# OUTER HEBRIDES ADULT PROTECTION COMMITTEE

## Adult Support and Protection (Scotland) Act 2007

## Multi-Agency Adult Support and Protection Procedures and Guidelines

**Updated September 2023 in line with the revised National Code of Practice issued July 2022**

**Refreshed 14 October 2024**

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## Introduction

In my capacity as Independent Chair (Convenor) of the Outer Hebrides Adult Protection Committee (APC), I am pleased to present these refreshed Outer Hebrides Multi-Agency Adult Support and Protection Procedures and Guidelines 2024.

Following feedback from our own practitioners; previous and very helpful external scrutiny and inspection feedback and the findings from our own ongoing quality assurance and self-evaluation activities, the APC and its partners has now completed a full review and refresh of our ASP Procedures, now replicated in this publication.

Whilst these ASP Procedures reflect, and are compliant with The Adult Support and Protection (Scotland) Act 2007 and the Adult Support and Protection (Scotland) Act 2007: Code of Practice (Scottish Government: July 2022), they do not aim to replicate in full, or replace them. Neither do they replicate or replace any existing service or agency ASP Procedures.

On the contrary, they complement them and translate national legislative and policy publications into our own multi-agency adult support and protection practice arrangements across the Outer Hebrides.

These ASP Procedures are for **all practitioners working in all sectors across the Outer Hebrides.** They include a SMART Index for easy navigation and electronic links throughout to key national legislation, policy and guidance documents, for easy reference and access to more detailed practice information and advice.

In publishing these ASP procedures, the APC is mindful that ***procedures and guidelines cannot in themselves support the care and protection of adults who may be at risk of harm and are unable to safeguard themselves***. However, ***a competent, confident and skilful workforce, working together with a vigilant public can.*** Therefore, these ASP Procedures are for ***everybody*** and will be supported by ongoing multi-agency adult protection learning and development opportunities and public information.

I would like to take this opportunity to thank all those who have contributed to these refreshed ASP Procedures, which I would commend to you all.

**Ross Drummond**
**Independent Chair (Convenor)**
**Outer Hebrides Adult Protection Committee (APC)**
**14 October 2024**

## 1 Adult Support and Protection is everyone's business

These procedures and guidelines, hereinafter referred to as inter-agency guidance, outline the duties and responsibilities of all services and agencies in the Outer Hebrides, concerned with the support and protection of adults; however, it is important to recognise that ***"adult support and protection is everyone's business as we work together to care for and protect adults who may be at risk of harm"***. All individuals, services and agencies, have a contribution to make in supporting and protecting adults at risk of harm in the Outer Hebrides.

Most adults who are affected by disability, mental disorder, illness, physical or mental infirmity live their lives comfortably and securely, either independently or with the help of caring relatives, friends, neighbours, professionals or volunteers. Some adults affected in this way, however, are unable to safeguard themselves.

Harm of adults at risk may be caused by anyone; relatives or family members, volunteers, paid carers, friends and acquaintances, other service users, neighbours, and more rarely strangers and those who deliberately exploit adults at risk.

It is important to understand however that harm may also be caused by the adult at risks own actions; support and protection for adults who self-harm, including self–neglect, where linked to an additional vulnerability as described above, may be the focus of support and protective measures.

This inter-agency guidance is designed to ensure that there is common practice across the Outer Hebrides and to provide a framework that can be applied across all services and agencies to inform and complement individual service and agency guidance/procedures. The national Adult Support and Protection (Scotland) Act 2007: Code of Practice (Scottish Government: July 2022) has strongly influenced the information within this inter-agency guidance. Some elements of the national code are included directly, whereas other sections are provided where relevant with a hyperlink. Further information and exploration of the key issues within this inter-agency guidance are contained within the full national Code of Practice 2022, and is available here: Adult Support and Protection (Scotland) Act 2007: Code of Practice (Scottish Government: July 2022).

The national Code of Practice 2022 seeks to strengthen the guidance given regarding inter-agency co-operation and related matters. It also seeks to clarify guidance and processes, and to achieve greater clarity in relation to capacity and consent in so far as these terms apply to adult support and protection.

## 2 KEY PRINCIPLES AND DEFINITIONS

### 2.1 ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

The **principles** underpinning the 2007 Act mean that:

- The intervention must provide benefit to the adult which could not reasonably be provided without intervening in the adult's affairs;
- All actions should be supportive and be the option that is *least restrictive* to the adult's freedom; *and*
- Any interventions must have regard to:
  - the wishes of the adult and relevant others;
  - providing information and support to enable the adult to participate in the process;
  - the adult's abilities, background and characteristics; *and*
  - Not treat the adult less favourably than any other person in a comparable situation.

### 2.2 Adult Support and Protection Definitions

Who is an **adult at risk of harm**? ("3 point criteria")

An adult at risk of harm is any person aged 16 years or over who:

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

***ALL THREE ELEMENTS MUST BE MET***

### 2.3 Young people

The definition of an adult at risk includes people aged 16 years and over with disabilities, mental disorders, illness, or physical or mental infirmity and who are at risk of harm from themselves or others. Adult Protection practitioners should pay particular attention to the needs and risks experienced by young people in transition from youth to adulthood, who are more vulnerable to harm than others.

As other legislation and provisions exist which include persons up to 18 years (and sometimes up to age 26 years or even beyond), **support under these other provisions may be more appropriate for some young persons**. The responsibilities of the council and other services and agencies for persons aged 16 -

18 years will extend beyond adult protection legislation. Situations may arise, particularly for 16 and 17 year old young people, where there are legitimate interests and engagement from services for both children and adults.

Young people may already be receiving services from a range of children's services, or as care experienced (looked after children). This is not to say that they will or will not become adults at risk in terms of the 2007 Act simply because they have reached a particular age. Each case will need to be considered individually.

### 2.4 What is harm?

An adult is at risk of harm where:

- 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 includes all harmful conduct and in particular includes:

  - physical harm;
  - sexual harm;
  - psychological/emotional harm;
  - financial harm;
  - neglect; *and / or*
  - self-harm (including self-neglect, self-poisoning and self-injury).

Harm includes all harmful conduct, whether deliberate or unintentional. Harmful conduct also includes acts of omission, for example neglect or harm as a consequence of the individual's own behaviour (self-harm).

The list is not exhaustive, and no category of harm is excluded simply because it is not explicitly listed. In general terms, behaviours that constitute harm to a person can be physical, sexual, psychological, financial, or a combination of these.

### 2.5 Capacity

The national Code of Practice 2022 highlights that it should be noted and strongly emphasised that the three-point criteria above make no reference to capacity. **For the purposes of the 2007 Act, capacity should be considered on a contextual basis around a specific decision, and not restricted to an overall clinical judgement**.

It is recognised that, due to many factors in an individual's life, capacity to make an authentic decision is a **fluctuating concept**. Thus, even if deemed to possess general capacity, attention must be paid to whether a person has **clear decisional and executional ability** (i.e. to both make and action decisions) **to safeguard themselves in the specific context arising**.

### 2.6 Reporting harm

There is a legal duty for all agencies named in the 2007 Act to report to the Social Work Service the circumstances where it is known or believed that an adult is at risk of harm.

It is good practice, wherever possible, to inform the adult of the referral, taking care to emphasise why you are concerned and why you need to seek additional support and/or protection.

If you are unable to inform them of the referral, you should note specific issues such as capacity, third party information, increased risk to the adult or whether the perpetrator is present along with other details on the referral form or your agencies referral paperwork. Record and retain a copy for your agency's records.

### Steps to Take – The "Four Referral Rs"

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

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

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

**Record** – use the individual's record to note the issues that arose, the circumstances, the decisions made/actions you took, and the rationale for your actions. Where there are no existing records, information should be recorded in line with your own service or agency procedures and then discussed with your manager.

### 2.7 Emergency response required

Any member of staff who witnesses, suspects or receives information about an adult at risk being subject to harm, mistreatment or neglect, and where the adult is in immediate danger, requires urgent medical attention or crime is suspected, they must call the appropriate emergency services on 999 (police, ambulance, fire service).

### 2.8 Emergency response not required

If the adult does not require urgent medical attention, but you suspect or have witnessed harm, mistreatment or neglect, speak to the person about the harm you are concerned about. Record your conversation carefully and try to write down the person's actual words in relation to their description of the event(s) and their feelings about the outcome. Include the time and date that the record was made. Tell the person that you are going to report the details to your line manager and to the Social Work Service. The report of harm should be **passed without delay** to both your manager and the Social Work Service.

### 2.9 Whistle blowing/raising concerns

Organisations should have policies and procedures in place to deal with employee concerns about unprofessional, dangerous or illegal activities, which they become aware of through their work. This is often known as "whistle blowing". An essential element of such policies is the underpinning principle that staff who raise concerns reasonably, responsibly and in good faith, will not be penalised or victimised in any way. Any service or agency receiving a whistle blowing report of harm must act on it. For further information staff should refer to the relevant "Whistle blowing" policy for their own particular organisation.

## 3 UNABLE TO SAFEGUARD OR UNWILLING TO SAFEGUARD?

As set out in the national Code of Practice 2022, the first point of the three- point criteria set out in section 3(1) of the 2007 Act relates to whether the adult is unable to safeguard their own well-being, property, rights or other interests.

Most people will be able to safeguard themselves through the ability to take clear and well thought through decisions about matters to do with their health and safety, and as such could not be regarded as adults at risk of harm within the terms of the Act.

However, this will not be the case for all people, and when a person is deemed unable to safeguard themselves, they will meet the first point of the three-point criteria.

- '**Unable**' is not further defined in the 2007 Act, but is defined in the Collins English Dictionary as "*lacking the necessary power, ability, or authority (to do something); not able*".

- '**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.

Note: An adult who is considered ***unwilling to safeguard themselves***, rather than ***unable to safeguard themselves***, may not be considered an adult at risk.

**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.

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.

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. This could therefore mean that in these circumstances they should be regarded as unable to safeguard themselves.

Other circumstances can impact on the extent to which a person is meaningfully able to safeguard themselves. Refusing to give a random stranger money is, for example, very far removed from the situation where it is the person's relative who is making such a request, and where the adult is dependent upon that relative for support. For fear of repercussions or removal of support, they may feel afraid of refusing the request.

It is also important to bear in mind that an inability to safeguard oneself is **not the same as an adult lacking mental capacity**. For example, a person may have relevant mental capacity, but also have physical limitations that restrict their ability to implement actions to safeguard themselves. Capacity applies to both decision-making and the implementation of decisions. A person can have the capacity to make

a particular decision, but through illness or infirmity, may not have the physical capacity to implement that decision.

**Thus, in all circumstances, one should consider that even where a person can make a decision, are they able to action that decision to safeguard themselves?**

Where an individual is deemed not to meet the three-point criteria, or there exist factors or complexities that may be relevant to legislation other than the 2007 Act, thought should be given to other legislation which may provide alternative or additional pathways, e.g. The Adults with Incapacity (Scotland) Act 2000 or The Mental Health (Care and Treatment) (Scotland) Act 2003.

Regard should also be given to the possible relevance of The Social Work (Scotland) Act 1968, to ensure that assessments of need and promotion of social welfare are considered, where appropriate. If domestic abuse is a factor, consideration may also be given to the relevance of a Multi-Agency Risk Assessment Conference ('MARAC'), in which information about domestic abuse victims at risk of the most serious levels of harm is shared on a multi-agency basis to inform a coordinated action plan.

## 4 TRAUMA

Many people affected by trauma and adverse childhood experiences remain able to safeguard their own wellbeing. However, 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.

### 4.1 Trauma informed practice

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.

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.

### 4.2 Key principles

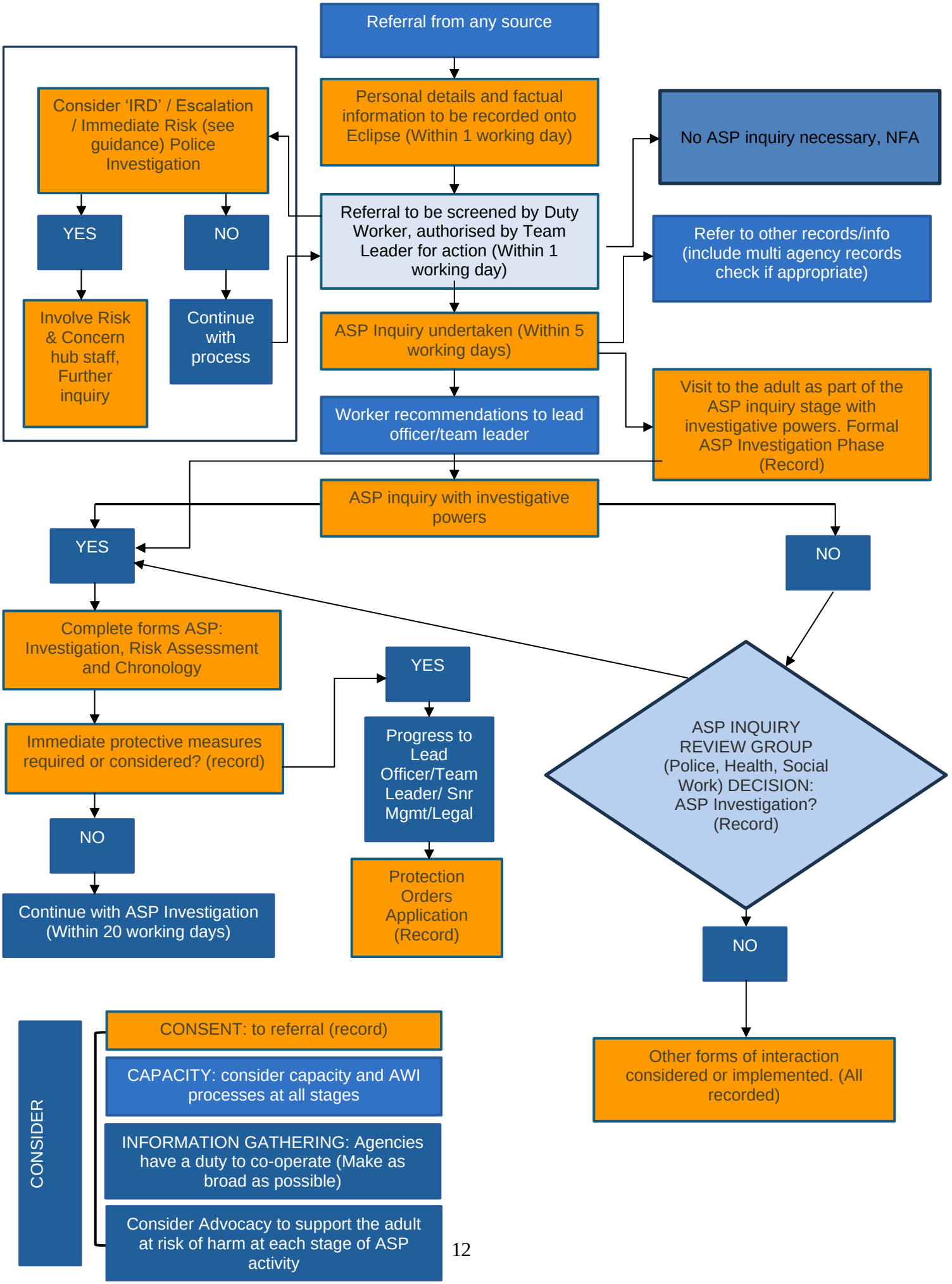
Key principles of a trauma informed approach are:

- safety
- trustworthiness
- choice
- collaboration
- empowerment

Taking a trauma informed approach to adult support and protection practice enables all those who perform any of the functions under the 2007 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.

The "Transforming Psychological Trauma: A Knowledge and Skills Framework for the Scottish Workforce" (NHS Education for Scotland: 2017), 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.

# REFERRAL AND INITIAL INQUIRY PROCESS FLOWCHART



# 5 KEY ADULT SUPPORT AND PROTECTION PROCESSES

## 5.1 Inquiry

Inquiry is the first stage of the adult support and protection process undertaken by the local authority social work service, following receipt of information about an adult. Section 4 of the 2007 Act places a **duty** on the Social Work Service to make inquiries about an adult at risk's wellbeing, property or financial affairs where it is known or believed that intervention may be necessary to protect the adult.

## 5.2 The report of harm / referral

This information may be received through a report of harm referral form from an individual service or agency, or through information passed through a phone call to the Social Work Duty Service (01851 822708) or Faire (Out of Hours) (01851 701702) but may also be received through information from other sources including elsewhere within the Social Work Service or multi-agency partners. All information reported about an adult at risk, regardless of source, will be recorded on the Social Work system.

The Social Work Service will make inquiries to establish whether the three-point criteria are met, and to take any immediate actions to support and protect the adult.

## 5.3 Inter-Agency involvement

Throughout all ASP activity and at all stages or processes, consideration should be given to seeking and including relevant information from key partner services and agencies. Social Work is the lead agency, as set out within the legislation, however multi-agency input into the ASP processes helps strengthen the quality and safety of activity.

## 5.4 Visits – Inquiry Stage

Within all Inquiry processes, consideration should be given by the worker responsible for the Inquiry to carry out a visit to the adult considered at risk of harm. A visit to the individual can be beneficial in clarifying and gathering key information around the duty to inquire. Decision-making around this decision should be clearly recorded alongside any discussion held with the Team Leader regarding requirement for a visit.

### 5.5 Escalation, IRD and consideration of further investigation

At the Inquiry stage, and also where ASP activity progresses, there should be consideration given to whether it would be beneficial for an **Inter-Agency Referral Discussion (IRD).** This is where the regional Police Scotland Risk and Concern Hub IRD Detective Sergeants can be contacted, and an IRD convened.

At the IRD, information relating to the person(s) at risk would be shared by Police, Social Work and Health and thereafter safety planning and investigation agreement would be determined. It should be made clear that this is more resource intensive, than the multi-agency information gathering from Police as part of routine inquiry, and therefore should be limited to issues of higher complexity and risk where possible and in particular, where there is an inference of criminality or exploitation within the circumstances presented/known information.

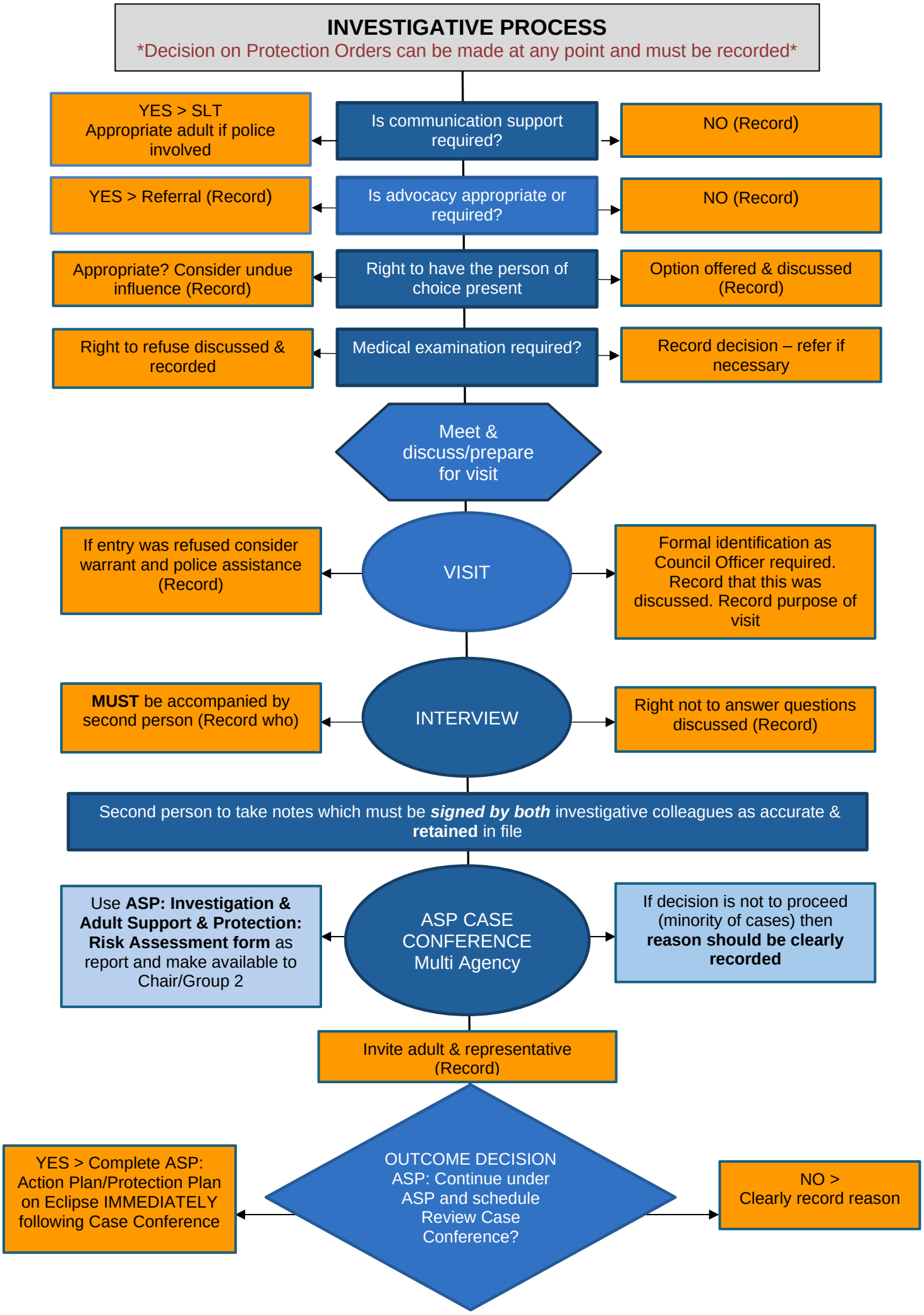
Initial discussion between the responsible worker, local Police and the Risk and Concern Hub Police staff can often be beneficial when giving consideration to the added value, benefit and requirement for an IRD.

At all stages of ASP processes, consideration should be given to whether there is **imminent risk** to the adult at risk of harm, and whether there is a need for **escalation** for immediate safety measures to be taken alongside investigation agreement. This should be a constant consideration as information is gathered through the ASP processes, as new information may change the initial assessment of risk and imminence.

Should information come to light about potential criminal activity, this should be passed on to Police colleagues at the earliest opportunity so that an IRD can be convened where decision-making around the requirement for a **criminal inquiry** will be discussed and recorded.

There should be clear communication between the Police and Social Work in terms of planning ASP activity alongside potential Police inquiry in order to ensure that there is a shared agreement about the progression of ASP activity and inquiry, alongside any criminal investigation process. This planning and agreement should again be clearly recorded by both agencies.

Where there is concern that physical or sexual harm has occurred against an adult at risk of harm, again an IRD should be convened so that consideration should be given to whether there is a requirement for a **Forensic Medical Examination**. Again, this should be discussed by the worker responsible with both health and Police colleagues involved in the IRD with subsequent decision making clearly recorded.


INVESTIGATIVE PROCESS
*Decision on Protection Orders can be made at any point and must be recorded*
Is communication support required?
YES > SLT Appropriate adult if police involved
NO (Record)
Is advocacy appropriate or required?
YES > Referral (Record)
NO (Record)
Right to have the person of choice present
Appropriate? Consider undue influence (Record)
Option offered & discussed (Record)
Medical examination required?
Right to refuse discussed & recorded
Record decision – refer if necessary
Meet & discuss/prepare for visit
VISIT
If entry was refused consider warrant and police assistance (Record)
Formal identification as Council Officer required. Record that this was discussed. Record purpose of visit
INTERVIEW
MUST be accompanied by second person (Record who)
Right not to answer questions discussed (Record)
Second person to take notes which must be signed by both investigative colleagues as accurate & retained in file
ASP CASE CONFERENCE Multi Agency
Use ASP: Investigation & Adult Support & Protection: Risk Assessment form as report and make available to Chair/Group 2
If decision is not to proceed (minority of cases) then reason should be clearly recorded
Invite adult & representative (Record)
OUTCOME DECISION ASP: Continue under ASP and schedule Review Case Conference?
YES > Complete ASP: Action Plan/Protection Plan on Eclipse IMMEDIATELY following Case Conference
NO > Clearly record reason

### 5.6 Inquiry

The **purpose** of an adult support and protection **inquiry** is to:

- Establish matters of fact: what has actually happened and the nature and extent of the actual harm or risk of harm to the adult;
- Ascertain the adult's views about his or her situation; the 2007 Act places a duty on council officers to consider advocacy and other services;
- Determine whether actions are necessary to protect the adult; *and*
- Complete the Adult Support and Protection: Inquiry Form, the basis of which is an assessment of risk.

Other investigations may be conducted in parallel to the adult support and protection investigation. For example, employee conduct disciplinary proceedings, criminal investigations, NHS or Care Inspectorate inquiries may also be ongoing. These processes **do not** negate the need for the Social Work Service to investigate and fulfil its duties under the 2007 Act, and **the Council remains the lead agency throughout the adult support and protection investigation process.**

The outcome from any parallel investigation reported to the Council Officer may impact on and influence any protection plan for the adult/s at risk of harm. Due regard to the duty to cooperate under Section 5 of the 2007 Act and data protection considerations will be necessary.

### 5.7 Visits – Inquiries with investigatory powers Stage

Section 8 of the 2007 Act, which permits a Council Officer and any person accompanying them, to interview any adult present at the place of the visit under Section 7 of the 2007 Act. This therefore applies to any adult from the point at which an inquiry has been initiated, until such times as adult support and protection procedures have ended.

A suitably qualified Council Officer, with a supporting officer, will carry out visits under the 2007 Act. Identification must be presented indicating the authority to carry out the duties as defined by Sections 4 to 10 of the 2007 Act. If entry is refused and no other reasonable steps can be taken to conduct the visit, further statutory measures may be necessary.

Considering the supporting officer, as a multi-agency partner may be beneficial e.g. CPN, Dementia Nurse, Nursing Staff etc.

The purpose of an interview is to enable or assist the Council to gather information directly from an individual to assist the Council in determining if the individual is at risk or harm, and/or what action may be required. The interview may include:

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

Officers conducting interviews will need to ensure appropriate recording of the content of the interview and any decisions made by the adult, including those about who attends e.g. a family member.

### 5.8 Considering the adult's rights during an interview

Section 8(2) of the 2007 Act provides that the adult is not required to answer any questions. The adult must be informed of that fact before the interview commences.

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. Support must be provided where necessary in order to enable the adult to come to a decision on whether to answer any questions – for instance, where they have some level of incapacity.

In keeping with the 2007 Act's Principles, an adult must be assisted to participate as fully as possible in any interview(s). Where an adult can make some contribution (or participate to some extent), the planning process for the interview must consider all appropriate ways of assisting the person to participate. This might include the use of communication aids, consideration of the location of the interview and of the people present during an interview. The purpose of support will be to assist the adult to contribute whilst always protecting the rights of the adult.

The use of independent advocacy and/or the presence of other support people during an interview, are some options the planning process might consider. Seeking the consent of the adult to be interviewed requires a more proactive approach than simply advising the adult that they are not obliged to answer questions. The point is to ensure that the adult is given reasonable opportunity and encouragement to answer questions whilst respecting their right not to.

### 5.9 Interviews

The national Adult Support and Protection (Scotland) Act 2007: Code of Practice (Scottish Government: July 2022) reinforces that the adult is not required to answer any questions and must be informed of that fact before the interview starts. They can choose to answer any question, but it is important they do not feel compelled to answer any question they prefer not to.

As previously mentioned, the adult must be assisted to participate as fully as possible. This may require planning on behalf of the Council Officer (communication aids, location of interview, and personnel involved). The purpose of this support is to aid the adult to contribute while protecting the adult's rights.

The adult may wish another person to be present at the interview, for example, a family member, paid carer, or independent advocate.

Section 8 of the 2007 Act allows a Council Officer, and any person accompanying the Officer to interview the adult in private. A decision about whether the interview will be undertaken in private will be based on how best to achieve the objectives of the investigation.

A private interview may be requested by the Council Officer and supporting officer where:

- Someone present is thought to have caused harm or poses a risk of harm to the adult;
- The adult says they don't want the individual present;
- It is believed the adult will communicate more freely if interviewed alone; *or*
- There is concern of undue pressure from others.

Interviews with others present, besides the adult at risk, are allowed under Section 8 of the 2007 Act. This can include someone who shares their home with the adult, or in a regulated care setting, a care worker, for example. These individuals are also not required to answer questions, and they must be informed of this before the interview starts.

### 5.10 Other Investigations

#### Medical Examinations

These may determine if immediate treatment is necessary; provide evidence to inform criminal prosecutions (conducted under police direction) or assess the adult's mental capacity. Any medical examination must be carried out by a health professional (see Section 9 of the 2007 Act).

**Examination of records**

The 2007 Act gives Council Officers the right to seek and obtain records including medical and financial records from any source (NHS, public, voluntary, commercial) where this would assist the investigation. The Council Officer should provide evidence that they are authorised to access records to the record holder.

The Council Officer can inspect the records or arrange for someone suitably qualified and experienced to inspect the records, for example, financial records may require assistance from colleagues within the council's finance section. Medical records must only be examined by a suitably qualified healthcare professional; this will require the Council Officer to consider a suitable health representative to undertake this aspect of record examination.

**Large Scale Investigations**

Large-Scale Investigations (LSI) are an inter-agency response to circumstances where there is the potential that more than one adult is at risk of harm within a registered service or health setting (this includes residential care, day services, care at home services or hospital wards).

Whilst the 2007 Act is silent on LSI, Chapter 8 of the Adult Support and Protection (Scotland) Act 2007: Code of Practice (Scottish Government: July 2022) provides further information advise on LSIs.

### 5.11 Outcomes following an investigation

Upon completion of the investigation the Council Officer will present a report of the findings using the Council Officer's report paperwork to their Team Manager/Lead Officer.

Examples of outcomes from an investigation are:

**The adult at risk criteria is met and harm is established**

Where the criteria are met, certain options may be appropriate:

- Where the adult is already receiving services, assessment may identify that **continuation with care management** arrangements following a review of an existing care plan is appropriate. It is important for records to reflect that the criteria are met and that this is the most proportionate response
- Consider **adult protection orders** under the 2007 Act. If the Council Officer has been refused entry and no other reasonable steps can be taken to conduct the investigations, statutory measures may be necessary (e.g. Protection Orders); or
- **No further action**. This outcome may be reached on the basis that the adult

has requested this; there are no consent or capacity issues and there are no concerns regarding undue pressure or risks to others identified. Records should indicate clearly that the adult has met the criteria as an adult at risk and the reasons why no further action is to be taken at this time.

**The adult does not meet the criteria as an adult at risk of harm**

Despite the fact the criteria are not met, there may be other factors that require to be addressed.

The options could include:

- Referral for **assessment under care management** (subject to eligibility criteria and agreement of the adult);
- Where the adult is already receiving services, it may be appropriate for the adult to **continue under care management** arrangements following a review of the existing care plan.
- **Referral to another appropriate agency**; *or*
- **No further action** is required.

The Council Officer completing the adult protection inquiry with/without the use of investigative powers will share the findings and conclusions with the adult and all involved agencies as soon as practicable.

**IN ALL CASES PROGRESSING TO THE USE OF INVESTIGATORY POWERS THE EXPECTATION IS THAT THE FINDINGS AND RECOMMENDATIONS WILL BE BROUGHT TO A CASE CONFERENCE FOR MULTI-AGENCY AGREEMENT.**

### 5.12 Case Conference

Subsequent to inquiries and investigative activity, the multi-agency assessment will be considered by an inter-agency Adult Support and Protection Case Conference. A Case Conference will be convened to discuss the concerns that an adult is at risk of harm and include the engagement of the adult and all relevant agencies in the assessment of risks and strengths, and in planning for next steps.

This will be assisted by the collation, in advance of the Case Conference, of up to date and well-balanced inter-agency Chronologies. The collated Chronology may be updated to reflect information arising from the Case Conference.

A Risk Assessment will also be collated in advance of the Case Conference, which again may be updated to reflect information arising from the Case Conference.

A Case Conference is a meeting involving the adult and his/her representative (including an advocate) and relevant partner services and agencies to consider the harm identified and what supportive and/or protective arrangements the adult and

the partner services and agencies agree. Persons involved with decision-making may also include carers, family members or a proxy (a welfare attorney or welfare guardian) where appropriate. It is important that the adult is encouraged to participate in this process and steps should be taken to hold a meeting that is meaningful for the adult.

If the adult is unable or unwilling to attend, the reasons must be included along with steps taken to encourage their participation, and their views and wishes communicated by a nominated person and recorded in the minute.

The legislation relevant to the adult's circumstances **will be taken into account** at an initial Case Conference and can include The Adult Support and Protection (Scotland) Act 2007, The Mental Health (Care and Treatment (Scotland) Act 2003 and The Adults with Incapacity (Scotland) Act 2000.

The meeting participants will assess the risk the adult is exposed to and agree actions which will form a protection plan. The plan will detail individual and collective responsibilities with appropriate timescales. A lead person or persons will be identified to coordinate the plan.

A Review Case Conference will follow within a maximum of 3 months of the Initial Case Conference and will be necessary in order to review any protection plan to ensure it is working and to consider any changes needed to ensure it is achieving its aims. A date for this will be agreed at the Initial Case Conference. Should the outcome at Initial Case Conference be that a Review Case Conference is not considered necessary, the reasoning and decision should be clearly recorded.

### 5.13 Organising and chairing case conferences

The Council Officer undertaking the investigation will be responsible for liaising with Business Support Admin to organise the Case Conference (Initial and Reviews) and ensure a suitable date and venue to maximise attendance by all relevant parties, in particular, the adult at risk. Business Support Admin will arrange invitations to all participants, including the adult.

The Council Officer will prepare an outline of the reasons for the Case Conference (Initial and Reviews). This will allow those in attendance to participate more fully during the Case Conference, but it can be withheld if it places the adult at further risk. The adult's invitation should be in a format appropriate to their needs. The chairperson will normally be the Council Officer's Lead Officer, but this can be delegated, by agreement, to another Team Manager.

### 5.14 Format of a case conference

The format for a Case Conference involves introductions by the chairperson, explaining the functions of a Case Conference and the context of adult support and protection guidelines.

**Any restricted access or third-party information** should be discussed at the beginning of the meeting, **prior to the attendance of the adult** and anyone who is accompanying them, including any advocacy worker. This part of the meeting will be minuted separately as part of the restricted access section and will not be circulated to the adult or anyone they have invited to attend.

The Council Officer who undertook the inquiry, with investigative powers, will present the findings from the report based on the gathered facts. These will include:

- Details of the initial Report of Harm;
- The type of harm the adult is subject to or at risk of;
- A brief outline of the adult's current living arrangements;
- Existing supports, both paid and informal arrangements;
- Who the adult resides with, if appropriate;
- Whether the adult has a caring responsibility for any child or young person;
- Any issues of capacity, consent, or undue pressure; *and*
- The skills, attributes and resilience factors the adult holds

There will then be an opportunity for the adult and other attendees to comment on the Council Officer's report and express their view on any measures, if any, they think necessary to protect the adult from harm. If there are disagreements about any information presented, there should be an attempt to resolve these at the time; however, it may be that some disagreements cannot be resolved and may only be acknowledged and recorded.

The Chairperson will summarise the discussions and agreed actions.

Any Adult Protection Plan will be developed based on the decisions reached, identifying the owners of actions and allocating time scales for each action.

Where there are agreed protective actions requiring immediate action, these should be progressed without waiting for the Case Conference Draft Minutes or the Adult Protection Plan to be circulated. A Contingency Plan should be included in the Adult Protection Plan where a breakdown of the protective measures is anticipated.

The Draft Minute and the Adult Protection Plan should be circulated to all those invited to the Case Conference and those tasked with any actions **within 10 working days,** whether or not they attended.

Comments on the accuracy of the Draft Minute and Adult Protection Plan should be addressed with the Chairperson within **10 working days** of receipt of the Draft Minute. Where the adult at risk has chosen not to attend, there must be agreement and timescales regarding feeding back to the adult the outcome of the Case Conference.

### 5.15 Protection Orders - Assessment Orders, Removal Orders and Banning Orders

Chapter 11 to Chapter 14 (pages 73 to 96) Adult Support and Protection (Scotland) Act 2007: Code of Practice (Scottish Government: July 2022) contains significant information on the guidance, application and processes involved in consideration of use of Assessment Orders, Removal Orders and Banning Orders (collectively referred to in the 2007 Act of Guidance as 'Protection Orders').

Staff should familiarise themselves with this helpful guidance in advance of any Case Conference and consideration of their use, and decisions made about any application (or decisions about them not being considered relevant or appropriate) should be clearly recorded within the case conference minute routinely.

Adult Support and Protection (Scotland) Act 2007: Code of Practice (Scottish Government: July 2022)

Chapter 11 – Protection Orders – Page 73 Chapter 12 – Assessment Orders – Page 76

Chapter 13 – Removal Orders – Page 80 Chapter 14 – Banning Orders – Page 87

**Appendix 1 – ASP Timescales**

- Referral details to be entered on Eclipse – **1 working day**.
- Referral to be screened by Duty Worker and authorised by Team Leader – **1 working day**.
- ASP Inquiry – **5 working days**.
- ASP Investigation – **20 working days**.
- ASP Risk Assessment – **20 working days**
- ASP Action Plan/Protection Plan – Draft to be available for discussion at Case Conference and document to be completed and distributed by the Council Officer **immediately** following the Case Conference.
- Case Conference Draft Minute to be circulated within **10 workings days** of the Case Conference.
- Case Conference Attendees have **10 workings days** to advise of any amendments.
- Comments and amendments addressed and final Case Conference Minute to be issued within **10 working days**.