**Adult Support and Protection**



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**Contents**

|  |  |
| --- | --- |
|  | **Page** |
| How to use this resource | 3 |
| Module 1 - My concerns (types of harm) | 5 |
| Module 2 - My Responsibilities (What must I do?) | 15 |
| Module 3 - Legislation | 21 |
| Module 4 - Frequently Asked Questions aka myth-busting | 30 |

**About this Open Educational Resource (OER)**

As part of the SSSC’s commitment to open educational practice, we’ve packaged all of the text from our Adult Support and Protection smartphone app into this document and licenced it under Creative Commons to make it easier for you to reuse and adapt the material.

The material was developed to be used as a reference resource for all workers whose role includes supporting or caring for adults. It is designed to be used in conjunction with the workers organisation’s adult support and protection policies and procedures. There are sections on the signs and symptoms of harm and abuse; what workers should do if they have concerns; and the legislation that applies to adult support and protection. There is also a Frequently Asked Questions section that covers common issues and dilemmas relating to adult support and protection.

You can download the app here:

<http://learningzone.workforcesolutions.sssc.uk.com/course/view.php?id=56>

Please note that while this resource contains information that may be useful as part of a learning programme, it is not intended to be used as a stand-alone learning resource.

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**Module 1 - My concerns (types of harm)**

**Definition of harm**

The Adult Support and Protection (Scotland) Act 2007 defines harm as:

“Harm includes all harmful conduct and, in particular includes:

* conduct which causes physical harm
* conduct which causes psychological harm (eg by causing fear, alarm or
* distress)
* unlawful conduct which appropriates or adversely affects property, rights or interest (eg theft, fraud, embezzlement or extortion)
* conduct which causes self-harm.”

This resource contains information about common types of harm. However, it is not possible to include all types of harm, and it is important to remember that harm can be anything that has a detrimental effect on the wellbeing of a person. In the course of your work, if you think a person may be at risk of any type of harm, you must report this in line with your duty of care. (Your duty of care will be explained in the ‘My Responsibilities’ section of this app)

**Financial harm**

Signs that indicate someone may be at risk of financial harm include:

* loss of financial ability
* loss of property
* pressure to sign Power of Attorney or wills or actual changes to wills and deeds
* visitors who only come by when benefits are cashed
* individuals who ‘help’ with withdrawing funds
* lack of congruity between living conditions and assets
* removal of access to benefits by family members
* unexplained alternations to accounts
* unexplained debt or inability to pay bills
* unplanned / unanticipated sale of property / possessions
* confused / irregular signature or credit card / cheques

Symptoms that someone may experience from financial harm include:

* not being able to maintain a proper diet, adequate heating etc which affects their physical well-being
* anxiety and distress about having enough money or possessions in the future
* not being able to choose what to spend their money on
* anxiety about information that they have been given about what to do with their money.

Actions that you must take if you are concerned.

* Report your concerns following your organisation’s adult support and protection policies and procedures. These will explain who you must contact and the information that they may want from you.
* If your concerns do not relate to someone that you work with, you can contact any local council service and say that you have an adult protection concern.
* It is important to act, even if you do not have evidence of harm. You will not be criticised for doing this, and may even help to prevent more serious harm to the person.

**Physical harm**

Signs that indicate someone may be at risk of physical harm include:

* slapping, pushing, hitting, kicking
* misuse of medication
* pinching, biting, shaking
* forcible feeding
* restraining or holding back an individual
* inappropriate moving and rough handling
* inappropriate touching
* threatened with a weapon
* weight loss due to malnutrition
* history of unexplained injuries caused by falls / accidents
* broken bones
* bed sores
* depression
* withdrawn
* distrust.

Symptoms that someone may experience from physical harm include:

* the person experiences pain that prevents them from doing activities that they want to
* the person is fearful of the consequences of asking for support
* the person becomes withdrawn and does not interact with others.

Actions that you must take if you are concerned:

* report your concerns following your organisation’s adult support and protection policies and procedures. These will explain who you must contact and the information that they may want from you.
* if your concerns do not relate to someone that you work with, you can contact any local council service and say that you have an adult protection concern.
* it is important to act, even if you do not have evidence of harm. You will not be criticised for doing this and may even help to prevent more serious harm to the person.

**Neglect**

Signs that indicate that someone may be at risk of neglect include:

* not maintaining their preferred level of personal cleanliness and dress
* not attending medical appointments
* not having sufficient to eat and drink
* not having social contact with others
* not being supported to move around eg being left in bed
* neglect of accommodation, self-neglect
* not re-setting a night alarm or buzzer
* inadequate heating or nutrition, isolation and abandonment, withholding key essentials, denying access to social or educational services
* person alone and at risk
* failure to give privacy and dignity
* failure to take an adult at risk to medical appointments or administer medications.

Symptoms that someone may experience from neglect include:

* a deterioration in overall health and wellbeing
* loss of dignity and self-esteem
* isolation and loss of contact with family and friends
* loss of motivation
* reduced levels of independence.

Actions that you must take if you are concerned:

* report your concerns following your organisation’s adult support and protection policies and procedures. These will explain who you must contact and the information that they may want from you.
* if your concerns do not relate to someone that you work with, you can contact any local council service and say that you have an adult protection concern.
* it is important to act, even if you do not have evidence of harm. You will not be criticised for doing this and may even help to prevent more serious harm to the person.

**Psychological / emotional harm**

Signs that indicate that someone may be at risk of psychological or emotional harm include:

* changes in the person’s mental state such as confusion, anxiety, paranoia
* changes in the person’s behaviour such as angry outbursts, being tearful, becoming withdrawn
* the person expressing feelings of worthlessness and hopelessness
* the person having reduced level of self-esteem and confidence
* threats, manipulation, inappropriate treatments
* humiliation, overt control and dominance
* isolation and abandonment
* bullying and intimidation by word or act
* access to person being denied
* misuse of power or influence
* threats of harm or abandonment
* putting down, ignoring someone
* controlling behaviour
* taking away privacy
* constant criticism
* changes in sleep pattern
* deterioration in physical presentation
* changes in psychological health
* sudden speech disorder
* neurotic behaviour
* fear of making mistakes
* self-harm
* denying someone the right to exercise their religion or belief
* forcing and individual to participate in a religious or belief practise
* denying someone access to culturally appropriate meals
* inappropriate nicknames.

Symptoms that someone may experience from psychological or emotional harm include:

* low mood / depression
* fear of expressing choices or opinions
* low self-esteem and lack of confidence in own ability
* lack of appetite and changes in sleeping patterns.

Actions that you must take if you are concerned:

* report your concerns following your organisation’s adult support and protection policies and procedures. These will explain who you must contact and the information that they may want from you.
* if your concerns do not relate to someone that you work with, you can contact any local council service and say that you have an adult protection concern.
* it is important to act, even if you do not have evidence of harm. You will not be criticised for doing this and may even help to prevent more serious harm to the person.

**Sexual harm**

Signs that indicate that someone may be at risk of sexual harm include:

* changes in behaviour such as becoming withdrawn, using sexual language/behaviour
* complaints of pain or signs of bruising and injury to intimate areas of the body
* flinching or reluctance to have any physical contact
* more attention given and time alone arranged by a particular person or people
* changes in behaviour, weeping, anger, violent reactions, withdrawal and self-isolation
* physical damage torn rectal / vaginal tissues, anal pain
* signs of grooming
* unexplained pregnancy
* bleeding
* pain, irritation and bruising
* evidence of inappropriate restraint
* over sexualised behaviour, language and expression
* changes to posture, stiffness and difficulties in sitting
* withdrawal of contraception or initiation of the same
* suspicion of strangers and groups
* keeping secrets
* sexually transmitted infections
* bedwetting
* nightmares
* inappropriate sexual contact, touching, kissing
* sexual assault rape, non-consensual contact, sexualised conversation / comments
* indecent exposure
* being made to watch to listen to pornography without consent
* voyeurism.

Symptoms that someone may experience from sexual harm include:

* physical symptoms such as pain, increases in infections
* inappropriate attachment to a particular person or people
* fear of being alone with people
* self-blame for ‘encouraging’ the perpetrator leading to reduced self-esteem.

Actions that you must take if you are concerned:

* report your concerns following your organisation’s adult support and protection policies and procedures. These will explain who you must contact and the information that they may want from you.
* if your concerns do not relate to someone that you work with, you can contact any local council service and say that you have an adult protection concern.
* it is important to act, even if you do not have evidence of harm. You will not be criticised for doing this and may even help to prevent more serious harm to the person.

**Discrimination**

Signs that indicate that someone may be at risk of discrimination include:

* lack of sensitivity or attention to cultural needs
* person is not permitted to make choices
* offensive remarks about race, culture, gender age etc
* lack of opportunity to realise potential
* racist, homophobic, ageist, sexist behaviours, harassment and any other discriminatory acts eg trans phobia
* preventing someone from accessing appropriate sexual support / education
* loss of self-esteem
* bullying incidents on basis of individuals race, age, gender etc
* offensive remarks or harassment
* changes to adults mental state
* proving unacceptable food / diet
* failure to provide for cultural needs
* isolation
* hate crime
* not allowing for choice or difference
* social isolation and exclusion
* refused access to services or excluded inappropriately.

Symptoms that someone may experience from discrimination include:

* loss of self-esteem and confidence
* changes in mental state such as becoming fearful, anxious or depressed
* feeling socially isolated and excluded
* distress due to not being able to maintain cultural or religious rituals.

Actions that you must take if you are concerned:

* report your concerns following your organisation’s adult support and protection policies and procedures. These will explain who you must contact and the information that they may want from you.
* if your concerns do not relate to someone that you work with, you can contact any local council service and say that you have an adult protection concern.
* it is important to act, even if you do not have evidence of harm. You will not be criticised for doing this and may even help to prevent more serious harm to the person.

**Self-harm**

Signs that someone may be at risk of self-harm include:

* injuries such as bruising or cuts
* not taking prescribed medication (including hoarding of medication)
* engaging in risky behaviour such as substance or alcohol misuse
* communicating a sense of hopelessness and questioning whether life is worth living
* refusal to eat or drink
* drug / alcohol misuse
* cutting, burning, scalding or hitting parts of own body
* calculated and dangerous risk taking
* banging head or other parts of the body
* swallowing harmful substances
* overdosing.

Symptoms that someone may experience from self-harm include:

* pain, increased risk of infection
* deterioration in physical and mental health
* guilt that they are self-harming
* social isolation.

Actions that you must take if you are concerned:

* report your concerns following your organisation’s adult support and protection policies and procedures. These will explain who you must contact and the information that they may want from you.
* if your concerns do not relate to someone that you work with, you can contact any local council service and say that you have an adult protection concern.
* it is important to act, even if you do not have evidence of harm. You will not be criticised for doing this and may even help to prevent more serious harm to the person.

**Institutional harm**

Signs that someone may be at risk of institutional harm include

* removal of individuality within an institution by strict inflexible regimes and routines, lack of accommodation to individual choice, lifestyle etc
* lack of choice
* changes in behaviour
* lack of involvement and interest in normal activities, self-isolation, passivity and withdrawal
* inadequate staffing
* lack of attention to complex needs
* lack of understanding of individual communication needs
* fear of another person
* jokes at expense of someone else.

Symptoms that someone may experience from institutional harm include:

* a feeling of helplessness
* lack of self-worth
* loss of motivation
* loss of confidence.

Actions that you must take if you are concerned:

* report your concerns following your organisation’s adult support and protection policies and procedures. These will explain who you must contact and the information that they may want from you.
* if your concerns do not relate to someone that you work with, you can contact any local council service and say that you have an adult protection concern.
* it is important to act, even if you do not have evidence of harm. You will not be criticised for doing this and may even help to prevent more serious harm to the person.

**Module 2 - My Responsibilities (What must I do?)**

**Your duty of care**

“Duty of Care is defined simply as a legal obligation to:

* always act in the best interest of individuals and others
* not act or fail to act in a way that results in harm
* act within your competence and not take on anything you do not believe you can safely do.”

(Social Care Institute for Excellence)

It is vital that you remember your duty of care whenever you are working with people who require support. This is particularly important where a person may feel or be more vulnerable.

**Immediate actions**

1. Although you may be facing a stressful situation, it is important that you act calmly. This will help to give reassurance to the person and also help to give you confidence to deal with the situation appropriately.
2. The first thing that you must do is to ensure that the person is not in further immediate danger. Depending upon the circumstances, you may need to call for assistance such as from the police or ambulance service. Remember it is also important that you minimise any risks to you and do not put yourself in danger.
3. It is very important to reassure the person, particularly if he/she has disclosed the harm or abuse, or is concerned that the harm or abuse could get worse as a result of it being reported. Let the person know that you are there to provide support and what you are going to do. Remember that the person still has the right to make choices and these must be respected even if you don’t think these are in the best interests of that person. However you are still encouraged to report your concerns
4. Under the SSSC Codes of Practice for Social Service Workers, you have a duty to report any concerns that you have, even if the person asks you not to do this. You should explain that you will respect the person’s right to confidentiality and only pass on information to people who need to know when someone is at risk of harm. Never promise to ‘keep it to yourself’ as this could be placing the person and others at greater risk. Reporting is covered in more detail in the Reporting section of this resource.
5. Take a note of the time and what you see and hear. You should write this down as soon as possible after you finish supporting the person as you need to refer to this later. It is important to ensure that this is factual and does not include your interpretation of events.
6. Do not try to investigate this yourself as you could make things worse. Investigations must always be carried out by specially trained workers, who have a detailed knowledge of legislation and ways to promote the safety of individuals.
7. If there is a possibility that a crime has been committed, such as assault, it is important that the evidence of this is not altered as this may affect the chances of a prosecution. Therefore, you should not do anything that will alter the evidence, such as helping the person to wash or change clothes before being told that it is okay to do so by someone investigating the situation (this can be hard to do, but is important).

**Reporting**

Your organisation will have procedures for reporting adult support and protection concerns. Your employer has a duty to ensure that you have access to these. You have a responsibility to make sure that you are familiar with them and know who you should contact about such concerns. This will often be your line manager or supervisor but you also need to know who to contact if they are not available.

It is important that you report any concerns that you have including the following:

* you have general concerns about someone’s wellbeing
* you see or hear about something which could be harmful
* you feel someone has done something to an individual which makes you uncomfortable
* someone tells you that something harmful has happened or is happening to them.

(‘Tell Someone: Information for Care Workers’ from the ‘Tell Someone Training pack)

If you do not have any evidence for your concerns, you may feel reluctant to report these. However, if you make clear that you are using your professional judgment based on your knowledge or your understanding of the person’s situation, you should find that your concerns are taken seriously.

Remember that even it turns out that the person is not experiencing any harm, it is better for you to have had this checked than not report your concerns.

**Following up – why it is important to follow up**

You have reported your concerns to the appropriate person, so is that all that you have to do?

No, it is not enough for you just to report your concerns. You need to be sure that your concerns have been investigated, and action taken if necessary to protect the person.

The investigation may not be carried out by your own organisation. The Adult Support and Protection (Scotland) Act 2007 places the responsibility for leading investigations on local authorities, so once you report your concerns, you may not have much further involvement in the process. Also, the investigators must uphold the confidentiality of the person, so you may not be aware of any action that has been taken to protect the person.

However, if you feel that the person continues to be at risk of harm, you have a responsibility to report this to the appropriate person (usually your line manager or supervisor) in line with your adult support and protection policies and procedures.

If you think that your concerns are not being taken seriously; that these have not been passed on for investigation; or that the concerns relate to your line manager, you may need to use your organisation’s whistle-blowing procedures. While it is unlikely that you will ever need to use these, it is important that you are familiar with the whistle-blowing procedures in case you do.

**Possible consequences of not reporting or following up**

If you do not report, or follow up your concerns, the main possible consequence is that the person will suffer harm. This may be a continuation of existing harm, or harm that might have been avoided. Imagine how you would feel if you knew that you could have done something to help prevent this happening.

However, there are other possible consequences if you do not report or follow up your concerns. These could be:

1. Your relationship with the person is damaged as they feel that they cannot trust you to support them. In particular, if they disclose something to you, this may have taken a lot of courage, so they could feel ‘let down’ if you do not act on this.
2. You and your colleagues could also be placed at risk. It could be a risk of physical harm, or it could be a risk to your reputation and integrity, eg where there is financial harm.
3. You will not be following your organisation’s policies and procedures. This could result in disciplinary action or, depending upon the severity, you could actually lose your job.
4. You will have breached the Scottish Social Services Council (SSSC) code of practice, which clearly states that you have a duty to report concerns. If you are registered with the SSSC, you could find that conditions are placed on your registration, which could affect your ability to work in care services. Depending upon the severity of the breach, you could even be removed from the register altogether, meaning that you could no longer work in care services.

The possible consequences above are not intended to frighten you, but are there to show you that doing nothing (ie not reporting or following up your concerns) may affect many people.

**Your professional codes of practice**

In the section ‘Possible consequences of not reporting or following up’, we mentioned the Scottish Social Services Council (SSSC) Code of Practice. This is the code that all workers in the social care professions are expected to follow and uphold, regardless of whether or not they are registered with the SSSC. The SSSC was established by the Regulation of Care (Scotland) Act 2001 as the regulatory body for social care professions.

The code has been designed to promote the protection of vulnerable people, to protect you as a worker, and to promote public trust in the social care professions. Therefore, it is essential that you always work in line with the code and you have a responsibility to know and understand your duties within this. If you breached the code, this would be treated very seriously, and any lack of knowledge or understanding of the code on your part would not be accepted.

You may be registered with another regulatory body, such as the Nursing and Midwifery Council (NMC) or the General Teaching Council for Scotland (GTCS). These bodies also have codes of practice that you must follow to maintain your registration, and will include duties relating to the protection of people.

If you do not follow the codes of practice of your regulator, this could result in your removal from their register and affect your ability to work in your chosen profession.

**Looking after yourself – awareness that you can be affected too; seeking appropriate support eg supervision; your, and your employer’s, responsibilities**

“It comes with the territory”

When you encounter adult support and protection situations and issues, your focus will be on promoting the protection of the person. It is easy to forget that these situations can be very stressful for you too, particularly where it involves physical or sexual violence. Also, you may find that the circumstances trigger memories or strong emotions relating to your professional or personal life.

As people working in caring professions, we tend to expect that we will be dealing with stressful situations to some degree or another, so see this as just part of the job. However, it is important that you know that both you and your employer have a role to play in supporting you to manage this.

If you have found any situation at work particularly stressful, you should be able to discuss this with someone. Many organisations have policies that use supervision as part of the debriefing process for staff who have experienced stressful situations at work, such as aggression and violence.

**Other sources of advice and support**

You can find guidance and support from a number of sources. Some of these are listed below. Some of the documents may be large and you may find it easier to read them on a bigger screen such as a PC, laptop or tablet.

Adult Protection Committees – under the Adult Support and Protection (Scotland) Act 2007, each local authority area in Scotland must have an Adult Protection Committee (APC). These are a good source to locate guidance and training. To find your local APC, type the name of your local authority and Adult Protection Committee into your internet search.

[www.scotland.gov.uk](file:///D%3A%5Cuserdata%5Cwilsonba%5Cwww.scotland.gov.uk) – on the Scottish Government home page, type Adult

Protection in the search bar and you will be directed to the appropriate pages

[www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk/) – the Office of the Public Guardian (Scotland) website. A good source of information about Power of Attorney and the financial aspects of the Adults with Incapacity (Scotland) Act 2000

[www.mwcscot.org.uk](http://www.mwcscot.org.uk) – the Mental Welfare Commission website is a good source of guidance on how to promote the rights of people who have mental health issues, learning disabilities, and related conditions.

[www.careinspectorate.com](http://www.careinspectorate.com) – a good source of information and guidance about how to promote and protect the rights of vulnerable people who use care services in Scotland.

**Module 3 - Legislation**

This section gives you information about the most common legislation that relates to adult support and protection. It is possible that more than one piece of legislation will apply to any adult that you may encounter. So, it is important that you have an awareness of all the legislation below and consider how these interact with each other to protect adults who are at risk of harm.

The information contained in this section is for general guidance only and is designed to raise your awareness of the legal protections available. The legislation referred to below sets out the principles that you must be aware of in the course of your day to day duties.

Your role within adult support and protection will depend on your position in your organisation and the duties assigned to you by your employer and managers.

**The Adult Support and Protection (Scotland) Act 2007**

This legislation was introduced to try to prevent and stop adults, who may be at risk, from being harmed and abused.

The Act defines adults at risk as people aged 16 years or over who:

* may be unable to safeguard their wellbeing, rights, interests, or their property
* may be harmed by other people, or by themselves;
* because of a disability, illness, infirmity or mental disorder are more at risk of being harmed than others who are not so affected.

It is really important for you to understand that having a physical or mental illness, or a disability does not necessarily mean that a person will be regarded as an ‘adult at risk’. This will only be the case when all three parts of the definition above apply. You may hear this referred to as the three point test to determine if an adult is at risk.

Harm includes all harmful conduct and can include:

* conduct which causes physical harm
* conduct which causes psychological harm (eg by causing fear, alarm or
* distress)
* unlawful conduct which appropriates or adversely affects property, rights or interest (eg theft, fraud, embezzlement or extortion)
* conduct which causes self-harm.

The Act has measures to identify and protect individuals who fall into the category of adults at risk. These measures include:

* requiring councils to make the necessary enquiries and investigations to see if action is needed to stop or prevent harm happening
* requiring specific organisations to co-operate with councils and each other about adult protection investigations
* the introduction of a range of protection orders including assessment orders, removal orders and banning orders
* a legislative framework for the establishment of local multi-agency Adult Protection Committees across Scotland.

In 2008 (revised in 2014), the Scottish Government published a Code of Practice relating to the Adult Support and Protection (Scotland) Act 2007. This explains the expectations on people involved in enquiries and investigations, so you should read this to ensure that you understand what you have to do if you are involved in an investigation. You can read this here.

[link: http://withscotland.org/resources/adult-support-protection-code-of-practice]

**Adult with Incapacity (Scotland) Act 2000**

The Adults with Incapacity (Scotland) Act 2000 provides ways to help safeguard the welfare and finances of people who lack capacity.

It protects adults (people aged 16 or over) who lack capacity to take some or all decisions for themselves because of a mental disorder or an inability to communicate.

Under the act, an adult is considered to be incapable if they are unable to:

* make decisions
* act on decisions
* communicate decisions
* understand decisions
* retain the memory of decisions.

**Principles to be followed**

The Act aims to protect people who lack capacity to make particular decisions, but also to support their involvement in making decisions about their own lives as far as they are able to do so. Anyone authorised to make decisions or take actions on behalf of someone with impaired capacity must apply the following principles:

**Principle 1 - benefit**Any action or decision taken must benefit the person and only be taken when that benefit cannot reasonably be achieved without it.

**Principle 2 - least restrictive option**Any action or decision taken should be the minimum necessary to achieve the purpose. It should be the option that restricts the person's freedom as little as possible.

**Principle 3 - take account of the wishes of the person**In deciding if an action or decision is to be made, and what that should be, account must be taken of the present and past wishes and feelings of the person, as far as these may be ascertained. Some adults will be able to express their wishes and feelings clearly, even although they would not be capable of taking the action or decision which you are considering. For example, he/she may continue to have opinions about a particular item of household expenditure without being able to carry out the transaction personally.

The person must be offered help to communicate his or her views. This might mean using memory aids, pictures, non-verbal communication, advice from a speech and language therapist or support from an independent advocate.

**Principle 4 - consultation with relevant others**Take account of the views of others with an interest in the person's welfare. The Act lists those who should be consulted whenever practicable and reasonable. It includes the person's primary carer, nearest relative, named person, attorney or guardian (if there is one).

**Principle 5 - encourage the person to use existing skills and develop new skills**Encouraging and allowing the adult to make their own decisions and manage their own affairs as much as possible and to develop the skills needed to do so.

**Supervision and regulation**

Under the Act four public bodies are involved in the regulation and supervision of those authorised to make decisions on behalf of a person with incapacity. These are: the Office of the Public Guardian (Scotland), the Mental Welfare Commission for Scotland, the courts and local authorities.

(Mental Welfare Commission for Scotland website, 2015)

It is important for you to understand that capacity is not ‘all or nothing’. This means that while a person may not be able to make decisions about some aspects of their life, they may still be able to make decisions about other parts. You must follow the principles above to enable the person to retain as much control over their life as possible without causing then harm.

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

The Mental Health (Care and Treatment) (Scotland) Act 2003 applies to people with a mental disorder, which refers to people with mental health problems, personality disorders and learning disabilities. It aims to provide safeguards to protect the rights of people with mental disorders.

There are various principles that you must apply in carrying out functions of the Act. These principles are:

* the present and past wishes and feelings of the service user must be considered
* the service user has the information and support to enable participation in decisions
* have regard for the views of the service user and also the named person, carer of the service user and any guardian or welfare attorney of the service user
* look at all options for their care
* any treatment agreed should give the maximum benefit
* have regard to the identity of the service user including age, sexual orientation, religion, culture, linguistic background
* any restrictions to freedom should be the minimum necessary in the circumstances
* no person should be treated less favourably than others
* special care is taken of the welfare of people under 18 years of age.

**Supported person’s rights**

Named person

A supported person has the right to identify a ‘patient’s named person’, who must be consulted and involved by services when decisions are being made about support. The named person can also act on behalf of the supported person however, they are not the independent advocate, who has a different role. The choice of named is person is the supported person’s. If they decide not to choose anyone, a carer or relative will automatically be chosen as named person.

Independent advocacy

Under this Act, all supported people who have mental disorders have a right to have an independent advocate to act on their behalf. This person acts independently from services and ensures that the views and needs of the supported person are promoted, particularly when the service user is unable to do this. Independent advocates also have an important role in enabling supported people to understand their options and why decisions have been reached about their care.

Advance statement

Supported people can make written statements about how they would like to be treated and supported at times when their mental health may make it difficult to make informed decisions. Advanced statements must be considered by doctors and Mental Health Tribunals when making decisions about treatment and support for people who have impaired abilities to make decisions.

**Ill-treatment and wilful neglect**

It is an offence for any person in relation to care, who is either a member of staff, a carer or a member of staff at a hospital to ill-treat or wilfully neglect a person that they are caring for, who has a mental disorder.

**Other legislation**

There is other legislation that you and your colleagues may need to consider in relation to adult support and protection. These are listed below. It is important that you know what you are expected to do within the legislation as you may be held accountable for any actions or lack of actions.

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**Human Rights Act 1998**

This Act gives further effect in domestic law to the rights enshrined in the European Convention on Human Rights. In practice, this enables individuals to invoke Convention Rights in domestic courts for certain purposes, rather than requiring to them to have their case heard in Strasbourg. Many decisions taken by local authorities will be affected by this legislation and due regard should be had to the Human Rights issues. Some of the key rights that must be considered are:

* Article 2: Right to life will be protected by law
* Article 3: Prohibition on torture, inhuman or degrading treatment or

punishment

* Article 5: Right to liberty and security of person
* Article 6: Right to a fair trial or hearing
* Article 8: Right to respect for private and family life, the home, and correspondence
* Article 9: Freedom of thought, conscience and religion
* Article 12: Men and women of marriageable age have the right to marry

and to found a family.

Rights of individuals as set out in the Act can only be restricted where it is legal and proportionate to do so. The concept of proportionality arises only after legality has been established. Put crudely, it means balancing means and ends and taking account of the need to find a fair balance between the protection of individual rights and the interests of the community at large. It would have to be proved that there were ‘relevant and sufficient reasons’ for any course of action and that there was not ‘a less restrictive alternative’ which was capable of producing the same results. Legal advice should be sought where there are concerns that an adult’s human rights are being breached.

**Public Interest Disclosure Act 1998**

This Act has been introduced to strengthen existing employment regulations and to protect whistle blowers who disclose malpractice within the workplace. Only certain types of disclosure are protected including:

* disclosure that criminal offences are or could be being committed
* failure to comply with legal obligations
* endangering the health and safety of any individual.

Information falling within one of the proceeding matters is being, or is likely to

be, deliberately concealed.

This Act is an important preventative measure; however, any person who suspects malpractice in their workplace should initially follow any existing internal reporting procedures. Where no procedures exist or staff feel unable to follow their employer’s procedure they may be well advised to contact their own solicitor and/ or an organisation called Public Concern at Work before relying on the protection of this Act.

**Equalities Act 2010**

The Equality Act 2010 bans unfair treatment and helps achieve equal opportunities in the workplace and in wider society. It replaced previous anti-discrimination laws with a single Act to make the law simpler and to remove inconsistencies, making it easier to understand and comply with. It also strengthened protection in some situations.

The Act covers nine protected characteristics, which cannot be used as a reason to treat people unfairly. Every person has one or more of the protected characteristics, so the Act protects everyone against unfair treatment.

The protected characteristics are:

* age
* disability
* gender reassignment
* marriage and civil partnership
* pregnancy and maternity
* race
* religion or belief
* sex
* sexual orientation.

The Equality Act sets out the different ways in which it is unlawful to treat someone, such as direct and indirect discrimination, harassment, victimisation and failing to make a reasonable adjustment for a disabled person.

The Act prohibits unfair treatment in the workplace, when providing goods, facilities and services, when exercising public functions, in the disposal and management of premises, in education and by associations (such as private clubs).

The definition of disability is wide and will affect a number of vulnerable adults.

Disability is defined as a physical or mental impairment that has, or has had, a

substantial and long‐term adverse effect on a person’s ability to carry out normal day-to–day activities. The Act makes it unlawful for service providers to discriminate against a disabled person, and requires reasonable adjustments to practices and environment where the existing situation makes it impossible or unreasonably difficult for disabled persons to make use of the service.

There are exceptions detailed in the Act where discrimination may be justified.

**References / Further Reading**

* East-Ayrshire Adult Protection Committee (2013): “Acting Against Harm – Legislative Guidance Booklet”
* MacLean S, and Shiner M (2011): “Social Care and the Law in Scotland, 8th Edition”; Kirwin MacLean Associates Ltd.

**Module 4 - Frequently Asked Questions aka myth-busting**

**I have been told that the supported person lacks capacity. Does this mean that they cannot make any decisions about their life?**

Workers often misunderstand what is meant by lack of capacity and think that this means that if someone does not have capacity to make decisions in one aspect of their life, it means that they cannot do this for any aspects of their life. This is not the case.

Capacity is not ‘all or nothing’. For example, a person may lack understanding and not be able to make decisions about financial aspects of their life but be perfectly able to understand and make decisions about how they are cared for. When there are concerns about someone’s ability to make decisions, there is a legal process that involves assessing which aspects this covers.

It is important that if someone has been assessed as lacking capacity, you must be clear about which aspects of their life this covers. This should be clearly stated in care plans and risk assessments. If you do not enable someone to make decisions that they are able to, you may actually cause harm by not promoting and respecting their rights.

Remember that as a social service worker, you have a duty under the SSSC Code of Practice to support a person to be as independent as possible. This includes the right to take risks and make informed choices even if you think that these are not in their best interest. If a person has capacity to make these choices, you must respect these even if they lack capacity to make decisions in other aspects of their lives. However you should consider reporting your concerns or discussing them with the person's care manager.

**Is it true that harm is only done by workers?**

No. Potentially, harm can be done by anyone, including a person harming him or herself. Some workers can find it difficult to acknowledge that carers or a supported person can cause harm, particularly if the worker has a close working relationship with them. Remember that the harm may be unintentional and the person causing it may not realise that it is harm.

If you have any concerns that a supported person may be at risk of harm or being harmed, you must report this using your organisations policies and procedures, so that these can be investigated. Remember that even if you do not have evidence, you must still report your concerns.

**Who can I tell if I have concerns and think that someone may be at risk of harm?**

If your concerns relate to a work situation your policies and procedures will tell you who you should tell about your concerns and how to maintain confidentiality. You must follow these.

You should be respecting the confidentiality of the supported person anyway. This includes not passing information to someone who does not need to know it. You must be aware that this may include colleagues, particularly where concerns relate to poor or abusive work practices. Your adult support and protection policy should identify who is responsible for investigating concerns and who should receive reports of concerns.

If your concern does not relate to work or you do not work for an organisation, you should contact your local council or adult protection service and ask to speak to someone regarding adult protection.

Whoever you tell has a duty to respect the confidentiality of the individual, which means that they will only pass on information that is required to protect the person at risk or minimise the harm. Any information that is written down by them is covered by the Data Protection Act 1998. This means that you can tell them about your concerns knowing that they will do all that they can to maintain the person’s confidentiality while promoting their protection.

**Is it actually my responsibility to act?**

Yes. The SSSC Code of Practice for Social Service Workers states that you must protect supported people from harm as far as possible. This means that if you have any concerns that a person may be at risk of harm, you have a duty to act on these. That is why it is important that you know the policies and procedures that you will be expected to follow.

Remember that you may also be accountable for what you do not do and could have to justify why you did not act. If someone is harmed because you did not act, this could lead to disciplinary action being taken against you by your employer and the SSSC.

**Is it true that my responsibility to act only applies to work situations?**

No. Harm and abuse can occur anywhere and at any time. If you encounter harm and abuse outwith work, it can be very difficult to decide what to do about it. You should always place the welfare and wellbeing of the person at the forefront of what you do. You should also consider the wishes of the person, while recognising that you may have to go against these by reporting your concerns.

Remember that if you suspect that a crime has been committed, regardless of whether this is inside or outside of work, as a social service worker, you are expected to report this. If you do not do this, you might be seen as condoning the crime, which could call into question your suitability to be a social service worker and may lead to disciplinary action by the SSSC.

Every local authority, NHS and many public bodies will advertise how you can report adult support and protection concerns.

**Is it true that I can’t pass on my concerns because the person being harmed has asked me to keep it confidential?**

In work situations, you must never put yourself in a position where you promise not to pass on information. If a supported person is about to tell you something and asks you to keep it to yourself, you must explain that you may not be able to do this. If you have already been told something, it is important that you explain that you may need to report this to an appropriate person. Your organisation should have a policy regarding communication with supported people in general. It will also have a policy and procedure about what you must do when harm and abuse is disclosed to you.

Remember that it may have taken the person a lot of courage to tell you about the harm, and they may be anxious in case the person causing it finds out. Therefore, you must ensure that you keep the information confidential and only pass it on in line with your organisation’s policies and procedures.

You may be concerned that this affects the trust that the supported person has in you, however, the SSSC Code of Practice states that you have a duty to report any concerns about a risk of harm. Therefore, it you do not do this and it becomes known that the supported person had given you the information this could lead to disciplinary action being taken against you.

You must remember that this is guidance only as the law on confidentiality and duties to report information is complex. It is your employer’s responsibility to ensure that you are aware of your duties under the Data Protection Act 1998.