appropriate to their needs to enable them to make their views and wishes known. Wherever possible, the adult should be asked which form of communication is preferred e.g., technical aids or translator services. The input of a Speech and Language Therapist may also be considered.

If the adult is being interviewed by the police, the support of an **Appropriate Adult** may be required for people subject to a diagnosed mental disorder as defined in [s328 of the Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#). The Police will arrange for an Appropriate Adult to be available. For further information see: [Appropriate Adult Guidance for Local Authorities](#).

The revised Code of Practice 2022 states: 'It is likely that a visit to the adult, and the interview with them, will be central to adult support and protection processes, including information gathering, determination of the three-point test, risk assessment, and determination of actions to be taken'.

## 7.2 Investigative Powers

An investigation uses powers under the ASP Act to fulfil the obligation to conduct inquiries under [Section 4](#)

[Section 7 to 10](#) of the ASP Act states that investigative powers require a council officer to be involved and therefore, carry out the investigative functions.

The following conditions must be met to become a council officer:

- Fully Qualified Social Worker with a minimum of 1 year post qualifying experience
- Having undertaken the ASP for Council Officers - Training Course
- Having the approval of their Line Manager to act as a Council Officer
- Council Officer Training should be refreshed every three years.

**Inquiries using investigative powers Section 7 to 10 can be used:**

- to determine what action is required to protect the adult from harm.
- to gather further information to determine whether the adult is at risk; or
- to gather further information to determine whether further action is required to protect the adult from harm.

**Investigative powers include the following activities, all of which require the involvement of a council officer:**

- a visit.
- an interview with the adult.
- a medical examination of the adult.
- the examination of records.

The Act states that:

- a visit may be undertaken to assist the council in conducting inquiries.
- interviews may be undertaken with any adult present during a visit.
- medical examinations and the examination of records may be undertaken when the council officer knows or believes the adult may be at risk of harm (i.e., examinations can be undertaken as part of an inquiry but before a determination has been made as to whether the adult is at risk of harm).
- the purpose of an assessment order is to establish whether the person is an adult at risk.

As per Section 4, a council has a duty to inquire to decide whether it needs to do anything to protect an adult at risk from harm. That harm may relate to their wellbeing, property, or financial affairs.

As part of those inquiries, there are some activities (use of investigative powers under the Act) which **may only be undertaken by a council officer** or by another person accompanying them, including visits, interviews, a medical examination, and examination of records.

Investigation activity should be carefully planned and managed to ensure that:

- all available information is gathered and considered to complete a risk assessment.
- the adult is fully supported to contribute; understand their views of risk through formal interview.
- any medical evidence and medical intervention are provided.
- the police are notified if it is thought a crime may have been committed.
- determination can be made as to whether the adult meets the three-point test as an adult at risk.
- appropriate arrangements can be made for support for, and protection of, the adult.

[Section 8](#) of the Act permits a council officer and any person accompanying them, to interview an adult, in private, and to interview any adult present at the place of the visit under section 7. This applies from the start of an inquiry until ASP procedures have ended.

## 7.3 Right of Entry

Section 7 of the Act allows a council officer to enter any place and adjacent place to make the necessary investigations to:

- enable or assist the council in conducting inquiries under Section 4 to decide whether the adult is an adult at risk of harm.
- establish whether the council needs to take any action to protect the adult at risk from harm.

**Who may undertake the visit?** A council officer, as defined in [Section 53](#) of the Act and who meets the requirements of the Order described previously, can undertake a visit. The council officer will be accompanied by a second person. It is appropriate for the council officer to be assisted in the investigation by appropriately qualified and trained staff from the council or other agency such as a key worker, health professional or police or another professional known to the family. It is helpful but not essential for the second person to have completed second person training.

## 7.4 Visit

[Section 36\(1\)](#) states that a council officer may only visit a place at reasonable times. A balance needs to be struck to fully involve the adult and give notice, with professional judgement, regarding risk and imminent harm. [Section 7](#) permits a council officer to enter any place e.g., the adult's home, a relative or friend's home, a care home, a day centre, educational establishment, place of employment, respite unit, hospital, or other medical facility. The council officer can access all parts of the place visited e.g., sheds, garages, outbuildings, and all areas used by, or on behalf of the adult, e.g., sleeping accommodation, facilities for hygiene, meal preparation areas and general living space.

## 7.5 If entry is refused.

Where a council officer is refused entry to the premises, they should initially consider how entry may be achieved, without resorting to seeking a warrant from a sheriff authorising entry as a first course of action. A council officer may not use force during, or to facilitate, a visit ([Section 36\(4\)](#)). Provided delay would not increase the risk to the adult, the council officer and Team Manager should arrange a multi-disciplinary discussion and plan to coordinate action by those involved before deciding whether to apply for a warrant. Regard should be given to minimising distress and risk to the adult. The views of any other persons who may be concerned for the welfare of the adult should be considered.

The Team Manager and Legal Services should be contacted for advice if a warrant may be required. If a warrant is applied for and granted, the council officer and his/her colleague will be accompanied by a Police Officer.

## 8. Investigative interviews

Due regard should be given to who the second person is, from the adult's perspective and from previous information gathered, as this could significantly influence the quality of the investigative interview. Prior to visiting under Adult Support and Protection, the Council Officer and second person should meet with the Team Manager, where possible, to discuss the concerns and plan the investigative interview. The Council Officer and Second Person will agree how to conduct the interview and clarify roles. The interview should be arranged to take place at a time and venue that suits the adult at risk, as far as possible. Interview planning should consider ways of assisting a person to participate, including the use of communication aids, deciding where to conduct the interview based on the information received, the views and wishes of the adult and what would best enable the adult to participate as fully as possible. The council officer must also offer a referral to advocacy to assist the adult with the interview.

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

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

**Safety of Practitioners:** Where there is an indication that the council officer may encounter resistance, including the threat of verbal or physical violence, a meeting with the Team Manager will ensure staff are supported in planning and executing the visit to ensure their protection. Reference should be made to the council's violence to staff or lone working procedures to assess any potential risks and measures, such as staff visiting in pairs or liaising closely with the Police, where necessary.

The interview assists the council officer to determine if the individual is at risk of harm, and/or what action may be required and may include:

- establishing if the adult has been subject to harm.
- determining whether the adult is at risk of harm.
- establishing if the adult feels their safety is at risk and from whom.
- discussing what action, if any, the adult wishes or can take to protect themselves.
- discussing what action, if any, others can take to protect the adult.

## 8.1 Interviewing with others present

It is good practice to ask an adult whether they would wish another person to be present and to facilitate this where possible. Consideration should be given to potential undue influence and the impact of any interview on others. It is inappropriate to use children as interpreters and children should not be present to discuss complex concerns or risks. Depending on the content of the interview, those present could also experience trauma through listening to sensitive/distressing information concerning the individual's experiences.

## 8.2 Private Interview

A private interview would be deemed necessary where:

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

[Section 8](#) allows the interviewing of any adult in a place being visited under Section 7 of the Act. For example, in some cases, it may be in the interest of the adult for another person to also be interviewed such as someone who shares their home with the adult or, in a regulated care setting, a care worker. Section 8(2) provides that anyone interviewed under this section is not required to answer any questions, and that they must be informed of this before the interview begins.

## 8.3 The Role of the Second Person

The role of the second person in an investigative interview includes:

- jointly investigating concerns with the council officer.
- contributing to an assessment of the risk to the adult.
- taking a detailed record of the interview, and potentially being available as a second witness in the event of court proceedings.
- where appropriate, assisting communication with the adult (or any other member of the household).

(Additional communication support may be required for British Sign Language, lip speakers, a Makaton communicator, a deaf-blind communications interpreter, or a language interpreter where English is not the visited person's first language).

The Second Person should record the interview in note form. The notes do not need to be completely verbatim, but should:

- be an accurate reflection of questions asked.
- reflect any corresponding answers and/or statements made by the adult.

- contain the adult's exact words at key points.
- include quotation marks when noting the adult's exact words.

Note: all the handwritten notes from every investigative interview, must be kept. They can be stored within the paper social work file for safekeeping. If your team does not hold paper files, alternative arrangements must be made for the storage of all handwritten notes. The notes should also be scanned, and an electronic file kept in addition to the paper version. The handwritten notes should be fully legible, and these require to be signed and dated by the two workers and retained in the adults file – in case they are required.

The Role of the Second Person [Training](#) covers this process.

## 8.4 Stages of Interview

### Introduction

1. Formal identification as a Council Officer is required at all visits. The accompanying person must also produce formal identification, and both must be shown to the adult. The purpose of the visit must also be explained at the outset (be very clear that the interview is being requested because of Adult Support and Protection Concerns having been raised). Explain that the adult has the right to withhold consent to the interview, can choose to answer some but not all questions and can choose not to co-operate with entire investigative process if they so wish – but point out that it would be very helpful to be able to record their views in relation to the concerns that have been raised. Explain the reason for writing notes of the interview. How all this is conducted will have an impact on whether the interview continues. Where possible, others in the house should be offered an explanation as to what is happening and why, without breaching the adult's right to confidentiality. The council officer should make every effort to ensure that information is provided in an appropriate form that the adult can understand.
2. **Rapport** - Begin the interview with neutral subjects, try to establish a two-way conversation that helps the adult to relax. This could be done by the person who knows the individual best.
3. **Free Narrative** – Always use open questions e.g. 'Do you know why we have come today?' 'What's it like living here?' 'Tell me about your family'. Try not to interrupt, tolerate long pauses. Encourage with open prompts such as 'then what' and 'anything else?' Reflect in the words of the adult 'so you were saying...'.
4. **Questions** - Again, open questions – 'What...' 'Who...' 'When....' 'Where...' 'you said earlier... tell me a bit more about that'.
5. **Closure** – Try to summarise as closely as possible what was said by the adult. Check the accuracy of what you have understood. Explain to the adult and any support people in place what happens next based on what has been discussed. Give contact details and try to re-establish a neutral ending. Leave the Adult with a copy of the (Green) Leaflet – Adult Support and Protection 'Information for You' (Guide to Adult Support and Protection for Service Users) – this should have the council officer's contact details completed at the appropriate place and leaves space for the Adult to note any questions they might have after you have left. These leaflets can be obtained from the Senior Officer ASP.

The ASP 'Investigative Interviewing' (2 day) Course is an essential component of the [Training](#) for Council Officers in North Ayrshire.

## 9. Medical Examination

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

A medical examination may be required as an investigative power for several reasons including:

- the adult's need of immediate medical treatment for a physical illness or mental disorder.
- to establish if the adult has sustained injuries of any kind.
- to provide evidence of harm to inform a criminal prosecution under police direction or an application for an order to safeguard the adult.
- to assess the adult's physical health needs; or
- to assess the adult's mental capacity.

Examples of circumstances where a medical examination should be considered include:

- the adult has a physical injury which he or she states was inflicted by another person.
- the adult has injuries where the explanation (from the adult or other person) is inconsistent with the injuries and an examination may provide a medical opinion as to whether harm has been inflicted, or whether there are concerns around self-harm.
- there is an allegation or disclosure of sexual abuse, and the type of assault may have left physical evidence (following local procedures for liaison with the police);
- the adult appears to have been subject to neglect or self-neglect and is ill or injured and no treatment has previously been sought.

Section 9(2) of the Act states that the person to be examined must be informed of their right to refuse before a medical examination is carried out. In an emergency, where consent cannot be obtained, doctors can provide treatment when a

- life is in imminent danger and treatment is necessary to save life.
- to prevent significant deterioration to the point of endangerment to life.

However, doctors need to respect any valid advance refusal, they know of. An example of an emergency where consent cannot be obtained is where the person is unconscious.



Where it is not possible to obtain informed consent of the adult because they lack the mental capacity or have difficulty communicating to provide consent, the council should contact the Office of the Public Guardian to determine whether welfare attorney, or welfare guardian has been appointed.

Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use the provisions in [Adults with Incapacity \(Scotland\) Act 2000](#) or the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#).

Consideration should be given to the importance of where and how medical examinations are conducted. Where a forensic medical examination is required/referred due to concerns around harm caused by rape or sexual assault, this must occur in a suitable healthcare facility i.e., a forensic medical suite in a Sexual Assault Referral Centre (SARC), where the suite has been properly decontaminated.

## **10. Risk Assessment and Risk Management**

Decision making is based on the principles of the legislation and analysis of risk and how risks can be managed. Discussion with the Team Manager is essential in agreeing the outcomes of an ASP inquiry with or without investigative powers.

The council officer, in conjunction with others, will decide when to undertake an ASP Risk Assessment. It is anticipated that this will be completed before a case conference to inform the Chairperson in advance. The adult being assessed should always remain at the centre of the assessment and subsequent decision making.

The Risk Assessment (AP2) requires assessors to determine whether the adult assessed has specific communication needs or requires support from an advocacy service. The tool is designed to ensure that individual rights are recognised at the beginning of an assessment and that capacity is considered at this stage. The question of information sharing is included both at the beginning, and end of the risk assessment, to ensure that the adults views are sought. Where it is agreed that information sharing is required against the person's wishes the reasons for this should be clearly recorded. The Risk Assessment provides a format for bringing together comprehensive, relevant information, the tool reflects an expectation that professional opinion/judgement is required about the risk and any protective action which might be needed.

### **10.1 AP2 Timescales**

An AP2 Risk assessment should be started within 8 working days of the referral being received and be completed within 15 working days and should include:

- an analysis of the risks identified and the adult's ability to safeguard themselves.
- an assessment of whether the adult is at risk of harm.
- an assessment of the nature and severity of any risks identified, including when and where the adult may be placed at risk and an identification of the factors that will impact on the likelihood of risk.

- a clear overview of the risks, vulnerabilities, and protective factors.
- The adult's views.
- Information about significant others in the adult's life and their views, where appropriate; the collation and analysis of a multi-agency chronology, to inform the risk assessment.
- any immediate action taken to safeguard the adult.

## 11. Chronologies

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

Chronologies are an essential feature of risk assessment in adult support and protection activity and must be updated and analysed during inquiry with and without investigation.

A chronology is:

- a summary of events key to understanding of need and risk, extracted from comprehensive case records, and organised in date order.
- a summary reflecting strengths and concerns evidenced over time.
- a summary highlighting patterns and incidents critical to understanding need, risk, and harm.
- a tool to inform understanding of need and risk.

A chronology can be single agency or multi-agency.

A multi-agency chronology must comply with information sharing guidance and protocols in the way that it is developed, held, shared and reviewed; reflecting information sharing guidance in the revised [Code of Practice 2022](#), including duties to cooperate under [Section 5](#) of the Act. It must be accurate, relevant, and proportionate to purpose.

A chronology, whether single- or multi-agency is not a comprehensive case record and should not substitute detailed and accurate case records. A chronology should also not exclusively list adverse circumstances and must consider significant positive changes also.

A multi-agency chronology can be developed as part of inquiries, to contribute to the risk assessment and subsequent decisions. Contribution to the chronology is a collective responsibility. This should support the development of a shared understanding with, and between, those involved in the risk assessment and in determining an appropriate support and/or protection plan.

The views of the adult should be sought to check the accuracy of the chronology and to understand the impact of events. Further Guidance is provided in the [Care Inspectorate's Practice Guide to Chronologies](#).

## 12. Decisions following inquiry with investigative powers.

Where the adult does not meet the three-point test as an adult at risk of harm possible decisions are:

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

Where the adult at risk of harm, three-point test is met, and harm is established or suspected then the possible decisions are:

- agree an interim protection plan.
- proceed to case conference.
- consider intervention under the Adult Support and Protection (Scotland) Act 2007, the Adults with Incapacity (Scotland) Act 2000 or the Mental Health Care and Treatment (Scotland) Act 2003.
- use of other relevant legislation.

## 13. Initial and Review Case Conferences

Following investigation, a [Case Conference](#) should be recommended and convened where an inquiry has concluded with an assessment that an adult is at risk of harm and that protective orders may be required or where engagement of the adult and all relevant agencies is needed to further assess risks and strengths, and planning for next steps. If a decision is made to proceed to Case Conference the responsible manager should convene a case conference as soon as practical, but no later than 20 working days from the date the initial referral was received by social work.

The purpose of an Adult Support and Protection Case Conference is:

- to facilitate multi-agency sharing of information relating to possible harm.
- the joint assessment of current and ongoing risk
- to consider any existing risk management plan
- to consider and agree, where appropriate, a specific and detailed Support and Protection Plan (where required)
- agreement of timescales for addressing risks and providing services to support and protect the adult.

The council officer has a lead role in presenting their risk assessment including:

- providing evidence and analysis of risk with reference to the three-point test
- Informing of the type of harm the adult is subject to, or at risk of
- Providing relevant information such as the adult's living arrangements
- Informing of existing supports, formal and informal and any risk management measures already in place.

- Advising whether the adult has any caring responsibilities.
- Highlighting issues of capacity, consent, or undue pressure; and
- Considering the skills, attributes and resilience factors the adult has.

The adult should, where possible, be invited to contribute as fully as possible. Case Conference decisions will seek to protect an adult using informal protection measures but will also consider the need for statutory protection measures under the ASP Act or other relevant legislation.

The needs of the adult may mean that a Case Conference may also need to consider other options for protecting people, including under the provisions of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) and the [Adults with Incapacity \(Scotland\) Act 2000](#). However, this should not compromise any actions that may need to be taken under ASP legislation.

There will be occasions where the alleged perpetrator of harm may be a carer or relative of the adult at risk of harm. As such, there may also be a need to consider support to the alleged harmer as well as to the adult themselves.

Where the adult has not attended the meeting, the meeting should agree arrangements for how the outcome of the meeting is explained to them, and who will be responsible for doing this.

Case Conferences should be as inclusive as possible with the presumption that, barring serious risks to attendance, the adult will be in attendance. The adult can be accompanied by a person of his/her choice – provided they are not involved in the harm of the adult. Support should be given to the adult to make this as easy as possible, including giving advice and preparation support in advance of the meeting, consideration of timing, venue and accessibility of meetings and the number of people in attendance. The adult does have the right to decide not to attend, and this should be respected, unless there is reason to believe their decision was made because of undue pressure. Where the adult is unable to attend, the reason for their non-attendance and efforts to support their attendance should be recorded in the Case Conference minute and arrangements should be made to ensure that the adult's views and wishes are shared at the meeting.

### 13.1 Invitations to Adult Support and Protection Case Conferences

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

To schedule a Conference, email ASP Shared mailbox at [adultprotection@north-ayrshire.gov.uk](mailto:adultprotection@north-ayrshire.gov.uk) including:

- the timescale for conference

- the fully completed [Case Conference and Review Case Conference Pro Forma](#)
- the venue preference
- any other relevant information (such as mobility issues, communication issues) .
- the completed AP2 and chronology (at least 48 hours before the meeting).

In North Ayrshire, 2 Senior Officers, Community Care, are employed to chair Case Conferences. They are independent chairs, who do not have active involvement in service provision.

The chairs are knowledgeable in Adult Support and Protection Legislation, have experience in adult protection practice and have a role in challenging all contributing services on progress in supporting and/protecting the adult at risk of harm.

## **13.2 The role of the Chair**

The chair's role includes:

- agreeing who to invite and ensuring that those invited to the Case Conference understand its purpose, functions, and the relevance of their contribution.
- sharing with the adult the nature of the meeting, and possible outcomes
- ensuring that the adult's views are considered.
- facilitating information-sharing, analysis and consensus about the risks and protective factors
- facilitating decisions and determining the way forward, as necessary
- if progressing with a support and protection plan, facilitating the identification of a core group of staff responsible for implementing and monitoring the support and protection plan
- agreeing review dates
- following up on actions and responsibilities when these have not been met.

Where it is agreed that the adult requires ongoing support under Adult Support and Protection Legislation a date should be agreed for a multi-agency Review Case Conference.

## **13.3 Case Conference minutes**

Case Conference minutes should be accurately recorded detailing:

- who was invited?
- who was present (for audit purposes and those who have not responded should also be noted)
- who contributed information either in person or through previous submissions?
- the agreed adult support and protection plan
- a date for the review meeting. Review meetings should be convened every

three months, unless it has been agreed that no further actions are required under ASP legislation.

## **14. Adult Support and Protection Plan**

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

A Protection Plan can be initiated at any point of the ASP process depending on need or urgency; however, a complete Plan will be agreed at a Case Conference. This should not delay progressing any protective action that can be taken prior to the Case Conference.

An AP3 will include a set of actions and strategies agreed by relevant agencies and put in place to support and protect 'adults at risk'. The Plan is designed to eliminate or reduce risk. The plan should reference the adult's views, strengths, needs and concern. The adult should be supported to contribute as fully as possible and should be supported to understand the actions in the Plan. The AP3 will clearly identify agreed actions, timescales, and individuals responsible to eliminate or reduce identified risks. The AP3 should be reviewed involving the adult and all relevant agencies to ensure that the actions are effective in reducing risk and to make changes to the ASP plan as appropriate.

The AP3 Protection Plan should be completed within 10 working days from the Case Conference and should include a date for a review meeting. The plan should be authorised by the Chair of the Case Conference

### **14.1 Monitoring and Reviewing the Protection Plan**

If a review meeting has been agreed usually a core group of professionals will be identified to ensure the implementation of the protection plan.

The council officer should be identified as a lead professional to be kept informed of relevant updates regarding the adult and the progress of the support and protection plan. Lead professionals from other agencies who will work with the plan should be identified. The lead professionals are responsible for implementing, monitoring, and reviewing the support and protection plan, in partnership with the adult.

The lead professionals should:

- be co-ordinated by the Council Officer
- meet monthly to carry out their functions.
- keep effective communication between all services and agencies involved with the adult.
- activate contingency plans promptly when progress is not made, or circumstances deteriorate.
- recommend the need for any significant changes in the plan to the case conference chair and provide updates to the review case conference,

- including any update to risk assessment and chronology.
- be alert, individually and collectively, to escalating concerns that may require immediate response and/or additional support and
- reconvene a Review Case Conference if the protection plan is failing or requires significant adjustment.

## **15. Case Conference Reviews**

Case Conference Reviews should take place every 3 months to formally review the ASP protection plan (AP3). The review case conferences will consider whether the adult continues to meet the criteria for an adult at risk of harm, and if not, whether there are other supports that will still be required outside the provisions of the ASP Act. Adult Protection Plans will be updated as part of the review process and will continue until agreed that they are no longer necessary.

The purpose of the Review Case Conference is to:

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

Where the Case Conference concludes that an Adult Protection Plan is no longer required, the reason for this should be defensible and clearly recorded in the minute and in an ASP closing summary.

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

1. Current and future risk:
  - Is the adult still experiencing harm and/or is there a likelihood they will continue to experience harm if this process ends?
  - Have the actions of the protection plan been implemented and have they achieved their intended outcomes?
  - Has the individual(s) alleged to be causing the harm cooperated with the plan, including any protection orders?
  - Is the individual(s) alleged to be causing the harm still in contact and/or are they likely to re-establish contact if the adult protection process ends?
  - Have there been any significant issues in relation to the adult and/or relative,

carer or significant other(s)?

- What steps have been taken to overcome all or any of these issues?

2. Current views of all relevant parties:

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

3. Future planning and arrangements: -

- Is there evidence that the adults welfare will be safeguarded and promoted should the adult protection process end?
- Is there a need for ongoing care and support?
- Are there risks best managed via another process – care management, care programme approach, use of other legislation and processes?
- If further adult concerns arise, are the adult, carer(s), guardian, attorney, significant other(s), care provider(s), and any other agencies clear as to how to raise concerns.
- If the case is to be closed, does the adult, carer(s), guardian, attorney, significant other(s), care provider(s), and any other agencies know how to refer as ASP should there be concerns in the future.



## **16. Case Conference Dissent/Dispute/Complaints**

Any agency, adult or their carers have the right of access to complaints procedures should they disagree with any decision or outcome arising from the case conference process. Similarly, all parties retain the right to request a review of their care provision at any time. Under the Adult Support and Protection Case Conference procedures any dissent/dispute or complaint occurring within the proceedings of the case conference, must be recorded in the relevant minute. The Chairperson holds ultimate responsibility for decision making within the Adult Support and Protection Case Conference and subsequent ASP Review Case Conferences. However, any serious dissent/dispute or complaint must be reported to senior management and procedures followed to deal with disputes and complaints.

## 17. Protection Order

All three Protection Orders require the Sheriff to be satisfied that, prior to the granting of said Order, the adult is either at risk of or subject to **serious** harm.

Protection orders under [Section 35](#) means any:

- assessment order (which involve taking a person from a place to carry out an interview or medical examination),
- removal order (removal of an adult at risk)
- banning order or temporary banning orders

Applications for protection orders must be made by the council, except for banning orders where the application may also be made by or on behalf of the adult whose well-being or property would be safeguarded by the order or any other person who is entitled to occupy the place concerned.

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 a protection order. Protection orders may be applied for at any time in the process, depending on the individual circumstances of a case. The decision to apply for a protection order will normally be taken at an Adult Support and Protection Case Conference. As such it will be a multi-agency decision, informed by a report from the council officer.

**If you are considering a protection order, please consult Legal Services at the earliest opportunity [legaldiary@north-ayrshire.gov.uk](mailto:legaldiary@north-ayrshire.gov.uk) If urgent please contact the Litigation Team Manager of Legal Services.**

The council will then arrange for the submission of the application. The council officer will be required to provide evidence, along with any other person with involvement and evidence to support the necessity of the application, e.g., depending on the circumstances of the case, any health professional, family, neighbour, Housing officer and so on. Attention must be paid to timescales where an application for a further order is being considered. Timely discussions with the Sheriff clerk, by Legal Services, explaining the concerns and seeking an agreement regards timing to assist in ensuring continuity of protection orders.

What to consider before applying for a protection order?

Before deciding or undertaking any function under the ASP Act, regard must be given to the general principles of the Act.

The use of other legislation may also be considered, for example, social work, child protection, mental health, civil law, or criminal justice legislation. The provision of other services and advocacy should be considered ([see Section 6 of the ASP Act](#)). The rationale for referring or not referring to advocacy must be clearly recorded and referenced in reports.

A Sheriff must not make a protection order if the affected adult at risk refuses to consent. If the adult is refusing to consent to the granting of a protection order the council should re-consider the merit of the application.

If the council decides to pursue an application 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 to consent, the requirement to prove undue pressure does not apply. Evidence of lack of capacity will be required by the Sheriff.

Where the adult is incapable of consent, checks should be made to establish if there is a POA or guardianship in place who may have powers to consent on the adult's behalf. To do so email the Mental Health Officers Service at [mhoservice@north-ayrshire.gov.uk](mailto:mhoservice@north-ayrshire.gov.uk). If there is no POA/Guardianship recorded a check should be made with the Office of Public Guardian.

Where the adult demonstrates a preference not to consent but is believed not to have the capacity to make that decision, next steps must be considered to decide which is the most appropriate legislation to protect the adult.

Where an adult may be unable to express an opinion, or unable physically to resist an order, that inaction is not necessarily agreement. If an adult with incapacity will not comply with a protection order, and does not have capacity in that context, it may be better to act under other legislation, such as the Adults with Incapacity (Scotland) Act 2000, to pursue the appointment of a guardian with the power to take the action necessary to protect or support the adult.

Alternatively, if the adult has a mental disorder, it may be more appropriate to consider the Mental Health (Care and Treatment) (Scotland) Act 2003, which can permit an assessment, medical examination and, if necessary, the removal of the person at risk to a place of safety without her/ his consent.

While simultaneously using measures in other legislation, it still may be appropriate to consider an application for a protection order under this Act; protection orders can be in effect concurrent with orders granted from other legislation.

Where practicable, the adult must be kept fully informed at every stage of the process, for example, whether an order has been granted, what powers it carries, what will happen next, whether they have the right to refuse or what other options are available. POAs and Guardians must be kept up to date with proceedings and good practice would be to keep informal carers up to date also.

## **17.1 Protection Orders and Consent**

The principles of the ASP Act highlight the importance of striking a balance between an individual's right to freedom of choice and the risk of harm to that individual.

Three stages where consent should be considered:

1. The council must believe that there are no other steps available to protect the adult from harm, which could reasonably be taken with the adult's consent before proceeding to apply for an order. For example, an informal approach may have been tried, which was unsuccessful, in which case the option to apply to the court for a protection order is available.
2. Where the adult at risk has refused to consent, the Sheriff can only ignore this refusal where the Sheriff reasonably believes:
  - that the affected adult at risk has been unduly pressurised to refuse consent to an order; and
  - that there are no steps which could reasonably be taken with the adult's consent which would protect the adult from the harm which the order or action is intended to prevent (Section 35(3)).
  - If an order is granted, a person must not take action to carry out or enforce that order without separately considering the same test. That person may only proceed if they reasonably believe the adult at risk has been unduly pressurised to refuse consent, and there are no other steps it would be reasonable to take to protect the adult from harm, which the adult would consent to.
3. [Section 35\(4\)](#) of the Act gives an example of what may be undue pressure. This states that an adult at risk may be considered to have been unduly pressurised to refuse to consent to an order if it appears that:
  - harm which the order or action is intended to prevent is being, or is likely to be, inflicted by a person in whom the adult at risk has confidence and trust; and
  - that the adult at risk would consent if the adult did not have confidence and trust in that person.

For further advice in relation to undue pressure and protective orders please see [Section 35](#) of the ASP Act and chapter 11 pages 74 to 76 of the revised [Code of Practice 2022](#).

## **17.2. Notifications and hearing**

On applying for a protection order, notice must be given to the subject of applications, i.e. the person to be banned from an adult's home, and the affected adult at risk (where that person is neither the applicant nor the subject of the application [\(Section 41\(3\)\)](#)).

[Under Section 41\(4\) and \(5\)](#), the affected adult may be heard or represented and has the right to be accompanied in court by a friend, a relative or any other representative (including legal). The council should, if appropriate, advise any other persons who have an interest in the person's well-being or property that the application is to be made to enable them to enter the proceedings.

The Sheriff may disapply the requirement to invite participation in a hearing, or representation at one, and the right to be accompanied where satisfied that this will:

- protect the adult from serious harm; or
- not prejudice any other person affected by the disapplication ([Section 41\(2\)](#))

[Section 15\(2\)](#) provides that the Sheriff may require the council to allow a specified person to have contact with the adult at risk subject to specified conditions. Before doing so the Sheriff must under have due regard to:

- representations of the council as to whether persons should be allowed contact with the adult at risk; and
- any relevant representations made by:
  - the adult at risk.
  - any person who wishes to be able to have contact with the adult at risk; and
  - any other person who has an interest in the adult at risk's wellbeing or property [Section 15\(3\)](#).

There may also be times when a person who is concerned for the adult's welfare would wish to enter the proceedings and be heard by the Sheriff, for example, to ask that the adult be taken to a place other than that chosen as a "suitable place" by the council.

Where the council considers that it would protect an adult at risk from serious harm or will not prejudice any person affected by the disapplication, then the council may ask the Sheriff to dispense with intimation on the adult at risk (who is neither the applicant nor the subject of the application) and the subject of the application.

Where the adult has indicated that they do not wish legal representation, or it appears that they do not understand the process, this should be indicated to the court. The Sheriff has discretion to appoint a safeguarder before deciding the application [Section 41\(6\)](#). The court can also appoint a Curator ad Litem.

Under [Section 41\(6\)](#) the Sheriff also has discretion to appoint a safeguarder before deciding on the order. The role of the safeguarder is to safeguard the interests of the affected adult at risk in any proceedings relating to an application. The Sheriff may instruct the safeguarder to report on the issue of consent.

### **17.3 Assessment orders**

Assessment order [Section 11](#)

The application for an assessment order must be made by the council's legal department. This allows a council officer to take a person from a place being visited under section 7 to a more suitable place to allow a council officer, or council nominee, to conduct a private interview or for a private medical examination by a health professional to conduct a medical examination in order to determine whether

the adult is at risk of serious harm and if it is decided that the person is an adult at risk, whether the council needs to do anything by performing their functions under the ASP Act or other legislation in order to protect the person from harm. This order would only be necessary if it were not possible to carry out the interview or examination at the place of the visit.

An assessment order would only be granted where there is reasonable cause to suspect the adult, who is at risk, is being, or likely to be, seriously harmed and that this action is needed to establish this and identify any further actions that need to be taken to protect that adult at risk.

A multi-disciplinary plan should be prepared in advance on how to carry out the assessment to minimise distress and risk to the adult. The procedure should be carefully planned and co-ordinated with all involved in the process, including contingencies in case the adult does not respond as expected. Where it is anticipated that there may be a risk of violence, a multidisciplinary assessment of the risk should be undertaken. It may be that the management of the process should be passed on to the Police to enable them to address the issue of the safety of all parties concerned. However, the principle of "least restrictive alternative" needs to be considered by all parties.

The assessment order is valid for 7 days after the date specified in the order. It does not contain powers of detention and the adult can refuse to be interviewed or examined despite the order. Once the order has been executed, it cannot be used again i.e., it does not provide for the adult to be taken from a place more than once to be interviewed or for a further medical examination. There is no right of appeal in relation to an assessment order.

The adult can be taken to the place specified on the order but still retains the right to refuse to answer all or some of the questions and to refuse a medical examination. The adult must be informed of these rights. The adult should also be advised that the assessment order was made due to concern for the adult and that they may choose to leave at any time.

The council continues to have a duty of care and as such should support the adult to return safely to the place from where they were removed or to a place of their choice, within reason. Discussion with the adult should consider a support plan, where appropriate. A multi-disciplinary meeting may be required to discuss further care or protection issues.

[Section 12](#) sets out the circumstances in which a Sheriff may grant an assessment order. The sheriff must be satisfied that:

- the council has reasonable cause to suspect the subject of the order is an adult at risk who is being, or is likely to be, seriously harmed.
- the order is required to establish whether the person is an adult at risk who is being, or is likely to be, seriously harmed; and
- the place at which the person is to be interviewed and examined is available and suitable. The council must therefore be able to satisfy the Sheriff that a suitable place will be available to take the adult. In some circumstances this requires written confirmation from the person who owns or manages this place that they are willing to receive the adult for assessment purposes. The place could be a friend's or relative's house or a care home. The suitability of the place to conduct a private examination could be confirmed in writing but may not always be practicable in potentially urgent or emergency situations.

An order should only be sought where it is not practicable during a visit under [Section 7](#) (due to a lack of privacy or otherwise) to

- interview the person under [Section 8](#); or
- conduct a medical examination of the person under Section 9.

It may be that the adult needs to be taken from a threatening environment to be able to feel safe to relax and agree to an interview and/or medical examination. It is good practice to detail actions to be taken, estimated length of time for assessment/interview to consider, and evidence, the principle of least restriction.

The applicant must give notice to the subject of the application and the affected adult at risk (where that person is neither the applicant nor the subject of the application) [Section 41\(3\)](#).

Before determining an application, the Sheriff must invite the subject of the application, and the affected adult at risk to be heard or represented before the Sheriff. The affected adult may be accompanied in court by a friend, relative or other representative (including legal). The Sheriff may disapply this where they are satisfied this will protect the adult from serious harm or will not prejudice any other person affected by the disapplication. Where the council becomes aware that the adult wishes the person suspected of harming the adult to attend a hearing, they should inform the Sheriff prior to the hearing being held. The Sheriff can then consider the relevant provisions available under the [Vulnerable Witnesses \(Scotland\) Act 2004](#). Where the adult does not want legal representation or does not appear to understand the process this should be recorded and indicated to the court. The court can appoint a safeguarder or Curator ad Litem.

## 17.4 Removal orders

[Section 14](#) of the ASP Act allows a council to apply to the Sheriff for a removal order. A removal order allows the council to remove the adult at risk to a specified place. The purpose of a removal order is to assess the adult's situation and to support and protect them. This is a short-term order and is effective for a *maximum* of seven days.

A removal order can only be granted in relation to an adult at risk of harm and for protection purposes, not for an interview or a medical examination. It permits the person named in the order to be moved from any place to protect them from harm. Action can only be considered where the person is an adult at risk who is likely to be seriously harmed if not moved and suitable accommodation is available.

The council must protect any property owned or controlled by an adult who is removed from a place under a removal order.

A council officer may apply to the sheriff for a removal order which authorises:

- a council officer, or any council nominee, to move a specified person to a specified place within 72 hours of the order being made; and
- the council to take such reasonable steps as it thinks fit for the purpose of protecting the moved person from harm.

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 move the adult at risk. For example, the nominated person may be more familiar to the adult at risk than the council officer. However, only the council officer and Police constable have the right to enter the premises where the adult is located to remove the adult (see [Section 37 and 39 of the ASP Act](#)). The removal order will specify where the adult is to be removed to. Good practice suggests a protection plan should be submitted by the council with the application.

Under [Section 15](#) the Sheriff may grant a removal order only if satisfied:

- that 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; and
- as to the availability and suitability of the place to which the adult at risk is to be moved. The place from which the adult at risk is removed may not necessarily be their own home. They could be in public, private, or commercial premises. The adult can be removed from any place in pursuance of a removal order. The adult is to be removed to the place specified in the order.

Good practice would be that the council provides a suitability report of both the place and the person willing to care for the adult at risk. The council should also obtain a written agreement from the owner of the proposed specified place where it is, for example, a private home or independent care provider to confirm the owner's willingness to receive the adult at risk for up to 7 days.



## 17.5 Warrant for entry

Where an assessment order is granted the Sheriff must also grant a warrant for entry in relation to a visit under section 7 ([Section 38](#)).

Where a removal order is granted, the Sheriff must also grant a warrant [Section 39](#) warrant for entry: removal orders.

A Warrant for entry that authorises a police constable to accompany a council officer and take any action reasonably required, to fulfil the object of the visit. Only the constable has a right to use reasonable force. Wherever possible, entry to premises should first be attempted without force. The use of force is an absolute last resort, to be used in very exceptional circumstances, and only when all other options have been exhausted.

A multi-disciplinary plan should be prepared in advance on how to carry out the assessment or removal order. The procedure should be planned and co-ordinated with all involved to minimise distress and risk to the adult, including contingencies in case the adult or any person present does not respond as expected.

Where it is anticipated that there may be a risk of violence, a multidisciplinary assessment of the risk should be undertaken, and consideration should be given to passing the management of the process to the police to address the issue of the safety of all involved. However, all parties involved should bear in mind the principles in [Sections 1 and 2](#) of the Act.

To note: Once a warrant has been executed, it cannot be used again.

(For further information on warrants for entry, please refer to chapters 6, 12, and 13 of the [revised Code of Practice](#)).

Urgent Cases: Justice of the Peace

[Section 40](#) provides that an application can be made to a justice of the peace for a warrant to enter premises in cases of urgency where it is not practicable to make application to a Sheriff.

An application may be made to a justice of the peace where:

- it is not practical to apply to the Sheriff, and.
- the adult at risk is likely to be harmed if there is a delay in granting the warrant.

This is unlikely to be required in practice. Legal Services in North Ayrshire work out of hours and can contact the Sheriff Clerk who also work out of hours. If required, Legal Services have contact details for a Justice of the Peace, if for any reason they were unable to contact a Sheriff. A stand-by rota for Legal Services is circulated to Legal Services and senior managers weekly if contact needs to be made with Legal Services out of hours.

## **17.6. Banning and temporary banning orders (Section 19)**

These orders will only be granted where the adult at risk is in danger of being seriously harmed and where banning the subject of the order from a specified place is likely to safeguard the adult's well-being and property more effectively than the removal of the adult at risk. Any decision to grant or refuse to grant a banning or temporary banning order can be appealed to the Sheriff Principal.

It bans the subject of the order from a specified place, may have other conditions attached to it, and may last for a period not exceeding 6 months. The subject may be a child.

[Section 21](#) allows the Sheriff to grant a temporary banning order pending determination of an application for a banning order.

A banning or temporary banning order may:

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

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

[Section 22](#) provides that an application for a banning order may be made by or on behalf of:

- an adult whose well-being or property would be safeguarded by the order; or
- any other person who is entitled to occupy the place concerned; or
- where section 22(2) applies, the Council.

Under [Section 22\(2\)](#) the council is under an obligation to apply for a banning order if it is satisfied:

- that the criteria in [Section 20](#) are satisfied.
- that nobody else is likely to apply for a banning order in respect of the circumstances which caused the council to be satisfied as to the matters set out in Section 20; and
- that no other proceedings to eject or ban the person concerned from the place concerned are pending before a court.

The applicant may also apply for a temporary banning order at the same time as making an application for a banning order, or later. This allows a temporary order to be granted where it is inadvisable to wait until a full hearing on the banning order application to take place.

If the adult at risk is the applicant, it would be good practice for the council to assist with the application.

Criteria for granting a banning order or temporary banning order.

[Section 20](#) of the Act provides that a Sheriff may grant a banning order only if they are satisfied that:

- 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 moving the adult from that place; and
- that either:
  - (i) the adult at risk is entitled, or permitted by a third party or
  - (ii) 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.

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 from further serious harm.

The order allows a person to be banned from being in a specific place, usually where the adult at risk lives. The main test for the order is whether the person is, or is likely to be, seriously harming an adult at risk. The banning order may ban the subject from contact with the adult at risk for up to a maximum period of six months and may include other conditions that a Sheriff thinks appropriate. For example, this period could provide an opportunity for the adult at risk and the subject to undergo mediation to explore future living arrangements, or to secure the adult at risk's future on a permanent basis.

Occupancy Rights of Adult at Risk

[Section 23](#) provides that the granting of a banning or temporary banning order does

not affect the adult at risk's rights, as a non-entitled spouse, to occupy a home within the place from where the subject of the order is banned under the [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#). This means that a banning order, despite affecting the subject's right to occupy the property in question, does not affect any rights that the adult at risk has under the 1981 Act.

Where the adult at risk is entitled to occupy a place, their occupancy rights are not affected if their husband, wife, partner etc. is banned from the place. Where the adult at risk has no occupancy rights and the proposed subject of the order does have these rights, then the subject cannot be banned from the place. Banning orders may also be applied in respect of public places and may also be used where neither the adult at risk nor the subject has a right to occupy a property.

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. If the circumstances are such that there is a need to act urgently, then a referral to the Children's Reporter should be made at the same time as the application for an order. Liaison with Children's Social Work services will promote information sharing, reduce the risk of duplication of efforts, and allow for clarity of roles and responsibilities.

How long can a banning order be granted for?

A banning order can last for any period up to **a maximum of six months**. The applicant should consider what would be the shortest period possible in line with the general principles, the adult at risk's wishes, the least restrictive approach and what would be beneficial to the adult.

The period for a banning order will be specified by the Sheriff. A banning order may be recalled or varied.

Expiry of temporary banning order

[Section 21\(4\)](#) of the ASP Act provides that a temporary banning order expires on the earliest of the following dates:

- the date the Sheriff determines the application for the related banning order.
- the date by which the Sheriff is required to determine the application for the related banning order.
- if the temporary banning order is recalled, the date on which it is recalled; or
- any specified expiry dates.

**To note: A temporary banning order may also be recalled or varied.**

**Conditions that can be attached to a banning order.**

A banning order may specify several matters and may have conditions attached.

[Section 19](#) enables the order to be tailored to allow contact between the subject and the adult at risk under supervised conditions, perhaps as a first step to resolving the issue. This may include supervision of the subject in the area or place they are banned from to allow some form of mediation between the subject and the adult at risk, or to allow the subject access to the adult at risk's children or family. The conditions for this contact could be specified in an Access Plan, showing dates, times, and location.

### **Attaching a power of arrest**

[Section 25](#) permits the Sheriff, at the time of granting the banning or temporary banning order, to attach a power of arrest. The Sheriff will make such a decision based on the facts and circumstances of the case presented.

The evidence for this would be based on the likelihood of the subject breaching the banning order or any of the conditions attached to the banning order. If the order or 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 are likely to breach the order again if not arrested.

Where a banning or temporary banning order has been granted without an attached power of arrest and the facts and circumstances of the case have changed since the order was granted, then application may subsequently be made as a variation to attach a power of arrest.

### **Application for variation or recall of a banning order or a temporary banning order.**

[Section 24](#) provides that application may be made to the Sheriff to recall or vary a banning or a temporary banning order by an application by, or on behalf of:

- the subject of the order.
- the applicant for the order.
- the adult at risk to whom the order relates; or
- any other person who has an interest in the adult at risk's well-being or property.

The Sheriff may vary or recall either type of order if satisfied the variation or recall is justified. The Sheriff must be satisfied that there has been a change in the facts or circumstances in respect of which the order was granted or last varied.

A variation may not vary the date on which the order expires.

- (a) in the case of a banning order, beyond the date which is 6 months after the date on which the order was granted.
- (b) in the case of a temporary banning order, beyond the date by which [Section 21\(3\)](#) requires the Sheriff to determine the related application for a banning

order (which is 6 months of the date of lodging the related application).

A banning or temporary banning order can be varied any number of times within the specified period. If the Sheriff recalls the order, then the terms of the order cease to have effect. The grounds therefore for recalling the order should show that further harm is not likely to take place. **Right of appeal against a decision to grant or a refusal to grant an order or temporary order.**

[Section 51\(2\)](#) provides for a right of appeal against a decision to grant, or a refusal 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 party to the appeal to the Sheriff Principal.

An appeal against a Sheriff's decision to grant, or refuse to grant, a temporary banning order may be made to the Sheriff Principal. However, an appeal is only competent with the leave of the Sheriff. An appeal against the sheriff principal's decision to the Court of Session is only competent with the leave of the Sheriff Principal.

### **How long does an order continue to have effect?**

Where a Sheriff Principal decides to quash a banning order or temporary banning order, the order will continue to have effect until either the end of the period for appeal (if no appeal is made) or, where an appeal is made, when it is abandoned or where the decision to quash the order is confirmed.

Alternatively, the order will continue to have effect until it otherwise expires under [Section 19\(5\)](#) (banning orders) or [Section 21\(4\)](#) (temporary banning orders) or, in the case of a temporary banning order, the sheriff principal refuses leave to appeal against the decision to quash the order.

### **Whom does the applicant have to notify of the granting, variation or recall of a banning or temporary banning order?**

Under [Section 26](#) where the Sheriff grants a banning order, temporary banning order, variation or recall, the applicant (where not the adult at risk) must notify the adult at risk and such other interested person(s) specified by the Sheriff, by delivering a copy of the order (and any power of arrest attached) or the varied order or the order of recall to that adult and/or other interested person(s) specified by the Sheriff. However, failure to deliver a copy of an order, variation, or recall does not invalidate it.

Where a power of arrest has been attached, [Section 27](#) provides that the police, via the chief constable, must be notified by the applicant for the banning order or temporary banning order, as soon as possible, by delivering a copy of the order and any power of arrest attached.

### **Preserving the banned person's property during an order**

[Section 19\(2\)\(d\)](#) of the ASP Act states that a banning order may also direct any specified person to take measures to preserve any moveable property owned or

controlled by the subject which remains in the specified place while the order has effect. The ASP Act allows for specific measures to be taken to preserve the subject's property. The applicant should obtain an inventory of moveable property belonging to the subject of the banning order that can remain in the adult at risk's home or specified place, from which the subject is banned. It would be good practice to obtain a signature from the subject confirming that the inventory is correct. The subject can formally request any of these measures. This may be to protect property such as pets or computers.

### **Where an order is breached without a power of arrest**

Where the subject of the order breaches the order, this will be dealt with based on a failure to comply with an order of court. As a result, if established, the subject of the order can be held in contempt of court. The applicant (and the adult at risk where not the applicant) may raise a normal action for breach of an order. Any proceedings in this regard should be accompanied by confirmation from the procurator fiscal that no criminal proceedings are to be commenced in respect of the facts and circumstances that are to form the subject matter of breach proceedings. An adult at risk is not required to report any breach of an order.

Where the person breaching the order has also committed a criminal offence, this will be dealt with in the usual manner. Proceedings will be instigated by way of a petition by the procurator fiscal, following normal court procedures. Where a banning order is breached and the basic sanctions are ineffective in deterring the subject of the order, other options may be considered. Where no powers of arrest are in place, application to vary the order under section 24 should be considered to include this power. In such cases the council and its partners may need to consider other civil and criminal law routes to protect the adult at risk of harm. As with any proposed action, there will be professional and ethical considerations that will require to be balanced against the principles of the ASP Act.

### **Where an order with an attached power of arrest is breached**

The power of arrest becomes effective only when served on the order and will expire at the same time as the order. Under [Section 28](#), where a banning order or temporary banning order has a power of arrest attached, a constable can arrest the subject of an order if the constable:

- reasonably suspects the subject to be breaching, or to have breached, the order; and
- considers that there would, if the subject were not arrested, be a risk of the subject breaching the order again.

When someone is arrested [Section 28](#)

[Section 29](#) requires that the officer in charge of a police station must detain the arrested person in custody until the person is brought before the Sheriff under [Section 32](#) of the Act. The facts and circumstances giving rise to the arrest must be reported to the fiscal as soon as is practicable.



[Section 32](#) sets out the duty to bring the detained person before the Sheriff and makes clear that the arrested person should be brought to court, in the district in which the person was arrested. This should be on the next court day on which it is practicable to do so but that does not prevent the Sheriff dealing with the matter if sitting on a non-court day for the disposal of criminal business.

### **Authorisation of further detention period by Sheriff**

Where the Sheriff is satisfied following the petition by the fiscal as per [Section 33](#) that a breach of the banning order or temporary banning order appears to have taken place and that there is a “substantial risk” the subject will breach the order again, the Sheriff may authorise the person to be detained for a further period of not more than 2 days (not counting days which are not court days).

Where the Sheriff decides not to authorise further detention, then the detained person must be released (unless already in custody in respect of another matter).

The Sheriff must provide the detained person with an opportunity to make representations prior to making any decision.

The banning or temporary banning order, any conditions attached, and power of arrest continue notwithstanding breach proceedings.

Expiry of an order prior to any criminal proceedings

If the subject was charged for committing an offence as a result of breaching the order and released on bail, the conditions of the order continue until its expiry, unless varied under [Section 24](#).

In cases where an order will expire prior to court proceedings, the applicant for the order, or the council if not the applicant, may wish to consider applying for a new banning order and temporary banning order until such time as the subject is tried. There is nothing in the ASP Act which prevents a fresh application being made. The decision would depend on whether there is sufficient evidence to make an application and whether an order remains justified according to the statutory criteria. In cases where the council intends to act under its adult protection duties, it may wish to liaise with the police or procurator fiscal regarding the application.

## **18. Learning Reviews**

The approach to Significant Case Reviews has been revised. These are now called Learning Reviews with key objectives to ensure that essential recommendations translate into effective learning to prevent recurrence of the most serious events regarding adults at risk of harm.

An Adult Support and Protection Learning Review is a means for public bodies and office holders, with responsibilities relating to the protection of adults at risk of harm, to learn lessons, from considering the circumstances where an adult at risk has died or been significantly harmed.



It is carried out by the Adult Protection Committee under its functions of keeping procedures and practices under review, giving information and advice to public bodies and helping or encouraging the improvement of skills and knowledge of officers or employees of public bodies as set out in [Section 42\(1\)](#) of the Act.

The Scottish Government published [National Guidance for Adult Protection Committees Undertaking Learning Reviews](#)

This guidance identifies the Care Inspectorate as the central repository for all adult protection learning reviews, enabling learning from these reviews to be shared more widely.

As such, it is important that all case reviews or reflective learning reviews that are similar in purpose though not labelled as a learning review, are also submitted to the Care Inspectorate. All reviews or reflective learning exercises serving the same purposes of a learning review – and meeting the criteria for a learning review – should use the learning review guidance, including the protocol for submission to the Care Inspectorate.

Please email [apc@north-ayrshire.gov.uk](mailto:apc@north-ayrshire.gov.uk) if you are considering a learning review and you will be sent the Pan Ayrshire Learning Review Guidance

Links to other legislation and guidance can be found on pages 97 and 98 of the [Code of Practice 2022](#).

## 19. Checklist of points to remember

- Inquiry - Whilst it may be necessary to visit an adult as part of an ASP Inquiry to determine whether the three-point test is met, this visit must be undertaken by a council officer. The council officer must be very clear with the adult that ASP concerns have been raised and ensure the adult knows they do not need to answer any questions or engage with the inquiry. The council officer should also explain subsequent ASP processes that may be invoked – for example a formal ASP Investigative interview and/or Case Conference. The fact that a visit was undertaken to determine whether the three-point test was met does not remove the necessity for a formal ASP Interview to take place (with a Council Officer, Second Person and formal note taken) using investigative powers where the complexity of the situation requires further investigation or where the three-point test has been met.
- Investigative Interview – Meet with the second person and Team Manager before any Investigative Interview takes place – to discuss the concerns, the focus of the interview and clarify the roles people will take during the interview. Gather the views of all relevant individuals and agencies as part of risk assessment and decision making to determine the next appropriate steps in keeping the adult safe.
- Consent – The adult's consent is not required to make an ASP referral - everyone has a duty to report concerns about an adult at risk of harm, even if consent to do this is withheld. Whilst it is always preferable to have the adult's consent, even if there are no concerns in relation to incapacity or undue pressure, the adult's refusal to cooperate in an adult protection inquiry should not automatically signal the end of any inquiry, assessment, or intervention.
- Capacity – If there are any doubts in relation to capacity - a clear assessment of capacity will aid decision making regarding consent and legal options available. This must be requested at the time the decision is to be made and must be in relation to the decision at hand as opposed to an overall clinical judgement on capacity. See the Practice Guidance for Social Workers: Requesting Capacity Assessments.
- Advocacy – the Act places a duty on all staff to consider support services, including advocacy. Advocacy should also be offered to all adults where ASP procedures are progressing. The outcome of this should be recorded.
- Information Sharing - partner agencies and some public bodies are obliged via the legislation to co-operate, in relation to information sharing, in any inquiry/investigation. Medical case records can only be accessed by a medical professional. If an adult is subject to mental health legislation the Mental Welfare Commission should be informed.

## **20. ASP Timescales**

- 1 ASP referral is completed at central admin with details of the referral included on an AP1 document.
- 2 ASP referrals are prioritised over all other work and there must be immediate consideration of risk on receipt of referral.
- 3 ASP Inquiry is started within 24 hours of receipt of referral and should be completed within 5 working days.
- 4 An ASP Inquiry should never be closed or cancelled prior to completion of ASP inquiry (this includes where the adult has passed away during the inquiry).
- 5 Within 5 working days, the AP1 form will be completed on CareFirst with recommendations sent to the Team manager for approval. The Team Manager can either approve or request additional information.
- 6 Team Manager approves AP1 and concludes the AP1, recording the decision in Significant Life Events.
- 7 Where the complexity of a situation requires a fuller assessment of risk to determine the three-point test or to make decisions regarding appropriate action or where it has been established that the three-point test is met and further action is needed under Adult Support and Protection, the AP2 risk assessment should be opened within 8 working days and be completed within 15 working days from the date of referral and a significant life event updated.
- 8 The AP2 should be sent to the Team Manager for approval. The Team Manager can either approve or request additional information.
- 9 If the AP2 recommendation includes proceeding to a Case Conference, admin will open an AP5 case conference minute. A Case Conference should be convened within 20 working days of receiving the ASP referral.
- 10 An AP3 Protection Plan must be completed by the council officer based on the protection plan agreed at the multi-agency Case Conference, completed within 10 working days following the Case Conference and to be signed off/authorised by the Chair of the Case Conference 48 hours after receipt. If the decision is to proceed under Adult Support and Protection procedures 3 monthly reviews will be required and lead professionals should meet to coordinate and review the protection plan between formal review meetings.
- 11 Once all actions have been completed that relate to the Adult Protection Inquiry, including any follow up action identified following the completion of the Adult Protection Inquiry with/without investigative powers, or following an adult protection plan, then the practitioner must complete the ASP Closure Summary on Carefirst ensuring all requested information and additional

actions are completed. This must then be alerted to the Team Manager to agree and record final closure of Adult Protection on Carefirst.

**Recording:** The Process for Social Work Staff to work through the AP1 (ASP Referral and Inquiry ) documentation on CareFirst is contained within the [ASP Carefirst High Level Guide](#)

**Please see Practitioner and Team Manager Carefirst Checklists on Connects**

## **21. ASP training**

**Find out about ASP training sessions:**

[ASP Training Calendar 2022/2023](#)

[ASP Training Calendar 2023/2024](#)

To book a place, complete and return an ASP Training Nomination Form to [ASPTraining@north-ayrshire.gov.uk](mailto:ASPTraining@north-ayrshire.gov.uk).

Recommendations

- All frontline, admin, and supervisory staff and those with line management responsibility should undertake ASP Overview (3 hours via MS Teams) multi-agency training, refreshing every 3 years.
- All staff who do not regularly come into contact with adults who may be at risk of harm e.g. Building Services, Facilities Management, Roads and Waste should complete the Adult Support & Protection e-learning module available on [i-Learn](#) refreshing every 3 years.
- All Social Work Assistants (who can undertake ASP desktop inquiries) should undertake ASP Overview multi-agency training and Initial Decision Making in Adult Support & Protection, both courses should be refreshed every 3 years. The duration of each of these courses is 3 hours via MS Teams.
- Any staff member who may be called upon to take on the role of the second person (for an ASP Investigation) should undertake ASP Overview multiagency training and Role of Second Person, both courses should be refreshed every 3 years. The duration of each of these courses is 3 hours via MS Teams.

All Council Officers **must** undertake:

- Complete ASP Overview (3 hours via MS Teams)
- Council Officer Training (4 days, face-to-face)
- Call Back Session (3 hours via MS Teams)

- Council Officer Refresher Training (1 day, face-to-face), refreshing every 3 years.

Council Officers and Team Leaders/Managers are also recommended to undertake:

- Complete ASP Overview (3 hours via MS Teams)
- Crossing the Acts (1 day, face-to-face)
- Good Recording and Defensible Decision Making in Adult Support and Protection (3 hours via MS Teams), refreshing every 3 years.

## **22. Useful Contacts**

To discuss ASP Training, please contact the Adult Support and Protection Learning and Development Advisor via [ASPTTraining@north-ayrshire.gov.uk](mailto:ASPTTraining@north-ayrshire.gov.uk)

For information in relation to Adult Support and Protection Policies contact the Learning and Development Advisor or the Senior Officer (ASP) or email [apc@north-ayrshire.gov.uk](mailto:apc@north-ayrshire.gov.uk)

For advice in relation to Adult Support and Protection in relation to specific case complexities or good practice guidance contact the Senior Officer ASP or the Senior Officers, Community Care, or email [apc@north-ayrshire.gov.uk](mailto:apc@north-ayrshire.gov.uk)

Legal Services can be contacted for advice in relation to legal options available in specific cases and should be consulted early where protection orders are being considered. Please contact the Team Manager via email and copy to Legal Diary (shared mailbox) [LegalDiary@north-ayrshire.gov.uk](mailto:LegalDiary@north-ayrshire.gov.uk)

Advice should be considered in consultation with your line manager, as appropriate and should not detract from operational discussions and agreement on how best to progress where an Adult is at risk of harm.

## **23. ASP Paperwork**

**[Adult support & protection \(sharepoint.com\)](#)**

**End of document**