



Adult Support and Protection Policy & Procedure

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Introduction

The Adult Support and Protection (Scotland) Act 2007 was introduced to make provision for protecting adults who are unable to safeguard their own interests and are at risk of harm or self harm, including neglect.

The purpose of this document is to provide the mechanism whereby Care Commission staff can consider adult protection matters, both in the context of assessing the policies and procedures of providers and in responding to adult protection concerns they may come across in their day to day work.

The Adult Support and Protection (Scotland) Act 2007

The Act allows a person to exercise a function under the Act where it is reasonably required to provide benefit to the adult concerned and is, from the options available, the least restrictive to the adult's freedom.

A set of principles underpin the Act and are applicable to any public body or office holder authorising any intervention or carrying out a function in relation to an adult, for example, health professionals, social workers and care providers.

The principles require due regard to be given to:

- the wishes of the adult;
- the views of others, for example, nearest relative, guardian or primary carer;
- the importance of the adult participating as fully as possible;
- that the adult is not treated less favourably than someone not considered to be an 'adult at risk';
- the adult's abilities, background and characteristics, for example, sexual orientation or religious persuasion

Duty to co-operate

There is also a requirement under the Act for certain bodies and office holders to co-operate with a local authority making inquiries under the Act and with each other. It is also a requirement for a public body or office holder who knows or believes that a person is an adult at risk of harm and that action needs to be taken to protect them from harm, then the facts and circumstances of the case must be reported to the local authority for the area in which it considers the person to be located.



The bodies and office holders listed in the Act are:

- The Mental Welfare Commission for Scotland;
- The Care Commission;
- The Public Guardian;
- All councils;
- Chief Constables of Police Forces; and
- the relevant Health Board

The Care Commission has developed an E- notification system for local authorities to inform the Care Commission of Adult Protection issues that they are investigating in regulated services.

Initial inquiries

Responsibility for carrying out these inquiries rests with the local authority's social work services. The local authority may, however, consult and/or work in partnership with other agencies. **The initial inquiry covers the preliminary stage of the process only and is to establish where there is genuine cause for concern or intervention.**

Other professionals, such as the police, the Care Commission or health professionals, may be asked to assist.

The Act does allow for other persons to accompany a council officer when carrying out any visits under the requirements of the Act. The policy position of the Care Commission is that this would only take place where it is considered there is a strong probability that action will be required under the Regulation of Care (Scotland) Act 2001 and that the evidence gained will enable that to take place.

Definitions

The Adult Support and Protection (Scotland) Act 2007 (ASP Act) does not use the term abuse but that of harm and adults at risk of harm.

Definitions of harm

Harm is defined as including all harmful conduct and, in particular, includes:

- (a) conduct which causes physical harm;
- (b) conduct which causes psychological harm (for example, by causing fear, alarm or distress);

- (c) unlawful conduct which appropriates or adversely affects property, rights or interests (for example, theft, fraud, embezzlement or extortion); and
- (d) conduct which causes self-harm

This list is not exhaustive. In general terms, behaviours that constitute “harm” to others can be physical (including neglect), emotional, financial, sexual or a combination of these.

Who may be at risk of harm?

Adults at risk are adults (persons aged 16 or over) who:

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

It is important to stress that all three elements of this definition must be met. The presence of a particular condition does not automatically mean an adult is an ‘adult at risk’. Someone could have a disability but be able to safeguard their well-being etc.

Role of the Care Commission

The Care Commission's role in promoting the protection of adults, using registered care services, is enshrined in the principles set out in the Regulation of Care (Scotland) Act 2001. This states that 'the safety and welfare of all persons who use, or are eligible to use care services are to be protected and enhanced'. All activity associated with the regulatory process must be carried out in accordance with this principle, with a view to ensuring that services meet the identified needs of individual service users in a manner which promotes and respects their independence and, in so far as it is practicable to do so, affords them choice in the way the service is provided, while maintaining their safety.

It is important to emphasise that the statutory requirement to undertake adult protection investigations lies with the local authority and the police, not the Care Commission.

Primarily, the role of the Care Commission is a regulatory one in considering the safety of all service users in any registered care service. When a particular accusation, evidence of harm or e-notification is received which may involve one or more service users, a service level risk assessment should be carried out. This will determine the scope of any possible risk of harm to other users of the service. The outcome of this should be discussed with the relevant team manager to clarify whether any regulatory action is required from the outset.

If considering possible regulatory action, discussion should be held with the local authority involved and where appropriate, the police and/or Procurator Fiscal to ensure that any Care Commission activity will not interfere with ongoing investigations.

Implications for RICE activity

Registration

In considering any application for registration, Care Commission officers should assess the extent to which a provider has demonstrated their commitment to ensuring the protection of adults.

The applicant should be asked to describe their adult protection procedures and demonstrate a sound understanding of adult protection issues.

During the process of registration, the Care Commission may be made aware of concerns regarding an applicant's suitability to provide a service. The source of this information may be anonymous, or be provided by another organisation including Disclosure Scotland. In the majority of cases, these allegations would be discussed with the applicant and permission sought to carry out further investigations and checks, for example, via the local authority or police. Where information is given in confidence, team managers should take legal advice before having these discussions.

The Care Commission officer, in conjunction with their team manager, will need to exercise professional judgement in reaching a decision regarding the suitability of an applicant for registration.

Policies and procedures

During the process of registration, inspection and complaints investigation, Care Commission officers will be required to assess the content and effectiveness of both the service provider's adult protection policy and other associated policies and procedures.

Key components of an adult protection policy

- a statement that the provider will follow the local authority adult protection guidance;
- a description of the staff/provider/manager responsibilities;
- a statement of what the provider will do if there are suspicions of harm. This should include contacting police and local social work department and, where relevant, the 'placing' local authority. It should also include the requirement to notify the Care Commission;
- a description of information to be recorded in the event of concerns being raised regarding adult protection issues;
- arrangements to ensure staff awareness of adult protection issues, access to policy, induction and ongoing training;
- telephone numbers for local social work and police;
- arrangements to ensure that users have access to independent advice including advocacy;
- arrangements for regular review of the policy;

- regular reviews of service users' care needs, which allow for the assessment of risks regarding actual and potential harm

Other systems that the provider must be able to evidence are in place and being used:

- Safer recruitment procedures, including enhanced Disclosure Scotland checks, checks with professional registers (eg SSSC, NMC, GTC), two references, (one preferably from the most recent employer) and a medical declaration. (SSI 2002 No 114, Regulation 9);
- Qualifications and training. These should be relevant to the job descriptions and tasks performed by staff and in accordance with SSSC guidance. Ongoing appropriate training should, for example, include managing challenging behaviour, use of restraint, administration of medication and other required statutory training. (SSI 2002 No 114, Regulation 13(a));
- Staff induction. This should ensure all staff are aware of the services policies and procedures, including the Adult Support and Protection Policy and, the values and practices included in the SSSC's Code of Practice. (SSI 2002 No 114 Regulation 13(a));
- Risk assessments. These must be in place for service users and reflect their assessed needs. They should be reviewed regularly and actively deployed. (SSI 2002 No 114, Regulations 4 and 5);
- Management of users finances. Robust arrangements must be in place for the storage of users monies and valuables and for the recording of all financial transactions carried out on behalf of a user. This should encompass the requirements under the terms of the Adults with Incapacity (Scotland) Act 2000. (SSI 2002 No 114, Regulation 19(3)(h));
- Whistle blowing/complaints policy and procedures, including access to the Care Commission complaints procedure. (SSI 2002 No 114, Regulation 25);
- Staff disciplinary procedure including referral as appropriate to SSSC and NMC and any other relevant professional body (SSI 2002 No 114, Regulation 19(2)(e));
- Accidents and incidents. Notification and recording of these including analysis to identify any patterns of incidence. (A must for care homes/good practice for other services). (SSI 2002 No 114, Regulation 21(2)(d)).

Providers are also recommended to have the following policies in place:

- Lone working policy. This should ensure staff are aware of the need for the ongoing assessment of situations where they are working alone ensuring their own and others safety;
- Visitors to premises. Robust procedures should be in place for monitoring visitors, volunteers, trades people etc. visiting the care service;
- Staff supervision and appraisal policy and arrangements for team meetings;
- Equal opportunities policy and cultural awareness training for staff;
- Volunteer policy (students, trainees) including vetting, training, supervision and how they will be deployed;
- Data Protection awareness;
- User involvement and consultation;
- Where appropriate, a policy for managing difficult and challenging situations, along with the provision of appropriate training.

Inspection

The process of inspection provides an opportunity to assess the overall quality of a service, taking into account the Regulation of Care (Scotland) Act 2001 and associated regulations and the National Care Standards. Inspection also provides an opportunity to test the effectiveness of a service's policies and procedures.

Assessing the robustness of a service's adult protection policy and procedures is fundamental. The process needs to be evidence based, providing an evaluation of the extent to which the prescribed standards are met.

Checks should be made as to whether the service has had to invoke its adult protection procedure since the last inspection. If they have, then follow the process through checking whether they have followed:

- their own procedure;
- that of the appropriate local authority;
- best practice guidance.

Discussion should also be held with staff, users and any visitors regarding:

- their knowledge of the service's adult protection policy and procedures;
- if they have raised any concerns and what happened;
- what training has been available for staff

Where adult protection investigations have been undertaken, contact the social worker involved to receive feedback on appropriateness of action taken by the service.

Addressing matters of immediate and/or serious concern during an inspection

During the course of an inspection, Care Commission officers may find evidence of harm or poor practice which potentially places an adult at risk, or an adult may disclose that (s)he is being, or has been, harmed. In either case the Care Commission officer must take action to ensure the matters are addressed. Where a lay assessor has such concerns, these must be immediately raised with the Care Commission officer leading the inspection. The welfare and safety of the user must always be the paramount consideration.

It may be necessary to suspend an inspection to allow for discussion with the police, social work department and, where relevant, health service personnel.

Concerns that a service user is, or has been, subject to harm

- the Care Commission officer should advise their team manager immediately and the matter must immediately be referred to the local authority in which the user is residing. This should take place even where the service user has not requested involvement. It is then the decision of the local authority whether or not to take action;
- the Care Commission officer should check that action has been taken and note this in PMS in a memo under the service document header, entitled 'Adult Protection issues re <subject>'. Any other information and correspondence regarding the matter should be held in appropriately named memos, etc. under the Adult Protection issues re <subject> heading;
- the Care Commission officer must liaise with the responsible council officer and, where appropriate, the police and/or Procurator Fiscal, to ensure that issues pertaining to the ongoing regulation of the service be considered;
- discussion needs to take place with the team manager to determine whether enforcement action is required to ensure the safety of other service users. However, this must be carried out in a manner which does not interfere with the investigation of the allegations

Guidance for Care Commission staff on receipt of an allegation of harm

- the Care Commission officer must take all allegations seriously and take appropriate action referring immediately to the relevant agencies and informing their team manager;
- Reassurance should be given to the service user (and/or the person raising the concern) and they should be advised that their concerns will be shared with the appropriate people;
- if the allegation refers to harm by staff, the matter must not be raised directly with the staff of the service. Consideration should be given as to how much information should be shared with the manager of the service. This would depend upon the nature of the allegation and, whether by doing so, it may contaminate evidence;
- if the allegation refers to harm by other users, the manager of the service should be advised as quickly as possible. The Care Commission officer should also ensure that the manager puts into action the service's adult protection policy, making appropriate notifications to other agencies. Care Commission staff should also follow up on the concerns raised and also report the matter to the social work department and, where appropriate, the police;
- if the allegations refer to harm by a relative or visitor, the matter must not be raised directly with the alleged perpetrator. To do so may contaminate evidence or prejudice effective investigation.

Guidance for Care Commission officers in dealing with receipt of an allegation

- listen carefully and reassure;
- let the person know that the Care Commission has a duty to report the incident and that we will maintain confidentiality amongst peers in the community;
- explain what you have to do next and who you will report to;
- it is not the Care Commission's job to investigate adult protection allegations;
- ensure that you make a full written record of what has been said and, if possible, check the content of this with the person disclosing. Record date, time, place, actual words used by the service user and any observed non verbal behaviour. Make sure you sign and date your notes;
- do not destroy original notes, these should be filed in the service paper file;
- report your concerns to your team manager immediately;
- ensure that the allegation is reported to social work and where appropriate, the police, in line with the local authority support and protection of adults procedure. Do not assume that the service has reported the incident;
- do not ask leading questions, simply reflect back what the user (or any other individual reporting harm) is saying to check understanding, for example, 'you are saying that you saw...you think...you heard'.



Complaints

The Care Commission's complaints procedure provides a framework for dealing with allegations of adult harm. In such circumstances, complaints should follow the fast track procedure, with team managers being notified immediately of concerns and agreeing an appropriate course of action.

Responding to allegations

When an allegation of adult harm falling within the ASP Act is made, irrespective of the nature of the allegation or the source (including anonymous complaints) it should be acted upon regardless of evidence. Such action involves the immediate notification of the relevant social work department and where appropriate, the police. Reference should be made to the Care Commission's MOU with the respective local authority for relevant contact details. The responsibility for the investigation of allegations of adult harm falling within the ASP Act rests with local authority social work department and the police. However, there may be circumstances in which it would be legitimate for the Care Commission to become involved, ie where the allegation may impact upon a registered service as a whole. In such circumstances, the Care Commission should participate in a multi-agency discussion to review information and agree a course of action. At this stage, an initial risk assessment must be undertaken to establish any regulatory action which requires to be taken with the provider/service to ensure the safety of all users being cared for. The process of risk assessment should include a review of all available information about the relevant care service, in particular past complaints. There should be ongoing liaison with the local authority/police, in relevant circumstances, to ensure that the Care Commission can take account of the outcome of any investigation they make with regard to our ongoing regulatory duties and activities.



Enforcement

Where it is established that a service is operating in a manner which fails to adequately protect users, the Care Commission will consider whether enforcement action is required, either to protect the user who has been subject to harm, or other users who are receiving a service. Such enforcement action may include the imposition of conditions on registration, serving an improvement notice, or making application for a Section 18 cancellation of registration.

Decisions regarding proposed enforcement action should be agreed within the Scheme of Delegation. It should be noted that the implications of unnecessary delays in taking enforcement action, in particular moving to emergency cancellation, is likely to significantly undermine the Care Commission's ability to demonstrate the reasonable grounds for such action. In addition, enforcement action may be appropriate in circumstances when there is insufficient evidence to lead to criminal proceedings but where there is evidence which suggests the provider may not be suitable to provide a care service.

The Care Commission enforcement policy and associated guidance should be followed to ensure that evidence is collated appropriately and the enforcement applied is at the most appropriate level.

Referral to the Local Authority

As stated previously, it is a requirement under the Adult Support and Protection (Scotland) Act 2007 (ASP Act) to report all instances of harm or suspected harm to adult persons where it is believed that person is an adult at risk of harm (as defined by the ASP Act), to the relevant local authority.

Reference should be made to the Care Commission's MOU with the relevant authority to identify who should be contacted in the first instance. Where appropriate, the referring authority should also be informed.

Once the information has been shared, the decision as to whether an investigation under the ASP Act is appropriate, lies with the local authority. When making this decision, consideration may have to be given to the use of appropriate provisions contained in other legislation, for example, the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care and Treatment) (Scotland) Act 2003, or other social work, police, health, housing or regulation of care legislation.

The local authority may decide that nothing further needs to be done. It would be expected, however, that this conclusion would only be arrived at after a range of inquiries have been carried out.

Where it is decided that no further action is required, it would be expected that the local authority would produce a report including why they believed no further action is required.

There is no requirement under the ASP Act for a local authority to hold a case conference to either decide the appropriate action to take or, to review the case once action has been taken. This will be decided in accordance with local multi-agency procedures.

It is essential that good communications are established between identified council officers and the relevant local Care Commission staff, to ensure the statutory requirements of both bodies are met and that the safety of the users of registered services are protected at all times.

Where a council officer requests assistance from the Care Commission in any investigation, this should be discussed with the team manager/CRO and/or the regional manager to decide whether what is being requested is appropriate under the Regulation of Care (Scotland) Act 2001 legislation.

Adult Protection Committees (APC's)

The Act places a duty on local authorities to set up APCs that will be responsible for monitoring and advising on adult protection procedures, for ensuring appropriate co-operation between agencies and for improving the skills and knowledge of those with a responsibility for the protection of adults at risk.

APCs have a significant role in ensuring co-operation and communications within and between agencies to promote appropriate support and protection for adults. Some local authorities already have APC type structures in place, but the Act creates a duty for local authorities to provide APCs across Scotland. The statutory requirements relate to the structure of the Committees and provide a general framework for how APCs should operate.

Adult Protection Committees must be established for every local authority area. Local authorities are encouraged to work together to ensure adult support and protection committees work effectively in their areas. There may be different models to deliver this and local authorities should adopt the model that is more appropriate for their area.

APC membership must include representatives of the relevant local authorities, NHS Board and Chief Constable, and may include a representative of the Care Commission (at the discretion of the Care Commission).

To improve co-operative working, APCs will have to ensure that procedures and practices are both multi-agency. These procedures and practices will need to cover, for example:

- referral and initial response;
- assessment and risk assessment;
- adult protection conferences and protection planning;
- care management;
- adult support;
- risk monitoring;
- review

Procedures will also need to address arrangements for the local inter-agency and inter-professional communication, information sharing and co-ordination. It will also be important for local guidelines to cover communication with adults at risk, family members and others, and to be clear about expectations in respect of advocacy, representation of adults at risk and support services, especially where any intervention is pursued under the ASP Act.

The ASP Act requires APCs to give information or advice to its statutory members on the safeguarding of adults at risk in the council area(s). The ASP Act, however, does not require APCs to become involved in individual case reviews. APCs have a strategic monitoring function rather than an operational role, although it may be useful for them to consider critical incidents as a means to promote learning.

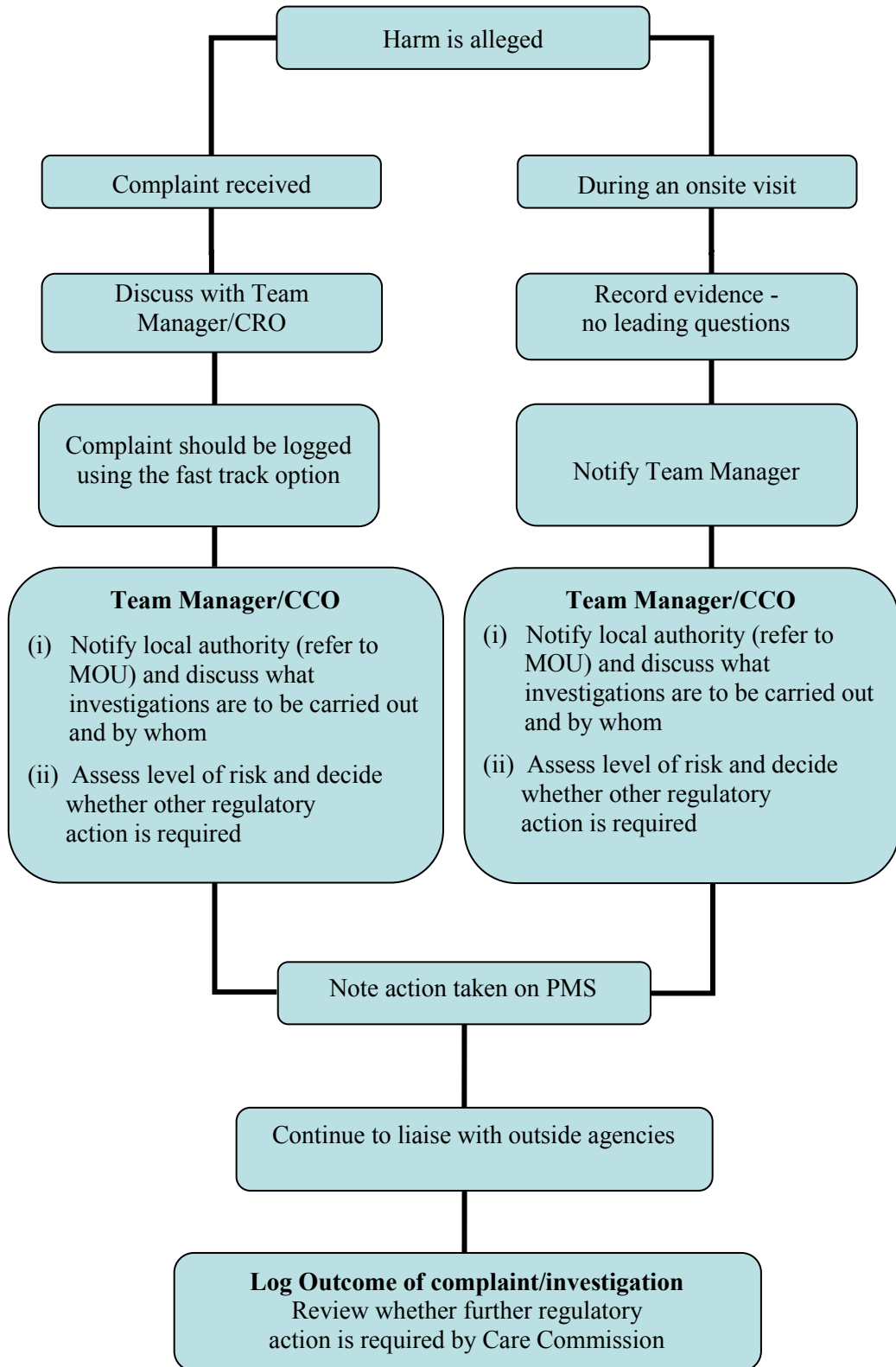


APCs have a duty to make or assist with arrangements for improving the skills and knowledge of the public bodies and office holders having responsibilities relating to the safeguarding of adults at risk in their area.

Care Commission involvement in APCs

The policy of the Care Commission is to attend all committee meetings, where practicable, following the first twelve months from the commencement of the ASP Act, after which there will be an internal review of impact and involvement for all Care Commission representatives. Further levels of involvement would then be agreed following the review.

The Care Commission representative will be a team manager or regional manager with the relevant knowledge and experience. The requirement to attend and the allocation of an appropriate representative will be at the discretion of the regional manager.



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