

# The Adult Support and Protection (Scotland) Act 2007



## Supporting and Protecting People in East Ayrshire Practitioner's Handbook

[www.east-ayrshire.gov.uk/asap](http://www.east-ayrshire.gov.uk/asap)



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## CONTENTS

|   |                |
|---|----------------|
| <b>Introduction</b>   | <b>Page 1</b>  |
| <b>Key Principles and Definitions in Adult Support and Protection</b>       | <b>Page 2</b>  |
| <b>Decision Making 1 - Human Rights</b>                                     | <b>Page 4</b>  |
| <b>Decision Making 2 – Adults’ Participation and Involvement</b>            | <b>Page 6</b>  |
| <b>Decision Making 3 - Informing Initial Actions/Inquiries</b>              | <b>Page 10</b> |
| <b>Decision Making 4 - Informing Investigation</b>                          | <b>Page 13</b> |
| <b>Decision Making 5 – Preparation and Participation in Case Conference</b> | <b>Page 17</b> |

### Introduction

This Practitioners Handbook is intended to complement the *Supporting and Protecting People in East Ayrshire Interagency Practitioner Guidance: May 2014*. It does not replace the need to familiarise yourself with this document, the Adult Support and Protection (Scotland) Act 2007 and its associated Code of Practice.

This guide provides a range of information and checklists intended to support Council Officers in professional decision making and to inform other multi-agency professionals who are undertaking or participating in Adult Support and Protection (ASP) inquiries and/or investigations and/or meetings.

### Key Principles and Definitions in Adult Support and Protection

Any intervention under the terms of the Adult Support and Protection (Scotland) Act 2007 (The Act) must:

- ✓ Provide **benefit** to the adult;
- ✓ Be the **least restrictive** to the adult’s freedom.

**Section 3(1)** of the Act defines ‘**adults at risk**’ as adults who are aged 16 and over, who:

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

**Section 3(2)** of the Act 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 3(4)** of the Act states that a Council must make inquiries about a person’s wellbeing, property or financial affairs if it **knows** or **believes**:

- ✓ That the person is an adult at risk; **and**
- ✓ That it might need to intervene in order to protect the person’s wellbeing, property or financial affairs.

**Section 53(1)** of the Act states ‘harm’ includes all harmful conduct and, in particular, includes:

- ✓ Conduct which causes physical harm;
- ✓ Conduct which causes psychological/emotional 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;
- ✓ Neglect and self neglect.

## Decision Making 1 - Human Rights

### *“Don’t Use a Sledgehammer to Crack a Nut”*

When a person is experiencing harm this is always a breach of their human rights as it always means there is a misuse of power. In situations where there are deficiencies in care and these affect someone’s wellbeing, harm can be the consequence.

Human rights can be **absolute** or **qualified**. The rights to life and not to be subjected to torture or inhumane or degrading treatment or punishment are **absolute** and must always be protected.

**Qualified** rights can be restricted by a public authority if this can be justified when protecting a person or the wider public, and rights include:

- ✓ The right to respect for private and family life, home and correspondence;
- ✓ The right to freedom of thought, conscience and religion;
- ✓ The right to freedom of expression;
- ✓ The right to freedom of assembly and association;
- ✓ The right to protection of property.

The challenge to practitioners is in making professional judgements about the degree of impact on these rights and the seriousness of harm, therefore the principle of proportionality must be applied by any professional making decisions to intervene in a person’s life.

The Scottish Human Rights Commission has developed the steps to a ‘FAIR’ approach which practitioners can apply to help reach a balanced and justified solution in most situations.

For further information on Human Rights and examples, see:  
[www.Scottishhumanrights.com/careaboutrights](http://www.Scottishhumanrights.com/careaboutrights)

**F – Facts:** what is the experience of the individual? Are they being heard and if not do they need support to be heard? What are the facts of the harm so we can look at these?

**A – Analysis** of the right(s) at stake. Are the rights absolute or qualified? Can we justify the level of intervention? Is it the minimum necessary to protect the person and others?

**I – Identification** of shared responsibilities through identification of these. What changes are necessary? Who needs to help make the changes?

**R – Review** actions: Have the actions taken been recorded and reviewed? Has the individual been involved?

In this guidance intervention is used instead of restriction but means the same when trying to decide whether the intervention is 'FAIR'

Ask yourself:

- ✓ What is the intervention I am considering? Is there a legal basis and how will it reduce the harm?
- ✓ Is there another way this could be achieved and has it been tried?
- ✓ If I need to decide not to follow adult protection procedures have I justified this with the 'FAIR' approach?
- ✓ Have I considered the rights and interests of all people affected?
- ✓ Have I made sure my decisions have been checked with my line manager or another with specialist knowledge (MHO) to give me an independent view?
- ✓ Have I made sure that there are safeguards in place that reduce the risk of further harm?
- ✓ Does the intervention destroy the chance of the person to exercise their qualified rights? **and**
- ✓ If it does, this may mean deprivation of liberty. Legal options to intervene should always be considered so that the person is able to have access to their rights to be heard, to appeal or seek their own legal redress.

## Decision Making 2 - Adults' Participation and Involvement

### Consent

All agencies have a duty to report any suspicion of harm i.e. refer with or without an adult's consent, if they **know** or **believe** harm has happened or is likely to.

**Section 8(2)** of the Act states that any person who is to be interviewed in relation to adult protection concerns has to give consent to be interviewed and to answer questions, and that this should be made explicit by the Council Officer at the outset.

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

If harm is suspected the law allows for the Council Officer to gather all relevant information in order to inform decisions even without the adult's consent, as this may give a fuller picture of the situation and level of harm.

Where the adult withholds consent, a judgement has to be made regarding whether this may be due to undue pressure by another person.

**Section 35(4)** of the Act defines undue pressure as:

- ✓ 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.

The issue of undue pressure by a person in the trust of the adult is central to shifting the assessment of 'harm' to 'serious harm'.

If the view is taken that the adult has refused consent through undue pressure and there is evidence to suggest that an adult is at risk of serious harm, an application for a Protection Order can be considered. The Assessment Order, Removal Order and Banning Order are all types of Protection Orders.

If Protection Orders are being considered the Council's legal section must be informed and actively involved in the process via advice and/or attendance at the Planning Meeting/Case Conference. If Protection Orders are not being applied for on an emergency basis, the need for application to the Sheriff should be evidenced and recorded within the Planning Meeting/Case Conference minute. Please note that there is no power of detention in any of the three ASP Protection Orders.

If undue pressure is not a factor and the adult has the capacity to make his/her own decisions about personal circumstances in relation to a level of risk, formal procedures under the terms of the ASP Legislation may not be appropriate. Consideration must be given to the level of risk to the individual and others who may be affected which may require statutory agencies to continue to share relevant information under this legislation.

In situations where concern for an adult's safety remains, the Council Officer will need to seek consent to continue intervention within the assessment and care management framework. A *My Life, My Plan/My Life, My Review* should then be completed and a care plan constructed ensuring an appropriate level of support and protection is in place.

### **Capacity**

Where a Council Officer has reason to believe an adult's capacity may be impaired, an accurate assessment of capacity may be crucial to making decisions regarding whether to intervene under ASP Legislation. An adult may have limited capacity in one area of daily life and lack the capacity to make safe decisions in another. Here we are looking at whether someone has the cognitive ability to understand the decisions they are making and risks they may be taking in relation to keeping themselves safe from harm.

Where capacity is uncertain and harm is occurring, a view of the person's capacity can be sought from a relevant professional such as their General Practitioner. If the adult lacks capacity, intervention under the *Adults with Incapacity (Scotland) Act 2000* should always be considered particularly where a person is experiencing self harm and neglect and may be disengaging. If there is a diagnosable mental illness present affecting an adult's ability to keep himself/herself safe from harm due to a deterioration in their mental health, consideration must be given to intervention under the terms of the *Mental Health (Care and Treatment) (Scotland) Act 2003* to ensure access to care, support or treatment for the adult. The current procedures allow for all these decisions across the legislation to be discussed at a single meeting. It is crucial that adults at risk of harm are not subjected to multiple interviews or meetings which may cause them unnecessary distress.

### **Capacity Checklist**

Ask yourself:

- ✓ Does the adult understand the nature of what is being asked and why?
- ✓ Is the adult capable of expressing his or her choices/wishes?
- ✓ Can the adult be made aware of his/her right to refuse to answer questions as well as the possible consequences of doing so?

#### **Note:**

Even if an adult lacks capacity, Protection Orders under the terms of the Act can be applied for.

There may also be situations where intervention is required utilising, concurrently, more than one piece of legislation.

## Consent Checklist

Ask yourself:

- ✓ Did the adult consent to the ASP Referral being made?
- ✓ Has consent been sought from the adult to be interviewed and to answer questions?
- ✓ Have all voluntary avenues of intervention been attempted without success?
- ✓ Have I explained to the adult their right not to be interviewed or answer questions and have I respected the adult's decision?
- ✓ Do I believe the adult is under undue pressure?
- ✓ Is the adult at risk of 'Serious Harm'?
- ✓ Am I considering a Protection Order and have I involved Legal Services?
- ✓ Have I made sure my decisions have been checked with my line manager or another with specialist knowledge (MHO) to give me an independent view?

## Decision Making 3 - Informing Initial Action/Inquiries

Adult Support and Protection Referrals are received via Customer First Administration staff, processed and passed to the relevant Team Manager for screening and allocation to a Council Officer/Social Worker for initial action/inquiries to be undertaken or closed if referral does not meet the criteria.

An Inquiry is defined as: ***Any action taken by social services following a report of alleged harm to establish where there is a cause for concern or intervention in order to protect the person's wellbeing, property or other affairs.***

The Council Officer making inquiries needs to make sure they access **all** relevant information from **all** potential sources that they believe will help them make sense of the adult's situation and the level of risk of harm in order to determine whether they continue to meet the 3 point test or not and whether further intervention is warranted.

In the first instance it is crucial to check all potential social work systems as information may already exist. It should be noted that where a category of harm has been identified there is always the potential for others, for example we know from looking at harm in East Ayrshire financial harm rarely exists alone. There is often accompanying physical, psychological and on some occasions sexual harm which workers always need to be mindful of.

### Information Gathering

The Council Officer should prepare and plan their contact with other agencies such as NHS Ayrshire and Arran, Housing Services, Police Scotland, Banks and Building Societies, the Department of Work and Pensions, Scottish Fire and Rescue Services and General Practitioners (non exhaustive list). The Council Officer should know and be able to explain to those they are requesting information from:

- ✓ What information they need and how it relates to the harmful situation
- ✓ Why they need it and how it will help with inquiries

- ✓ What they will do with the information
- ✓ Who the information will be shared with
- ✓ How long the records will be kept and whether or not they will be returned or destroyed.

All formats of records, such as paper, computer, audio and visual are covered by the legislation. Only original documents (or certified copies) can be used in Court.

### **Risk Assessment**

The key role of the Council Officer as they collate information is to continually assess risks to the individual, other agencies and any other relevant people identified. The AP1 summary of inquiries should contain reference to an analysis of the risks identified and the need for any further specialist risk assessments and/or management plan and ensure arrangements are in place to undertake this.

The Council Officer should always consider whether any immediate action is necessary in order to protect the adult but also more importantly consider whether immediate action would cause more distress or would pose a greater risk to the adult. A fire risk assessment should always be considered.

Where information received indicates there is multi agency involvement and a number of complex practice and legal decisions that may require to be considered, an Adult Protection Planning Meeting is a way to share and collate all information relatively easily. This should be held within 5 days of the referral being made however Planning Meetings can take place at any time in the process.

**It is important that clear and full information about any AP Referral, inquiry and investigation is recorded at every stage. This should include relevant information from any source and should explain why decisions have been made. This information should be recorded on the AP1 and identified as a significant event within Profile Notes on SWIFT.**

The following initial decisions and actions have to be made in consultation with your Team Manager at this stage:

- ✓ Police must be informed immediately if information indicates a crime may be involved to ascertain their view of circumstances and to ensure non-contamination of any potential Police evidence;
- ✓ Is medical intervention required? If yes, ensure this is accessed;
- ✓ Decide whether an immediate Protection Order is required and if so, seek approval from the Service Manager.
- ✓ Are children involved who could be at risk of harm? If so, a referral must be made to Children and Families under Child Protection Procedures;
- ✓ Ascertain the adult's Consent (or POA/Guardian) to the referral and intervention and is this available? – see Decision Making 2.
- ✓ Ascertain the adult's capacity to consent and understand the nature of harm and protection – see Decision Making 2.
- ✓ Have you identified a Carer and has relevant information and support been offered to them?
- ✓ Is the situation complex involving a number of different agencies or concerns? If so consider an Adult Protection Planning Meeting.
- ✓ Do inquiries indicate that further action under Adult Support and Protection is inappropriate or disproportionate and if so decide what action is required i.e. no further action, refer to another agency, care management to continue, My Life, My Plan or My Life, My Review to be undertaken.
- ✓ Ensure referring agency (where appropriate) has been informed of the outcome of the Referral.
- ✓ Is an Investigation under Adult Support and Protection legislation proportionate to the circumstances and if so arrange to plan this with your Team Manager
- ✓ Is the adult at risk funded by another local authority? If yes have you ensured regular communication arrangements are in place?

## Decision Making 4 – Informing Investigation

### Support for the Adult

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.

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 support is preferred e.g. technical aids or translator services. The input of a Speech and Language Therapist, Interpreting Service or Sensory Impairment Service may also need consideration.

An Appropriate Adult is required for people subject to a police interview who have a diagnosed mental illness, learning disability, personality disorder, dementia, autistic spectrum disorder or acquired brain injury. The role of the Appropriate Adult is to facilitate communication between the person and the police and during an interview, as far as possible, ensure understanding by both parties. The use of an Appropriate Adult is extended to all categories of interview – witness, victim, suspect and accused.

### 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.

An adult has the right to refuse any medical examination even if subject to a Protection Order and has to be advised of this right prior to the examination. An adult's right to withhold consent can be dispensed with only if:

- ✓ His/her life is in imminent danger and treatment is necessary to save life;
- ✓ To prevent significant deterioration to the point of endangerment to life **and**
- ✓ If consent or lack of consent cannot be given i.e. adult is unconscious.

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

The primary reasons to conduct a medical examination are:

- ✓ To establish if injuries of any kind have been sustained and inform risk assessment;
- ✓ To establish the need or otherwise for immediate medical attention;
- ✓ To assess the degree of physical or mental illness;
- ✓ To assess the level of capacity; **and/or**
- ✓ To provide evidence of harm that will inform any future criminal investigation (These require to be planned in conjunction with the Police)

### Visit

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

Visits have to be made at reasonable times unless there is immediate risk to the adult. Visits to interview an adult can be made anywhere e.g. the

adult's home, a relative or friend's home, a care home, day centre, educational establishment, place of employment, respite unit, hospital or other medical facility. They can access all parts of the place visited e.g. sheds, garages, outbuildings and all areas used by or on behalf of the adult e.g. sleeping accommodation, meal preparation areas and general living space.

Formal identification as a Council Officer is required at all visits; your ID should be updated with your Council Officer role following the required training. The accompanying person (Secondary Worker) must also produce formal identification and both must be shown to the adult. The purpose of the visit and the rights of the adult must also be explained at the outset.

If entry is refused, force cannot be used. The Team Manager should be contacted for advice as a warrant of entry and an Assessment Order may be required. If these orders are granted, the Council Officer and his/her colleague must be accompanied by a Police Officer arranged for this purpose. Remember to ensure arrangements are in place to repair any damage to locks or property.

### **Secondary Worker**

A Council Officer must be accompanied to formal adult protection interviews by a Secondary Worker. Due regard should be given to who this person is, from the adult's perspective and from previous information gathered, as this could significantly influence the quality of the investigative interview i.e. the adult may have an established relationship with the secondary worker which may or may not be an advantage. Where the nature of harm is not a specialism of social work for example physical harm or impact of self neglect a medical professional may be preferred. The Council Officer has a crucial role in liaising with them and ensuring absolute clarity regarding the planning of the interview and each other's roles and responsibilities.

A Secondary Worker should also have attended The Role of the Secondary Worker Training to ensure they are clear regarding their role, purpose of the interview and their support role to the Council Officer. Together they may interview, in private if required, any adult found in a place being visited under the terms of **Section 7** of the Act.

### **Interview Technique**

|          |        |                |
|----------|--------|----------------|
| <b>I</b> | I      | Introduction   |
| <b>R</b> | Run    | Rapport        |
| <b>F</b> | For    | Free Narrative |
| <b>Q</b> | Quick  | Questioning    |
| <b>C</b> | Coffee | Closure        |

**Introduction** – Show identification and Council Officer Authorisation. Explain purpose of visit and reason for writing notes of interview. Explain that the adult has the right to withhold consent to interview, can choose to answer some, but not all questions and can choose not to co-operate with the entire investigative process, and ensure the adult understands their rights. How all this is conducted will have an impact on whether the interview continues.

**Rapport** – Begin 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.

**Free Narrative** – Always use open questions e.g. 'Do you know why we have come today?' 'What is 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 back the words of the adult 'So you were saying...'

**Questions** – Again, open questions 'What...' 'Who...' 'When...' 'Where...' 'You said earlier.....tell me a bit more about that'

**Closure** – Try to summarise as closely as possible what was actually said by the adult. Check the accuracy of what you have said. Explain to the adult and any support people in place what happens next on the basis of what has been discussed, give contact details and try to re-establish a neutral ending.

**Recording of Interview** – The Council Officer should record the interview Summary with the AP1 Section B.

## Decision Making 5 – Preparation & Participation in Case Conference

### Preparation for Case Conference (Council Officer)

The Council Officer has a significant and crucial contribution to make in terms of informing the decisions to be made within an Adult Protection Case Conference.

An Initial Case Conference will be held no later than 28 days following receipt of the referral if required and information from initial inquiries and/or investigation must be available for this via the completed AP1. Where the Council Officer has completed a Risk Assessment (AP2) or any other generic or specialist risk assessment tool relevant to the harm this should also be available to the Case Conference.

It should be noted that Council Officers may utilise the Case Conference as a means of completing or updating an AP2 therefore may rely on information provided from other agencies relating to risks of harm.

### Preparation for Case Conference (Adult and Relevant Others)

A key role of the Council Officer is to ensure that the adult is fully informed of what is entailed within a Case Conference. This should include information for them about what happens at the meeting and what will be discussed. The Council Officer should also identify how the adult wishes to present their views, worries, concerns or questions.

The preparation also includes ensuring that the adult's participation and attendance is supported in any way possible. Council Officers will require to liaise closely with Chairpersons to ensure the adult's support needs are facilitated. Consideration should be given to the use of video conferencing or social media such as Skype or FaceTime if the adult is familiar with this. This may support the adult to participate without the need for their views to be relayed by a third party.

The adult should also be supported to access a person of their choice to attend the Case Conference with them; this could be an independent advocate or another third sector support agency such as Breaking the Silence, Rape Crisis, Victim Support, Carers Centre, etc. This list is not

exhaustive. Many adults will choose to be supported by someone they trust who very often will be a friend or family member and this should be accommodated. The only exception is where the Chair of the meeting has made a decision to exclude that person for all or part of the meeting. This should be explained to the adult and consideration given to negotiating another source of support.

#### Ask yourself:

- ✓ Have you discussed the nature of concerns and areas that will be covered in the meeting with the adult and any family members or advocates?
- ✓ Are you clear about any tools or environmental adaptations that may be required to promote the adult's attendance or participation?
- ✓ Have you identified all potential supports for the Adult and/or their Carer?
- ✓ Have you informed the Chair of any support needs of the adult and/or their carers?
- ✓ Have you prepared relevant paperwork i.e. completed AP1 and AP2 (or any other relevant Risk Assessment)?
- ✓ Have you identified anyone who may require to be excluded from all or part of the meeting and discussed this with the adult and the Chair?

**Remember:** Further information is available via the adult protection website [www.east-ayrshire.gov.uk/asap](http://www.east-ayrshire.gov.uk/asap) or alternatively the Adult Protection Unit via telephone: 01563 576728 / E-Mail: [MAPS@east-ayrshire.gcsx.gov.uk](mailto:MAPS@east-ayrshire.gcsx.gov.uk)

For information on the local East Ayrshire Council Officer Forum contact Learning and Development Practitioner Adult Protection via telephone: 01563 576739 or alternatively via E-Mail: [MAPS@east-ayrshire.gcsx.gov.uk](mailto:MAPS@east-ayrshire.gcsx.gov.uk)

For all updated research on Child and Adult Protection the WithScotland practitioner resources <http://withscotland.org/> are a good reference source for use by all Council Officers and practitioners.