



Shetland Inter-agency Adult Protection Procedures



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SEPTEMBER 2020



SHETLAND INTER-AGENCY ADULT PROTECTION PROCEDURES

Act Against Harm

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What to do if you are worried about an adult?

To make an Adult Protection Referral or raise a concern about the safety and wellbeing of an adult (which is defined as someone over the age of 16), please contact the Duty Social Worker.

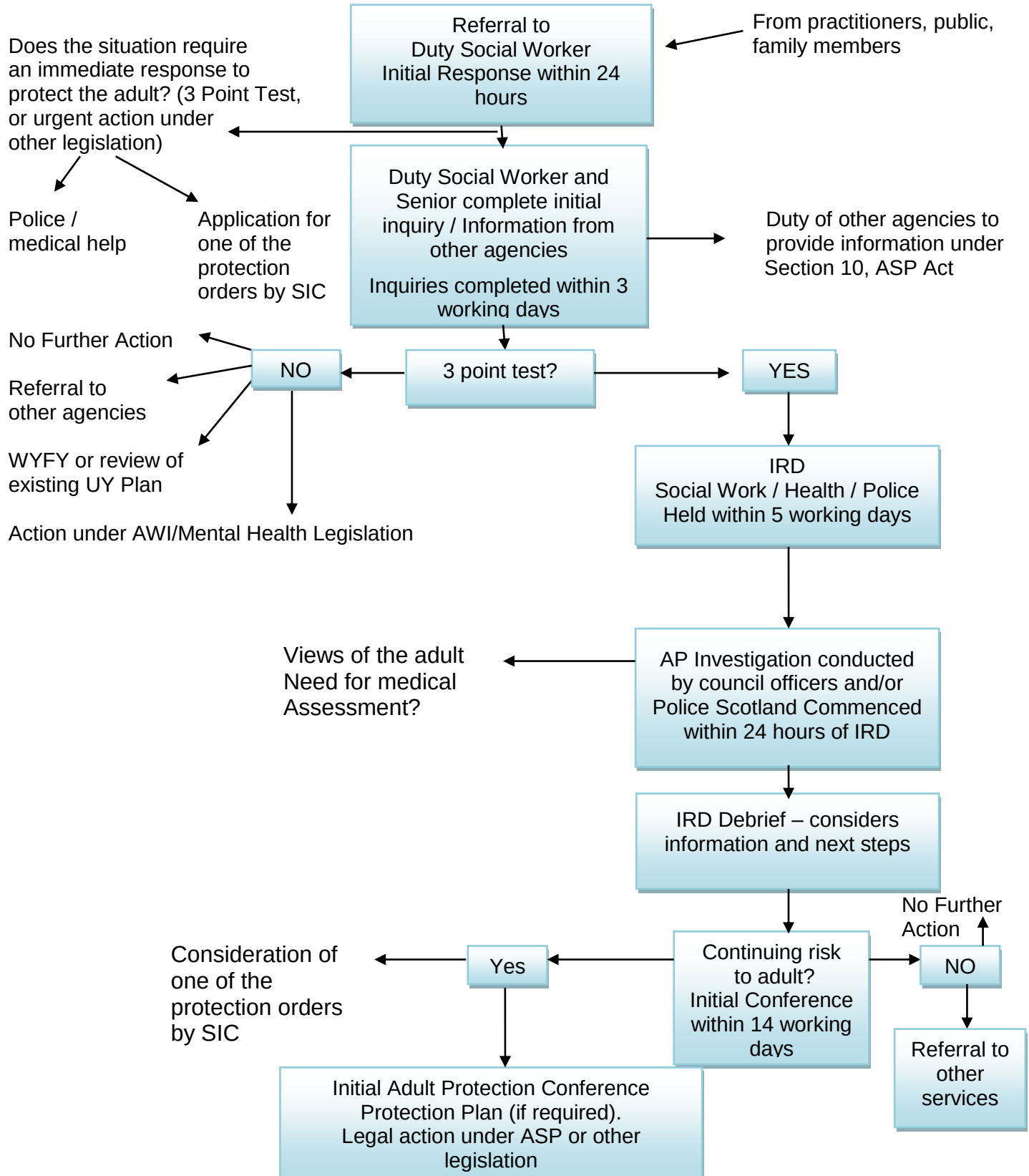
Adult Protection Duty Social Work Service	Telephone
Monday to Friday 9 am – 5 pm	dutysocialwork-adults@shetland.gov.uk
During Working Hours	01595 744400
Duty Out of Hours Service – for both adults and children (outwith above times)	01595 695611

Police	Telephone
24 hour cover	
Lerwick Police Station	101
In an emergency call 999	

NHS Shetland	Telephone
Gilbert Bain Hospital – A&E	01595 743000
NHS 24	111
In an emergency call for an ambulance on 999	

FLOWCHART

This flowchart represents the process of responding to a referral that indicates an adult may be at risk of harm. At any stage in the process, emergency action to protect the adult, or a decision that the adult does not meet the 3 point test, or that action under the Mental Health (Care and Treatment) (Scotland) Act 2003 or Adults with Incapacity (Scotland) Act 2000 would better meet their needs, can stop the process.



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EXPLANATION OF TERMINOLOGY

GLOSSARY:

SPPC	-	Shetland Public Protection Committee
APCC		Adult Protection Case Conference
FGM	-	Female Genital Mutilation
GIRFEC	-	Getting it Right for Every Child
GP	-	General Practitioner
ICT	-	Information and Communication Technology
LGBT	-	Lesbian, Gay, Bisexual and Transgender
MHO		Mental Health Officer
NHS	-	National Health Service
PVG		Protecting Vulnerable Groups
SWIFT	-	Social Work Information System
UY		Understanding You
WYFY		With You For You assessment of adults' care needs

OPENING HYPERLINKS WITHIN THE INTERNET VERSION OF THIS DOCUMENT

To open a hyperlink you should hover over the link and when you see the pointing finger () left click once. If this does not work, right click when you will be presented with a number of options. Choose "Open Hyperlink" which will take you to the website or document.

Please report any links that do not work to the Lead Officer for Shetland Public Protection Committee (see the Contacts page on www.safershetland.com)

Chapter 1: Introduction

- 1.1 Most adults who may be considered to be at risk of harm manage to live their lives safely with the assistance of caring partners, relatives, friends, family and with the support of medical and social services provided by professional agencies and volunteers. However, some people will experience harm such as physical abuse, sexual abuse, psychological harm or exploitation of their finances or property. The Adult Support and Protection (Scotland) Act 2007 (<http://www.legislation.gov.uk/asp/2007/10/contents>), (Code of Practice 2014: www.gov.scot/Resource/0045/00455465.pdf) was introduced to ensure that adults who experience such harm will be protected.
- 1.2 The Shetland Inter-Agency Adult Support and Protection procedures have been developed to support consistent practice by all agencies in Shetland who are members of the Shetland Public Protection Committee. These procedures have been approved by NHS Shetland, Shetland Islands Council, Police Scotland and the Third Sector represented by Voluntary Action Shetland.
- 1.3 Shetland Public Protection Committee (SPPC) fulfils all the functions of an Adult Protection Committee as laid down in the Adult Support and Protection (Scotland) Act 2007 and the 2014 Code of Practice. The work of SPPC is based on the principle that everyone - all agencies including the third sector and the wider community - have responsibilities to ensure that adults who may be at risk of harm in Shetland are safe, respected and included and fully involved in all decision making. Our aspiration for all adults who may be at risk of harm is that they are empowered through support from the responsible agencies to be free from harm and enabled to make decisions and choices about their lives and to live as independently as possible in relation to their personal circumstances.

Chapter 2: Policy and Principles

- 2.1 All Adults at Risk have a right to protection from harm and exploitation and to adequate physical, emotional and social care support.
- 2.2 All concerns and suspicions of harm will be taken seriously and investigated in accordance with agreed interagency procedures.
- 2.3 All agencies are committed to working in an open and cooperative way.
- 2.4 The Adult at Risk will be informed and involved wherever possible in any adult protection process. Any assistance that they require to participate fully will be provided and their views sought and respected.
- 2.5 It is acknowledged that people who may cause harm to an adult may do so unintentionally and they may be provided with appropriate support in accordance with their particular needs. It is also recognised that individuals who cause harm to others may themselves be an adult at risk and their needs should also be assessed.
- 2.6 Work will be carried out on the basis of partnership with the adult and their families and carers, wherever appropriate.
- 2.7 All interventions under these procedures must be person centred and comply with current legislation and guidance on equality and diversity, reflecting best practice in areas of gender, race, disability, age, sexual orientation and religious belief. All interventions should uphold the adults rights under UN conventions.
- 2.8 **Overarching Principles Adult Support & Protection (Scotland) Act**
Any person or body taking a decision under the A S & P Act must be able to demonstrate that the principles of the Act have been applied to clear decision-making and to their intervention.
Any intervention:
- a) Will provide benefit to the adult which could not reasonably be provided without intervening in the adult's affairs; and
 - b) Is, of the range of options likely to fulfil the object of the intervention, the least restrictive to the adult's freedom.
- 2.9 In addition any intervention must have regard to:
- a) the adult's ascertainable wishes and feelings (past and present);
 - b) any views of
 - the adult's nearest relative,
 - any primary carer, guardian or attorney of the adult, and
 - any other person who has an interest in the adult's well-being or property; and
 - c) the importance of
 - the adult participating as fully as possible in the performance of the function, and
 - providing the adult with such information and support as is necessary to enable the adult to participate.

Public bodies or office holders must also have regard to:

- d) the importance of the adult not being, without justification, treated less favourably than the way in which a person who is not an Adult at Risk of harm would be treated in a comparable situation;
- e) the adult's abilities, background and characteristics.

Chapter 3: Values

- 3.1 All Adults at Risk of harm have a right, and should be enabled to achieve that right, to live and receive services in an environment which is free from prejudice and safe from harm.
- 3.2 Where it is suspected that an adult has been harmed all agencies will work co-operatively to provide a service which:

Is Prompt

And at a pace of delivery in accordance with the timescales in these interagency procedures which ensures the immediate and ongoing health and safety of the adult in need of support and protection.

Is Sensitive

To the adult in need of support and protection and his/her representatives/carers and to staff.

Is Effective

In providing solutions which are as simple and practical as possible and aimed to prevent the risk of harm recurring. Solutions are based on holistic risk assessments and risk management

Is Balanced

Agencies must exercise responsibilities and duties appropriately, and ensure that all intervention in people's lives, those harmed, their family, and staff, is justified, with the reasons being fully documented (recorded).

Is Aware

And does not discriminate against a person because of their religious and cultural beliefs, age, disability, gender, race or sexuality.

- 3.3 Human Rights will be respected. In determining appropriate action, every effort must be made to enable the adult in need of support and protection to express their wishes in a way that is appropriate to them.

Chapter 4: Definition of an Adult at Risk

4.1 Adults at Risk are adults who:

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

(This can be referred to as the 3 point test – [see 4.5 below](#))

4.1.1 An Adult is defined as a person aged 16 or over.

4.2 Harm includes all harmful conduct and, in particular, includes

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

4.3 An Adult is at **risk of harm** if:

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

NB: “Conduct” includes neglect and other failures to act.

4.4 The definition of “harm” in the Act sets out the main broad categories of harm that are included. The list in the definition is not exhaustive and no category of harm is excluded simply because it is not explicitly listed. In general terms, behaviours that constitute ‘harm’ to a person can be physical, sexual, psychological, financial, electronic or a combination of these. The harm can be accidental or intentional, as a result of self-neglect or neglect by a carer or caused by self-harm and/or attempted suicide. Domestic abuse, gender based violence, forced marriage, human trafficking, stalking, hate crime and ‘mate crime’ (one friend or acquaintance harming another) will generally also be harm.

4.5 The 3 Point test

The presence of a particular condition does not automatically mean that an adult is an “Adult at Risk”.

It is important to remember that all 3 elements of the definition must be met. It is the whole of an adult's particular circumstances which can combine to make them more vulnerable to harm than others.

4.6 The first element of the above three-point criteria relates to whether the adult is unable to safeguard their own well-being, property, rights and other interests. ‘Unable’ is not further defined in the Act or guidance, but is defined in the Oxford English Dictionary as ‘Lacking the skill, means or opportunity to do something’

- 4.7 **An inability to safeguard oneself is not the same as an adult not having capacity.** An adult may be considered unwilling rather than unable to safeguard themselves and so may not be considered an Adult at Risk. Adults who have capacity may still be unable to protect themselves
- 4.8 Assessing the three point test needs to be based on comprehensive interagency information that is shared with or gathered by Adult Social Work. **Assessing that an adult has capacity does not negate the duty to act for an individual's wellbeing.** An absence of capacity (please see [Chapter 10: Legal Context](#) for legal information) opens up various legal processes. However when a person has decision making capacity practitioners have to rely on negotiation and relationship building skills in order to attempt to help the adult.

4.9 Problematic alcohol and drug use

Vulnerability or a lack of ability to safeguard, which is due to temporary problematic alcohol or drug use, would not by itself result in an individual being considered an "Adult at Risk". Adults have the right to make choices and decisions about their lives, including the use of alcohol and drugs, even if that means they choose to remain in situations or indulge in behaviour which others consider inappropriate. Without any additional vulnerability, such as an illness or disability, adult protection intervention would not normally be appropriate. Young people aged 16-18 can be particularly easily influenced and legislation places limits on children not in place for adults such as access to alcohol. However, the ongoing problematic use of drugs or alcohol may take place alongside (and on occasions contribute to) a physical or mental illness, mental disorder or a condition such as alcohol related brain damage. If this is the case an adult may be considered an "Adult at Risk". It must be stressed, however, that it is the co-existing illness, disability or frailty, which would trigger adult protection considerations, rather than the substance use itself.

A number of diagnoses are problematic when alcohol or drug use are regular features of an adult's presentation, but in each case multi-agency inquiries should be made to gather as much information as possible about an adult's condition. In addition, because an adult's underlying condition may deteriorate with ongoing alcohol or drug use, inquiries should be made each time an adult protection referral is made and no assumption should be made about the adult's condition on the information gathered during a previous inquiry. An assessment that intervention under the Act is not necessary or appropriate taking into account local eligibility criteria, does not absolve authorities of responsibility to consider intervention under other legislation, such as the NHS and Community Care (Scotland) Act 1990, or to offer other services. Actions taken or reason for no action should be recorded. Consideration should be given to practical and emotional support provided by social work, health or the third sector. For example the provision of health and social care services such as housing, independent living, financial, occupational therapy, counselling, support for carers, and Integrated Health and Social Care services. Recent research into Significant Case Reviews when an adult at risk died or was injured have shown that many of these adults had long term drug and alcohol problems, but their circumstances were not sufficiently assessed in terms of them being an adult at risk.

4.10 16-18 Year Olds

- 4.10.1 Young people age 16 – 18 can be at risk of falling between gaps in services. All partners in the Shetland Partnership have signed up to the Shetland GIRFEC policy. As part of this there is agreement to provide a Named Person Service. All children and young people in Shetland up to the age of 18 should have a Named Person in place who can be a first point of contact if the child, young person or their family need advice guidance and assistance. https://www.shetland.gov.uk/children_and_families/documents/GIRFECGuidanceV1.2.pdf
- 4.10.2 For young people aged 16-18 who are still in Education the Schools Service will provide a Named Person. For young people who have left school and who have not been Looked After, Shetland Islands Council Youth Work Services will provide a Named Person. For any young person who was Looked After on their 16th birthday and is entitled to a through care and after care service, that service will provide a Named Person.
- 4.10.3 To ensure that vulnerable young people aged 16 -18 who may be at risk of significant harm have their situation assessed and responded to, please see the Vulnerable Young Person's guidance Protocol 11 in Section 3 of the Shetland Interagency Child Protection Procedures (<https://www.safer-shetland.com/assets/files/cp-procedures-final-march-2019v2.pdf>)
- 4.10.4 For young people age 16 to 18 who have been identified as being at risk of significant harm a child protection referral should be made to Children and Families Social work. An initial child protection case conference can be called and a young person over 16 can have their name placed on the child protection register if those attending the conference assess that is the best way to protect them. It would be unusual to register a young person aged over 16, but there is nothing in National Guidance that prohibits this if it is felt to be appropriate. A supportive working relationship with the young person taking account of their views is also important. If a child whose name is already on the child protection register becomes 16 then consideration of continued registration is appropriate as would normally happen at the next Review Child Protection Case Conference - they do not need to be automatically deregistered. What will need to be considered for young people over 16 is whether any of the provisions under the Adult Support and Protection (Scotland) Act 2007 would assist in safeguarding them. The Shetland interagency Child Protection Procedures can be accessed through the following link (<https://www.safer-shetland.com/assets/files/cp-procedures-final-march-2019v2.pdf>)
- 4.10.5 It is possible for a young person to remain on a Compulsory Supervision Order under the Children's Hearing Act (Scotland) 2011 up to the age of 18, if they are already subject to such an order on their 16th birthday. This means that they are "Looked After" and there are corporate parenting responsibilities in place for their care and welfare up to the age of 26. A young person who is subject to a Compulsory Supervision Order is classed as a child for the purposes of the remedies available under the Children's Hearing (Scotland)

Act 2011 Act or the Children's (Scotland) Act 1995 Act. A Compulsory Supervision Order is part of the Child Protection Framework, and it would unnecessarily complicate matters to deal with a young person who is already being dealt with under this framework under the Adult Support and Protection Procedures. However, it should be noted, that the remedies available under the Adult Support and Protection legislation, such as a Banning Order, would be available to protect such a young person. This is a legally complex area, and staff should seek advice from the Duty Social Worker who can consult with Shetland Islands Council's legal services, if required.

Chapter 5: Recognising Abuse and Harmful Behaviour towards an Adult

- 5.1 There are a number of signs which may indicate that an adult may have been harmed or neglected.

When providing information about possible signs of harm it is important to remember:

- Any list of signs can never be completely definitive or exhaustive;
- There may be alternative explanations for any signs of harm and there could be a number of possible causes. The existence of one or more symptoms does not necessarily indicate harm;
- The following information should be looked at in the context of the adult's whole situation, and in combination with a range of other information related to the adult's circumstances.

- 5.2 It is reasonable to expect carers and family members and professionals to be seriously concerned by the appearance of any of the following indicators of harm either singly or in combination. **However, assumptions cannot be made on the basis of checklists, and it is essential to make objective assessments at all times**

- 5.3 Good practice would always be to seek advice and guidance by contacting the duty social worker if you have any concern about an adult's welfare or safety.

The following gives some information about possible indicators of harm – physical abuse, sexual, psychological and emotional harm, or neglect. There can be an overlap between all the different forms of harm and all or some can co-exist. Harm, including sexual harm, can be perpetrated by both males and females.

- 5.4 **Physical Abuse** involving actual or attempted injury to an adult defined at risk e.g.
- Physical assault caused by punching, pushing, slapping, tying down, giving food or medication forcibly, denial of medication.
 - Use of medication other than as prescribed
 - Inappropriate restraint

Bruises

- Bruised eyes are particularly suspicious if, both eyes are bruised (most accidents cause only one) there is no bruise to the forehead or nose or suspicion of skull fracture (bruised eyes can be caused by blood seeping down from an injury above)
- Bruising in or around the mouth
- Grasps marks on arms, chest or shoulders
- Finger marks (e.g. you may see three or four bruises on one side of the face and one on the other)
- Symmetrical bruising (especially on the ears)
- Outline bruising (e.g. belt marks, hand prints)
- Linear bruising (particularly on the buttocks or back)
- Bruising on soft tissue with no obvious explanation
- Different age bruising (especially in the same area)
- Abrasions, especially around wrists and /or ankles

NB Most falls or accidents produce one bruise on an area of the body - usually on a bony protuberance. An adult who falls downstairs generally has only one or two bruises. Bruising in accidents is usually on the front of the body as most people generally fall forwards. In addition, there may be marks on the adult's hands if they have tried to break their fall.

The following are uncommon areas for accidental bruising, back of legs, buttocks (except, occasionally, along the bony protuberance of the spine), neck, mouth, cheeks, behind the ear, stomach, chest, underarm, genital and rectal area. Injuries in any of these areas of the body would require a discussion with the Duty Social Worker and a medical examination.

Bites

These can leave clear impressions of the teeth.

Burns and Scalds

It can be very difficult to distinguish between accidental and non-accidental burns. Generally speaking with modern safeguards and different living arrangements there are fewer accidental burns than there were in the past- e.g. fewer coal/peat fires, fewer people smoking, modern hot water systems regulate temperatures, safer cookers and electric kettles. As a general rule burns or scalds with clear outlines are suspicious. So are burns of uniform depth over a large area. Also splash marks about the main burn area (caused by hot liquid being thrown)

NB Concerns should be raised where a carer responsible for an Adult at Risk of harm has not checked the temperature of the bath.

Scars

Many adults have scars, but notice should be taken of exceptionally large numbers of differing aged scars (especially if coupled with current bruising), unusually shaped scars e.g. round ones from possible cigarette burns or large scars from burns or lacerations that did not receive medical treatment

Fractures

Should be suspected if there is pain, swelling, and discolouration over a bone or a joint. The most common non accidental fractures are the long bones i.e. arms, legs, ribs.

5.5 Emotional/Psychological Harm – resulting in mental distress to the Adult at Risk e.g.

- Excessive shouting, bullying, humiliation
- Manipulation or the prevention of access to services that would enhance life experience
- Isolation or sensory deprivation
- Denigration of culture or religion

The following indicators should be considered by workers when concerns regarding emotional harm arise. In some situations the following will be applicable

- Carers' behaviour
- Carers' history – mental health, substance misuse, relationship with adult

- Pressure exerted by family or professional to have someone admitted to residential care
- Weight change- loss of appetite or overeating
- Loss of confidence
- Extreme submissiveness or dependence in contrast with known capacity
- Demonstration of fear of another person by the vulnerable adult
- Sudden changes in behaviour in the presence of certain persons.
- Rejection
- Denigration
- Scapegoating
- Denial of opportunities for appropriate socialisation Isolation from normal social experiences, preventing the Adult at Risk from forming friendships
- Under stimulation
- Sensory deprivation
- Marked difference in material provision in relation to others in the household
- Unrealistic expectations of the vulnerable adult
- Asking for an Adult at Risk to be removed from home, or indicating difficulties in coping with an Adult at Risk, about whose care there are already doubts
- Fear of carers
- Refusal to speak
- Severe hostility/aggression towards other adults.

5.6 Financial or Material Harm -Financial harm is often linked to neglect, emotional and psychological harm and involves the exploitation of resources and belongings of the Adult at Risk e.g.

- Theft or Fraud
- Misuse of money, property or resources without informed consent
- Important documents are reported to be missing
- Unexplained or sudden withdrawal of money from accounts
- Contradiction between known income and capital and unnecessarily poor living conditions especially where this has developed recently
- Personal possessions or valuables going missing from the home without satisfactory explanation
- Someone has taken responsibility for paying rent, bills, buying food etc – but this is not happening
- Unusual interest taken by relative, friend, neighbour or other in financial assets, especially if little real concern shown in other matters
- Next of kin refuses to follow advice regarding control of property via continuing/welfare power of attorney
- Where care services, including residential care, are refused under clear pressure from potential inheritors
- Unusual purchases unrelated to the known interests of the Adult at Risk
- Abuse of power by the person with a power of attorney
- Organised financial scams which are deliberately targeted through post, phone or e mail at people who are perceived to be vulnerable to this approach or who have been scammed previously. Large quantities of unsolicited mail and phone calls may be a sign that this is happening.
- Bogus or rogue trades people who fail to complete work or overcharge or who do substandard work

- Financial loan companies who contract a loan agreement with people who do not have the capacity to understand the implications of a loan agreement.
- “Cuckooing” is when an individual causes harm to an adult at risk by moving into their property, using their resources and money and possibly conducting illegal activities from the adult’s home (for e.g. drug dealing). The adult can be groomed, persuaded, forced or frightened into letting the person use their home or they may be lonely or feel sorry for the individual.
- . Adults at risk can be placed under duress to rewrite wills or sign over goods property or money

For further information and helpful links to other organisations, please see the ‘For Everyone’ section of the Adult Protection part of the Safer Shetland website: <http://www.safershetland.com/for-everyone1>

5.7 Sexual Harm – involving activity of a sexual nature where the Adult at Risk cannot or does not give consent. Consent is defined in the Sexual Offences (Scotland) Act 2009 (www.legislation.gov.uk/asp/2009/9/contents) as “free agreement”. Sexual harm would include:

- Incest
- Rape
- Acts of gross indecency
- Sexual Harm can occur when Adults at Risk of harm are involved in sexual relationships or activities which they have not consented to or are pressured into consenting to or they cannot understand.
- Such activities could include unwanted sexual contact such as rape or incest, inappropriate touching including sexual harassment either verbal or physical, indecent exposure, displaying pornographic material, inappropriate sexual material or online sexual activity intended for the gratification of another person.

The following give some general indicators that may be related to sexual harm, but care should always be taken not to assume that they definitely indicate that an adult has been harmed in this way. They are causes for concern in themselves and may require further assessment and help.

- Adult aversion to being touched.
- Tendency to withdraw and spend time in isolation
- Deliberate self harm
- Depression and withdrawal
- Wetting or soiling, day or night
- Sleep disturbances or nightmares
- Anorexia or bulimia
- Phobias or panic attacks
- Any of the above noted as a change in behaviour
- Dysregulated sexual behaviour which may be as a result of dementia (this would require medical assessment and potentially could be a risk to others)

The following are more specific indicators

- Injuries in genital area
- Infections or abnormal discharge in the genital area
- Complaints of genital itching or pain
- Presence of sexually transmitted diseases/pregnancy
- Excessive washing
- Disclosure by the adult of an experience of sexual harm

5.8 Neglect and acts of omissions by others charged with care of Adult at Risk – including ignoring medical or physical care needs

- Failure to provide access to appropriate health or social care or educational services
- Withholding of the necessities of life such as nutrition, clothing, appropriate heating etc

The following indicators, singly or in combination, should alert workers to the possibility that the Adult at Risk needs are being neglected:

- circulation disorders
- pressure sores – particularly if they are avoidable or untreated
- unhygienic home conditions
- supervision that is inappropriate for the adult's care needs provided by a carer that exposes the adult to risk
- carer with substance misuse problems who is not providing appropriate care and supervision
- Failure to seek appropriate medical attention
- A delay or failure in seeking medical treatment which is obviously needed
- An Adult at Risk is found at home or in a care setting in a situation of serious but avoidable risk
- Unnecessary delay in a member of staff or a carer responding to the adult's request for help or their care needs
- Serious or persistent failure to meet the needs of the Adult at Risk
- Non attendance at social care or educational service
- Carer's own health and vulnerabilities affecting their ability to provide appropriate care

Neglect can also include:

Medication Misuse

- Unexplained drowsiness/over sedation
- Sudden change in relation to a long term condition
- Inappropriate use of over the counter medication

Dietary Misuse

- Unexplained weight loss/weight gain

5.9 Self neglect

Self neglect is the inability (intentional or unintentional) to maintain a socially and culturally accepted standard of self-care with the potential for serious consequences to the health and wellbeing of the adult. Self neglect can include neglect of bodily needs for food, cleanliness, warmth and medical care. Self-neglect can include neglecting to care for one's home and surroundings.

Hoarding can result in self neglect. Hoarding is the excessive collection and retention of any materials to the extent that it impedes day to day functioning. It can include "hoarding" animals. Self-neglect and hoarding are often linked to experiences of trauma and significant mental health problems.

It is characterised by:

- Acquiring and failing to throw out a large number of items
- Severe cluttering of the adult's home so that it is no longer able to function as a viable living space
- Significant distress or impairment of worth around life (please see the Adult Protection Committee's January 2016 Newsletter with further information on self neglect: www.safershetland.com/assets/files/APC-Newsletter-Final-180116.pdf.)

(Consultation with Shetland Islands Council Environmental Health Service can assist when assessing serious situations where hoarding or serious self neglect are an issue (http://www.shetland.gov.uk/environmental_health/).

5.10 Multiple forms of Harm

This may occur in an ongoing relationship or service setting or to more than one person at a time. It is important therefore to look beyond single incidents and consider underlying dynamics and patterns of harm. For example a perpetrator targeting more than one adult at risk in the community

5.11 Random Violence

An attack by a stranger on an adult defined as being at risk is an assault, a criminal matter, and should be reported to the police. However where there is the possibility that the violence may be part of a pattern of victimisation in a community or neighbourhood, Adult Protection Procedures may apply in respect of effective multi-agency intervention.

5.12 Domestic Abuse and Gender Based Violence

Domestic abuse is a pattern of controlling, coercive, threatening, degrading and/or violent behaviour, including sexual violence, by a partner or ex-partner. Statistically, domestic abuse is overwhelmingly experienced by women and perpetrated by men. However men can also find themselves in abusive situations.

Often when people think of domestic abuse they think of physical violence, but domestic abuse includes coercive control, psychological, emotional and financial harm.. For many women and men who live with domestic abuse there will be no scars, bruises or broken bones, but for some it can take their life. No one kind of abuse is more serious than any other.

Abusive behaviour is defined in the Domestic Abuse (Scotland) Act 2018 as behaviour exhibited by one partner or ex- partner towards another partner or ex-partner. The abusive behaviour is described as behaviour which is

- Violent, threatening or intimidating
- Making the partner or ex-partner dependent or subordinate
- Isolating from friends, relations and other sources of support
- Controlling, regulating or monitoring freedom of action
- Depriving or restricting freedom of action
- Frightening, humiliating, degrading or punishing

These behaviours are often referred to as coercive control. The damaging and harmful effects on children are also recognised in the legislation. Such behaviour can be a criminal offence. The legislation is not gender specific and it is recognised that although statistically most abuse is directed at women, men can also be harmed.

Most adults who experience domestic abuse or gender based violence will not meet the three point test however anyone can seek advice and help about domestic abuse (<http://www.safershetland.com/domestic-abuse>).

Gender based violence which includes female genital mutilation, forced marriage, honour based violence, rape and sexual assault can result in very high risk situations for women and girls. These are offences and any indications that adults (or children) have been harmed in this way should be discussed with Police Scotland. The Scottish Government has issued the following guidance for healthcare professionals regarding female genital mutilation: [http://www.sehd.scot.nhs.uk/cmo/CMO\(2016\)05.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2016)05.pdf)

Adults with a learning disability, substance misuse problems or mental illness can be very vulnerable to exploitative or abusive relationships. Some adults may have lived with domestic abuse for many years and it is only when outside agencies are providing care and support that this may become apparent to others outside the immediate family.

5.13 Discriminatory Harm

Adults with a range of physical and mental problems can be discriminated against to the extent that their right to live as they choose free from harm is seriously affected. Adults can be discriminated against due to disability, race, gender, religion or sexuality. Discrimination can be a hate crime and consideration about reporting any such behaviour to the police is important as well as using adult protection processes to protect the adult. Please see the links below:

<http://www.gov.scot/Resource/0039/00395041.pdf> (Briefing Paper May 2012: "Tackling Hate Crime using an Outcomes Approach in Edinburgh)

<http://www.gov.scot/Topics/Justice/policies/reducing-crime/tackling-hate-crime> (page on Scottish Government website with response to 2012 report above)

Care services have a duty to respect service user's culture, sexuality and religion and failure to do so can also amount to discriminatory harm.

5.14 Organisational Harm

An adult can be at risk of harm in a variety of settings that should promote their care and welfare- hospitals, care homes and day care services

The following report "Identifying and Applying Early Indicators of Concern in Care Services for People with Learning Disabilities and Older People" www.gov.scot/Resource/0044/00443002.pdf identified the following commonly occurring areas of concern:

- Concerns about leadership and management
- Concerns about staff skills, knowledge and practice
- Concerns about residents behaviour and wellbeing
- Concerns about the service resisting the involvement of external people and isolating individuals
- Concerns about the ways that services are planned and delivered
- Concerns about the quality of basic care and the environment

When a referral is received about an Adult at Risk potentially being harmed within a care setting or by staff working in the community then these adult protection procedures must be followed. Where there may be a potential systemic failure in the delivery of care services to adults, there is a legal duty for Shetland Islands Council through Adult Social Work to make inquiries. These inquiries should consider whether there is potential that other adults are also experiencing harm or are at risk of harm.

The Stepwise guide in these procedures should be followed and consideration given to the requirement to begin a Large Scale Inquiry ([see appendix 7](#)) Further information about managing allegations against staff are in [Appendix 2](#)

5.15 Raising concerns at work

If any person, employed by or working in a voluntary capacity, for any organisation in Shetland has concerns about the care and support being provided to a service user then using their own organisations method for raising concerns at work should be followed. This can be difficult – especially when the behaviour of colleagues or managers is affecting the quality of care provided. Ultimately the safety of service users has to be the paramount consideration. General advice and guidance about whistle blowing can be found at: www.gov.scot/Publications/2011/12/06141807/4.

5.16 Links to Child Protection

If concerns are raised about at Adult at Risk who has childcare responsibilities or contact with children then consideration must be given to the child's safety and wellbeing. It is also important to consider if the person responsible for harming an adult may also be a risk to children and young people. Experience shows that there have been a number of situations in Shetland where perpetrators have posed a risk to children as well as adults. Shetland's Inter-Agency Child Protection Procedures must be followed to address these concerns

<https://www.safershetland.com/assets/files/cp-procedures-final-march-2019v2.pdf>

Advice can be sought from the Duty Social Worker Children and Families Team (tel. 01595 744000 Mon-Fri 9-5am and in urgent situations from the out of hours Duty Social Work on 01595 695611) and if necessary a child protection referral can be made.

5.17 Links to Duties under the 2015 Counter Terrorism Act-Prevent Strategy

The Counter Terrorism and Security Act 2015 places a duty on Local Authorities and partner agencies to prevent people from being drawn into terrorism. The "Prevent Duty Guidance for Scotland" has been prepared to assist agencies to put this into practice. Staff have a duty to be aware of situations where people may become radicalised and to stop people becoming terrorists or supporting terrorism. There are threats posed to the UK by terrorism based in the Middle East, but also Northern Ireland and other extremist groups (for example far right wing or racist groups). People can be groomed and influenced and this process is very similar to the way in which grooming can take place for other purposes. There may be some adults who, due to having a learning disability or mental health problem, may be targeted and vulnerable to radicalisation. This can take place online or in the real world. Becoming involved in such activity can be a clear risk to the adult as well as a potential risk to others.

Workshops to Raise Awareness of Prevent (WRAP training) and e-learning courses on SIC and NHS Shetland systems should be completed by all staff to comply with

legal duties under the Act. There can be a risk of significant harm and so staff who have concerns about an adult who may be being drawn into such activity should

- Contact the police immediately
- If the adult is vulnerable and being exploited make an adult protection referral to the Duty Social Worker.

There is a single point of Contact for Prevent-currently that role is held by the Deputy Executive Manager for Children's Social Work who should be notified if a concern about radicalisation is raised through adult protection or any other process. Following an initial interagency discussion a plan will be formulated to assist the adult. In some cases it may be appropriate to hold a Prevent Professional Concern Case Conference which will be chaired by the Improvement Reviewing Officer and follow appropriate Prevent Procedures.

Web link to PREVENT Guidance for Scotland:
<https://www.gov.uk/government/publications/prevent-duty-guidance>

Chapter 6: Stepwise Guide for ASP Procedures

Step by Step Guide

Everyone should be able to:

Recognise

Be aware that an adult may be at risk of harm or abuse and may need support and protection.

Respond

Take immediate action necessary to ensure safety.

Report/Refer

Follow adult protection procedures - speak to a line manager/make a referral by phone to duty social work. Do not delay

Record

Record all information, send a written referral to follow a telephone referral including actions, discussions and decisions.

Steps 1 to 6 cover the steps that anyone can use to report concerns that an adult may be at risk. Where guidance may vary for staff from a particular agency this is noted. [Steps 7 to 9](#) give more detailed guidance to Council Officers and police who may be conducting formal adult protection investigations.

STEP 1 – Recognising

1.1 Person Responsible – These guidelines should be followed by anyone who witnesses, suspects or receives information about an adult being harmed.

1.2 Action to Take

1.2.1 If the adult at risk requires urgent medical attention or urgent police protection, go to **Step 3**.

1.2.2 If the adult has an obvious injury, then staff may seek an explanation from them. Even if the explanation indicates an accidental cause then it is always good practice to record that.

If the adult speaks about experiences of financial harm, domestic abuse, discriminatory harm, physical harm, neglect, sexual abuse or emotional abuse, then listen carefully, seek basic clarification of what the adult is saying and record the information in as much detail as possible. Further information about how to support an adult who discloses abuse is contained in [Appendix 6](#)

1.2.3 If the information about the risk to the adult comes directly from them or from someone else, explain that you cannot keep this confidential and will need to speak to your line manager.

1.2.4 In many cases concerns about an adult's safety may come from a number of events or pieces of information that, when added together, indicate that they may be at risk. For example neglect or emotional harm are often the result of a series of events that impact on the adult's mental and physical health over a period of time. It is always appropriate to seek advice and make an adult protection referral if the information indicates the adult may be at risk. Acting quickly to seek advice and share information is important and gives the best opportunity to protect the adult. Consent is not required to make an adult protection referral - please see Step 4 for more information about confidentiality and sharing information.

1.2.5 The timing and nature of further contact with the adult, carers or family must be decided by the investigating agencies following the making of an adult protection referral.

STEP 2 – Staff member discusses reported concern with Line Manager

2.1 Person Responsible – Staff member in consultation with Line Manager (except where the Line Manager is implicated in the alleged harm)

2.2 Action to Take – Consultation with Line Manager / Supervisor.

Discuss concerns with your Supervisor / Line Manager as soon as possible. If they are unavailable, or have been implicated in the allegation of harm, a suitable alternative manager should be sought. The full facts and circumstances of the situation should be shared with the line manager without delay.

The following points, amongst others, may be considered:

- The adult's level of capacity and consequent involvement in actions / decisions / choices.
- If it appears that there has been an incident or incidents of harm to an Adult at Risk, there is a duty to report to Adult Social Work (or Police Scotland in more urgent situations) there is a statutory duty for the local authority to undertake 'initial inquiries'. **Do not delay in making an adult protection referral to Duty Social Work**
- Whether emergency action is likely to be necessary and any steps required to secure the Adult at Risk's immediate safety. If emergency action is required do not hesitate to provide this for the service user i.e. call an ambulance or NHS 24, or the Police.(see Step 3 below)
- Record discussion and any action taken.

2.3 Specific Guidance for NHS Shetland Health Professionals

NHS Shetland and the Adult Protection Guidance for Health Professionals issued by Scottish Government have agreed that some staff are able to make a direct referral to the Duty Social Worker without consulting with a line manager.

- Consultants
- A & E staff
- Health visitors
- Midwives
- GPs
- ANPS
- Practice Nurses
- Community Nurses
- Scottish Ambulance Service

All of these staff can seek advice and guidance from line managers, but are not obliged to do so before making a referral

Good practice would be that a copy of the written referral would follow the telephone referral and would be shared with line managers, the patient's consultant if made during a hospital stay, and with the Protection Nurse Advisor. NHS staff can contact the Protection Nurse Advisor to discuss concerns about any adult and to seek advice about making adult protection referrals. The Protection Nurse Advisor is contactable on 07795 304 038)

General Practitioners have a key role in protecting vulnerable adults and specific national guidance has been developed to support them – web link to national GP guidance (https://www.pkc.gov.uk/media/33952/GP-Guidance-on-the-involvement-in-multi-agency-protection-arrangements/pdf/GP_-_guidance-on-the-involvement-of-gps-in-multi-agency-protection-arrangements_1_.pdf?m=636099847300400000).

See also national guidance issued for healthcare professionals regarding female genital mutilation: [http://www.sehd.scot.nhs.uk/cmo/CMO\(2016\)05.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2016)05.pdf)

STEP 3 – When Immediate Medical Assistance or Police Involvement is needed because a Crime may have been Committed or there is an immediate risk of harm

3.1 Person Responsible – the staff member or any other person

3.2 Action to be taken

- If urgent medical assistance is required, take the adult to Accident and Emergency or phone for an ambulance.
- Where there is a report or suspicion of a crime or if immediate assistance is required, an Adult Protection referral can be made direct to the police in an emergency by phoning 999. This may also need to be considered if the safety of the adult and the staff member is at immediate risk.
- All action taken **must** be recorded and discussed with a line manager or an alternative manager as soon as possible – but do not delay summoning emergency help.

STEP 4 – Sharing Information and Confidentiality

4.1 Person Responsible – Person/staff member who has the concern about the Adult at Risk and their Line Manager.

4.2 Action to Take

It is not necessary to seek consent before making an adult protection referral

However, if it does not increase the risk to the adult or alert a suspected perpetrator it would be good practice wherever possible to inform an adult that a referral will either be made or has been made. It would be unfair to ask an adult to give consent to an adult protection referral being made if the person responsible and the line manager have a duty to make a referral anyway

It is also important to consider if the adult at risk of harm is being influenced – placed under undue pressure by a relative, partner, family member or friend so that they are not able to protect themselves. If there is any evidence or concern about undue pressure, then an adult protection referral should be made without delay to the duty social worker. ([See also Appendix 3 in Section 2 of these Procedures for more information on undue pressure](#)).

Balancing the adult's right to make choices about their own life with the right to be protected and live their life free from harm can be complicated. However at the stage that the person responsible and their line manager have agreed that the adult is potentially at risk then making an adult protection referral is appropriate. It should be noted that at the later stages in the Adult Protection process adults can choose to opt out and their right to do so would be respected. Further information about consent, participation and advocacy is available in [Chapter 8, Paragraph 8.2](#) .

STEP 5 – Referral to Adult Care Social Work Team

5.1 Person Responsible – Staff member / Line Manager.

Referral to Adult Social Work Duty Social Worker /Out of Hours Duty Social Worker.

5.2 Action to Take

If there is a suspicion, allegation or clear evidence of harm, a referral to the Adult Social Work Team Duty Social Worker should be made **by telephone without delay** (01595 744400). If the concern arises outside of normal office hours a referral must be made to the emergency out of hours duty social worker who is contactable via 01595 695611. Please note that the out of hours duty social worker will call the referrer back to discuss the concerns.

The referral should include as many of the following details as possible. The referral form in [Chapter 13](#) should also be completed and e mailed to duty social work to follow up the telephone referral. It is advisable to keep a copy of the referral form for the referrers own records.

- The adult's name, address, date of birth, ethnic origin, gender, religion, GP, type of accommodation, family circumstances, support networks, physical health and communication difficulties if any, mental health including whether the person is subject to an order within the terms of the Mental Health (Care and Treatment) (Scotland) Act 2003 (www.mwcscot.org.uk/the-law/mental-health-act/) or the Adults with Incapacity (Scotland) Act 2000 (www.mwcscot.org.uk/the-law/adults-with-incapacity-act/)
- The referrer's job title and reason for involvement.
- Nature / substance of the allegation or concern
- Details of care givers / significant others.
- Details of alleged perpetrator, current whereabouts and likely movements within the next 24 hours, if known.
- Details of any specific incidents, e.g. dates, times, injuries, witnesses, evidence such as bruising.
- Background of any previous concerns.
- Is the adult at risk aware of the referral being made.
- Information given to the person, expectations, wishes of the person, if known.
- Record discussion and any action taken.
- Any information that the referrer may hold that relates to previous adult protection concerns

Once the referral is made by telephone the referral form in [Chapter 13](#) should be completed and sent to Adult Social Work Team. It can be securely emailed to dutysocialwork-adults@shetland.gov.uk

A copy should be retained for the records of the referring agency. NHS Shetland staff should also send a copy to the Advanced Nurse Practitioner (Protection).

Out of Hours Duty Response (tel. 01595 695611 for Out of Hours Duty Social Work)

Shetland is too small to have a waking 24 hour social work response team, but help in an emergency situation or where the risk to an adult is such that it will not wait until the next morning can always be obtained at any time of the day or night via the Duty Social Work service.

The after-hours number will be answered by an operator who will contact the Duty Social Worker or Duty Social Work Manager, who will call the referrer back. The referrer will need to provide a number for this purpose. However, if the referrer is unable to give a number, it is important as much information as possible is provided to the operator, who will pass it on. It is more helpful if the Duty Social worker can speak directly to the person making the referral in order to respond in the best way possible to safeguard the adult.

The Duty Social Worker receiving the call will check social work records on SWIFT / O drive to identify if the adult is known to the department.

After checking to see if the adult is known, the duty social worker will contact the out of hour's manager to discuss what actions may be necessary to take to protect the adult. There may be difficulties in seeking information out of office hours however, action will always be taken by social work, involving Police Scotland if necessary, to provide immediate protection to an adult at risk of harm if that is required

Police Scotland should be contacted by dialling 999 if an emergency response is required and 101 for more routine matters.

Information passed to Out of Hours Duty Social work and Police Scotland that an adult is at risk of significant harm will always be responded to and the adult safeguarded overnight until further plans can be made. Formal investigations conducted by Council Officers and in some situations by Police Scotland will be planned and conducted the next working day

6.2 Day Time Duty Service

6.2.1 Person Responsible – Duty Social Worker/Duty Assistant receiving the referral and Senior Social Worker (Adult Social Work Team).

Under section 4 of the Adult Support and Protection (Scotland) Act 2007 the 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 (by performing functions under the Act) in order to protect the person's wellbeing, property or financial affairs.

Adult Protection referrals must take priority over all other work and must be responded to within 24 hours. At a minimum this means the Duty Social Worker starting to gather information to inform an initial adult protection inquiry and information to assist with making a decision about the three point test.

The duty to inquire arises whether or not the adult is aware that concerns have been raised. Duty Social workers should always be aware of situations where an Adult at Risk is subject to undue pressure – please see [Appendix 3](#) for more information.

6.2.2 **Action to Take**

On receipt of information indicating that an Adult at Risk may have been abused or suffered harm or neglect, Duty Social Worker will:

- a) Record all relevant details that are available:
 - The Adult at Risk
 - The alleged harm suffered
 - The alleged perpetrator
 - The adult's family/carers
 - The referrer
- b) Notify the Senior Duty Social Worker as soon as possible.

The Senior Social Worker will be responsible for ensuring the appropriate checks are made and will coordinate any actions necessary to protect the Adult at Risk and to support and advise the Duty Social Worker.

Allegations Against Staff

If the adult protection referral indicates that an adult has been harmed by an employee (including personal assistants) in then the Senior Social Worker should inform the Executive Manager for Adult Services and steps should be taken to inform the Care Inspectorate if this is required. Further information about managing allegations against staff and volunteers is given in [Appendix 2 for information about allegations against staff](#).

If the harm is attributable to the care being provided by a personal assistant employed by the adult through Direct Payments then adult protection procedures should be followed. Further consideration should then given to the advisability of continuing with Direct Payments please see [Appendix 2 for further information](#).

In situations where a personal assistant or staff member or volunteer may have caused harm to an adult the risks to other adults who have contact with them need to be considered.

There may be situations where a number of adults are at risk- being targeted by a particular perpetrator, having contact with a carer or volunteer who has harmed one adult and may be risk to others, numbers of adults receiving inappropriate neglectful care in a care setting (residential, day care or NHS). In these situations the Duty Senior Social worker and Executive Manager should discuss the requirement for a large scale inquiry and follow the protocol at [Appendix 7](#) of these procedures

In situations where the Adult at Risk is believed/known to have a mental disorder, it would be good practice to seek the advice of a Mental Health Officer (MHO).

- c) The Duty Social worker will ensure the following checks are made:
- Social Work records
 - Discussion with social care or social work staff who may know the adult
 - NHS Shetland records can be accessed through the Advanced Nurse Practitioner (Protection) who should be the first point of contact. General Practitioner, Hospital, Accident & Emergency Dept., Community Nurse and the Community Mental Health Team can be checked and relevant and proportionate information shared.
 - Local Authority for any known recent address
 - Other services as appear relevant – Housing. Criminal Justice Team, Children and Families Team, Third Sector Services, etc.
 - Police Scotland Public Protection Unit in Inverness can complete checks of relevant data bases when requested by the Senior Social Worker to do so. Initial contact between the DSW/Senior Social worker and Police Scotland Inspectors based in Lerwick will be made to share information and decide if a more formal Interagency Referral Discussion (IRD) is required which would involve NHS Shetland and possibly other agencies too. ([please see Step 7](#))
 - If checks show that there have been previous adult protection or adult concern referrals then it is appropriate to arrange an IRD or discuss the circumstances of the adult at the interagency Screening Meeting where appropriate. 3 referrals received in a six month period should trigger an IRD or discussion.
- d) **It is important to note that under [Section 10 of the Adult Support & Protection \(Scotland\) Act 2007](#) ALL agencies and organisations have a duty to share information with Social Work when they are inquiring into the circumstances of an Adult at Risk. Any agency or organisation who has duty under Section 10 to share information which is refusing to do so potentially commits an offence under Section 49 of the Act. A standard letter can be sent from Shetland Islands Council Adult Social work formally requesting appropriate information and reminding individuals and agencies of their duties ([Please see appendix 8 Section 10 Letter](#))**
- e) Consideration will need to be given by the Duty Social Worker/Senior to the needs of the alleged perpetrator who may also be an Adult at Risk themselves. A separate referral in respect of the alleged perpetrator may be appropriate in such cases.
- f) Sufficient information must be gathered to establish whether the person referred meets the criteria for an Adult at Risk of Harm, as defined by [the 3 Point Test \(Chapter 4, paragraph 4.5\)](#).
- g) **Duty to Inquire** This will be conducted by the Duty Social Worker (DSW) /Duty Assistant and will involve comprehensive gathering of information from all relevant agencies to assist in deciding if the adult meets the 3 point test, what risk the adult is being placed at (if any) and also what care needs they may

have. Initial information gathering will be conducted by the Duty Social Worker/Duty Assistant and will allow an assessment of possible risks and should indicate the likelihood of harm being perpetrated or if there are other unexplained/complex issues which require further exploration. This will either proceed to an investigation, be dealt with using other legislation or not require any further action. In some situations it may be appropriate to allocate a Council Officer and for an initial information gathering visit to be made to the Adult at Risk of harm. This can be particularly helpful in situations where it is not clear from the referral what the nature and level of risk is. In any case Initial Inquiries should be completed within 3 working days. In situation where this is not possible due to unavoidable delays e.g. when seeking information from the Office of the Public Guardian or from financial bodies this should be recorded as a delay

- h) Once comprehensive information is gathered from all agencies a decision may be taken in non-urgent cases to discuss the adult's situation at the inter-agency screening meeting, which is usually held fortnightly.
- i) The DSW will provide an acknowledgement to the referrer within 48 hours of receiving the referral.

6.2.3 The Senior Social Worker will consider all the information available and, in discussion with the Duty Inspector, Police Scotland will determine whether an Interagency Referral Discussion (IRD) is needed, where the decision to proceed to an investigation under the Adult Support and Protection Procedures will be made.

6.2.4 It is often the case that a new referral is received by the DSW relating to an adult who already has an allocated social worker and a current care package. This referral will be passed to the allocated social worker and their senior to respond to. However, the process outlined above needs to be followed to provide a clear audit trail of the response to the referral and to ensure that all the statutory requirements to inquire into the adult's situation are completed and any investigations are conducted. Special care may need to be taken as there may be a tendency to see a possible adult at risk referral as just another incident in a complex situation that is already known about- interagency information gathering and subsequent risk assessments will always need to take place and recorded to ensure that both risks and needs are responded to

STEP 7 – IRD, Debrief IRDs and Adult Protection Planning meetings

7.1 Persons Responsible

DSW in consultation with Senior Social Worker and Police Scotland.

7.2 Action to take

The IRD will commence as soon as practicable commensurate with the assessed risk to the adult or others and no later than 5 working days. Debrief IRDs will be called to discuss the outcome of any formal investigations and may also decide if an adult protection case conference is required.

An Inter-agency Referral Discussion is a vital stage in the process of information sharing, assessment of risk and decision making about an adult who is known or believed to be an Adult at Risk of Harm. An IRD should involve Police, Health and Social Work and any other service or agency as required. IRDs can be conducted by telephone/video link or a face to face meeting. Any agency can initiate an IRD. Its aim is to:

- Share relevant and proportionate information about the adult and any relevant family members/carers
- Consider what kind of investigation should be undertaken (Police criminal or Council Officer Investigation or a joint investigation). There may be situations when further inquiries are required to establish if any formal adult protection investigation or other actions are required.
- At the IRD Police Scotland may advise other agencies that a criminal investigation needs to be conducted (for e.g. into alleged assault or theft) and this process may need to take priority. However, any actions required to protect the adult at risk should be put in place.
- To determine whether a medical examination is required and make appropriate arrangements for this
- Conduct and agree an initial risk assessment
- Agree an initial action plan/risk management plan and establish which agencies are to be involved, also identify the lead agency.
- Consider whether an intervention under the Adult Support and Protection (Scotland) Act 2007 is required. This can include visits, interviews and medical examinations of records to gather more information.
- Consider whether urgent protection orders under the Adult Support and Protection Act are necessary. To agree a contingency plan if entry is refused and whether or not an application for a warrant may be necessary
- To consider the capacity of the adult at risk and whether this has ever been or requires to be assessed
- Whether any form of enhanced communication will be needed to facilitate communication or if the person may need an interpreter if they sign or English is not their first language
- Consider whether there are any other adults or children under 18 who may be at risk of harm (consider requirement for a [Large Scale Investigation –please see appendix 7](#))
- Consideration will always be given to the involvement of representatives of other disciplines at any stage of the planning process. Human Resources staff from the appropriate agency may need to be involved if the meeting is considering an allegation against a staff member- however the confidentiality

of the adult at risk needs to be considered and HR should only be party to the information they need as regards the allegation and how the staff member may need to deal with.

- The IRDs and debrief IRDs must always consider the need for an Initial Adult Protection Case Conference and the decision should be recorded as an outcome. The decision not to proceed to case conference should also be recorded
- Inter-agency Referral Discussion usually take place by telephone, however, in complex cases and where a range of different professionals are involved or in situations where inquiries have raised additional questions, it may be more appropriate to convene an Adult Protection Professionals meeting (please see below).
- The decisions made at an IRD will be recorded by the Social Worker and signed off by the Senior Social worker present on the Record of Action proforma
- In situations where an IRD is likely to decide that a Council Officer led investigation will be required it is helpful wherever possible to identify who the Council Officer will be and include them in the meeting. [Chapter 9](#) contains more detailed information for Council Officers about conducting formal investigations and outlines their roles and responsibilities. This chapter also gives information about who can act as a Council Officer.
- Consider if the offer of advocacy should be made to the adult.

7.2.1 Adult Protection Professional Meetings. In some instances where there are a number of agencies involved or there are complex allegations and care needs- possibly rather than calling an IRD a wider Adult Protection Professionals meeting is more helpful. This can be a useful approach when

- there are a number of referrals which individually do not indicate the adult meets the three point test, but which need to be considered as a whole
- when information coming from professional staff/ carers/family members/the adult is not entirely clear or is conflicting,
- when considering situations involving substance misuse, self-harm, self-neglect or the impact of hoarding.
- An Adult Protection Professional meeting may also be useful when there have been allegations against staff
- when considering the requirement for a Large Scale Investigation.

The Adult Protection Professional meeting should chaired by the Senior Social worker, be held within 10 working days of the referral and be minuted. The adult would usually be informed that this meeting was being held, unless to do so would either impede a Police investigation, cause significant distress or place the adult at additional risk of harm.

- 7.2.2 All professional staff who are invited to attend an IRD or Adult Protection Professional meeting have the following responsibilities and must come prepared
- Relevant and proportionate information in respect of the adult at risk from their own agencies records
 - A chronology if one is available
 - Any information in respect of a carer or family member that is relevant to the discussion(for e.g. concerns that an older person living with dementia is being neglected may be the substance of the referral – knowing that their carer has a significant medical record of alcohol misuse would be important in assessing risk to the adult)
- 7.2.3 Further IRD/Debrief IRDs may be necessary on receipt of additional information from any investigative interview, medical examination or other relevant source, in order to assist the decision-making process.
- 7.2.4 The Social Worker attending the IRD will record decisions taken on the Record of Action Proforma. The Senior Social Worker will send a copy to the representative(s) of any other agencies who attended the meeting.
- 7.2.5 Disagreements about the methods of progressing the investigation, if not resolved at the IRD, will be referred to the Chief Social Work Officer and the Chief Inspector of Police Scotland Shetland Area Command, for consideration.
- 7.2.6 In cases arising outside of normal working hours, it may be that only the Police and Social Work (Out of Hours Executive Manager) are available to determine any action to be taken at that time. The Council Officer will be appointed in accordance with these decisions.
- 7.2.7 Where there are 3 or more referrals received within a 6 month period in relation to an individual, their situation should be discussed at the inter-agency screening meeting. This will allow for a thorough inter-agency discussion and decisions about any further action can be taken. An IRD can be arranged if that would be a quicker and more appropriate response to the concerns.

7.3 Debrief IRD

Step 8 outlines the process of formal investigation. Once this is completed a Debrief IRD will be arranged by Administrative support

- 7.3.1 Purpose of Debrief Strategy meeting
- To share information with all agencies
 - To determine any further actions. Police Scotland may need to start a criminal enquiry on the basis of information gathered
 - To assess the continuing risk to the adult and decide if an adult protection case conference and a protection plan may be required
 - To assess and decide if any legal action is required to safeguard the adult- either under the Adult Support and Protection Act or Mental Health (Care and Treatment) Act or Adults with Incapacity Act
 - To update risk assessments and risk management plans
 - To consider the needs of the adult and if an assessment of needs using the With You For You process or a review of an existing care plan is required

- To consider any medical needs the adult may have.

7.3.2 IRD debrief meeting will be minuted by administrative support and decisions recorded and signed off by the senior social worker. An IRD Debrief can decide that an Adult Protection Case Conference is required. Initial Adult Protection Case Conference should be **convened within 14 working days** of the decision to call a conference. Further information about Adult Protection Case Conferences is in [Chapter 7: Adult Support and Protection Case Conference](#).

STEP 8 – INVESTIGATION

8.1 Persons Responsible

Council Officer and in some circumstances police officers

8.2 Background

- 8.2.1 The main purpose of an investigation is to learn of the adults experiences of harm, if any, and to gather information in order to take or plan any necessary action.

The case will be allocated through the Duty Social Work system and the investigation started **within 24 hours** of the IRD that decided an investigation was necessary.

- 8.2.2 The investigation will be carried out by a professional who can undertake the duties of a Council Officer under the Adult Support & Protection (Scotland) Act 2007 and a second worker as appropriate. In circumstances where there are indications that an offence may have been committed investigations will be led by Police Scotland. The IRD may decide that it is appropriate for a joint investigation involving Police Scotland and Social work should be carried out.

- 8.2.3 There should always be two individuals – one of them must be a Council Officer – involved in the investigation to ensure staff are protected and that there is corroboration of evidence.

- 8.2.4 Staff must be sensitive to the effect that multiple interviews may have on the Adult at Risk; this may be perceived as abusive and should be avoided by good inter-agency co-ordination.

8.3 Visits by Council Officers

Council Officer may attempt to gain entry to a property, with the consent of the adult, but the adult is allowed to refuse.

Where access to a place is refused, it might be necessary to consider the need to apply for a Warrant of Entry ([Chapter 11: Legal Action – Warrant of Entry](#)).

- 8.3.2 The **purpose of a visit** – is to assist the Council:
- **To decide whether the adult is an Adult at Risk of harm;** and
 - **To establish whether the Council needs to take any action in order to protect the Adult at Risk from harm.**

A Council Officer **may enter any place to enable or assist an inquiry (s.7 (1)).**

- 8.3.3 A Council Officer is permitted with consent to enter any place. In most cases this will mean where the Adult at Risk normally resides.

- a) The adult's own home or home with carers;
- b) A registered setting, such as a care home;
- c) A day centre;
- d) A place of education, employment or other activity;
- e) "Respite" residential accommodation;
- f) A hospital or other medical facility;
- g) Commercial premises.

8.3.4 Visits should be planned to take place at “reasonable times”. However there should be a recognition that a balance needs to be struck between the timeous investigation of allegations of harm and the requirement to involve the visited adult and carers/family in the process of the investigation.

8.3.5 Visits should be timed to allow the Adult at Risk to be spoken to in private.

8.3.6 A Council Officer must: under s.36(2):

- Produce **evidence of own identity**, following local APC adult protection procedures, and of any **person accompanying**;
- **State the object of the visit**; and
- **Produce evidence of the officer’s authorisation to visit the place.** (If a Warrant has been obtained).

There is an obligation to be clear that the purpose of the visit is to investigate a suspected risk of harm. Wherever possible, other people in the household should also be offered an explanation as to what is happening and why, without breaching the adult’s right to confidentiality. Every effort should be made to ensure that any information provided is in an appropriate form that the adult, or other person present, can understand

Seek to ensure that any **information provided is in an appropriate form.**

The leaflet “Keeping You Safe” which gives basic information about the process of investigation and lets an adult know how their personal data will be handled should also be given by the Council Officers.

8.4 Interviews

8.4.1 Before carrying out any interviews, the Council Officers and any other Investigating Officer (e.g. Police Officer) – must discuss and agree the structures of the interview. The roles of the different Officers must be explained to the interviewee before the interview commences. The interview will be recorded in writing and this should be explained to the interviewee as well as how information will be shared following the interview.

8.4.2 A Council Officer, and any other person accompanying the Officer as part of the investigation, may interview in private, any adult found in a place being visited.

8.4.3 An Adult at Risk interviewed under this section has a legal right not to agree to the interview in its entirety or choose to answer some questions but not others. Adults must be informed of that fact before the interview starts. The Council Officer needs to clarify if the interviewee has understood this right and consider if the individual has the capacity to understand prior to commencing the interview. It is crucial that the individual is assisted to raise concerns with a minimum of prompting. Council Officers should also carefully consider if an adult is subject to undue pressure and that is why they are not able to consent to an interview ([see also Appendix 3 for more information on Undue Pressure](#)).

8.4.4 Consideration must be given as to how best to promote the Adult at Risk’s participation in the interview through identifying whether communication aids or other support may be required, e.g. a specialist in sign language or other non-verbal

communication; or a family member or carer to aid communication or the assistance of an independent adult.

8.5 Examination of records

8.5.1 [Section 10 of the Adult Support and Protection \(Scotland\) Act 2007](#) states:

- a) Council Officers may require someone to provide health, financial or other records
- b) This includes records held in audio, visual or other formats
- c) Requirement may be made during a visit or at any other time
- d) Requirement made at any other time must be made in writing
- e) Inspection can be by the officer and any other appropriate person

NB: It is an offence for a person to fail to comply with a requirement to provide information, except with reasonable excuse.

8.5.2 There are particular powers in respect of Health Records.

Health Records are defined – as relating to an individual's physical or mental health and made by or on behalf of a health professional.

8.5.3 The Adult Support & Protection (Scotland) Act 2007 states that health records may be:

- **Sought and obtained** by a Council Officer
- But
- **Inspected only** by a health professional

Health professionals holding records must act within their professional guidance.

8.5.4 The decision to make an application for the examination of records will normally be taken in a multi disciplinary context in an initial or subsequent IRD at which legal advice must be obtained.

8.5.5 In exceptional circumstances this decision can be taken by the Chief Social Work Officer or their designate in collaboration with Shetland islands Council Legal Services.

Chapter 7: Adult Support And Protection Case Conference

7.1 Arranging the Case Conference

7.1.1 An Initial Adult Protection Case Conference will be called by the Senior Social Worker from Social Work within 14 working days of a decision to hold a conference being made.

7.1.2 The decision to convene a Case Conference will usually be taken at the Debrief IRD following the conclusion of the investigation. In circumstances where no investigation has occurred but the initial inquiries/cumulative concerns indicate the need for a case conference, then this will be also called by the Senior Social Worker.

7.1.3 **Review Adults Support and Protection Case Conferences.** The first review should take place after 3 months and then at 6 monthly intervals until it is decided a protection plan is no longer required.

7.1.4 The following should normally be invited to a Case Conference:

- The Adult at Risk of Harm
- The Independent Advocate – where there is one
- The Adult's carer/family member (see 7.5)
- The Adult's paid carer (where appropriate)
- The Social Worker/Council Officer
- Police
- Health staff- GP, Community Nursing Staff, Substance Misuse Service, Advanced Nurse practitioner for Learning Disability, CPN, Consultant Psychiatrist, Advance Nurse Practitioner for Adult and Child Protection etc
- Representative from Shetland Islands Council Legal Services (where Legal action is being considered)
- Other agencies who are considered to have a relevant input
- Minute Taker

7.1.5 The Senior Social Worker who has been involved in the decision to convene the Case Conference is responsible for ensuring that the administrative arrangements are made.

7.1.6 Case Conferences will be chaired by the Independent Reviewing Officer (IRO) or the Lead Officer Adult and Child Protection if the IRO is not available.

7.2 Purpose

7.2.1 The purpose of the **Initial Adult Support and Protection Case Conference** is:

- To gather together the Adult at Risk, appropriate members of the family/carers and the relevant agencies to share and assess information collated during an Adult at Risk investigation, and to consider other relevant background information.
- To listen carefully to the views of the adult about their situation.
- To determine risk and enable multi agency consideration of cumulative concerns.
- To decide if any legal action is required to protect the adult under the Adult Support and Protection (Scotland) Act 2007 or any other legislation
- To formulate, or provide the framework for the development of a Protection Plan which includes consideration of necessary support services.
- To agree a Support Plan, if this is more appropriate, where a protection plan is not indicated.

7.2.2 The purpose of the **Review Adult Support and Protection Case Conference** is:

- To review the circumstances of the Adult at Risk
- To listen carefully to the views of the adult about their situation
- To monitor the effectiveness of the Protection Plan
- To consider whether the Adult at Risk continues to be at risk
- To amend the Protection Plan where necessary

7.2.3 Where the decision of the Review Case Conference is that the Adult at Risk no longer requires to be subject to a Protection Plan, consideration should be given to the support/care needs.

7.2.4 In the event of the Protection Plan reverting to a Support Plan, this will be reviewed in accordance with the With You For You (WYFY) Process:

www.shetland.gov.uk/community_care/with_you_for_you.asp

Any Support Plan will be reviewed in accordance with WYFY Procedures.

7.3 Role of the Chair

7.3.1 The Chair's role is to:

- in consultation with the Senior Social Worker or Social Worker agree who to invite, who cannot be invited and who should be excluded.
- check that any special arrangements to support the attendance and participation of the adult, carers or family members have been put in place
- ensure that all persons invited to the Initial or Review Adult Protection Case Conference understand its purpose, functions and the relevance of their particular contribution
- meet with the Adult at Risk immediately prior to the conference and explain the nature of the meeting and possible outcomes
- facilitate information-sharing and analysis
- ensure that the views of the Adult at Risk and their carers/family members are taken into account
- facilitate decision-making
- If consensus cannot be reached the Chair has the ultimate responsibility to take a decision, while recording conference views
- wherever possible, chair Review Adult Protection Case Conferences to maintain a level of consistency

- where a decision is made that a protection plan is required for an Adult at Risk outline decisions that will help shape the initial Protection Plan
- identify the allocated Social Worker (if not already appointed)
- facilitate the identification of risks, needs and protective factors and how strengths can be build on to improve the Adult at Risk's situation
- facilitate the identification of a core group of staff responsible for implementing and monitoring the Protection Plan
- agree review dates
- challenge any delays in action being taken by staff or agencies
- ensure that timescales are adhered to, including review dates, distribution of minutes and copies of the Protection Plan and changes to plans
- ensure that any member of staff forming part of the core group who was not present at the case conference is informed immediately about the outcome of the case conference and the decisions made, and that a copy of the Protection Plan is sent to them.
- ensure an Admin Assistant from the Adult Social Work Team is invited to arrange a venue and take a formal minute.

7.3.2 To assist the Chair of Adult Protection Case Conferences there is a standing agenda – please see [Form 6: Standing Agenda for Adult Protection Case Conferences](#) in [Chapter 13](#).

7.4 Participation of the Adult at Risk

7.4.1 If the fullest participation of the Adult at Risk in supporting and protecting them from harm is to be achieved, he or she needs to be included in the best way, taking into account their needs and capacity in all decision making processes about their support and protection.

7.4.2 The Adult at Risk (unless it is considered not to be in their best interests) should be invited and involved in setting up the Case Conference to consider risks to which they are exposed and how best they can be protected, or enabled to make informed decisions concerning potential risks. If the Social Worker has assessed that it would not be in the adult's best interests to attend, then this should be discussed with the Chair of the conference who will make the final decision and record the reasons. This should not prevent the adult's views being shared at the conference. This decision should be communicated to the adult and they should be given an opportunity to make an appeal to the Chair of the Conference.

7.4.3 It would be the responsibility of the allocated Social Worker to maximise the likelihood of the adult attending by providing information, choice of venue, day and time of the Conference, other attendees, video conference options and support with travel arrangements. Consideration should also be given to augmented communication needs, translator, supporter and advocate. Adults may have a trusted key worker who may be able to help with this process and also support the adult at the meeting. Adults can bring a supporter to the meeting to assist them.

7.4.4 Every Adult Protection Case Conference should consider the views of the Adult at Risk – whether they are present or not. Every effort should be made by the Chair to ensure that the Adult at Risk's views are heard and recorded.

7.5 Participation of other agencies and family members/carers.

- 7.5.1 The Case Conference is not a forum for the decisions and recommendations of the agencies involved in the investigation of the case to be endorsed. The multi disciplinary nature of Case Conferences means that each agency carries responsibility for decisions and recommendations.
- 7.5.2 Those attending should be there because they have a significant contribution to make arising from professional expertise, or knowledge of the Adult at Risk.
- 7.5.3 Carers should be included at Case Conferences as standard practice. Formal exclusion of carers/family should only occur after serious consideration of exceptional circumstances, for example the threat of, or actual, physical violence or serious disruption, or where a carer's/family's attendance is not in the best interests of the Adult at Risk.
- 7.5.4 The views of the adult in respect of the involvement of family members or carers needs to be sought and considered. An adult's right to privacy and confidentiality needs to be considered. If there are any details of the adult's life that may need to be discussed as part of information sharing and risk assessment, but which the adult does not wish family members to be aware of, the adult's allocated Social Worker or advocate needs to make the Chair of the Conference aware of this. An agreement can then be reached about the best way to deal with this. In some situations it may be appropriate to have a section in the Conference that family members or carers are not present for, to allow the adult the space to discuss the confidential issue. This may be particularly important if family members may dominate the adult or seek to speak for them or where there is an issue such as domestic abuse.
- 7.5.5 The Adult at Risk and his/her family members and carers must be prepared for and fully informed of the sequence of events in advance of the Case Conference, in order to minimise anxiety and encourage fullest possible contribution.

The Chair will take responsibility for this process. This must generally involve a pre meeting with the adult, his/her family or carers or independent advocate.

- 7.5.6 Justification for any formal exclusion or why a section of the Conference has been held that does not include a family member or carer should be recorded in writing, and include supporting evidence.
- 7.5.7 "Restricted" information from professionals attending the Conference may sometimes be made available to a Case Conference, i.e. information that is not shared with particular participants. Participants should indicate in advance if they wish to share information in this way. The decision rests with the Chair in consultation with Police, Social Work and NHS colleagues as appropriate, and will be allowed in exceptional circumstances only, e.g. where this is considered necessary for personal safety reasons or information which may be sub judice. Any such information will be minuted separately.

7.6 Reports

- 7.6.1 The Council Officer will provide a written report for the Case Conference
- 7.6.2 A copy of the report must be with the Chair and with the minute-taker at least 24 hours before the Initial Conference. For review case conferences reports should be with the Chair 3 working days before the conference
- 7.6.3 Other agency representatives will also be asked to provide a written report. Such a request should be complied with whenever possible, and a written report **MUST** be provided if an invitee is unable to attend, using the format in [Form 8: Report from other agencies](#))
- 7.6.4 Information should clearly distinguish between fact, observation, allegation, opinion and matters proven in court.

7.7 Risk Assessment

- 7.7.1 In reaching a decision as to whether the adult requires a protection plan, the Case Conference's primary consideration is assessment of risk of harm to the adult.
- 7.7.2 Key issues in this process includes assessment of:
- Communication, Capacity and Involvement
 - Chronology of Significant Events
 - Current Risks or Concerns
 - Current Risk Description
- 7.7.3 Key Questions in Risk Assessment are:
- What behaviour or concerns have led to the situation
 - Who is the source of concern
 - Particular triggers or risky circumstances
 - Protective Factors
 - What is the adult's assessment of risk
 - What is the family/carers assessment of risk
 - Is the current living situation a safe place for the adult
 - Risks to other people
 - Future action to be taken to reduce risks
- 7.7.4 Assessment should include consideration if other household/family members are Adults at Risk.

7.8 Decision

- 7.8.1 For an adult to be subject to a Protection Plan, the Case Conference must have clear indications that he/she has been or is at risk of harm and that a multi disciplinary Adult Protection Plan is required. In deciding whether a protection plan is needed, the Conference should consider whether the adult is at continuing risk of harm.
- 7.8.2 Evidence for this will include issues raised by the investigation, the risk assessment and professional judgements.
- 7.8.3 Professionals attending the Case Conference have a collective responsibility to consider whether a Protection Plan is appropriate. The Chair will elicit the views of the Conference members (other than family members/carers and the adult who is the subject) and try to achieve a consensus.
- If consensus cannot be reached the Chair has the ultimate responsibility to take a decision, while recording Conference views.
- 7.8.4 A draft summary minute will be produced within 3 working days and passed to the Chair for approval.
- 7.8.5 Following the Chair's approval and within **10 working days** of the Case Conference, the minute will be circulated to those persons who were involved.
- 7.8.6 If no comments are received by the Chair within 5 working days, it will be assumed that the recipients are in agreement with the minutes.

7.9 Protection Plan

- 7.9.1 The outline Protection Plan will be agreed at the Adult Protection Case Conference and the task of the first Core Group will be to agree the detail of the Protection Plan.
- 7.9.2 The Adult Protection Case Conference will also identify the membership of the Core Group and Social Worker.
- 7.9.3 The Protection Plan will be recorded in the format specified in [Chapter 13 \(Form 9: Protection Plan\)](#) and will be completed within 2 weeks of the Adult Protection Case Conference.
- 7.9.4 The lead worker must be a Social Worker.
- 7.9.5 The lead worker is responsible for:
- Coordination and motivation of the interagency Adult Protection Plan
 - Communication between agencies
 - Ensuring the full engagement of the adult and his/her family/carers in the implementation of the Protection Plan.

7.10 Core Groups

- 7.10.1 A Core Group is a group of identified individuals, which includes the Social Worker, who have a crucial role to play in implementing and reviewing the Adult Protection Plan. The Core Group should include the Adult at Risk and any family member, supporter or advocate, as appropriate. The Core Group is responsible for ensuring that the Protection Plan remains focussed on reducing risk and meeting the needs of the Adult at Risk.
- 7.10.2 The functions of the Core Group include:
- ensuring continuing assessment of risk and need
 - implementing, monitoring and reviewing the Protection Plan
 - maintaining effective communication between all services and the Adult at Risk
 - activating contingency plans promptly when progress is not being made or risks increase
 - reporting to Review Adult Protection Case Conferences on progress and recommending earlier reviews if there need to be any significant changes to the Protection Plan – this would include any concerns about non-engagement
 - fully involving the adult in Core Groups' meetings.
- 7.10.3 The Core Group will meet within 10 working days of the Case Conference and at least once per month to consider the progress of the Plan's objectives.
- 7.10.4 Core Group arrangements are a delegated function of the Adult Protection Committee. It is important for there to be full attendance by the nominated agency representative.
- 7.10.5 Core Group meetings should be chaired by a Senior Social Worker and minuted by a trained minute taker. The minutes should be checked and signed by the Senior Social Worker and distributed to Core Group members within 5 working days of the meeting.

7.11 Transfer to or from another Local Authority

- 7.11.1 Where an adult who is subject to a Protection Plan in Shetland moves away to a known address in another local authority, the Social Worker should inform the new area and share full information with the receiving local authority as soon as possible.
- 7.11.2 If an adult subject to a Protection Plan leaves Shetland in an unplanned way or there is any concern that they may be at risk, then Police Scotland should be informed.
- 7.11.3 If an adult subject to a Protection Plan moves to live in Shetland, then the Protection Plan developed by the originating local authority would be adopted and a review Adult Protection Case Conference be arranged to review risk within 15 working days and decide if, in the light of a move to Shetland, the adult still required a Protection Plan. Considering the adult's care and support needs would also be important.
- 7.11.4 Records and information from the originating authority should be requested. Liaising with the Advanced Nurse Practitioner for Adult and Child Protection to ensure the transfer of medical information and information sharing would also be important.

7.12 Appeals process

- 7.12.1 There may be situations where an adult at risk, their carer or advocate is unhappy about the decision of an adult protection case conference or the process by which a decision was reached,
- 7.12.2 Any concern or complaint about the professional behaviour of an individual worker attending the conference on behalf of their agency should be directed by the Chair to the appropriate agency and their complaint procedure.
- 7.12.3 If a decision has been taken not to invite the adult to the case conference and they are not happy with this they have a right of appeal to the Chair of the Adult Protection Case Conference. The Chair should arrange to meet with or speak to the adult to discuss this decision and the reasons for it. Wherever possible the Chair should seek to involve the adult by making sure their views are heard or someone representing their view is in attendance at the case conference. Or alternately arrange for the adult to attend part of the case conference. The Chair's decision will be final and should be communicated to the adult in writing.
- 7.12.4 If the adult (or someone acting on their behalf) wishes to appeal the decision to make the adult subject to a protection plan or not to put such a plan in place, should in the first instance be offered a conflict resolution discussion with the Chair of the case conference. If this does not resolve the issue then the formal appeal process laid down in the Shetland Interagency Child Protection Procedures should be followed. (<https://www.safershetland.com/assets/files/cp-procedures-final-march-2019v2.pdf>)
- 7.12.5 The Chair should exercise caution in circumstances where an adult could be under undue pressure. If the appeals process is invoked then any protection plan which is in place remains active until such time a Review Adult Protection Case Conference takes place and either renews or ends the protection plan
- 7.12.6 One of the underpinning principles of the Adult Support and Protection (Scotland) Act 2007 is the least intervention in an adult's life and if the existence of a protection plan is causing distress and difficulty for an adult then this should be taken into account and discussed at a Review Adult Protection Case Conference which can be arranged earlier than would normally be the case

Chapter 8: Participation, Consent and Advocacy

8.1 Participation of the Adult

8.1.1 The adult's views and wishes are central to Adult Support and Protection, and every effort should be made at each stage of the process to ensure that barriers to the adult's participation are minimised.

8.1.2 The adult should be provided with any assistance or material appropriate to their needs to enable them to make their views and wishes known. Reasonable adjustments should be made, taking account of the adult's needs where these are identified, for example:

- communication skills or attention span
- sensory impairment
- the adult's first language being other than English
- any other relevant factors.

The communication needs of the adult should be considered, and the adult (or their representative) should be asked what support they may require. This may include:

- a specialist in sign language or other form of non-verbal communication, which may include talking mats
- an interpreter
- an independent advocate
- an Appropriate Adult where police are interviewing an adult with a mental disorder
- a family member or carer to help communication.

8.1.3 A lack of capacity to consent to being interviewed is not an automatic bar on the adult participating in the interview process. The principle of the adult participating 'as fully as possible' should be adhered to. In addition, if the adult is thought to have been influenced to refuse consent, consideration should be given to whether there has been "undue pressure" applied (see [Appendix 3: Undue Pressure](#)).

8.1.4 The adult should always be invited to attend an Adult Protection Case Conference, where required. Only in exceptional circumstances following a decision made by the Chair, may the adult be excluded and the rationale for this must be clearly recorded in the minute for the Case Conference.

8.1.5 Appropriate Adults

The council manages the local Appropriate Adult Scheme. Where a mental disorder or communication difficulty may affect the individual's ability to understand or participate in the interview process, Police may request an Appropriate Adult to facilitate communication. The request for an Appropriate Adult can be made by contacting the Adult Social Work Duty Team

8.2 CONSENT

- 8.2.1 Adults have the right to make their own decisions and choices regarding lifestyle and the lives that they lead. Therefore, the consent of the adult is generally required before anyone can intervene in their lives.
- 8.2.2 When intervening under these procedures, the consent and co-operation of the Adult at Risk is very important and must be considered at all times. The Adults with Incapacity Act (Scotland) 2000 (www.mwcscot.org.uk/the-law/adults-with-incapacity-act/), the Mental Health (Care and Treatment) (Scotland) Act 2003 (www.mwcscot.org.uk/the-law/mental-health-act/) and the Adult Support and Protection (Scotland) Act 2007 (www.legislation.gov.uk/asp/2007/10/contents) all set out various principles to which regard must be given when exercising functions under these Acts. They all include the principle that regard must be given to the past and present wishes of the adult.
- 8.2.3 It is not necessary to seek consent before making an adult protection referral. It would be unfair to ask an adult to give consent to an adult protection referral being made if the person responsible and the line manager will make a referral anyway. It is good practice to inform the adult that a referral will be made and why, as long as that will not increase the risk to the adult. Please see the "[Stepwise Guidance in Chapter 6 \(Step 4\)](#)".

In some circumstances, it is necessary for professionals to act immediately in order to protect someone from serious harm or to report a suspected crime without first advising the adult that they will do so. The adult will be advised of the action taken as soon as practicable afterwards, so long as there is no risk to the adult. Anyone proceeding on this basis must record their actions. Advice should be sought from the relevant agency's legal or professional advisors.

The Council has a duty to make inquiries under the Adult Support and Protection (Scotland) Act 2007 when it knows or believes that the person is an Adult at Risk and that they might need to intervene to protect the person. **The adult's consent is not required for the local authority to carry out inquiries although the Council should seek the adult's co-operation in accordance with the principles of the Act.**

Other public bodies such as the NHS and the police have a duty to co-operate, insofar as is consistent with their functions, with a local authority carrying out an investigation. This is in terms of [Section 5](#) of the Adult Support and Protection (Scotland) Act 2007. Section 10 of the Adult Support and Protection (Scotland) Act 2007 places a duty on public bodies and other organisation (for example banks) to share information with a Council Officer conducting an investigation. (Section 49 makes it an offence not to comply with a request for information made under section 10).

A proper exercise of a public body's functions may include being bound by a duty of confidentiality. However, it should be noted that, under Section 5(3), if the public body believes that a person is an Adult at Risk of harm, and that action needs to be taken under the Adult Support and Protection (Scotland) Act 2007 to protect them, then the facts and circumstances of the Adult at Risk should be reported to the relevant local authority. The adult's consent is not required.

8.2.4 **Obtaining Consent – Who Obtains Consent?**

As noted above, consent is not required for anyone to make an adult protection referral and Council Officers do not need consent in order to make inquiries or to conduct an adult protection investigation. However the adult's willingness to cooperate with adult protection processes is important – they have the right not to answer questions and can refuse any support that is offered under a protection plan unless they lack capacity or are affected by a mental illness or disorder that may require compulsory treatment. The adult's ability to consent may also be affected by any negative influence/undue pressure – see [Appendix 3 Undue Pressure](#).

8.2.5 **Capacity**

The adult must be capable of giving consent. Being incapable means incapable by reason of mental disorder or of inability to communicate because of physical disability; of

- a) acting; or
- b) making decisions; or
- c) understanding decisions; or
- d) retaining the memory of decisions.

Advice on capacity can be sought from the Council's Mental Health Officers or Duty Social Worker. Assessing capacity needs to be undertaken by a registered medical practitioner - usually a GP in most cases.

8.2.6 **Informed Consent**

In order for the adult's consent to a Protection Plan to be valid, it must be informed consent. This means they have to understand fully what they are consenting to and the implications of that consent.

It is also important for the adult to understand fully the implications of an Adult Support and Protection investigation to enable them to decide whether or not to cooperate. The adult must be given an explanation of the Adult Protection Procedures in a way that enables them to fully understand what is happening and why a Council Officer may need to speak to them. The leaflet "Keeping You Safe" which gives basic information about the process of investigation and lets the adult know how their personal data will be handled should also be given by the Council Officers.

8.2.7 **What if they say "No"?**

If an adult refuses to cooperate with an investigation into their circumstances and does not wish to accept any help or support to provide protection, then their wishes must be given due regard. **However the local authority has a duty to inquire if it has reason to believe that an adult is at risk and may need intervention to protect them from harm. Council Officers should consider if the adult may be subject to undue pressure and this may be the reason they are unable to cooperate** ([see also Appendix 3 for more information on Undue Pressure](#)). Anyone proceeding without the cooperation of the adult must record and justify that decision and should explain the decision to the Adult at Risk, except in exceptional circumstances.

8.2.8 Consent during the exercise of powers under the Adult Support and Protection (Scotland) Act 2007

- a) The Adult Support and Protection (Scotland) Act 2007 seeks to balance the right of the Adult at Risk to make their own decisions and the need to intervene to protect the adult from harm. Adult Protection is a partnership between the Adult at Risk and the statutory authorities.
- b) The Council Officer carrying out an investigation under the Adult Support and Protection (Scotland) Act 2007 has certain statutory powers. In terms of [Section 7](#) the Council Officer can enter any place to conduct their inquiry, but they may not use force to effect entry. If force will be necessary then the Council Officer should seek a warrant from the Sheriff to authorise the Police to use force to effect entry.
- c) In terms of [Section 8](#) of the Adult Support and Protection (Scotland) Act 2007 the Council Officer has the right to interview any person. **However the person being interviewed can refuse to answer any questions and has to be advised of that right by the Council Officer at the beginning of the interview.**
- d) In terms of [Section 9](#) of the Adult Support and Protection (Scotland) Act 2007 a health professional may conduct a medical examination of an Adult at Risk in private. The adult has the right to refuse to be examined and must be informed of that right before any examination takes place.
- e) The question of consent is also an important consideration in deciding whether to proceed with any of the protective orders available under the Adult Support and Protection (Scotland) Act 2007. The protective orders are of limited effect if the Adult at Risk is adamant that they do not wish to co-operate with the protection being offered.
- f) For further information relating to Removal, Assessment and Banning orders please see [Chapter 10: Legal Context](#) and [Chapter 11: Legal Action](#).

8.3. **ADVOCACY**

8.3.1 The Council has a duty, if it is considered that it needs to intervene to protect an Adult at Risk of harm, to **consider** the provision of appropriate services, including **advocacy**, to the adult concerned, after making enquiries under the Adult Support and Protection (Scotland) Act 2007.

8.3.2 Some Adults at Risk, but not all, will:

- Lack confidence to speak up and think they are not allowed to express an opinion.
- Not be used to making choices.
- Not have information to make choices.
- Be easily intimidated.
- Not have enough time to say what they want.
- Have difficulty making themselves understood.
- Have problems with communication, social interaction and understanding.

Therefore all Adults at Risk must be given the opportunity to have a supporter with them during any investigative interviews or associated meetings.

8.3.3 To ensure this is appropriately communicated to the Adult(s) at Risk, advocacy must be an agenda item at the IRD and a decision must be made about who will discuss this topic with them. It is important to record the fact that advocacy has been discussed with the adult and this service offered to them whether or not they choose to take it up.

8.3.4 Many people will choose a friend, family member or carer to support them. This is permissible unless the person they choose could be a perpetrator or a witness.

However, even if the person has an appropriate supporter they can bring along, they must be informed of their right to Independent Advocacy and the role of an advocate must be explained to them in a way that they are likely to understand.

If the person does not wish to have an Independent Advocate or other supporter in attendance, their views must be respected and recorded.

8.3.5 If someone cannot express their views, or they cannot be ascertained, this must be acknowledged. However, an Independent Advocate should still attend proceedings to ensure the person's needs are fully considered. The Advocate may be the only participant without a conflict of interest. This is in line with the principles of the Adults with Incapacity (Scotland) Act 2000. (www.mwcscot.org.uk/the-law/adults-with-incapacity-act/).

In such circumstances consideration should be given to the use of formal powers under the Adults with Incapacity (Scotland) Act 2000 to secure the person's longer-term interests. Further information can be sought from the Duty Social Worker and additionally Shetland Islands Council staff can seek advice from Shetland Islands Council Legal Services. See also information on www.safershetland.com/adult-protection-for-professionals, <https://www2.gov.scot/Publications/2008/03/25120154/1> (a short guide to the Adults with Incapacity (Scotland) Act 2000) and www.mwcscot.org.uk/publications/good-practice-guides/ (Mental Welfare Commission).

8.3.6 In the context of these procedures the aim of Independent Advocacy is to:

- Help people have their say
- Add weight to a person's ideas, wishes and opinions
- Challenge attitudes and perceptions
- Protect people's rights

It works by:

- Supporting people to represent themselves
- Following the person's agenda (not the service or family agenda)
- Acting outside the service system

8.3.7 In a case where the person is unable to make an informed choice (or if they do not have another person to support them), an independent advocate must be obtained. The independent advocate may be in addition to someone who knows the person well and can understand their speech or signing system.

8.3.8 If the alleged perpetrator is considered to be an Adult at Risk, they must also be given the opportunity to have a supporter present and be informed about their right to Independent Advocacy. The same applies to any witnesses or others who are in need of support and protection in their own right.

The same supporter or advocate must not be used for different people involved in the same case.

8.3.9 Independent advocacy can be obtained from:

Advocacy Shetland
Market House
14 Market Street
Lerwick
ZE1 0JP

Tel: 01595 743929

Email: info@advocacy-shetland.org

Web site: <http://www.advocacy-shetland.org/>

8.3.10 The Sheriff has discretion under [Section 41\(6\)](#) of the Adult Support and Protection (Scotland) Act 2007 to appoint a person to safeguard the interests of the Adult at Risk in any proceedings relating to an application to Court.

Chapter 9: Council Officers

Who can act as a Council Officer and their Roles and Responsibilities

- 9.1 Special powers are given to a “Council Officer” in terms of the Adult Support and Protection (Scotland) Act 2007 to enable them to make the necessary enquiries to establish whether action is required to stop or prevent harm from occurring. [Section 52\(1\)](#) of the Adult Support and Protection (Scotland) Act 2007 restricts the type of individual who may be authorised by a Council to perform Council Officer functions.

- 9.2 A Council Officer must be:
Registered in the part of the Scottish Social Services Council register (www.sssc.uk.com/registration) maintained in respect of social workers or social service workers or is the subject of an equivalent registration

OR

Is registered as an Occupational Therapist in the register maintained under article 5 (1) (establishment and maintenance of register) of the Health Professionals Order 2001 (www.legislation.gov.uk/ukxi/2002/254/article/5/made)

OR

Is a Nurse Registered with the Nursing and Midwifery Council (www.nmc.org.uk/)

AND the person has at least 12 months post qualifying experience of identifying and managing Adults at Risk. All staff in Shetland who undertake the duties of a Council Officer should have completed Level 4 Adult Support and Protection Training (see www.safershetland.com/adult-protection-for-professionals).

- 9.3 The Code of Practice 2014 (www.gov.scot/Resource/0045/00455465.pdf) for the Adult Support and Protection (Scotland) Act 2007 states “The order also provides that authorisation to perform the functions of a council officer under section 11 (assessment orders), 14 (removal Orders), 16 (right to remove Adult at Risk) or 18 (protection of moved person’s property) is restricted to registered social workers, occupational therapists and nurses who have at least 12 months relevant experience. A council may withdraw the authority of a person to perform the functions of a council officer if the person no longer meets the relevant requirements.”

The guidance points out that the Council Officer has the right of entry, to make enquiries and investigation. The Council can apply for protection orders such as assessment orders, removal orders and banning orders. Additionally a Council Officer has powers to protect the property of a person who has been moved by one of these orders.

9.4 Obstruction

It is an offence to prevent or obstruct Council Officers from carrying out any court order or warrant issued under the Adult Support and Protection (Scotland) Act 2007 ([Section 49](#)).

It is also an offence under [Section 49](#) to refuse, without reasonable excuse, to comply with a request under [Section 10](#) of the Adult Support and Protection (Scotland) Act 2007 to provide information.

However, if the Adult at Risk prevents or obstructs a person, or refuses to comply with a request to provide access to any record, then the adult will not have committed an offence.

Chapter 10: Legal Context

Protection is available to vulnerable people through both criminal and civil courts. Further protection is available through various other mechanisms provided that the individual's needs meet the criteria set out in the legislation. Such protection is aimed at both preventing abuse and, on occasion, taking action against the abuser. Action against the abuser is more likely to arise in the criminal courts, although a civil action for damages may be possible.

Other mechanisms available include, for example:

- Powers of Attorney, (www.publicguardian-scotland.gov.uk/power-of-attorney)
- The Adults With Incapacity (Scotland) Act 2000 (www.mwcscot.org.uk/the-law/adults-with-incapacity-act/)
Codes of Practice: <https://www.gov.scot/collections/adults-with-incapacity-formand-guidance/#codesofpractice>
- Mental Health (Care and Treatment) (Scotland) Act 2003:
www.mwcscot.org.uk/the-law/mental-health-act/ and Codes of Practice Volumes 1, 2, 3: <https://www.gov.scot/publications/mental-health-care-treatment-scotland-act-2003-code-practice-volume-1/pages/0/> / [Mental Health \(care and treatment\)\(Scotland\) Act 2003: Code of Practice Volume 2](#) / [Mental Health \(care and treatment\)\(Scotland\) Act 2003: Code of Practice Volume 3](#)
- Mental Welfare Commission for Scotland for good practice guides:
www.mwcscot.org.uk/publications/good-practice-guides/
- Sexual Offences (Scotland) Act 2009: www.legislation.gov.uk/asp/2009/9/contents

10.1 Criminal Law

The Criminal Law in Scotland permits the prosecution of any person accused of a criminal action. In order to decide whether or not a particular circumstance or alleged offence is within the criminal law it will be necessary to liaise with the Police Scotland who will, if necessary, consult with the Procurator Fiscal in order to determine whether a prosecution is necessary. The Police undertake the investigation of crimes and report the facts and circumstances to the Procurator Fiscal. It is the Procurator Fiscal's decision whether to pursue the matter further. The Procurator Fiscal will take into account the public interest, the evidence which is available and the interest of the victim. The Procurator Fiscal will have statements provided to him from the Police and it will therefore be necessary to co-operate with the Police in such a joint investigation in order to obtain the necessary evidence.

Various crimes can be committed against vulnerable persons. Examples of these will include assault (including sexual assault), crimes of dishonesty and crime against property. More specifically there are laws in place which are intended to provide particular and further protection to people who are considered vulnerable. There are provisions in the Mental Health (Care and Treatment) (Scotland) Act 2003 which relate to crimes against people who are considered to be mentally disordered, in particular it is an offence for any person to ill treat or wilfully neglect a person who is under their care. Sexual offences, including engaging in sexual acts with a person who lacks capacity to consent because of a mental disorder, are regulated under the Sexual Offences (Scotland) Act 2009. Such crimes will be investigated by Police Scotland.

Criminal injuries compensation may also be available to anyone who has been the victim of a serious violent crime and it is worth remembering that such compensation may be available even if there has been no prosecution in respect of the crime in question.

10.2 Civil Law

Civil law is however, perhaps more relevant in considering whether there are other means available to protect an Adult at Risk to ensure that he or she does not become the victim of abuse in the first place.

An Adult at Risk who has been abused may have an action in damages against his or her abuser. He or she may also be able to take proceedings preventing the abuser from acting improperly or contacting him or her further. Some vulnerable people may not meet the 3 point test under the Adult Support and Protection (Scotland) Act 2007 ([see Chapter 4, para 4.5](#)). Nevertheless the local authority may still regard such a person as vulnerable and as someone in need for the purposes of their general social work duties. In such a situation the local authority can provide advice and assistance to support the person in exercising their legal rights under the civil law such as in seeking an interdict under the [Protection from Harassment Act 1997](#) or the [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#). This cannot extend to legal representation by the local authority.

10.2.1 Human Rights Act 1998

The [Human Rights Act 1998](#) makes it unlawful for certain public bodies to act in a way which is incompatible with a person's rights under the European Convention on Human Rights. There are several rights under the Convention which may be relevant to the actions which may be undertaken in terms of these procedures. The most significant rights in this context are the right to life under Article 2, the right not to be subject to inhuman or degrading treatment or punishment under Article 3, and the right to respect for private and family life under Article 8. It is apparent that sometimes these rights may conflict with each other. Not all the rights are absolute, and some may be restricted proportionally to the end being sought and in accordance with the law. However it is important that everyone involved in adult protection appreciates the general need to respect the human rights of individuals involved in any protection process.

10.2.2 Adult Support and Protection (Scotland) Act 2007

The Adult Support and Protection (Scotland) Act 2007 (the 2007 Act): (www.legislation.gov.uk/asp/2007/10/contents, 2014 Code of Practice: <http://www.gov.scot/Resource/0045/00455465.pdf>) is central to the protection of Adults at Risk. The 2007 Act provides a duty for local authorities to inquire and investigate when it appears that an Adult at Risk is at risk of harm. The 2007 Act also puts a duty on other public bodies such as the NHS and Police Scotland to co-operate with local authorities, who are then given powers to seek certain orders from the Court to provide protection to the Adult at Risk. Finally the 2007 Act imposes a duty to have an Adult Protection Committee to oversee the strategies developed and the implementation of those strategies for the protection of the vulnerable members of our community.

Adult support and protection is a function which is now under the strategic management of the Integration Joint Board in Shetland. The actual delivery of operational services remains the duty of the Council's Social Work Department in terms of the current strategic plan. Anyone with concerns about an Adult at Risk should therefore follow [Chapter 6 \(Stepwise Guide\)](#) of these procedures and refer to the Duty Social Worker.

For information about Health and Social Care Integration legislation, please see:

www.shetland.gov.uk/Health_Social_Care_Integration/default.asp and
http://www.legislation.gov.uk/asp/2014/9/pdfs/asp_20140009_en.pdf

There is a key role in the Adult Support and Protection (Scotland) Act 2007 for a “Council Officer.” This has a special meaning in this context and does NOT mean just any employee of the Council but means one with specific qualifications and special approval. Please see [Chapter 9: Council Officers](#).

Interventions under the Adult Support and Protection (Scotland) Act 2007

The Adult Support and Protection (Scotland) Act 2007 introduced three orders that Local Authorities can use to protect adults.

- Assessment Order
- Removal Order
- Banning order

There is further brief information below about each of these orders. Please see the detailed information in [Chapter 11](#) about situations which may require applications to be made for these orders.

Assessment Order

The Council can apply to the Sheriff for an assessment order if the Council has reasonable grounds to suspect an Adult at Risk is being or is likely to be seriously harmed and an order is necessary to establish the facts. If the person is willing to agree to an assessment there is no need for an order. The Council must ensure that there is an available and suitable venue for the assessment to take place. The adult thought to be at risk has the right to refuse to answer any questions or to be medically examined during the assessment carried out under the Assessment Order. They also have the right to leave the place of assessment at any time.

Removal Order

The Council can apply to the Sheriff for a Removal Order if the Council considers that it is necessary to remove an Adult at Risk to prevent them from being seriously harmed. Consent is an important issue. If the adult agrees to the removal then no order is necessary. If the adult does not consent then careful consideration must be given to whether the order will achieve the aim of keeping the adult safe. The Removal Order can authorise the removal of the person against their wishes but not their detention. The adult has the right to leave the place to which they have been removed.

Banning Orders

The Council can apply to the Sheriff for a Banning Order to keep a person who is or is likely to seriously harm an Adult at Risk away from that adult. A Banning Order is appropriate only when the Adult at Risk's well-being or property would be better protected by banning the person who poses the threat than by removing the Adult at Risk. A Banning Order can last up to 6 months and can be renewed.

Again consent is a crucial factor. If the Adult at Risk consents to a plan to keep them safe from the person who threatens them with serious harm then no court order is required. If the Adult at Risk has capacity but will not consent then the Sheriff can still grant the order if he considers that the Adult at Risk has been unduly pressurised (see [Appendix 3: Undue Pressure](#)) to refuse the consent to the granting of the order.

10.2.3 Adults With Incapacity (Scotland) Act 2000

The Adults with Incapacity (Scotland) Act 2000 (the 2000 Act) has provision for decision making if a mental disorder or disability means someone is unable to take or communicate decisions in important areas of his or her life. The 2000 Act applies to those who are 16 or over. The principles of the 2000 Act must be adhered to at all times when working with someone who lacks capacity.

Link to the 2000 Act: www.mwcscot.org.uk/the-law/adults-with-incapacity-act/ and short guide: <https://www2.gov.scot/Publications/2008/03/25120154/1>.

Codes of Practice: <https://www.gov.scot/collections/adults-with-incapacity-formand-guidance/#codesofpractice>

The provisions of the 2000 Act can provide protection for an adult's property, financial affairs and welfare. However, it is important to remember that not all vulnerable people can be regarded as "incapacitated" under the 2000 Act. The 2000 Act **only** applies to those who lack the capacity to make the decisions required.

This section provides a brief outline of some of the interventions available under the 2000 Act. If an Adult at Risk lacks capacity, reference should be made to the appropriate agency's policies and procedures on the 2000 Act. Advice and guidance on the general application of the 2000 Act can be sought from Shetland Islands Council via Duty Social Work.

Interventions available under the Adults With Incapacity (Scotland) Act 2000:

Power of Attorney

An Adult at Risk may be able to grant a Power of Attorney over their affairs to other people, provided that when doing so the Adult at Risk is legally capable of granting such a power of attorney. The Adult at Risk would have to seek their own independent legal advice to create and register a Power of Attorney. The Office of the Public Guardian also gives advice on making a Power of Attorney:

www.publicguardian-scotland.gov.uk/power-of-attorney.

Financial & Welfare Guardianship Order

A Guardianship Order can be granted by the Sheriff to give powers to a guardian to make decisions on behalf of an adult who lacks capacity in relation to their property and financial affairs and/or welfare. A guardianship order is one of the most restrictive means of dealing with an adult's affairs and should only be used when there is no other option. Guardianships should be used when an adult has complex and ongoing needs which means significant decisions need to be made on their behalf.

Intervention Orders

An Intervention Order can be granted by the Sheriff to give powers to a suitable adult to carry out a specific action in relation to the property and financial affairs and/or welfare of an adult who lacks capacity. An Intervention Order is suitable when there is a need to deal with a single issue on behalf of an adult where the outcome can be predicted.

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

The Mental Health (Care & Treatment) (Scotland) Act 2003 (the 2003 Act) contains powers and duties in relation to people with a mental disorder. The definition of mental disorder includes:

- A mental illness
- A learning disability
- A personality disorder

Link to the Mental Health (Care and Treatment) (Scotland) Act 2003:

www.mwcscot.org.uk/the-law/mental-health-act/ and Codes of Practice:

<https://www.gov.scot/publications/mental-health-care-treatment-scotland-act-2003-code-practice-volume-1/pages/0/> / [Mental Health \(care and treatment\)\(Scotland\) Act 2003: Code of Practice Volume 2](#) / [Mental Health \(care and treatment\)\(Scotland\) Act 2003: Code of Practice Volume 3](#)

Where an Adult at Risk has a mental disorder it may be more appropriate for them to be managed under the 2003 Act, rather than the Adult Support and Protection Procedures. However, specific criteria and the principles of the 2003 Act must be met in order for the Act to be invoked. There will be situations where an individual has a mental disorder but they do not meet the criteria or principles. For example, they cannot be admitted to hospital under a Short Term Detention Certificate because they are not at significant risk or their decision-making about medical treatment is not impaired or being detained would not be the 'least restrictive alternative' to address their situation.

The 2003 Act also provides considerable rights and protection for individuals with a mental disorder. These must be taken into consideration if any action is being considered under the Act. In terms of this legislation affected adults are automatically entitled to access independent advocacy services and may have an Advance Statement, for example, the person's Advance Statement if they have one.

Mental Health Officers (MHOs) have a significant and pivotal role in most intervention taken under the 2003 Act. It would therefore be good practice to involve a MHO at the earliest opportunity, if a person is thought to have a mental disorder and it is uncertain which route should be followed.

Intervention under the Mental Health (Care & Treatment) (Scotland) Act 2003 includes:

Emergency Detention Certificate – where a person is unwell and a doctor deems they urgently need care and treatment for their mental disorder they can be detained and admitted to hospital under an Emergency Detention Certificate. A doctor has to seek consent from a Mental Health Officer, unless there is a valid reason for not doing so.

An Emergency Detention Certificate should only be used as a last resort as it is more restrictive, and affords the individual fewer rights than other forms of detention. It may be used where a situation is so extremely urgent that there is no alternative, or where a situation cannot wait for an Approved Medical Practitioner (i.e. a Psychiatrist approved under the 2003 Act) to assess.

Short Term Detention Certificate – A doctor approved under the 2003 Act can admit and detain a person to hospital against their will if they have a mental

disorder, are at significant risk and meet the other criteria of this section and the principles of the act. A Short Term Detention Certificate cannot proceed without consent being sought from a Mental Health Officer.

Compulsory Treatment Order – where there is a need for longer-term care and treatment a Mental Health Officer can make an application to the Mental Health Tribunal for Scotland, along with 2 doctors' reports (one of which must be from an approved medical practitioner) for a Compulsory Treatment Order – either hospital or community based.

Removal to a Place of Safety

A Police Officer can remove a person to a place of safety if they are in a public place; appear to have a mental disorder and appear to be in need of immediate care and treatment.

10.2.5 The National Assistance Act 1948

Under the Act, there is a duty to protect the moveable property of any person admitted to hospital or residential care when the person is unable to protect his or her property and no other arrangement has been made. A local authority is obliged to take steps to prevent damage or loss to the patient's property. The Adult at Risk's property is thus protected in this way.

10.3 Independent Legal Advice

It is important to remember that all Adults at Risk have the right to seek their own independent legal advice. It may be that they wish to consider legal action against someone to ensure their own protection. Actions may include an interdict to prevent someone from doing a particular thing or action under the Protection from Harassment Act 1997. The 1997 Act states that every individual has a right to be free from harassment and provides a variety of remedies including damages, interdict and Non-Harassment Orders.

10.4 Vulnerable Witnesses

The <https://www2.gov.scot/Publications/2005/04/04143522/35246> aims to improve conditions for vulnerable witnesses by increasing the number of support measures available to help them participate more fully in criminal and any civil court proceedings.

The definition of "vulnerable witness" includes anyone where there is a significant risk that the quality of their evidence may be diminished by reason of fear or distress in connection with giving evidence at the trial. This will enable the court to take into account the wider circumstances of the case, such as the nature of the evidence the witness will give, and any relationship between the witness and the accused.

10.5 Duty to Investigate/Make Enquiries

Where there is a suspicion that an Adult at Risk is at risk of harm, the procedures set out in this Policy will be followed. However, there are statutory powers to investigate in particular circumstances that may be applicable depending on the facts of the case.

Duty to investigate in terms of:

- a) [The Adult Support and Protection \(Scotland\) Act 2007](#) (2014 Code of practice: www.gov.scot/Resource/0045/00455465.pdf)

Local authorities have a duty to 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 they might need to intervene to protect the

person. Certain public bodies such as NHS Shetland and Police Scotland have a statutory duty to co-operate with the Council when carrying out such an inquiry. This duty is recognised by the development of the joint approach embodied in this Policy.

Special powers are given to a “[Council Officer](#)” (See Chapter 9) in terms of the Adult Support and Protection (Scotland) Act 2007 to enable them to carry out any investigations.

b) [Adults With Incapacity \(Scotland\) Act 2000](#)

(www.mwcscot.org.uk/the-law/adults-with-incapacity-act/)

Short guide: <https://www2.gov.scot/Publications/2008/03/25120154/1>. Codes

of Practice: <https://www.gov.scot/collections/adults-with-incapacity-formand-guidance/#codesofpractice>

Local Authorities supervise welfare guardians and investigate complaints about welfare attorneys and other people operating welfare powers under the Adults With Incapacity (Scotland) Act 2000 (the 2000 Act). They may also investigate any circumstances made known to them in which the personal welfare of an adult seems to them to be at risk. A local authority can take action under the 2000 Act only if its investigations reveal an adult lacks capacity in relation to the matter in question.

The Public Guardian (www.publicguardian-scotland.gov.uk/power-of-attorney) supervises financial guardians and investigates complaints about attorneys and others operating the financial provisions of the 2000 Act. The Public Guardian has a specific duty to investigate whenever she/he becomes aware that the property or financial affairs of an adult may be at risk.

If the investigation reveals cause for concern, the Public Guardian may do what she/he thinks necessary to safeguard the property or financial affairs of the adult. Local Authorities and the Mental Welfare Commission (www.mwcscot.org.uk/publications/good-practice-guides/) should co-operate with the Public Guardian’s investigation. If the investigation reveals welfare concerns, the Public Guardian passes these on to the local authority.

c) [Duty of a Local Authority to Inquire under the Mental Health \(Care & Treatment\) \(Scotland\) Act 2003](#)

The Local Authority has a duty to inquire into an adult’s (aged over 16) circumstances, under the Mental Health (Care & Treatment) (Scotland) Act 2003, (the 2003 Act) where they appear to have a mental disorder, are living in the community and

- May be experiencing ill treatment or neglect
- His/her property may be at risk of loss or damage
- She/he may be living alone or without support and may be unable to look after him/herself, his/her property or financial affairs
- The safety of another person may be at risk

A Mental Health Officer (MHO) can apply for a warrant where entry to premises, access to medical records or medical examination is necessary but access has been, or is likely to be, denied.

In addition, the MHO can apply for an order to remove a person to a place of safety.

Where an individual meets the above criteria, it would be more appropriate for their situation to be investigated via the statutory provisions of the 2003 Act rather than under the Adults Support and Protection Procedures.

Link to Mental Health (Care and Treatment) (Scotland) Act 2003:

www.mwcscot.org.uk/the-law/mental-health-act/ and Codes of Practice:

<https://www.gov.scot/publications/mental-health-care-treatment-scotland-act-2003-code-practice-volume-1/pages/0/> / [Mental Health \(care and treatment\)\(Scotland\) Act 2003: Code of Practice Volume 2](#) / [Mental Health \(care and treatment\)\(Scotland\) Act 2003: Code of Practice Volume 3](#)

LEGAL ACTION – WARRANT FOR ENTRY

11.1 General

[Section 7](#) of the Adult Support and Protection (Scotland) Act 2007 allows for a Council Officer to visit premises to establish whether or not further action is needed to protect an Adult at Risk of harm.

11.1.1 The purpose of a visit under this section is to:

- a) Assist the Council in conducting enquiries under [Section 4](#) of the Adult Support and Protection (Scotland) Act 2007 to decide whether the adult is at risk of harm; and
- b) Establish whether the Council needs to take any action to protect the adult from risk of harm.

11.1.2 [Section 37](#) of the Adult Support and Protection (Scotland) Act 2007 makes provision for Warrants of entry.

NB: only the Council can apply for a warrant for entry.

11.1.3 The Sheriff may only grant a warrant for entry where they are satisfied that:

- a) A Council Officer has been, or reasonably expects to be refused entry or otherwise will be unable to enter; or
- b) Any attempt by a Council Officer to visit the place without such a warrant would defeat the object of the visit.

11.1.4 **Once a warrant has been executed, it cannot be used again.**

Although [Section 40](#) of the Adult Support and Protection (Scotland) Act 2007 provides that a warrant of entry application can be made to a Justice of the Peace in certain circumstances, this is not available in Shetland. The type of Justice of the Peace, which we have in Shetland, are not authorised to sign warrants. In the absence of the Sheriff an Honorary Sheriff may grant a warrant.

A warrant for entry granted by a Justice of the Peace expires 12 hours after it has been granted.

A warrant allows a Council Officer to visit any place specified in the warrant, accompanied by a Constable.

11.2 Decision

11.2.1 The warrant authorises a Constable to use reasonable force to take entry to fulfil the object of the warrant.

The decision whether to apply for a warrant of entry will be made by the Executive Manager Adult Services in consultation with the Chief Social Work Officer and usually following consultation with the Police at an IRD. If possible the Executive Manager Adult Services should be involved in the IRD if it looks likely that a warrant may be required. Speed of action may be critical.

Advice from Shetland Islands Council Legal Services should be sought as soon as it is believed that a warrant for entry is the appropriate action. Both legal advice and legal representation would normally be required in making an application to the Sheriff. However, in the event of this not being available, and the adult being at immediate risk of harm, action should not be delayed.

- 11.2.2 If a warrant for entry is granted by the Sheriff without legal advice or representation, legal services should be contacted as soon as practicable thereafter.

11.3 Application

- 11.3.1 The Sheriff Clerk must be contacted with a view to arranging for the Sheriff to hear the application. Usually this will be done by the Shetland Islands Council Legal Services.

If the Sheriff is not going to be available within a timescale which will ensure the safety of the Adult at Risk, then the Sheriff Clerk should be asked to make the necessary arrangements with an Honorary Sheriff. Shetland Islands Council Legal Services will assist Social Work staff to apply for a warrant.

11.4 Notification

- 11.4.1 If the application is successful, the applicant, i.e. Shetland Islands Council is responsible, through a Council Officer, in collaboration with the Police to give effect to the warrant within 72 hours.
- 11.4.2 Whenever practicable the Adult at Risk should be notified that a warrant of entry has been granted.

11.5 LEGAL ACTION – PROTECTION ORDERS

11.5.1 General

The Adult Support and Protection (Scotland) Act 2007 provides for a number of orders, which can be applied for as follows:

- a) An **Assessment Order** allows a Council Officer to conduct an interview in private and/or health professional to conduct a medical examination in private. This may be required to establish whether the person is an Adult at Risk and if further action is required to protect him/her.
- b) A **Removal Order** allows the Council to remove the Adult at Risk to a specified place in order to assess the situation and to support and protect him/her.
- c) **Banning Orders and Temporary Banning Order** will ban the subject of the order from a specified place. They may have other conditions attached, for example contact under certain conditions.
- d) Application may only be made for any of the orders, where the adult is at **risk of serious harm**.

NB: There is no definition of serious harm in the Adult Support & Protection (Scotland) Act 2007, and it is important to consider what constitutes serious harm as it will be different to different people.

- e) **When the Adult at Risk does not consent** to the making of any of the orders, the Council must prove that the adult has been subject to “**undue pressure**” to refuse consent or that the adult lacks the capacity to consent. (See [Appendix 3 for Undue Pressure](#))

11.5.2 ASSESSMENT ORDERS

- a) [Section 11](#) of the Adult Support & Protection (Scotland) Act 2007 allows the Council to apply to a Sheriff for an Assessment Order. The purpose of the Assessment Order is:
 - i) To take the Adult at Risk to a more suitable place to enable them to be interviewed in private; or
 - ii) To be medically examined in private
- b) A Sheriff may only grant an Assessment Order if they are satisfied that:
 - i) The Council has reasonable cause to suspect that the subject of the order is an adult who is being, or is likely to be, seriously harmed;
 - ii) 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
 - iii) The place at which the person is to be interviewed and examined is available and suitable.
- c) In addition, in circumstances where the Adult at Risk has refused to consent, this refusal to consent can be ignored, if the Sheriff believes:
 - i) That the affected Adult at Risk has been unduly pressurised ([see Appendix 3: Undue Pressure](#)) to refuse consent; and
 - ii) That there are no steps which could reasonably be taken without the adult's consent which would protect the adult from the harm which the order or action is intended to prevent.
- d) [Section 35\(4\)](#) of the Adult Support & Protection (Scotland) Act 2007 states that an Adult at Risk may be considered to have been unduly pressurised to refuse consent if it appears that:
 - i) harm which the order or action is intended to prevent is being, or likely to be, inflicted by a person in whom the Adult at Risk has confidence and trust
 - ii) the Adult at Risk would consent if the adult did not have confidence and trust in that person.

However [Section 35\(5\)](#) clarifies that the above is not the only type of behaviour which could cause undue pressure.

Undue pressure can be applied by an individual who may or may not be the person suspected of harming the adult.

- e) An Assessment Order should only be sought where it is not practicable during a visit (due to lack of privacy or otherwise) to interview the person or conduct a medical examination of the adult where the criteria above apply. ([Sections 7, 8 and 13](#) of the Adult Support and Protection (Scotland) Act 2007).
- f) In granting an Assessment Order, the Sheriff must also grant a warrant for entry that authorises a Police Constable to use reasonable force. ([Section 38](#), Adult Support and Protection (Scotland) Act 2007).

It must be borne in mind that the use of force is an absolute last resort. Once granted the Council must reconsider the need to use the Order

before enforcing it. (2014 Scottish Government Code of Practice, Chapter 11, paragraph 21: (www.gov.scot/Resource/0045/00455465.pdf)).

- g) The Sheriff may appoint a person to safeguard the interests of the Adult at Risk during the proceedings ([Section 41](#) of the Adult Support and Protection (Scotland) Act 2007).

h) **Decision**

If the Senior Social Worker responsible for the investigation into the circumstances of an Adult at Risk considers that it is likely an application for an Assessment order may be required, then consultation with the Executive Manager Adult Services and their inclusion in any strategy meeting or discussion may be appropriate. In some circumstances an Assessment Order may need to be applied for quickly in response to the potential of harm to the Adult at Risk.

Advice from Shetland Islands Council Legal Service should be sought as soon as it is believed that an application for an Assessment Order is the appropriate action.

i) **Application**

Only the Council can apply for an Assessment Order. An application for an Assessment Order must be made by Legal Services.

The Sheriff has a wide discretion about how the case will be heard in Court. However, usually evidence on oath will be required from the Council Officer, who will be accompanied and represented by a solicitor from the Council's Legal Services.

j) **Notification**

Once the Council decide to lodge an application with the Court, the Council's Legal Services will:

- **Notify** the affected adult in writing of the application ([Section 41](#) of the Adult Support and Protection (Scotland) Act 2007)
- Inform the adult of his/her right to be heard or represented; and
- Inform the adult of his/her right to be accompanied by a friend, relative or any other representative of choice.

Once the Council lodges the application the Court will fix a date for a hearing. The Council's Legal Services will be required to notify the Adult at Risk of the hearing date.

An application to disapply the notification procedures can be made to the Sheriff at the time of lodging an application, if this is considered necessary to protect an Adult at Risk from serious harm or will not prejudice any person affected by the disapplication.

The Council's Legal Services should inform the Sheriff before the Hearing;

- if the person suspected of harming the adult may attend, so that the Sheriff can consider whether to apply the provisions of the Vulnerable Witnesses (Scotland) Act 2004;
- if the adult concerned has indicated that he/she does not wish legal representation; or
- it appears that the adult does not understand the process.

The Sheriff may appoint a Curator ad Litem where the adult does not have full mental capacity.

k) Implementation

The Assessment Order is valid for 7 days from the date the order is granted.

In giving effect to the Assessment Order, the Council must plan:

- to minimise distress and risk to the adult;
- apply it on the basis of the principle of “the least restrictive alternative”;
- to keep the adult fully informed of their rights, options and events;
- where the adult is going to be moved to;
- how the move is to be carried out;
- transport arrangements if applicable

The adult must only be taken to the place specified on the order.

The adult’s consent to being taken elsewhere does not invalidate the original terms of the order.

The assessment must be undertaken in the shortest time practicable.

The adult is free to leave at any time. The adult retains the right to refuse to be interviewed or to be medically examined. An Assessment Order does not permit the adult to be detained. The authorised Council Officer must advise the adult of their rights and seek their consent to any proposed interview or medical examination.

In terms of the Councils duty of care, the adult must be returned to the place from which they were removed, or to a place of their choice, within reason.

A multi agency Case Conference should be convened to consider what action is required to protect or support the Adult at Risk.

11.5.3 REMOVAL ORDERS

- a) General
[Section 14](#) of the Adult Support and Protection (Scotland) Act 2007 allows a Council to apply for a Removal Order. The purpose of a Removal Order is primarily for protection and:
- to assess the adult's situation and provide support and protection;
 - not primarily for a council interview or a medical examination;
 - permits the person named to be moved from any place;
 - requires the return of the adult to their own environment as soon as possible.
- b) The order may only be used for very specific purposes, such as:
- resolving issues between the adult and a person suspected of harming the adult;
 - relieving carer stress.
- c) A Sheriff may only grant a Removal Order 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;
 - that there is a substitute place available to remove the adult to.

In addition, in circumstances where the Adult at Risk has refused to consent, this refusal to consent can be ignored, if the Sheriff is satisfied that the adult lacks capacity to consent or:

- that the affected Adult at Risk has been unduly pressurised to refuse consent; and
 - that there are no steps which could reasonably be taken with the adults consent which would protect the adult from the harm which the order or action is intended to prevent.
- d) [Section 35\(4\)](#) of the Adult Support and Protection (Scotland) Act 2007 states that an Adult at Risk may be considered to have been unduly pressurised to refuse consent if it appears that:
- harm which the order or action is intended to prevent is being, or likely to be, inflicted by a person in whom the Adult at Risk has confidence and trust
 - that the Adult at Risk would consent if the adult did not have confidence and trust in that person.

However [Section 35\(5\)](#) clarifies that the above is not the only type of behaviour which could cause undue pressure.

- e) In granting a Removal Order, the Sheriff must also grant a warrant for entry that authorises a Police Constable to use reasonable force. It must be borne in mind that the use of force is an absolute last resort.
- f) The warrant of entry should specify the place from which the adult would be removed.

g) **Decision**

The Decision to apply for a removal order must only be taken after consideration of the following:

- Whether it is the least restrictive option;
- The need to provide benefit to the adult;
- The adult's wishes and needs;
- Voluntary approaches and alternative legislation have been explored and are unlikely to protect the adult;
- All other options have been explored;
- The action is in accordance with the principles of the Adult Support and Protection (Scotland) Act 2007.

If the Senior Social Worker responsible for the investigation into the circumstances of an Adult at Risk considers that it is likely an application for a Removal Order may be required, then consultation with the Executive Manager Adult Services and their inclusion in any strategy meeting or discussion may be appropriate. In some circumstances a Removal Order may need to be applied for quickly in response to the potential of harm to the Adult at Risk.

Advice from Shetland Islands Council Legal Service should be sought as soon as it is believed that an application for a Removal Order is the appropriate action.

- h) A written report on the suitability of the place and the person who shall have responsibility to care for the Adult at Risk should be prepared by the Council Officer.
- i) A written agreement should also be obtained from the owner of the proposed specified place, where it is an independent care provider, to confirm their willingness to receive the Adult at Risk for up to 7 days. The proposed specified place shall be set out in the application and any Removal Order granted.

j) **Application**

Only the Council may apply for a Removal Order.

Applications for a Removal Order can only be made to the Sheriff, or an Honorary Sheriff in the absence of the Sheriff in an emergency. The provisions for an application to a Justice of the Peace are not relevant in Shetland, as we do not have the type of Justice of the Peace who is authorised to grant judicial orders.

k) **Notifications & Hearing**

Once the Council decide to lodge an application with the Court, the Council's Legal Services will:

- Notify the affected adult in writing of the application;
- Inform the adult of his/her right to be heard or represented; and
- Inform the adult of his/her right to be accompanied by a friend, relative or any other representative of choice;
- If appropriate, advise any other interested person of the application.

Once the Council lodges the application the Court will fix a date for a hearing. The Council's Legal Services will be required to notify the Adult at Risk of the hearing date.

An application to disapply the notification procedures can be made to the Sheriff at the time of lodging an application, if this is considered necessary to protect an Adult at Risk from serious harm or will not prejudice any person affected by the disapplication of the notification procedures.

The Council's Legal Services should inform the Sheriff before the Hearing if:

- the person suspected of harming the adult may attend so that the Sheriff can consider whether to apply the provisions of the Vulnerable Witnesses (Scotland) Act 2004;
- the adult concerned has indicated that he/she does not wish legal representation; or
- it appears that the adult does not understand the process.

The Sheriff may appoint a Curator ad Litem where the person does not have full mental capacity or a safeguarder to safeguard the interests of the adult through the proceedings.

The Council Officer should advise any person with an interest in the adult's welfare of the removal. This will be done as soon as practicable after the order has been executed and within 1 working day in writing.

i) Implementation

Before implementing the Removal Order, consideration must be given by the Council whether it is still necessary to do so. ([Scottish Government 2014 Code of Practice](#), Chapter 12, paragraph 24). Given that the primary purpose of a Removal Order is protection the following must be adhered to:

- The Adult at Risk must be removed within 72 hours.
- The order will expire 7 days after the day the adult was removed.
- The order can be specified by the Sheriff to expire in a shorter period.
- The Adult at Risk cannot be returned home and removed again within the period.
- The adult should be removed for as short a period as possible.

Council Officers and Police Constables have the right to enter premises to remove the adult.

The Council Officer may arrange for another person, who may be more familiar, to move the adult. The person identified should be specified in the application.

The Council must plan:

- to minimise distress and risk to the adult;
- always on the basis of the principle of "the least restrictive alternative";
- to keep the adult fully informed of their rights, options and events;
- where the adult is going to be removed to;
- how removal is to be carried out;
- transport arrangements if applicable.

Protection of Property – In respect of property owned or controlled by the adult moved, the Council must:

- take any reasonable steps to safeguard the property;
- prevent it from being lost or damaged;
- enter any place to remove the property;
- return the property to the adult as soon as reasonably practicable.

This could be agreed in advance with the adult in the form of a Protection Plan. Property could include house contents, vehicles, animals, monies and clothing.

- m) The Sheriff can apply conditions to the Removal Order. This can deal with, for example, contact for the Adult at Risk with persons who are a support to the adult.
- n) Application can be made to the Sheriff to recall or vary a removal order by:
 - the Adult at Risk;
 - any person who has an interest in the Adult at Risk's well-being or property;
 - the Council.

Variation or recall has to be justified by a change in the facts or circumstances.

Where a Removal Order is recalled, the Sheriff may direct the Council to:

- return the adult to the place from which the adult was removed; or
- take the adult to another specified place, having regard to the adult's wishes, within reason.

11.5.4 BANNING AND TEMPORARY BANNING ORDERS

- a) [Section 19](#) of the Adult Support and Protection (Scotland) Act 2007 provides for the granting of a Banning Order and attachment of conditions to such an order, by the Sheriff.

A Banning Order bans the subject of the order (“the subject”) from being in a specified place. The subject of the order may be a child.

[Section 21](#) of the Adult Support and Protection (Scotland) Act 2007 allows the Sheriff to grant a Temporary Banning Order pending determination of an application for a Banning Order.

- b) A 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.

NB: The subject of the Banning Order may not necessarily be living with the Adult at Risk

- c) Criteria for granting a Banning Order.
A Sheriff may only grant a Banning Order if they are satisfied:
- 1) An Adult at Risk is being, or is likely to be, seriously harmed by another person;
 - 2) 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:
 - The Adult at Risk is entitled, or permitted by a third party, or
 - Neither the Adult at Risk nor the subject is entitled, nor permitted by a third partyto occupy the place from which the subject is to be banned.
 - 3) The Adult at Risk consents to the Banning Order, or they lack the capacity to consent to the Banning Order or they have been subject to undue pressure.
- d) A Banning Order can last for any period up to a maximum of 6 months. The period will be determined by the Sheriff.

A Banning Order may be recalled or varied.

e) **Temporary Banning Order**

[Section 21\(4\)](#) of the Adult Support and Protection (Scotland) Act 2007 provides that a Temporary Banning Order expires on the earliest of the following dates:

- The date the Sheriff determines the Banning Order; or
- Is required to determine the Banning Order within the period specified in Court Rules;
- The date on which it is recalled; or
- Any specified expiry date.

f) **Decision**

The Decision to apply for a Banning Order must only be taken after consideration of the following:

- Whether it is the least restrictive option;
- The need to provide benefit to the adult;
- The adult's wishes and needs and in particular whether they consent to the application;
- Voluntary approaches and alternative legislation have been explored and are unlikely to protect the adult;
- The action is in accordance with the principles of the Adult Support and Protection (Scotland) Act 2007.

If the Senior Social Worker responsible for the investigation into the circumstances of an Adult at Risk considers that it is likely an application for a Temporary Banning Order or Banning Order may be required, then consultation with the Executive Manager Adult Services and their inclusion in any strategy meeting or discussion may be appropriate. In some circumstances a Temporary Banning Order may need to be applied for quickly in response to the potential of harm to the Adult at Risk.

Advice from Shetland Islands Council Legal Services should be sought as soon as it is believed that an application for a Banning Order is the appropriate action.

g) 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 this would be appropriate.

If the circumstances are such that there is a need to act urgently, then a referral to the Children's Reporter can be made at the same time as the application for an order.

The decision to ban a child should be taken at a multi-agency Case Conference, at which a representative from Children and Families Social Work must be present.

In cases of urgency, the Executive Manager Children & Families must be advised of and consulted on the impending application.

Advice from the Council's Legal Service should be sought as soon as it is believed that a Banning Order or Temporary Banning Order is the appropriate action. Both legal advice and Legal representation would normally be required in making an application to the Sheriff. However, in the event of this not being available, action should not be delayed.

- h) It would be good practice to advise the subject of a the Banning Order that the council intends to seek the order, However this is not a legal requirement and protection of the adult at risk is the primary focus.
- i) Consideration must be given before a Banning Order is applied for whether banning the subject from a specific place is likely to:
- better safeguard the well being and property of the Adult at Risk of harm from being seriously harmed, more effectively than would the removal of the adult; and
 - provide an opportunity to address any issues that otherwise could not be addressed;
- The possibility of protective measures by agreement must be explored.

j) **Application**

The Council's Legal Service will prepare and present the application to the Sheriff.

The application for a Banning Order must be accompanied by a plan clearly identifying the place and area from which the subject is to be banned.

- k) The Council is obliged to apply for a Banning Order if they are satisfied that:
- The criteria are met – see [Section 20](#) of the Adult Support and Protection (Scotland) Act 2007;
 - Nobody else is likely to apply for a Banning Order in the circumstance; and
 - No other relevant banning proceedings are pending before a Court.

NB: If the Adult at Risk is the applicant, it would be good practice for Shetland Islands Council to assist with the application, although the Council's Legal Services cannot represent an Adult at Risk.

- l) The Sheriff has the discretion to appoint a safeguarder or a Curator ad Litem where the person does not have full mental capacity.

m) **Notifications**

Once the Council has lodged an application with the Court, the Council's Legal Services will:

- Notify the affected adult and the subject in writing of the application;
- Inform the adult and the subject of his/her right to be heard or represented; and
- Inform the adult and the subject of his/her right to be accompanied by a friend, relative of any other representative of choice;
- If appropriate advise any other interested party of the application
- Consider referral to the Children's Reporter if the banning application is about a child.

n) **Power of Arrest**

A Banning Order or Temporary Banning Order can have a power of arrest attached:

The Applicant (where it is not the Adult at Risk), must deliver a copy of the Banning Order or the Temporary Banning Order with a power of arrest to the Adult at Risk and such other persons as may be specified. Likewise the Banning Order or Temporary Banning Order with a Power of Arrest attached requires to be served on the subject. The applicant should specify in the

application who it is intended should be authorised to carry out this services of the Order. The power of arrest becomes effective only when served on the subject ([Section 26](#), the Adult Support and Protection (Scotland) Act 2007).

- o) The Council's Legal Services shall notify the Chief Constable, Police Service for Scotland where a Banning Order or Temporary Banning Order with a power of arrest has been granted ([Section 27](#), the Adult Support and Protection (Scotland) Act 2007). However, it would also be good practice to ensure that the Chief Inspector for the Shetland Area Command is aware that a power of arrest has been attached to a Temporary Banning Order or to a Banning Order.
- p) Unlike the other protection orders, there is a right of appeal to the Sheriff Principal against the granting or refusal of a Banning Order or a Temporary Banning Order.
- q) The following is a useful checklist for practitioners:
 - Who is to be banned
 - What area does the ban cover
 - What length of ban is requested (up to 6 months)?
 - Should there be contact between the adult and the subject of the order?
 - What conditions should be attached to the ban e.g. power of arrest?
 - Are the powers required immediately?
 - Purpose of ban – what is going to be achieved?
 - If the banned person is living in the same accommodation, how is their property going to be secured and protected?
 - Who notifies police of the power of arrest attached to the condition?
 - What is the likelihood of appeal?
 - Any impact/risk to others by banning the person from the premises, e.g. rehousing of the banned person?

Chapter 12: Medicals

12.1 Introduction

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

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

- The adult's need of immediate medical treatment for a physical illness, injury or mental disorder
- To provide evidence of harm to inform a criminal prosecution or action to safeguard an adult
- To assess physical health needs
- To assess the adult's mental capacity

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

12.4 Consent

12.4.1 Consent must be obtained from the adult prior to a medical assessment by the GP. If the adult lacks capacity to make informed decisions about consenting to an assessment, consent should be obtained from their Welfare Guardian or Welfare Power of Attorney. If there is no Welfare Guardian or Power of Attorney, a Mental Health Officer should be consulted and consideration given to whether any provisions in the [Adults With Incapacity \(Scotland\) Act 2000](#) or the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) apply.

12.4.2 If there is no Welfare Guardian or Welfare Power of Attorney, or they are not available, or they are alleged perpetrators or are suspected of colluding with alleged perpetrators, an Assessment Order may be applied for (see [Chapter 10: Legal Context](#) and [Chapter 11: Legal Action](#)). An Assessment Order may also be applied for if there is a Welfare Guardian or Power of Attorney and they are refusing permission for a medical examination to take place, or if it is suspected that the adult has made the decision not to participate in a medical examination due to undue pressure (see [Appendix 3 Undue Pressure](#)).

12.4.3 **A person is not obliged to answer any questions put to him/her and must be informed of his or her right to refuse prior to a medical examination being carried out.** If there are concerns that an adult has not understood the question, inquiries should be made to ensure whether there is a Welfare Guardian or Power of Attorney who should be contacted for consent. In a forensic medical examination Police may consider the use of an Appropriate Adult who could inform regarding consent. Regardless of whether the medical examination is carried out by a Police Doctor or a GP it is the responsibility of the Medical Practitioner to be

satisfied that the Adult at Risk has consented or at least has no resistance to the examination.

12.5 Procedure

- 12.5.1 If an Adult at Risk requires immediate medical **treatment** this must be sought without delay. The medical staff should be informed of any known history and that their findings may have forensic significance.
- 12.5.2 Council Officers and other non-medical staff must not carry out medical examinations. However it is acceptable, when injuries and/or bruises are obvious, to assess whether these are consistent with any explanation provided. Absence of physical signs should not be taken as conclusive evidence that no harm has taken place.
- 12.5.3 If an Adult at Risk has an injury that does not require immediate treatment, he or she should be subject to an interview prior to any medical examination. This will enable the investigating officers to assess whether or not a medical is necessary.
- 12.5.4 A joint decision will be made regarding the necessity for a medical examination except where a crime has been committed. Decisions will be made in relation to:
- the need for the medical examination;
 - the purpose of the medical examination;
 - the type of medical examination;
 - who should conduct the medical examination;
 - where it should take place;
 - when it should take place
- 12.5.5 If, after a joint investigation, the Police decide not to commission a specialist medical examination, but the Council Officer believes one is necessary, the Council Officer should discuss this with their Line Manager immediately.
- 12.5.6 Forensic medical examinations usually take place under the following circumstances if:
- it is believed that an adult has sustained a non-accidental injury;
 - there is concern regarding sexual harm and there is the likelihood that physical evidence may be present;
 - the adult has injuries where the explanation (from the adult or other person) is inconsistent with the injuries and an examination may provide a medical opinion as to whether or not harm has been perpetrated;
 - the adult appears to have been subject to neglect or self-neglect;
 - the adult is ill or injured and no treatment has previously been sought
- 12.5.7 Sexual harm medical assessments will only be conducted by registered medical practitioners who are appropriately qualified and skilled. They will be forensic medical examiners contracted by the Police.
- 12.5.8 The Council Officer will not be present when the adult is being examined. The adult may have someone else accompany them during a forensic medical examination as long as that person is not an alleged perpetrator.

- 12.5.9 It is the responsibility of the Police to co-ordinate forensic medical examinations. In cases of serious sexual offences Police Officers should follow the 'Scottish Investigators Guide to Serious Sexual Offences'.
- 12.5.10 Following a forensic medical examination, the forensic medical examiner should provide a hand written interim report of their findings.
- 12.5.11 Some medical examinations can be arranged by the Council Officer with the adult's GP. This would be appropriate if, for example, an adult has been injured and there is no real evidence at that stage that the injury is non-accidental. The consent requirements remain. If, after examination, the GP believes that injuries are non-accidental, the Police should be contacted immediately for further discussion.
- 12.6 A medical professional is defined under [section 52\(2\)](#) of the Adult Support and Protection (Scotland) Act 2007 as:
- A Doctor
 - A Nurse
 - A Midwife
 - Or any other type of individual described by order made by Scottish Ministers.

NB: If at the Immediate Response stage, the Adult at Risk has an obvious injury, action should be taken as indicated under [Chapter 6: Stepwise Guide for Adult Support & Protection Procedures](#), see [Step 3](#).

INDEX OF FORMS:

[Form 1: NHS Shetland Referral to Social Work](#)

[Form 2: SIC and other agencies \(non-NHS\) Referral to Social Work](#)

[Form 6: Standing Agenda for Adult Protection Case Conference](#)

[Form 8: Report from Agencies Other than Social Work for an Adult At Risk Case Conference](#)

[Form 9: Protection Plan](#)

FURTHER INFORMATION AND LEAFLETS:

For information leaflets about attending Adult Protection Case Conferences in easy-read format, please see: **<http://www.safershetland.com/easy-read-information>**

Professionals can find further information at:
<http://www.safershetland.com/adult-protection-for-professionals>

Form 1

**NHS Shetland – Adult at Risk
Referral to Social Work service**

Please also send a copy of this form, when completed, to the Advanced Nurse
Practitioner (Protection)

**NB do not use this form if this is a request for assessment of need and access to
services**

To: Name:

Address:

I refer for your attention

Name: Date of Birth:

Address:

Parent/Family/Carer Address if different from above:

Telephone Number:

Name of General Practitioner:

Telephone Number:

Name of Community Nurse:

Address of Community Nurse:

Telephone Number:

Account of Circumstances Leading to Referral

From Referrer:

.....
.....
.....
.....

Name: Position: Date:

Please attach a copy of your agency's chronology (if available)

Form 2

**Shetland Islands Council
Adult at Risk – Referral to Social Work Service**

Referring Agency:

Shetland Islands Council*

Schools Service*

Housing Services*

Other SIC department or service (please state)*

Other organisation (please state)*

NB do not use this form if this is a request for assessment of need and access to services

Adult At Risk

CONFIDENTIAL

To: Duty Senior Social Worker, Community Care Social Work

Copy to: Referrer's Head of Appropriate Department/Organisation

(*delete as appropriate)

Designated Person for Referrer's Organisation (please state):

From: Referrer: Name, Designation/post held and name & address

Adults Name:

Date of Birth:

Address:

Name and Address of Carer/Family Member

Date and time of initial contact with member of staff:

Reasons for concern:

(clearly indicate whether this refers to an incident, suspicion or allegation by the adult at risk)

Date and time of contact with the Duty Social Work service:

Advice received from the Duty Social Work service:

Any other comments:

Signed: Date:

Please attach a copy of your agency's chronology (if available)

Form 6

Standing Agenda for Adult Protection Case Conferences

Pre-Conference

Written reports from the social worker or any other agency should be with the Chair and the minute taker of the conference at least 24 hours before the conference. It is good practice that report writers will share the contents of the report with the Adult at Risk and any family members with whom it may be appropriate to share information prior to the conference.

The Social Worker should agree with the Chair:

- How the view of the Adult at Risk of harm will be represented and if the adult is attending the meeting , bringing a supporter or advocate or if a carer or relative will attend and speak on their behalf
- If the Adult at Risk of harm needs any additional support to express their views- e.g. communication book, hearing loop, translator, makaton or someone who can sign to assist communication
- If the venue of the conference is accessible to the adult or any supporter/carers who are attending
- If the Adult at Risk, their carers, family members, supporter or advocate wishes to meet the Chair before the meeting
- Where and when reports are read by professionals attending the meeting. It is better practice to invite professional to come 15 minutes early and sit in another room to read reports and then join the Chair and Adult at Risk in the room where the conference will be held.
- Does the Chair need to consider excluding anyone? This should only occur after serious consideration of exceptional circumstances for example the threat of, or actual, physical violence or serious disruption or where a carer's/family's attendance is not in the best interests of the Adult at Risk.
- Is any professional requesting a confidential section of the conference in order to share restricted information?

Adult Protection Case Conferences

Guidance about adult protection case conferences is contained in [Chapter 7](#) of the 2016 Shetland Interagency Adult Support and Protection Procedures.

It is good practice for the Chair to recap at key points in the conference to ensure facilitation of minute taking and to aid clarity for all attending.

AGENDA	PROMPT
1 Welcome	Check any communication/support systems have been provided and are working
2 Introductions	Each person should state their role, agency(where appropriate) and contact with the Adult at Risk of harm A particular welcome and introduction of the Adult at Risk if they are present and an acknowledgment of the challenge it may be for them to be at a meeting that will discuss some difficult issues in their life
3 Apologies and Housekeeping	Identify if a written submission of views have been sent and when may be the best point in the meeting to consider them.
Views of the Adult at Risk	If the Adult at Risk is not present note for the minute why they are not present and what arrangements are in place to be able to hear and consider their views.
4 Identify exclusions and state reasons	Identify if the Adult, any individual, or agency has excluded themselves or been excluded by the Chair for part or all of the meeting. Identify the person and note reasons
5 Information and Confidentiality	Be clear about whether anyone attending can take copies of the report provided for the meeting or not Will reports be sent out with the minutes?
6 Give a synopsis of the purpose of the case conference See Chapter 7, Paragraph 7.2 of these Procedures	Purpose of an initial conference is to • To gather together the Adult at Risk, appropriate members of the family/carers and the relevant agencies to share and assess information collated during an Adult at Risk investigation and to consider other relevant background information • To determine risk and enable multi-agency consideration of cumulative concerns • To formulate or provide the framework for the development of a protection plan(if that is required) which includes consideration of necessary support services • To agree a support plan if this is more appropriate Purpose of a review case conference • To review the circumstances of the Adult at Risk and the effectiveness of the protection plan • To consider if the Adult at Risk continues to be at risk (may require review of 3 point test) • To amend the protection plan if necessary
7 Facility to ask for a break/adjournment	
8 Investigating Officers report, findings and actions to date	Reports should already have been read. If reports cannot be shared for legitimate reasons this should be recorded.

AGENDA	PROMPT
9 Chair introduces any other reports from participating agencies	Includes any written or verbal submissions. Report writers if present can speak to their report briefly
10 Views of the Adult at Risk of harm	Done at this stage as their view may be augmented by the views of others. Views can be expressed by themselves, an advocacy worker or representative nominated by them
11 Views of carers/relevant others	
12 Appraise received information, opinions and assessment of risk see Chapter 7, Paragraph 7.7 of these Procedures re Risk Assessment	Factors to consider • Communication, capacity and involvement • Chronology of significant event • Current risks or concern • What behaviour/concern have led to the situation • Who is the source of harm/concern? • Particular triggers of risky situations? • Protective factors • What is the Adult's own assessment of risk? • What is the family/carers assessment of risk? • Is the current living situation safe for the Adult? • Risks to other people • Future action to be taken to reduce risk • Are there any other adults at risk of harm in the household/other family members?
13 Agree Adult Support and Protection plan – is this required?	Actions required by whom and when and within what timescale What outcome do we want for the Adult at Risk and what needs to change to achieve that outcome?
14 Legal Views and requirement for any legal action	A representative from Shetlands Islands Council legal services should normally be present. However if they are not present it is still important to consider the need for any action under the Adult Support and Protection Act, Adults with Incapacity and the Mental Health Act. If professionals think that legal action or advice may be required and no legal representative is present then it should be agreed who will consult with legal and when that will be done – may need to be immediate if high risks have been identified by the case conference.
15 Core Groups and date for first Core group meeting	Identify those to be involved and lead person who will usually be the social worker
16 Clarify if everyone understands what is happening and any questions	
17 Summary of decisions and record any dissent	List decisions and those responsible
18 Confirm communication strategy	Who are minutes and the protection plan to be sent to?

AGENDA	PROMPT
19 Arrange date for review conference	3 months and then 6 months
20 Thank all who have attended and ensure plans are in place for Adult's safe return home.	
21 Ensure that any reports are collected back in and either destroyed or passed to the minute taker to send out with minutes	

Form 8

Format for Reports for Case Conferences from Agencies other than Social Work

1. Report for Adult at Risk Case Conference for:

To be held on:

Report from (Name & Designation):

.....

Initial / Review – please delete

2. Family Composition

Name	DOB	Relationship to Adult	Address

3. Cause for concern including:

(a) Any precipitating incident

(b) Any previous concerns

4. Relevant Family History/Chronology

(Please include here relevant information from your services that potentially affects the Adult)

5. Past and present involvement regarding:

[Name and DOB of Adult]

From:

[Your name and professional role]

For case conference on:

[Date]

Please provide information relevant to your services specific to the Adult. Please contribute any information you have that will help build up a picture of the Adult's circumstances. Include any strengths, and any areas where further support may be needed. Consider in particular any potential areas of risk.

6. Summary Statements/Analysis

- Risk Factors

- Protective Factors

7. Adult's View of your Report

8. Signed:

Date:

PROTECTION PLAN**Form 9**

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

DATE OF PROTECTION PLAN:

1. PERSONAL DETAILS – ADULT AT RISK

First Names:		Surname:	
Date of Birth:			
SWIFT No:		CHI No:	

2. AGENCY/STAFF INVOLVEMENT

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

3. ACTIONS

Date:

SUPPORT AND PROTECTIVE SERVICES

Actions and Roles, which define services to be in place and procedures to be followed, with responsibilities, timescales and outcomes identified involving service users, carers, members of the core group and all other agencies involved in the Protection Plan. These should include immediate or longer-term actions; both benefit enhancing and harm-reducing measures, and roles of services, the adult, advocates, unpaid carers, attorneys and guardians, as appropriate.

Actions and Roles	Responsibility	Timescales/ Deadlines	Intended Outcomes
a) Support, treatment, therapy (specify services)			
b) Control measures (including any legal action)			
c) Direct contact with person			
d) Risk management with perpetrator			
e) Information sharing arrangements			
f) Risk management coordination			
g) Other Actions			

4. VIEWS AND ROLES OF ADULT AT RISK AND OTHERS

Date:

Adult's view of Protection Plan:

Advocate's View of Protection Plan:

Unpaid Carer/s view/s of Protection Plan:

Guardian/Attorney's view/s of Protection Plan:

Agencies dissenting from Protection Plan:

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

Identify significant changes which might occur	What additional or alternative action should be taken in that event	Responsibility

6. DISTRIBUTION OF PROTECTION PLAN

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

Person/Agency	Name and Designation	Sent copy of Protection Plan (date, or N/A)
Adult at Risk		
Nearest relative/carers		
Named Person		
Advocate		
Social Work staff		
Support Agency		
Community Health		
G.P		
Consultant		
Police		
Housing		
Legal Representative		
Attorney/Guardian		
Others		

7. REVIEW ARRANGEMENTS

Review Date:	Review Location (if known):
--------------	-----------------------------

Protection Plan approved as accurate and confirmed copied to set agencies and Core Group members

Signed by Case Conference Chair:

Date:

[Appendix 1](#)

- Quality Assurance of Adult Protection Processes

[Appendix 2: Allegations Against Staff](#)

- Allegations Against Staff

[Appendix 3: Undue Pressure](#)

- Undue Pressure

[Appendix 4: Protocol for Adult Support & Protection Initial Screening Group](#)

- Protocol for Adult Support and Protection Initial Screening Group

[Appendix 5.1: Data Sharing Agreement and 5.2 Data Sharing for Case Review](#)

- Data Sharing Agreement and Data Sharing for Case Reviews

[Appendix 6 Managing a Disclosure](#)

- Managing a Disclosure

[Appendix 7 Large Scale Investigations](#)

- Large Scale Investigations

[Appendix 8 Section 10 Letter](#)

- Section 10 Letter

APPENDIX 1

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Quality Assurance of Adult Protection Processes

Protecting Adults at Risk of harm is the responsibility of all agencies and organisations in Shetland. Each agency will need to have regard to their own internal quality assurance processes that focus on the actions taken by their own staff and the outcomes for a particular adult.

Shetland Public Protection Committee has the responsibility of taking an overview of adult protection processes and through the Quality Assurance Sub-committee for Adult Protection to bring together information from single agency quality assurance work and to also commission interagency quality assurance work. This should be guided by an agreed self-evaluation framework that aims to improve outcome for adults subject to adult protection procedures and is clearly linked to continuous improvement.

The Care Inspectorate has developed Quality Indicators for adult protection and made a number of recommendations taken from the pilot adult protection inspections completed in 2017 and reported on in 2018. Any activity undertaken to support self-improvement through self-evaluation will reference the QIs and the recommendations.

Given the specific role of Local Authorities under the Adult Support and Protection (Scotland) Act 2007 quality assuring the referrals received, the actions of Duty Social Workers, Council Officers and allocated Social Workers for adults subject to protection plans on a day to day basis will fall to Senior Social Workers. Additionally the Independent Reviewing Officer will gather information about Adult Protection Case Conferences and report to APC on an annual basis.

Shetland Public Protection Committee has agreed to participate in a biannual case review that will use the Care Inspectorate's Case Reading Proforma to assess the quality of work and the outcomes for adults receiving services. A data sharing agreement to facilitate this is in appendix 6 ([ADD HYPERLINK](#)) The Lead Officer will take responsibility for ensuring the most up to date version of the Care Inspectorate's Proforma is available for the annual case review. The findings of the case review will feed achievable recommendations and a SMART action plan that will be overseen by QASC and SPPC.

APPENDIX 2

Allegations Against Staff

1.1 Any allegations that an adult has been harmed by a member of staff from any organisation (or volunteer working for any organisation or personal assistant) will be dealt with in accordance with these procedures following the stepwise guide as laid out in section 6. In some instances, an individual doing regulated work can become unsuitable to continue to do this work due to their conduct at work or outside of work.

1.2 Anyone who receives an allegation indicating that a member of staff, personal assistant or volunteer has harmed or may have harmed an adult must make an adult protection referral immediately following normal procedures.

1.3 The Senior Social Worker Duty Team Adult Social Work will coordinate the initial inquiries and any subsequent IRD or formal investigation- although it must be noted that in cases that indicate criminal conduct Police Scotland will take a lead. The Senior Social Worker will ensure that the staff member's line manager is informed immediately and the appropriate Senior Manager and HR in the employing organisation

1.4 The Senior Social Worker needs to inform appropriate managers that an allegation has been made against a member of their staff. Additionally the following should be notified;

- For allegations against Social Workers or Social Care staff or any other Shetland Islands Council staff the Chief Social Work Officer should be informed
- For allegation against teacher or other staff employed by schools service –Director Children's Services
- For NHS Staff –Head of HR
- For Police Scotland Chief Inspector Shetland Area Command

Third Sector and Private Employers will need to manage such situations through their own managers, management committees and HR resources.

The Shetland Inter-agency Adult Protection procedures should be implemented to conduct the adult protection investigation. But these processes should work alongside the organisations own HR procedures. Suspension or redeployment of staff is decision to be taken following the agencies own HR processes and the guidance of appropriate managers. However the principle of protecting an adult at risk whilst acknowledging the difficulties for staff and ensuring they are also supported should be adhered to.

1. 5 In situations where allegations are made against Personal Assistants employed under direct payments any investigation should follow these procedures, but additionally consideration will need to be given as to whether the direct payment package can continue

1.6 There will be situations when setting up a large scale investigation is necessary. This will usually be when allegations indicate a culture of poor, abusive neglectful care in a specific service or when the member of staff against who allegations have been made has provided a service to a number of adults either in the community or in a care centre or day service. Please see appendix 9 Large Scale Investigations

APPENDIX 3

UNDUE PRESSURE

(SECTION 35 OF THE ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007)

1. Undue Pressure

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

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

- 1.6 The burden of proof of establishing that there has been undue pressure on an Adult at Risk of harm rests with the Council in court applications.
- 1.7 Where the Council considers that, after making enquiries under Section 4 of the Act, it needs to intervene, it has a duty to ensure that the adult's past and present wishes are represented and that the adult is assisted to participate as fully as possible in proceedings.

APPENDIX 4

Protocol for Adult Support and Protection Initial Screening Group

Introduction

The Adult Support and Protection (Scotland) Act 2007 Section 4 makes it a legal duty for Shetland Islands Council to make inquiries into the circumstances of adults that it know or believes to be at risk and for other agencies to co-operate with these inquiries. Section 5 outlines the duty on police services and health services (as well as other bodies) to co-operate with any inquiries.

It also makes it a legal duty for agencies to make referrals to Shetland Islands Council of any adult they believe to be at risk of harm.

Police Service Scotland comes into contact with a large number of adults about whom they have welfare concerns. Additionally NHS Shetland and a range of services operated by Shetland Islands Council to provide support and care to adults may also become aware of potential “at risk” situations. The circumstances of these adults differ widely, as does the seriousness of the concerns.

This Protocol will sit as an Appendix to the Shetland Inter-Agency Adult Support and Protection Procedures 2016. This protocol operates under the Shetland Data Sharing Agreement and to the duties placed on agencies to share information in Section 5 of the Adult Support and Protection (Scotland) Act 2007.

Purpose of the Initial Screening Group

- To ensure that there is an integrated process for establishing where there is a genuine cause for concern or intervention
- To establish what information agencies already have about the adult referred and to share information that is relevant and proportionate to the situation under discussion and any associated risk to the adult.
- To ensure that information is discussed and a co-ordinated response agreed.

The intended outcomes of the introduction of the Adult Support Protection Screening Meeting are therefore to

- Improve the sharing and collation of interagency information so as to be better able to make appropriate decisions about the need for support to an adult
- To assist the local authority in determining if the adult’s situation meets the three point test and if formal investigations and other measures under the Inter agency Adult Protection Procedures may be required.

This protocol outlines the operational procedures of the screening meeting. The protocol is designed to ensure that relevant information is shared by the key adult protection partners, and that actions are agreed that are both appropriate and proportionate.

Procedures

1. Meeting frequency

The Duty Senior Social Worker and Duty Social Worker will triage adult concern and adult protection referrals by completing initial checks. Any immediate action necessary will be taken. Cases that would benefit from an interagency discussion will be referred to the interagency screening meeting which will be held as and when required. Any adult who has been referred on 3 occasions will be referred to the screening meeting for an interagency discussion and risk assessment.

Permanent full time members of the screening meeting will be:

- Senior Social Worker SIC Adult Social Work (Chair of the screening group)
- Inspector for Shetland Area Command
- Manager of the Community Mental Health Team or band 7 Nurse Practitioner Community Psychiatric Nurse
- NHS Shetland Adult Protection Nurse Advisor
- Duty Administrative Assistant Social Work(minute taker)

Deputes can be asked to attend the meeting as necessary. It will be the responsibility of permanent members of the group to brief those deputising for them.

Any other agencies can be invited if it is felt it would be appropriate to include them to discuss a specific referral for example the inclusion of staff from the Criminal Justice Team and Housing Services may in some circumstances be appropriate.

2. Confidentiality and Data Management

Adults have the right to have their confidentiality respected and therefore representatives attending the adult screening meeting have a duty to share information that is relevant to the situation. Information will be shared in accordance with the Shetland Data Sharing Protocol.

- Decide from the information that their agency holds in respect of an adult who has been referred to the screening meeting what may be relevant to share and discuss
- E mails giving information about the referrals should be sent by secure e mail and measures must be taken to make sure that only authorised people have access to them. If representatives choose to print e mails measures must be taken to ensure that the hard copy is kept safe and only authorised staff have access to it.
- Information relating to the adult either in electronic form or hard copy should be filed in the adult's file or destroyed following the meeting.

3. Preparation for screening meetings

A referral raising a concern that an adult may be at risk will be made by any agency or individual to the Duty Administrative Assistant Adult Social Work Team.

The Duty Administrative Assistant will

- Check SWIFT for any information relating to the adult referred. A check for information on other adults or children connected to the adult referred or living at the same address must also be made.
- Pass referral to the Duty Senior Social Worker urgently if the referral indicates immediate risk

- Once the Duty Senior Social Worker has decided that the referral can wait to be discussed at the next screening meeting the Duty Assistant will e mail the referral to the single point of contact in the agencies, who attend the meeting. This should be done within 2 working day of receipt of the referral.
- The Duty Administrative Assistant to contact Housing services to check any information that they may hold in respect of the adult. Depending on the outcome of this initial check the Duty Senior may decide that a representative from Housing Services should attend the screening meeting to further discuss the adult's situation.
- The Duty Senior Social Worker may also decide that other agencies should be invited to attend the screening meeting to discuss a specific referral.
- Before the meeting the Duty Assistant will prepare a collated agenda sheet giving the list of referrals to be discussed and this will be circulated to all agencies two working days prior to the meeting who attend by secure e mail.

The Duty Senior Social Worker Community Care always has the discretion to decide how a referral will be dealt with i.e. whether other legislation Mental Health (Care & Treatment) (Scotland) Act 2003, Adults With Incapacity (Scotland) Act 2000 – applies and also which referrals can wait until the ASPISG meeting. Information from other agencies can be sought by telephone if a more urgent response is required to the situation of the adult who has been referred.

The following outlines the responsibilities of staff attending ASPISG

- On receipt of an e mail in respect of a referral the person acting as the single point of contact for their agency will check records in respect of the adult referred and will, if need be, speak to colleagues who may have first hand knowledge of the adult and their situation. Staff acting as a single point of contact should also collate any relevant information with regards to family members or people living with the adult that may be relevant to the adult's situation.
- If on collating information and adding it to the information received in the referral indicates that there may be a higher risk to the adult than was first thought, then the staff member acting as a single point of contact should telephone the Duty Senior Social Worker to discuss further.
- Agencies will record the receipt of the referral for their own record and chronology
- There is an expectation that staff acting as a single point of contact need to be prepared well in advance of the meeting and bring to the meeting relevant information.
- The Duty Senior Social Worker will chair the meeting and will ensure that there is a minute taker available to take notes using the agreed proforma attached at [Appendix 1](#).

4. Screening Meeting

Screening meetings will

- Share and collate information relevant to the circumstances of the referral
- Make a decision about the meeting of the three point test and if any further action is required under ASP procedures. This decision lies finally with the Duty Senior Social Worker acting on behalf of the council under the Adult Support and Protection (Scotland) Act 2007, but should be informed by the information shared and discussed at the meeting.
- The minute of the meeting should record whether or not the three point test is met
- If the adult meets the three point test and if it is necessary to arrange an initial strategy meeting to plan an investigation it would be good practice that this is a separate meeting from the screening group.
- Decide on any other intervention that may be needed either on a single or interagency basis
- To decide if there is a need to report back to the screening meeting on any action taken. This will not be necessary for every referral, but for some it may be important.

5. Following ASPISG meetings

- It is important that there is a flow of information both into and out of the screening meeting. Following the discussion at the ASPISG meeting it will be important for staff acting as a single point of contact to feedback to colleagues who may also be working with the adult whose situation has been discussed and there may be specific actions for agencies to undertake.
- The minute taker will circulate the minute and any actions required within two working days following the meeting by secure e mail.
- Staff acting as single point of contact for their agency can share the section of the minute referring to a specific adult with staff in their agency who are either currently working with that adult and have provided information for the screening meeting or who are being asked to assess the adult's needs in response to decisions made at the screening meeting.

NOTE TAKING PROFORMA**Adult Protection Multi-Agency Screening Meeting – DATE OF MEETING****Present:**

Adult's Name	
Date of Birth	
Address	

Date and nature of incident

--

Note of Discussion

--

Actions

--

To include decision about the 3 point test**Signed: (Senior Social Worker- Chair)**

APPENDIX 5 .1

DATA SHARING AGREEMENT

Between

**SHETLAND ISLANDS COUNCIL
NHS SHETLAND
POLICE SCOTLAND and
VOLUNTARY ACTION SHETLAND**

1. Introduction

- 1.1 This is a Data Sharing Agreement (the Agreement) supported by the Shetland Data Sharing Policy (the Policy). The Policy forms part of the Agreement. By agreeing to the terms of the Agreement, all parties have undertaken to implement and adhere to the terms of the Policy.
- 1.2 The Agreement forms part of the Shetland Inter-Agency Adult Support and Protection procedures (the Procedures). By agreeing to the terms of the Agreement , all parties have undertaken to implement and adhere to the terms of the Procedures.

2. Purpose

- 2.1 The purpose of the Agreement is to facilitate the exchange of data to support the Procedures and ensure that adults who may be at risk of harm in Shetland are safe, respected and included, with clear communication routes and fully involved in all decision making.
- 2.2 The aim is that all adults who may be at risk of harm are empowered through support from the parties to the Agreement to be free from harm and enabled to make decisions and choices about their lives and to live as independently as possible in relation to their personal circumstances.
- 2.3 Most adults who may be considered to be at risk of harm manage to live their lives safely with the assistance of caring partners, relatives, friends, family and with the support of medical and social services provided by professional agencies and volunteers. However, some people will experience harm such as physical abuse, sexual abuse, psychological harm or exploitation of their finances or property. The Adult Support and Protection (Scotland) Act 2007 was introduced to ensure that adults who experience such harm will be protected.

3. Data to be Shared

- 3.1 There are four stages where data may be shared between the parties to the Agreement in compliance with the Procedures:-
 - (i) Referral to Duty Social Work
 - (ii) Social Work Investigation
 - (iii) Adult Support & Protection Case Conference
 - (iv) Protection Plan

3.2 At each stage, only information that is relevant and proportionate to the situation will be shared and that information shall only be used for the purposes of identifying whether an adult is at risk of harm, and if so, developing and implementing a plan to protect that adult.

3.3 Identifying an adult that may be at risk of harm or abuse and that may need support and protection is fully detailed in the Procedures along with clear examples and guidance. The Procedures also include standard forms and records to be completed which clearly identify the information that is required at each stage.

4. Recording the Data Sharing

4.1 The standard forms within the Procedures must be completed to ensure that there is an accurate record of all data sharing for each adult referred to Duty Social Work.

5. Consent

5.1 Adults have the right to make their own decisions and choices regarding lifestyle and the lives that they lead. Therefore, the consent of the adult is generally required before anyone can intervene in their lives.

5.2 Shetland Islands Council has a statutory duty to make inquiries under the Adult Support and Protection (Scotland) Act 2007 when it knows or believes that the person is an adult and risk and that intervention may be required to protect the adult.

5.3 Other public bodies, such as NHS Shetland and Police Scotland, have a statutory duty to co-operate with Shetland Islands Council when carrying out an investigation under the Adult Support and Protection (Scotland) Act 2007 and to report the facts and circumstances of an adult at risk to Shetland Islands Council.

5.4 In complying with the statutory duties imposed by the Adult Support and Protection (Scotland) Act 2007, the adult's consent is not required for a referral and investigation under the Act. At the point that a formal investigation is being undertaken an adult should receive a copy of the leaflet entitled "Information for Adults at Risk" which explains the process to be followed under the Procedures and how their personal information will be handled. It is important that the adult is involved and informed at each stage so that their co-operation is sought in accordance with the principles of the Act.

5.5 If a Protection Plan is required to manage the risks to the adult, then the adult's consent must be sought to the measures contained within the Protection Plan. The adult's views and wishes are central to Adult Support and Protection and safety measures cannot be enforced on the adult. The adult's consent is clearly recorded on the Protection Plan.

5.6 If the adult does not consent to the proposed Protection Plan, if there are any concerns regarding the adult's capacity or there are concerns that there is undue pressure being applied to the adult then appropriate legal advice should be sought in accordance with the Procedures.

6. Security

6.1 Information will be shared by:-

- (a) E-mail across recognised secure networks in accordance with paragraph 8.5.4 of the Policy.
- (b) Verbal updates at meetings which are held and recorded in accordance with the Procedures.

7. Retention & Storage of Data

- 7.1 The parties to the Agreement are responsible for ensuring all personal data they hold under the Agreement is stored and destroyed in accordance with their own Data Protection and/or Retention and Destruction Policy.

8. Responsibilities

- 8.1 The parties to the Agreement are responsible for ensuring their staff are bound by the Agreement and adhere to its terms. The parties are individually responsible for ensuring that all supporting policies and procedures necessary to comply with the Agreement are implemented within their own organisation.

9. Individual Rights of Access to Data

- 9.1 The parties to the Agreement are responsible for ensuring they have the necessary policies and procedures in place to deal with a request from an individual to access their personal data and an explanation of how it has been handled under the Agreement.

10. Complaints & Breaches

- 10.1 Any breaches of the Agreement identified by the parties must be brought to the immediate attention of the Data Controller within the agency where the breach occurred. The Data Controller should carry out an internal investigation to identify the cause of the breach.
- 10.2 Any individual wishing to make a complaint regarding how their personal data has been handled under the Agreement should do so through the appropriate organisation's internal Complaints Procedure.
- 10.3 The parties to the Agreement are responsible for giving an individual general advice and support on how to progress a complaint or concern under the Policy.

11. Rectification, Blocking, Erasure & Destruction

- 11.1 The parties to the Agreement are responsible for ensuring that their Data Protection Policy covers the procedure for responding to a Notice or Court Order requiring rectification, blocking, erasure or destruction of personal data.

12. Review

- 12.1 The Agreement will be reviewed when the Procedures are reviewed or more regularly if necessary due to changes in legislation, guidance or good practice. The review will be organised by the Shetland Adult Protection Committee and should involve all parties to the Agreement.

12.2 The following information will be prepared and considered when the Agreement is reviewed:

- Any updated guidance in respect of data protection issued by the Information Commissioner's Office or Scottish Government.
- Any complaints or issues raised by the parties to the Agreement or any adult at risk that require to be addressed by amending the Agreement

APPENDIX 5.2

DATA SHARING AGREEMENT

Between

**SHETLAND ISLANDS COUNCIL;
NHS SHETLAND AND
POLICE SCOTLAND**

**Adult & Child Protection
Annual or Bi annual File Review**

1. Introduction

1.1 This is a Data Sharing Agreement (the Agreement) supported by the Shetland Data Sharing Policy (the Policy). The Policy forms part of the Agreement. By agreeing to the terms of the Agreement, all parties have undertaken to implement and adhere to the terms of the Policy.

2. Purpose

2.4 The purpose of the Agreement is to facilitate the exchange of personal data between the Parties to support an annual or bi-annual file review. The aim of a file review between the Parties is to enable better planning and delivery of services, ensure the quality of services being delivered and compliance with legislation and to improve the standard of service.

2.5 Both the Adult Support and Protection (Scotland) Act 2007 and the 2019 Protocol for Protecting Children and Young People Guidance for Chief Officer Groups and Child Protection Committees places on Adult Protection and Child Protection Committees the duty to ensure the continuous improvement of services to protect children and adults by having in place methods of review. File reviews are an important element of this. Appendix 1 provides further detail of relevant legislation and guidance in respect of self-evaluation.

2.6 Sharing data to facilitate file reviews will allow an in depth analysis of inter-agency practice in child and adult protection cases, with the aim of improving practice and sharing learning. This is focussed on better and safer outcomes for children and adults at risk. There are risks involved in not working together to review practice and improve outcomes. There are risks attached to conducting a file review and ensuring the safe sharing and management of personal data, but measures will be put in place to mitigate any risks.

2.7 Data shared as part of the file review will be relevant and proportionate. Data from a specific time frame (usually two years previous to the date agreed) will be shared and used to complete the file review.

2.8 There are many ways of conducting self-evaluation, Shetland Public Protection Committee will use a range of approaches, however, a file review is one of the most important methods as it allows for an understanding of the impact of interagency practice on the lives of adults and children at risk and allows for qualitative assessment of the services provided. Additionally it gives clear evidence of the ability of agencies to work together, share information and undertake their separate and collective duties to protect adults and children.

3. Data to be Shared, Process of File Review and Data Security

3.1 NHS Shetland hold data on patients who access a number of health services. Routinely data from GP, Health Visitor, School Nursing and Community Nursing records will be shared for the file review. Depending on the nature of the files under review, data from other NHS services may also be shared – e.g. Mental Health, Child and Adolescent Mental Health Service, Substance Misuse and Recovery, Speech and Language Therapy, Occupational Therapy or Physiotherapy.

3.2 Data held by Police Scotland on their Vulnerable Person Database and any relevant or connected criminal investigations or offences will be shared.

3.3 Data held by Shetland Islands Council on an adult or child's social work files will be shared.

3.4 The Lead Officer Adult and Child Protection (hereinafter referred to as the Lead Officer) will be responsible for the organising and carrying through of the file review by:

- Identifying Lead Reviewers from NHS Shetland, Police Scotland and Shetland Islands Council Social Work (hereinafter referred to as the Lead Reviewers).
- Agreeing dates to conduct the file review and ensuring suitable premises with secure data storage are available for use.
- Requesting a list from Shetland Islands Council Social Work of those adults and children who have been subject to protection processes within the agreed timeframe and from those lists making a random selection of cases. The percentage of randomly selected cases will vary depending on the nature of the file review. The list of cases to be reviewed will be shared with Lead Reviewers by secure e mail.
- Assigning a unique identifier for the purposes of file review to each child or adult whose files are chosen for review.
- Collating information and drafting a report on the findings of the file review.

3.5 Files will be collected and returned by the Lead Reviewer from the respective agency. They will be responsible for safely transporting files to and from the venue. In some cases Lead Reviewers may choose to provide hard copies for the review. They have the responsibility of ensuring that any such copies are destroyed after the review. If files need to be retained overnight the Lead Officer will ensure they are in a locked cabinet in a locked room.

3.6 During the file review, files will be read by pairs of Lead Reviewers and files may be read by reviewers from other agencies eg a social work file may be reviewed by the NHS and Police Scotland Lead Reviewers. A file review proforma (which will usually be the one developed by the Care Inspectorate) will be completed. The proforma will have the unique identifier provided by the Lead Officer and will not contain personal data that would identify the individual.

3.7 Completed proformas will be passed to the Lead Officer who is responsible for preparing a report on the findings of the file review. The content of the report will be agreed by the Lead Officer with the Lead Reviewers. The final report will not contain any personal information and will identify learning points under the following headings

- What went well?
- What could have been better?
- What has been learnt and any follow up actions for the parties to respond to.

3.8 The full report will be shared with the quality assurance groups for adult and child protection who will assist in developing an action plan to respond to findings. Executive summaries and draft action plans will be shared with the Shetland Public Protection Committee and Chief Officers Group. The Chief Officers Group may request that the full report is shared with them.

3.9 Once the final report is agreed and presented the Lead Officer will destroy the proformas and any other data relating to the file review. The list of cases reviewed will be retained until the next file review to ensure that a different list of files is used.

4. Legal Basis for Processing Personal Data

4.1 The legal basis for processing personal data and special category data will vary depending on the roles and responsibilities of each party to this Agreement.

4.2 Shetland Islands Council – Legal Basis

4.2.1 Processing personal data to enable the annual file review is necessary for the performance of a task carried out in the public interest by the Council.

4.2.2 Processing special category data to enable the annual file review is necessary for -

(a) Reasons of substantial public interest as set out in the Data Protection Act 2018. It is necessary for the Council to process sensitive personal data to carry out key functions as outlined by law; and

(b) Is necessary for the purposes of the provision of social care and the management of health and social care systems and services.

4.3 NHS Shetland – Legal Basis

4.3.1 GDPR Article 6(1)(e):

Processing personal data is necessary for the performance of a task carried out in the public interest or in exercise of official authority vested in the Controller.

4.3.2 GDPR Article 9(2)(h):

Processing special category data is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of law, or pursuant to contract with a health professional.

AND is subject to:

GDPR Article 9(3):

the requirement to process by or under the responsibility of a professional subject to the obligation of professional secrecy under law or rules established by national competent bodies, or by another person also subject to an obligation of secrecy under law or rules established by national competent bodies.

Note: This also satisfies the condition in section 10(2) of the Data Protection Act 2018 for the processing of data concerning health. This condition is met if the processing is necessary for health or social care purposes.

4.3.3 Managing and sharing confidential data in respect of adults or children must also be in accordance with the seven Caldicott Principles:

Principle 1 - Justify the purpose(s) for using confidential information

Sharing confidential information for the purposes of interagency file reviews will allow NHS Shetland to improve the quality and safety of the services it provides. Sharing of confidential health data will support the interagency working that is central to protecting adults and children.

Principle 2 - Do not use personal confidential data unless it is necessary

Sharing personal confidential data is only required in the **initial stage** of the file review and it is considered essential to effective learning. It will allow a clear picture of practice and outcomes to be identified

Principle 3 - Use the minimum necessary personal confidential data

Anonymising and redacting records chosen for review prior to their inclusion in the interagency review would require disproportionate effort and would be a poor use of public resources. The principle of 'minimisation' is respected by only sharing confidential data from the specified review period timeframe and restricting this to the relevant parts of the NHS record.

Principle 4 - Access to personal confidential data should be on a strict need-to-know basis

Access to special category data will only be granted to the Lead Reviewers from NHS Shetland, Police Scotland and Social work. Relevant audit information from each case will be collated anonymously on a file review proforma. The final report will not contain any personal information. It will contain aggregate data from all the review proformas.

Principle 5 - Everyone with access to personal confidential data should be aware of their responsibilities

The Lead Reviewers for NHS Shetland will take full responsibility for collecting, sharing and retuning case files and destroying any hard copies made for the purposes of the file review. The Lead Reviewers from Police Scotland and Social Work are bound by professional confidentiality and will not discuss any information outside the file review process.

Principle 6 - Comply with the law

The use of personal data and special category data for audit, review and research purposes is permitted under data sharing legislation as set out in Sections 4.3.1 and 4.3.2 above.

Principle 7 - The duty to share information can be as important as the duty to protect patient confidentiality

NHS Shetland has a duty to share information in order to protect adults and children at risk. Working together with other agencies to protect adults and children at risk is a fundamental principle of national legislation and guidance.

4.4 Police Scotland

4.4.1 Processing personal data to enable the annual file review is necessary under the ASP Act and Child Protection National Guidance and, in accordance with the safe processing of data, Police Scotland will share information in the interests of interagency working, continuous self-improvement and shared learning.

4.4.2 Processing special category data to enable the annual file review is necessary under the ASP Act and Child Protection National Guidance and, in accordance with the safe processing of data, Police Scotland will share information in the interests of interagency working, continuous self-improvement and shared learning.

5. Retention & Storage of Data

- 5.1 The parties to the Agreement are responsible for ensuring all personal data they hold under the Agreement is stored and destroyed in accordance with their own Data Protection and/or Retention and Destruction Policy.

6. Responsibilities

- 6.1 The parties to the Agreement are responsible for ensuring their staff are bound by the Agreement and adhere to its terms. The parties are individually responsible for ensuring that all supporting policies and procedures necessary to comply with the Agreement are implemented within their own organisation.
- 6.2 The Lead Officer has the responsibility of ensuring that Lead Reviewers are fully aware of their data security and management responsibilities and fully abide by the need for any information discussed or reviewed as part of the file review to remain confidential. As part of induction and preparation for the file review the Lead Officer will remind Lead Reviewers of these obligations.
- 6.3 If in the process of reviewing a file an immediate risk to a child or adult as result of poor practice is identified this should be drawn to the attention of the Lead Officer who will contact the appropriate senior person. For social work this is the Chief Social Work Officer, for NHS Shetland Director of Nursing and Acute Services, for Police Scotland Local Area Commander.

7. Individual Rights

7.1 The parties to the Agreement are responsible for ensuring they have the necessary policies and procedures in place to deal with a request from an individual to exercise their individual rights under the Data Protection Act 2018 and an explanation of how their personal data has been handled under the Agreement.

7.2 The Lead Officer Adult and Child Protection will act as the single point of contact if any individual makes a request for information about how their personal data has been used in the file review.

8. Complaints & Breaches

8.1 Any breaches of the Agreement identified by the parties must be brought to the immediate attention of the Data Controller within the agency where the breach occurred. The Data Controller should carry out an internal investigation to identify the cause of the breach.

8.2 Any individual wishing to make a complaint regarding how their personal data has been handled under the Agreement should do so through the appropriate organisation's internal Complaints Procedure.

8.3 The Lead Officer Adult and Child Protection can act as a single point of contact should anyone wish to make a complaint to any of the agencies involved in the file review by advising the individual how to access the appropriate complaints procedure.

9. Review

9.1 The Agreement will be reviewed every three years or more regularly if necessary due to changes in legislation, guidance or good practice. The review will be organised by Lead Officer and should involve:-

- Lead Reviewers from agencies involved in file reviews;
- Nominated members of the Quality Assurance Sub-Committees for the Shetland Public Protection Committee;
- Independent Chair of SPPC

9.2 At the end of each file review, the Lead Officer and Lead Reviewers will complete a file review feedback form, which will identify any specific issues relating to the file review process. This feedback will be considered at the above review.

Appendix 1 To Data Sharing Agreement for Case Reviews

Legislation and Guidance in respect of self-evaluation

The ASP act states that:

- Adult Protection Committees are “to keep under review the procedures and practices of the public bodies and office-holders to which this section applies which relate to the safeguarding of adults at risk present in the council’s area (including in particular and such procedures and practices which involve co-operation between the council and other public bodies or office holders to which this section applies” (Section 42 (1) a)
- Adult Protection Committees should “make, or assist in or encourage the making of arrangements for improving the skill and knowledge of officers or employees of the public bodies and office holders to which this section applies who have responsibilities relating to the safeguarding of adults at risk present in the council’s area” Section 42 (1) c
- “each of the public bodies and office holders must provide the Adult Protection Committee with any information which the committee may reasonably require for the purposes of performing the Committee’s functions “ Section 45 (1)

The Adult Support and Protection Act Code of Conduct states in Chapter 13 that APC should be “developing and introducing arrangements and protocols for inter-agency working and auditing and evaluating the effectiveness of these arrangements”

These duties provide the basis for the instigation of multi-agency self-evaluation to assist APC in meeting their duties under the Act. Self-evaluation requires access to case notes and patient records etc across a multi- agency landscape.

In Shetland the Shetland Public Protection Committee fulfills all the legal requirements of an Adult Protection Committee.

(Taken from “Barriers to Information sharing” Briefing paper By Paul Comley National Lead Officer Adult Protection 2013)

2 Protecting Children and Young People Guidance for Child Protection Committees and Chief Officers

The following extracts refer to self evaluation and continuous improvement

“2.4 Chief Officers, working together, have the following roles and responsibilities:

- individually and collectively, demonstrating leadership and accountability for child protection work and its effectiveness on behalf of their agencies / bodies – including the effectiveness of the CPC itself
- agreeing the CPC Annual Report and Improvement / Business Plan, including operational priorities for protecting children, and ensure the allocation of resources to the CPC
- considering performance reports that include qualitative and quantitative data on the effectiveness of services in improving the experiences of, and outcomes for, children in need of protection”

3 Function of the Child Protection Committee

3.1 CPCs are the key local bodies for developing, implementing and improving child protection strategy across and between agencies, bodies and the local community. A CPC is expected to perform a number of crucial functions in order to jointly identify and manage risk to children and young people, monitor and improve performance and promote the ethos that ***“It’s everyone’s job to make sure I’m alright”***.

3.2 The functions are grouped as follows:

- continuous improvement
- public information, engagement and participation
- strategic planning and connections
- annual reporting on the work of the CPC

Continuous Improvement

3.3 CPCs have a pivotal role in the continuous improvement of the protection of children and young people. A number of functions relate directly to this role. These are:

Policies, Procedures and Guidance

Clear and robust inter-agency guidance is vital to the protection of children and young people.

Each CPC will:

- ensure that local child protection policies, procedures and guidance are informed by this guidance and the National Guidance for Child Protection in Scotland (2014)
- systematically develop, disseminate and review the effectiveness of inter-agency policies, procedures and guidance
- ensure that policies, procedures and guidance are developed around current and emerging issues where there is agreement that this is required

Data and Evidence

CPCs will have an overview of performance from key services about their work to protect children and young people in line with the shared dataset. This will include qualitative and quantitative data on the effectiveness of services in improving the experiences of, and outcomes for, children in need of protection. They will ensure this is used to influence improvements in the quality of services to protect children and young people. CPC members will ensure that they have appropriate data collection arrangements and analytical capacity in place so that activity, trends and themes can be proactively identified and escalated. This should reflect the national child protection minimum dataset.

Quality Assurance and Self Evaluation

CPCs have responsibility for the development and implementation of interagency quality assurance mechanisms. Each CPC will:

- establish systematic approaches to quality assurance and self-evaluation which focus on the experiences of, and outcomes for, children, young people and families
- use the learning from this activity to develop, implement and measure the impact of improvement plans
- involve key stakeholders including frontline staff, managers, children, young people and families in aspects of undertaking, reviewing and learning from quality assurance and self-evaluation activity

- take account of learning from sources including research; inspection locally and nationally; and other CPCs in order to promote good practice and contribute to improved outcomes for children and young people”

In Shetland the Shetland Public Protection Committee fulfills all the requirements laid down in National Guidance of a Child Protection Committee.

Further information about Agencies Privacy Statements

Shetland Islands Council - <https://www.shetland.gov.uk/information-rights/PrivacyStatements.asp>

Police Scotland - <https://www.scotland.police.uk/access-to-information/data-protection/privacy-notice>

NHS Shetland - <https://www.nhsinform.scot/care-support-and-rights/health-rights/confidentiality-and-data-protection/how-the-nhs-handles-your-personal-health-information>

<https://www.shb.scot.nhs.uk/board/privacy.asp>

Caldicott Guardian - <https://www.igt.hscic.gov.uk/Caldicott2Principles.aspx>

Appendix 6

Managing a disclosure of harm

Adults who are at risk of harm may tell someone that they are not safe and are at risk. This information can come to light in a variety of ways:

- The adult makes a choice to tell a trusted person (a neighbour, friend, family member, paid or unpaid carer, health professional etc.) what is happening to them. E.g. the adult tells the trusted person that they are in an abusive relationship
- The adult, in the course of other discussions related to health, welfare and support, makes a disclosure, although they may not have intended to do this e.g. when speaking about nutritional needs and eating well the adult says that they are not getting sufficient food and often feel hungry.
- In response to an appropriate question the adult makes a disclosure of harm e.g. a carer asks the adult about some bruises to their arm and the adult says they have been hit
- The adult accidentally reveals that they may be at risk e.g. the adult tells a carer they are sending money away in order to get their Lottery winnings – the carer is concerned they are being scammed

However concerns come to light it is important to:

- Take what the adult says seriously
- Listen carefully
- Ask appropriate clarifying questions if it is not clear what the adult is saying or meaning. These need to be open questions- “tell me” “describe to me”, who, what, when, how
- But do not bombard them with questions. . Take care if the adult has communication difficulties and requires augmented communication support
- Try not to ask leading questions. These are questions that suggest the answer e.g. “it was George who hit you wasn’t it?”
- Do not investigate, make promises you cannot keep to stop what is happening or contact the person who is causing harm to the adult
- Even if the adult is fearful of the consequences of what they have said and does not want the information passed on. It is important to be honest and let them know that if they are at risk the person receiving the disclosure cannot keep it a secret.
- Follow the Stepwise guide in these procedures (add hyperlink) and make an adult protection referral without delay.
- Only share information with those who need to know Duty Social worker, Line Manager or supervisor and do not share with others. Discuss concerns raised by the adult’s disclosure without delay.

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- Consent from the adult is not required to make an adult protection referral. However if it is safe to do so , does not increase the risk to the adult and does not alert any alleged perpetrator then it is good practice to let the adult know that such a referral has been made.
- Make referral without delay by phone. Professional staff should follow this with a completed referral form (Section 13 forms) keep copy of the form for the referrer's records.

Further help

It is not possible in a set of Procedures such as these to cover every eventuality. Training at various levels and on various topic is available through the Shetland Public Protection Committee, and may be provided by your own organisation.

Appendix 7 Large Scale Investigations Protocol

1. Definition of Large Scale Investigation

A large scale investigation (LSI) is a multi-agency response to circumstances where there may be one or more adults at risk of harm within a care setting (residential care, day care, care at home or health care setting). A large scale investigation may also be necessary when a number of adults have been targeted by the same perpetrator in the community.

2. Purpose of the protocol

- To help to decide if a LSI is required
- Provide a standardised approach to be implemented by all professionals consistent with current evidence of best practice
- Provide a framework to co-ordinate and plan a number of individual inquiries and investigations

3. Criteria

A large scale investigation should be considered in the following situations:-

- A report of harm to one individual which may affect a number of other individuals for e.g. an adult at risk of harm may allege that a member of care staff has harmed them – consideration needs to be given to the safety of other adults in contact with that staff member.
- Concerns raised about systematic failure impacting on the quality of care delivered which may be placing individuals at risk of harm. This type of concern may be linked to a series of incidents or concerns that present over time and raise questions about management and the skill of staff.
- Multiple victims of one individual causing harm for e.g. a number of adults being systematically targeted by an individual who is sexually or financially exploiting them. Police Scotland will have the lead responsibility in such situations, but using this protocol will bring together other agencies to assist in investigations, sharing of information and the support and protection of victims.

4. Process

Following the Stepwise guide Interagency Referral Discussions (IRD's) will take place to consider any adult protection referral that may require further investigation. Using the criteria above every IRD should consider the requirement for an LSI. In most cases it will quickly become apparent that an LSI is required or not. In some cases it may only become apparent when subsequent adult protection referrals indicate a pattern. If there is doubt about the circumstances of the adult or adults at risk then the Shetland Interagency Adult Protection Procedures allow for an Adult Protection Professional Meeting to be called which can include representatives from any agency who can contribute to the discussion and decision making.

If the IRD (or subsequent Adult Protection Professional Meeting) decides that the case or cases under discussion meet the criteria for an LSI then the Senior Social Worker attending the IRD has the responsibility to communicate this to the Executive Manager Adult Services.

The Executive Manager Adult Services has the responsibility to convene and chair an interagency Large Scale Investigation Core Group. An Initial meeting should be held as quickly as possible consistent with initial risk assessments, but in any case within 7 working days.

If there is any dispute about the requirement for an LSI the matter should be escalated to the Senior Case Review Group (Chief Social Work Officer, Director of Nursing and Acute Services NHS Shetland, Chief Inspector Police Scotland) as quickly as possible so the matter can be resolved.

Initial Investigations

1. If the identified risks relate to the actions of a staff member (or staff members) within an organisation, then that organisation will be responsible for invoking its own disciplinary proceedings and ensuring that any immediate risks are removed or minimised.
2. Where there are concerns of wilful neglect and concerns that other adults may be at risk, a report must be made to the Police.
3. If there is a criminal investigation, this will take priority over any disciplinary proceedings and the organisation should be advised accordingly. Where the organisation concerned contracts with the Council to provide a service, then the Contracts Officer / Strategy Team should be advised of any indications that the provider may be in breach of contract.
4. Where the allegation relates to a Personal Assistant who is being employed under a direct payments arrangement consideration of the safety of all the adults the personal assistant provides care too needs to be considered. Ultimately Shetland Islands Council may have to consider if it is appropriate for the direct payments to continue.
5. The IRD will need to include appropriate representatives from HR departments – SIC, NHS Shetland etc. The Chief Social Worker should be notified when any LSI is commenced
 - Whether any immediate protective action is required should individuals be at risk of imminent harm;
 - Whether an LSI is required and an Interagency LSI Core Group should be established
 - If an LSI is required then the Senior Social worker attending the IRD/Strategy meeting will take responsibility for liaising with the Executive Manager Adult Services
6. If the allegations relate to a registered service then the Care Inspectorate should be alerted.

Further information for managing allegations against staff please see Appendix 2 in the ASP Procedures.

1. Investigations

Individual Council Officer led investigations involving interviewing adults who have been harmed by a member of staff or in a care setting should be planned and carried out as is laid out in the Stepwise Guide in the ASP Procedures. Where individual investigations are taking place as part of a LSI they should be reported back and discussed at the Interagency LSI Core Group chaired by the Executive Manager Adult Services. The initial meeting should take place within 7 working days of the decision that an LSI is required. The frequency, time and place for subsequent meetings will be agreed by the Executive Manager in conjunction with the Senior Social Worker and other key agencies. Meetings will be minuted.

Interagency LSI Core group meetings do need to consider the whole picture, but also the individual needs of the adult involved.

The following list should be used as an outline agenda, but it is not exhaustive and other issues may need to be identified and added

- Identify all adults who will need to be interviewed. Agree whether / how to progress the investigation and allocate council officer to plan and undertake interviews. Second council officers will be required and in some cases interviews may be jointly done with Police Scotland
- Share available information from all key agencies including police, health, council and the Care Inspectorate;
- Consider the requirement for criminal investigation
- Legal action under the ASP Act e.g. any of the protection orders
- Whether individual adult protection case conferences need to be convened
- Care planning
- Advocacy
- Support to carers and family members and agreeing what information will be shared with them and if the consent of the adult is required to share information
- Identify and evaluate risks;
- Decide what further information is required and how that will be sourced;
- Agree a risk management plan identifying key tasks to be undertaken, the person's responsible and agreed timescales. This will include any immediate protective measure for individuals (where not already addressed);
- For a Care Home – decide whether there will be a moratorium on admission;
- Agree whether a review meeting is required and set a date if necessary.
- Link to disciplinary processes and action may be required

1.1 Obtaining consent from an adult(s), for sharing information and / or passing on concerns (to the police for example) is a key issue. Where an adult does not give consent consideration will need to be given to:

- The possibility that they may be experiencing undue pressure;
- The risks to which other adults may be exposed by not sharing information;
- The adult's capacity at the time to make informed decisions

1.2_ Where there are ongoing concerns about an individual adult or adults, the presence of a concurrent Police, Care Inspectorate or other investigation should not delay the agreement and implementation of a protection plan for the adult at risk.

It may be that, during the course of an investigation, further information emerges about a separate Adult Support and Protection concern. In these circumstances, there will be a need for an additional investigation of the individual concerned, a further IRD (where relevant) and an interim support and protection plan which is proportionate to the assessed risk in addition to the overarching large scale investigation and action plan

1.3 LSI review Meeting

A review meeting should be convened in order to review progress or conclude the investigation.

The timescale of the review must be proportionate to the risk of harm to all individuals.

The review meeting will:

- Consider reports from investigating social workers
- Ensure that appropriate Risk Assessments have been completed and Risk Management Plans are in place;
- Agree any outstanding actions and date of next review (where required).
- Ensure that timescales are set for following up any outstanding actions.

Where the review meeting has decided to conclude the Large Scale Investigation, any protection plans implemented for individual adults at risk should be continued and reviewed in line with standard local ASP Procedures.

2. Records

2.1 All decisions taken by the Strategy Group should be minuted. Where available minutes should be stored securely on the SIC O Drive. All agencies are responsible for the secure storage of the minute within their organisations policy & procedures.

2.2 Minutes of the Inter-Agency LSI Core Group meetings will form the basis of the investigation record together with any reports submitted. Where investigations relate to an individual, case notes will be recorded on SWIFT.

2.3 The decision to end an investigation should be taken at the Large Scale Investigation and minutes should be circulated to this effect to all invitees.

Section 2

Increasingly vulnerable adults are targeted and exploited by individuals who wish to financially harm them, sexually exploit them or use their home either as a place to stay or for illegal activity such as supply of illegal drugs. There is evidence to suggest that such individuals may move from one adult at risk of harm to another or target a number of adults at the same time.

As outlined in section 1 if information shared at the inquiry and IRD/Strategy meeting indicates a number of adults at risk from a specific individual an Interagency LSI Core Group should be established under the chairmanship of the Executive Manager Adult Services, however Police Scotland will take a lead on any criminal investigations.

There will be occasions when the person who is causing the harm is themselves an adult at risk or someone with significant complex problems of their own (mental health, substance misuse issues for e.g.) The needs of the person causing harm should also be considered by the LSI Core Group and where required help and support offered as a way of mitigating that person's situation and their need or propensity to target others.

The process outlined in Section 1 should be followed.

APPENDIX 8 Section 10 letter

Introduction

Section 10 of the Adult Support and Protection (Scotland) Act 2007

“A council officer may require any person holding health, financial or other records relating to an individual whom the officer knows or believes to be an adult at risk to give records or copies of them, to the officer”

There is a legal duty to provide information required under Section 10. In most circumstances agencies will respond to a request for information by phone or e mail. Sometime it may be more appropriate to make a formal request using the information below copy and pasted into a letter or email.

Letter/Email Proforma

ADULT SUPPORT AND PROTECTION

Local Authority application for disclosure of information under the Adult Support and Protection (Scotland) Act 2007 Health, Financial or Other Records

In Scotland, the Adult Support and Protection (ASP) (Scotland) Act 2007 Act gives councils and other public bodies working with them various powers to support and protect adults at risk (as defined by the Act).

For the purposes of the Act, an adult at risk is someone who is:

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

Section 10 of the Act requires any person holding health, financial or other records relating to a particular individual to share the records, or copies of them, to a Council Officer, who is authorised under the legislation to seek relevant information in relation to the concern that the adult in question may be at risk of harm.

Information requested under this section of the Act is used to allow the Council to decide whether the individual is an adult at risk of harm and whether it needs to do anything to protect them from harm. An adult protection investigation may also lead to criminal action, depending on what the information reveals.

The request does not impact upon any financial power of attorney or financial guardianship that may exist for the Adult in question. There is no requirement to seek permission from any such person before providing information that is requested, as in some circumstances it may be by doing so that the adult in question is placed at greater risk of harm. Under section 49(2) of the Act it is an offence for a person or an organisation to fail to comply with a requirement

made under section 10, without reasonable excuse

Such information requested under section 10 of the ASP Act will be used only for the purpose of establishing whether the individual is an adult at risk of harm and determining whether the council needs to take action to protect the adult.

I would be grateful if you would acknowledge this request on receipt, either by e mail or telephone. In order to facilitate the timescale of the inquiry I would appreciate if the information could be made available as soon as possible please, in order that this will inform the possible need for any immediate action.

Whilst you will be concerned about client confidentiality, it is important to note that NOT sharing this information may place the adult at further risk of harm,

Should you be unfamiliar with this Act you can view a copy of it at

www.legislation.gov.uk/asp/2007/10/content

You may also wish to refer this request to your Power of Attorney Department who may be more familiar with the terms. Should you have any queries regarding the content of this letter, please feel free to contact me at the address below.

Request for information under section 10 of the ASP Act:

Date

I,(name), acting as a Council Officer (ASP) for Shetland Islands Council would like to request disclosure of information, from (agency name and address) under section 10 of the Adult Support and Protection (Scotland) Act 2007 as follows:

Name of person	
National Insurance Number * and/or Date of Birth & Address (* National Insurance Number preferred identifier)	
Brief reason why the information is requested and the use that will be made of it	
Information that is requested: Health record Bank/ Building Society Account(s) detail Copy statements from (dd/mm/yyr to dd/mm/yyr.....) Any other (specify)	
Requestor's name, position, organisation, address and telephone number.	

Date Completed

Completed by (name and role in organisation)

Date returned to Council Officer