

SOCIAL WORK SERVICES ADULT SUPPORT & PROTECTION PROCEDURES

University Health and Social Care North Lanarkshire



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APPENDICIES

Please note that appendices may be updated throughout the life of this procedure therefore please use the appendices as standalone documents which can be found [here](#).

Introduction

The Adult Support and Protection (Scotland) Act 2007 came into effect in October 2008 and its fundamental aim is to support and protect adults who are at risk of harm.

Most adults in North Lanarkshire Council, who may experience or become at risk of harm and are less able to protect themselves due to frailty, dementia, physical or learning disabilities and impairments or mental health problems, manage to live their lives without the need for legislative intervention to mitigate harm. Often this is with the assistance of caring relatives, friends, paid carers, professional agencies, or volunteers.

However, some adults in similar circumstances, are unable to safeguard themselves, property, rights and other interests and may therefore require intervention under Adult Support and Protection to ensure that they are living a life free from risk of harm or a life where harm is mitigated as much as possible.

North Lanarkshire Council in conjunction with the West of Scotland Inter Agency Group developed Practice Guidance and Procedures for Adults at Risk of Harm which:-

- Recognise existing legislation
- Consider the Adult Support & Protection Codes of Practice (Scottish, Government, 2022)
- Focus on the Adult Support & Protection (Scotland) Act 2007
- Contain information on the definition of harm and common indicators
- Outline the procedures and process for intervention
- Set out guidance for and emphasise the importance of, consideration of actions taken, establishing standards of good practice and outcomes for people's lives.
- Recognise existing systems to protect adults at risk, such as the national care standards, sound recruitment practices and appropriate training and support of staff.

- Are consistent with the European Convention on Human Rights, the Human Rights Act 1998 and the United Nations Convention on the Rights of Persons with Disabilities.

University Health and Social Care Partnership North Lanarkshire has responsibilities to ensure that all adults at risk are supported and are as safe as reasonable from harm and that they are respected, included, have their views considered and are fully involved in all decision making. The aspiration, for all adults at risk in our community, is that they are empowered, wherever possible to have as much say as they can through support from all the public partners in University Health and Social Care North Lanarkshire and its associates, so that they can be free from preventable harm and are able to make choices about how to live as independently as possible in line with their personal strengths.

The Adult Support and Protection (Scotland) Act 2007 should be read in conjunction with other adult legislation which is of equal importance in the protection of adults at risk – including the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care & Treatment) (Scotland) Act 2003. The links below have been provided for all relevant legislation, which may require to be referred to or considered, either separately or in conjunction with one another, in the protection of adults. There are also links to relevant guidance including the revised [The Code of Practice for Adult Support and Protection in Scotland](#) (Scottish Government, 2022)

PLEASE NOTE THAT THIS IS A WORKING DOCUMENT AND IT MAY BE SUBJECTED TO CHANGE DURING IT'S LIFESPAN.

Legislation

Adult Support and Protection (Scotland) Act 2007

Social Work (Scotland) Act 1968

Adults with Incapacity (Scotland) Act 2000

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

Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

Local Government (Scotland) Act 1973

Data Protection Act 2018

Carers (Scotland) Act 2016

Human Rights Act 1998

Race Relations (Amendment) Act 2000

Regulation of Care (Scotland) Act 2001

Vulnerable Witnesses (Scotland) Act 2004

Equality Act 2006

Protection of Vulnerable Groups (Scotland) Act 2007

Equality Act 2010

Sexual Offences (Scotland) Act 2009

Domestic Abuse (Scotland) Act 2011

Domestic Abuse (Scotland) Act 2018

Human Trafficking and Exploitation (Scotland) Act 2015

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011

Victims and Witnesses (Scotland) Act 2014

Anti-social behaviour, Crime and Policing Act 2014

Social Care (Self-directed Support) (Scotland) Act 2013

Criminal Justice (Scotland) Act 2016

National Guidance for the 2007 ASP Act

[Adult Support and Protection \(Scotland\) Act 2007 - Codes of Practice July 2022](#)

[Adult Support and Protection \(Scotland\) Act 2007 - Guidance for Adult Protection Committees July 2022](#)

[Adult Support and Protection \(Scotland\) Act 2007 – Guidance for General Practice July 2022](#)

Part 1 – General principles and definitions

- 1.1 The Adult Support & Protection (Scotland) Act (hereby referred to the Act) is accompanied by a set of guiding principles, which must be borne in mind, by anyone taking or considering action under the legislation. These aim to ensure that the Act is interpreted correctly and ensure that any action taken under the legislation is **both necessary and proportionate**.
- 1.2 The general principles set out in part one of the Act are that an intervention should provide **benefit** to the adult and should be the **least restrictive** option available to fulfil the aim of the intervention.
- 1.3 In North Lanarkshire the general overarching principles and values of good practice underpin all interventions to protect adults who may be at risk of harm and are as follows:



- Every adult at risk has a right to be protected from all forms of harm, abuse, neglect and exploitation.
- The welfare and safety of the adult takes primacy in relation to any activity under the Act.
- Every effort should be made to enable the individual to express their wishes and make their own decisions to the best of their ability recognising that such self-determination may involve risk.

- Every effort should be made by professionals involved to understand the risk of harm within the context of the adults' circumstances. This means obtaining detailed information relating to the risk of harm from the adult's perspective and from those who have an interest in the adult.
- Where it is necessary to, and there is power to make decisions on behalf of the adult for their own safety (or the safety of others) this should be proportionate and be the least restrictive response to the identified risks to health, welfare, property or finances of the adult consistent with the current legislative framework.
- The adult should not be treated less favourably than another adult in a comparable situation.
- Consideration should be taken of the adult's abilities, background and characteristics.
- The views of the adult's nearest relative, primary carer, named person, guardian or attorney and any other person who has an interest in the adult's wellbeing or property, must be listened to and acknowledged.

1.4 There are three main acts which provide a framework for protecting adults at risk of harm in Scotland. These are; **Adult Support and Protection (Scotland) Act 2007**, **Adults with Incapacity (Scotland) Act 2000** and the **Mental Health (Care & Treatment) (Scotland) Act 2003**. Where an intervention under these Acts is considered, the above principles are set down in the legislation and accompanying Codes of Practice and should be followed.

[The Code of Practice for Adult Support and Protection in Scotland](#) (Scottish Government) was updated in July 2022. It is a helpful document that practitioners should reference in all cases where the Act is being considered or applied at any time.

Definition of an Adult at risk

The Adult Support and Protection (Scotland) Act 2007 (Section 53) defines an adult as a person aged **16 years or over**.

- 1.5 Section 3(1) of the Act defines 'adults at risk' as individuals who:
- are unable to safeguard their own wellbeing, property, rights and 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.

1.6 **All three points of the above definition must be satisfied for a person to be deemed an adult at risk under this legislation.**

There needs to be a causal effect between the three points. It is important to note that the existence of a particular condition on its own does not mean that an adult is at risk. It is the interplay of how the adults condition impacts upon their ability to safeguard their wellbeing, property, rights etc resulting in a risk of harm. A person may have a disability and be perfectly able to safeguard themselves.

Unable to safeguard

- 1.7 Although it is important to consider someone's capacity under the Adults with Incapacity (Scotland) Act 2000 whilst undertaking duties under the Act, it should be noted and strongly emphasised that the three-point criteria above make **no reference to capacity**. For the purpose of the Act, capacity should be considered on a contextual basis around specific decisions and not restricted to an overall clinical judgement.

Capacity is not, and never should be, a consideration in application of the three-point criteria: **an inability to safeguard oneself is not the same as lacking mental capacity**.

A person's ability to safeguard can fluctuate due to factors in their life and thus even if a person is deemed to have general capacity there must be attention paid to whether a person has clear **decisional** (to make) and **executional** (to implement) ability to safeguard themselves.

- 1.8 A distinction therefore requires to be made between **Unable** and **Unwilling** to safeguard themselves.

Unable, is not defined within the Act however Collins English Dictionary defines it as "lacking the necessary power, ability, or authority (to do something) not able". Unable to safeguard should also be understood in a changing context informed by a more trauma-informed approach and considering undue pressure – which may render a person unable' to make decisions to protect themselves.

'Unwilling' is defined in the Collins English Dictionary as “unfavourably inclined; reluctant” and may thus describe someone who is aware of the potential consequences but still makes a deliberate choice.

A distinction may therefore be drawn between an adult who **lacks these skills** and is therefore unable to safeguard themselves, and one who is deemed to have the power, ability or authority to safeguard themselves, but who is apparently **unwilling** to do so.

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

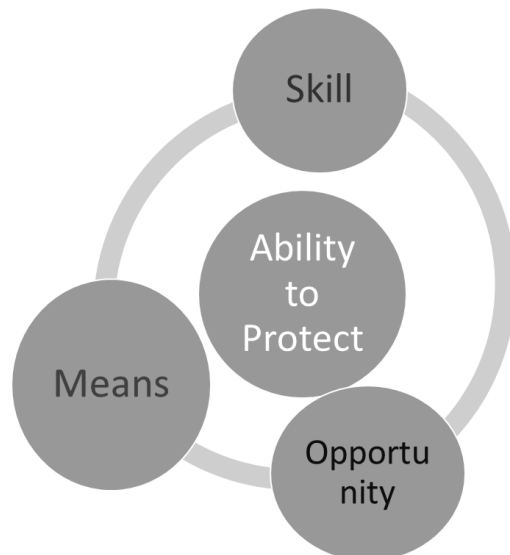
1.10 It is therefore important, as part of the assessment, to understand the person's decision-making processes. This should include an understanding of any factors which may have impacted upon them with the effect of impinging on, or detracting from, their ability to make and action free and informed decisions to safeguard themselves. A person who lacks the skills, means and/or opportunity to safeguard themselves may therefore mean that in these circumstances they should be regarded as unable to safeguard themselves.

Practitioners should therefore take particular care when considering the Unable to safeguard criteria of the Act. Consideration to be made regarding the adult's skills, means and opportunities to safeguard themselves.

Extends beyond available information, Advice and services

Personal resources
Reasonable mental wellbeing
Physical health
Strength of character
Resilience

Sources of support around the person
Neighbours, friends, family
Community groups
GPs, nurses, shop staff



More than cognitive capacity
Ability to
concentrate
think things through
resist undue influence

Self awareness of impact of history, relationships
Self neglect, substance misuse, trauma -
how these impact on choices and belief

A favourable occasion or a good chance
Hidden psychological aspects –
A belief that change for the better is possible, that
they are worth the effort, trust someone enough

Is current way of living self preservation?

Is ASP process a threat

Similar considerations apply to **coercive control or undue pressure**. In such situations the control exercised over a vulnerable person may also effectively render them unable to take or action decisions that would protect them from harm. Further guidance on undue pressure can be found at section [12.11](#) of this document.

For further guidance on unable to safeguard please see [National ASP Codes of Practice](#).

Trauma and Trauma Informed Practice

1.11 Most adults who are, or are believed to be, at risk of harm will be people for whom the application of the three-point criteria will be relatively straightforward. This will lead to consideration of options for intervention whether under the provisions of the Act and/or other relevant legislation. However, there are a number of people for who straightforward application of the three-point criteria is not possible and some may remain in situations which continue to compromise their health, wellbeing and safety. All adults who have capacity have the right to make their own choices about their lives, and these choices should be respected if they are made freely.

1.12 As discussed above, whether someone is “unable or unwilling” can be complex and for some, the complexity, severity and persistence of post traumatic reactions may impact to the extent that these individuals repeatedly take decisions that place them at risk of harm.

Equally, issues with their sense of self and interpersonal relationships, seriously affecting all or many of their relationships across many areas of life, can severely compromise their ability to safeguard. These safeguarding challenges can be associated with patterns of chronic difficulties in experience of emotions, emotional expression and/or regulation, and associated coping strategies such as self-harm, care-seeking and use/misuse of alcohol and drugs.

1.13 As part of an assessment – which may require significant time to undertake - it is crucial to understand the person’s decision-making processes. Consideration should be given to any factors that may have impacted upon the adult with the effect of impinging on, or detracting from, their ability to make free and informed decisions to safeguard themselves. This could therefore mean that, in some circumstances, they should be regarded as unable to safeguard themselves.

- 1.14 **Trauma informed practice** is an approach to care provision that considers the impact of trauma exposure on an individual's biological, psychological and social development. Delivering services in a trauma informed way means understanding that individuals may have a history of traumatic experiences which may impact on their ability to feel safe and develop trusting relationships with services and professionals.
- 1.15 Trauma informed practice is not intended to treat trauma-related issues. It seeks to reduce the barriers to service access for individuals affected by trauma, and to promote understanding of the impact of trauma on individuals.
- 1.16 Key principles of a trauma informed approach are:
- Safety
 - Trustworthiness
 - Choice
 - Collaboration
 - Empowerment
- 1.17 **Taking a trauma informed approach to adult support and protection** enables all those who perform any of the functions under the Act to better understand the range of adaptations and survival strategies that people may make to cope with the impacts of trauma. Practitioners should be alert to the need to view behaviours that compromise health, wellbeing and safety as adaptations that may have played a useful role in the individual's life in helping them to survive, and cope with, their experiences of trauma. Examples of such adaptations can include maintaining contact with an alleged harmer; use of drugs or alcohol; self-harm; hoarding, and avoidance of places and people, including professional relationships and services, which may trigger reminders of prior traumatic experiences. As above, in these circumstances, some people's ability to take and action decisions about safeguarding themselves may effectively be compromised.
- 1.18 [The 2017 Transforming Psychological Trauma: A Knowledge and Skills Framework for the Scottish Workforce](#) details the specific range of knowledge and skills required across the workforce, depending on their and their organisation's role and remit in relation to people who have experienced trauma. Those with direct and frequent contact with people who may be affected by trauma should be equipped to 'trauma

skilled' level of practice. Those professionals with regular and intense contact with people affected by trauma and who have a specific remit to respond by providing support, advocacy or specific psychological interventions, should have adequate training and experience to practice at 'trauma enhanced' level. Practitioners with responsibilities under the Act should be trained to the appropriate levels, as noted in The Scottish psychological trauma training plan (page 22). This is to ensure their adult support and protection practice reflects the in-depth knowledge and understanding required to intervene in the lives of those affected by trauma. Taking a trauma informed approach can result in better outcomes for people affected by trauma and seek to address the barriers that those affected by trauma can experience when accessing support.

- 1.19 Adopting a trauma informed approach to adult support and protection work is good practice, even when applied to individuals who have not experienced, or been significantly impacted by, psychological trauma.

Further information and learning can be found on North Lanarkshire's Council's LearnNL.

An adult is at risk of harm if:

- another person's conduct is causing (or is likely to cause) the adult to be harmed; or
- the adult is engaging, (or is likely to engage) in conduct which causes (or is likely to cause) self harm.
- Harm can be a one-off event, an escalation or ongoing harm.
- Harm can also be intentional or unintentional.
- It can also be something that is done to a person, but also something that is left undone (harm by **omission**).

Definition of harm

- 1.20 The definition of harm or abuse within the 2007 Act can take many forms which, in practice, may not exist in isolation but may overlap. It is common for adults to be experiencing multiple types of harm at the same time.

The key issue remains the exercise of sound professional judgement set against individual circumstances.

Harmful or abusive conduct may consist of but not exclusive to:

Discrimination

1.21 Discriminatory harm consists of abusive or derisive attitudes conveyed orally, or in writing or through behaviour aimed at denigrating a person's gender, sexuality, ethnicity, race, culture, religion, age, disability or any other characteristic of the person. Such harm is a violation of human rights and may constitute a hate crime. Examples include:

- Abusive name calling due to race, disability etc
- Abusive acts such bullying due to gender, sexuality etc
- Abusive communications such as graffiti, letters or social media communications

Physical

1.22 Physical harm occurs when a harmer intentionally or recklessly causes the victim to believe he or she is about to be subjected to violence or is subjected to physical actions that result in distress or injury regardless of the degree of the consequences. Examples include:

- Physical assault e.g. punching, pushing slapping, mishandling, tying down, giving food or medication forcibly or covertly.
- Use of medication other than as prescribed.
- Inappropriate restraint e.g. using bed sides to prevent someone getting out of bed or locking doors to keep people in.

Emotional or Psychological

1.23 Emotional or Psychological harm (in the absence of other forms of harm) is caused when conduct leads to fear, loss of self-esteem, loss of dignity, humiliation, feelings of shame, isolation or impotence. This results in mental distress for the adult. Examples include:

- Swearing, shouting, bullying, humiliating.
- Playing on known anxieties

- Manipulation or the prevention of the use of services or facilities, which would aid or enhance life experience.
- Isolation or sensory deprivation.

Financial and Material

1.24 Financial harm is caused by the illegal or improper use of the individual's resources (both financial and property) by another person without their informed consent or through the exercise of undue influence or pressure. Family members, neighbours or acquaintances can sometimes carry out such exploitation, but it can also be done by paid or unpaid carers or volunteers. Examples include:

- Theft or fraud.
- Misuse of money, property or resources e.g. spending an adult at risk's benefit without their agreement or buying inappropriate goods from which the adult will not benefit
- The removal of objects or items that mean something to the adult. These objects or items can have emotional, monetary, and practical value.

North and South Lanarkshire Adult Protection Committees have developed a [Finance and Property Harm guide](#).

Sexual

1.25 Sexual harm and abuse occurs when a harmer engages in physical acts of penetrative or non-penetrative contact sexual activity or non-physical sexual activity involving visual or auditory exposure to sexually explicit material with a victim who is unable to consent to or refuse such activity. Examples include:

- Incest.
- Rape, indecent assault e.g. inappropriate touching.
- Acts of gross indecency.
- Forcing an adult to observe indecent images or footage.

1.26 **Particular consideration** is required when sexual harm is being caused by another person who could also be considered an adult at risk of harm.

For example, sexual harm can be caused by residents towards other resident(s) within a care home or acute settings. This can often be due to changes in their condition, and it is therefore important to consider what support and/or protection they may require.

Sexual harm may be considered a criminal matter and must be reported to Police Scotland – regardless of whether the victim or the alleged harmer has been deemed to have capacity or not. It is Police Scotland’s duty to make appropriate inquiries regarding criminality. **Forensic medical examination must be considered.**

The Mental Welfare Commission has published a guidance around [Adults with Incapacity, Sexual Relationships and the Criminal Law](#) which may be helpful.

- 1.27 Regardless of whether criminality is established or not, **the support for a victim** is crucial and they should receive appropriate support irrespective of their capacity and ability to verbalise their understanding of what has happened to them.

Self-Neglect

- 1.28 Self-neglect entails the failure of the individual to meet his or her own personal, physical and health needs leading to deterioration in their condition. Self-neglect may arise due to a range of motivational or mental health conditions or a combination of both. Examples include:

- Failure to care for one’s health needs, such as not looking after one’s skin, teeth, feet etc.
- Failing to take prescribed medication
- Failing to recognise or limit behaviour which is putting oneself at risk, such as associating with people exploiting vulnerable adults or indulging in highly risky behaviours
- Failure to care for one’s belongings, such as clothing and property
- Failure to care for one’s environment, such as cleanliness within the home, hoarding issues or property falling into disrepair

The North and South Lanarkshire Adult Protection Committees have published a [Neglect and managing resistance guidance](#).

Hoarding

- 1.29 Self-neglect and Hoarding can often be looked at under the same umbrella term. However, it is important to consider Hoarding as a separate concern and harm type. People who hoard may not be considered self-neglecting and vice versa.

Extreme Hoarding behaviour has been classified as a mental health diagnosis in its own right and can also be linked to other diagnosis. In extreme cases it can lead to some people living in dangerous and/or unhealthy conditions, resulting in a risk of harm.

It is important to recognise that hoarding and self-neglect are both situations which may require considerable time to address and should be based on person-centred and relationship-based practice approaches. It is also important to consider a [Trauma Informed Practice](#) approach.

Self-harm

- 1.30 Self-harm is when the individual intentionally damages or injures their body. It's usually a way of coping with or expressing overwhelming emotional distress. Examples include:

- cutting or burning one's own skin
- punching or hitting oneself
- poisoning oneself with tablets or liquids, or similar
- Inserting objects into one's body

Neglect – can also be considered harm by omission

- 1.31 Neglect entails the failure of responsible individuals to meet the physical, psychological, emotional, and social needs of an individual either intentionally or through omission leading to deterioration in their condition in one or more areas of their wellbeing. Neglect may arise from individual actions or omissions or result from systemic failures in provision by the responsible agency. Examples include:

- Denial of or lack of food, sleep, clothing.
- Failure to provide for warmth, shelter, medical treatment.
- Failure to provide for psychological wellbeing.
- Denial of medication.
- Failure to respect differences and resulting needs.

Situations requiring particular consideration:

Random violence

- 1.32 Random violence i.e., an attack by a stranger or strangers on an adult is an assault and should be reported to the police. These assaults will not usually require the implementation of the adult protection procedures. However, there is a possibility that the violence may be part of a pattern of victimisation in a community or neighbourhood, and in this case adult protection procedures should apply. It could also result from a lack of appropriate support care which has placed the person in the situation where the assault occurred or the person themselves has put themselves in that situation due to issues of lack of self-care. This too would require consideration.

Domestic Abuse

- 1.33 [The Domestic Abuse \(Scotland\) Act 2018](#) received Royal Assent on 9th March 2018. The legislation creates a specific offence of “abusive behaviour in relation to a partner or ex-partner”. This will cover not only physical abuse but other forms of psychological abuse and coercive and controlling behaviour that could not easily be prosecuted using the previous criminal law. The law allows the police and courts to pursue someone on a “course of conduct” offence – that is a single offence where physical, psychological and coercive behaviour can be prosecuted at once. This reflects a growing understanding that domestic abuse is often a course of behaviour that extends over a period of time and includes not only physical violence. It should be noted that physical violence does **not** require to be present for a crime of domestic abuse to be committed under the Domestic Abuse (Scotland) Act 2018.

Domestic abuse can be physical, sexual, and emotional or psychological and is a pattern of behaviour carried out by the person perpetrating domestic abuse to cause fear and control behaviour of the victim/survivor. This pattern of behaviour can include isolation, threats and micromanagement of everyday life and you may hear it being referred to as coercive control.

- 1.34 There are strong similarities within this definition and the definitions of an adult at risk. **The key factor in considering adult support and protection procedures in situations of domestic abuse should be the presence of an adult at risk as defined within the Act and this guidance.** Not everyone who experiences domestic abuse will satisfy the three-point criteria that defines an adult at risk.

- 1.35 Victims/ survivors of domestic abuse who don't meet the criteria that defines an adult at risk can still be at significant risk of harm (including homicide) due to the tactics of the person perpetrating domestic abuse. To assist you in assessing the level of risk and to develop a safety plan with the victim/ survivor you can use the DASH-RIC. You can find guidance on the DASH-RIC and how to use the risk assessment tool [here](#) Training is also available on [LearnNL](#).

Please note, the DASH-RIC can also be used with victims/ survivors who **do** meet the criteria for an adult at risk.

Cases that score 14 or more on the DASH-RIC are classed as high risk (this is of serious injury or homicide) and should be referred to MARAC even if they are being progressed through adult protection processes. MARAC has a significant focus on the person perpetrating domestic abuse and their pattern of abusive behaviour. This will be useful to practitioners who are assessing risk and planning for the safety of the adult at risk of harm.

Forced Marriage

- 1.36 [Forced Marriage etc \(Protection and Jurisdiction\) \(Scotland\) Act](#) 2011 came into force on 28 November 2011. From September 2014, a forced marriage has become a criminal offence in Scotland.

A forced marriage is a marriage in which one or both spouses do not consent to the marriage and duress is involved.

It is also a forced marriage if it involves a child, or an adult who lacks the capacity to give free and full consent to the marriage or is unable to understand the nature of marriage.

Duress can include physical, psychological, financial, sexual and emotional pressure, threatening conduct, harassment, threat of blackmail, or use of deception and other means.

- 1.37 Part 1 of the Forced Marriage Act empowers the civil courts in Scotland to make a Forced Marriage Protection Order (FMPO) which can protect both adults and children at risk of being forced into marriage and can offer protection for those who already have been forced into marriage.

If it is thought the person subject to a forced marriage, or a planned forced marriage, is considered to meet the three-point criteria of being 'an adult at risk of harm', these procedures will apply.

Note: The danger of involving the family and the community in cases of forced marriage may increase the risk of serious harm to an individual. The family may deny that the individual is being forced to marry and they may expedite any travel arrangements and bring forward the wedding.

- 1.38 Always remember the 'one chance' rule: you may only have one chance to speak to a potential victim of forced marriage and, therefore, only one chance to save a life.

[North Lanarkshire Multi Agency Guidance](#)

[Scottish Government Guidance on Forced Marriage](#)

Modern Slavery

- 1.39 Modern slavery encompasses:

- human trafficking
- slavery, servitude, and forced or compulsory labour.

An individual could have been a victim of human trafficking and/or slavery, servitude and forced or compulsory labour.

- 1.40 For a person to have been a victim of human trafficking there must have been:

- action (recruitment, transportation, transfer, harbouring or receipt, which can include either domestic or cross-border movement)
- means (threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability - however, there does not need to be a means used for children as they are not able to give informed consent)
- purpose of exploitation (for example, sexual exploitation, forced labour or domestic servitude, slavery, financial exploitation, illegal adoption, removal of organs)

- 1.41 For a person to have been a victim of slavery, servitude and forced or compulsory labour there must have been:

- means (being held, either physically or through threat of penalty – for example threat or use of force, coercion, abduction, fraud, deception, abuse of power or

vulnerability. However, there does not need to be a means used for children as they are not able to give informed consent)

- service (an individual provides a service for benefit, for example begging, sexual services, manual labour, domestic service)

1.42 Forced or compulsory labour may be present in trafficking cases. However, not every person who is exploited through forced labour has been trafficked.

People can be trafficked for many different forms of exploitation such as forced prostitution, forced labour, forced begging, forced criminality, domestic servitude, forced marriage, and forced organ removal.

1.43 Contrary to a common misconception, people don't necessarily have to be transported across borders for trafficking to take place. In fact, transporting or moving the victim doesn't necessarily define trafficking.

1.44 The effects of trafficking on its victims are wide-reaching and many will experience significant harm as a result of their situation. As traffickers seek to avoid contact with the authorities, care and access to universal services such as health and education often result in poor outcomes for those who are trafficked. Employees should be aware that:

- **The Adult Support and Protection (Scotland) Act 2007 may apply for trafficked children/young people who are age 16 or over**
- **The Adult Support and Protection (Scotland) Act 2007 may also apply to adults who have been trafficked**

[Scottish Government guidance on Human Trafficking](#)

[National referral mechanism](#)

1.45 Modern slavery is a complex crime and may involve multiple forms of exploitation. Victims may not be aware that they are being trafficked or exploited, and may have consented to elements of their exploitation, or accepted their situation. If you think that modern slavery has taken place, the case should be referred to the National Referral Mechanism (NRM) so that the relevant competent authority can fully consider the case. You don't need to be certain that someone is a victim.

1.46 If you think you have encountered a person (adult or child) in Scotland or Northern Ireland who has been a victim of modern slavery, you should complete a referral via the [online process](#).

1.47 Adults will only be accepted into the NRM if they have consented to the referral being made. Informed consent requires that the potential victim have the NRM, the referral process, and potential outcomes, clearly explained to them. Individuals who are recognised as a potential victims of modern slavery through the NRM have access to specialist tailored support, which may include access to advice, accommodation, protection and independent emotional and practical help.

For further information regarding the National Referral Mechanism please [click here](#).

Alcohol and substance use

1.48 Adults have the right to make choices and decisions about their lives, including the use of alcohol and substances, even if that means they remain in situations or indulge in behaviour which others consider inappropriate.

Vulnerability or a lack of ability to safeguard, which is due to temporary problematic alcohol or drug use, would not by itself result in an individual being considered an “adult at risk”. The problematic use of drugs or alcohol may take place alongside and may be a contributing factor to a physical or mental illness, mental disorder or a condition such as alcohol related brain damage. If this is the case, an adult may be considered an adult at risk under the Act.

1.49 It may also be that the impact of a person’s dependency renders them subject to physical or mental infirmity, and places them at risk of harm. Adults’ dependant on drugs and alcohol may also be impacted by trauma. Consideration of the impact of trauma on the individual’s ability to safeguard should be a thread throughout ASP activity.

To access the ASP Code of Practice guidance [click here](#)

Institutional harm

1.50 Institutional harm and abuse may involve conformity to routine, imposition of values and standards on users of the service to meet the needs of the institution and which may be to the detriment of the individual. **There may be instances when Large Scale**

Investigation procedures may be required to be considered – further guidance on this can be found [here](#).

It should be noted that it is possible for an adult at risk to personally experience harmful conduct in an institution without the institution as a whole being abusive.

1.51 Examples of harm and abuse within institutional settings would include:

- Poor management practice which promotes poor care standards, lack of positive responses to complex needs, rigid routines, inadequate staffing and insufficient knowledge base within the service.
- Unacceptable ‘treatments’ or programmes which include sanctions or punishment such as withholding food or drink, seclusion, unauthorised use of control and restraint and over medication.
- Failure of agencies to ensure that staff receive appropriate direction, supervision and guidance on anti-discriminatory practice.
- Failure to access key services such as health care, dentistry, prostheses.
- Lack of personalised and outcome focused care planning
- Inappropriate use of equipment, or lack of appropriate equipment.

1.52 Should the service user who is the subject of the Adult Support and Protection referral be care managed by **another Local Authority**, North Lanarkshire Council continues to hold the legislative duty to undertake any inquiry under the Act. However, it is good practice to link with the placing authority and there may be times when joint working should be considered. It is important to note that the placing Local Authority continues to hold responsibility for any **care management** concerns/decisions.

The same principles should be followed if a North Lanarkshire Council resident is the subject of to an Adult Support and Protection referral whilst residing out with the local authority.

1.53 Consideration should also be given to whether there are any concerns regarding ill-treatment and wilful neglect.

Ill-treatment and Wilful Neglect

1.54 **Note: ill treatment and the wilful neglect of an adult could be a criminal offence**

- 1.55 [The Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#) was given Royal Assent on 6 April 2016 and includes offences of ill-treatment or wilful neglect. There are two main offences: an offence that applies to care workers and an offence that applies to care providers (see definitions below). These offences came in to force on **1 October 2017**.

The offences in the 2016 Act for ill-treatment or wilful neglect recognise the particular vulnerabilities of those receiving health and social care as well as the level of trust placed in those providing that care. The 2016 Act provides penalties which are at an appropriate level proportionate to the breach of trust in such crimes (see definitions below).

- 1.56 Presently, there are offences of wilful neglect and ill-treatment set out in section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and section 83 of the Adults with Incapacity (Scotland) Act 2000. These offences cover the neglect or ill-treatment of mentally disordered people and adults with incapacity.
- 1.57 On investigation, the police may decide that there is sufficient evidence to report the alleged offence to the Procurator Fiscal. In the course of such an investigation, it would be up to the police to question anyone they thought relevant, including former staff.
- 1.58 Section 29 of the 2016 Act amends the Police Act 1997 to insert the care worker offence into a list of offences which must always be disclosed on all types of higher-level disclosure. The inclusion of this offence on the 'Offences which must always be disclosed' list means that no matter how old the conviction is, it should always be disclosed by Disclosure Scotland on a higher-level disclosure.

Definitions

- 1.59 **Care worker definition and care worker offence** Section 26 of the 2016 Act sets out the care worker offence and the penalty for conviction. "Care worker" is defined in section 28(1) and covers care workers (employees and volunteers), their managers and supervisors, and directors or similar officers of organisations. The offence is committed where a care worker is providing care for another person and ill-treats or wilfully neglects that person.
- 1.60 **Care provider definition and care provider offence** Section 27 of the 2016 Act sets out the care provider offence that will apply to providers of health or social care services. Care provider is defined in section 28(3) and covers both legal persons

(corporate bodies, partnerships and unincorporated associations) and individuals who have others working for them (see below). The care provider offence is committed if a three-stage test is met:

1. an individual is ill-treated or wilfully neglected by someone providing health care or social care on behalf of the care provider,
2. the care provider's activities are organised in such a way as to be a gross breach of the duty of care (see below) owed to the individual, and
3. Were it not for that gross breach, the ill-treatment or wilful neglect would not have occurred (or would have been less likely to occur).

1.61 **Relevant duty of care and 'gross' breach of that duty** Section 27(3) places a "relevant duty of care" of the care provider which means a duty owed in connection with providing, or arranging for the provision of, adult health care or adult social care, and a breach of a relevant duty of care is a "gross" breach if the conduct alleged to amount to the breach falls far below what can reasonably be expected of the care provider in the circumstances.

Duty of Candour

1.62 The [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act](#) also includes a duty of candour on health and social care organizations. This creates a legal requirement for health and social care organisations to inform people (or their carers/families) when they have been harmed as a result of the care or treatment they have received. The duty of candour was implemented in Scotland on 1st April 2018.

The principles and ethical duty of openness apply to all incidents and any failure in care or treatment. The Duty of Candour applies to incidents whereby moderate harm, significant harm or death has occurred.

Providing health and social care services is associated with risk and there are unintended or unexpected events resulting in death or harm from time to time.

1.63 When this happens, people want to be told honestly what has happened, what will be done in response, and to know how actions will be taken to stop this happening again to someone else in the future.

1.64 There is a need to improve the focus on support, training, and transparent disclosure of learning to influence improvement and support the development of a learning culture across services.

1.65 Candour is one of a series of actions that should form part of organisational focus and commitment to learning and improvement.

Transparency, especially following unexpected harm incidents is increasingly considered necessary to improving the quality of health and social care.

Being candid promotes accountability for safer systems, better engages staff in improvement efforts, and engenders greater trust in patients and service users.

1.66 The requirements of the Duty of Candour are as follows:

As soon as reasonably practicable after becoming aware that a safety incident has occurred that falls into the moderate harm or more serious categories the social work professional must, report the incident to their line manager, for escalation to the Head of Social Work or delegated person so that a decision can be made as to how to:-

- notify the 'relevant person' (this is usually the service user, but may in some circumstances be the relative, carer or advocate) that the incident has occurred and
- provide a reasonable support to the relevant person in relation to the incident.

Other types of harm:

1.67 It is important to consider that no harm or abuse is excluded under the Act. **Professional curiosity** is key.

For example:

1.68 **Online harm** – an adult accessing/ becoming exposed to inappropriate content online, potential scamming, being exposed to radical views and far-right extremism, receiving unwanted contact through social media (grooming, cyberbullying and sexual harassment). Online harm can potentially also lead to financial abuse due to blackmailing and scams.

1.69 **Cuckooing** – a person or a group of people taking over someone's house and refusing access to carers or stopping contact with family and friends and visits from professionals.

1.70 **County Lines** – often directed towards young, vulnerable children and adults. Being used for selling drugs, carrying money and weapons through the use of violence and coercion.

1.71 **Senior social workers, Managers and Council Officers should acknowledge that all types of harm have the potential for criminality to be present.**

In cases where criminality is suspected or known, the situation must be reported to the Police at the earliest opportunity and confirmation sought as to whether Police intend to fully investigate and when this will occur, so as not to leave an individual at ongoing risk.

The Council Officer, senior social worker and/or manager should liaise with Police Scotland to establish whether further action under Adult Support and Protection would be detrimental to any criminal investigation and if so how to proceed.

Professional Curiosity

1.72 Professional curiosity is the capacity and skills of communication to explore and understand what is happening for a person, rather than making assumptions or accepting things at face value. It requires skills of looking listening, asking direct questions and being able to hold difficult conversations. Professional Curiosity and challenge are a fundamental aspect of working together to keep adults safe from harm. This approach is important in helping to identify harm, abuse and neglect which can be less obvious and can ensure that the right information is gathered and shared to assess both needs and risks. Being professionally curious is necessary to fully understand a situation and the risks an individual may face, which are not always immediately obvious.

Being more curious as professionals and 'digging deeper' into areas where there is little, or no information will help to inform assessments and empower you to influence key moments of decision making to reduce risks to adults. Escalating concerns that could cause drift, delay, and a shift in focus from the adults' best interests should be embraced and seen as effective care.

Data Protection and Information Governance

- 1.73 A number of bodies have a duty to co-operate under the Act (Section 5), e.g. Health Boards and Healthcare Improvement Scotland, Police and Councils. Any information received during an inquiry is treated with the utmost confidence and will not be disclosed to any third parties other than in accordance with the provisions of the Act. (Section 5) outlines a further number of service providers who contribute to the protection of adults at risk. Bodies named in the Act have unequivocal responsibilities to cooperate with the local authority undertaking ASP inquiries; to notify the council of an adult who may be at risk of harm; and to cooperate with others named. Other organisations who are not specifically named should also cooperate with ASP processes where requested, in order to achieve the best outcome for the individual at risk of harm.
- 1.74 **Data protection law** enables organisations and businesses to share personal data securely, fairly and proportionately. The Information Commissioner's Office (the "ICO") has a [Data Sharing Code of Practice](#) and the resources available at their Data Sharing Information Hub provide detailed guidance and tools to aid data sharing in compliance with data protection law. The ICO provide a Step-by-step guide to data sharing. The ICO page linked above have a helpful advice relating to data sharing and associated misconceptions.

Capacity and Consent

- 1.75 In relation to an adult's capacity the presumption in law is that all adults have the capability to manage their own affairs until or unless they are recognised, in law, as being incapable.

Within the Adults with Incapacity (Scotland) Act 2000, the law makes a distinction between those who are capable of managing their own affairs and those who are not.

- 1.76 Under the Adult Support and Protection (Scotland) Act 2007 all public agencies have a duty to report concerns about a person who is or may be an adult at risk of harm, to the council. It should be noted that this is **not dependent on the adult's consent** and there is no mention of capacity in the 3-point criteria, at the point of referral.
- 1.77 In relation to implementing the 2007 Act, some interventions are reliant on the adult's consent. Consent is required for example, to interview; undertake medical

examinations; attend meetings and agree to a protection plan. Without the adult's consent and cooperation there are restrictions on the support and protection which can be offered or provided to an adult at risk of harm however there should not be a barrier to ongoing protection.

1.78 There are actions which can be taken to establish whether the adult is an adult at risk of harm which do not require consent, such as gathering information, sharing information with other relevant professionals, holding case conferences or protection planning. Wherever possible, the adult should be informed of these activities.

1.79 **The ASP codes of practice states that “the adult's refusal to co-operate in an adult protection inquiry should not automatically signal the end of any inquiry, assessment or intervention. Whilst the adult has a right not to engage in any such process, the council and its partners should still work together to offer any advice, assistance and support to help manage any identified significant risks. Any assistance should be proportionate to the risk identified and any need to support carers’ needs should be considered.” (ASP Codes of Practice 2022, p.49)**

1.80 **Within the Adults with Incapacity (Scotland) Act 2000 (AWI) an adult means a person who has attained the age of 16 years;**

“Incapable” means incapable of:

- Acting; or
- Making decisions; or
- Communicating decisions; or
- Understanding decisions; or
- Retaining the memory of decisions

An adult will not be deemed incapable by reason only of lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid.

1.81 Capacity applies to both decisions making and the implementation (execution) of decisions. A person can have the capacity to make a particular decision but through illness, traumatic event, or infirmity may not have the physical or emotional capacity to retain a memory of a decision and/ or to implement that decision. A person's capacity

can be transient, vary over time and vary in respect of different types of decision making.

- 1.82 As capacity can change over time, it should be assessed at the time that consent is required. When considering capacity, practitioners must also consider factors such as the adult's mood or state of mind, lack of confidence - or lack of experience - in making decisions or carrying out decisions, and the individual's ability to retain the memory of the decision. When requesting advice on a person's capacity, it is important that the determination of capacity is specific in relation to which areas of decision making and executive action the person may lack capacity.
- 1.83 **The test of capacity is a clinical decision and should be supported by medical evidence.**
- 1.84 In all cases both new and open, Council Officers and managers must consider the skills and abilities of the adult to promote and safeguard wellbeing, property, rights and interests, including the capacity to understand the risks of harm, both actual and potential, and decide how to proceed having regard to the principles of the Act.
- 1.85 Where there are concerns and/or it has been established that an adult at risk lacks capacity, the 2007 Act recommends that other legislation including the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care & Treatment) (Scotland) Act 2003 are considered in conjunction with the Adult Support and Protection (Scotland) Act 2007 to protect the adult.
- 1.86 **In these situations, the Council Officer must discuss the case with the senior social worker and take guidance from a Mental Health Officer (MHO) before proceeding. If the adult is already subject to guardianship, the supervising officer and private guardian or attorney should be consulted, where appropriate.**

The ASP Code of Practice sets out some factors to consider:

- does the adult understand the nature of what is being asked and why?
- is the adult capable of expressing their wishes/choices?
- does the adult have an awareness of the risks/benefits involved?
- can the adult be made aware of their right to refuse to answer questions as well as the possible consequences of doing so?

To access additional information on capacity and consent within the ASP Code of Practice [click here](#)

- 1.87 Specific consideration may be required when considering capacity and **Adult Support and Protection involving adults with Alcohol Related Brain Injury (ARBD)**. The Mental Welfare Commission has provided further advise which can be accessed [here](#).

Reform of the Mental Health and Capacity Law

- 1.88 The Final report of [The Independent Review of Mental health, Capacity and Adult Support and Protection legislation](#) published in 2022 gave a significant number of recommendations to reform current mental health and capacity law in Scotland – Mental Health (Care and Treatment)(Scotland) Act 2003, Adults with Incapacity (Scotland) Act 2000 and Adult Support and Protection (Scotland) Act 2007.
- 1.89 Although the recommendations stated that Adult Support and Protection (Scotland) Act 2007 should not be fused with the other legislations there is a recognition that the three pieces of legislations require to work together and there is a strong emphasis on taking a human rights approach in all three pieces of legislations.
- 1.90 The Scottish Government published their [Scottish Mental Health Law Review – our Response](#) in response to the independent review and it highlights a significant drive towards ensuring that people’s human rights are adhered to whilst being supported under said pieces of legislations.
- 1.91 Considering the three Acts are closely associated some of the changes and working plan being implemented by the Scottish Government, may have an impact on practice and processes within Adult Support and Protection practice. One of these areas to consider is **Supported Decision Making**.

Further information on supported decision making can be found here - [Supported decision making | Iriss](#).

Part 2 – Council duties and role of other agencies

2.1 The [Adult Support & Protection \(Scotland\) Act 2007](#) places duties on councils to:

- Carry out inquiries to establish whether action is required, where it is known or believed that an adult is at risk of harm and that intervention may be necessary to protect the adult ([Section 4](#)).
- Co-operate with other councils and other listed (or prescribed) bodies and office holders ([Section 5](#)).
- Have regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services), following making inquiries under section 4 of the act. ([Section 6](#)).
- Inform any adult prior to the starting of the interview, that they may refuse to answer any question put to them ([Section 8](#)).
- Inform an adult believed to be at risk that they may refuse to consent to a medical examination ([Section 9](#)).
- Take reasonable steps to protect property owned or controlled by the Adult, who is removed from a place under a removal order. This may include moving property belonging to the adult from that place, where this is considered reasonably necessary in order to prevent the property from being lost or damaged. The council must ensure the property is returned to the adult concerned as soon as reasonably practicable after the relevant removal order ceases to have effect ([Section 18](#)).
- Visit a place at reasonable times only, to state the object of the visit and produce evidence of authorisation to visit.
- Council officers may not use force to facilitate, or during, a visit. However, under [Section 37](#) a sheriff may authorise a warrant of entry. Which allows a council officer to visit any specified place under section 7 or 16 together with a constable, and a constable who so accompanies a council officer is authorised to do anything, using reasonable force where necessary, which the constable considers to be reasonably required in order to fulfil the object of the visit.

For urgent cases a justice of the peace may authorise the same. Further information on warrant of entry can be found in [Sections 36 to 40](#).

- Set up an Adult Protection Committee (APC) to carry out various functions in relation to adult protection in its area, and to review procedures under the Act ([Section 42](#)). The Adult Protection Committee may cover more than one council area.
- Local Authorities' Social Work Services are the lead agency and will have the overall responsibility for the coordination of adult protection procedures and will be the central point for the receiving and logging of referrals.
- The 'duty of care' in respect of adult protection is a corporate local authority responsibility incorporating all services of the council. Staff across a range of services within the council may, in the course of discharging their duties, encounter actual or suspected risk to an adult or have such information reported to them.

Adult Support and Protection Council Officer

2.2 The [Adult Support and Protection \(Scotland\) Act 2007](#) defines a Council Officer as a person appointed by the Council under Section 64 of the Local Government (Scotland) Act 1973. Within University Health and Social Care North Lanarkshire, Council Officers will:

- Be a professionally qualified social worker with a minimum 12 months post qualifying experience of assessing and managing risk
- Be registered with the Scottish Social Services Council (SSSC)
- Complete the Adult Support and Protection training programme.

Chief Officer's Group

2.3 In 2019 the Scottish Government published updated guidance Protecting Children and Young People, Child Protection Committee (CPC) and Chief Officer Responsibilities. This concentrated child protection, however, also has direct relevance to adult protection. The Guidance for Adult Protection Committees (APC) therefore reflects the content of this document as it applies to Adult Support and Protection.

2.4 The role of the Public Protection Chief Officers' Group (PPCOG) is to oversee public protection activity, work collectively to identify issues for joint development and improvement and promote inter-agency activity with respect to public protection with

regard to Child Protection, Adult Support and Protection, Domestic Abuse and Multi Agency Public Protection Arrangements (MAPPA), in North Lanarkshire.

- 2.5 The Chief Officers Public Protection group is chaired by the Chief Executive of North Lanarkshire Council with members being the Chief Executive of National Health Services Lanarkshire (NHSL), a representative of the Chief Constable of Police Scotland, the Chief Accountable Officer of the University Health and Social Care North Lanarkshire and other Council Service Leads. It is also attended by the independent Chairs of the CPC and APC and MAPPA and Domestic Abuse leads and by senior officers of the Council and NHSL. The Chief Officers' Public Protection Group meets quarterly.

Adult Protection Committee

- 2.6 The Adult Support and Protection (Scotland) Act 2007 ([Sections 42 – 47](#)), states that each council must establish a multi-agency Adult Protection Committee (APC). Its functions include:
- reviewing adult protection procedure and practice;
 - providing information and advice and making proposals;
 - improving skills and knowledge; and
 - all in the context of improving cooperation and communication between agencies.
- 2.7 [Scottish government guidance was published in 2022](#) and emphasises the APC's role to give information or advice, or make proposals, on the exercise of these functions which relate to the safeguarding of adults at risk.
- 2.8 The committee should also be seeking to improve co-operation and communication within and between each of the public bodies involved in order to better safeguard adults at risk.
- 2.9 Adult Protection Committees have been statutorily assigned the lead role for overseeing cooperation and communication between agencies to promote appropriate support and protection for adults at risk of harm.

North Lanarkshire Social Work Emergency Service (SWES)

- 2.10 Practitioners working within Social Work Emergency Services (SWES) are bound by the same duties, responsibilities and principles of the 2007 Act as those within mainstream Social Work Services. SWES receive ASP referrals from both fellow professionals and members of the public. Practitioners within SWES should generate and record ASP referrals for new and existing cases using the appropriate paperwork (AP1) and recording systems and a handover may be required to locality social work teams when normal business hours resume.
- 2.11 Senior Social Workers within SWES will review each ASP referral and determine the proportionate response required to ensure that the individual referred is safe from immediate harm. Interventions such as visits to individuals and dialogue with partner agencies should be recorded on relevant recording systems. SWES practitioners should forward AP1 referrals to appropriate locality teams to continue ASP inquiries or investigations as per present local agreements. Localities must be made aware of the current situation, all tasks and interventions that have been completed and those that may be outstanding. Local admin staff will log the referral on the social work system and ensure the duty Senior Social Worker is notified.

Independent sector

- 2.12 All voluntary, not for profit and private providers should have internal procedures in place that set out action to be taken in the event of actual, disclosed or suspected harm involving:
- A member of staff or volunteer in relation to a service user.
 - A service user in relation to another service user.
 - A person from outside the agency known to a service user.

Adult Protection Roles and Responsibilities

- 2.13 **There is a need to distinguish between:**
- The role of independent and voluntary agencies in investigating allegations made against their own staff or volunteers; and
 - The responsibility of social work to ensure the protection of individual service users.

2.14 **The role of Independent Providers is to:**

- Prevent harm and take immediate steps to protect the adult and any other service users thought to be at risk.
- Refer the concern to social work and or the police.
- Inform the Care Inspectorate (if a registered organisation).
- Take action under disciplinary procedures in respect of a staff member or volunteer.

2.15 **The role of North Lanarkshire Social Work Services is to:**

- Undertake adult support and protection inquiries with or without investigative activity in order to assess risk of harm to one or more individuals. Take appropriate action to protect adults at risk of harm
- Link with the Care Inspectorate if the agencies are registered and agree responsibilities in partnership with the Inspectorate in terms of the immediate protection of any adult currently at risk of harm.
- Link with Social Work Service's Quality Assurance Team, when concerns arise relating to an independent sector or commissioned service.

2.16 It should be made clear to independent providers and voluntary agencies that social work services (if appropriate and in conjunction with the Police and or Care Inspectorate) **will** lead inquiries into allegations of harm against an individual and that any other action taken by the agency should not delay or prevent such inquiry requirements.

Advocacy Services

2.17 Section 6 of the Act places a duty on the council, where intervention is required to protect an adult at risk of harm, to consider the provision of appropriate services, including independent advocacy services, to the adult concerned, after making inquiries under Section 4 of the Act.

2.18 Independent advocacy aims to help people by supporting them to express their own needs and express their own informed decisions. Advocacy services will support adults to access information and explore and understand the options available and to participate more fully in adult protection processes.

- 2.19 Advocacy should be offered and revisited throughout the ASP process.
- 2.20 Advocacy can also provide support to a carer or service user to alleviate stressful or conflict situations and the potential for harm, in particular where the adult has capacity and does not wish any protective action to be taken.
- 2.21 University Health and Social Care North Lanarkshire have invested in advocacy services for adults who may require support due to mental disorder or interventions under the ASP Act. They are:

Equals Advocacy – 01698 327772, admin@equalsadvocacy.org.uk for adults aged 65 years and over,

North Lanarkshire Advocacy – 01698 358 245, Sam@equalsay.org for adults aged between 18 and 64 years,

Who Cares Scotland – 0141 221 4441, hello@whocarescotland.org for children and young people aged 16 and 17 years.

Cross Boundary and Locality ASP Case Transfer

- 2.22 [Section 53](#) of the Act states the responsible council is the area where the adult is present in. This means that North Lanarkshire Social work services are responsible for undertaking ASP inquiries in the North Lanarkshire area, even if the “adult at risk” has been placed by another authority. This also applies in circumstances where an adult is not ordinary resident in North Lanarkshire for example if a possible an adult at risk is within a health/acute setting within North Lanarkshire Council boundaries. Section 5 of the 2007 Act places a duty upon public bodies to co-operate and share information. [Appendix 1](#) provide further detail on this.
- 2.23 In cases where adults are supported under Adult Support and Protection in another local authority area and have moved or are planning to move to North Lanarkshire, and additionally, those adults at risk who are moving between different localities within North Lanarkshire, the following principles and process should be followed at all times.
- An ASP Case conference **must** be planned and held to fully discuss the risks of harm and any accompanying risk management plans ([AP3](#))

- An AP2 risk assessment **must** be produced where for the ASP Case conference clearly identifying the risks of harm, both actual and potential and information shared as to how these risks of harm are to be managed. An AP2 can be used as part of investigatory activity even if the results in an NFA decision.
- Regular communication and co-operation should take place between the Council Officers and any other agencies involved.

The above process should be led by risk of harm and the needs of the adult involved. There could be Ordinary Residence rules for those adults who are moving between local authority areas and Council Officers should contact NLC legal services for clarity of information in such cases.

Part 3 - ASP Referral process

- 3.1 Section 4 of the 2007 Act places a duty on local authorities to make inquiries about a person's wellbeing, property, rights or financial affairs if it **knows or believes** that the person is an adult at risk of harm, and that it might need to intervene in order to protect the adult from that risk of harm.

[Appendix 2 – AP1 referral form](#)

- 3.2 Concerns may be brought to the attention of the local authority in a number of ways and all referrals/concerns should be treated seriously and co-ordinated in a consistent manner, that meets statutory responsibilities and prevents delay in risk assessment activity being carried out.
- 3.3 North Lanarkshire Council Social Work, as part of the University Health and Social Care North Lanarkshire, are lead agency for adult support protection work and will be the central point for the receipt and logging of referrals. Social work will have overall responsibility for the co-ordination of adult support and protection risk assessment and risk management.
- 3.4 North Lanarkshire Council Social Work and wider staff within Health and Social Care must be aware of adult protection procedures and other legislation that could better meet the needs of the adult who may be at risk of harm. Consideration of the main principles of **benefit** and the **least restrictive** option must be given.
- 3.5 The application of **professional judgement** is fundamental in deciding whether or not to utilise investigative activity under the act and a decision should be made following the collation of relevant information on receipt of referral and thereafter necessary inquiries carried out.
- 3.6 Section 5 of the 2007 Act states “where a named public body or office-holder knows or believes that a person is an ‘adult at risk’ and action needs to be taken in order to protect that person from harm, then that public body or office holder **“must report the facts and circumstances of the concern to the council for the area where the adult is at for the time being in”**”.

- 3.7 Where someone is suspected of being an adult at risk of harm, an Adult Support and Protection referral should be made to the council within 24 hours – any delay should be recorded with reasons. Once you have made a referral this places a duty on the council to make inquiries under the Act. All adult support and protection referral submitted to North Lanarkshire Council should receive initial inquiries.
- 3.8 This means that **all public body employees** named within the 2007 Act have a legal duty to report and staff should be clear to whom they have a duty to report to within their own organisations.
- 3.9 North Lanarkshire Council Social Work staff should be mindful that this duty to report covers existing and open cases. It therefore follows that consideration must be given as to whether an open case meets the threshold for ASP interventions.
- 3.10 Whilst the 2007 Act does not give voluntary and private providers the same legal duty to report and co-operate, the ASP Code of Practice states that such agencies should act within the spirit of the legislation and are expected to adopt and follow local adult protection guidance and procedures within the geographical area. The contractual framework for registered service providers in North Lanarkshire contains a requirement to have and operate an adult support and protection policy in line with the Guidance for registered services in North Lanarkshire.
- 3.11 Adult support and protection referrals for adults who are not known to social work services will be forwarded to admin colleagues who in the first instance will log the referral details then send the adult protection referral to the ASP duty senior social worker for further action.
- 3.12 Adult support and protection referrals for adults who are known to social work services will be forwarded to admin colleagues in **the locality where the harm occurs**. They will in the first instance log the referral details then send the adult support and protection referral to the ASP duty senior social worker for further action. The referral should be sent to and actioned by the locality team where the harm occurred.
- 3.13 If the adult at risk is identified as already having an allocated worker and their senior social worker should be notified of the referral. Please note that the referral should be sent to and actioned by the locality team where the harm occurred. If the adult is allocated to a worker within a different locality - discussion should be held who is best to progress the ASP referral. However, it is the locality where the harm has occurred

that has the ultimate responsibility to ensure and sign off any agreed decisions and conclusions.

If the allocated worker is not available the referral should be passed to an identified appropriate worker for action, this is the discretion of the duty senior social worker.

3.14 Where the referral agency or social work has concerns about the immediate safety and wellbeing of an adult they should advise the appropriate emergency service immediately e.g. police, medical practitioner.

3.15 The collation of relevant information on receipt of referral is crucial in the application of sound professional judgement. Wherever possible the following information should be sought and recorded at the point of referral:

- Details of referrer and their relationship to the adult.
- Whether or not it is likely that the referrer is willing to be interviewed if required during the course of any possible future inquires (This is not optional for employees of Public Bodies as determined by the ASP Act).
- Person who is suspected of causing harm or abuse and their relationship to the adult (if any) and whether they have contact with any other adults at risk and/or children.
- Name and addresses of adult and any persons with an interest e.g. family, carer etc where known.
- Current whereabouts of the adult.
- Date of birth of the adult.
- Whether the adult has a physical disability, learning disability, mental health or communication difficulties.
- Natures of harm caused or anticipated.
- Are there any concerns regarding criminality.
- Are there any concerns regarding domestic abuse.
- Whether the adult is subject to any proxy decision making powers under the [Adults with Incapacity \(Scotland\) Act 2000](#) or subject to any order under the [Mental Health \(Care & Treatment\) \(Scotland\) Act 2003](#)
- The identity of any witnesses and their contact details and whether any specific incident has been captured on CCTV.

- 3.16 These procedures should be followed even where referrers refuse to give their name or on receipt of anonymous letters and or phone calls. Where referrers do give their name, but request that their identity should not be disclosed, they can be advised that any information given will be treated with discretion and that their identity will not be revealed unless the protection of the welfare of the adult or any court proceedings arising requires this.
- 3.17 Where a member of the public or non-public body makes a referral for a service user who is not known to social work, this information should be placed on an AP1 referral form ([Appendix 2](#)) by the person receiving the information or who is identified by the social work manager. If an active case the allocated worker will undertake this role.
- 3.18 The AP1 form or referral details should then be logged onto social work information system by admin support as either a new referral or an add allocation. This information must always be reported to the appropriate senior social worker for them to complete the AP inquiry screen and further action.
- 3.19 The Senior Social Worker is responsible to screen the AP1 referral information and assess whether the primary harm is accurate and make necessary changes where required.

Police Scotland involvement

- 3.20 **The Police Scotland Hub has got an Adult Protection team which is based within the Police Offices in Campbell Street, Hamilton. Best contact is – 01698 483445 and 01698 483429 LanarkshireAdultSupportandProtection@scotland.police.uk**
- 3.21 The HUB processes all Adult Protection referrals and ‘Adult Concern’ reports ([Appendix 3](#)) generated by the Police Concern Hub research officers. Officers within the HUB are responsible for recording and referring adults at risk of harm to each social work locality within North Lanarkshire.
- 3.22 In relation to inquiries with and without investigative activity of adults at risk, requests for involvement of police in adult protection planning meetings and case conferences should be referred to Officers within the Police Scotland HUB in the first instance ([Appendix 17](#)). **Please note that there is a separate form for requesting information only which can be found [here](#), highlighted as appendix 28.**

- 3.23 In general, police involvement will come from the police office in the adult's home area. Should the local police officer require specific support from the Protection HUB, this will be coordinated by the Police Officers based within the HUB. **Police Scotland has a Standard Operating Procedure for responding to adults at risk of harm.**
- 3.24 In cases where there is suspected criminality, social work services have a duty to inform the Police of any potential criminality within referral information at the earliest opportunity. If Police decide to investigate, social work services will continue to support the adult at risk and his/her carer (where appropriate), in coordinating and monitoring any agreed interim protection plan.
- 3.25 If it is decided that a criminal investigation is required, this will be undertaken by the Police. During any Police investigation, the Council has an ongoing duty to safeguard and protect the adult at risk. Social work services and the Police should work in partnership to plan any actions or interventions, within timescales, necessary to protect the adult at risk. The Police will decide if a referral to the Procurator Fiscal is required and appropriate.
- 3.26 It is acknowledged that the person alleged to be causing harm may also be supporting the adult. In such cases social work services may need to take action to ensure the adult's support needs continue to be met during any investigation by the Police.

Appropriate Adult

- 3.27 [Section 42](#) of the [Criminal Justice \(Scotland\) Act 2016](#) places a duty on the police to ensure this type of support is provided during custody procedures, while the [Criminal Justice \(Scotland\) Act 2016 \(Support for Vulnerable Persons\) Regulations 2019](#) place a duty on local authorities to provide an Appropriate Adult when such a request is made by the police. North Lanarkshire Council's Appropriate adult service is currently comprised of internal staff who carry out their appropriate adult duties in addition to their current roles. When acting as an appropriate adult, employees are fulfilling the role independent of their main job within North Lanarkshire Council. Appropriate Adults are selected for their experience of working with adults who have a mental disorder/disabilities and/or experience of assisting vulnerable adults with communication.

- 3.28 The Appropriate Adult is not providing advocacy or speaking on behalf the adult, but is an independent third party, checking that effective communication is taking place for the adult involved in the police process.
- 3.29 If an Appropriate Adult has any concerns relating to the general wellbeing of the person they are supporting, separate from the police investigation and police procedures, they should make the concerns known to both the police and the Appropriate Adult Service Coordinator. All Appropriate Adults within North Lanarkshire must have an understanding of Adult Support and Protection legislation and how this can relate to their role.

Hospital social work teams:

- 3.30 Where an adult is an inpatient at hospital the referral should be logged by the hospital social work team. If the adult has an allocated social worker in NLC, discussions should take place with the locality senior social worker as to who is most appropriate to proceed with the inquiry. Where the adult does not have an allocated social worker, the inquiry should be commenced by the hospital social work team.
- 3.31 Regardless of the adult being admitted to hospital and considered to be in a place of safety, the referral will continue to have inquiries made in order to be satisfied that the harmful situation will not continue to affect the adult or any other party on discharge from hospital.

ASP Referral process for young persons, known to Children & Families Services

- 3.32 In the event of a protection issue arising for a young person, aged 16 years and above who is not known to social work / not currently an allocated case consideration should be made to whether Child Protection or Adult Protection procedures would be suitable. Senior social workers within children and education and adult services should have a discussion to consider this.
- 3.33 Where a protection issue arises for a young person 16 years and above who is an allocated case, a referral should be made under adult protection procedures, to the allocated worker (regardless of whether the worker is based in a children and families team or not) using AP1 paperwork ([Appendix 2](#)).

- 3.34 The allocated worker, in all instances, must discuss the referral with their line manager, who will liaise with the relevant managers within the locality to decide what action is required and who will progress/record the actions and decisions taken.
- For example, if the young person referred has an open case file to children and families, the senior social worker (children & families) must discuss and agree with the relevant community care manager what action requires to be taken.
 - Where community care receive a referral in the first instance and there is ongoing children and families involvement with the case, the community care manager must discuss with the relevant senior social worker what action requires to be taken.
- 3.35 In all instances, when considering who is best placed to investigate the matter, relevant managers should ensure that decisions are based on the needs of the young person, as well as the nature of the information involved in the referral.
- 3.36 At any stage of children and families involvement with a young person i.e. via the child protection or looked after away from home framework, etc. it may be that the young person is also an “adult at risk”.
- 3.37 Equally, as part of the adult protection process, it may be identified that there are young children at risk of harm and employees must recognise and report all harmful situations, regardless of their roles.
- 3.38 The senior social worker (children and families / community care, depending on who is progressing the referral) must ensure that the referral/investigation etc is captured on the correct screens on the social work system. For children it would be the CP screens but if it is being pursued via adult protection, this would be the AP screens. The ASP recording framework on [4.19](#) and [6.65](#) of this guidance **must** be used.
- 3.39 Consideration should be given as to whether contextual safeguarding or transitional safeguarding approaches would be appropriate and if the young person/ young adult meeting the criteria for this. Contextual safeguarding seeks to identify and respond to harm and abuse posed to young people outside their home, either from adults or other young people. Traditional Child protection processes focus on risk and harm within the family/ home. Child protection processes and approaches do not aid the understanding

and addressing risks of harm out with the home, and as such are not as effective for older children where risks from peers or exploitation outside the home becomes more prevalent. This approach is available to appropriate young adults up to the age of 18 years and care experienced young adult up to 26 years.

[North Lanarkshire Young Peoples Safeguarding Panel Guidance](#)

[North Lanarkshire Child Protection Guidance](#) offers further information and guidance on this.

Transitional Safeguarding

- 3.40 Transitional Safeguarding relates to work undertaken with young people as they move into adulthood but may not follow the existing pathways into either adult health or social care. This approach reflects the ongoing impact of trauma and childhood experiences, along with other risk/ harm factor, on a young adult's ability to safeguard themselves. For more information, see the briefing provided by Research in Practice (RiP): [Transitional safeguarding from adolescence to adulthood – RiP](#)
- 3.41 For young people currently involved with children and families, who have been identified and assessed as an "adult at risk" as part of the review of their plan, actions should be agreed on how to support and protect them during the transition from children and families to younger adults' services. This may include consideration of contextual and transitional safeguarding approaches.
- 3.42 Any decision/actions agreed must be based on assessment/ planning and reviewing activity, that have taken place for the young person and ongoing support must be clearly defined.
- 3.43 All relevant agencies must be represented at the review including a council officer from community care.
- 3.44 Whereas part of the review, a decision is made that the young person is an adult at risk; the Adult Support and Protection (Scotland) Act 2007 applies, and this should be recorded and an adult protection inquiry undertaken if appropriate.
- 3.45 As part of the review plan, an updated plan should be developed to ensure all relevant decisions/actions taken in support of the young person being an adult at risk are recorded. A minute of all decisions and reasons for decisions should also be recorded.

- 3.46 Any actions taken to support and protect the young person should be consistent with North Lanarkshire Council procedures, and any other relevant legislation should be taken into account i.e. [Adults with Incapacity \(Scotland\) Act 2000](#); the [Mental Health Care & Treatment \(Scotland\) Act 2003](#) etc.

ASP Referral process for NLC / Independent Sector, Registered or Contracted Service

- 3.47 North Lanarkshire Social Work Services, as lead agency on behalf of University Health and Social Care North Lanarkshire have overall responsibility for the co-ordination of Adult Support and Protection and will be the central point for receiving and logging referrals.
- 3.48 Referrals for NLC services that also include staff conduct or complaints will be managed within North Lanarkshire Council internal procedures. Independent Services will manage their own staff conduct issues.
- 3.49 The manager responsible for the service should make a referral to the social work team in the area where the person is for the time being in and where the harm occurs, even if the adult is not known to North Lanarkshire social work services or they have been placed by another authority.
- 3.50 Section 53 of the Act states the responsible council is the area where the adult is present in. This means that North Lanarkshire Social work services are responsible for undertaking ASP inquiries in the North Lanarkshire area, even if the “adult at risk” has been placed by another authority. This also applies in circumstances where an adult is not ordinary resident in North Lanarkshire for example if a possible an adult at risk is within a health/acute setting within North Lanarkshire Council boundaries.
- 3.51 On receipt of the adult protection referral the senior social worker or delegated to suitable worker should alert the placing authority or care manager (if they are based in another locality within NLC) that an adult protection referral has been received and after inquiries or investigations have taken place, appropriate recommendations will be made, including whether an urgent care review is required. Time delays should be avoided wherever possible, particularly in cases of potential or actual serious harm.

3.52 **For Support at Home** and other service involving social work employees, the home support team leader, Senior or Manager, of the staff concerned, will discuss any referrals with the senior social worker and if there is disagreement then the locality social work manager will decide whether an adult protection inquiry should be undertaken. Discussions should take place between, the Locality Social Work Manager and Manager HR Business Partner in the Council if there are concerns regarding a staff member's conduct, with regard to their work situation, in line with HR processes. For staff not employed by the Council, the employing body should consider any HR action necessary. In both instances, HR and/or Police processes should not delay ensuring the safety of any individual or other individuals, who may be at risk potentially.

ASP Large Scale Investigation (LSI) process in North Lanarkshire.

Part 4 - ASP Inquiry process

- 4.1 The new [National Adult Support and Protection Codes of Practice](#) supports a new way of considering the Adult Support and Protection processes. Instead of differentiating between inquiries and investigation under the Act it explains the whole process as an **Adult Support and Protection Inquiry**. Depending on the action taken during the ASP inquiry process this will be seen as an **inquiry with or without the use of investigative activity**.
- 4.2 The purpose of an inquiry, with or without investigatory activity, is to ascertain whether adults are at risk of harm, and whether the council may need to intervene, provide support, or any other assistance to the adult or any carer. Any investigatory activity – explained in this guidance - is triggered under the Act and should be recorded as such.

Inquiry without investigative activity.

- 4.3 Initial inquiries under Adult Support and Protection should be commenced within **24 hours of receipt of referral**. In cases where there is an allegation of physical and/or sexual harm inquiries should commence immediately, and contact made with the Police to:
- identify any potential areas of criminality
 - confirm whether a Police investigation is required
 - establish roles and responsibilities within timescales
- 4.4 If appropriate, attempts to visit the adult and speak to them alone should be made within **24 hours – however this would be deemed an investigative activity and should be recorded as such**.
- 4.5 **In most cases it will be appropriate to commence and conclude inquiries without using investigative activity within 5 working days**. By exception (determined by the senior social worker or equivalent manager) this time scale may be extended, however it should not go beyond 5 days reasons must be recorded.

Who can carry out the inquiry without the investigative activity?

- 4.6 The person tasked with carrying out inquiries without investigative activity **can be but does not require to be a qualified council officer**. It is only when investigative activity (specified below) a council officer is required. The inquiry without investigative activity can for example be undertaken by a social worker (non-council officer), care manager, home support manager – all require having sufficient knowledge and understanding of Adult Support and Protection and have undertaken appropriate training. Student social workers should not complete any ASP inquiries. If the inquiry without investigative activity is carried out by a non-council officer, the worker should be overseen/supported by a council officer.
- 4.7 If the adult is known to have a mental disorder or intervention under the Adults with Incapacity (Scotland) Act 2000 and a Mental Health Officer (MHO) has already been identified, they should be contacted and, should undertake the Inquiry without investigative activity – and if further action required under the act they should be considered as Lead Council Officer – if they have had appropriate training as a Council Officer.

What is an Inquiry without investigative activity?

- 4.8 The worker carrying out an Inquiry without investigative activity should gather details of the incident and identify the risks of harm, both actual and potential and consult social work records to ascertain if the adult is known. This may sometimes be referred to as a desktop activity. The collation and consideration of relevant materials, including consideration of previous records relating to the individual and seeking the views of other agencies and professionals.

This may include contact with:

- Health staff, including General Practitioner (GP).
- The Mental Welfare Commission.
- Office of the Public Guardian.
- Any relevant source of information which may be relevant – such as Integrated Day services, home support and other service provision/provider.

- 4.9 The purpose of an Inquiry without using investigative activity is to gather sufficient information to allow the senior social worker to confirm whether further activity - to

establish whether an adult is at risk of harm or whether further action to mitigate risk of harm is required - is required under the Act.

- 4.10 Inquiries may involve a single agency or more, as relevant, to the case.
- 4.11 **Please note that any direct contact with the adult or the adult's family/legal proxies would be considered an investigative activity under the Act and should be recorded as such.**
- 4.12 There may be consideration in certain circumstances that an adult can be contacted by a non-council officer if they are an allocated case. However, this require careful consideration and should only be carried out if it is believed that it would greatly benefit the adult. Any contact with the adult should be overseen by a council officer and in some cases a direct contact with the adult may be a joint phone call with the council officer and the allocated worker.
- 4.13 It is also important to consider that if a non-council officer is having any direct contact with the adult that they cannot directly address the Adult Support and Protection concern. If any such conversation is commenced the contact should be terminated or reverted to a council officer.
- 4.14 The adult has a legal duty to be informed that an ASP referral has been received and that activity is being undertaken under the Act. They have a right to be informed of their rights. This is the Council Officers duty.
- 4.15 Safeguarding the welfare of the adult remains paramount. Any urgent action deemed necessary should not be delayed by the need for further consultation and the arrangements for an AP Initial Referral Discussions/Planning meeting.
- 4.16 If the level of risk is such that immediate action is required, which cannot be achieved on a voluntary basis, legal advice must be sought, to determine whether there are any statutory powers which can be invoked.
- 4.17 The senior social worker should consult with the locality social work manager (LSWM) to discuss the information available and subsequent action.
- 4.18 Practitioners should be alert to all forms of harm. An adult may be deemed at risk of harm and there **may be children or other adults** in the same household or in

connection with the adult that is also at risk of harm. When making inquiries as a result of either adult or child protection referrals, consideration should also be given to the potential vulnerability of other members of the household.

Recording Inquiry without investigative activity

4.19 When an appropriate range of inquiries have been carried out and the decision is to either undertake further activity under the Act – Inquiries with investigative activity - or to take no **further action (in relation to adult protection specifically – there may still be a need for of ongoing contact for other reasons)**, the worker undertaking the inquiry without investigative activity will record this on the recording system with the following headings:

1. Reason for Referral
2. Inquiry without investigative activity taken
3. Other Agencies consulted/People contacted
4. Evidence how the adult is un/able to safeguard wellbeing, property, rights, interests
5. Evidence how the adult is/not at risk of harm
6. Evidence how the adult is/not affected by disability, illness, mental disorder, physical and mental infirmity etc
7. Protective Factors
8. Recommendations/Analysis of risk
9. Feedback to referrer

4.20 An analysis of risk is required in every case regardless of whether the inquiry has established harm is present or not. All inquiry recordings must include reference to the 3-point criteria and clear risk analysis given for the decision. The analysis and use of a single or multi-agency chronology should be referenced within the analysis and recommendation.

Adult Protection Outcome/Feedback of Inquiry without Investigative Activity

4.21 Sec 5 of the Act places a duty upon public bodies to co-operate with the council when undertaking inquiries with or without investigative activity and investigations. This duty extends to sharing proportionate information. Public bodies are encouraged to contact

North Lanarkshire Social Work Services if an update or additional information is required as part of an ASP inquiry.

- 4.22 On completion of ASP activity – inquiries with or without investigative activity the Council Officer is responsible to provide proportionate feedback to the referrer – this need to be clearly recorded as part of the ASP recording. Feedback can be provided via telephone however practitioners may find it helpful to provide feedback via email as this encourages a clear audit trail and accountability ([Appendix 24](#)).

The senior social worker is responsible to ensure that this feedback is provided and recorded appropriately.

- 4.23 Information that is collated as part of an ASP inquiry is sensitive and may include details of actual or potential risk of harm and plans to mitigate such risks. Council Officers must balance this with the need to share proportionate information to encourage effective inter-agency working, as many Significant Case Reviews have highlighted the importance of agencies co-operating and communicating effectively in order to safeguard and protect adults at risk.

- 4.24 This is especially important when decisions following an Adult Support and Protection inquiry involves action to be taken by the referrer or other relevant agency. They are required to understand their role in an ongoing protection or care plan.

- 4.25 The senior social worker overseeing the case should sign off the Inquiry without Investigative activity and ensure that the recording is a true reflection and analysis of the risks and protective factors. The following options should be considered:

- Does not meet three-point criteria - NFA
- Does not meet three-point criteria – managed through existing care plan involvement
- Does not meet three-point criteria – referred for non-ASP services
- Meets three-point criteria – manage through existing care plan
- Meets three-point criteria – Pass to Inquiry with Investigative Activity
- Proceed to planning meeting

Part 5 – ASP Planning meetings Process

- 5.1 ASP planning meetings can be held at any time of the ASP process. However, it must not delay any immediate action required to protect the adult at risk and an adult protection investigation may be initiated while additional information is being collated.
- 5.2 Planning meetings should be convened where there are complexities around the referral and there is a need to share all available information and to agree a plan on how to proceed with the inquiry and protect the adult at risk.
- 5.3 The locality social work manager (or delegated manager) will decide if it is appropriate to convene a planning meeting in order to:
- Decide if an investigative activity is required.
 - Consider if an investigation under the Adults with Incapacity (Scotland) Act 2000 or Mental Health (Care & Treatment) (Scotland) Act 2003 should take place or if some other more appropriate course of action should be taken.
 - Clarify the process of the investigation and who should participate or lead.
 - Clarify roles and responsibilities in relation to formal investigatory activities and to agree a timescale for the completion of the activity.
 - Agree a robust communication strategy between agencies within timescales.
 - Consider what further action, if any, is required to protect the individual.
- 5.4 Details of the Adult Protection Initial Report (AP1) should be made available to those attending the planning meeting to provide basic details.
- 5.5 The planning meeting forms part of the investigatory process and should be formally recorded. The senior social worker will co-ordinate the completion of the planning meeting pro forma and ensure that all information is recorded on the relevant adult protection screen ([Appendix 6](#)).
- 5.6 The Locality Social Work Manager is responsible to chair the ASP Planning meeting and must be briefed by the Lead Council Officer and Senior Social Worker with the relevant information prior to the meeting taking place. If the locality social work manager opts to delegate, the task the senior social worker should chair this meeting.

- 5.7 Planning meetings can be held at any time during the ASP process, to clarify information and inform decisions. However, it must not replace the need for an ASP Case conference.
- 5.8 Where there is evidence of a suspected criminal offence, the police **must** be invited to the planning meeting to clarify roles and responsibilities, within timescales and decide who should lead the formal investigation. If the situation is urgent then there should be no delay in agreeing the process of investigation.
- 5.9 A referral made under the adult support and protection procedures may also relate to a person to whom adults with incapacity or mental health legislation applies, therefore consideration should be given, where appropriate, to using these adult protection procedures in conjunction with interventions under these Acts.
- 5.10 In deciding whether ASP investigative activity under these procedures is required, or some other approach is more appropriate, e.g. community care assessment, service provision, intervention under other legislation, the locality social work manager or senior social worker should take account of the following considerations:
- The extent and severity of the alleged harm.
 - Whether the harm was a one-off event or part of a long-standing pattern and the impacts of this upon the adult.
 - The potential for harm on others.
 - The need for protection or support for the alleged harmer if they lack capacity or also are at risk of harm.
 - The intent of the person allegedly responsible for the harm.
 - The legality of the actions involved, that is, does the adult meet the three-point criteria.
 - The risk of harm being repeated against the person.
 - The risk of harm being repeated against other adults and/or children.
 - The view of the adult against whom harm has allegedly been caused.
 - The capacity of the adult to understand their current situation.

These formal tasks should be carried out within the context of assessment and planning and be focused on personal outcomes for example, being safe.

- 5.11 Should the ASP Planning meeting decide that no further action under Adult Protection Procedures is required the senior social worker leading on the inquiry will ensure that the decisions taken for this action are fully recorded.
- 5.12 **Where an adult has capacity and meets the criteria of the Act but indicates that they do not wish support this does not absolve the council and partners of their responsibilities to cooperate and consider protective measures for the adult.**
- 5.13 While the adult has the right not to engage with the process, the appropriate partners should still meet to consider what action could be taken in the best interest of the adult at risk of harm; this could include a Care or Protection Plan or advice or support to the individual where possible, to manage identified risk. All actions and decisions from any meetings and contacts with the adult must be clearly recorded to evidence defensible decision making.
- 5.14 If a decision is reached that further intervention is to be taken under the [Adult Support & Protection \(Scotland\) Act 2007](#) then the following actions must be recorded and taken forward:
- Agreement on, who will support the 'adult at risk'.
 - Consideration of the use of other adult legislation that could offer a level of protection more suitable to the presenting circumstances.
 - Establish if the adult meets the 'three-point criteria' under the 2007 Act
 - Establish whether the case should proceed with investigative activity and consider whether one of the ASP protection orders may be required.
 - Agree a multi-agency plan, within timescales to undertake investigative activities.
 - Agree who will be the Lead Council officer, and who will be the Second Officer involved.
 - Set a date for an initial ASP Case conference **no later than 21 working days** from the date of referral.
- 5.15 **Where the decision is to proceed to an inquiry utilising investigative activity immediately on receipt of referral the senior social worker where they suspect a crime has been committed, must immediately contact:**

- The Police Concern HUB to ascertain their view on whether a criminal offence has taken place and whether this is of sufficient seriousness for the police to lead on the investigation and agree roles within timescales.
- Any other relevant agency (including referral agency) to agree the level of co-operation and participation in the process of investigation.

5.16 **Dissent**

If the referrer disagrees with the outcome of an ASP inquiry, they should contact the Locality Social Work Manager to discuss further. If there continues to be dissent the Health and Social Work Manager will consider all the information and professional opinions in order to make a final decision.

Part 6 - ASP Inquiry with Investigative Activity process

- 6.1 As with all other interventions under the Act the general principles laid out in part one of the Act must be applied when undertaking any intervention.
- 6.2 It is the responsibility of North Lanarkshire Social Work Services to lead on adult support and protection inquiries. Other agencies may be asked to become involved if their action or contribution is required to progress the process under the lead of the local authority i.e. Police (if criminality is suspected or the safety of the Council Officer is compromised), Housing, Care at home, Health or other specialist services.
- 6.3 All workers who lead on Adult Support and Protection inquiry using investigative activity **must** be a trained Council Officer of the local authority and a professionally qualified and registered social worker. The senior social worker (or equivalent manager) will identify the Lead Council Officer who will take the lead.
- 6.4 The investigative activity undertaken will be co-ordinated by the appropriate senior social worker (or equivalent manager) who will keep the locality social work manager informed of progress.
- 6.5 Risk Assessment (AP2) including the use of multi-agency chronologies and will be adopted as the standard assessment, recording and care planning mechanism for all formal investigative activities under multi-agency adult protection procedures. See further information [here](#).
- 6.6 **Chronologies** – single and multi-agency chronologies should be considered as essential of any ASP inquiry. Further guidance on the use of chronology can be found below at point [6.18](#).
- 6.7 If the adult is known to have a mental disorder or intervention under the Adults with Incapacity (Scotland) Act 2000 and a Supervising Officer / Designated MHO is involved they should be contacted and if appropriate participate in the ASP inquiry.
- 6.8 If the adult is subject to private guardianship that guardian should be alerted (unless they are the alleged harmer, and it is deemed of detriment to the adult to notify the

guardian) along with the guardian’s local authority supervisor. This information can be accessed via Adults Team, Social Work Headquarters.

- 6.9 The senior social worker co-ordinating the inquiry utilising investigative activity must record on the appropriate recording system investigative activity has been initiated and input this decision (and date) on the system.
- 6.10 Adults who are at risk of harm or believed to be at risk of harm under the ASP legislation has the right to independent Advocacy – information on this can be found in part 2.17 in this document.

Purpose of the ASP Investigative activity

- 6.11 The purpose of **investigative activity** under the Act is to enable the council to fulfil its obligation to conduct inquiries under section 4. Investigative activity under Sections 7-10 can be used to:
 - Enable or assist the council in conducting inquiries under Section 4 to decide whether the adult is an adult at risk of harm; and establish whether the council needs to take any action in order to protect the adult at risk from harm.
 - To check the accuracy of any allegations of harm or potential harm.
 - To establish and clearly record the facts about the circumstances, which have given rise to concerns.
 - To involve the adult seen to be at risk as fully as possible within the investigative process (*this may involve use of independent advocacy, appropriate adults’ scheme, translation or sensory impairment services*).
 - To review the adult’s situation, in respect of current protective legislative powers in force e.g. AWI Act and MHCT Act.
 - To identify on assessment any serious risk of harm and contributing factors or concerns arising from the adult’s circumstances.
 - To establish with the adult their views on the risks of harm they face and whether they wish professional intervention to take place (subject to their capacity to make such a decision).
 - To establish where possible the views of carers, agencies and relevant persons with an interest in the adult considered to be at risk.
 - To ensure where possible, appropriate action is taken to reduce the risk of harm e.g. in respect of alleged harmer(s).

- To ensure all options are considered as to how the harmer could be removed from the situation, (if this is the most appropriate desirable outcome), as opposed to the adult at risk having to leave their home.
- To consider any action necessary regarding any adult or any children at risk and to take appropriate to assess any need for action in relation to them.

6.12 **Note: During the conduct of an ASP inquiry where any child protection concerns arise action must be taken under [North Lanarkshire Council Social Work Child Protection Procedures](#) to ensure the immediate and future safety and wellbeing of the child or children.**

6.13 **Particular cautions are required when there are concerns regarding People posing a particular risk to children (Schedule 1 offenders). Council staff involved in ASP inquiries should ensure that information coming to their attention in the course of their duties relating to a Schedule 1 offender is recorded and shared with the relevant agencies.**

Please see [North Lanarkshire MAPPA information leaflet](#) for further information.

Fuller Risk Assessment – AP2

6.14 As part of an inquiry where investigatory activity is utilised and a more complex multi-agency assessment is required, an [AP2 risk assessment](#) should be utilised.

6.15 **Consideration should be given to completing an AP2 risk assessment as part of the inquiry process to support the decision whether further action under ASP is required to mitigate risk of harm to the adult** – for example to make an informed and evidence-based assessment whether an Initial Case Conference is required or not.

6.16 The AP2 is a tool bringing together comprehensive, relevant information, the tool reflects an expectation that professional opinion/judgement is required about the risk and any protective action which might be needed. A robust risk assessment should include an overview of the inquiry undertaken including investigatory activity used as well as other relevant information and analysis of multi-agency chronologies. The risk assessment should include information pertaining to significant others in the adult's life, and provide a clear overview of the risks, vulnerabilities, and protective factors, as well as the adult's views. A good risk assessment can support decision making and

assist in considering the severity of harm and the consequence if no action is taken to reduce the risk(s).

- 6.17 If the decision is to progress to an ASP Initial Case conference the Lead Council Officer will at all times complete an AP2 risk assessment which should provide a balanced view between risk of harm, abilities of the adult at risk, including capacity (decisional and executorial) and consent, strengths and protective factors ([Appendix 14](#)).

Chronologies

- 6.18 “A chronology is a written record of **significant** events both **positive** and **negative** in the order they occur, in the life of the person. The chronology needs to be **regularly analysed for patterns of behaviour** and for the **impact** which these behaviours have had on the individual’s life. This helps us to better understand the person’s **needs** and **risks**, including their need for protection from harm” (Pan Lothian Guidance on Chronology, 2020)

- 6.19 Significant case reviews have taken place to support learning from cases where individuals have died, suffered significant harm or been at risk of significant harm. These reviews highlighted chronology as a key area for improvement for all agencies involved in the care and protection of children, young people and adults.

[Care Inspectorate: Triennial Review of Initial Case Reviews and Significant Case Reviews \(2018-2021\) Impact on practice](#)

- 6.20 **It is good practice for Chronologies to be utilised within all areas of work involving children, young people and adults – across the lifespan however for the purpose of this guidance it will focus on the use of chronologies within the Adult Support and Protection process.**

- 6.21 A chronology is:

- a summary of events key to the understanding of need and risk, extracted from comprehensive case records and organised in date order
- a summary which reflects both strengths and concerns evidenced over time
- a summary which highlights patterns and incidents critical to understanding of need, risk and harm

- a tool which should be used to inform understanding of need and risk. In this context, this means risk of harm to an adult

6.22 A chronology may be:

- single-agency
- multi-agency

A multi-agency chronology must comply with information sharing guidance and protocols in the way that it is developed, held, shared and reviewed; reflecting local information sharing guidance and duties to cooperate under Section 5 of the Act. It must be **accurate**, **relevant** and **proportionate** to its purpose.

A multi-agency chronology:

- is a synthesis which draws on single-agency chronologies
- reflects relevant experiences and impact of events for the adult
- include turning points, indications of progress and/or relapse
- will inform analysis, but is not in itself an assessment
- may evolve in a flexible way to integrate further necessary detail
- may highlight further assessment, exploration or support that may be needed
- is a tool which should be used in supervision

6.23 A chronology, whether single- or multi-agency:

- **is not** a comprehensive case record and cannot substitute for such records
- **is not** a list of exclusively adverse circumstances

6.24 **A multi-agency chronology is expected to be developed by the council officer as part of inquiries**, to contribute to the risk assessment and subsequent decisions.

6.25 Contribution to the chronology is a **collective** responsibility by agencies involved in the adult's life.

6.26 Forming a chronology should assist a shared understanding with and between those involved in the risk assessment, as well as to contribute to any subsequent support and protection plan, if appropriate. The perspective of the adult at the centre of the adult protection process should be explored to gain understanding of the impact of events and to check their perception of accuracy.

- 6.27 **The AP2** – risk assessment highlights the need for a multi-agency chronology. Please also note **separate request forms (Appendix 16)** in this guidance for an Information Request form that can be utilised to gather information from relevant agencies.

Investigative Activities

Visit (Sec 7) /Direct Contact

- 6.28 Under section 7 of the Act a Council Officer has a power of entry to enter any place or other property to make inquiries whether any action is required to protect an adult from harm. This power extends to allow the Council Officer to inspect any area of the building, including outbuildings that may be linked to the adults' welfare and risk of harm. **Caution is required to ensure that any power of entry is lawful – see Appendix 8 for further information.**

A place could also include entering premises where the person is residing temporarily or spends part of their time, for example:

- a day centre;
- a place of education, employment or other activity;
- respite residential accommodation, or a hospital or other medical facility.

- 6.29 In North Lanarkshire two members of staff **must** visit, one must be a Council Officer and may be accompanied by a **second worker**.

- 6.30 The SSW overseeing the case should ensure that appropriate briefing and debriefing processes are followed see [Part 7](#) of this document.

- 6.31 The Lead Council officer should always explain the role and offer the adult support from an independent advocacy worker. The recording of such a discussion and decision/referral should always be recorded on appropriate recording system.

- 6.32 **The Lead investigating officer must identify as a Council Officer, which includes showing the adult their identification and explain the purpose of their visit to the adult and those with an interest in the adult where appropriate. They also require by law to advise the adult of their rights – as they do under not require answering any questions, they do not require to engage with the Council Officer, and they can change their mind at any time.**

- 6.33 The ASP Code of Practice states that Council Officers should advise the adult and other concerned parties, they are visiting to make inquiries regarding a risk of harm. Care must be taken by the Council Officer in not disclosing detailed information, pertaining to what has prompted the initial concerns.

Second worker

- 6.34 A **second worker** can be another professional or person who can assist the inquiry for example a key worker known to the adult, a police officer, health professional or representative from the Care Inspectorate or Office of the Public Guardian. SSW and Council Officer should take particular care should be taken to identify who would best be suited to undertake this role – taking into account that the person should have had relevant training and experience to support the inquiry. **The person may have prior knowledge about the adult, or it may be that due to the adult’s particular situation a specific professional or input may benefit the adult and the ASP inquiry.**

Anyone requested to undertake the second worker role should recognise the timescales and urgency of undertaking ASP inquiries.

The Second worker role is crucial to support during the ASP inquiry – and should not only been seen as a scribe during an interview. They should work together with the Council officer and the SSW to assess the risk to the adult. They would often be asked to continue to be involved throughout the ASP process – especially if the adult is assessed as an adult at risk of harm.

- (i) Student Social Workers should not be utilised as a second worker in ASP inquiries. Where appropriate and with consent of the adult, students can be provided with shadow experiences of ASP meetings for example a case conference or planning meeting.

Interview (Sec 8)

- 6.35 Section 8 of the Act allows a Council Officer and any person accompanying the officer, to interview the adult in private. Whether or not the adult should be interviewed in private will be decided based on whether this would assist in achieving the objectives of the ASP inquiry.

- 6.36 Section 8(2) of the Act provides that the adult is not required to answer any questions, and that the Council Officer **must** advise the adult of this before the interview takes place. The adult can choose to answer any question put to them, but the purpose of this section is to ensure that they are not forced to answer any question that they choose not to answer.
- 6.37 This **does not** however prevent the Council Officer from gathering information in relation to the concerns which have been raised. For example, the Council Officer and the second worker should use observational skills to identify the presentation of the adult and their immediate environment and consider this information in light of the concerns being raised. General questions could also be asked; however this should be carried out in a sensitive manner helping the adult to understand the Council Officer role while respecting the adults rights to refuse.
- 6.38 A similar process should be followed to an assessment of risk. In any interview, gaining the consent of the adult to be interviewed should also consider the adult's capacity and promote the adult's participation in the interview.
- 6.39 In situations where it is either known or suspected the adult does not have capacity to consent to interview, principles of participation should be paramount and professional judgement demonstrated by the council officer in relation to proceeding.
- 6.40 There are several phases for investigative interviewing. For full guidance on this process see [Appendix 9](#).
- 6.41 The interview, where possible, should be conducted in a safe, quiet, comfortable setting where interruptions are to a minimum.
- 6.42 The Council Officer undertaking the interview must keep an open mind and gather information without prejudice.
- 6.43 The second officer should record a summary account of the interview using appropriate paperwork and noting significant comments, information and emotions and demeanour and responses of the adult etc. The recording should reflect any points which may support any legal action necessary e.g. dates, details of what and who is/was responsible for causing harm.

- 6.44 **Note: If someone is describing harm they suffered this should be recorded as fully as possible in the adults own words (verbatim). Interview template can be found in (Appendix 10).**
- 6.45 Should the investigation take place within a private or voluntary setting, the Contracted and Private Providers Guidance should be referred to. Please contact social work headquarters for further information if required. **However, the investigative interview should follow the same guidance as above.**
- 6.46 Circumstances may arise where an interview would not be undertaken as a physical visit to meet with the adult. In the context of an interview under Section 8 of the Act such options such as telephone interview and virtual meetings should only be used if there are strong reasons to do so (largely related to safety and infection control concerns arising out of a physical visit), and these reasons should be recorded.
- 6.47 It is reasonable to assume that a virtual encounter or telephone call with an adult thought to be at risk of harm, for the purposes of inquiring into or investigating their circumstances, should be regarded as an interview in exactly the same way as if it had been a physical encounter. This means that in such cases all the requirements of a physical visit should still be met, including the council officer providing evidence of their authorisation. **Therefore, any direct contact with the adult in relation to the Act should be recorded as investigatory activity.**

Medical Examinations (Sec 9)

- 6.48 Under Section 9 of the Act a Council Officer may request that a health professional conduct a medical examination in private, of an adult at risk of harm. Under Sec 52 (2) of the Act a health professional includes a doctor, nurse or midwife. NHS Lanarkshire has agreed this will be doctor.
- 6.49 A medical examination can include physical, psychological or psychiatric assessment or examination and may be required for a number of reasons e.g.
- The adult's need for immediate medical treatment
 - To provide evidence of harm to inform a criminal prosecution
 - To support an application for an order to safeguard the adult
 - To assess the adult's health needs
 - To assess the adult's mental capacity

6.50 Situations where a medical examination **must** be considered include:

- The adult has a physical injury inflicted by another person
- The adult has an injury where the explanation is inconsistent with the injuries
- There is an allegation of sexual abuse and the assault may have left physical evidence
- The adult appears to be injured due to neglect or self-neglect or self harm
- The adult is ill or injured and no treatment has previously been sought

6.51 Section 9(2) of the Act states that the person to be examined must be informed by the Council Officer of their right to refuse to be examined before the medical examination takes place.

6.52 In an emergency and where consent cannot be obtained, doctors can provide medical treatment to anyone who needs it, provided the treatment is necessary to save life or avoid significant deterioration in the person's health. However, even in those circumstances, any advance notice that a person would have refused to consent to such treatment should also be taken into account.

6.53 Where a forensic medical examination is required/referred due to concerns around harm caused by rape or sexual assault, this must occur in a suitable healthcare facility i.e. a forensic medical suite in a Sexual Assault Referral Centre (SARC), where the suite has been properly decontaminated.

Examination of Records (Sec 10)

6.54 Section 10 of the Act allows Council Officers to require any person holding health, financial or other records relating to an adult at risk to give the records, or copies of them to the Council Officer, in order to assist them to decide whether further action is needed to protect the adult at risk from harm. Records are defined as those held in audio, visual or other formats.

6.55 Whilst confidentiality is important it is not an absolute right. Nonetheless, the sharing of information must be **proportionate to the harm** it is being sought to prevent and where possible the consent of the adult should be sought.

- 6.56 **Medical records** such as those held in acute hospital records may only be inspected by a health professional. Council officers can nominate who they think is appropriate to inspect records on their behalf. NHS Lanarkshire has agreed that doctors take on this responsibility and request can be made using.
- 6.57 While a GP is not required to co-operate, the adult's medical records belong to the Health Board and they are required to co-operate. If a GP refuses to co-operate, the Lead Council Officer should contact the practice nurse manager for access to medical records. While any council officer may require health records or copies to be produced, health records may only be inspected by a health professional (other than to establish that they are health records, in the first instance).

For further information - [Scottish Government's ASP Guidance for General Practice](#)

- 6.58 **If there are any issues relating to the access of medical information or assessment** this must be passed to the Locality Social Work Manager for them to liaise with senior health personnel.
- 6.59 Where there is a risk of financial harm, and the adult has an appointee the Department of Works and Pension (DWP) should be alerted for them to pursue further investigation and action.
- 6.60 **When requesting information from DWP the - section 10 information request ([Appendix 11](#)) should be utilised. Contact can be made with the Advanced Customer Care Service on: acssl.escalationscotland@dwp.gov.uk**
- 6.61 Social Work Scotland and the National Banking Support Group under the auspices of the Financial Sector Resilience Group (Scottish Business Resilience Centre/Police Scotland) have agreed a national protocol for Council Officers accessing information under Sec 10, from financial institutions across Scotland. Council Officers should use this protocol and template when attempting to gather proportionate information from financial institutions ([Appendix 11](#)).
- 6.62 The principles of the Act must be adhered to and the purpose of any access to records or sharing of information must be proportionate and should be to further the best interests of the adult and otherwise unable to be achieved without such an intervention.

- 6.63 Section 49 of the Act provides that it is an offence for any person to fail to comply with a requirement to provide information under Section 10 unless that person has a reasonable excuse for failing to do so. **Note: This does not apply to the adult at risk themselves.**
- 6.64 When the information is gathered it will be the responsibility of the senior social worker (or equivalent manager) to decide, on information available, whether:
- immediate action is required in relation to the adult deemed to be at risk;
 - whether an initial AP Case conference is required with relevant staff and partner agencies;
 - no further action is required under adult protection procedures;
 - Further action beyond the scope of the ASP Act is needed.

Recording ASP with Investigative activity

- 6.65 When an appropriate range of investigative activity have been carried out and the decision is to **progress to ASP initial case conference** or **no further action under ASP**, the council officer will enter the outcome and analysis of the risk on the recording system with the following headings:
1. Reason for Investigation
 2. Investigative Actions Taken
 3. Other Agencies consulted
 4. Evidence how the adult is un/able to safeguard wellbeing, property, rights, interests
 5. Evidence how the adult is/not at risk of harm
 6. Evidence how the adult is/not affected by disability, illness, mental disorder, physical and mental infirmity etc
 7. Protective Factors
 8. Recommendations/Analysis of risk
 9. Feedback
- 6.66 **An analysis of risk** is required in every case regardless of whether the inquiry has established harm is present or not. All inquiry recordings must include reference to the 3-point criteria and clear risk analysis given for the decision.

6.67 The senior social worker overseeing the case should sign off the Inquiry without Investigative activity and ensure that the recording is a true reflection and analysis of the risks and protective factors. The following options should be considered:

- Does not meet three-point criteria - NFA
- Does not meet three-point criteria – managed through existing care plan involvement
- Does not meet three-point criteria – referred for non-ASP services
- Meets three-point criteria – manage through existing care plan
- Meets three-point criteria – Proceed to Initial Case Conference

Adult Protection Referral Acknowledgment

6.68 Most Adult Protection referrals are sent to Social Work Services electronically. Within each locality, there are bespoke e-mail baskets set up to facilitate this. This arrangement ensures that all electronic referrals will be issued with a notification that North Lanarkshire Social Work Service have received the ASP referral and that an inquiry will take place. In cases where the ASP referral has been submitted in paper form the senior social worker (or equivalent manager) must ensure, where appropriate, that a letter is sent advising the referring agency that the ASP referral has been received and that an inquiry will take place. Or if an email address has been provided for feedback purposes this can also be used.

Adult Protection Outcome/Feedback of Inquiry with Investigative activity

6.69 Sec 5 of the Act places a duty upon public bodies to co-operate with the council when undertaking inquiries with or without investigative activity and investigations. This duty extends to sharing proportionate information. Public bodies are encouraged to contact North Lanarkshire Social Work Services if an update or additional information is required as part of an AP inquiry or investigation.

6.70 On completion of ASP activity – inquiries with or without investigative activity the Council Officer is responsible to provide proportionate feedback to the referrer – this need to be clearly recorded as part of the ASP recording. Feedback can be provided via telephone however practitioners may find it helpful to provide feedback via email as this encourages a clear audit trail and accountability ([Appendix 24](#)).

The senior social worker is responsible to ensure that this feedback is provided and recorded appropriately.

- 6.71 Information that is collated as part of an ASP inquiry is sensitive and may include details of actual or potential risk of harm and plans to mitigate such risks. Council Officers must balance this with the need to share proportionate information to encourage effective inter-agency working, as many Significant Case Reviews have highlighted the importance of agencies co-operating and communicating effectively in order to safeguard and protect adults at risk.
- 6.72 This is especially important when decisions following an Adult Support and Protection inquiry involves action to be taken by the referrer or other relevant agency. They are required to understand their role in an ongoing protection or care plan.

Notification of a significant incident / referral for learning review -

- 6.73 Where there are incidents of significant or serious harm, they will be reported to the chair of the Adult Protection Committee via the Head of Adult Social Work Services.
- 6.74 The Locality Social Work Manager or Service Manager if external to locality will liaise with Manager; Younger Adults to discuss concerns and agree what action will be taken.
- 6.75 A formal Chief Social Work notification form will be produced by the Locality Social Work Manager and forwarded to the Manager, Younger Adults and the Head of Adult Social Work. The Head of Adult Social Work will consider the notification and add an opinion regarding whether a review should be conducted or not, for consideration by the Chair of the APC. Any Significant Case Review will be the decision of the Chair following a discussion of all the information.
- 6.76 The process of reporting a serious incident to the Adult Protection Committee can be found in Appendix 25 & 26 in this guidance.

Part 8 – ASP Case Conference process

- 8.1 An ASP Case conference is a **multi-agency forum** held to share information and make joint decisions about how to support and protect an adult deemed to be at risk of harm. Whilst there are no statutory provisions relating to case conferences, the arrangements for case conferences detailed in these procedures have been agreed by the agencies represented on the North Lanarkshire Adult Protection Committee and public body employees have a duty to co-operate under Sec 5 of the Act.
- A Case Conference should be considered when the risk of harm to the adult is significant, and a multi-agency discussion is required to ensure the safety and wellbeing of that adult.**
- 8.2 The Locality Social Work Manager will convene and Chair an initial ASP Case conference within **21 working days** from the date of the initial adult protection referral. Where the Locality Social Work Manager decides to convene an initial AP case conference out with the 21 working day timescale, he/she must record the reasons for this decision.
- 8.3 A completed Risk assessment ([AP2](#)) including a multi-agency chronology should be submitted to the Locality Social Work Manager and relevant others **three days** prior to the case conference taking place.
- Where an ASP Case conference has been arranged on an urgent basis, the Lead Council Officer should complete an [AP2](#) – risk assessment at the earliest opportunity.
- 8.4 Links must be made with children and families services where the circumstances involve a young person who is known to them or where children may live in the same household.
- 8.5 Council legal services should be invited, as appropriate, in order to provide advice where there is likely to be an application for measures to a sheriff. Should a protection order be required the Council Officer should contact North Lanarkshire Council's legal department should be contacted. Further information on this process can be found in part [12](#) of this document.
- 8.6 A Mental Health Officer (MHO) should be invited to case conference if it is deemed necessary to consider issues of capacity, consent and options under alternative

legislation.

- 8.7 As with all other interventions under the Act the general principles set out in part one of the Act must be applied.

Part 7 - ASP Briefing and Debriefing Process

- 7.1 Where a decision is taken to proceed to an Inquiry with Investigative Activity, the senior social worker overseeing the case must brief the staff involved and can utilise ([Appendix 7](#)) for this purpose.
- 7.2 The activity required should be a planned process with roles and remits of the team agreed beforehand. The objective of the Inquiry with investigative activity is to establish whether an adult meets the criteria as an adult at risk of harm, the nature of the risk of harm, the level of risk and the likelihood of the risk continuing or recurring. Within this context consideration should be made to identify the most positive environment towards obtaining a full assessment of the adult's circumstances, needs and whether intervention or further action is necessary. The process requires both preparatory and post interview/investigative activity considerations:-
- Gathering and collating the fullest information available prior to any formal investigative interview e.g. information known from the Inquiry without investigative activity and previous involvement
 - Considering the range of possible risks of harm and other possible risks
 - Agreeing where the investigative interviews will take place
 - Ensuring the time of the visit is at a 'reasonable time'
 - Agreeing what areas will need to be addressed
 - Who will lead the interview
 - Who will record the interviews
 - How open questions will be asked to avoid leading the 'adult at risk'
 - Timescales for completion of each task
 - Considering employee health and safety
 - Agreeing how the outcome of the investigative activity will be reported to the Senior social worker
- 7.3 The relevant senior social worker should take cognisance of the potentially demanding nature of this work and ensure, in respect of the Lead Council Officer, and any other of their staff involved, that they are offered the appropriate time and support. Any associated workload management requirements should be met accordingly, and that expectations regarding feedback on progress of the investigation are clear.

- 7.4 Given the potential complexity of such situations, requirements for corroboration and in the interests of support for staff and health and safety it is recommended that investigative activity including visits **should always involve two workers.**
- 7.5 In North Lanarkshire the investigative activity under the Act will always be led by a Lead Council Officer. The relevant Senior social worker will be responsible to identify the Lead Council Officer and take responsibility for ensuring appropriate supports are in place.
- 7.6 The Lead Council Officer **must** be allocated to the case when it proceeds to investigative activity.
- 7.7 Section 8 of the Act allows the council, as lead agency, to request a co-operating body employee to accompany them on an investigative visit – **second worker**. It therefore follows that the **Second Officer does not require to be a Council Officer. Further guidance [here](#).**
- 7.8 It will be the responsibility of partner agencies involved in any investigative activity under the Act to ensure the support and health and safety of their workers involved.
- 7.9 On completion of the AP investigative visit/s and interview/s or other relevant activity under the Act, the Lead Council Officer and Second Officer should be debriefed by the senior social worker co-ordinating the investigation ([Appendix 7](#)). The purpose of this debriefing session is to discuss the outcome of the activity and clarify whether any action is required, including urgent action e.g. police and/or health, consideration of an ASP protection order and whether a fuller risk assessment ([AP2](#)) is required.
- 7.10 In all cases that require an investigative interview, the Lead Council Officer/Second worker must enter a recording on the appropriate recording system which offers a brief synopsis of the event. The Second Worker (if they do not have access to social work recording system) should forward a written account to the council officer via email. Council Officers/Second worker are not required to record the investigative interview in verbatim terms – however it is important when actual harm/abuse is disclosed every attempt should be made to take a verbatim accurate written statement as possible.

The content and purpose of the ASP Case Conference

8.8 The ASP case conference should focus upon risk of harm, needs, strengths, protective factors, capacity and consent. The content of the meeting should include:

8.9 **Introduction**

The chairperson should introduce the case conference by confirming:

- The purpose and function of the case conference within the context of adult protection procedures under the ASP (S) 2007 Act
- That certain information pertaining to the adult at risk may have to be restricted and give the reason for that restriction.
- Who is present - the Chairperson should ask participants to introduce themselves and identify their role;
- The role of the minute taker and the need to clearly record discussion

Reports and gathering of facts

It is important to note that the ASP case conference is a multi-agency forum and should involve views and assessment from all relevant professionals.

- All professionals should be asked by the chairperson to share information beginning with the circumstances of the referral and conduct of inquiries.
- The multi-agency chronology should be considered and discussed at the case conference. It should form part of the risk assessment.
- The content of any reports submitted.
- There should be a consideration of the risks of harm, the nature and level of such risks and the likelihood of recurrence (AP2 Risk Assessment).
- Potential relevant legislation and /or protection orders should be considered

8.10 The risk assessment (AP2) is not intended as a substitute for consideration and decision making in an ASP Case conference, rather the format is intended to provide a means by which such conferences can be fully informed about the findings and views of the assessor and the person being assessed, both in relation to past events and possible future actions.

8.11 The terms of the risk assessment are also intended to provide not only for a balanced response to individual rights and agency responsibilities, but also consideration and

analysis of the potential impact from any future protective measures. In addition, areas which need considered are:

- Whether any protection measures require to be sought or reviewed if they were established during the ASP inquiry.
- Any relevant background information (following all the information relating to the current investigation been discussed).
- What the strengths or weaknesses are in the current support arrangements and any need for advocacy to support the person at risk's views and wishes to be heard
- The adult at risk's ability to consent and capacity to understand. Or ability to make informed decisions. Decisional and executorial ability needs to be considered. Consideration to be made relating to past or ongoing Trauma.
- A history of any significant events – multi-agency chronology.

8.12 The Chair of the case conference should provide verbal summaries following each individual relevant contribution in order to ensure clarity and to assist the person at risk of harm and/or carer to be fully engaged and understand what is being said. This approach should also facilitate the taking of the minute. It is particularly important that the person and any carers or family have an opportunity to make their own contribution.

8.13 If there is disagreement about any facts or opinion presented there should be an attempt to agree a consensus at the time. In the event of this not being possible some, disagreements may only be acknowledged.

Involvement of the adult

8.14 **Particular care** should be taken to ensure the involvement of the adult at risk of harm and their carer/family/relevant person as well as any identified support – such as advocacy worker.

The adult at risk should (unless it is considered not to be of benefit to them) be invited to and involved in setting up of meetings to consider risks to which they are exposed and how best they can be protected or enabled to make informed decisions concerning potential risks. If they are not invited, the reason should be recorded and communicated to the person in a format they can understand, along with a method for the person to appeal the decision provided.

The adult also has the right to refuse to attend. It is important that the adult does not feel pressurised, however, and the possibility of undue influence affecting the adult's hesitancy to participate should be considered. In all cases where the adult is not attending, the views and preferences of the adult should be sought and recorded in advance of the meeting, and another individual should represent those views on their behalf, such as an advocacy worker or other designated person. The reason for the adult not being present needs to be recorded as part of the minute of the meeting, and alternative methods identified for explaining fully to the adult what options were considered, what decisions were taken, and why.

8.15 **Consideration should always be given as to how the adult or relatives, carers etc might most effectively participate.** Consideration should be given to ensure that:

- The purpose and process of the case conference has been fully explained, the venue is not intimidating to the adult or carer and is accessible. It is the role of the senior social worker (or equivalent manager) to ensure that a designated worker has discussed these issues with the adult and their supporters.
- It is good practice for the council officer to meet with the adult and/or relatives/support prior to the case conference to explain the purpose of the case conference and what is likely to take place. It is important to ensure that the adult is aware of what is being discussed during the meeting. **It is their information and life that is being discussed.** In addition, it is good practice for the council officer to offer to meet the adult (or carer if appropriate) after any meeting to explain the discussions and decisions, and to ascertain whether any issues remain unaddressed or new issues have arisen.
- There will be occasions and circumstances where it is not of benefit to the adult to attend meetings, in addition when someone is unable to attend through lack of capacity, appropriate alternative representation, such as family, carers and/or independent advocacy services is considered.
- Appropriate communication support systems (including translation and interpretation) are provided.
- Attendance for part of the meeting is an option where agreed if there are areas an individual will find too distressing. There is the facility for the adult to be consulted out with the meeting and their views appropriately represented if preferred.

- Adults **must not** be required to meet with individuals who have or are suspected of placing them at risk and which may cause them distress.
- Where the alleged harmer is also seen as a person at risk, consideration should be given to holding a separate case conference regarding their needs.
- Attendance at the ASP Case conference will be at the discretion of the Chair in partnership with the adult at risk. This should ensure the exclusion of any individual where there are substantive grounds for believing that their involvement in the conference would undermine the process or serious conflict is liable to emerge, or where sub judice information is being presented.

Interpretation and Assessment

8.16 The chairperson should lead the discussion which focuses upon:

- What strengths the adult has and what are the strengths available to support the adult e.g. positive role of carers or family members?
- What are the threats to the adult at risk's wellbeing?
- What are the specific dangers, actual and/or potential to the adult at risk?
- What is the current or potential role of carers and family members?
- What extended family and other informal supports could be mobilised?
- Is there a need for community or professional supports to be offered?
- Is there a need for urgent protective action to be taken, including a formal ASP protection order?

Decision

8.17 The multi-agency case conference needs to decide whether the adult or any other person is believed to be at continuing risk of harm and if so:

- Decide if there is a need for formal measures to protect the adult e.g. ASP protection orders, or pursue further investigative activity.
- Refer/not refer to the police, if this has not already been done in the course of the inquiry (i.e. where it is believed that a crime may have been committed).
- Consider if an adult protection plan is required – all adults agreed as an adult at risk at case conference stage and progressing to be supported under this legislation require to have a protection plan.

- Agree any decisions and/or actions that are required to safeguard and protect the adult at risk.
- Identify and agree an ASP core group who will work with the Council Officer
- Determine roles and responsibilities of the various professionals involved in the protection plan.
- Make arrangements for implementing and review of the AP3 Protection plan.
- Identify and agree a review date. (This must take place within **three months initially** and then at least every **six months thereafter**)

8.18 **Legislation**

Consideration of current protective legislative measures may be required to implement the protection plan e.g. Adults with Incapacity (Scotland) Act 2000, Mental Health (Care & Treatment) (Scotland) Act 2003 and Adult Support & Protection (Scotland) Act 2007.

8.19 **Note 1**

In considering legally protective measures of intervention due consultation **must** be given to the **Principles** underpinning the various Acts

Note 2

Where it is anticipated that the use of the Mental Health (Care and Treatment) (Scotland) Act 2003 (MHCTA) or Adults with Incapacity (Scotland) Act 2000 (AWI) may be appropriate the chair person of the case conference should ensure that an MHO is present to give advice.

Where issues of lack of capacity are identified and intervention under the Adults with Incapacity (Scotland) Act 2000 is a decision from the ASP Case conference, North Lanarkshire Council Procedures in relation to the AWI should be followed.

See North Lanarkshire Council AWI Guidance [here](#)

8.20 The requirement for a separate AWI Case conference ensures when an MHO can be allocated to complete a summary report for the Case conference, setting out the Adult's circumstances; Adult and relevant others' views and making recommendations for the powers that require to be sought in order that the adult's care plan can be implemented.

8.21 In some urgent situations, the ASP Case conference may identify that significant harm to the adult is likely if immediate action under AWI is not undertaken. In such cases, it

would be appropriate to discuss all legal options open to the council to safeguard and protect the adult at risk. An example of this would be, where it has been determined that there is a need for a council solicitor to apply for a Removal Order under s293 or s294 of the Mental Health (Care and Treatment) (Scotland) Act 2003 in conjunction with an application for interim welfare guardianship. In such an instance, however, there is likely to be prior knowledge about the serious risks being posed to an adult and a locality-based MHO should have been present at the Adult Protection Case conference.

- 8.22 Whilst the purpose of the Adult Protection Case conference is to consider the need for the implementation of an adult protection plan and to implement this, it will be the responsibility of the chairperson to ensure that recording requirements and case conference outcomes are all made and met timeously.

Invitations to ASP Case conference

- 8.23 Invitations should be made to all appropriate partners and agencies. Council officer should utilise [Appendix 12](#) to request invitations are sent. Please note that Police Scotland has a separate [request document](#). The ASP Case conference should:

- consider the fullest information possible
- be an inclusive process involving the adult at risk, family, carers and/or those with a legitimate interest
- involve multi agencies with an interest and/or involvement
- consider reasonable and practicable measures in line with the principles of the Act and any formal protective actions

- 8.24 **Attendance at the ASP Case conference should include (where appropriate):**

- Lead Council Officer and other investigating officers where appropriate
- The adult who is seen to be at risk of harm or their representative if they do not feel able to attend.
- Carer or relative (having regard to wishes of the adult). If the adult has identified a named person in relation to the MH Act, the adult may seek the attendance of their named person.
- General practitioner and any other appropriate health practitioner .
- Police.
- Scottish Fire and Rescue Services.

- Staff from any regulatory bodies or care provider organisations directly involved with the adult.
- Legal services.
- Independent advocacy.
- Proxy decision makers (attorney or guardian).
- MHO for specialist advice in relation to any potential need for issues arising in relation to mental disorder or lack of capacity.
- Any relevant housing or homeless organisation.

Any further invitation should be as appropriate to the wishes of the adult at risk and the needs of the meeting. All attendees must be fully agreed in advance by the Chair.

8.25 **Exclusion from ASP Case conference**

Practice in this area should be characterised with a genuine wish for involvement and participation, wherever appropriate the adult at risk, carers or family being present. It is only where there are substantive grounds to believe that the involvement of carers or family would undermine the process and purpose of the case conference that they should be excluded throughout.

Information which can be obtained without attendance should be gathered prior to the meeting if this allows the Chair to have the information (rather than risking information through non-attendance by someone e.g. a police officer etc).

8.26 Grounds for exclusion may be when:

- A level of conflict or tension exists within the carers or family; or
- There is substantive evidence to believe that there is a likelihood of violent or serious disruption of the process of the case conference.
- There is third party or sub judice information is being presented to the case conference.
- It is judged necessary by the chairperson that the presence of family or carers would seriously affect the risk to the adult concerned.

Role of the chairperson

8.27 The Chair will:

- Consider and rule on requests for a family member and or carer to be excluded from the case conference. Where possible the adult involved should attend the case conference along with their advocate, however if they are unable or do not

wish to attend their advocate should attend on their behalf. Every effort should be made to include the adult at the case conference to ensure that they feel and are involved in the decision-making process.

- Consider meeting with the professionals attending the case conference prior to its commencement and before the family and or carer and adult involved are invited in, to confirm if any information needs to be shared without the family being present. If so, this should be done prior to them joining the case conference.
- Confirm that all professionals involved are aware of the facility to ask for an adjournment at any time during a case conference and to agree how this will be done.
- Introduce him or herself to the family and or carer and, where appropriate, the adult involved immediately prior to the case conference and confirm their understanding of the purpose and process of the case conference.
- Ensure that the decisions of the case conference are fed back to the person at risk or relevant family or carers, who have been unable to attend or excluded from the case conference as soon as practicable after it.
- Ensure that where the adult attends the case conference the appropriate worker meets with them after the case conference to ensure they understand the outcome of the meeting and any actions planned. Where the adult is unable to attend, they should be advised as soon as possible of the outcome of the case conference.
- Ensure that any communication support or systems (e.g. loop system or interpreter) are made available.
- Be responsible for leading the discussion and ensuring that all those invited are given the opportunity to participate and contribute to the discussions.
- Hold ultimate responsibility for decision making within the AP Case conference and subsequent review case conferences.
- Summarise all decisions, actions and who is responsible for carrying these out so that these decisions are recorded by the person taking the minute of the meeting.
- Ensure that the decision is recorded on appropriate recording system after the case conference.
- Ensure that the action and minutes of the case conference are accurate, do not include sensitive information that may jeopardise any ongoing investigations

and that they are distributed to the appropriate agencies and, where appropriate, the family and or carer and the adult as soon as possible.

ASP Case conference dissent, dispute, complaints

- 8.28 Any agency, adult or their carers have the right of access to complaints procedures should they disagree with any decision or outcome arising from the case conference process. Similarly, all parties retain the right to request a review of their care provision at any time.
- 8.29 Under the adult support and protection case conference procedures any dissent, dispute or complaint occurring, within the proceedings of the case conference **must** be recorded in the relevant minute. In the case of dispute, dissent or complaint that cannot be resolved within the case conference the chairperson will require to refer to the Health and Social Work Manager to review the issues raised.
- 8.30 Where a further review case conference is deemed appropriate to be held to address the concerns raised this should be done within **15 working days** of the recorded concerns. This meeting **must** be chaired by an appropriately qualified Health and Social Work Manager or Headquarters Manager. Should there continue to be dispute or dissent then discussion should take place with the chief social work officer for further advice or guidance.
- 8.31 Complaints relating to procedural arrangements should be made via the Social Work complaints procedure.
- 8.32 Where service delivery is bound by legislative protective measures such as the [Adults with Incapacity \(Scotland\) Act 2000](#) or [Mental Health \(Care & Treatment\) \(Scotland\) Act 2003](#) legal review through the court or tribunal system or to the Mental Welfare Commission may be an option and relevant procedures and Scottish Government Codes of Practice should be followed in such instances.

ASP Case conference minutes

- 8.33 The chairperson has the responsibility to ensure an accurate record of the discussion and key decisions is made in a case conference minute ([Appendix 18](#)). The chair

should ensure that appropriate administrative support in the form of a specialist minute taker is available for this purpose.

8.34 The person who will take the minutes of the meeting should be identified in advance and should not be the chairperson.

8.35 It is important that an accurate record of the salient features of the discussions and of the decisions reached at the adult protection case conference is made and kept. These records will form part of the basis of defensible decision making. It is advisable for minutes to make clear:

- That they are a record of a meeting held under the auspices of Adult Protection & Support (Scotland) Act 2007 and North Lanarkshire Social Work Adult Protection procedures therefore that those attending understand the basis upon which the meeting is held including the confidential nature of the proceedings and the minutes.
- Who attends the meeting and in what capacity.
- The identity of the adult at risk.
- Those issues which are relevant to the assessment and the management of risk.
- For each risk factor identified there should be a corresponding response as to how that factor will be managed.
- The actions that will be taken as a consequence of the discussion, who will take them, in what timescale and how these actions are intended to reduce or managed the risk.
- Action points from the meeting will be reflected in a focussed and clear minute and completed protection plan ([Appendix 19](#)).

8.36 In cases where it is anticipated an ASP protection order could be required the chairperson should refer to guidance to ensure the legal requirements of obtaining an order are fully covered. Further guidance on ASP protection order can be found in [part 12](#) of this document.

8.37 The minutes of the meeting should be treated as confidential. The minutes should be given only to those attending the meeting or who should have been present due to their role as a relevant public body to the circumstances of the case and should be seen only by those persons and those who have the authority and duty to consider what was discussed and decided. Sensitive information from other agencies should be screened by the chair and not be securely so that their confidentiality is preserved.

8.38 The chairperson is responsible to meet with the minute taker directly after the ASP Case conference concludes. This brief meeting will confirm the decisions reached by case conference attendees. These decisions **must be recorded upon appropriate recording system the same day, or at the earliest opportunity and the summary of decisions confirmed, typed and circulated.**

8.39 **Distribution of minutes**

The actions **from the case conference should be distributed as soon as possible. The minutes should follow as soon as possible after – following it having been signed of and approved by the chair they should be distributed** to the appropriate agencies and, where appropriate, the family and or carer and the adult as soon as possible.

Part 9 – ASP Protection Planning process

- 9.1 The **protection plan (AP3)** has been designed for use when allegations of harm or exploitation have been made and an ASP Case conference has agreed that there is a risk of harm or serious harm; or when high levels of risk cannot be managed within a normal care or welfare plan ([Appendix 19](#)).
- 9.2 The format for the protection plan assumes that, reflecting good practice, there will be a lead worker to co-ordinate protection work and that, in most cases, there will also be a core group of workers from different services. **The Lead Council Officer will be responsible to co-ordinate the protection plan but it is all core groups members responsibility to contribute to it.**
- 9.3 Inquiries and audits have indicated that adult protection conference minutes may not fully reflect all of the elements of a full protection plan, and the completion of a full written protection plan seeks to separately identify all of those elements. It also aims to ensure the definition of responsibilities, timescales and outcomes for whatever actions are necessary in the categories provided. It should be noted that there may need to be several actions under particular headings.
- 9.4 The terms of the protection plan format reflect certain key practice principles which are also evident in the risk assessment, particularly the need to identify and respond to the views of the adult at risk and significant others and the need for good communication both with them and between all the professionals or agencies involved.
- 9.5 **The protection plan should be seen as a working document and should reflect the current situation of the adult.**

Part 10 - ASP Core Group process

- 10.1 Core group members must be identified during the initial adult support and protection conference or as soon afterwards as possible if relevant representatives are not in attendance and their names, along with delegated tasks and timescale recorded in the minute.
- 10.2 Core groups are small groups of interagency staff who are involved with individuals who are supported under to adult support and protection.
- 10.3 Membership of the core group should be kept as small as possible without compromising the adult protection planning and protective process. Too many professionals in the core group can oppress and impair the adult and their carer's attendance.
- 10.4 The core group has delegated responsibilities to progress the adult protection plan and is answerable to the ASP Review Case conference.

ASP Core group role

- 10.5 The senior social worker co-ordinating the adult protection case is responsible for chairing the core group.
It is the responsibility of the first core group meeting **(within 1 week of the case conference)** to consider the decisions and actions agreed by the initial case conference and develop the protection plan. The senior social worker should lead these multi-agency discussions ([Appendix 19](#)).
- 10.6 The Lead Council Officer is responsible for completing the details in the AP3 protection plan template ([Appendix 19](#)). **However, it is the multi-agency core groups responsibility to contribute to and agree actions.**
- 10.7 The protection plan should be outcome focused and clearly identify the roles and responsibilities of each core group member, within timescales. The actions should match the identified risks of harm, clearly identify how it is intended to mitigate and/or manage the risks and deliver the outcomes to be achieved for the adult.

10.8 **Core group members should pay particular attention to those adults at risk who, due to their circumstances, will be returning to situations where they remain at continued risk of harm.** As above, the protection plan in such cases should clearly match the identified risks of harm but identify and record any assessment that mitigating the risk may be limited. This is particularly true when an individual's own actions constitute a major element of the risk. Sometimes in such circumstances, the plan may be restricted to limited objectives such as maintaining contact and attempting to intervene when the adult is willing to cooperate.

This is not the same as saying that nothing can be done and does still require partners to continue to cooperate to the best of their abilities in the face of non-engagement from the adult.

10.9 Each core group must review the effectiveness of the adult protection plan being worked to, and as part of this review, consider:

- progress in implementation of the adult protection plan to date
- any changes to protective/risk factors identified
- if outcomes identified are being achieved/not being achieved (if not consider why not and what needs to be changed to meet the outcomes)
- what tasks need to be undertaken (and by whom) in order to work towards agreed outcomes
- if there is a need to recommend to the locality social work manager that a review adult protection conference is required because of a significant deterioration in the adults circumstances and likelihood of future harm.

Where core group's recommendation that there needs to be a review adult protection conference convened as soon as possible, this in itself must not preclude action to safeguard the adult in the interim period e.g. ASP protection order.

10.10 Any changes to the adult support and protection plan as a result of the core groups review must result in the adult protection plan being updated to reflect the changes agreed and copies of the new plan disseminated to core group members. The Lead Council Officer is responsible for this task.

10.11 The chairperson (senior social worker) of the core group must ensure that those in attendance at the core group meetings, and those invited but unable to attend, receive copies of the adult protection plan being worked to and a copy of the updated plan/minutes after each core group.

10.12 A copy of core group minutes must also be given to the locality social work manager.

Timescales

10.13 The first core group should meet no later than **1 week** from the initial ASP Case conference being held. Thereafter core groups should be held **4-6 weekly** for the duration of the protection plan.

Generally, the frequency of the core group meetings will be determined by the chair of the ASP case conference in line with levels of risk, however they should not be less than the timescales set out in 10.14. At times, where risk has increased, more frequent core group meetings may be required.

10.14 Any member of the core group can also request an additional core group meeting to consider new information.

10.15 The relevant locality social work manager should be notified of this request and decide on whether to grant this request. If the request is refused the core group member must be advised in writing that he/she can appeal this decision by writing to the health and social work manager.

10.16 **The core group held 9 weeks after the initial ASP Case conference (the third core group meeting) will be responsible to consider the protection plan and ensure that a short analysis of the plan and its effectiveness is submitted to the ASP Review Case conference and should include a written update of the most up to date protection plan ([Appendix 19](#)).**

10.17 The ASP Case conference review should take place no more than two weeks after this core group meeting has taken place.

10.18 Any deviation from the above timescales must be justified and recorded fully.

Part 11 - ASP Review Case Conference

process

- 11.1 Where there is no immediate dissent, dispute or complaint the first ASP Review Case conference should be held within **3 months** of the initial adult support and protection case conference and thereafter at not more than **6 monthly intervals** for the duration of the protection plan being in place.
- 11.2 This is a multi-agency review case conference and as during the initial ASP case conference, and all relevant professionals should partake and provide information regarding their current involvement and view of current risks and protective factors.
- 11.3 Again, it is important to ensure the contribution and attendance of the adult at risk of harm as well as any relevant support including family, unpaid carers and advocacy.
- 11.4 The discussion during the ASP case conference review should be based around an up-to-date AP3 – protection plan which should have been distributed as appropriate – at least 3 days before the case conference review.
- 11.5 The purpose of the review case conference is to:
- Review support and outcomes to date and to confirm the current situation.
 - Consider the current protection plan and the analysis of the current situation.
 - Consider the recommendations of the core group, if one is appointed.
 - Review risk management plans and establish current level of risk.
 - Ensure agreed duties and responsibilities across partner agencies have been fulfilled and agree any action where failure to implement the plan has been identified.
 - Up-date the protection plan and associated service provision.
 - Ensure any intervention or legal powers exercised in relation to the principles remains proportionate and are the least restrictive option in terms of maximising benefit and offering effective protection.

Please see [Part 8](#) for general information and principles.

Part 12 – ASP Protection Orders

- 12.1 During the process of an adult support protection inquiry there may become need for protection measures to be considered in certain circumstances – where there is risk of serious harm to the adult and other measures to protect the adult has been considered, attempted and/or deemed unsuitable to mitigate the risk identified. It must be noted that there is no requirement under the 2007 Act for the council to have previously undertaken investigative activity – such as arranged a visit, an interview or medical examination prior to applying for any assessment, removal or banning order. Applications for protection orders can be made at any time in the process, depending on the individual circumstances of the case. Please note that the adult that is subject of an application for a protection order require to consent – unless undue pressure can be evidenced.
- 12.2 The decision to apply for a protection order will normally be taken at an Adult Support and Protection Case Conference. As such it will be a multi-agency decision, informed by a report from the council officer. The council will then arrange for the submission of the application.
- 12.3 When protection orders are considered – a representative from North Lanarkshire Council legal service requires to be contacted and invited to the Case Conference.
- 12.4 **Contact should be made via North Lanarkshire Council Litigation and Paralegal inbox: litigationparalegalteam@northlan.gov.uk or 01698 – 302330.**

When contacting legal – please note the contact details for the allocated SSW and Council officer and second worker. This will enable the legal representative to take swift action and contact can be made with the appropriate people to gather information.

They will request a copy of the AP1 referral, AP2, multi-agency chronology, minutes of previous meetings and any other relevant information to the application – or considered application – prior to the case conference.

- 12.5 It is recognised that some circumstances require an urgent application for a protection order. In those circumstances – and when an AP2 has not been completed (due to time constraints) it is important that the legal representative can gather information at

the Case Conference that is usually pertained within the AP2. This will form the basis for an application to the sheriff.

- 12.6 Any proposed action, including use of other legislation, should be in line with the principles of the Act ([Section 2](#)).
- 12.7 The Act places a duty on the council, if it considers that it needs to intervene in order to protect an adult at risk of harm, to consider the provision of appropriate services, including **independent advocacy services**, to the adult concerned, after making inquiries under Section four of the Act. The rationale for referring or not referring to advocacy must be clearly recorded and specifically referred to in any reports.
- 12.8 Other services are not defined in the Act but consideration should be given to practical and emotional support provided by social work, health, voluntary sector and private sector providers. For example, the provision of mainstream health and social care services such as housing, independent living, financial, occupational therapy, counselling and support for carers.
- 12.9 Under Section 41(6) of the Act, the sheriff has discretion to appoint a person to safeguard the interests of the affected adult at risk in any proceedings relating to an application. It may be that the sheriff will instruct a safe guarder to report on the issue of consent.
- 12.10 Consideration must be given to which legislation would be most appropriate and of benefit to the adult for example child protection, mental health, civil law or criminal justice legislation.

Undue pressure

- 12.11 **Are there indicators that the adult is being influenced by someone else they have trust in or are dependent upon? Is there someone who is either intentionally or unintentionally preventing them from protecting themselves effectively? Is there someone who is suspected of harming or threatening the adult? Is there someone the adult is afraid of?**
- 12.12 Undue pressure may be applied to prevent the adult from seeking help or to influence the decisions they make which subsequently leaves them at risk of harm. The outcome may or may not be a direct benefit to the person applying the pressure.

- 12.13 It must be borne in mind that the principles of adult support and protection emphasise the importance of striking a balance between an individual's right to freedom of choice and the risk of harm to that individual. This should **always** be considered during the adult support and protection process and particularly for any protection order. prior and during the application of any protection order.
- 12.14 The Act and codes of practice clearly state that a sheriff must not make a protection order if the affected adult at risk refuses to consent to it being granted. If it is considered that the adult will refuse consent to the granting of a protection order the council should re-consider the merit of the application. The council must not take any action for the purpose of carrying out or enforcing a protection order if they know that the affected adult at risk has refused to consent to the action. If the council decides to pursue an application where the affected adult has capacity to consent and their refusal to consent is known, then the council must prove that the adult has been "**unduly pressurised**" to refuse to consent to the granting of an order.
- 12.15 Where the adult at risk has refused to consent, Section 35 provides that the sheriff in making an order, or a person taking action under an order, may ignore the refusal where the sheriff, or that person, reasonably believes:
- that the affected adult at risk has been unduly pressurised to refuse consent;
 - and that there are no steps which could reasonably be taken with the adult's consent which would protect the adult from the harm which the order or action is intended to prevent.
- 12.16 [Section 35\(4\)](#) of the Act gives an example of what may be considered to be undue pressure. This states that an adult at risk may be considered to have been unduly pressurised to refuse to consent if it appears:
- That harm which the order or action is intended to prevent is being, or is likely to be, inflicted by a person in whom the adult at risk has confidence and trust; and
 - that the adult at risk would consent if the adult did not have confidence and trust in that person.

In this scenario, the sheriff or the council officer pursuing the application must reasonably believe that there is a relationship of confidence and trust between the affected adult at risk and the person allegedly subjecting the adult to undue pressure, and that the adult would otherwise consent if the adult did not have that confidence and trust.

- 12.17 The most obvious relationships in which confidence and trust are likely to exist between parent and child, siblings, partnerships and friendships. The assessment of undue pressure may include the development of the relationship and how the suspected harmful circumstances may have resulted in the affected adult's refusal to consent.
- 12.18 Section 35 (5) makes it clear that this is not the only type of behaviour that would constitute undue pressure. Undue pressure can also be applied by an individual who may or may not be the person suspected of harming the adult, such as a neighbour, carer or other person. For example, a relative who is not suspected of causing the harm but does not, for whatever reason, wish the council to apply for an order may place undue pressure on the affected adult to refuse consent.
- 12.19 Undue pressure may also be applied by a person that the adult is afraid of or who is threatening them. In those situations the undue pressure would be applied by a person whom the adult does not trust.
- 12.20 Where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. Evidence of lack of capacity will be required by the sheriff. Where the adult is incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney may consent on their behalf. Where the adult demonstrates a preference not to consent, but where s/he is believed not to have the capacity to make that decision, next steps must be considered.
- 12.21 If an adult with incapacity does not or will not comply with a protection order, and where an adult does not have capacity in that context, it may be better practice to take action under other legislation, rather than under this Act, e.g. under the [Adults with Incapacity \(Scotland\) Act 2000](#), to pursue the appointment of a guardian with the power to take whatever action is necessary to protect or support the adult. Alternatively, if the adult with incapacity has a mental disorder, it may be more appropriate to consider the

[Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#), which can permit an assessment, medical examination and, if necessary, the removal of the person at risk to a place of safety without her/ his consent.

Further information and guidance regarding protection orders and Undue Pressure under the Act can be found in the [National Codes of practice](#).

- 12.22 [The Mental Welfare Commission Investigation into the Death of AB](#) considers the importance of understanding undue pressure and the impact of the ability to make informed decisions.

Refusal of entry – warrant of entry application

- 12.23 The Act allows a council officer, together with a police constable, to take entry to any place in order to enable or assist inquiries into whether an adult requires protection. If the council officer is refused entry to the premises, then, in accordance with the principles of the Act, in the first instance there is a need to consider how entry may be achieved without the need for an application for a warrant.
- 12.24 In order to minimise distress and risk to the adult, the procedure should be carefully planned and co-ordinated with all involved in the process.
- 12.25 Where it is anticipated that there may be a risk of violence, a multi-disciplinary assessment of risk should be undertaken. It may be more appropriate for the process to be passed to the police to enable them to address the issue of the safety of all parties concerned.
- 12.26 When considered necessary an application to a sheriff for a warrant for entry can be made. This authorises a council officer to visit any place specified in the warrant accompanied by a police constable. The constable is authorised to do anything, including the use of reasonable force where necessary, to fulfil the objective of the visit. If the constable needs to open any lockfast place, a joiner may be required. It is the responsibility of the council (i.e. the council officer) to take all reasonable steps to ensure that the person's property and premises are left secured which may also require the services of a joiner.

This form of warrant expires 72 hours after it has been granted. Once executed, it cannot be used again.

- 12.27 The council officer or senior social worker should liaise with legal services to discuss the areas of concern and further action.
- 12.28 Legal services on behalf of the council will make the application to the sheriff to seek a warrant for entry. The council officer will also be required to attend.
- 12.29 The sheriff may, on the application of the council, otherwise grant a warrant for entry in relation to a visit under [section 7 of the Act](#) only if satisfied, by evidence on oath—
- (a) that a council officer has been, or reasonably expects to be—(i) refused entry to, or
 - (ii) otherwise unable to enter, the place concerned, or
- (b) that any attempt by a council officer to visit the place without such a warrant would defeat the object of the visit.
- 12.30 In cases of urgency and where the criteria are met there may also be a need to consider application for any one of the three protection orders at the same time. This decision should be in consultation with your locality social work manager.
- 12.31 Where there is no access to a sheriff (out of hours) and an adult at risk is likely to be harmed if there is any delay a justice of the peace can be contacted for a hearing. This **form of warrant expires 12 hours after it has been granted.** Once executed the warrant cannot be used again.

ASP Assessment Order

- 12.32 Any proposed action, including use of other legislation, should be in line with the principles of the Act ([Section 2](#)).
- 12.33 Consideration must also be given to whether the adult should be referred to an independent advocacy organisation or provided with other services.
- 12.34 Section 11 of the Act allows councils to apply to a sheriff for an assessment order. This order would only be appropriate if it were not practical (due to lack of privacy or

otherwise) to carry out an interview or medical examination of the adult at the place of the visit.

12.35 When an assessment order is granted, the sheriff must also grant a warrant for entry under Section 37 of the Act in relation to a visit under Section 7. The warrant for entry accompanies the assessment order will detail a specified place and only that place can be entered using the warrant. The warrant authorises a council officer to visit the specified place together with a police constable and authorises the constable to take any action which he/she considers to be reasonably required, in order to fulfil the object of the visit. Only the constable has a right to use reasonable force and only when deemed necessary.

Criteria for an Assessment Order

12.36

- The council has **reasonable cause to suspect** that the adult at risk is being, or likely to be, **seriously harmed**.
- The order **is required to establish** whether the person subject to the order is an adult is at risk and is, is or likely to be, **seriously harmed**.
- The place at which the person is to be interviewed and examined is available and suitable.
- The proposed action is of benefit to the adult and reflects the principles of the Act.

12.37 The council must therefore be able to satisfy the sheriff that a suitable place will be available to take the adult. This may in some circumstances require written confirmation from the person who owns or manages this place that they are willing to receive the adult for assessment purposes. For example, the place could be a friend's or relative's house or a care home. The suitability of the place to conduct a private examination could also be confirmed in writing. This would be desirable, but it may not always be practicable in potentially urgent or emergency situations.

12.38 If the council decides to pursue an assessment order where the affected adult has capacity to consent and their refusal to consent is known, then the council must prove that the adult has been '**unduly pressurised**' to refuse to consent to the granting of an order. Where the adult does not have capacity, then this requirement does not

apply. Please see undue pressure section of this document (12.11) for further information.

- 12.39 If the adult is unable to consent any proxies or guardians should be approached, if appropriate, otherwise consideration should be given to alternative legislation.
- 12.40 The adult can be taken to a place specified in the order but whilst there, the adult retains the right to refuse to answer all or some of the questions when interviewed. The adult may similarly refuse a medical examination. Should the adult refuse to remain in the specified place the council officer must return the adult to their previous location or another location of their choice, within reason.
- 12.41 Where practicable the adult and carers, if appropriate, should be kept fully informed at every stage of the process, whether the order is granted, what powers it carries, what will happen next, their right to refuse participation in medical examination, interview and other options available.
- 12.42 An Assessment Order does not have the power to detain the adult in the place they are taken to, and the adult may choose to leave at any time.
- 12.43 It will be the responsibility of the council officer to return the adult to their place of residence.
- 12.44 It is the responsibility of the locality social work manager (or nominated person) to arrange a case conference, where possible, prior to this intervention taking place.

Purpose of an Assessment Order

- 12.45 To determine whether the adult is an adult at risk; and whether any action needs to be taken to protect the adult from serious harm.

An Assessment Order allows a council officer to take an adult at serious risk to a more suitable place to conduct a private interview (section 8), or a health professional to conduct a medical examination in private (Section 9). **An Assessment Order does not give any power to detain the adult.**

- 12.46 This order will be necessary **only** if it were not possible to carry out the interview or examination in the place of the visit and all informal options have been unsuccessful.

12.47 There is no requirement under the Act for the council to have previously arranged a visit under [Section 7](#), an interview under [Section 8](#), or medical examination under [Section 9](#) prior to applying for an Assessment Order.

Application for Assessment Order

12.48 An application for an Assessment Order must be made by North Lanarkshire Council Legal Services. **See 12.4 above.** Evidence of the concerns leading to the application will be required and the solicitor may request the attendance of the council officer at any hearing before the sheriff.

12.49 Council officers must inform legal services of any concerns not already documented in the AP2, information obtained and action to be taken following the granting of the order. A copy of relevant assessments, chronology and protection plans will be requested by the solicitor. Please see [12.4](#) above.

12.50 The application should highlight the type of assessment that is to be carried out and estimated length of time needed.

12.51 All relevant written reports will be served on the adult and their representatives, and this should be taken into account by the report writer. The sheriff can be asked to withhold reports or information that may jeopardise the safety or wellbeing of the adult. Where such a request is thought necessary, legal services must be informed as soon as possible, to allow proper notice to be given to the court.

Court process

12.52 Section 41(3) and (5) of the Act provides that the applicant for an order (legal services) must notify the adult in writing of the application and should advise them of their right to be heard or represented before the sheriff and to be accompanied by a relative, friend or other representative.

12.53 It is the responsibility of the applicant (legal services) to serve the papers on the adult, either by registered post or via sheriff officers.

12.54 [Section 41\(2\)](#) provides that the **sheriff may dispense with the above requirements** where the sheriff is satisfied that by doing so this will protect the adult from serious harm or will not prejudice any other person affected by the application.

- 12.55 Where the council becomes aware that the person suspected of harming the adult may also attend the hearing this should be made clear to legal services.
- 12.56 Where the adult does not wish legal representation or does not appear to understand the process the council representative should advise the court.
- 12.57 The sheriff has discretion to appoint a safeguarder to safeguard the interests of the adult.

Granting of an Assessment Order

- 12.58 When an Assessment Order is granted, the sheriff must also grant a warrant for entry under Section 38 of the Act. The warrant for entry accompanying the Assessment Order will detail a specific place and only that place can be entered using the warrant. Only the constable can use reasonable force to enter the premises.
- 12.59 Where practicable the adult must be kept fully informed at every stage of the process of their rights and other options available.
- 12.60 Where the adult lacks capacity and there are no guardian or attorney in place, consideration should be given to whether it is appropriate to use the [Adults with Incapacity \(Scotland\) Act 2000](#) or the [Mental Health \(Care & Treatment\) \(Scotland\) Act 2003](#).
- 12.61 The Assessment Order is **valid for seven days** after the date specified in the order and there is **no ground for appeal**.
- 12.62 It would be good practice for a multi-disciplinary plan to be in place when considering action under any protection order. Contingency plans should also be in place to help deal with situations where an adult does not respond as expected.

ASP Removal Order

- 12.63 Any proposed action, including use of other legislation, should be in line with the principles of the Act ([Section 2](#)).
- 12.64 Consideration must also be given to whether the adult should be referred to an independent advocacy organisation or provided with other services.

- 12.65 [Section 14](#) of the Act allows councils to apply to a sheriff for a Removal Order. This order will only be granted if the sheriff is satisfied that the adult is likely to be seriously harmed if not moved to another place.
- 12.66 The removal order is not for the purpose of interview or medical examination.
- 12.67 Before pursuing a removal order consideration should be given to voluntary approaches and use of other legislation. Other options should be explored and exhausted.
- Careful consideration must be given to the impact on the adult's circumstances should they refuse consent to the granting of the Removal Order. A case conference should be held, and consideration given to the benefit to the adult and a contingency plan put in place.**
- 12.68 If the council decides to pursue a Removal Order where the affected adult has capacity to consent and their refusal to consent is known, then the council must prove that the adult has been '**unduly pressurised**' to refuse to consent to the granting of an order. Where the adult does not have capacity, then this requirement does not apply. Please see [undue pressure section](#) of this document for further information.
- 12.69 If the adult is unable to consent any proxies or guardians should be approached, if appropriate, otherwise consideration should be given to alternative legislation.
- 12.70 Where practicable the adult and carers, if appropriate, should be kept fully informed at every stage of the process, whether the order is granted, what powers it carries, what will happen next and other options available.
- 12.71 The council **must** protect the property owned or controlled by an adult who is removed from a place under a removal order. [See protection of property form.](#)

[Purpose of a Removal Order](#)

- 12.72 Allows the council to remove the adult at risk to a specified place in order to support and protect them.

Criteria for a Removal Order is:

12.73

- The person in respect of whom the order is sought is an adult at risk who is **likely to be seriously harmed** if not moved to another place.
- A suitable place is available to which the adult at risk can be moved.
- The proposed action is of benefit to the adult and reflects the principles of the Act.

12.74 A Removal Order allows a council officer to take an adult at serious risk of harm to a more suitable place. This could be a private, public or commercial premise.

12.75 The adult is to be removed to the specific place named in the order. If a decision is made to move the adult somewhere else, either a fresh application for a removal order will be necessary, or it may be possible to apply to vary the order.

12.76 There is no requirement under the Act for the council to have previously arranged a visit under Section 7, an interview under Section 8, or medical examination under Section 9 prior to applying for an Assessment Order.

Application for a Removal Order

12.77 An application for a Removal Order must be made by North Lanarkshire Council Legal Services. **See 12.4 in this document.** Evidence of the concerns leading to the application will be required and the solicitor may request the attendance of the council officer at any hearing before the sheriff.

12.78 Council officers must inform legal services of any concerns not already documented in the AP2, information obtained and action to be taken following the granting of the order. A copy of relevant assessments, chronology and protection plans will be requested by the solicitor. Please see [12.4](#) above.

12.79 Where a Removal Order is required, but it is not practicable to apply to the sheriff and the adult is likely to be harmed if there is any delay, the council officer should make the application to a justice of the peace.

12.80 Though the application must be made by the council, the council may choose to nominate another person, for example someone from one of the co-operating bodies,

to actually move the adult. This may be someone who is more familiar with the adult. This will be agreed at case conference.

- 12.81 The Removal Order will specify where the adult is to be removed to. Before the application is made it must be confirmed in writing or verbally that the specified place is available, suitable and agreement has been given by the owner for the adult to remain there for up to seven days.

Court process

- 12.82 [Section 41\(3\) and \(5\)](#) of the Act provides that the applicant for an order (legal or council officer) must notify the adult in writing of the application and should advise them of their right to be heard or represented before the sheriff. The adult also has a right to be accompanied by a relative, friend or other representative.
- 12.83 **All relevant reports will be served on the adult and their representatives and this should be taken into account by the report writer.** The applicant may also ask the sheriff to withhold information if it would be detrimental to the safety or wellbeing of the adult. Where such a request is thought necessary, legal services must be informed as soon as possible, to allow proper notice to be given to the court.
- 12.84 It is the responsibility of the applicant (legal services) to serve the papers on the adult, either by registered post or via sheriff officers.
- 12.85 [Section 41\(2\)](#) provides that the sheriff may dispense with the above requirements where the sheriff is satisfied that by doing so this will protect the adult from serious harm or will not prejudice any other person affected by the application.
- 12.86 [Section 15\(2\)](#) provides that the sheriff may require the council to allow a specific person to have contact with the adult at risk subject to conditions; however the sheriff must consider the council's views and the views of the adult, the person wishing contact with the adult and any other person who has an interest in the adult's well-being or property before imposing such a condition.
- 12.87 Where the council becomes aware that the person suspected of harming the adult may also attend the hearing this should be made clear to legal services.
- 12.88 Where the adult does not wish legal representation or does not appear to understand the process, the council representative should advise the court.

12.89 The sheriff has discretion to appoint a safe guarder to safeguard the interests of the adult.

Granting of a Removal Order

12.90 When a Removal Order is granted, the sheriff will automatically grant a warrant for entry. The warrant for entry accompanying the Removal Order will detail a specific place and only that place and any adjacent place can be entered using the warrant. Only a constable can use reasonable force to enter the premises.

12.91 To minimise distress and risk to the adult, the intervention should be carefully planned and co-ordinated with all those involved in the process. Contingency plans should be in place in case of unforeseen circumstances, and everyone should be familiar with them.

12.92 Where it is anticipated that the use of force may be necessary to execute the order, a multi-disciplinary assessment of the risks should be undertaken. In such circumstances the process should be passed to the police to enable them to address the issues of safety.

12.93 Once a warrant has been executed it cannot be used again.

12.94 The adult must be **removed within 72 hours** and the **order will expire seven days** from when the adult has been moved, not counting the day the adult is moved, and it **expires at midnight on the final day**. The sheriff may specify that the order should expire after a shorter period.

12.95 The adult cannot return home and then be removed again within this period.

12.96 Where the order has been granted by a justice of the peace under the emergency procedures, the adult must be **removed within 12 hours** and the **order will expire after 24 hours from the granting of the order**. These timescales may be shortened by the justice of the peace at the time the order is granted.

12.97 The adult can be taken to a place specified in the order but whilst there, the adult retains the right to leave the place at any time and must be informed of this right. Should the adult refuse to remain in the specified place the council officer has a duty

of care and should return the adult to their previous location or other place requested, within reason.

- 12.98 Where practicable the adult must be kept fully informed at every stage of the process of their rights and other options available.
- 12.99 Where the adult lacks capacity and there are no guardians or attorneys in place consideration should be given to whether it is appropriate to use the [Adults with Incapacity \(Scotland\) Act 2000](#) or the [Mental Health \(Care & Treatment\) \(Scotland\) Act 2003](#).
- 12.100 If the adult has been removed or left the premises prior to the implementation of the order, the warrant attached to the removal order will no longer be valid and a new application will be necessary. Theoretically the removal order will remain valid, unless is specified the place from where the adult was to be removed but advice should be immediately sought from legal services before attempting to implement this.

Protection of property

- 12.101 The council must take reasonable steps to prevent any property owned or controlled by the person moved under a protection order from being lost or damaged. It also gives the council the right to enter *any place the adult has property that requires to be protected* and remove property and take all reasonable steps to safeguard the property ([Appendix 21](#)).

Section 18 of the Act highlights:

This duty applies where (a) the adult is unable to protect, care for or otherwise deal with their property, and

(b) no other suitable arrangements have been or are being made for the purposes of preventing such loss or damage

The Council are entitled to remove property for the duration of the removal order and that any property removed must, as soon as is reasonably practicable after the removal order comes to an end, return the property to the adult.

- 12.102 Property can include house contents, vehicles, animals, livestock, cash, credit cards and clothing.

12.103 The council is not entitled to recover any expenses it incurs in relation to property owned or controlled by the adult removed.

Variation and recall of a Removal Order

12.104 [Section 17](#) provides that an application can be made to the sheriff to recall or vary a removal order. This application may be made by either:

- The adult at risk.
- Any person who has an interest in the adult at risk's wellbeing or property.
- The council

12.105 The sheriff must be satisfied that the variation or recall is justified by a change in the facts or circumstances. The Removal order cannot be varied to allow the council to do anything at any time beyond seven days after the day on which the adult at risk is moved.

12.106 Where the sheriff has recalled the Removal Order, the sheriff may direct the council to:

- Return the adult to the place from which they were removed.
- Take the adult to another place which the sheriff, having regard to the adult's wishes, may specify.

Recording and messaging

12.107 It is important to consider all the issues when making an application for a Removal Order and this should be recorded in the protection plan and on the adult protection screens.

12.108 In line with appropriate recording screens being updated by the Senior Social Worker, when a protection plan is in place a message will flag up on the recording system advising that there is a formal protection plan in place for.

ASP Banning Orders

- 12.109 Any proposed action, including use of other legislation, should be in line with the principles of the Act ([Section 2](#)).
- 12.110 Consideration must also be given to whether the adult should be referred to an independent advocacy organisation or provided with other services.
- 12.111 Before pursuing a Banning Order consideration should be given to voluntary approaches, use of other legislation and other options explored and exhausted.
- 12.112 **Careful consideration must be given to the impact on the adult's circumstances should a Banning Order be pursued. A case conference should be held and consideration given to the benefit to the adult and a protection plan put in place.**
- 12.113 Where practicable the adult and carers, if appropriate, should be kept fully informed at every stage of the process, whether the order is granted, what powers it carries, what will happen next and other options available.

Purpose of a Banning or Temporary Banning Order

- 12.114 The purpose of a Banning Order or Temporary Banning Order is to better safeguard the adult's wellbeing and property by banning a person from a place for up to six months. Banning Orders are a temporary solution and a means of enabling the care manager to implement a care package that will support the adult at risk and minimise future risk of harm. Or support the cycle of harm to be broken. Forward planning is crucial to assisting the adult to manage their future needs on an informal basis.
- 12.115 The subject of the Banning Order may not necessarily be living with the adult at risk. The point of the Banning Order is to put some distance between them to protect the adult at risk of further harm.
- 12.116 There is no requirement under the Act for the council to have previously arranged a visit under [Section 7](#), an interview under [Section 8](#), or medical examination under [Section 9](#) prior to applying for an Assessment Order.

Criteria for a Banning or Temporary Banning Order is:

12.117

- An adult at risk is being, or is likely to be, **seriously harmed** by another person;
- The adult at risk's well being or property would be better safeguarded by banning the other person from a place occupied by the adult than it would be by removing the adult from the place; **and either**:
 - the adult at risk is entitled, or permitted by a third party; **or**
 - neither the adult at risk nor the subject is entitled, or permitted by a third party.
- to occupy the place from which the subject is to be banned.

12.118 In the terms of the order, the adult is referred to as the '**affected adult**' and the person subject to the banning order is referred to as the '**subject**'.

12.119 If the council decides to pursue a Banning or Temporary Banning Order where the affected adult has capacity to consent and their refusal to consent is known, then the council must prove that the adult has been '**unduly pressurised**' to refuse to consent to the granting of an order. Please see [undue pressure section of this document](#) for further information.

12.120 Where the adult does not have capacity, then this requirement does not apply, however any proxies or guardians should be approached, if appropriate. Otherwise consideration should be given to alternative legislation.

Application for a Banning or Temporary Banning Order

12.121 An application for a Banning or Temporary Banning Order can be made by the adult, any other person who is entitled to occupy the place concerned or North Lanarkshire Council Legal Service. See section [12.4](#).

12.122 [Section 22\(2\)](#) of the Act places an obligation on the council to apply for a Banning Order if it is satisfied that:

- The criteria for granting a Banning Order are met.
- No one else is likely to apply for a Banning Order.
- No other proceedings to eject or ban the person concerned from the place concerned are pending in court.

12.123 The applicant may also apply for a temporary Banning Order at the same time as making an application for a Banning Order, or at a later date. This allows an order to be granted pending final determination of the Banning Order application and may be used when it is inadvisable to wait for a full hearing on the Banning Order application taking place.

12.124 Council officers must inform legal services of any concerns not already documented in the AP2, information obtained and action to be taken following the granting of the order. Council officers must inform legal services of any concerns not already documented in the AP2, information obtained and action to be taken following the granting of the order. A copy of relevant assessments, chronology and protection plans will be requested by the solicitor. Please see [12.4](#) above.

12.125 **Where consideration is being given to applying for an order which bans a child, this should include prior consideration of making a referral to the Children's Reporter where it is believed there would be an effective case to answer. In the case of urgency, a referral should be made to the Children's Reporter at the same time the application for an order is being made.**

12.126 Consideration should also be given to any conditions that may be attached to the order. This decision and any decisions relating to the involvement of a child should be taken at a multi-disciplinary case conference and highlighted in the protection plan. Appropriate representation from children and families social work management needs to be present if a banning order relating to a child or young person is likely to be discussed. The Locality Social Work Manager Community Care should agree attendance at any planning meeting with the Locality Social Work Manager, Children, Families and Justice.

Who can be banned from a property?

12.127 **Where the adult at risk is entitled to occupy a place, her or his occupancy rights are not affected** if husband, wife, partner etc. is banned from the property.

12.128 Where the adult at risk is a non-entitled spouse under the [Matrimonial Homes \(Family Protection\) \(Scotland\) Act 1981](#), they still have the right to occupy the home from which the subject of the order is banned.

12.129 If the adult at risk is not entitled to occupy a place, the Act does not allow a person who is entitled to occupy that place to be banned. (For example a person being cared for in a relative's home.)

12.130 Banning Orders may be used in respect of public places (day centre, care home).

12.131 Banning Orders may be used where neither the adult at risk nor the subject to the order has a right to occupy a property (day centre).

Court process

12.132 [Section 41\(3\) and \(5\)](#) of the Act provides that the applicant for an order (legal services) must notify the adult in writing of the application and should advise them of their right to be heard or represented before the sheriff. The adult also has a right to be accompanied by a relative, friend or other representative.

12.133 It is the responsibility of the applicant (legal services) to serve the papers on the adult, either by registered post or via sheriff officers.

12.134 **All relevant reports will be served on the adult and their representatives, and this should be taken into account by the report writer.** The applicant may also ask the sheriff to withhold information if it would be detrimental to the safety or well-being of the adult. Where such a request is thought necessary, legal services must be informed as soon as possible, to allow proper notice to be given to the court.

12.135 [Section 41\(2\)](#) of the Act provides that the sheriff may dispense with the above requirements where the sheriff is satisfied that by doing so this will protect the adult from serious harm or will not prejudice any other person affected by the application.

12.136 Where the adult does not wish legal representation or does not appear to understand the process the council representative should advise the court.

12.137 The sheriff has discretion to appoint a safeguarder to safeguard the interests of the adult.

Granting of a Banning or Temporary Banning Order

- 12.138 Once the Banning Order is in place the agreed protection plan and other support arrangements should be implemented and each agency fulfil their role.
- 12.139 To minimise distress and risk to the adult, all intervention should be carefully planned and co-ordinated with all those involved in the process. Contingency plans should be in place in case of unforeseen circumstances and everyone familiar with them.
- 12.140 The locality social work manager will oversee the implementation of the protection order in conjunction with other relevant agencies. Support services for the adult at risk should be identified in advance and implemented as soon as appropriate.
- 12.141 The length of the Banning Order will be specified by the sheriff and should be for the shortest period possible however it can last for a **maximum of six months**.
- 12.142 A **Temporary Banning Order** expires on the date the Banning Order is made, the date which it is recalled or any specific date the sheriff decides. Where a Temporary Banning Order is granted, the hearing in relation to the full Banning Order must be held within six months of that date.
- 12.143 Where it is anticipated that the use of force may be necessary to execute the order, a multi-disciplinary assessment of the risks should be undertaken. In such circumstances it is important that the police are part of this assessment to help address the issues of risk.

Rights of appeal

- 12.144 **Banning Order** - There is a right of appeal against the sheriff's decision to grant or refuse to grant a Banning Order. An appeal must be made to the sheriff principal in the first instance. The sheriff principal's decision may be appealed to the Court of Session but only by those who were involved in the appeal to the sheriff principal.
- 12.145 **Temporary Banning Order** - There is a right of appeal against the sheriff's decision to grant or refuse to grant a Banning Order. An appeal can only be made to the sheriff principal with the leave of the sheriff. The sheriff principal's decision may be appealed to the Court of Session only with leave of the sheriff principal.

Powers of a Banning or Temporary Banning Order

12.146 A Banning or Temporary Banning Order bans the subject from being in a specified place. The subject of the order may be a child.

12.147 A Banning or Temporary Banning Order may:

- Ban the subject from a specified place and a specified area within the vicinity within the specified place.
- Authorise the summary ejection of the subject from the specified place and the specified area.
- Prohibit the subject from moving any specified things from the specified place.
- Direct a specified person to take measures to preserve any movable property owned or controlled by the subject which remains in the specified place while the order is in effect.
- Be made to any specific conditions.
- Require or authorise any person to do, or to refrain from doing, anything else which the sheriff thinks necessary for the enforcement of the order.

12.148 The sheriff has the authority to attach conditions to the order as appropriate. A condition specified in the order may authorise the subject to be in the place or area they are banned from but only at specified times, for example supervised access to children, family members. They may also authorise supervised visits with the adult at risk as a first step to resolving the issues.

12.149 The conditions of this contact should be specified in a contact plan, showing dates, times and locations ([Appendix 20](#)).

12.150 **Attaching a power of arrest** will be decided by the sheriff based on the facts and circumstances of the case presented and become effective only when the subject to has been served with the order. This condition will expire at the same time as the order.

12.151 **The police, via the chief constable, must be notified as soon as a possible after any power of arrest attached to a Banning or Temporary Banning Order becomes effective. This will be completed by the applicant for the order (i.e. legal services if the council is applicant).**

- 12.152 Where a banning order is granted without a power of arrest the appropriate manager should inform the local police office of the order being granted.
- 12.153 The evidence for a power of arrest would be based on the likelihood of the subject breaching the banning order or any of the conditions attached to the banning order. There should be some immediacy of the risk of serious harm or urgency to justify the necessity for a power of arrest.
- 12.154 If any of these conditions were breached the subject may be arrested without warrant if a constable reasonably suspects them to be in breach of the order and that they may subsequently breach the order again if not arrested.
- 12.155 **If the person subjected to the Banning Order** is a child, then the officer must alert any person known to have parental responsibilities and rights in relation to the child. A referral to the Children's Reporter would also be expected to be made.
- 12.156 Where a Banning or Temporary Banning Order has been **granted without an attached power of arrest** and the circumstances of the case change, an application may be made to the sheriff to attach a power of arrest.
- 12.157 This decision would be made following a multi-disciplinary review of the adult's circumstances police and legal services representatives should be invited to the meeting.
- 12.158 The review should be chaired by the locality social work manager or delegated officer and a formal minute of the meeting taken. Decisions should also be recorded on appropriate recording system.
- 12.159 If the subject breaches an order with no attached powers of arrest, this will be dealt with on the basis of a failure to comply with the order of the court and police should be notified. As a result, the subject may be held in contempt of court.
- 12.160 If the person breaching the order also commits a criminal offence this will be dealt with via the police.

Protection of property

12.161 The Act states that the banning order may direct any specified person to take measures to preserve any moveable property owned or controlled by the subject which remains in the property they have been banned from.

12.162 The applicant (who could be the council or another person) should obtain an inventory of the subject's property which remains in the premises they are banned from. It would be good practice to obtain their signature to confirm the inventory is correct ([Appendix 21](#)).

12.163 The subject can formally request these measures be undertaken.

Variation and recall of a Banning Order

12.164 An application can be made to the sheriff to vary or recall the order by:

- The subject of the order.
- The applicant for the order.
- The adult at risk to whom the order relates.
- Any other person who has an interest in the adult at risk's wellbeing or property.

12.165 The sheriff must be satisfied the request is justified by a change in the facts or circumstances under which the order was granted or, as the case may be, last varied.

Recording and messaging

12.166 It is important to consider all the issues when making an application for a banning order and this should be recorded in the protection plan and on appropriate recording system.

12.167 In line with appropriate recording screens being updated by the Senior Social Worker, when a protection plan is in place a message will flag up on the recording system advising that there is a formal protection plan in place for.

