

Adult Support & Protection Policy

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Development & Approval Group or Team	Public Protection Policy Review Group
Endorsing Body:	NHSL Public Protection Strategic Group
Governance or Assurance Committee	Healthcare Quality Assurance and Improvement Committee
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Responsible Person	NHSL Chief Nurse, Head of Service Public Protection

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CONSULTATION AND DISTRIBUTION RECORD	
Contributing Author / Authors	<ul style="list-style-type: none"> • Adult Support and Protection Advisor • Public Protection Professional Lead
Consultation Process / Stakeholders:	<ul style="list-style-type: none"> • NHSL Public Protection Strategic Group • North Lanarkshire Adult Protection Committee • South Lanarkshire Adult Protection Committee • NHSL Clinical Staff • NHSL Information Governance Manager, DPO
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CHANGE RECORD			
Date	Author	Change	Version No.
April 2010	K. Robertson		No. 1
March 2014	M. Serrels		No. 2
November 2017	G. Queen	Updated responsibility and governance details.	No. 3
February 2018	K. McCaffrey	Updated and condensed.	No. 4
May 2019	A. Hayne	Inserted contact details for North Lanarkshire Council Social Work departments for each locality. Updated email for copy AP1 to be sent to within NHSL.	No. 5

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August 2019	A.Hayne	Updated South Lanarkshire Council Social Work department email contacts.	No. 6
January 2021	A. Hayne	Appendix 3 refreshed. Responsible person on cover page updated.	No. 7
August 2021	D. Maclean	Referral process updated.	No. 8
August 2023	Public Protection Professional Lead; ASP Advisor	Reviewed and updated to reflect changes to ASP Code of Practice (2022).	9.0

1. INTRODUCTION

Most adults, who might be considered to be at risk of harm, manage to live their lives without experiencing harm. Often this is with the assistance of caring relatives, friends, paid carers, professional agencies or volunteers. However, some people will experience harm such as physical harm, psychological harm, sexual harm or exploitation of their finances or property. The Adult Support and Protection (Scotland) Act 2007 was introduced to maximise the protection of adults at risk of harm.

There are other relevant pieces of legislation designed to support and protect adults at risk of harm such as the:

- Adults with Incapacity (Scotland) Act 2000
- Mental Health (Care and Treatment) (Scotland) Act 2015

The addition of the Adult Support and Protection (Scotland) Act 2007 now means there is a concise legal framework to facilitate further the protection of adults at risk of harm through the measures contained in Part 1 of the Act.

2. AIM, PURPOSE AND OUTCOMES

The aim of this policy is to assist in the prevention of harm occurring to adults who may be at risk, through building on good practice and a common understanding of the issues. This also provides guidance for all NHSL staff to improve their understanding of the following:

- The roles and responsibilities of health professionals in protecting adults who may be at risk of harm.
- Staffs duty to report their concerns and their duty to cooperate with any inquiries, visits, investigations.
- The legal basis for intervention.
- The terminology used in adult protection.
- The principles of good practice in adult protection.
- How to access training and further information regarding Adult Support & Protection.

3. SCOPE

3.1 Who is the Policy intended to Benefit or Affect?

- NHSL employees.
- Service users.
- Partner agencies.

3.2 Who are the Stakeholders

- NHS Lanarkshire employees.
- Service users.
- Partner agencies.

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4. PRINCIPAL CONTENT

4.1 What does the Act do?

The Adult Support and Protection (Scotland) Act 2007:

- provides greater protection to **adults at risk of harm** through powers to investigate and take action to support and protect an adult in situations where concern exists.
- places a duty on NHS Lanarkshire to co-operate in investigating suspected or actual harm and to work in partnership to reduce the risk of harm.
- places a duty on Councils to make inquiries and investigations to find out if further action is required to stop or prevent harm occurring.
- introduces a range of protection orders including assessment orders, removal orders and banning orders.
- recognizes the need for a multiagency approach and therefore provides for the establishment of local multi-agency Adult Protection Committees across Scotland.

4.2 Who is an adult at risk?

The Act defines adults at risk as follows:

Adults at risk are adults, aged 16 years of age and over, who:

- Are unable to safeguard their own well-being, property, rights or other interests;
- Are at risk of harm, and
- 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.

This is often referred to as the '**3 point Criteria**'.

Application of the 3 Point Criteria

It is important to stress that **all three elements** of this criteria must be met. It is the whole of the adult's particular circumstances, which can combine to make them more vulnerable to harm than others. 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. The Adult Support and Protection (Scotland) Act 2007 Code of Practice (2022 pg15) strongly emphasised that the three-point criteria above make no reference to capacity and attention must be paid to whether a person has clear decisional and executorial ability to safeguard themselves.

4.3 What is harm?

An adult is 'at risk of harm' when:

- Another person's conduct is causing (or likely to cause) the adult to be harmed.
- The adult is engaging (or likely to engage in conduct that causes (or likely to cause) self-harm.
- The adult may be subject to institutional harm which can occur due to organisational or system issues.

Adults can be at risk of harm in various settings, be it in their own home, in the wider community, or in a hospital setting. They also may be placed at risk through inappropriate arrangements for their care in a range of social or health care settings. Perpetrators of harm can include families and friends, informal and formal carers, fellow users of residential and day care services, fraudsters and members of the public.

Harm includes all harmful conduct and gives the following examples:

- Conduct which causes physical harm
- Conduct which causes sexual harm
- Conduct which causes physical neglect
- Conduct which causes psychological harm (e.g. by causing fear, alarm or distress)
- Unlawful conduct which appropriates or adversely affects property, rights or interests (e.g. theft, fraud, embezzlement or extortion)
- Conduct which causes self-harm

Examples of Harm:

- Neglect and acts of omission
- Financial or material
- Psychological/emotional
- Physical
- Sexual
- Human trafficking
- Forced marriage

(The list is not exhaustive).

4.4 Principles of the Adult Support and Protection (Scotland) Act 2007

The overarching principle is that any intervention in an individual's affairs should provide benefit to the individual, and should be the least restrictive option of those that are available which will meet the purpose of the intervention.

Therefore, the following will be taken into account:

- the wishes and feelings of the adult at risk (past and present).
- the views of other significant individuals, identified as not being involved in the concerns raised, such as the adult's nearest relative; their primary carer, guardian, or attorney; or any other person with an interest in the adult's well-being or property.
- the importance of the adult taking an active part in the performance of the function under the Act.
- the provision of relevant information and support to the adult to enable them to participate as fully as possible.
- the importance of ensuring that the adult is not treated less favourably than another adult in a comparable situation.
- the adult's abilities, background and characteristics (including their age, gender, sexual orientation, religious persuasion, racial origin, ethnic group and cultural and linguistic heritage).

The principles must be taken into account at all stages of any intervention and emphasise the importance of striking a balance between an adult's right to freedom of choice and the risk of harm to that person. Also recognises staff's duty of care to escalate any adult protection concerns with the understanding that any intervention must be reasonable, necessary, proportionate and legal.

However, there will be situations where their consideration produces potential conflicts, such as occasions when the adult at risk expresses a preference not to engage with any form of intervention, but the professionals involved believe that adult protection interventions would provide a benefit to them. In such circumstances, the expectation is that decision-making should take place on a multi-agency basis to enable full and complete discussion of potential protective actions, and the application of the principles set out above.

For the purposes of these principles, making a decision not to act is still considered as taking a decision. The reasons for taking this course of action should be recorded as a matter of good practice (ASP Code of Practice, 2022)

4.5 Statutory Powers and Duties

Inquiries and Investigations - What are a council's duties under the Act?

Councils have a statutory duty to make inquiries about a person's well-being, property or financial affairs if they know or believe that the person is an adult at risk and that they might need to intervene to take protective action.

- Council officers have the power to carry out investigations through visits, interviews and examination of financial or other records (except health records).
- Council officers can require health records to be produced in respect of an adult at risk. However, these records can and must only be examined by a health professional such as a doctor or nurse.
- Health professionals have the power to carry out a medical examination as part of an investigation. This will be done by Medical Practitioners in Lanarkshire.
- An adult must be advised, prior to an interview or medical examination, their right not to answer any questions / refuse to be medically examined. Individuals also have the right to object to their information being processed. However, a clinical judgment must be taken if there are overriding factors that would mean sharing/processing the data regardless of the objection. Any objection should be clearly documented within the patient record with the decision making process noted to evidence outcome.
- Councils have a duty to consider the importance of the provision of appropriate services to the adult, including, in particular, independent advocacy.

4.6 Duty to Report and Co-operate

The Adult Support and Protection (Scotland) Act (2007) sets out statutory duties of co-operation for certain public bodies and their office-holders:

- All Councils
- The relevant Health Board
- Chief Constable of police force maintained in the council's area
- Care Inspectorate
- Healthcare Improvement Scotland
- Mental Welfare Commission for Scotland
- The Public Guardian
- Any other public body or office holder specified by the Scottish Ministers

These public bodies and office holders must:

- Co-operate with a Council making enquiries under the Act.
- Where a named public body or office-holder knows or believes that a person is an adult at risk and action needs to be taken in order to protect that person from harm, then that public body or office-holder must report the facts and circumstances of the case to the council for the area where they believe the person to be located. NHSL staff should also be clear who they have a duty to report to within their own organisations. Good practice would dictate that even if in **doubt** the referral should be made (ASP Code of Practice, 2022; pg27).
- The person at risk or suspected of being harmed should not be spoken to in the presence of an alleged/suspected perpetrator of harm.
- If the person is in immediate danger, appears seriously injured physically/sexually, is unconscious, or is at serious risk of harm (e.g. requires urgent medical treatment and/or is subject to ongoing violence and requiring Police assistance), the appropriate emergency service should be called e.g. Police, Ambulance, or Fire and Rescue by dialling **999**. The individual should be informed of the action taken where possible.

- If a member of staff believes they are in danger they must leave the immediate scene, contact the Police, and not return until it is safe to do so. The member of staff should inform their line manager immediately and on returning to their work base document the situation via the Datix Incident Recording System and submit an AP1 to social work.

4.7 Offences

It is an offence to prevent or obstruct any person from doing anything they are authorised to do under the Act.

It is also an offence to refuse, without reasonable excuse, to comply with a request to provide information made under the provisions for the examination of records. This offence does not apply to the adult at risk. NHS Lanarkshire have a legal obligation to comply with the Act and therefore do not rely on consent from the adult at risk. However, the duty of confidentiality remains and the adult at risk should be fully informed that their information will be shared unless there is a risk that this would jeopardise the investigation, or cause further risk of harm. Any objection to this should be recorded and a record of the decision and reason to share regardless of the objection should be noted.

Information shared should be relevant and proportionate to allow the council officer to do the job required, pertinent to that situation and not excessive in line with current data protection legislation.

4.8 Criminal Acts

Where it is suspected that a criminal offence may have been committed, or if there is uncertainty that something may be a criminal offence, Police should be contacted for advice / to report the incident at the earliest opportunity. It is important that:

- Care is taken not to disturb anything, which may be used as evidence.
- If the allegation is against a relative, friend, or carer that they are not informed of the allegation until the Police have agreed a course of action.
- If the allegation involves a member of staff it must be brought to the immediate attention of their Line Manager. The Service Manager or Senior Professional lead must be informed as it may be necessary for them to make a decision to inform the Police before discussing it with the employee in question.
- Questioning of either the alleged victim or the alleged perpetrator must not be undertaken by NHSL staff unless instructed by the Police.

Where there is doubt if a criminal offence has been committed staff can take advice from the police on an anonymous basis.

4.9 If the Alleged / Suspected Perpetrator is also an Adult at Risk of Harm

Consideration must be given to their safety and well-being and to their needs as an adult at risk of harm.

4.10 If the Alleged / Suspected Perpetrator is a Staff Member

Where an allegation concerns the actions of a member of staff, who may also be a colleague, it is the duty of those concerned to report the matter to their line manager / service manager as well as reporting the matter to the relevant council. However, if the manager is implicated then the General Manager/Site Director/Health and Social Work Manager / Senior Professional Lead should be informed. The information shared must be adequate to enable the matter to be investigated, relevant and not excessive.

4.11 Referrals and Initial Actions

Social Work Services are responsible for the overall coordination of Adult Support and Protection and are the central point for receiving and logging referrals. All referrals should be routed directly through social work to ensure consistency of practice, timescales are adhered to, and that an informed decision can be made in each situation as to the most appropriate way to undertake any investigation (See Appendices 1 & 2). NHS Lanarkshire staff may be asked to contribute to any subsequent investigations if the adult is known to them.

Referrals – prompt action is vital- Target timeline for referral is 24 hours.

Referrals should be made by telephone to:

Social Work Services in the area where the adult normally resides and followed up with a completed **eAP1** referral form – (Appendix 3) or within Morse patient management system. This form can also be downloaded from FirstPort. (Click [here](#))

or

Hospital Social Work Team if the person is being treated in University Hospital Hairmyres, Monklands or Wishaw.

Send a copy of the eAP1 to the local office where the adult normally resides:

Airdrie locality area:	Airdriesocialworklocality-AdultProtectionreferral@northlan.gov.uk
Bellshill locality area:	Bellshillsocialworklocality-AdultProtectionreferral@northlan.gov.uk
Coatbridge locality area:	Coatbridgesocialworklocality-AdultProtectionreferral@northlan.gov.uk
Cumbernauld locality area:	Cumbernauldsocialworklocality-AdultProtectionreferral@northlan.gov.uk
Motherwell locality area:	Motherwellsocialworklocality-AdultProtectionreferral@northlan.gov.uk
Wishaw locality area:	Wishawsocialworklocality-AdultProtectionreferral@northlan.gov.uk
East Kilbride locality area:	swloeastkilbride@southlanarkshire.gov.uk
Hamilton locality area:	swlohamilton@southlanarkshire.gov.uk
Lanark locality area:	swloclydesdale@southlanarkshire.gov.uk
Rutherglen locality area:	swlorutherglen@southlanarkshire.gov.uk

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If out of office hours, weekend or public holidays, the relevant emergency Social Work teams on the following numbers:

- North Lanarkshire Council – 0800 121 4114
- South Lanarkshire Council - 0303 123 1008

NB. Copy of eAP1 is automatically sent to NHSL Adult Protection Service.

AdultProtectionNHSL@lanarkshire.scot.nhs.uk

The referrer must also place a copy of the referral in the adult's case notes.

If the adult is in immediate danger, the appropriate emergency service should be called prior to the telephone referral to Social Work Services.

The written referral should be completed on NHSL's pro forma referral form – **eAP1** - no later than **one working day** after telephone referral. This form should be copied in order for a copy to be kept in the Adult's health record. A copy of the referral (paper or electronic) should be sent to the Service Manager/Senior manager for the service / area. A copy of the **eAP1** will automatically be sent to NHS Lanarkshire, Adult Support & Protection

Service. The use of NHS mail to transmit documents to social work is the preferred route rather than surface mail.

An entry of the events surrounding the referral should be documented in the person's health record i.e. date and time referral was made; the name of the person in social work services who accepted the referral; name and time line manager/service manager/senior manager informed.

A DATIX should be logged after an AP1 has been submitted

4.12 Consent and Capacity

It is very important to note that irrespective of a person's ability to consent or whether they have capacity if you know or believe they are an adult at risk as defined by the Act you have a legal duty to Report.

Existing law allows information to be disclosed without consent, where such disclosure is required by law (either a court order or statute) or where such disclosure is in the public interest, although the person, about whom information is disclosed, should always be informed of the disclosure unless this is likely to jeopardise the investigation or cause further risk of harm. Where the public interest test is relied upon, then such disclosure must be proportionate to the harm it is being sought to prevent. All decisions should be documented appropriately.

Crime detection and prosecution, as well as prevention, may provide legitimate grounds for disclosure. NHS Boards are required to ensure that their staff are aware of and can operate local procedures for sharing of information with the Police to promote the prevention and detection of crime, while respecting and safeguarding the interests of

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patients and the public in the confidentiality of personal health information in accordance with the principles in Sections 1 and 2 of the Act, the adult's consent should be obtained prior to the information being obtained and the Lanarkshire Data Sharing Protocol should be followed. Where the police approach health requesting information to prevent or detect a crime, they must submit a schedule 2, section 2 form, signed by a senior officer, providing a legal basis for sharing the information.

Whilst confidentiality is important, it is not an absolute right. Co-operation in sharing information is necessary to enable a local Council to undertake the required inquiries and investigations. Information should only be shared with those who need to know and only if it is relevant to the particular concern identified. The amount of information shared should be proportionate to addressing that concern. Adults who may be being harmed may be anxious about the information being shared with others and should be reassured.

4.13 Dissent and Escalating Concerns

All staff working within NHS Lanarkshire have an employee and professional responsibility to report and escalate concerns they may have about the care and well-being of adults who are unable to protect their own interest. The referrer should receive confirmation of receipt of referral and should receive feedback regarding the outcome. **Staff should contact social work if they have not received feedback regarding their referral.**

If the referrer disagrees with the outcome of an ASP referral / investigation / case conference progress they should refer to the escalation stages of the NHS Lanarkshire Resolution Escalation Policy and/or contact, NHS Lanarkshire Adult Protection Service to discuss further and where necessary, alert their direct manager e.g.;

- Where they have made an adult protection referral to Social Work, but are dissatisfied with the outcome of the referral.
Or
- Where multi-agency working is established, the Health Professional believes the threshold for adult protection is not met.

5. ROLES AND RESPONSIBILITIES

All NHS Lanarkshire staff have a duty and responsibility to:

- Comply fully with this Policy.
- Undertake relevant level of training.
- Ensure they know how to access this policy and AP1 forms on the Adult Support and protection page on FirstPort/Morse (further reading also available on this page).

6. RESOURCE IMPLICATIONS

Will require to release staff to undertake or facilitate ASP training.

7. **COMMUNICATION PLAN**

- NHS Lanarkshire Policies within Firstport
- National and local Adult Protection Policies within Firstport
- Briefings to NHSL employees via managers and staff briefings.

8. **QUALITY IMPROVEMENT – Monitoring and Review**

Policy will be reviewed in August 2026 and then at least every 3 years or as required.

9. **EQUALITY IMPACT ASSESSMENT**

This policy meets NHS Lanarkshire's EQIA.



box)

10. **SUMMARY or FREQUENTLY ASKED QUESTIONS (FAQs)**

If you require further information including access to training information and referral forms, please follow the links below:

NHSL Public Protection webpage: <http://firstport2/staff-support/public-protection/default.aspx>

NHSL Adult Support & Protection webpage (Access AP1 form & training information): <http://firstport2/staff-support/public-protection/adult-support-protection/default.aspx>

11. **REFERENCES**

Appropriate Adults Scheme

<https://beta.gov.scot/policies/victims-and-witnesses/appropriate-adults/>

Adults with Incapacity – Communication and Assessing Capacity: a guide for social work and healthcare staff

<http://www.scotland.gov.uk/Resource/Doc/210958/0055759.pdf>

Adults with Incapacity (Scotland) Act 2000

http://www.opsi.gov.uk/legislation/scotland/acts2000/en/aspen_20000004_en.pdf

Adult Support and Protection (Scotland) Act 2007 Code of Practice (2022)

<https://www.gov.scot/publications/adult-support-protection-scotland-act-2007-code-practice-3/>

Adult Support and Protection (Scotland) Act 2007

<https://www.legislation.gov.uk/asp/2007/10/contents>

Adult Support and Protection (Scotland) Act 2007 Easy Read Guide

<https://www.gov.scot/publications/adult-support-protection-scotland-act-2007-short-introduction-part-1-act/>

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Caldicott Principles <http://www.informationgovernance.scot.nhs.uk/wp-content/uploads/2016/03/CaldicottGuardianManualScotland-June2012v2.pdf>

Data Protection Act 2018

<http://www.legislation.gov.uk/ukpga/2018/12/contents/scotland>

General Data Protection Legislation

<https://www.parliament.scot/about/information-rights/data-protection/data-protection-policy>

Guidance on Information Sharing between NHS Scotland and the Police

http://www.sehd.scot.nhs.uk/mels/CEL2008_13.pdf

Mental Health (Care and Treatment) (Scotland) Act 2015

<http://www.legislation.gov.uk/asp/2015/9/enacted>

The Mental Welfare Commission (MWC) for Scotland

<http://www.mwcscot.org.uk/>

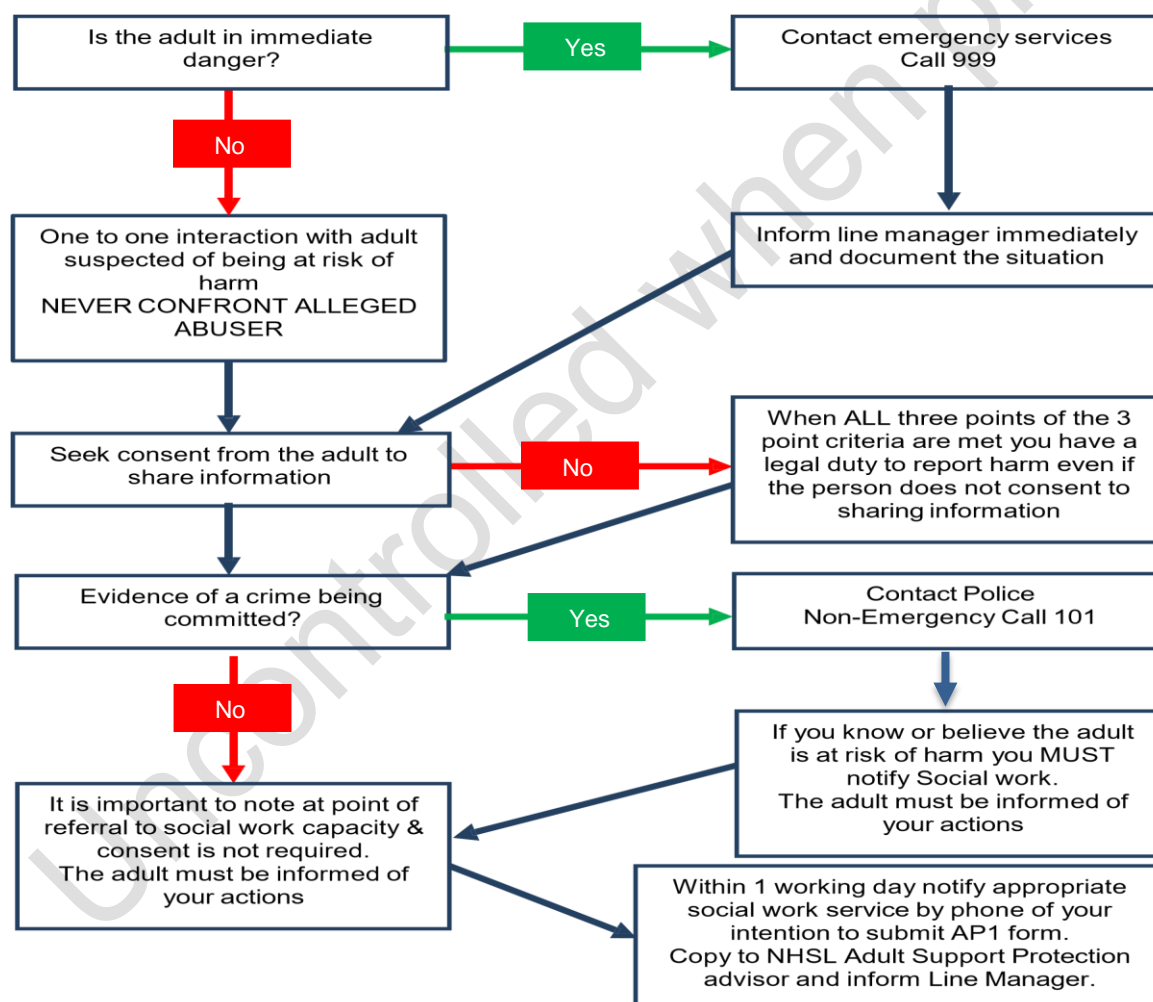
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Appendix 1:

Adult Support and Protection Flowchart

An adult (aged 16 or over) is at risk if they meet all 3 points of the criteria set by the Adult Support & Protection (Scotland) Act 2007.

- 1) Are unable to safeguard their wellbeing, property, rights or other interests;
- 2) Are at risk of harm, and
- 3) Because they are affected by a disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.



Social Work services have 5 working days to inform the NHSL referrer of the outcome of their initial inquiries and advise them of any further action to be taken.