

MANUAL OF OPERATIONAL INSTRUCTIONS**OPERATIONAL INSTRUCTION NO. CC1.7****SUBJECT: ADULT SUPPORT AND PROTECTION****Staff responsible:**

All Social Work and Health staff have a responsibility to identify and report any circumstances which may place an adult at risk. Council officers have specific responsibilities in investigating and managing these circumstances and must intervene as appropriate.

For all hospital in-patient residents, adults in residential care and in the wider community of Angus, Angus Social Work and Health will take lead agency responsibility in relation to adult protection.

For non - forensic medical examinations, examination of health records, medical treatment and acute admissions the NHS will take lead responsibility.

Statutory basis:

Adult Support and Protection (Scotland) Act 2007 (The Act)

Code of Practice: for Local Authorities and practitioners exercising function under part 1 of the Act

References:

Adults with Incapacity (Scotland) Act 2000

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

Human Rights Act 1998

Vulnerable Witnesses Scotland Act 2004

Children Scotland Act 1995

Data Protection Act 1998

Matrimonial Homes (Family Protection) (Scotland) Act 1981

Rights, risks and limits to freedom (MWC) June 2006

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1. DEFINITIONS

1.1 An adult at risk

Adults at risk are defined under Section 3 of the Act.

Adults at risk are adults who:

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

Thus an adult at risk **may** be a person who:

- is a frail older person
- has a mental disorder including learning disability, brain injury, dementia, mental illness or a personality disorder
- has a physical or sensory disability
- has a severe physical illness

Not everyone with a disability, mental disorder or serious health problem who is at risk of harm is an adult at risk under the terms of the Act. Such an adult may be able to protect themselves and their interests. An adult may be, or may become, more vulnerable to being harmed if their disability or disorder combines with their circumstances to make them less able to protect themselves or their interests.

A person's ability to protect themselves or their interests may fluctuate over time. Examples of this might be that they become homeless, their use of alcohol or other substances increases, their normal informal support network is unavailable, or their health deteriorates.

An adult is at risk of harm if:

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

The Act defines an adult as a person aged 16 and over. However, an adult aged between 16 and 18 years may still legally be defined as a child if they are subject to a current supervision requirement issued by a children's hearing. Although in these circumstances a young person's welfare needs may be met through the Children Scotland Act they would be protected through the Adult Support and Protection Act should they meet the criteria of adult at risk. It is essential that these young adults receive appropriate support from both children's services and relevant adult based services.

For the purpose of these operational instructions the term "community care services" covers all care services provided in any setting or context.

1.2 Definition of harm

In defining an adult at risk we must be clear about what constitutes "harm". This may consist of:

- a single act or repeated acts
- deliberate or unintentional
- physical, psychological, financial
- an omission to act (neglect)
- acts when an adult at risk is persuaded to enter into a financial arrangement or sexual relationship to which they have not or could not have consented
- unlawful conduct involving property e.g. theft, fraud, extortion
- acts of self harm or serious self neglect

Whether harm occurs within an institution or within the home, it often involves elements of power imbalance, exploitation and the absence of full consent.

1.3 Individuals who might harm others

Adults at risk of harm may be harmed by a wide range of people including:

- professional staff
- paid care workers
- informal carers
- volunteers
- other service users
- relatives and family members
- neighbours

- friends and associates
- people who deliberately exploit vulnerable people
- strangers

1.4 To whom do these instructions apply?

- 1.4.1 These instructions apply to adults i.e. persons aged 16 years and over who are defined as at risk and where there is suspicion, concern or evidence that they are, or are likely to be harmed.
- 1.4.2 Any adult present within Angus who is defined as an adult at risk will initially be the responsibility of Angus Council.
- 1.4.3 Where the adult at risk has been placed in Angus by another local authority that adult will be subject to these procedures but liaison must take place throughout with placing local authority.
- 1.4.4 Where Angus Council has placed an individual in another local authority, the responsible case holder must maintain appropriate involvement with the host local authority in relation to any investigation.
- 1.4.5 Adults at risk who are homeless, who are for the time being in Angus.

1.5 To whom do these instructions not apply?

- 1.5.1 Adults are not defined as an “adult at risk” simply because they have a disability or mental disorder.
- 1.5.3 People who have substance misuse problems may not be subject to these procedures **unless** they also meet the criteria of “adult at risk” as defined in 1.1.
- 1.5.4 People who are victims of domestic violence may not be subject to these procedures **unless** they also meet the criteria of “adult at risk” as defined in 1.1.

1.6 Council officers

A person authorised to undertake actions such as inquiries, investigations and application for protection orders under the Adult Support and Protection Act is called a council officer. In terms of the Act a council officer is someone who meets all of the following criteria:

- is employed by the local authority;
- is a professional social worker, nurse or occupational therapist;
- is registered with their own professional body;
- is professionally qualified for no less than 12 months;
- has at least 12 months post qualifying experience of identifying, assessing and managing risk in relation to adults; and
- has undertaken appropriate training.

All members of staff suitably qualified for 12 months or more who are employed by Angus Council will be deemed council officers. They must maintain registration with their professional body and must have undertaken council officer training. They will be required to take up learning opportunities to develop their skills in adult protection.

Team managers who are not eligible to be council officers (i.e. employed by the NHS) may support their staff undertaking adult protection activities but should consult with another team manager or service manager who has council officer status throughout the investigation. Accountability for decisions will rest with the manager who has council officer status.

2. IDENTIFYING HARM

Physical harm – actual or attempted physical injury inflicted on an adult at risk (including hitting, slapping, pushing, kicking, rough handling) misuse of medication or drugs. This can include depriving someone of prescribed or non-prescribed drugs, or giving the person dangerously large amounts of drugs and/or alcohol, and inappropriate restraint or sanctions.

Sexual harm – including rape and sexual assault or sexual acts to which the adult at risk has not consented, could not consent or was pressured into consenting, unwelcome touching or kissing or being pressured into viewing explicit material.

Psychological harm – including emotional abuse, threats of harm or abandonment, deprivation of contact with family members or friends, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal of services or supportive networks.

Neglect and acts of omission – including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating.

Self harm and self neglect – includes parasuicide, deliberate self injury, misusing prescribed medication, substance misuse, neglecting to take in enough nutrition, neglecting to access health services, living in an unheated or unsanitary environment, omitting to access welfare benefits.

Discriminatory abuse – actions (or omissions) and/or remarks of prejudicial nature focusing on a person's age, gender, disability, race, skin colour, sexual or religious orientation. This also includes "hate crime", where people are targeted for harassment and/or assault specifically because of their disability, race, religion or sexual orientation.

Human rights abuse – including right to liberty and security (Article 5); right to a fair hearing (Article 6); right to respect for private and family life (Article 8); freedom of thought, conscience and religion (Article 9); freedom of expression (Article 10); right to marry (Article 12); prohibition of discrimination (Article 14); prohibition of abuse of rights (Article 17) and protection of property (Article 1 of the first protocol).

Institutional harm – repeated instances of poor care or unsatisfactory professional practice. Abuse may occur within care homes, day care settings and in hospitals.

Indicators of institutional harm may include:

- lack of flexibility or choice
- no opportunity for snacks or drinks
- cultural/religious practices not catered for
- pressure sores
- person is unkempt and smells
- communal use of personal items and toiletries without consent
- inappropriate use of restraint
- over medication/sedation
- lack of procedures for the management of finances, property, medicines etc
- lack of privacy including control of phone, mail, visits etc
- derogatory remarks by care staff
- inadequate or delayed response to medical needs
- failure to access key services such as health care, dentistry, prosthesis, occupational therapy, speech and language therapy
- missing documents e.g. pension books
- staff in overly controlling relationships with service users

2.1 Regulation

The Scottish Commission for the Regulation of Care (the Care Commission) regulates and inspects care services. The Care Commission must be informed if institutional abuse or other mistreatment or neglect within a residential or nursing home or registered day care setting is suspected.

2.2 Harm of an adult at risk caused by an informal carer

It is important that there is awareness that informal carers may harm adults in their care, so that timely intervention and support is arranged to reduce the likelihood of harm taking place.

Carer issues, which could lead to breakdown in the caring relationship, include:

- carer under extreme stress
- dependency upon the adult at risk (e.g. financial)
- alcohol/substance misuse

- conflicting responsibilities
- poor family relationships over the years
- low income/financial problems
- enforced changes to carers lifestyle
- isolation/lack of support/social interactions
- carer has no private space
- carer has abused in the past or been abused
- caring responsibility has been imposed
- personal ambition has been undermined
- carer has mental health problems
- carer feels exploited
- carer feels guilty about expressing their ambivalent or negative feelings about the caring role
- carer experiences a cultural conflict in their caring role
- carer lacks the knowledge required to provide appropriate care

Other aggravating factors may include:

- reversal of the usual parent/child roles
- incontinence or difficult behaviour, especially if perceived as deliberate
- communication problems e.g. hearing, speech or memory
- violence is the norm
- adult at risk is aggressive or violent towards carer
- adult at risk has in the past abused the carer (e.g. childhood abuse, domestic abuse)
- adult at risk is rejecting or ungrateful
- disturbed sleep

Indicators of harm may include:

- silence in the home
- the home is unkempt, neglected, dirty and chaotic
- others in the household have been identified as being at risk of harm, including children and young people, other adults (e.g. domestic violence) and family pets
- the carer misuses substances while undertaking caring responsibilities
- lack of consideration of adult at risk's needs
- refusal to allow opinion
- aggression or volatile behaviour
- carer rejecting other help
- bizarre behaviour by the carer
- carer shows apathy, withdrawal, depression, hopelessness or suspicion
- not allowing the adult to be visited without the carer present
- any of the types of harm previously listed

2.3 Duty to report

Staff have a duty to report suspicions or disclosures made about any adult or child at risk of harm. A failure to report is a failure in their duty of care. Staff in all social work settings, whatever their role, must report any concerns of suspected or actual harm to children, young people or adults to their line manager. (Refer also to operational instructions child protection).

3. LEGAL FRAMEWORK

3.1 Legislation involved in the protection of adults

3.1.1 The Adult Support and Protection (Scotland) Act 2007

This Act has attempted to strike a balance between enabling individuals to lead independent lives that involve a degree of risk whilst also protecting those who may not be able to do so themselves. It enables intervention in the lives of adults who are deemed to be at risk of harm. Intervention requires consent of the adult at risk, if that consent is freely given and if the adult has capacity to give consent.

The Act:

- provides greater protection for adults thought or known to be at risk of harm
- places a duty on councils to make inquiries and undertake investigations to establish whether or not further action is required to stop or prevent harm occurring
- places a duty on specified organisations to co-operate in investigating suspected or actual harm
- introduces a range of protection orders including assessment orders, removal orders and banning orders, and
- provides a legislative framework for the establishment of adult protection committees across Scotland

The Act requires public bodies to co-operate and share information. The code of practice says that this duty also extends to include voluntary and private sector care providers.

3.1.2 Adults with Incapacity (Scotland) Act 2000

This Act is a significant piece of legislation in the protection of adults at risk. However, it can only be applied where the adult lacks capacity due to mental disorder or inability to communicate. The Act provides a framework to authorise financial or welfare based interventions where the adult is incapable of dealing with the issues in question.

Any order made through this legislation must provide for the minimum intervention necessary as the purpose of the act is not only to protect the individual but also to allow them as much control in their life as possible.

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

This Act places a range of duties and a range of powers to organisations involved in mental health service provision, including the Mental Welfare Commission, and the Mental Health Tribunal for Scotland. It also underpins the appointment of mental health officers (MHOs) who also have a formal role under the Adults with Incapacity Act.

The legislation gives powers to compulsorily admit an adult with a mental disorder to a psychiatric hospital or treat the adult in the community if the adult has a mental disorder, their health, safety or welfare is at risk or poses a risk to others and their ability to decide about their treatment is significantly impaired.

The legislation also places on the local authority a duty to inquire into circumstances where a person with a mental disorder is thought to be living in the community in a situation where they are uncared for, are ill-treated or neglected.

3.2 Principles of intervening to protect an adult at risk with a mental disorder

Adult protection does not lie exclusively within the Adult Support and Protection Act, for people with a mental disorder there are other relevant pieces of legislation to consider, including the Adults with Incapacity (Scotland) Act 2000, the Mental Health Care and Treatment (Scotland) Act 2003.

Under all three of the above pieces of legislation any intervention to protect adults must be the least restrictive to achieve benefit in order that a person's right to self determination is not undermined to an unnecessary or detrimental extent. Generally, interventions under the Adult Support and Protection (Scotland) Act 2007 are the least restrictive and therefore these procedures must be considered when dealing with issues of risk of harm to a person with a mental disorder.

The above three pieces of legislation are not mutually exclusive. They can be regarded as a legislative toolkit to protect adults with a mental disorder and can be used in combination if appropriate.

Any action under the ASPA in regard to someone who has or is thought to have a mental disorder requires to be discussed with a mental health officer who will remain involved as an advisor. Action under these procedures in relation to someone with a physical disability or physical health condition, has full capacity and who is able to communicate their wishes is **not** required to have the involvement of a mental health officer.

Any decision to take action under the Adults with Incapacity (Scotland) Act 2000 **to manage complex issues of risk or to protect an adult at risk of serious harm** must be preceded by an adult protection investigation and case conference **under adult protection procedures**. This is to ensure that:

- all the risk information is considered
- the least restrictive option is used to protect the adult; and
- any immediate action necessary to protect the adult is identified.

Immediate action in relation to an adult who lacks or is thought to lack capacity in areas of their life which places them at risk can be taken through the ASPA while an assessment of capacity is sought and/or an application made for an order under the Adults with Incapacity Act is prepared.

3.3 Other relevant legislation

3.3.1 Human Rights Act 1998

The European Convention of Human Rights was drawn up in 1950 and ratified by the UK in 1951. This was incorporated into the UK domestic law in the Human Rights Act 1998. The convention of rights, which are binding on statutory agencies include:

- the right to life (Article 2)
- freedom from torture and inhumane or degrading treatment or punishment (Article 3)
- the right to liberty and security of persons (Article 5)
- the right to respect for private family life, home and correspondence (Article 8)
- freedom of thought, conscience and religion (Article 10)
- prohibition of discrimination in the enjoyment of convention rights (Article 14)

While some human rights are regarded as fundamental (e.g. Articles 2 and 3), others can be limited in specific circumstances as long as any restriction is reasonable, proportionate, justified and necessary to protect others or in the interests of the wider community. This has clear implications for adult protection and any intervention must be balanced against the adult's rights and be proportionate to the risk.

3.3.2 Regulation of Care (Scotland) Act 2001

- established the Scottish Social Services Council to regulate social service workers and to promote and regulate their education and training
- established a new independent body to regulate care services in Scotland. This is known as the Scottish Commission for the Regulation of Care (The Care Commission); and
- established a system of care regulation encompassing the registration re-registration and inspection of care services against a set of national care standards.

3.3.4 Vulnerable Witnesses (Scotland) Act 2004

The Act established procedures for adults deemed as vulnerable who may be required to appear as witnesses in court in a way which best suits their needs. Consequently adults should be better supported during court proceedings and more able to give their best evidence.

4. STATUTORY RESPONSIBILITIES AND KEY ROLES

4.1 Social Work and Health statutory responsibilities and key roles

- identify adults who may be at risk and report concerns
- inquire into the circumstances of an adult who is thought to be at risk in all community, institutional and in-patient settings
- conduct investigations into alleged or suspected harm against an adult at risk and work to prevent further harm
- co-operate with other public bodies and local authorities in relation to adult protection
- apply to the court for warrants for entry and for protection orders as appropriate.

Key roles:

- chair adult protection case conferences and reviews
- record and distribute accurate records and minutes
- co-ordinate and monitor actions arising from the case conference/ review/meeting
- participate in any protection/support plan as agreed

4.2 Police statutory responsibilities and key roles

The police have a general duty to protect the public and to investigate on behalf of the procurator fiscal, where they believe that a criminal offence may have been committed. They will give the procurator fiscal any information, which will assist him/her to decide whether a criminal prosecution should take place. They will:

- identify adults who may be at risk and report concerns
- pursue criminal proceedings when appropriate
- protect and assist in the protection of people in situations of risk
- cooperate with any other agency to assist Social Work and Health taking action under the Adult Support and Protection Act

- identify adults attending court as a witness who may need special provision under the Vulnerable Witnesses (Scotland) Act 2004 and notify the procurator fiscal.

Key roles:

- participate in case conferences or provide a report to the case conference when appropriate
- participate in the protection/support plan as agreed

4.3 Statutory role of the procurator fiscal

The procurator fiscal, as the Lord Advocate's representative, has a duty to investigate the circumstance of any crime or suspected crime brought to his or her attention. He or she acts in the public interest and decides whether to bring criminal proceedings. Where proceedings have started, the procurator fiscal may interview witnesses.

The procurator fiscal also has a role in applying for the provision of any special measure under The Vulnerable Witnesses (Scotland) Act 2004.

4.4 Statutory responsibilities of health professionals

- identify adults who may be at risk and report concerns
- co-operate with and assist Social Work and Health taking action under the Adult Support and Protection Act
- provide information about the health and circumstances of adults at risks if requested to do so by a council officer taking action under the Adult Support and Protection Act
- facilitate access to health records if requested to do so by council officer conducting an investigation under the Adult Support and Protection Act
- examine medical records on behalf of a council officer who is taking action under the Adult Support and Protection Act
- undertake medical examinations, provided the person has given consent

Key roles:

- participate in case conferences or provide a report to the case conference as appropriate
- participate in the protection/support plan as agreed

4.5 Responsibilities of the Care Commission

- inform Social Work and Health when reports are received that one or more service users may be or are at risk of abuse or neglect within registered establishments
- work jointly with Social Work and Health and health services where residents require a response under these procedures
- attend adults at risk initial referral discussions, case conferences and reviews in respect of regulated services
- keep other agencies informed of any enforcement action taken by the Care Commission when inspecting any regulated service
- participate in investigation where appropriate
- pursue statutory action where appropriate

4.6 Roles and responsibilities of the Office of the Public Guardian

- oversee welfare and financial guardianships and directly supervise financial guardianships under the Adults with Incapacity (Scotland) Act 2000
- co-operate with any investigation under the Adult Support and Protection Act

4.7 Role of Mental Welfare Commission

- Investigate any complaint it receives concerning the welfare of anyone with a mental disorder including dementia, learning disability or acquired brain injury
- co-operate with any investigation under the Adult Support and Protection Act

4.8 Statutory responsibilities of private and voluntary sector

- The Adult Support and Protection Act requires public bodies to share information in relation to adults at risk. The Code of Practice says that this duty also extends to include voluntary and private sector care providers.

5 PROCEDURES

5.1 Operational procedures

THESE OPERATIONAL INSTRUCTIONS MUST BE FOLLOWED BY ANY MEMBER OF STAFF WHEN HARM IS TAKING PLACE, HAS TAKEN PLACE, IS SUSPECTED OR ALLEGED.

The multi-agency protocol, Protecting Adults at Risk in Tayside is consistent with these operational instructions.

5.2 Making a referral

All Social Work and Health employees in any role and all employees in integrated teams must be aware of how to respond to a concern about an adult at risk.

Concerns may arise in the course of their duties from:

- something they see
- something they hear
- something someone tells them, verbally or in writing
- something an adult at risk reports to them

If there are concerns identified in the course of their duties about an adult who may be at risk, all staff should in the first instance discuss with a line manager or another manager if not available. The manager should ensure that checks are made on CareFirst to ascertain whether the adult at risk is in receipt of community care services.

Referrals of concerns about adults at risk who are open cases to community care services should be made to the responsible team manager. If unavailable, the referral must be notified to the responsible service manager and if the service manager is unavailable to the senior manager community care. The responsible manager will identify and allocate to a council officer, who must be an employee of Angus Council.

Referrals in relation to adults at risk who are “not known” or have had their case closed must be made to the intake service.

Any verbal or telephone referral made about an adult protection concern should be followed up in writing and forwarded on to the receiving team manager. A copy of the letter/referral form must be retained by the referrer. If the referrer works directly with the adult at risk a record must be also made in

the adult's case file that a referral has been made, noting the nature of the concern.

5.2.1 Responding to a referral

When a referral is received checks must be made on CareFirst for any previous incidents and/or relevant data.

Details of the referral must be recorded on CareFirst along with type of harm alleged and details of the referrer. Any discussions and deliberations and the reasons for any decisions should be recorded.

A referral must trigger an inquiry unless there are good professional reasons for not doing so in which case this must be agreed with the team manager and recorded in the case file or on the referral form.

An example of an occasion when a referral may not trigger an inquiry is when it is clear that the referred adult does not meet the criteria of "adult at risk" as defined in 1.1. Nevertheless in such cases the referral may indicate that the adult concerned may require assistance, an assessment of need, provision of information and/or referral to other agencies and if so should be responded to as a routine referral.

Anonymous referrals will be accepted and acted upon, however the referrer should be encouraged to give contact details.

5.3 Inquiries

- Information gathering from within Social Work and Health and from other agencies and individuals will inform an initial risk assessment which should include any information about risks there may be to workers making a visit
- The referred adult should be informed of the inquiry, be a source of information and be involved in decision making **unless** it is likely to compromise the inquiry **and/or** if making contact at this stage is likely to increase risk to the adult
- Information should be gathered in such a way, that where possible, an alleged perpetrator is not alerted as this could increase risk to the adult
- If the council officer has concerns that a child or young person living in or regularly visiting the same household as the adult may also be at risk, they must immediately inform the appropriate children and families team, child protection team or intake service.

The purpose of an inquiry is to gather information from a number of sources in order to establish whether:

- the adult meets the criteria of “adult at risk” (as defined in 1.1)
- the adult is at immediate risk and requires urgent protective action
- the adult requires immediate medical treatment
- any other urgent action is required to protect the adult, any other adult(s) or child
- an investigation should be conducted
- how an investigation is to be conducted if required

If the adult at risk requires immediate medical attention contact the appropriate emergency service. It is advisable to first seek consent but clearly if an adult appears to be seriously ill, injured, or is unable to communicate wishes, is unconscious or if the adult’s capacity to consent is in doubt then an ambulance should be called without consent.

Immediate referral to the police and emergency medical services is essential in the case of alleged physical or sexual assault in order to preserve vital evidence. Again, it is advisable to seek consent but if an adult appears to be seriously injured, unable to communicate wishes, is unconscious or if capacity to consent is in doubt then this referral should be made without consent.

The council officer will complete the initial inquiry within 24 hours of receiving the referral or within 48 hours if agreed by the team manager.

5.3.1 Initial referral discussion

The inquiry should include an initial referral discussion. The discussion should take place with the public protection unit (Tayside Police) and an appropriate contact from the health services.

This discussion should take place with the persons listed below:

- The team manager, case holder, council officer
- The detective inspector of the public protection unit (or in the absence of the detective inspector with the detective sergeant)
- An appropriate representative from the NHS. For example the adult’s community nurse, general practitioner or learning disability nurse as appropriate to each case

- In the absence of an identified NHS contact the lead clinical director will be the contact for the initial referral discussion
- in case of an adult with a mental disorder, a mental health officer

In urgent and/or complex cases or in situations of potential serious risk the discussion must take place in person if possible, within 24 hours of receipt of a referral and should be chaired by the team manager.

In all other cases the discussion should take place within 48 hours and may be undertaken by telephone. The content and outcome of the discussion must be recorded in the case file.

The purpose of the initial referral discussion is to:

- share information known to each agency
- identify whether a crime may have been committed and the need for a police investigation
- identify the need for any urgent action required to protect the adult
- identify whether an investigation is necessary
- plan the investigation if an investigation is required
- in planning an investigation, assess risk of further harm or neglect to the adult or other adults at risk
- identify the need for a medical examination
- identify the route to access the medical examination (through the police surgeon or the adult's GP or specialist examination) if appropriate

Note that it is the responsibility of the police or NHS (whichever is appropriate to the case) to arrange a medical examination. The need for a medical examination may not be apparent at this stage but may be identified during an investigation when more information is available (see Appendix C for medical examinations flowchart).

Communication and information sharing must continue between the identified persons during the investigation if one is to be conducted.

- Medical examinations should be actively considered in all cases where there has been alleged physical harm or neglect or sexual harm where actual sexual contact has been alleged or is suspected.
- If the adult has capacity to consent to a medical examination then their right to refuse an examination must be communicated to them and their decision upheld.

- If capacity to consent is absent then Part 5 of the Adults with Incapacity Act should be implemented.
- If a guardian or welfare attorney is in place they should be approached to consent to a medical examination.

The decision as to whether an investigation is required should be based on whether action appears to be needed to protect the adult from harm. This should be recorded in the case file along with reasons for the decision.

A decision **not** to proceed to an adult protection investigation may be based on the following:

- that there is sufficient information available to make a decision that the situation involves no intentional or unintentional harm, self harm, or self neglect
- that the harm perpetrated was a “one-off” minor incident in unique circumstances and that there is no ongoing risk to the adult
- that the risk of harm has already been significantly reduced or eliminated through care management, referral to other agencies or other appropriate action including other statutory interventions, or
- the person is not an “adult at risk” as defined the legislation and in 1.1 above. In this case if the person agrees a referral will be made to services such as the police, domestic violence officer or the person will be given information about other relevant services

An investigation under the Adult Support and Protection Act must **always** follow if the adult meets the “adult at risk” criteria and any of the following apply:

- harm has already occurred and has the potential to occur again
- it is possible that a crime has been committed
- there is a risk of serious harm or serious harm has occurred
- an allegation involves a member of staff or a paid carer
- other adults are potentially at risk
- the alleged perpetrator is also an adult at risk
- alleged harm has taken place on property owned or managed by an agency that is providing services to the person experiencing or perpetrating the abuse

- there have been 2 previous adult protection referrals in relation to the individual in question in the past year
- the information gathered during the inquiry stage is not sufficient to form a reliable opinion as to whether action is required to protect the adult concerned, or
- there are clear indications that action is required to protect an adult at risk

5.4 Investigations

Objectives of the investigation are to:

- establish facts
- collate evidential information which may need to be presented in court to support an application for a protection order or other statutory intervention
- assess the needs of the adult at risk for protection, support and redress, and
- make decisions with regard to the perpetrator

5.4.1 Responsibilities of the team manager during the investigation:

The team manager will:

- be accountable for the decision whether to proceed to investigation
- ensure that communication and co-operation with the police and appropriate health professional(s) is maintained throughout the investigation
- manage and co-ordinate the investigation
- make decisions as to any urgent action required to protect adults including the use of protection orders
- allocate an appropriately qualified and experienced council officer to conduct the investigation
- In the absence of an available council officer the team manager will approach the service manager who will identify a council officer from another team or will approach the senior manager community care if that is not achievable

- ensure that adult protection work takes priority by providing the council officer with the time to conduct the investigation. This may involve reviewing priorities and re-allocating tasks/cases where necessary
- identify an appropriate co-worker to assist in the investigation. This might be a worker who the adult knows and trusts such as a support worker or social work student, or a health colleague who can also examine medical records or undertake a medical assessment, or in the case of someone with a mental disorder, a mental health officer might be the most appropriate co-worker
- in the event of suspected or alleged abuse involving a private care provider, either in the community or in a residential/nursing setting, ensure that the Care Commission is notified and kept informed about the progress and outcome of the investigation
- where there is evidence of ill-treatment, neglect or a shortfall in care in relation to a person with mental disorder, ensure that the Mental Welfare Commission is informed of the instigation of any investigation and at an appropriate point of the outcome of that investigation. (Refer to operational instruction CC4.6)
- ensure that the appropriate children's team or child protection team is notified if a child is at risk of harm, is a member of the same household or a frequent visitor to the adult at risk, is a suspected perpetrator of harm to the adult at risk, the adult at risk is aged 16-18 and is known to children's services or the adult at risk is pregnant
- consider the public interest and the need to notify any other Social Work and Health service, council department or outside agency. For example, criminal justice services, trading standards (for suspected targeted financial harm by "rogue traders"), environmental health department, SSPCA (for harm or neglect of animals or use of animals to attack or intimidate) or another local authority
- in the event of alleged or suspected abuse involving a local authority care home or day facility or any allegation against a member of Social Work and Health staff, ensure that the senior manager community care is notified
- ensure that all other professionals in an adult's care network and care staff providing a direct service to an adult at risk are notified of adult protection referrals and concerns and the outcome of the investigation
- ensure that the appropriate information is entered on CareFirst
- ensure the satisfactory completion of the investigation report and make the recommendation as to whether a case conference is necessary (ASP1)

- if a case conference is thought to be necessary decide who should be invited to the case conference

5.4.2 Responsibilities of the service manager

- In the absence of the team manager, another team manager may be identified by the relevant service manager to co-ordinate the investigation. In the absence of another team manager being available or where a team manager is the council officer undertaking the investigation the relevant service manager will manage the investigation, thereafter the senior manager community care and thereafter the director of Social Work and Health.
- if the team manager is not eligible to be a council officer (see 1.6 for definition of council officer), the service manager will oversee key decisions that are normally the responsibility of the team manager or will identify another manager who is a council officer to do so.
- be available for consultation
- countersign and be accountable for the recommendation as to whether a case conference should be held.

5.4.3 Criminal investigations

Many of the categories of harm are actions that may constitute criminal offences. Such actions include:

- assault whether physical or psychological
- sexual assault and rape
- theft or deliberate damage to property
- fraud or other forms of financial exploitation
- discrimination on grounds of race, religion, gender or disability
- false imprisonment

When complaints about alleged acts of harm or acts of omission suggest that a criminal offence may have been committed, the police may conduct a criminal investigation.

The local authority investigation should run in close parallel to any police investigation and focus on the protection and support needs of the adult at risk. It is vital that all information relation to an investigation is shared freely with the police and that support is given to the police investigation.

Where the adult at risk does not wish to make a formal complaint to the police it will be for the case conference discussion to decide on the appropriate action. This will take into account the interests of the adult at risk against those of public safety.

5.4.4 Joint work with the police

Co-operation with the police should be ongoing throughout a criminal investigation and will involve agencies sharing, reviewing and evaluating information as it comes to light.

- The police will advise on the preservation of evidence
- The police should be asked to assist in the local authority investigation where violence or could occur to ensure that the investigation is conducted safely
- A discussion will cover the possible need to use the appropriate adult scheme for interviewing victims, witnesses or suspected perpetrators
- The discussion will examine the evidence available, how further evidence will be obtained, what medical/forensic evidence is available and how further medical/forensic examination should be undertaken
- The discussion will identify personnel to be involved from the agencies and will agree on levels of communication to monitor the progress of the investigation
- It is important to ensure the adult at risk has support. Consideration should be given to making a referral (with consent) to Victim Support Angus
- The agencies will agree a press strategy if the media may be involved, involving the council's press officer

5.5 Responsibilities of the council officer:

The council officer will:

- complete the investigation within 5 working days in cases involving high risk to the adult and no more than 10 working days after referral. The decision regarding timing should be based on a discussion with the relevant team manager about the perceived level of risk
- arrange and make visits to the adult at risk for the purpose of making an assessment of risk
- gather and collate information from a variety of sources by conducting interviews, keeping accurate and up to date records and reporting on the findings of the investigation

- provide comprehensive background information and analysis of the risk to the adult concerned. This will form the basis of the report of the investigation (ASP1)
- Make recommendations to the team manager as to whether urgent intervention under the Adult Support and Protection Act is necessary to protect an adult at risk of serious harm, including the use of protection orders or warrants for entry or intervention under any other legislation
- Make recommendations as to whether a case conference is required
- Arrange a provisional date for a case conference with the adult protection unit as soon as it is considered that a case conference may be required

5.6 Role of the co-worker

The role of the co-worker is to provide assistance to the council officer as agreed with the team manager. This assistance may vary according to circumstance, but may include:

- gathering information from a variety of sources in order to inform the assessment and contributing to the investigation report
- accompanying the council officer on visits to the adult at risk for the purpose of making an assessment of risk and taking a role in the interview by helping to establish a rapport, taking notes, assisting with communication
- if the co-worker is a health professional, undertaking a medical examination if appropriate and if the adult consents
- if a health professional, examining medical records and assisting the council officer by interpreting the information
- if a mental health officer, contributing specialist knowledge of mental health and mental health law to the assessment

5.7 Planning a visit

Visits in relation to adult protection investigations should be undertaken by two members of staff, the council officer and identified co-worker. The team manager will take the lead in planning how the visit and interview might be conducted. Agreement will be reached about roles, note taking and about the best way to establish rapport.

The interview should be planned carefully to ensure a safe, secure and comfortable environment and that all relevant issues are raised

The need for an interpreter or alternative communication assistance, or speech and language therapist will be identified and arranged.

In cases where aggression or violence by the alleged perpetrator or adult at risk has been identified as a risk, an agreement should be reached about police involvement.

5.8 Warrants for entry

Where entry is denied to a property in order to interview an adult at risk, a warrant may be applied for. Warrants should be applied for:

- when every effort has been made to gain voluntary access and has been unsuccessful. All attempted contact will be recorded and may be used to evidence the need for a warrant on application
- where there is evidence to suggest that entry will be denied by an alleged perpetrator or others
- where alerting the alleged perpetrator may put the adult at risk at greater risk. In this case it may be necessary to apply for a removal and/or assessment order (see section 5.19 of these procedures) in which case a warrant will be for entry will be automatically issued with the order.

Should a warrant be required, contact should be made with the department of law and administration's legal team. Applications for warrants will be made in the sheriff court. In the event of a situation of such urgency that applying to the Sheriff would cause unacceptable delay, an application to a Justice of the Peace may be made. The social work out of hours service has a list of the Justices of the Peace and may be contacted on 01382 432270.

5.9 Interviewing the adult at risk

The interview with the adult must not be conducted in the presence of the alleged perpetrator especially if there is a possibility that a criminal offence has been committed. Every effort must be made to ensure a safe, secure and private environment for the adult concerned.

If this cannot be achieved and the adult is at risk of serious harm an assessment order may be required (see protection orders, section 5.19 of these procedures)

It is vital that the adult may be able to express their wishes about what action, if any, should be taken to protect them from harm. In order to ensure that the adult is able to relate what has happened to them and express their views as fully as possible the adult at risk may be accompanied by any of the following:

- a friend or chosen family member or other supporter unless they are the alleged perpetrator

- an interpreter if the person speaks English as their second language
- alternative communication assistance, speech and language therapist or specialist interpreter
- an independent advocate of their choosing, and/or an independent advocate chosen by the investigating officer to protect the person's interests

Full details of the interview should be recorded using ASP1.

5.10 Consent of the adult at risk

Adults at risk are not obliged to answer questions put to them in the course of an investigation and must be advised of their right not to answer before the interview begins.

The council officer should discuss with the adult at risk about the role of independent advocacy and facilitate the adult to make a referral to Angus Independent Advocacy if the adult requests support to do so.

The wishes of the adult must be respected if they wish no action to be taken **unless** it is unclear whether they have capacity to recognise the risks of their situation **or** it is established that they lack capacity **or** are being unduly pressurised by a third party into rejecting help.

Their decision should be recorded and the adult at risk should be advised that they could change their minds and who to contact should they wish to do so. If the case is an open case further work should continue to enable the adult to discuss their perception of the situation and to consider their choices.

The care manager or council officer should, with the adults permission communicate with appropriate parties, e.g. independent advocate, other professionals, carers, friends, etc to inform them of the decision. There may be an opportunity to identify (an)other person(s) who might be able to help the adult appreciate the risk and understand the choices available to them to remove or manage that risk.

Whether or not the decision is to continue the investigation or proceed to a case conference the adult at risk must be offered an assessment and carers must be offered a carers' assessment.

5.11 Capacity and consent

If the person has a welfare or financial guardian or attorney (a proxy) under the Adults with Incapacity Act, it may be that the adult is unable to give or withhold consent to being interviewed or to an investigation and in this case consent from the proxy should be sought. Alternatively, it may be that the adult has capacity to decide on some aspects of their life and not others and may be able to consent to being interviewed or to an investigation.

The Office of the Public Guardian holds information about guardianships/welfare and financial attorneys and is obliged under the Adult Support and Protection Act to assist in adult protection procedures.

There is no statutory requirement for a formal psychiatric assessment of capacity in relation to adult protection procedures. Assessments of whether a person has capacity can be made by professionals who know the adult, including a person's GP or care/case manager or case holder.

The ability to give informed consent involves:

- understanding in simple language what is involved
- understanding in simple terms the potential consequences of consenting or not consenting
- forming a decision about whether to consent
- being able to communicate their decision, and
- making a decision without coercion, fear or intimidation

It is good practice to discuss in the multi-professional arena whether an adult has capacity in relation to specific decisions. In the event of disagreement about whether a person has capacity a formal assessment should be sought unless the urgency of the situation requires immediate action.

If the urgency of the situation requires immediate action then a judgment may need to be made about a person's capacity without an assessment or multi-disciplinary consultation. If the person is unconscious, seriously injured or unwell they clearly lack capacity (and cannot give consent) and immediate medical and if appropriate police intervention should be sought.

If the person is considered to be under undue pressure from another person not to consent then legal advice must be sought from the department of law and administration before proceeding with the investigation, unless the urgency of the situation precludes consultation.

5.11.1 Investigations where a person lacks capacity to consent

If a person lacks or is found to lack capacity to consent or withhold consent to an investigation then an investigation under these procedures may proceed.

Should a proxy be in place (attorney or guardian) they should be asked to give consent and be involved in the investigation unless this would cause unreasonable delay. This does **not** apply if they are the perpetrator or suspected perpetrator of harm or if they are suspected to have negligently failed to protect the adult.

Please refer to Appendix B for capacity and consent flowchart.

5.12 Medical examination

It may be necessary as part of the investigation to arrange for a medical examination to be conducted (see also 5.3.1).

- Medical examinations should be actively considered in all cases where there has been alleged physical harm or neglect or sexual harm where actual sexual contact has been alleged or is suspected.
- If the adult has capacity to consent to a medical examination then their right to refuse an examination must be communicated to them and their decision upheld.
- If capacity to consent is absent then Part 5 of the Adults with Incapacity Act should be implemented.
- If a welfare guardian or welfare attorney is in place they should be approached to consent to a medical examination.

The reason for a medical examination may be:

- to establish if harm has been sustained
- to establish whether the adult requires medical attention/treatment
- to inform the assessment of capacity if necessary

A medical examination in private may be undertaken by a health professional accompanying a council officer on a visit to an adult at risk in the course of an investigation interview.

It is the responsibility of the NHS to arrange a medical examination if the investigation does not involve the police. Normally the person's GP will conduct a medical examination.

In the absence of registration with a GP the lead clinical director will facilitate an examination.

In the event of a police investigation taking place the police will arrange for a police surgeon to medically examine the adult at risk.

Please refer to Appendix C for the medical examinations flowchart.

5.13 Duty of co-operation and access to records

The Adult Support and Protection Act makes it a duty of public bodies and office holders of public bodies to co-operate in adult protection investigations and share information when asked to do so by a council officer in the course of an adult protection investigation.

Existing procedures relating to the sharing of information should be followed wherever possible. Where appropriate, 'Consent to Share Information' forms should be signed by the adult or welfare attorney or guardian as appropriate.

If there is reasonable concern that an adult at risk is being harmed or is at risk of harm, this will always override a professional or agency requirement to keep information confidential. If it is not possible to obtain consent from the adult, for example, if the situation is so urgent that obtaining consent would cause an unacceptable delay or where the adult cannot consent, the adult should be informed about the information sharing wherever possible (or inform their welfare attorney or guardian if applicable).

5.13.1 Accessing records

Section 10 of the Adult Support and Protection Act authorises a council officer to require any person holding health, financial or other records on an individual the officer knows or believes to be an adult at risk to give the records, or copies of them, to the officer.

Any decision to access records under the Adult Support and Protection Act should be made by the team manager. Application can be made in writing or in person (on a visit). The application letter should include:

- what information is needed
- why it is needed
- what will be done with the information
- who the information will be shared with
- how long the records will be kept and whether or not they will be returned or destroyed.

Information should only be shared with those who need to know and only if it is relevant to the particular concern identified. The amount of information shared should be proportionate to addressing that concern.

Examples of records that may be useful in an investigation include bank statements, employers' records, records held by the Department of Work and Pensions or records held by voluntary agencies. All formats of records such as computer, audio and visual are covered by the legislation.

Only original documents or certified copies can be used in court. If computer records are to be submitted as evidence, they must be printed off and signed by the holder to confirm they are a certified copy. The council officer should request copies of the records and ensure that original documents remain with the source of the information.

Section 49 of the Act states it is an offence of obstruction for a person to fail to comply with a requirement to provide information under Section 10. Reasonable efforts should always be made to resolve disagreements through informal means.

5.13.2 Accessing health records

If the council officer knows or believes an adult is at risk under the Adult Support and Protection Act, he or she has the right to request any person holding health records to give access to the records or copies of them. Health records are any record made by or on behalf of a health professional relating to an individual's physical or mental health. Records include notes written by GPs, occupational therapists, physiotherapists and nurses, either written or electronic.

Health records may only be inspected by a registered health professional for example doctor, nurse or midwife. If possible, an appointment should be made in advance to allow the author of the record time to gather the relevant information. It is good practice for the council officer, with the assistance of the health professional reading the records if appropriate, to interview the author.

However, it may not always be possible to interview the author especially if records contain entries made by a large number of different health professionals. During the interview, the council officer should record any statements made by the health professional inspecting the records.

In certain circumstances, it may be appropriate to request the records or copies of them, e.g. for inspection by another health professional for a second opinion.

In some cases it may be sufficient for a health professional to provide a written summary of his or her involvement and of the adult's physical and mental health along with any relevant documents or reports. However, it

should be noted that Section 10 of the Act refers to existing records held by a professional or an organisation rather than information created specifically to meet a request.

5.14 The investigation report

A record of the findings of the investigation and any decisions made will be recorded, signed and dated using ASP1 and must be countersigned by the team manager and service manager.

The investigation report should contain:

- details of the initial concern/alert/referral with all dates and times
- an outline of the current allegations/concern and any previous allegations/concern
- an assessment of the seriousness of the alleged harm
- a description of the adult and his/her circumstances including their views of the situation and their strengths
- where the harm took place
- an assessment of the adult relating to capacity and consent
- social situation/support networks of the adult at risk
- information about any alleged perpetrator
- details of how the investigation was conducted and who was involved
- evidence to support or refute the allegation/concern
- evidence to support any action through disciplinary procedures
- evidence for any action that could be taken by the Care Commission
- evidence for any legal action required other than under criminal law, such as use of protection orders
- indications of the causes of the harm
- a view about future risks
- the investigating officer's opinion and conclusions about risk prevention and action. This would include an opinion about services and support that increases the ability of the adult at risk to protect him or herself, and

- a recommendation as to whether a case conference is required

The investigating officer will discuss the content of the report with the adult at risk and make every effort to ensure the adult understands it and that any communication needs are addressed in order to do so. Where appropriate, the involvement of a family member or an advocate may be necessary.

The police are responsible for the collection and recording of evidence for a criminal prosecution.

5.15 Decision to refer to case conference

The service manager must review the investigation report (ASP1) and decide what action is required including whether to refer to the adult protection unit for a case conference. The service manager will only make a decision not to refer to the adult protection unit after consideration of a full investigation and assessment report. If two or more previous referrals have been received resulting in no case conference being convened, the manager should refer to case conference to allow agencies to come together to share information and concerns.

Feedback should be given to referring agencies or other professionals involved indicating that the referral/concerns have been addressed and an assessment completed. In giving feedback it is essential confidentiality must not be breached.

A case conference **must** be convened if it is requested by another agency.

5.16 Adult protection case conference

A case conference **must** be convened except where a formal decision has been taken (and reasons recorded why) not to proceed to conference.

This case conference should normally take place within seven working days of the commencement of the investigation and no later than 14 working days.

5.16.1 Role of the adult protection unit

The role of the adult protection unit (APU) is to take the lead role in convening the case conference. This includes:

- arranging a case conference when requested to do so
- issuing the invites to the case conference
- requesting reports from those unable to attend
- chairing the case conference, and
- distributing the minutes

In the absence of the adult protection review officer (APRO) the case conference will be chaired by a service manager.

The investigation (ASP1) report will be forwarded to the APU not less than 2 working days prior to the case conference

5.16.2 Invitations to the case conference

It is the responsibility of the team manager to decide on the key persons to be invited to the case conference and to notify the adult protection unit. Attendance of professionals should be limited to those with a direct contribution to make and a role to play in the support of the adult at risk. The adult at risk and appropriate family members/carers should always be invited to a case conference unless there is good reason why they should not attend.

Invitations to the case conference may include:

- the council officer and co-worker involved in the investigation
- the care/case manager
- the manager of care manager/council officer/other staff involved
- the adult at risk and/or their representative
- the adult at risk's welfare attorney or welfare guardian
- the adult at risk's independent advocate where applicable
- members of translation/interpretation services
- family members or other carers (where appropriate)
- police officers involved in the investigation or a representative of the public protection unit where appropriate
- relevant medical practitioners e.g. psychiatrist, GP or other medical professional
- a mental health officer in all cases of an adult with a mental disorder
- residential or day care staff involved with the adult
- the manager/member of staff of any commissioned service provider where appropriate
- a member of the council's legal team where appropriate

- where harm has occurred within a registered service a representative of the Care Commission

5.16.3 Purpose of the adult protection case conference

The purpose of the case conference is:

- to consider information contained in the reports presented to the meeting
- to consider what legal action, or further legal intervention, is indicated. This includes application for protection orders, action under the Adults with Incapacity Act or Mental Health Care & Treatment Act
- to agree further action that is needed to address and resolve the issues
- to allocate tasks/responsibilities to members of the meeting
- to make a decision about the current level of risk and make an assessment about level of future risk
- to draw up an initial adult protection plan and determine who will monitor and co-ordinate the plan
- to make recommendations for action as part of the adult protection plan
- to make specific recommendations in respect to the time/frequency/location of agreed actions and the professionals responsible
- to identify a core group of professionals who are directly involved in achieving the changes required and who will be responsible for implementing the protection plan.
- to plan and provide support to any carer if this is required
- to determine what information is shared with whom on a “need to know” basis
- to set timescales for tasks
- to agree contingency plans in the event of a breakdown in care arrangements
- to decide whether a review meeting is required and if so to set a date for the meeting in accordance with the protection needs of the adult at risk. This should be no more than six months from the original case conference, and

- to consider whether a criminal injuries claim may be appropriate (refer to operational instruction CC1.14)

5.16.4 Case conference report

The case conference must be minuted (see ASP2) and a copy should be circulated to the adult at risk and all those invited to the conference. Minutes will be distributed within fourteen working days of the case conference. In cases thought to involve high risk, the adult protection unit will distribute the recommendations of the meeting within two working days of the case conference.

Any dissent expressed at the meeting should be recorded in the minute. Arrangements should be made for sharing information about the case conference with family/carers not present at the meeting.

5.17 The adult protection plan

In many cases it will have been necessary to establish some form of adult protection plan before the full investigation concludes and, if appropriate prior to the conference at which the plan is further reviewed.

Whenever a protection plan is established it should include the following (where relevant to the protection of the adult at risk):

- action to ensure the safety of the adult at risk, including the application for any protection orders or any other legal intervention
- action to ensure the continued involvement of the adult at risk and where appropriate their carer or advocate
- details of support services, treatment or therapy available either in the immediate or the longer term to the adult at risk
- any changes to the way the services are provided
- any plan to support the adult at risk through action to seek justice or legal redress
- ongoing monitoring of the adults at risk's living arrangements
- how ongoing and future risks are to be managed and supported risk taking, if that is the wish of the adult at risk
- what services can be provided to the adult at risk to enhance their ability to protect themselves
- monitor and review arrangements

- contingency plans to ensure speedy response if the care and protection plan is not meeting the need and the adult continues to be at risk
- the protection plan must be formally reviewed at least every six months by an adult protection case conference. When the case conference decides that the risks have reduced and that an adult protection plan is no longer required, a decision must be taken about any tasks/actions that should be integrated into the care plan
- who will be responsible for each action detailed in the protection plan

All those contributing to the care and protection plan should have a copy and the adult at risk should be given a copy.

5.18 Implementation of the protection plan

The key professionals directly contributing to the protection of the adult at risk will be identified at the case conference as the core group.

The core group should meet within two weeks of the date of the case conference and then at least monthly unless agreed otherwise. The adult at risk and/or the carer should attend the meeting if appropriate. The core group will normally be chaired by the team manager but in cases involving high risk should be chaired by the service manager.

The purpose of the core group is:

- to monitor the implementation of the protection plan and ensure that actions are carried out within timescales
- to review risks
- to take account of any changing circumstances and needs and adapt the plan as necessary

There should be weekly visits to the adult at risk unless otherwise agreed and evidenced in the minute of the review.

The core group can be convened at any time following a request from any member of the group.

A copy of the current protection plan should be held by every member of the core group.

The core group will call an early review case conference if risks increase or circumstances change significantly.

5.19 Case conference reviews

- Adult protection case conference reviews should take place within 6 months or more frequently if required.
- The ASP1A should be completed prior to review by the council officer.
- The review will consider the changes that have been made and will re-assess the level of risk for the adult at risk.
- If there is still significant risk the case will be monitored by core group meetings and regular adult protection reviews.
- If the risks have been significantly reduced or eliminated the case does not need to remain under adult protection procedures.

5.20 Protection orders

The decision to seek a protection order may be made by an adult protection case conference but may be required at any stage after referral or during investigation. Decisions about whether to apply for a protection order will be based on the following considerations:

- that serious harm has occurred or is likely to occur
- that the adult has consented to an application if the adult has capacity to consent
- there is evidence of “undue pressure” if consent has been withheld
- the adult’s past and present views and the views of carers or family members if appropriate
- the extent to which the protection of the adult cannot be achieved through less formal means
- the extent to which the proposed action will benefit the adult

5.20.1 Serious harm

The seriousness of particular incidents of harm will not be identical for every individual and will depend on:

- the level of risk
- the extent of any injuries
- the impact of harm on physical health/mental health/welfare/financial circumstances of adult
- the frequency and severity of harm
- apparent intent
- history of harm
- the degree of distress for the adult at risk, and
- the probable consequences of non-intervention

5.20.2 Applying for protection orders

A protection order may be applied for at any stage post referral, during the investigation or following a decision taken by the case conference to ensure the safety of the adult.

The team manager and/or case conference should decide which nominated officer will take this forward and coordinate the intervention (normally the investigating council officer). The nominated officer must be employed by Social Work and Health.

Following the decision to proceed with an application for a protection order, consultation should take place with the department of law and administration to determine how the application should be progressed. A detailed report must be prepared on the template ASP7 and passed to the legal team within an agreed timescale. Care must be taken to identify and gather evidence for the need for the protection order.

An application for a protection order must be made by the council's department of law and administration. Evidence must be presented by the council's solicitor and the nominated council officer.

If practicable, and if doing so will not compromise the safety of the adult, the council officer will:

- notify the adult at risk in writing of the application
- inform the adult of his/her right to give or withhold consent
- inform the adult of his/her right to be heard or legally represented at the hearing
- 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 persons of the application

Council officers should inform the court prior to the hearing:

- if the person suspected of harming the adult may attend
- if the adult at risk does not wish legal representation
- it appears that the adult at risk does not understand the process, or
- provisions under the Vulnerable Witness (Scotland) Act 2004 may be required

The sheriff may:

- appoint a person to safeguard the interests of the adult at risk in proceedings
- apply the provisions of the Vulnerable Witnesses (Scotland) Act 2004
- appoint a curator ad litem where person does not have full mental capacity

5.20.3 Lack of consent to a protection order application

If it is decided by the council to proceed with an application when the adult has refused to consent and has capacity to consent, the council must provide evidence that the adult has been “unduly pressured”.

Undue pressure may be applied by:

- an individual who may not be the person suspected of actually harming the adult
- an individual with whom the adult has a trusting relationship and is suspected of harming the adult at risk. An example of a trusting relationship might be between partners, siblings, parent/child or friends.

- someone who the adult is afraid of or who is threatening her/him

If an adult lacks capacity to consent to a protection order application, a proxy (an attorney or guardian) may be approached to give consent **unless** that person has allegedly perpetrated harm or negligently failed to protect the adult at risk. In the absence of consent in these circumstances, the legal team in the department of law and administration must be consulted. It may be decided to proceed with the protection order alongside preparation for interventions under the Adults with Incapacity Act.

Where capacity to consent to a protection order is absent and there is no attorney or guardian in place, an application for a protection order under Adult Support and Protection Act may proceed if necessary to protect the adult whilst an application for intervention under the Adults with Incapacity Act is prepared.

5.20.4 Assessment orders

An assessment order may only be applied for if:

- there is reasonable cause to suspect that an adult is at risk of harm **and**
- it has **not** been possible or practicable through the course of a normal visit to interview the adult, to establish whether he or she is at risk of serious harm, and/or to undertake a medical examination.

Practical arrangements will need to be made prior to the application to prepare for implementation of the order.

The considerations required for the implementation of the assessment order will be detailed on the ASP 7 and will include:

- what assessment is required and what is the proposal for undertaking this assessment, including the need for any physical and/or psychiatric examination and the timescales in which they will be undertaken
- the location where the assessment will be conducted, means of transport to that location and any arrangements for medical examinations
- police involvement – a warrant for entry will be granted with a removal order
- how and when the individual will be notified about the proposal to apply for an assessment order and of their right to be represented
- who will remain with the individual during the assessment and what are the arrangements for the return transport

- the need for a risk assessment if force is likely to be needed to implement the order
- contingency plans should the adult exercise their right to withdraw consent
- the adult at risk's views

In granting of an assessment order the sheriff will grant a warrant for entry. The order is valid for 7 days after the date specified. Once issued, the order can only be used once.

5.20.5 Removal orders

Every attempt should be made to assess, treat and support the adult at risk in their own home and provide services in order to protect the adult. A removal order should only be applied for if it is necessary to the adult's safety that he or she should be removed and where an assessment order and/or banning order to exclude a perpetrator would not be adequate to protect the adult.

Practical arrangements to prepare for implementation of the order will need to be made prior to the application.

The considerations required for the implementation of the removal order will be detailed on the ASP 7 and will include:

- the location where the adult will be taken, means of transport to that location and any arrangements for their reception
- the emotional/psychological support to the adult while they are at the location
- interventions that may be carried out to reduce the risk to enable the adult to return home if possible or arrange for re-housing/care home residence if that is not possible
- the services that will be required to meet the individual's health and care needs while they are at that location
- whether there should be restrictions about contact with a specified person and what those restrictions should entail
- if supervised contact with a specified person is indicated then a person will be nominated to supervise
- police involvement – a warrant for entry will be granted with an assessment order
- how and when the individual will be notified about the proposal to apply for a removal order and of their right to be represented

- the need for a risk assessment if force is likely to be needed to implement the order
- contingency plans should the adult exercise their right to withdraw consent or ask to return home before the order expires
- the adult at risk's views

In granting of a removal order the sheriff will grant a warrant for entry. The order can only be used once and must be implemented within 72 hours of being granted and will expire 7 days after being implemented.

5.20.6 Placements for removed adults

Arrangements for removal of an individual will entail identifying an appropriate placement. The appropriateness of a particular placement will depend on:

- the individual's social circumstances, health and care needs
- whether risks can be managed at the placement (consideration should be given to deploying additional staff)
- the acceptability of the placement to the adult if the adult is able to express a view
- whether the adult's support network is available

A placement may be in:

- the home of a supportive family member if they agree to the placement for as long as the time period specified in the order (up to 7 days)
- a care home appropriate to the care needs of the adult
- a hospital ward **appropriate to the medical or psychiatric needs of the adult**
- a respite facility
- a property made temporarily available by the housing division for the purpose of implementing the order

If the placement is in another local authority (e.g. in the home of a family member or specialist care facility), contact must be made with the host authority about the intention to place the adult at risk and to make mutually agreed arrangements for the support of the adult at risk while they are in the authority's area.

The above arrangements will be detailed in the application template (ASP7).

5.20.7 Emergency removal orders

In cases where it is urgently necessary to remove an adult from a place where they are at immediate risk of serious harm an application may be made to a Justice of the Peace if it is not possible to make an application to the sheriff. The social work out of hours service has a list of the Justices of the Peace and may be contacted on 01382 432270. In such cases it will not be necessary to complete the ASP 7. However, it will be necessary to provide a brief report to the Justice of the Peace detailing:

- how the adult meets the criteria of adult at risk
- why the application is necessary
- why an application to the sheriff is not practicable
- that serious harm may come to the adult if there was a delay in seeking a removal order by normal means
- comment on any issues of capacity or “undue pressure”, and
- the suitability and availability of a placement

In granting a removal order the Justice of the Peace will grant a warrant for entry. The order can only be used once and must be implemented within 12 hours and once implemented it will expire after 24 hours.

5.20.8 Banning orders/temporary banning orders

Where an alleged perpetrator or perpetrators have been identified a banning order may be appropriate. This will allow the adult at risk to remain in their own environment with minimal disruption. A temporary banning order may be granted whilst a full banning order is being considered by the court.

Where the adult at risk is entitled to occupy a residence under Matrimonial Homes (Family Protection) (Scotland) Act 1981, their rights are not affected if their spouse or partner is banned from the place. Where the adult at risk has no occupancy rights and the proposed subject of the order does have these rights, the subject cannot be banned from the place. If you are unsure about the position, then this should be discussed with the Department of Law and Administration legal team prior to making a decision to apply for an order.

Practical arrangements will need to be made prior to the application to prepare for implementation of the order.

The considerations required for the implementation of the banning order will be detailed on the ASP 7 and will include:

- the potential disruption to family relationships/friendships and the impact that will have on the wellbeing and welfare of the individual
- the needs of the person residing with the adult at risk to whom the potential banning order will apply (if also an adult at risk a separate case conference will take place in relation to that individual)
- the services the adult at risk will require to meet their care needs, particularly where the person who will be subject to the banning order previously provided that care
- if a temporary banning order, what interventions to reduce risk are required to resume contact between the adult at risk (if the adult wishes this to happen) and the individual who will be subject to the temporary banning order
- how and when the individual will be notified about the proposal to apply for a removal order and of their right to be represented
- whether the power of arrest is necessary and what support to the adult at risk is required (e.g. the possible use of telecare) in order that the adult can call for assistance if needed
- contingency plan if the adult at risk does not co-operate with the implementation of the order
- the adult at risk's views

The above arrangements will be detailed in the application template (ASP7).

5.20.9 Implementing orders

Implementation of orders should be carried out carefully and sensitively to limit distress to the adult at risk as much as possible. A planning meeting to discuss a plan of action should be convened and chaired by the team manager. The following will be invited:

- a representative of the police
- health personnel who will be involved in medical assessments or treatment
- staff or carer identified to support the person if a placement is to be made (removal or assessment order)

- staff or carer identified to support the adult if they are to be supported in their own home (banning order).

5.20.10 Safeguarding property

The council has a duty to safeguard a person's property when undertaking functions under the Adult Support and Protection Act, including the implementation of protection orders. Safeguarding includes preventing loss or damage to property or making good damage that has occurred whilst the police exercised powers of entry. Property includes:

- the adult's residence whether owned or rented
- the adult's movable property
- the adult's pets

Any expenses incurred by a council officer should be authorised by the team manager or service manager if over the level which a team leader can authorise (refer to general operational instruction G1.1). Expenses might include:

- arranging kennel accommodation for pets
- for joiners to repair damage to doors on a privately owned property (Angus Council Housing Division or the Housing Association should be notified if publicly owned)
- temporary secure storage for movable property

It is not lawful to attempt to re-coup these expenses from the individual. Any removed property must be returned as soon as possible to the adult.

5.21 Provision of support for the adult at risk

Adults who have been harmed may be distressed and anxious and may need considerable emotional and practical support. In some cases the protection of the adult may have led to disruption or severance of key relationships, change of residence, and/or change in financial situation.

An adult may feel angry or ambivalent towards a perpetrator, feel guilty that they have "got someone into trouble" or be traumatised by what has happened to them.

Reassurance that their feelings are normal and support in expressing them will enhance the adult's recovery of their ability to continue with their lives in greater safety. Referral to Victim Support Scotland or any other support agency should be considered and/or referral for psychological therapies.

Post protection support for the adult should be fully discussed and agreed with the adult concerned and included in the protection plan.

5.22 Provision of support to an adult at risk during criminal proceedings

An adult at risk alleging an offence should be supported to make a statement to the police if they are able to do so.

5.22.1 Appropriate adults

Arrangements should be put in place to ensure that adults at risk who are alleged perpetrators, witnesses or victims of harm have the support of an appropriate adult while the police are questioning them. This is a requirement in cases where the adult has a learning disability or mental health problem and is unable to understand the significance of questions put to them or their replies and the police are undertaking a criminal investigation.

The appropriate adult must be someone who is independent of the investigation to avoid any conflict of interest, i.e. not a witness.

5.22.2 Vulnerable Witnesses (Scotland) Act 2004

Under this Act, vulnerable adults giving evidence in court may have special provision made to allow them to do so. These special measures are provided to reduce anxiety and distress in order that the vulnerable witness is more able to give evidence and the quality of that evidence is enhanced. The special measures available are:

- the use of a live television link from within or out with the court building
- the use of prior statements as evidence in chief (for uncontested evidence)
- the court appoints a commissioner (usually a solicitor) to take evidence under oath from a vulnerable witness unable to attend court
- a screen for the vulnerable witness to sit behind while giving evidence
- the vulnerable witness is accompanied by a supporter

The above measures can be used in combination if appropriate.

The police will notify the procurator fiscal that special measures are required following decision to prosecute the alleged perpetrator. The procurator fiscal will prepare the application for special measures to be considered by the court.

In addition, an adult can visit the court to familiarise themselves with the court surroundings and procedures, subject to the agreement of the court. A request for this would be made to the procurator fiscal alongside or instead of notifications about the need for special measures.

5.23 If the adult at risk moves to another area

If while conducting initial inquiries, an investigation or when a protection plan is in place the adult moves to another area action should be taken to establish the whereabouts of the adult. The new local authority should be given the information about any adult protection concerns and what action has been taken. An agreement should be reached between Angus Council and the new local authority about future action and roles and responsibilities.

5.24 If the alleged perpetrator moves

The police should be kept fully informed if an alleged perpetrator moves. If their whereabouts are known the new local authority must be informed so that appropriate decision making can be made regarding any required action.

5.25 Significant case reviews

Significant case reviews are undertaken in order that serious incidents are learned from and that learning will influence the development of future policy, practice and service development. The provision for significant case reviews has been authorized by the adult protection committee. (Refer to multi-agency protocol on significant case reviews).

A review may be initiated under the following circumstances.

When an adult dies and:

- the adult meets the definition of an adult at risk as defined by the Adult Support and Protection (Scotland) Act 2007
- abuse or neglect is known or suspected to be a factor in the adult's death;

and, in addition to this, the incident or accumulation of incidents gives rise to serious concerns about professional and/or service involvement or lack of involvement

When an adult has not died but:

- the adult meets the definition of an adult at risk as defined by the Adult Support and Protection (Scotland) Act 2007
- has sustained serious harm or risk of serious harm, under one or more of the categories of abuse and neglect set out in the Adult Support and Protection (Scotland) Act 2007 and in Section 2.7 of this guidance; and, in addition to this, the incident or accumulation of incidents gives rise to serious concerns about professional and/or service involvement or lack of involvement

Any case which may meet the criteria above must be notified in the first instance to the senior manager community care, who will make a decision whether the case warrants a review. Following this decision the senior manager will notify the senior planning officer.

5.26 Case closure

If it is identified that no further interventions are required the following procedures should be followed prior to closing the case:

- the decision to close the case should be discussed and agreed with the team manager
- the adult at risk's view must be sought in an interview with him/her on his/her own with appropriate support or proxy under the Adults with Incapacity Act
- a visit to the adult's accommodation should be undertaken to ensure it remains "suitable"
- the views of other relevant professionals should be sought regarding closure of the case
- there should be clear evidence that the adult's welfare and financial well being will continue to be protected following closure
- the adult at risk and all those with an interest are aware of how to re-refer should there be further difficulties
- care plans should be up to date and complete. They should include a closure summary that outlines why no further intervention is required and detail why the staff involved are satisfied with the care and safety of the individual.

5.27 Record keeping

(Refer to general operational instruction no 2.23)

All records should be:

- evidence based
- accurate
- up to date

All decisions and actions should be recorded and should include:

- nature/substance of incident
- initial assessment of incident, information provided and persons circumstances
- external referrals/consultations
- issues of capacity/incapacity/consent
- the adult who is at risk's wishes/views
- decisions/action taken
- roles and responsibilities of those involved
- framework for monitoring ongoing work
- issues of confidentiality
- if, when and why there is no further action decided.

If the alleged perpetrator is a service user, then the information about his/her involvement in an adult protection investigation, including the outcome of the investigation, should be included in his/her records. If an assessment is made that the individual still poses a risk to other service users, this should be included in any information passed on to service providers.

5.28 Support for staff

A case of adult protection causes stress for the individuals involved. Supervision and support should be provided to staff members by their line manager or by another identified manager if their own manager is absent. Issues, which may be identified as training or development needs in the course of an investigation should be incorporated into the staff member's development plan. During the process of the investigation the manager may need to:

- debrief staff
- clarify member of staffs role and level of responsibility
- offer help/advice.

In some cases staff may face an aggressive response in the course of their enquiries. Fear of violence or intimidation should be considered in planning the enquiry and discussed with the line manager. Action to protect staff in carrying out their tasks includes carrying out visits in pairs and involvement of the police where appropriate.

5.29 Allegations against a member of staff or a paid carer (excluding carers employed privately by the adult at risk)

Any allegation involving a member of staff employed by Angus Council or a commissioned service provider should immediately inform the service manager – who must then inform the senior manager community care and director (in accordance with operational instruction G2.17 Serious Incidents).

The member of staff should be made aware of their rights under employment legislation and Angus Council's disciplinary procedures.

The service manager should co-ordinate action as allegations against staff often result in several different investigations that run in parallel including:

- investigation conducted within disciplinary procedures of Angus Council
- police investigation if the alleged harm could constitute a criminal offence
- the adult protection investigation

5.30 Service users who are responsible for employing their own carers

Local authorities are empowered under the Community Care (Direct Payments) Act 1996 to make payments for community care direct to the service user in lieu of providing community care services. A service user receiving direct payments will have a comprehensive needs assessment and have been assessed as able to take on the responsibilities of becoming an employer.

As with any employer they should take up references for the person they intend to employ.

Service users in receipt of direct payments should be provided with information about how and where they should raise any concerns of risk to themselves or incidents of harm.

Direct payment agreements with service users should specify that adult protection issues are included in reviewing and monitoring arrangements. Agreement should be reached with the service user about appropriate monitoring arrangements applicable to paid carers, including a consideration that they be included in the review.

Care managers who play a direct role in direct payments may need to assist service users who are at risk of harm. Complaints and allegation involving these carers should be dealt with as though they were private individuals.

5.31 Large scale investigations

A large-scale adult protection inquiry would be indicated in a situation where a number of adults at risk have or may have been harmed:

- in a particular resource
- the same perpetrator is suspected
- a group of perpetrators are suspected.

Such situations will involve a wide range of agencies and a number of individual adult protection inquiries and investigations. It is important that all aspects of the investigation are planned and all agencies and individual professionals are clear about their respective roles and responsibilities.

In receiving information about individual cases of suspected and actual harm, it is important to consider possibilities that other adults may be at risk. Data checks should be made, consultation held with other agencies. It is important to consider whether past service users could have been harmed.

If the need for a large-scale enquiry becomes apparent, the senior manager community care will identify a service manager to take responsibility for co-ordination of the overall investigation.

5.32 Adult protection investigations within health services

The council have a statutory authority to investigate all instances of harm in any setting including a health setting. Any investigation involving an adult at risk in a health setting must take place in parallel with any investigation by NHS Tayside in respect to the incident or allegation.

Any investigation on health premises or involving allegations against staff employed by the NHS should be notified to the senior manager community care. The senior manager will allocate the investigation to a service manager who will co-ordinate the investigation.

5.33 If the alleged perpetrator is also an adult at risk

An adult at risk may be the perpetrator of harm. The identification of indicators that an adult at risk may be a potential perpetrator should be included as part of any risk assessment of the service user.

Where alleged harm perpetrated by another adult at risk is being investigated staff must maintain a caring approach and must be objective. Members of staff need to be aware of their own standards and values to ensure that conclusions are correct and are based on firm evidence. It is important not to over simplify the situation and jump to conclusions that one person must be the victim and the other the perpetrator.

If an adult at risk is identified as a potential perpetrator the following should be included as part of their care plan:

- a protection plan
- a treatment plan
- a contingency plan; and
- monitoring and reviewing arrangements.

Plans must involve all relevant professionals as well as family and carers where appropriate.

All allegations of harm perpetrated by an adult at risk must **always** give rise to an adult protection investigation and should be responded to within 24 hours.

Immediate action should be taken to protect other adults at risk from harm.

Specific decisions to be taken at pre-investigative planning meeting which should be attended by all agencies involved.

- how the action in relation to the adult at risk who is the perpetrator will be co-ordinated
- identification of and allocation to a separate care/case manager in order to ensure that their needs are met and that a care plan is devised to ensure that other adults are not also put at risk
- identification of an investigating council officer who was not part of the original investigation to minimise conflict of interest
- identification of who should be involved in the investigation and care/protection plan
- whether there is likely to be a criminal prosecution
- what information needs to be shared and with whom

5.34 Adults at risk who make repeated allegations

An adult at risk who makes repeated allegations which have been investigated and are unfounded, should be treated without prejudice.

Each allegation must be investigated under these procedures and a case conference convened where appropriate.

Each incident **must** be recorded.

Decisions about whether to intervene should be made in consultation with a team manager and other professionals. A record of these deliberations should be retained on file.

6. COMPLEX ISSUES ARISING IN ADULT PROTECTION

The protection of adults, like the protection of children, raises a variety of complex issues. Some of these are discussed in more detail below.

6.1 Rights, risks and self determination

In Scots Law, people aged 16 years and over (adults) are presumed to have legal capacity unless it can be shown otherwise. This means that adults are generally entitled to live as they chose and to make decisions as they wish unless their choice amounts to a criminal offence (in which case the criminal law will intervene) or there are restrictions imposed through civil law (e.g. interdicts).

The exception to this is where an adult lacks capacity either temporarily or permanently to make decisions to safeguard their own interests or wellbeing because of mental disorder or an inability to communicate their decision. An adult is regarded as having capacity unless it can be shown otherwise.

Intervention without consent into the lives of people who have capacity in the aspect of their lives that is considered potentially harmful would contravene that person's human rights. People who are in care homes, supported accommodation and/or are users of services retain their full human rights, unless these have been restricted by a legal process and then only to the extent allowed by the law. Adults must be allowed to exercise their rights even if that means they choose to remain in a situation that other people consider inappropriate or harmful.

However, every effort should be made to inform the adult at risk of the consequences of the choice he/she may be making. Where appropriate, use should be made of an independent advocate, communication aids or interpretation services.

Despite these efforts there will be occasions where adults at risk choose to remain in dangerous situations. Professional staff may find they have no statutory powers in cases where the adult is judged to have **sufficient capacity** to make his or her own choices, refuses the help or treatment which staff and/ or carers feel is needed and is making those choices freely without undue pressure from another person.

Where there is a likelihood that the adult may suffer serious harm an adult protection case conference should be convened:

- to consider how the situation should be managed and
- to consider issues of public interest.

An accurate record should be made of the decisions taken at the adult protection case conference including:

- the decision of the adult at risk
- evidence of capacity
- the advice or information they were given
- any further work that will be undertaken to support the adult (including referral to services such as advocacy services),
- where indicated, a date at which the decision should be reviewed with adult at risk, and
- consideration of the public interest

In order to demonstrate “defensible decision making” staff should ensure that:

- there is evidence the operational instructions have been followed
- any criminal act has been addressed
- every effort has been, and continues to be made in collaboration with other agencies to intervene positively to protect the adult at risk
- legal advice has been obtained.

If an adult at risk has made their wishes known whilst they have capacity and has subsequently lost capacity it will be necessary to assess whether the previous wishes of the adult at risk should be respected, particularly if these wishes have exposed the adult at risk to situations which could be potentially harmful. In such cases an adult protection case conference should be convened where these issues can be explored and a decision taken about the way forward. Legal advice should always be sought in such circumstances from the department of law and administration.

6.2 Capacity to consent to sexual activity

One aspect of adulthood which most of us take for granted is the right to be sexually active. All human beings are sexual beings with sexual needs, feelings and drives. Practitioners must strike a balance in working people with disabilities and mental disorder to enable them to get pleasure and enjoyment from their close personal relationships and provide them with protection from encounters which are exploitative or to which the person is unable to consent. This right is applicable to all adults, including:

- people with learning disabilities
- people with brain injury

- people with a physical disability, sensory impairment or communication difficulty
- people with dementia
- people with mental illness such as schizophrenia or bi-polar disorder

Adults may need support and information to enable them to form healthy relationships between themselves and others. They should be given appropriate information about sex and relationships in order to help them:

- keep themselves safe
- form informed consensual sexual relationships if they wish to do so
- act in a manner which is respectful towards others and themselves
- avoid unwanted effects such as sexually transmitted diseases and unplanned pregnancy
- express their sexuality which reflects their personal preference
- express their sexuality safely and within the limits of the law
- access help with sexual problems
- have privacy to develop their relationships

The above information must be in a format which is understood by the individual.

6.2.1 Concerns about capacity to consent to sexual activity

Assessments of capacity to consent may be undertaken by a professional who preferably knows the adult and has the necessary skills to do so. Guidance as to the assessment of capacity to consent is covered in this instruction in 5.13. Good practice is for issues of capacity to consent to sexual activity to be discussed in the multi-agency arena.

Where there are doubts or differences of opinion about whether a person has capacity to consent to a sexual relationship that is ongoing then these adult protection procedures should be followed and an investigation under the Adult Support and Protection Act take place. The adult protection investigation may include a formal assessment of the person's capacity by a consultant psychiatrist.

Should there remain significant doubt as to the person's capacity to consent and sexual contact is ongoing, or has the potential occur again, an adult protection case conference must be called.

Until further decisions are made immediate steps must be taken to protect the adult whilst an investigation is ongoing.

6.2.2 Where a person lacks capacity to consent to sexual activity

Where it is suspected that an adult lacking the capacity to consent to sexual activity has had sexual contact this must be notified to the police. It is a criminal offence for someone to have any sexual activity with someone who is not capable of consenting to sex due to mental disorder (Mental Health Care and Treatment Scotland Act 2003).

There must be immediate steps to protect the adult whilst an investigation under the Act is underway.

Indications that sexual activity has or may have taken place include:

- pregnancy
- sexually transmitted disease
- unexplained urinary tract infections or repeat oral, anal or vaginal infections such as candida
- injury or swelling around the genital or anal area
- fear, pain or distress when undergoing personal care

6.2.3 Where a person has capacity to consent but does not consent to sexual activity

Where a person meeting the criteria of adult at risk has the capacity to consent but is under duress to have a sexual relationship or has not consented to a sexual act that has been alleged to taken place the police must be notified immediately and thereafter involved in any investigation under the adult protection procedures.

It should be noted that a person may consent to sexual activity with a regular or occasional partner on some occasions but not others. Their right to say no to sexual activity must be encouraged and upheld. Any force or coercion must be regarded as a police matter and reported immediately.

If an alleged or suspected unlawful sexual act has occurred it is essential that evidence is not destroyed. There should be no attempt to help the person to wash even if asked to do so and it would reduce the person's distress.

The responsible case holder will make an assessment of what immediate steps need to be taken to protect the adult at risk, if this has not already been done, and will arrange what is necessary, including possible urgent action under the Adult Support and Protection Act.

6.3 Reporting disclosures and concerns

All professionals who have contact with adults at risk have a responsibility to share concerns/anxieties/disclosures with appropriate agencies. However, it should be recognised that, at times, this may pose a dilemma for staff who may feel that by so doing this could alienate the individual and/or the family and the potential for preventative/supportive work. To do nothing or to promise confidentiality and then share the concern is not acceptable. Staff must openly and honestly discuss with the individual and/or family the intention to share the information given and to advise them of the possible consequences provided this can be done safely.

6.4 Risk taking

Concern over risk taking can stifle and constrain providers of care leading to an inappropriate restriction of the individual's rights. There is a challenge for people working in all care settings to define a way forward where they are able to take calculated acceptable risks and allow risks to be taken.

In such situations a record should be made of who was consulted, what decisions were reached and what actions would be taken to monitor the situation and manage the risks.

Operational instruction CC1.15 gives further advice, guidance and tools for specific risk assessment and risk management processes.

6.5 Challenging behaviour/use of restraint techniques

There are some adults at risk who present challenging behaviour, which requires to be managed either in their own home, day care setting or care home. This brings with it a number of dilemmas including issues of restraint and the administration of medication. Any action undertaken to manage an adult with challenging behaviour could be misinterpreted, potentially leading to an allegation of abuse, therefore these issues require to be carefully assessed and recorded appropriately.

Procedures are in place to assist staff members who work in settings where challenging behaviour is likely to be a feature. The decision to invoke any form of restraint should not be made by a single individual and as much collaboration as is appropriate should be undertaken. There should also be some ongoing monitoring and reviewing of a decision to undertake any form of restraint. As people with increasingly complex needs require on-going care, the prevalence of challenging behaviour is likely to increase.

Further guidance about the issue of restraint and a specific risk assessment tool is included in operational instruction CC1.15 and Mental Welfare Commission Guidance – rights, risks and limits to freedom.

It is acknowledged that, in the course of their duties, staff may be assaulted, and in these circumstances have a right to defend themselves. Appropriate training and support must be available to staff. Incidents of aggression and violence or the use of restraint should be recorded using the appropriate documentation.

6.6 Allegations against staff members

When an allegation of harm is made against a member of staff either formally by letter, or informally by telephone or in person, it is essential that it is taken seriously and an investigation initiated into the staff member's alleged behaviour through the established procedures. This process would have to accord with any parallel investigation into the alleged incident(s). Consultation at an early stage with the staffing section and the line manager is vital to determine the appropriate routes to be taken for such matters to be taken.

If serious harm has occurred or narrowly avoided and there are serious concerns about service delivery or lack of service delivery then consideration of the significant case review protocols should also apply.

6.7 Domestic abuse

Domestic abuse is defined as "any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender".

Domestic abuse involves the misuse of power and the exercise of control by one adult over another adult person.

Where one or both adults involved can be defined as adults at risk, the Act and these procedures apply.

Action would not be taken under the Adult Support and Protection Act if the person does not meet the definition of adult at risk as defined in (section 1.1). If the person agrees, reference should be made to the police and to the domestic violence officer and information provided about other sources of help and support. Referral should also be made to the appropriate children and families team if children are part of the household.

6.8 The interface between child and adult protection

When investigating an adult at risk referral or concern care should be taken to consider whether children and young people who are members of the household are also at risk.

In cases where an adult at risk is harmed and where a child may be involved or be a member of the household where harm has taken place a referral should be made immediately to the child protection team.

Conversely, when investigating a childcare concern or child protection referral staff must consider whether adults in the household are adults at risk. Adults at risk of harm must be referred immediately to the appropriate community care team or through the intake service.

Young people who are 16-18yrs old, meet the criteria of adult at risk (as defined in 1.1) and are under a supervision order (Children Scotland Act 1995) or are care leavers in full time education continue to have their welfare needs met under the Children Scotland Act but would be protected under the adult protection procedures. Services from both adult and children's service must be involved in these circumstances.

6.9 Adults at risk who are pregnant

If the adult at risk is or may be pregnant, a planning meeting should be arranged involving Social Work and Health staff from children's and adult services and appropriate health staff. This meeting should ensure that a pre-birth risk assessment is completed in line with the relevant child protection operational instruction to determine the risk and the need to ensure the safety and well-being of the baby

6.10 Adult protection and mental health service users

Media attention has led to a tendency for mental health service users to be seen as potential perpetrators rather than victims of harm or exploitation.

Research has shown that people with mental health issues are four times more likely to be victims of violence than the general population and are more likely to be harmed than other people with disabilities. However, reports of harm may be seen by staff in all agencies as a symptom of their illness or they may be seen as unreliable complainants/witnesses.

All allegations of perpetrated harm must be taken seriously and investigated without assumption as to the credibility of the complainant.

Some factors influencing a decision about whether the individual can be defined as an adult at risk could include:

- ability to protect themselves or their interests may fluctuate with the adult's particular mental health needs at any given time, e.g. if they are currently subject to compulsion under mental health legislation or are especially unwell at the time
- the ability of people with a mental disorder to protect themselves from harm may be associated with a previous experience of abuse. Research has shown that a significant proportion of women who have been abused as children develop mental health problems. Similarly a significant proportion of men who are mental health service users have a history of physical abuse

- the experience of the mental health service user is within a system that can legally deprive people of their human rights, e.g. (loss of liberty, compulsory treatment) rendering the person innately powerless at these stages

The legal framework for protecting adults at risk with a mental disorder is complex. Any intervention must be of benefit to the adult and be the least restrictive option. Generally, interventions under the Adult Support and Protection Act are less restrictive than interventions under the Adults With Incapacity Act and Mental Health Care & Treatment Act and therefore the Adult Support and Protection Act should be considered where concerns arise. The three pieces of legislation are not mutually exclusive and can be used in combination if appropriate.

Advice from a mental health officer should be sought where adult protection concerns arise about a person with mental disorder.

The Mental Welfare Commission has a particular role in maintaining oversight of the standards of care for patients subject to compulsion under the Mental Health (Care & Treatment) (Scotland) Act 2003 and should be notified of any investigation under the Adult Support and Protection Act where there are concerns about their care.

6.11 Confidentiality and data protection

Disclosure of personal information is governed by the Data Protection Act 1998 and its accompanying guidance.

Personal data covers both facts and opinions about a living individual, which might identify that person. The provisions of the Data Protection Act ensure that personal information held about any individual cannot be used for purposes other than that for which it was originally supplied, without the individual's consent. This prevents unauthorised disclosure of a wide range of information.

There are several important exceptions to this set out in the Data Protection Act and related guidance. These enable data to be disclosed:

- to safeguard national security
- to prevent or assist in the detection of a crime
- to protect the vital interests of the person
- if the information is requested by an officer performing a function under any other legislation

This means that information given to professionals by their patient, client, or service user should not be shared with others without the person's permission unless the safety of an adult or adults or children may otherwise be put at risk.

All agencies working with adults at risk have in place an information sharing policy, which makes clear how issues of confidentiality are to be managed.

Staff working with adults at risk must:

- discuss the principles of information sharing with service users
- ask the service user what information they are willing to have share freely with the relevant professional partners
- advise the service user of the circumstances in which information will be shared without their consent, if necessary

When concerns about an adult's safety or welfare require a professional or agency to share confidential information without a person's consent, they should tell the person that they intend to do so (if possible) or have done so. They should tell the adult what information they will disclose or have disclosed and to whom, unless this would cause greater risk to the adult.

6.11.1 Requesting information from another agency

It is not helpful to contact another professional or agency and ask for everything they know about the family or associates of the adult at risk, because of concerns about an adult. If staff are not sure what kind of information the other agency may have or what they might need to know, they should explain the task so that the other person may better understand how they may help.

When any professional or approaches another agency to ask for information they must be able to explain:

- why they need the information
- what they will do with the information, and
- with whom the information will be shared

If a professional is asked to provide information they should never refuse solely on the basis that all the information held by the agency is confidential. On receiving answers to the above questions they will consider:

- whether there is any perceived risk to an adult or others which would warrant breaking confidentiality
- what information the service user has already given permission to share with other professionals

- whether they have relevant information to contribute – that is information which has, or may have, a bearing on the issue of risk to an adult at risk or others which would enable another professional to offer appropriate help, assist access to other services, or take other action necessary to reduce the risk to the to the adult
- whether that information is confidential, already in the public domain or could be better provided by another professional or agency, or the adult at risk directly
- how much information needs to be shared to reduce the risk to the adult, and
- whether disclosure would be in accordance with the Data Protection Act 1998

Section 49 of the Adult Support and Protection Act states it is an offence of obstruction for a person to fail to comply with a requirement to provide information about an adult at risk under Section 10 of the Act. Reasonable efforts should be made to resolve difficulties accessing information through informal means. Advice should be sought from the department of law and administration legal team should efforts to resolve the difficulty fail.

Angus Council, Dundee City Council, Perth and Kinross Council and NHS Tayside have agreed the contents of general protocol for sharing information (June 2003). The document provides “a framework for the secure and confidential sharing of information between organisations to enable them to meet the needs of citizens for care, protection and support in accordance with legislative requirements”. It also informs “customers or patients of the organisations who are party to the protocol of the reasons why information about them may need to be shared and how this sharing will be managed”.

6.12 Whistleblowing

If any member of staff has concerns about any aspect of an individual’s care or welfare or practice within any area of service should be reported through Angus Council’s whistle blowing policy. Within Social Work and Health an officer (senior manager strategic support services) has been identified as an independent manager to whom any concerns may be reported. This is in addition to the council policy.

What should be reported?

If a member of staff is concerned about an aspect of an individual's behaviour or a corporate practice which has resulted in or is likely to result in:

- a criminal offence, for example theft or fraud
- a failure to comply with a legal obligation
- a danger to the health or safety of an individual

- a miscarriage of justice
- actual or potential damage to the environment

or, if he/she is concerned about an attempt to cover up any of the above - then it is expected that this will be reported.

Reporting a concern

If a staff member has a concern that they are happy to report to a manager within their department then they should do so.

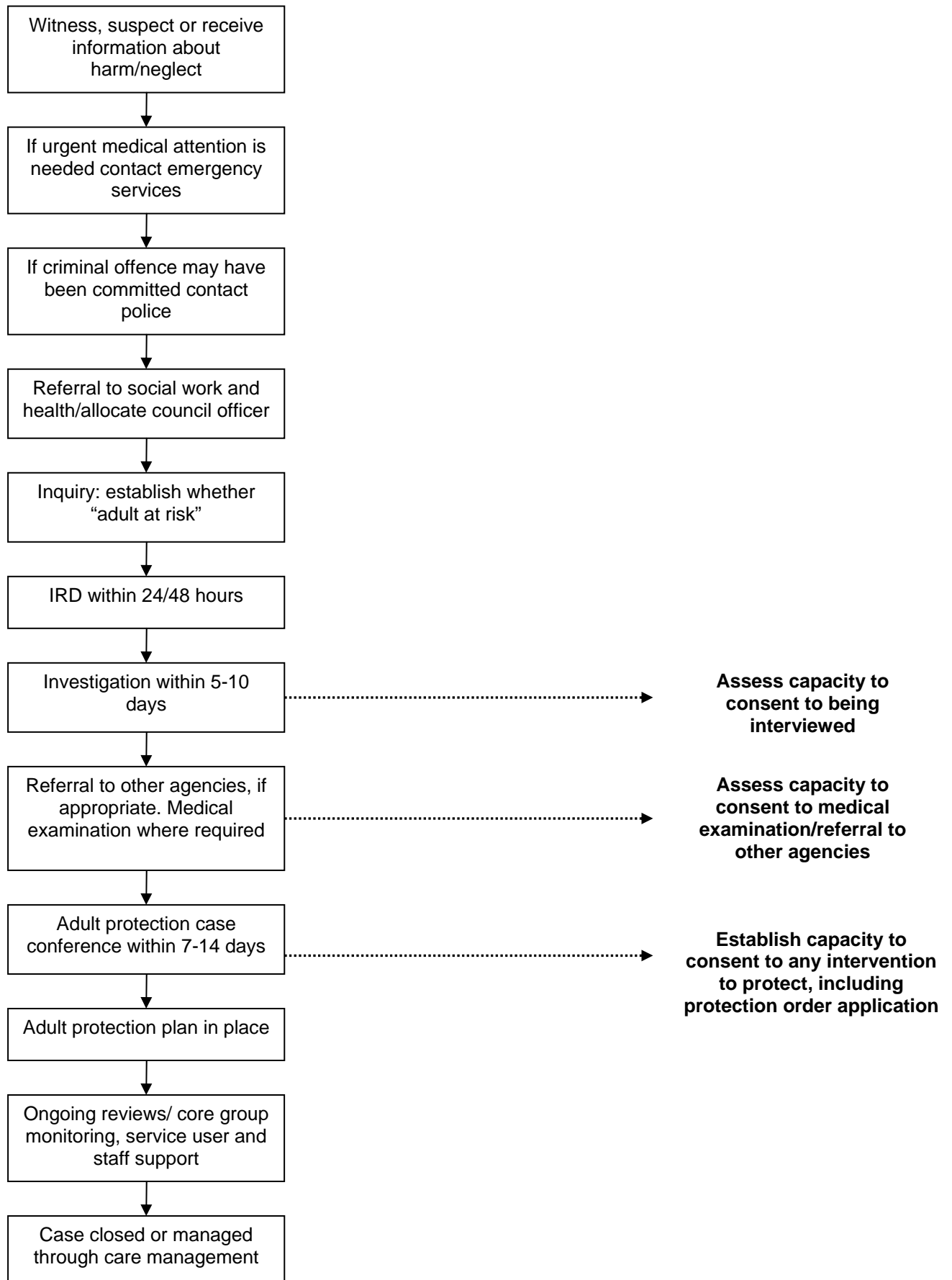
If however they feel that they cannot raise the matter within their department then they can telephone the council's ACCESS Line on 08452 777 778 or, for fraud matters, the council's Fraud Hotline on 0800 027 73 73.

All concerns will initially be reported to the council's chief executive and if it is preferred, a member of staff can write to him/her directly with their concern at Angus House, Orchardbank Business Park, Forfar, DD8 1AX.

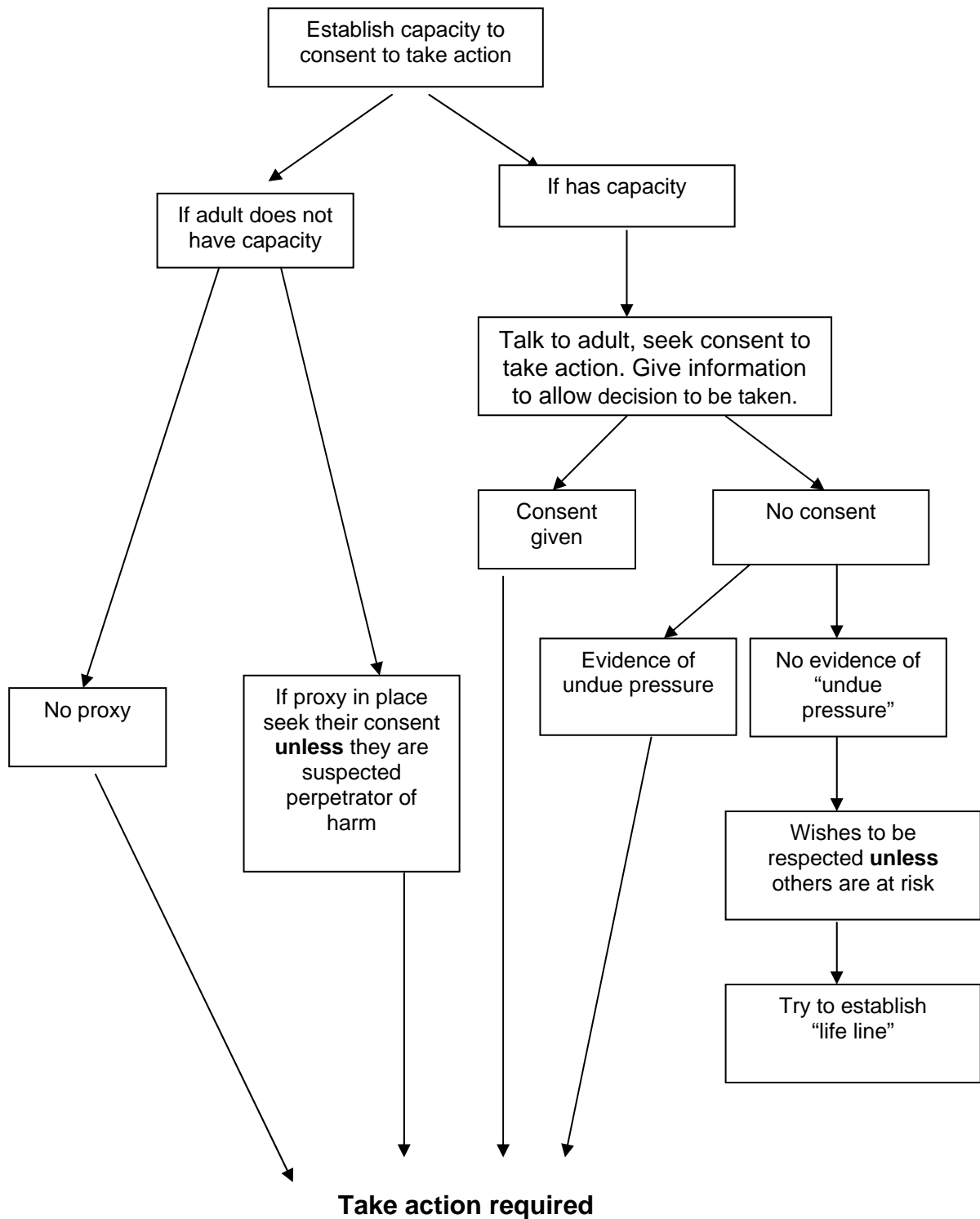
7 CONTACTS

Angus Council ACCESSLine	08452 777778
Social Work Out of Hours	01382 432270
Tayside Police	0300 111 2222
Public Protection Unit	01241 435450
Lead Clinical Director	01307 474844
Adult Protection Unit	01307 463762
NHS 24	08454 242424
Victim Support Angus	01241 870096
Angus Independent Advocacy	01241 434413

Adult Protection Processes



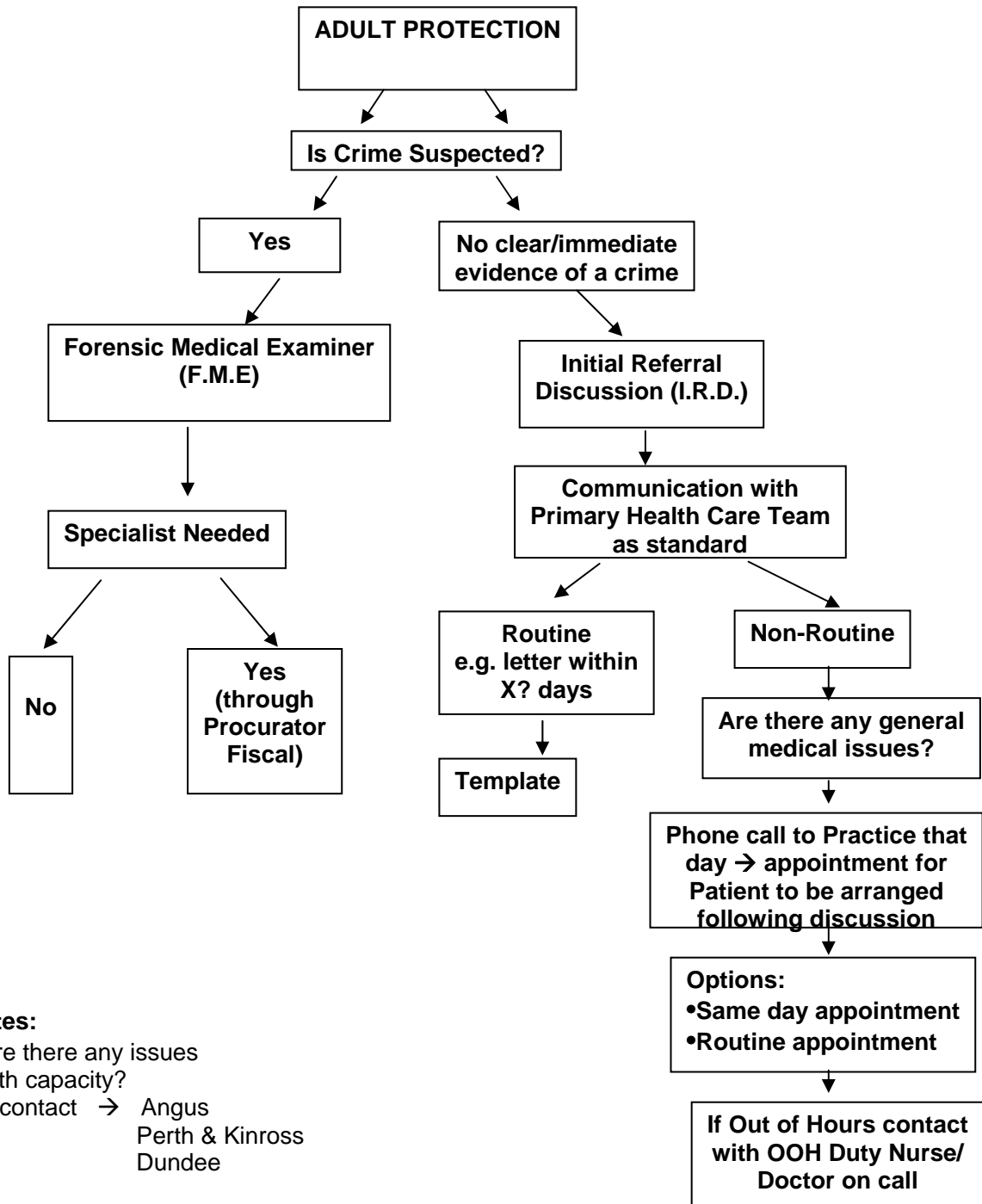
Establishing Consent



ADULT PROTECTION – MEDICAL EXAMINATION

3rd DRAFT

1. Interim Solution (until NHS Tayside decision taken)
2. Based on current number of cases requiring Medical Assessment
(if number were to increase considerably, financial implications need to be considered)
3. Consider Child Protection model



Notes:

- Are there any issues with capacity?
- contact → Angus
Perth & Kinross
Dundee

Draft 3 as at 22.12.09