

Scottish Borders Council

Adult Protection Policy 2014



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Policy

1. Purpose

To identify, minimise and manage risks presented by "Adults at Risk" as defined by the Adult Support and Protection (Scotland) Act 2007.

We must ensure that all suspicions, disclosures or actual harm are acted upon within the Adult Support and Protection (Scotland) Act 2007 & ELBEG Adult Support & Protection Inter-Agency Guidelines 2013.

We must work in cooperation with all partner agencies and third sector colleagues to establish proportionate responses to risk. We should ensure that there are clear defined responsibilities, and that actions carried out have a proportionate timescale. Where cases have an Adult Support and Protection Plan, partners must collaborate to reduce and minimise risk.

2. Scope

All people known or believed to be "Adults at Risk of Harm" in Scottish Borders as defined by the Adult Support and Protection (Scotland) Act 2007. The Principles and definitions within this policy apply to all Adult Protection activity carried out through Scottish Borders council.

3. Statute

Adult Support and Protection (Scotland) Act 2007

Adults with Incapacity Scotland Act 2000

Human Rights Act 1998

NHS & Community Care Act 1990

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

The Social Work (Scotland) Act 1968, section 12

The National Assistance Act 1948, section 47

Criminal Law

Local Government (Scotland) Act 1973

Vulnerable Witnesses (Scotland) Act 2004

Protection of Vulnerable Groups (Scotland) Act 2007

Data Protection Act 1998

Race Relations (Amendment) Act 2000

Equalities Act 2006

Regulation of Care (Scotland) Act 2001

3.1 Regulations

Disability Equality duty 2006

Gender Equality duty 2007

4. Policy

ELBEG Adult Support and Protection Inter-Agency Guidelines 2013

NHS Borders Adult Protection policy

SSSC Code of Practice

Social Work Department Contracting Specifications

SBC Code of Conduct

SBC Social Care & Health Policy and Procedures

Scottish Borders Council Disciplinary Procedures

5. Responsible Managers Scottish Borders Council and NHS Borders

Chief Social Work Officer

Head of Service Adult Social Care & Health

Group Manager Adult Social Care & Health

Adult Protection Coordinator and Adult Protection Officers

Adult Social Care and Health locality Team Leaders

6. Policy statement

The Adult Support and Protection (Scotland) Act 2007 was implemented on 29th October 2008. This provides a legislative framework to support and protect "adults known or believed to be at risk of harm" through powers to investigate and intervene in situations of concern. The Act places a duty on Councils to make inquiries and investigations to establish whether or not further action is required to stop or prevent harm occurring; places a duty on specified organisations, including the NHS, to co-operate in investigating suspected or actual harm; introduces a range of Protection Orders including Assessment Orders, Removal Orders and Banning Orders; and provides a legislative framework for the establishment of Adult Protection Committees across Scotland.

7. Principles of the Act

- Action must benefit the adult, which could not reasonably be provided, without intervening in the adult's affairs;
- Be least restrictive to the adult's freedom;
- Take in to account the wishes of the adult - in so far as they can be ascertained. Efforts must be made to assist and facilitate communication using whatever method is appropriate to the needs of the individual;
- The views of others - the views of the adult's nearest relative, primary carer, and any guardian or attorney, and any other person, who has an interest in the adult's well-being or property, must be taken into account, if such views are relevant;
- The importance of the adult participating as fully as possible - the adult should participate as fully as possible in any decisions being made. It is therefore essential that the adult is also provided with information to help that participation (in a way that is most likely to be understood by the adult). Where the adult needs help to communicate (for example, translation services or signing) then these needs should be considered. Any unmet need should be recorded;
- Wherever practicable the adult should be kept fully informed at every stage of the process, for example, whether an order has been granted, what powers it carries, what will happen next, whether they have the right to refuse, what other options are available etc;
- That the adult is not treated less favourably - there is a need to ensure that the adult is not treated, without justification, any less favourably than the way in which a person who is not an "Adult at Risk" would be treated in a comparable situation; and the adults abilities, background and characteristics - including, the adult's age, sex, sexual orientation, religious persuasion, racial origin, ethnic group and cultural and linguistic heritage.

8. Multi-agency working in Adult Protection

Adult Protection is a collective responsibility. Research indicates that in most cases the adult knows the person causing them harm. The support and protection of adults at risk of harm is a high priority for the statutory, voluntary and independent sectors.

The support and protection of adults at risk is not the responsibility of any single agency. Professionals working with adults at risk are required to work together to share information, assess risk and cooperate as part of a multiagency response to risk. In so doing, professionals can support or reduce the risk of harm to adults as per the Adult Support and Protection (Scotland) Act 2007. The Scottish Borders Adult Protection Committee is in place with representatives from the Council, NHS Borders, Police Scotland, the Care Inspectorate and two members from the Voluntary sector. This provides oversight and guidance on process and service delivery. Multiagency cooperation is a key part of shared understanding and managing risk. Adult Protection investigations may identify gaps in support, even if they conclude that no harm has taken place. Where this happens assessment or clear pathways should be in place to sign post the case to the appropriate services or support.

9. Duties under Adult support and Protection (Scotland) 2007 Act

- A set of principles which must be taken into account when performing functions under Part 1 of the Act;
- Placing a duty on Councils to make the necessary inquiries and investigations;
- To establish whether or not an adult is at risk from harm and further action is required to protect the adult's wellbeing, property, rights or other interests;
- Clarifying the roles and responsibilities of those involved in Adult Protection;
- A duty to consider the provision of advocacy or other services after a decision has been made to intervene;
- Permitting practitioners to investigate circumstances where individuals may have capacity to choose but not the ability to exercise that choice because of undue pressure;
- Requiring specified public bodies and office holders to co-operate with local councils and each other about adult protection investigations;
- A range of protection orders which are defined in the Act to include:
 1. assessment orders;
 2. removal orders; and
 3. Banning orders.
- The establishment of multi-disciplinary Adult Protection Committees.

The Act sets out the terms under which each council area establishes an Adult Protection Committee to oversee Adult Protection. The aim of the Adult Protection Committee is to ensure the delivery of better, long term, positive outcomes for adults at risk. This will include work to reduce the likely hood of harm through the appropriate coordination of services, and by overseeing the development of local process and guidance procedure and multiagency training.

9.1 Council's duty to make inquiries

An inquiry is any process that has the aim of gathering knowledge and information. This could include inquiries of any relevant party and the

Co-operation of the public bodies and office holders under Section 5 of the Act. The purpose of making inquiries is to ascertain whether adults are at risk of harm and whether the council may need to intervene or provide any support or assistance to the adult or any carer.

A council must make inquiries about a person's well-being, property or financial affairs if it knows or believes;

(a) That the person is an Adult at Risk, and

(b) That it might need to intervene in order to protect the person's well-being, property or financial affairs.

The initial inquiry covers the preliminary stage of the process only and is to establish where there is genuine cause for concern or intervention. The local authority has responsibility for leading and carrying out inquiries however other agencies may be contacted for evidence and further information, in order to clarify the multiagency perspective on the risk.

In situations where there is suspicion or evidence that the client may be an Adult at Risk of harm, but where meeting the criteria is unclear. An inquiry to gather further information and evidence should be used to clarify whether further action is required. A defensible decision should be recorded on whether or not to proceed under the Adult Support and Protection (Scotland) Act 2007.

In Scotland an adult is an "adult at risk of harm" if they meet all three of the following points as defined in The Adult Support and Protection (Scotland) Act 2007;

1. Unable to Safeguard
2. At Risk of Harm
3. Because they are affected by disability, mental disorder, illness, physical or mental infirmity, and is 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. It is the whole of an adult's particular circumstances which can combine to make them more vulnerable to harm than others.

Cooperation

The act puts a duty of cooperation on the Mental Welfare Commission, the Care Inspectorate, Office of the Public Guardian, Police Scotland, NHS services, and public bodies to assist councils in their inquiries as to whether an adult may be "an adult at risk of harm" and may require protection under the Act.

9.2 Conclusion of the Inquiry

The social care and health team leader will be responsible for the decision to proceed to IRD / Investigation in consultation with the Adult Protection unit where necessary. In cases where the adult is deemed not to be an "adult at risk" then the case could follow the following route. No further action, referred to the locality team for assessment, or the case could be sign posted to an appropriate service.

9.3 Adult Protection Investigations

An Adult Protection investigation is generally necessary where the information gathered as part of an Adult Protection Inquiry suggests that the adult is at risk of harm and the Council may need to take action to protect them.

As part of the Investigation process the Council Officer may have to visit and interview the adult, either on their own or along side an appropriate person accompanying them. Within the Act there is the power to carry out a medical examination with a relevant health professional.

Where this is appropriate the adult should always be informed why we are requesting and examination and that they have the right to decline or refuse an examination.

The Investigation has the authority to request and see records; these may be access to financial records to confirm evidence of financial harm or could be access to records in relation to the adult at risk. The local authority may have to see these records or get copies of the records. In the case of medical records, it should be another health professional that examines these records.

9.4 Warrants for entry under the Act

During the Adult Protection Investigation process, should a Council Officer be refused entry or was likely to be refused entry, or where they are unable to enter premises for another reason, they may apply to the sheriff for a warrant. An application for entry and assessment should be requested at the same time as a removal order where this is necessary. The warrant will allow them to enter the premises and allow a constable who accompanies the council officer to do anything, using reasonable force where necessary, which the constables consider to be reasonably required in order to carry out the object of the visit. The warrant expires 72 hours after it has been granted. In urgent cases an application for the warrant can be made to a justice of the peace. The justice of the peace will only grant the warrant if he /she are satisfied that it is not practicable to apply to the sheriff and that the adult is likely to be harmed if there is any delay in granting the warrant. It should be noted that a warrant granted by the justice of the peace will expire 12 hours after it has been granted.

The act allows council officers to apply for three types of order to complete their investigation or to provide protective measures to the adult. Unless a protective order is sought on an emergency basis, the application would be made in writing by the appropriate council solicitor.

9.5 An Assessment order

This allows the adult to be taken to a place where they can be interviewed by a council officer and examined by a specified health professional. The purpose of the assessment is to allow the council officer to establish whether the adult is an adult at risk and where they may need measures to protect them from harm. An assessment order expires seven days after the date specified in the order.

9.6 A Removal order

This allows the Council Officer to remove the adult to a specified place within 72 hours of the warrant being granted and for the council to take such reasonable steps as it thinks fit for the purpose of removing the moved person from harm. The removal order expires seven days (or less if specified by a sheriff) after it has been granted. The council has the duty to take reasonable steps to ensure the property of any adult subject to a removal order is not lost or damaged. In urgent cases, an application for a removal order can be made to a justice of the peace. In such circumstances the removal order will specify a period of 12 hours from the granting of the order and will only allow a period of up to 24 hours in which the order is to have effect. Any warrant for entry granted by the justice of the peace in connection with a removal order will also expire 12 hours after it has been granted. This part of the act replaces the powers previously available under section 47 of the National assistance Act 1948, to remove individuals living in unsanitary conditions.

9.7 A Banning order

Council Officers and other interested parties, including the Adult at Risk, can apply for a banning order. The order bans the subject of the order from being in a specified area or place. It would also authorise the ejection of the person from any specified place and would authorise persons to do anything else which the sheriff thinks necessary for the proper enforcement of the order. A banning order will expire 6 months (or less if specified by the sheriff) after it has been granted.

Normal practice will be that the adult and relevant others would be notified of the application in order that the sheriff may hear their views in relation to the application. The sheriff will only dispense with such notification if doing so will protect the adult from serious harm or will not prejudice any person affected by the application. The sheriff can only grant the order if it is shown:

1. That the adult will be, or likely to be, seriously harmed, unless the order is granted.
2. That the adult at risk consents to the order being granted or lacks the capacity to give consent or that the adult is only withholding consent because they are being unduly pressured to do so by a person who is inflicting, or likely to inflict harm, and in whom the adult has confidence and trust or where the adult is afraid of being threatened by another person.
3. That there are no steps which could reasonably be taken with the adult's consent which would protect the adult from the harm the order or action is intended to prevent.

10. Adult at Risk and Harm Definitions

Who is an adult at risk? – The Three Point Test

Under the Adult Support and Protection (Scotland) Act 2007 an "Adult at Risk" means a person aged sixteen years or over who:

- (a) Is unable to safeguard their own well-being, property, rights or other interests;
- (b) Is at risk of harm;
- (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.

All three elements of above criteria must apply to class an individual as an **adult at risk**

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, property, rights or other interests; all three elements of this definition must be met. It is the entirety of adult's particular circumstances which can combine to make them more vulnerable to harm than others.

Who is "at risk of harm"?

An adult is at risk of harm if another person's conduct is causing or is likely to cause the adult to be harmed. Or the adult is engaging or is likely to engage in conduct which causes or is likely to cause self-harm.

What is harm?

In the Adult Support and Protection (Scotland) Act 2007, harm includes “**all harmful conduct**” and, in particular, includes:

- (a) Conduct which causes physical harm;
- (b) Conduct which causes psychological harm (e.g. 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);
- (d) Conduct which causes “self-harm”;

11. Agencies Responsibilities under Adult Support and Protection (Scotland) Act 2007

Local Authority has a duty under the Adult Support and Protection (Scotland) Act 2007 to make inquiries about a person’s well-being property or financial affairs if it knows or believes;

- a) That the person is an adult at risk
- b) That it might need to intervene in order to support or protect them

Police Scotland have a responsibility to investigate crime and to protect the public from criminal harm. Police Scotland report facts and circumstances to the procurator fiscal who makes a decision on the facts and evidence presented. Police Scotland are a key partner agency and they have a duty to co-operate with any inquiries about adults at risk of harm.

NHS Borders has overall responsibility for the healthcare of service users / patients within Scottish Borders. NHS Borders are a key partner agency and under the Act they have a duty to co-operate with any inquiries about adults at risk of harm. Where required they will provide a nominated health professional to undertake any health assessments required.

The Care Inspectorate has a regulatory role in considering the safety of all service users in any registered care service and can take enforcement action under the Regulation of Care (Scotland) Act 2001 They have a duty to co-operate with any inquiries about adults at risk of harm.

The Mental Welfare Commission Scotland have a regulatory role to ensure that care, treatment and support are lawful and respect the rights and promote the welfare of individuals with mental illness, learning disability and related conditions. There is a duty placed upon the mental welfare commission to cooperate work alongside the local authority.

Office of the Public Guardian has a regulatory role in considering the financial and welfare safety of all service users in any registered care service and can take enforcement action under the Regulation of Care (Scotland) Act 2001 They have a duty to co-operate with any inquiries about adults at risk of harm.

12. The Importance of considering the wider issue of risk particularly where Children are involved

When dealing with Child Protection or Adult Protection cases, practitioners should always be alert that a case may have further impact on children or adults in a setting / home. It is a shared responsibility across all agencies to remember the needs of any child who may reside or have contact with an adult who may be at risk of harm, particularly where children live in the same household as an alleged perpetrator(s).

Where a Referral is made to social work services and a child or children may reside or have contact with an adult at risk or an alleged perpetrator, then the relevant children and families' team must be informed. Further assessment from children services may be required as to whether Child Protection Procedures are appropriate.

Cooperation and information sharing is central to this type of work and to the management of risk. Confidentiality must not be used as a barrier in situations where there is a reasonable cause to suspect that an adult is at risk of harm to self or others or where a Child is at risk, this will always override confidentiality.

13. Vulnerable Young Persons Protocol

It is recognised that within the Scottish Borders there is a small number of children and young people at risk of causing significant harm to themselves or others. This risk may be as a consequence of their own behaviour or a consequence of others behaviour towards them. The protocol is intended to give guidance for the assessment, decision making and co-ordination of a multi-agency response to the needs of this group of children and young people.

Aims and Objectives

- To identify children and young people who are placing themselves or others at risk of significant harm;
- To reduce the risk of harm to children and young persons and others;
- To undertake a multi-agency integrated risk assessment;
- To produce and review an outcome based risk management plan.

However, this protocol should also be considered for:

- Young people who are 16-18yrs who are not subject to a Supervision Requirement but who are considered to be a significant risk to themselves or others;
- Those young people 18-21yrs who have previously been Looked After by the Local Authority.
- In cases where a young person meets 2 of the criteria and there is a serious risk of harm, the Vulnerable Young Person's Protocol could be considered as a multi-agency forum to minimise and reduce risks.

Adults 16 years and over who meet all three points as an "Adults at Risk" criteria, should be considered under The Adult Support and Protection (Scotland) Act 2007. Refer to Vulnerable Young Persons Protocol for further information

14. Self Directed Support and Adult Protection

The Social Care (Self-directed Support) (Scotland) Act 2013 establishes a duty on local authorities to provide adults with choice over their care and support arrangements. The Scottish Government, local authorities and providers are committed to significant expansion of opportunities for adults and children to choose to take greater control over their support. People eligible for social care support will have four options to facilitate this choice. This will

shift the balance of care and have potential challenges for the design, delivery and availability of support services.

An Adult at Risk of harm, who chooses greater control and responsibility, either through a direct payment or individual service fund, does not in any way lose or compromise their entitlement to protection under the Adult Support and Protection (Scotland) Act. Local authorities are subject to the same duties and powers under the 2007 Act regardless of whether a person chooses to direct their support, or elects to ask the council to arrange support on their behalf. Nor do councils alter or reduce their responsibility to assess risk, inquire, investigate or, where necessary, intervene to protect. For some the nature of Self-directed support may well develop and improve an individual's ability to protect themselves.

The Self-Directed Support Act does not diminish or dilute existing duties with regard to assessment. It seeks to strengthen the principle of collaboration, involvement and informed choice when undertaking an assessment by placing these into statute.

Self Directed Support offers 4 options;

1. Direct Payment
2. The person directs the support
3. The local authority arranges the support
4. A mixture of the above three options

As with all other aspects there is an over-riding duty of care. If a worker believes one option is not appropriate it will be important to evidence the reasons why. For example where a practitioner believes a person is under "undue pressure to agree" Under the Adult Protection process or where there is evidence that the adult may not manage option 1 the other options should be explored and this should be documented and explained.

Local authorities have a duty to undertake annual reviews where support is provided to meet eligible need, or more frequently as a response to a significant change in circumstances. It is usual for the needs of people where there are public protection elements to be reviewed more frequently.

15. Scottish Borders Council Corporate Plan 2013 – 2018

"We seek the best Quality of life for all people in the Scottish Borders, prosperity for all our businesses and good health and resilience for all in our communities."

The Scottish Borders Council Corporate plan 2013 – 2018 covers 8 key areas:

1. ENCOURAGE – sustainable economic growth;
2. IMPROVE ATTAINMENT AND ACHIEVEMENT LEVELS;
3. PROVIDE HIGH QUALITY SUPPORT, CARE AND PROTECTION;
4. BUILD CAPACITY AND RESILIENCE;
5. MAINTAIN AND IMPROVE;
6. DEVELOP OUR WORK FORCE;
7. DEVELOP OUR ASSETS AND RESOURCES;
8. ENSURE - excellent adaptable collaborative and accessible public services.

Overall the vision statement for the Social Work department is:

'Social Work Services is working with the community to ensure everyone feels included. We will take a community leadership role in protecting children and vulnerable people, and in promoting wellbeing, social inclusion and social justice. In partnership with all relevant agencies, we will maximise all opportunities to actively address disadvantage.'

Adult Protection Coordinator vision statement

"The Adult Protection Unit is committed to promoting public awareness of Adult Protection issues, and to working with partner agencies and the wider community, to protect individuals from harm. We remain committed by working together to address issues of harm and power imbalance within Scottish Borders. All adults have the right to be treated as an individual with dignity and respect, to live their lives free from abuse".

Corporate priority 3 – Provide high quality, support and protection through the following 6 steps:

1. **Empowerment:** Providing people with support, assistance and information, and enabling them to make choices and give informed consent
2. **Prevention:** It is better to take action before harm occurs, focused and bespoke training programs, public awareness strategies, and multiagency partnerships are at the heart of SBC action
3. **Proportionality:** Proportionate and least restrictive responses which are appropriate to the risk presented. Working in partnership with adults and families / representatives.
4. **Protection:** Support and representation (advocacy) for those in greatest need
5. **Partnership:** Multiagency working and cooperation both with key services, the third sector and with communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse. An Interagency strategy is in place within Scottish borders to work with partners to reduce and prevent harm.
6. **Accountability:** Defensible decision making which is informed by knowledge and is evidence based. Accountability and transparency through the adult protection process, with clear lines of feedback to those involved in the process.

Corporate priority 4 - Build Capacity and Resilience through the following steps:

- Consider how existing local authority services can be reconfigured to support people to take part in activities or to build positive social connections;
- Provide targeted support to build social connections for isolated people, for example through befriending services or local area coordination;
- Work with the local community to understand and overcome barriers to accessing wellbeing and support / protection services;
- Where possible, co-produce protection materials with the local community to ensure that they are as accessible as possible;
- Provide access to interventions that build psychological coping skills, particularly for those at increased risk of poor wellbeing or at risk of harm;
- Ensure that frontline staff across SBC understand the importance of the Scottish Borders Corporate plan and sign posting wellbeing or protection calls to the appropriate service in a timely and professional manner.