



PROTECTING VULNERABLE ADULTS

In the Western Isles

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SECTION ONE

Foreword

These guidelines have been produced as a response to the growing awareness and documentation of the range, level and frequency of abuse towards vulnerable adults.

These guidelines have been developed by a multi-agency group to provide a framework to enable workers to recognise when vulnerable people may be at risk of abuse. They focus on how to get assistance, identify the legal position, use the appropriate channels for assessment of need and investigation, obtain services and promote positive collaborative working.

Partners

Comhairle nan Eilean Siar
NHS Eileanan Siar
Northern Constabulary
Western Isles Voluntary Sector

Introduction

Most adults and older people with mental illness, physical or learning disabilities or other special needs manage to live their lives comfortably and securely, either independently or with assistance from caring relatives, friends, neighbours, professionals or volunteers. However, for a small number, dependence on someone may produce conflict, exploitation and abuse.

- There is growing public awareness of abuse as a concern, evidenced by media coverage of individual incidents and public enquiries dealing with instances of abuse.
- Demographic factors indicate a growth in the population of older people. This means that the population of potentially vulnerable people will continue to grow in the coming decades.
- The development of services to adults has created a more enlightened and

empowering climate which offers users choice and participation in making decisions about their own lives. This also implies a dispersal of care within the community, and increasing reliance on informal carers and an expansion of the scope of responsibility of formal carers. This in itself may also involve an increase in risk as the venues in which people are cared for become more varied.

Safeguarding vulnerable adults is clearly a high priority for the Government but the key to ensuring vulnerable individuals are appropriately supported and cared for lies with the empowerment of the individual and their carers, a knowledge of what can be expected, a knowledge of their own individual rights and access to a responsive complaints and advocacy service. Of equal importance is the introduction and implementation of the National Care Standards, sound recruitment practices and the provision of appropriate training for those involved in care services. This will help to ensure that workers are trained, supported and enabled to work together to create a positive and empowering ethos within care settings.

As well as the Adults with Incapacity legislation, the Scottish Executive is moving forward on further legislation to protect vulnerable adults. The proposed legislation will cover vulnerable adults who do not have a mental disorder.

These guidelines have tried to be mindful of the complexities which surround adult abuse and while it is not possible to cover all eventualities it is hoped that they will prove useful to those working in the field of health and social care as they work towards the protection of vulnerable adults.

Definitions

What is abuse?

Abuse is an emotive term and can be subject to wide interpretation. The starting point for a definition is the following statement:

Abuse is a violation of an individual's human and civil rights by any other person or persons.

Abuse has also been defined as:

'the wrongful application of power by someone in a dominant position. Whether abuse occurs in institutions or in the home, it involves the elements of a power imbalance, exploitation and the absence of full consent. It also involves acts of omission and commission.'

Who is a vulnerable adult?

In this guidance 'adult' means a person aged sixteen years or over. The broad definition of a 'vulnerable adult' is a person:

'who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation.'

(Ref: 'Who Decides' Lord Chancellors Consultation Paper 1997)

All adults could be considered potentially vulnerable from time to time but this guidance focuses on those who for reason of ill health, disability, frailty or special circumstances depend on others to provide and promote their well-being and/or protection. **Although the emphasis in this guidance focuses largely on the 'vulnerable adult', experience suggests that the care giver him/herself can also be the recipient/subject of abuse and/or exploitation.**

Who is a carer?

There can be both formal and informal caring arrangements.

A **formal carer** or care worker is contracted to work by an employer e.g.

- Home Care/Personal Care Workers/Home Support Workers
- Care Homes (Residential and Nursing Home Staff)
- Sitters
- People employed within the NHS Day Centres etc.

An **informal carer** is someone who, without pay, provides care, help and assistance to someone else who is disabled, frail or unwell and may be a spouse, neighbour or friend.

Who may be the abuser?

Vulnerable adults may be abused by a wide range of people including relatives and family members, professional staff, paid care workers, volunteers, other service users, neighbours, friends and associates, people who deliberately exploit vulnerable people and strangers.

There is often particular concern when abuse is perpetrated by someone in a position of power or authority who uses his or her position to the detriment of the health, safety, welfare and general well-being of a vulnerable person.

Agencies not only have a responsibility to all vulnerable adults who have been abused but may also have responsibilities toward agencies/people with whom the perpetrator is employed or works as a volunteer. The roles, powers and duties of the various agencies in relation to the perpetrator will vary depending on whether the latter is:

- a member of staff, proprietor or services manager.
- a member of a recognised professional group.
- a volunteer or member of a community group such as a place of worship or social club.
- another service user.
- a spouse, relative or member of the person's social network.
- a formal or informal carer.
- a neighbour, member of the public or stranger.
- a person who deliberately targets vulnerable people in order to exploit them or,
- a person with mental health difficulties including behaviour disorders, personality disorders, munchausens, dysmorphia and self abuse.

SECTION TWO

Patterns of abuse

The following are the main forms of abuse that have been identified:

- 1. Physical abuse** - including hitting, slapping, pushing, kicking, misuse of medication, restraint or inappropriate sanctions.
- 2. Sexual abuse** - including rape and sexual assault or sexual acts to which the vulnerable adult has not consented, could not consent or was pressured into consenting.
- 3. Psychological abuse** - including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks.
- 4. Financial or material abuse** - including theft, fraud, exploitation, pressure in connection with wills, property, inheritance, financial transactions, or the misuse or misappropriation of property, possessions or benefits.
- 5. Neglect and Acts of Omission** - including ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating.
- 6. Discriminatory abuse** - actions (or omissions) and/or remarks of a prejudicial nature focusing on a person's age, gender, disability, race, colour, sexual or religious orientation.
- 7. Information abuse** - e.g. failure to adhere to the relevant 'Data Protection Act' guidance, failure to provide adequate and appropriate information about Complaints/Customer Services procedures etc.
- 8. Human Rights Abuse** - including denial of an understanding of Criminal Justice processes (Article 5) or a fair hearing (Article 6).
Any or all of these types of abuse may be perpetrated as the result of deliberate intent, negligence or ignorance.

Signs of potential abuse

Suspicions of adult abuse or neglect can come to light in a number of ways. The clearest indicator is a statement or comment by the adult themselves, by their regular carer or by others, disclosing or suggesting abuse or neglect. Such statements invariably warrant further action, whether they relate to a specific incident, a pattern of events or a more general situation.

There are of course many other factors which may indicate abuse or neglect. These may include:

- unusual or suspicious injuries;
- unusual or unexplained behaviour of carers including a delay in seeking advice, dubious or inconsistent explanations or injuries or bruises;
- an allegation of abuse made by a vulnerable adult;
- a vulnerable adult is found alone at home or in a care setting in a situation of serious but avoidable risk;
- over frequent or inappropriate contact/referral to outside agencies;
- a prolonged interval between illness/injury and presentation for medical care;
- if the vulnerable adult lives with another member of the household who is known to the Police or welfare agencies in circumstances which suggest possible risk to the life/health or well-being of that person;
- signs of misuse of medication:
 - a) not administered as prescribed;
 - b) over-medication resulting in apathy, drowsiness, slurring of speech, lack of sleep, continual pain, etc.;
 - c) under-medication resulting in lack of sleep, continual pain, etc.;
- unexplained physical deterioration in the vulnerable adult e.g. loss of weight;
- sudden increases in confusion e.g. dehydration produces toxic confusion;
- demonstration of fear by the vulnerable adult to another person/also demonstration of fear of going home;
- difficulty in interviewing the vulnerable adult e.g. another adult unreasonably insists on being present;
- anxious or disturbed behaviour on the part of the vulnerable adult;
- hostile or rejecting behaviour by the carer towards the vulnerable adult;
- serious or persistent failure to meet the needs of the vulnerable adult;
- signs of financial abuse e.g. a change in the ability of the vulnerable adult to pay for services, unexplained debts, or reduction in assets;
- carer as well as dependents showing apathy, depression, withdrawal, hopelessness and suspicion;
- unnecessary delay in staff responses to residents' requests;
- if a member of staff in a care setting has a history of moving jobs without notice, or has inadequate references;
- important documents are reported to be missing;
- pressure exerted by family or professional to have someone committed to care.

Dilemmas in adult protection

The protection of adults, like the protection of children, raises a variety of complex issues. There may be a number of conflicts which must be considered. Some of these are discussed in more detail below.

Duty to report

Staff have a duty to report suspicions or disclosures made about any vulnerable adults. While this may cause the individual worker difficulties, a failure to report is a failure in their duty of care. Staff **must** report any concerns of suspected or actual abuse to their line manager.

Rights/Self determination

There is a tendency for society to believe that vulnerable adults need to be protected and that their right to choose is secondary to this. Adults are individuals in their own right and, if they are able, must be allowed to exercise these rights even if that means they choose to remain in a situation which other people consider to be inappropriate or abusive. Every effort should be made to inform the vulnerable adult of the consequences of the choice he/she may be making.

Consent/Confidentiality/Disclosure

All professionals who have contact with vulnerable adults have a responsibility to refer concerns/anxieties/disclosures to the appropriate agency. However, it should be recognised that, at times, this may pose a dilemma for staff who may feel that by so doing this could alienate the individual and/or the family and the potential for preventative work. To do nothing or to promise confidentiality and then report the concern is not acceptable. The recommended procedure is to openly and honestly discuss with the individual and/or family the intention to report the information given and to advise them of the possible consequences.

Risk taking

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

Whistle-blowing

Most organisations now have developed a policy on whistle blowing. This is to allow staff to alert organisations to matters of suspected or actual malpractice.

This procedure provides guidelines, protection and reassurance to staff in order to encourage such disclosures. Please consult your local organisation's policy and procedure.

Challenging Behaviour/Restraint

There are some vulnerable adults who present challenging behaviour which requires to be managed either in their own home, day care setting or care home. This brings with it a number of dilemmas including issues of restraint and issues such as the disguising of medication in food and drink. These issues require to be carefully thought through. Any action undertaken to manage an adult with challenging behaviour could be misinterpreted, potentially leading to an allegation of abuse. Organisations should consider having in place practice guidelines to assist staff members who work in settings where challenging behaviour is likely to be a feature. Any decision to invoke any form of restraint or the disguising of medication in food or drink should not be made by a single individual and consultation with a senior officer should be undertaken. There should also be some on-going monitoring and reviewing of any decisions to undertake any form of restraint or disguising of medication. As people with increasingly complex needs require on-going care, the prevalence of challenging behaviour is likely to increase. It is not possible to cover this degree of complexity in guidelines of this nature other than to pose it as another dilemma which requires to be faced in the field of adult protection.

Allegations of abuse against staff members

It is possible that an allegation of abuse may be made against a member of staff either formally by letter, or informally by telephone or in person. Depending on the nature of the allegation, it may be necessary for the organisation to regard it as a formal complaint and initiate an investigation into the staff member's alleged behaviour through the organisation's own conduct procedures. The process would have to accord with any parallel investigation into the alleged abuse. Consultation with the organisations Human Resources / Personnel Section or equivalent and the line manager at an early stage are vital to determine the appropriate routes for such matters to be taken. In the absence of an organisation's own Human Resources section or equivalent, it is advisable to make contact with the local authority's own Human Resources Section.

Domestic abuse

Domestic Abuse is not specifically covered in this guidance. It is, however, recognised that the use of the guidance may well be appropriate in certain cases of domestic abuse. It will be particularly relevant when one of the partners has recognised special needs. Use of the Step by Step Guide may have some relevance and reference to the Appropriate Adult scheme will be useful.

SECTION THREE

Legal framework

Context

The distinction in law is made between those adults who are capax (capable of managing their affairs) and those who are not. Until a person is recognised in law as being incapable of managing their affairs or making decisions in their own best interests no care agency can intervene in a relationship because they deem it to be unsuitable or abusive. The statutory powers and duties of any care agency are underpinned by the Human Rights legislation and this works both ways so that, as well as protecting an individual's right to live his or her life peaceably and without fear, an authority must also (within reason) respect the manner in which the individual chooses to live his/her life. Where an individual has the capability to express their free will, care agencies can do no more than give information about services and where appropriate help the vulnerable adult to take up those services / options. They should not try to direct an individual to use these services in a manner that might be regarded as coercive.

It is for the foregoing reason that when approaching the kind of situation where there is the suspicion of abuse of a type which requires to be remedied by legal intervention (civil or criminal) the preliminary issue to be settled in every instance is whether the alleged victim has capacity.

Adults with Incapacity (Scotland) Act 2000

The Adults with Incapacity (Scotland) Act 2000 is now the most significant piece of legislation in the protection of vulnerable adults.

Until the 2000 Act was passed the law did not address directly the question of how to proceed when faced with the gradual elimination of an individual's capacity. Developed over a period in history when the majority life expectancy was much shorter than today and the economic divide was such that few people held assets of a value worth protecting at home, the law comprised what was in recent times recognised as an unsatisfactory mixture of inappropriate legislative provisions, expensive curatories and uncertain powers of attorney. The Adults With Incapacity (Scotland) Act 2000 introduced a more flexible system of providing for care as well as protecting the individual and their assets. It can also provide assistance for adults who are incapable. It is important to note that the 2000 Act does not simply address the needs of individuals who are incapax but is concerned with incapable adults who are defined as being:

'incapable of acting, making decisions, communicating decisions, understanding decisions, or retaining the memory of decisions, by reason of mental disorder or physical disability.'

An adult will not fall within this definition if their inability to communicate or understand communications can be 'made good by human or mechanical aid'. For example, an adult with speech difficulties may have an inability to communicate his wishes or desires but if this can be overcome by the use of a computer or other mechanism, he will not fall within the terms of the Act. Likewise, where a family member is able to interpret the wishes of an adult who is otherwise incapable of communication he will likely not fall within the terms of the Act.

Any party with an appropriate interest in the welfare of an individual can make an application to the Court to make an order to maximise the interests and protect the wellbeing of that individual. The Court has a broad discretion in hearing evidence and is not limited to considering only evidence proffered by the applicant. The Court has an equal discretion in making any order and is bound to make its order not necessarily in accordance with the terms of the application but rather in accordance with how it sees the best interests of the subject of the application might be served. Any order must endeavour to provide for **the minimum intervention necessary as the purpose of the Act is not only to protect the individual but also to allow them as much autonomy in their life as is possible.**

See Appendix 2 for details on:

- definition
- principles
- powers/functions
- local authority responsibilities
- public guardian contact details

Other relevant legislation

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

Advice on implementation of the Act, for example compulsory orders, should be sought from a Mental Health Officer - Comhairle nan Eilean Siar Social Work Department.

National Assistance Act 1948

Section 47

While heavily amended, this Act still has some validity in respect of people living in insanitary conditions, either by choice or through circumstances of abuse.

Under S47, the Medical Officer of Health (Public Health) can request a warrant from the Sheriff Court, to allow such a person to be removed to a hospital or other place of safety for a limited period. If a person is found to have a mental illness, they can be detained under the Mental Health (Care & Treatment) (Scotland) Act 2003.

If the person is found to be physically ill they can be treated by a doctor.

Note: This Act requires that the living conditions be so bad as to be detrimental to the health of an individual. It is rarely used and many likely scenarios are now addressed by the Adults With Incapacity (Scotland) Act 2000.

Only an appropriate member of a health authority can initiate the use of this

section. However, a request for consideration of its use can be made by anyone, and would have to be made to the appropriate health authority person.

Principles of practice in the protection of vulnerable adults

In practice this means that agencies should adhere to the following guiding principles.

(i) Actively work within the principles laid down by the Care Commission i.e. dignity, privacy, choice, safety, realising potential, equality and diversity.

(ii) Actively work together within an inter-agency framework.

(iii) Actively promote the empowerment and well-being of vulnerable adults through the services they provide.

(iv) Act in a way which supports the rights of the individual to lead an independent life based on self determination.

(v) Recognise that people can be unable to take their own decisions and/or to protect themselves and their assets.

(vi) Recognise that the right to self-determination can involve risk and ensure that such risk is recognised and understood by all concerned, and minimised whenever possible.

(vii) Ensure the safety of vulnerable adults by integrating strategies, policies and services relevant to abuse within the legislative framework i.e. the NHS and Community Care Act 1990, the Mental Health (Care & Treatment) (Scotland) Act 2003, the Public Disclosure Act 1990, the Regulation of Care Act 2000, the National Assistance Act 1948, the Human Rights Act 1998 and the introduction of the Care Standards by the Scottish Commission for the Regulation of Care 2002.

(viii) Ensure that when the right to an independent lifestyle and choice is at risk the individual concerned receives appropriate help, including advice, protection and support from relevant agencies e.g. independent advocacy.

(ix) Ensure that the law and statutory requirements are known and used appropriately so that vulnerable adults receive the protection of the law and access to the judicial process.

SECTION FOUR

STEP ONE:

You witness, suspect or receive information about abuse – talk to the victim and seek consent to take action

[Person Responsible:

Person/staff member who witnesses, suspects or receives information about abuse.
(In this document this person will be referred to as the 'staff member' for simplicity, this would include informal carers)]

- If the person is unconscious they clearly lack capacity (i.e. cannot at this point give consent), **go straight to Step 3**, Emergency Services.
- If the situation is not an emergency and you suspect/witness abuse, report your concerns to your Line Manager/Supervisor, **Step 4**.
- Speak to the person about your concerns and the risks involved. Ask the person what has happened (including whether it has happened before) who was involved, whether anyone else was present or within

hearing distance, what the person thinks about the situation and what they want done about it. Also try to ascertain potential risk to others.

Record your conversation carefully and if possible ask the person to agree that you have made an accurate record of the conversation.

Seek their consent for any subsequent steps you believe are necessary. **Go to Step 4 and proceed.**

- If consent is not given, **go to Step 2.**

[Notes:

a) Individuals should normally retain the right to decide whether and/or how they wish to be helped (**see Step 2 for exceptions**).

b) Ask the person if (s)he wishes to have any significant other(s) present during any discussion of alleged abuse.

c) If communication is a barrier e.g. ethnic minority language, sensory impairment and/or special needs it is important to offer the use of communication aids and/or an independent interpretation service. Your local social work service will have information to assist.

d) If the allegation of abuse concerns a staff member then as well as consultation with the line manager, contact should also be made with the appropriate Human Resources Section for advice and guidance (See Section 2 - 'Dilemmas').

e) Record any discussion and any action taken.]

STEP TWO:

When the person does not give consent for action. Establish capacity.

[Person Responsible:

Staff member in consultation with the Line Manager.]

- **If the person/vulnerable adult does not want any action taken their wishes should be respected unless** it is established that they lack the capacity to recognise their vulnerability/situation.
- If you are unsure of the person's capacity (ability to make an informed decision/choice) discuss this with your Line Manager and/or refer to Social Work Service.
- If the vulnerable, although capable, adult or his/her circumstances put other people at risk discuss fully with your Line Manager, and if deemed appropriate, a manager within your local Social Work Service Practice Team.
- **Record any discussions and action taken.**
- **Exception:** If the person is a tenant, resident, patient etc. in a statutory, voluntary or private institutional setting, it is important for any suspected or actual incident of abuse to be reported, regardless of the vulnerable adult's wishes, as this incident may impinge on others' rights and/or may involve situations where the alleged abuser is a member of staff.

In certain circumstances it may be appropriate to consider referring the situation to the Care Commission.
(See Glossary).

STEP THREE:

Emergency Services

[Person Responsible:
Staff member]

- Having obtained consent or established incapacity, contact the appropriate emergency service particularly if a vulnerable adult appears to be in immediate physical danger or there is

evidence of physical or sexual abuse.
Record. Proceed to Step 4.

[Notes:

- a) Staff members should not put themselves at risk.
- b) **Always discuss and record action taken.]**

STEP FOUR:

Consultation with Line Manager/Supervisor

[Person Responsible:

Staff member in consultation with the Line Manager.]

Discuss suspected or actual abuse with your Supervisor/Line Manager as soon as possible. If (s)he is not available discuss your concerns with a suitable alternative manager. The full facts and circumstances of the situation together with all available options and courses of action should be identified and discussed. **An agreed action plan should be the outcome of this meeting.**

The following points, amongst others, may need to be considered:

- The person's level of capacity and consequent involvement in actions/decisions/choices.
- Whether independent advice/consultation, Police, Social Work, Solicitors, Medical, (while protecting the person's identity), would be useful before proceeding. (Reference: Adults with Incapacity Act Section 3).
- Whether a referral to the local Social Work Practice Team is appropriate (it will be in most cases).
- Whether the Police should be contacted at this stage. In the case of physical/sexual

abuse immediate referral is **essential** to ensure that vital evidence is not destroyed.

- Whether a Medical Examination needs to take place. Any delay may jeopardise securing vital evidence.
- Whether the person needs to be removed to a place of safety. (See Glossary)
- Whether immediate action would cause more distress and/or pose greater risks to the vulnerable adult. (See Dilemmas).
- **Record**

STEP FIVE:

Referral to local Social Work Team

[Person Responsible:
Staff member /
Line Manager.]

Note:

In writing these guidelines we are conscious that different organisations e.g. hospital settings, may have their own internal procedures for dealing with suspected/actual abuse. We would however suggest that when situations reach this stage (Step 4) an interagency approach is advisable. We suggest referral to the local social work service as the local authority holds the lead responsibility for the duty of care.

Timing:

As soon as possible or no later than 24 hours from the vulnerable adult's consent or decision that he/she lacks capacity. If there is a suspicion of abuse or clear evidence of it a referral to the Practice Team should be made without delay subject to consent or the decision that (s)he lacks capacity. (**See Step 2**).

STEP SIX:

[Person Responsible:

Staff member /
line manager]

The referral to the Social Work Team should include (as far as possible):

- Personal details, name, address, date of birth, GP, type of accommodation, family circumstances, personal support (eg. friends) , physical health, any communication difficulties, mental health including whether the person is subject to any order under the Mental Health or Adults with Incapacity Acts.
- The referrer's job title and reason for involvement.
- Nature/substance of the allegation.
- Details of care givers/significant others.
- Details of alleged abuser and current whereabouts and likely movements within the next 24 hours, if known.
- Details of any specific incidents, e.g. dates, times, injuries, witnesses, evidence such as bruising.
- Background of any previous concerns.
- Awareness or not/consent or not by the person concerned, carers, alleged abusers of the referral.
- Information given to the person, expectations, wishes of the person, if known.
- **Record**

[Note:

The outline above would be useful for a referral/consultation with any external agency.]

STEP SEVEN:

Receiving/Accepting the Referral (Social Work Service)

[Person Responsible:

Duty Worker. The duty worker discusses the situation with his/her manager (Senior Social Worker/Team Leader).] The line manager's role and responsibilities are as follows:

Responsibilities of senior member of staff

- To protect the vulnerable adult.
- To overview/co-ordinate action - role, timing and multidisciplinary liaison.
- To support/advise the member of staff.
- To inform senior management, and / or the Care Commission etc. if appropriate.

Role of senior member of staff

- Discuss all referral information, if necessary confirm details with referrer.
- Establish whether any action is needed immediately/urgently e.g. does the vulnerable person need to be removed to a place of safety/ require medical assessment or attention.
- Confirm vulnerable adult's capacity/incapacity. Seek evidence to support this. If there is not sufficient evidence, consideration should be given to seeking medical/psychiatric/mental health officer input.

- Discuss/decide whether a joint visit with the Worker/Senior is appropriate.
- Discuss/decide whether consultation/referral to police is appropriate.
- Establish what other agency is involved and whether and/or when they should be informed.
- Co-ordinate an 'Action Plan' which would involve identifying a lead officer who would then carry out a full assessment. This would normally involve organising an adult protection case conference (See Step 9). The senior member of staff would chair this meeting. A care plan should be drawn up or a previous care plan might be revised.
- Overview the implementation and monitoring of the action plan.
- Review the situation regularly.
- Liaise with senior members of staff and/or other agencies. This would include using any internal incident reporting mechanisms as appropriate.
- **Ensure that all steps are recorded fully.**

STEP EIGHT:

Referral to the Police

[Person Responsible:
Social Work Manager]

- In situations where there may be indications of a criminal offence or a belief that one has taken place, a referral **must** be made to the police. Where the victim does not wish to make a complaint to the police it will be for the referral discussion to decide on the appropriate action. This will take into account the interests of the victim against those of public safety.
- This referral should be made by the Social Work Manager to the Area Inspector and

should involve consultation with health (if appropriate). The referral will include the sharing of information available to the agencies that will best assist the planning of a criminal enquiry.

- The referral will discuss the possible need to use the Appropriate Adult Scheme for interviewing victims, witnesses or suspected persons.
- The referral will examine the evidence available, how further evidence will be obtained. What medical/forensic evidence is available and how further medical/forensic examination should be undertaken.
- The referral discussion will plan the investigation and decide on what type of enquiry is required, which agencies are to be involved (social work, police, health) and will also discuss processes to be used to investigate the abuse allegation.
- The referral will agree on personnel to be involved from the agencies and will agree on levels of communication to monitor the progress of the enquiry.
- In planning the need for an investigation it will be important to assess risk of further abuse to the victim or other vulnerable persons.
- Within the referral process the agencies will discuss and agree a press strategy if deemed that it may be required.
- The referral process should be ongoing throughout a criminal enquiry and will involve agencies sharing, reviewing and evaluating information as it comes to light.

STEP NINE:

Adult Protection Case-Conference

[Person Responsible:

Social Work Manager]

Consideration should always be given to holding an adult protection case conference, particularly in situations where there is actual abuse or the threat or opportunity for ongoing abuse. Also where the individual concerned has little or no insight into the risk to which he/she may be placing him/herself or indeed others.

For specific guidance please see Page 26.

STEP TEN:

Referral to other Agencies

[Person Responsible:
Social Work Manager]

Consideration should be given to referring to other agencies (as appropriate) e.g. Public Guardian, Mental Welfare Commission and the Care Commission. (See Glossary).

STEP ELEVEN:

Ongoing work with the Vulnerable Adult

[Person Responsible:
Staff member in
consultation with the
Line Manager]

If the vulnerable adult decides not to give consent for a referral to the Police or Social Work Team, and they are assessed as being capable of making this decision, a discussion should still take place between the staff member and the Line Manager regarding further action.

a) If 'no further action' is decided the reasons for this decision and the date

should be clearly recorded.

b) 'Further action': Suggestions:

- Try to establish a 'Life Line' for the person e.g. a named person/ organisation where help can be sought if there is further danger and/or the person changes their mind about the referral. Ongoing work might include general support/advice and minimising harm/increasing safety of person.
- Locate an independent advocate. (See Glossary). If the person concerned would benefit/agree to having an independent person to represent their interest, referral to an advocacy service should be made.
- The situation should be regularly monitored and reviewed if at all possible.
- **Record**

STEP TWELVE:

Support of staff member

[Person Responsible:
Line Manager /
Supervisor]

The Line Manager may need to:

- De-brief staff.
- Clarify the staff members role and level of responsibility.
- Be accessible/supportive in following through the steps above.
- Identify another manager/supervisor in their absence.
- Offer assistance/advice on any organisational procedures e.g. completing significant occurrence forms/advising senior management within the organisation.

- Offer help/advice in recording.

STEP THIRTEEN:

Recording

[Person Responsible:

Staff member in
consultation with the
Line Manager]

Timing:

Immediately after each event -
as noted above.

Record discussions, decisions and action -
include:

- Nature/substance of incident.
- Initial assessment of incident, information provided and person's circumstances.
- External referrals/consultations.
- Issues of capacity/incapacity/consent.
- Vulnerable adults own wishes and views.
- Decisions/action taken.
- Roles/responsibilities of those involved - including clarification of lead officer if appropriate.
- Framework for monitoring/reviewing/ongoing work.
- Any issues of restriction/ confidentiality.
- If, when and why there is no further action decided.

Note:

These records should be evidence based,
accurate, legible and should be kept up to

date during all stages.

Adult Protection Case Conference Guidance

Purpose:

A case conference is a multi-disciplinary meeting at which information relevant to concerns about abuse or risk of abuse is shared and considered.

Status:

There are no statutory provisions relating to case conferences. The arrangements for case conferences detailed in these guidelines have been agreed by the agencies represented on the working group and members of staff from the agencies that are expected to adhere to them.

When:

An initial adult protection case conference should be held within seven working days of a referral being made to the Social Work Service or the Police which leads to an investigation into possible abuse.

Organising and Chairing:

The Social Work Service will take responsibility for the organising and chairing of case conferences. The chairperson should be the social work manager involved in the investigation. The designated chairperson will ensure that time and venues are arranged and that all relevant people, for example, GPs, district nurses, care staff, family members, social workers and, where appropriate, the adults involved in the abuse are invited and briefed about the purpose and format of the meeting. In the first instance this may be by phone call but will be confirmed by standard letter or e-mail. The person who will take the minutes of the meeting should be identified in advance and should not be the chairperson.

☒ The chairperson will consider and rule on requests for a family member and/or carer to be excluded from the case conference or requests that the adult involved should attend the case conference.

☒ In each and every case the chairperson will meet 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 professional needs to share information without the family being present. If so, this should be done prior to them joining the case conference.

☒ The chairperson should also 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 signalled and responded to.

Instructions to

Chairpersons:

- The chairperson will introduce him/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.
- Where a family member and/or carer has been excluded from (i.e. throughout)

the case conference the chairperson must ensure that the decisions of the case conference are fed back to them as soon as practicable after the case conference.

- The chairperson will ensure that the minutes of the case conference are accurate and that they are distributed to the appropriate agencies and, where appropriate, the family and/or carer within 14 days of the case conference.
- The chairperson should ensure that any communication aids/systems (e.g. loop system) are made available.

Involvement of Carers / Family

Significant family members and/or carers will normally be invited to attend all case conferences concerning the vulnerable adult in question.

Note, however, before the carers/family or the adults themselves are asked to join the case conference, the chairperson will ask if any of the professionals need to share any information without carers/family being present. If there is, this will be done prior to them joining the case conference.

During the course of the case conference if a professional wishes to share some information without the carers/family or adult being present, they can ask the chairperson for an adjournment when the carers/family and adult will be asked to leave for a short time.

It is important that carers/family have a room in which they can wait and that the time spent on this section of the case conference is kept to a minimum.

Exclusion of Carers / Family

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

Grounds for exclusion would be when:

- a) a level of conflict or tension exists within the carers/family; or
- b) when there is substantive evidence to believe that there is a likelihood of violent or serious disruption of the process of the case conference.

Carers/family may also be excluded when third party or sub judice information is being presented to the case conference.

Being an alleged abuser is not sufficient reason in itself to exclude a carer or family member, but this may be judged necessary by the chairperson if their presence would seriously affect the consideration of the risk to the adult

concerned.

Where the carers/family have been excluded throughout the case conference it is the responsibility of the chairperson to ensure that they are informed of the outcome.

Involvement of the adult involved in the abuse

The wishes and needs of the adult about whom there are concerns are at the heart of the case conference process. It should be normal practice for the adult to be involved in discussions about them and their circumstances.

The comments made previously in relation to the involvement of carers and family members apply equally to the involvement of the adult concerned. In addition the chairperson should be guided by:

- The capacity of the adult concerned.
- The information likely to be shared at the case conference.
- The likely effect on the adult, particularly when the person suspected of abuse may also require to have some involvement.
- The views of the carers/family.

Involvement of a Friend / Advocate

There may be occasions when a carer or family member or the adult concerned may wish to be supported by the attendance at the case conference of a friend, other relative, professional person or member of an independent advocacy service. The attendance of such a person who may be able to assist the adult in clarifying the content of the discussion should be encouraged.

Attendance of Professionals

Conferences should be attended by individual professionals from caring agencies who have a direct contribution to make and a role to play. These may include:-

- Social work professionals carrying out the investigation or who already know the individual and/or their carer/family and their supervising senior social worker.
- Medical professionals who are involved in the investigation or who know the carers and/or family concerned e.g. health visitor, general practitioner, district nurse, community psychiatric nurse etc.
- Police officers who are involved in the investigation.

- Voluntary or private sector staff who are directly involved with the carer/family.
- Residential or day care staff involved with the adult.
- Members of the Interpretation/Translation Services.

Information Sharing

Confidentiality is required from each participant in a case conference and this should be made explicit at the beginning of the meeting by the chairperson. Information will be shared in line with the Multi-agency Information Sharing Protocol. Exceptionally it may be considered that the disclosure of certain information in this kind of meeting could cause serious damage to the person it concerns and care needs to be taken on how this information is shared.

Conduct of Case Conference

Introduction

The chairperson introduces the case conference by confirming:

- The function of the case conference and the context of the adult protection guidelines.
- The carers' and/or family/adults' right to information under the Multi-agency Information Sharing Protocol; clarifying that certain information may have to be restricted; giving the reason for that restriction.
- The Chairperson then asks participants to introduce themselves.

Fact Gathering

The professionals are asked by the chairperson to share information:

- Beginning with the circumstances of the referral and conduct of enquiries;
- Moving on to any relevant background information only once all the information relating to the current enquiry has been shared.
- The chairperson briefly summaries each contribution at the time it is made to ensure that the contribution has been properly understood. This process should also facilitate the taking of the minute of the meeting.
- It is particularly important that the carers/family understand the information being shared and that they have an opportunity to make their own contribution. If there are disagreements about the information then there should be an attempt to resolve these at the time. However, it may be that some disagreements can only be acknowledged.

- The unrestricted information shared at the case conference is summarised by the chairperson.

Interpretation and Assessment

The chairperson should lead the discussion which focuses on:

- What are the strengths of the carers/family and what are the threats to the vulnerable adult's wellbeing?
- What are the specific dangers to the vulnerable adult and/or carers and family members?
- What extended family, professional and community supports could be offered?

Decisions

The case conference needs to decide whether the adult and/or any other person is believed to be at risk of being abused and if so:

- Consideration must be given as to whether or not a referral should be made to the police if it is believed that a crime may have been committed.
- An adult protection plan must be agreed.
- A case co-ordinator must be appointed who should be a social worker.
- A review date must be agreed which must take place within six months.

Conclusion

The chairperson will summarise the decisions made by the case conference and confirm with participants the roles they will play in the adult protection plan.

Minutes of Case Conference

The minutes of the conference should be completed and circulated to those attending and to family and carers not present. The chairperson is responsible for making any alterations to inaccuracies noted by those in attendance.

The minutes should include as a minimum:

- Essential fact.
- Details of the adult protection plan (if relevant).
- Whether the conference decided to refer the matter to the police.
- Recommendations for further action.

- An account of the process of the discussion and the reasons for recommendations.
- A note of any dissent.
- Date of review conference.

SECTION FIVE

Appendix 1

Glossary of terms

Explanatory Notes

The guidelines will be read by staff and carers in a number of health and social care settings, from the statutory, private and voluntary sector. They are devised to be applicable to all these sectors and we have tried to keep the language and terminology as non-specific as possible. However, inevitably not every term or designation will be understood by everyone. To assist with this potential difficulty we have compiled a glossary of terms. These further definitions are listed below.

- **Appropriate Adult** (see local Appropriate Adult scheme)
- **Capacity** - the ability to make an informed choice.
- **Care Commission** - The Scottish Commission for the Regulation of Care (full title) is a non-departmental public body independent of the Scottish Executive although accountable to Ministers and the Scottish Parliament for its actions. The Care Commission is responsible for regulating care services which were formerly regulated by NHS Boards and Local Authorities. Care Services will require to register with the Care Commission and will be the subject of regular inspection. The Care Commission takes an active role in encouraging improvement in the quality of services and making information available to the public about the quality of these services. The Care Commission also has a responsibility to investigate any complaints it receives from any source concerning any care service.
- **Independent Advocate** - a member of an advocacy service which operates independently of other service providers. Advocacy is about safeguarding individuals who are in situations where they are vulnerable and who are not being heard. This often involves speaking up for them and helping them to express their views and assist them to make their own decisions and contributions. Contact with the appropriate advocacy service can be made through the Local Authority or Health Board.
- **Line Manager/Supervisor** - the person who has managerial responsibility for an individual worker.
- **Mental Health Officer** - usually a Local Authority Social Worker who has undergone specific post qualifying accredited training in mental health. This person then has certain delegated powers under the Mental Health

(Care & Treatment) (Scotland) Act 2003 to act in conjunction with medical practitioners in the compulsory detention of individuals with mental disorders.

- **Mental Welfare Commission** - a national body appointed by the Scottish Executive to oversee and protect the rights of those with a mental disorder. The Mental Welfare Commission has a duty to investigate any complaint it receives concerning the welfare of anyone with a mental disorder including dementia, learning disability or acquired brain injury.
- **Place of Safety** - this can be a formal or informal arrangement to allow a vulnerable adult to be accommodated safely without the risk of further abuse e.g. hospital, care home or the home of another family member.
- **Public Guardian** - please refer to Appendix 3.
- **Social Care** - a range of settings, statutory and voluntary including care homes, care at home and hospitals, where vulnerable people are looked after or assisted with their essential living tasks.
- **Social Work Team** - the team which delivers the local social work service including all assessment and care management for adults and older people.
- **Staff Member** - for the purpose of these guidelines this includes anyone who is employed in a social care setting. Again for the purpose of these guidelines this term also applies to informal carers.
- **Whistle Blowing** - a means by which staff can safely raise their concerns within their organisation about matters of suspected or actual malpractice. This allows an individual to bypass the formal line management arrangements if necessary.

Appendix 2

Adults with Incapacity (Scotland) Act 2000

1. Definition

A person (16 years and over) who is incapable of acting, or making decisions, communicating decisions, or understanding decisions, or retaining the memory of decisions, on the basis of mental disorder or inability to communicate (without appropriate aids).

Note

1. Mental disorder is defined as a mental illness or mental handicap however caused or manifested.

2. For the purposes of the Act capacity is not all or nothing. It is possible to have 'minor' interventions e.g. where an individual is incapable of making some decisions whilst able to make others.

2. Principles

- Interventions must be of benefit to the person.
- Minimum/least restrictive intervention is applied.
- The person's wishes are taken into account.
- Other relevant parties are consulted.
- The adult is encouraged, as far as reasonably practicable, by any proxy (e.g. guardian, attorney, manager) to exercise and develop skills in the relevant areas of decision making.

3. Brief Outline of Powers / Functions

Continuing Powers of Attorney and Welfare Powers of Attorney.

- Friends, relatives, solicitors and other interested parties can become attorneys, **but local government officers are specifically excluded - but only from Financial Guardianship and only in a professional capacity.**
- Continuing Powers of Attorney can deal with a person's financial affairs, including selling property and paying for care costs.
- Welfare Powers of Attorney can make decisions about a person's care needs, including a decision to move to a care home.
- There can be two powers of attorney in place at the same time i.e. one financial and one welfare. There must be a written document specifying the powers, and to act on this it must be registered with the Public Guardian.
- **Powers of Attorney have to be granted while the person is 'capable' and become active once she/he becomes 'incapable'.**
- **Local authorities have a duty to investigate complaints about attorneys and to supervise guardians when not the local authority i.e. an individual.**

Accounts and Funds i.e. authority to intromit (deal) with funds.

- Authority is given to an individual (not the Local Authority) to access the incapable adult's funds for the purposes of meeting daily living expenses e.g. council tax, provision of sustenance, accommodation, fuel, the settlement of debts and miscellaneous items at the discretion of the Public Guardian.

Application cannot be made if guardianship or intervention order, or power of attorneys are already in place, addressing this issue. The local authority can

apply for financial guardianship but cannot act in this role. The local authority must seek appointment of a third party to act.

However, the local authority can apply for a Financial Intervention Order, which they can act upon, to resolve short term issues on a one off basis.

- An application is made to the Public Guardian, accompanied by a medical report certifying 'incapacity' and countersigned by the person who knows the 'incapable' adult. The Public Guardian issues a 'Certificate of Authority' which is usually valid for three years.

Managing Residents Finances - Enacted April 2002

- The manager of a residential establishment may apply to a medical practitioner for a certificate stating that the adult is incapable. The manager must first inform the adult and their nearest relative of the intention to seek the medical certificate. The certificate expires after three years. Once the certificate is obtained, the manager gives a copy to the adult and their nearest relative and to the Care Commission telling them that s/he intends to manage the adults affairs.
- Section 39 of the Act sets out the matters which may be subject to management and those include claiming, receiving, holding or spending any pension, benefit, allowance or other payment other than under the Social Security Contributions and Benefits Act 1992.
- Residential establishments require to be registered with a 'supervisory body' (usually the NHS Board or Care Commission).

Medical Treatment and Research - Enacted July 2002

- Authority to provide treatment to 'safeguard or promote physical and mental health'.
- Participation in research has to be sanctioned by an 'Ethics Committee', be of benefit to the incapable person and only allowed if it is impossible to conduct by using 'capable' persons.
- A medical practitioner can carry out specific treatments if the person has been 'certified' as incapable. This certificate lasts for one year, but can be renewed.

Note:

This section does not overrule the provisions of the Mental Health Act i.e. compulsory treatment for mental disorder.

Intervention Orders and Guardianship Orders

a) Intervention Orders

- An Intervention Order is a one-off order to deal with a specified financial or welfare matter. Application is made to the sheriff by anyone with an interest in the welfare or financial affairs of the adult, including the adult e.g. sale of house, signing a tenancy agreement etc.
- The **Local Authority has a duty** to apply to the sheriff where an Intervention Order is necessary to protect the property, financial interests or personal welfare of the adult and it is not being sought by others.
- The application requires two medical reports and a social work report regarding the welfare of the incapable adult.
- An Intervention Order must be registered with the Public Guardian. The order can be varied or recalled by the court.
- The Local Authority may be ordered by the sheriff to supervise the person given the powers of intervention.
- The Public Guardian has to notify the respective Local Authority of intervention orders of individuals living in the area.

b) **Guardianship Orders**

- Guardianship under the Adults with Incapacity Act may cover welfare and finances. The purpose is to protect the finances, property and welfare of the individual.
- There can be separate welfare and financial guardians (lead social worker can be welfare **but not** financial guardian).
- Guardianship may be suitable where there could be a need for continuing intervention or where there are several issues to deal with.
- Anyone with an interest can apply. **Local authorities must apply** if no-one else is doing so. Applications are made to the sheriff; two medical reports and a social work report (MHO) are required.
- Guardianship orders are usually valid for three years, five years or life time if so granted but this can be extended in exceptional circumstances. The orders are renewed by the sheriff. The Local Authority must apply for renewal if necessary, at the end of the previous order.
- The Public Guardian must notify the Local Authority of appointment of welfare and/or financial guardians in respect of incapable adults living in its area.

4. Local Authority Responsibility

- Give advice and information on the legislation.
- Give advice to attorneys in relation to their powers.

- Investigate complaints against attorneys.
- **Investigate the circumstances of any individuals at risk who come under the powers/functions of this Act.**
- Supervise welfare attorneys if directed to do so by the sheriff.

5. Public Guardian

The Act creates the Office of the Public Guardian, a role similar to that of the Accountant of Court. The Public Guardian also grants authority to access an adult's funds and has power to investigate complaints against interveners, guardians and attorneys etc.

(Contact details in Appendix 3)

Appendix 3

Useful contact details

Comhairle nan Eilean Siar

Social Work Department
Council Offices
Sandwick Road
Stornoway
01851 703773

Faire (Social Work Emergency Contact Out-of-Hours)

701702

Northern Constabulary

Police Station
Church Street
Stornoway
01851 702222

NHS Eileanan Siar

Health Board Offices
37 South Beach Street
Stornoway
01851 702997

Mental Welfare Commission for Scotland

K Floor
Argyle House
3 Lady Lawson Street

Edinburgh
EH3 9SH
Tel: 0131-222-6111

Public Guardian Office

Hadrian House
Calander Business Park
Calander Road
Falkirk
Tel: 01324-678300

The Scottish Commission for the Regulation of Care

(Care Commission)

Stuart House
Eskmills
Musselburgh
EH21 7PB
Tel: 0131-653-4100

Appendix 4

Acknowledgements

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