

## VOLUNTARY ACTION SHETLAND - SHETLAND BEFFRIENDING SCHEME

### PROTECTING ADULTS AT RISK POLICY

#### Policy Statement

In line with Voluntary Action Shetland's Protection of Vulnerable People Policy, all adults at risk have a right, and should be enabled to achieve that right, to live and receive services in an environment that is free from prejudice and safe from abuse. The Adult Support and Protection (Scotland) Act 2007 makes new provisions to protect Adults at Risk who are unable to safeguard their own interests in addition to other statutes already in place.

All volunteers will receive training on protecting adult at risk.

#### Definition

An adult at risk is one who is 16 years or over (*Shetland Inter Agency Adults support and Protection Procedures*):

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

It is important to remember that **all 3 elements of the definition** must be met. It is the whole of an adult's particular circumstances which can combine to make them more vulnerable to harm than others.

Thus an adult at risk may be a person who:

- Is elderly or frail
- Has a mental disorder including dementia or a personality disorder
- Has a physical or sensory disability
- Has a learning disability
- Has a severe physical illness
- Is a substance misuser
- Is an unpaid carer
- Is homeless

The presence of disability or age alone does not signify that an adult is necessarily at risk i.e. unable to take care of themselves or unable to protect themselves from abuse or exploitation.

An at risk person is one who is or is likely to be, dependant on another, or others, for care, whether as a result of ageing, illness, physical, mental or learning disability, or a combination of all or some of these factors.

Abuse is when a person, or persons, have caused harm, or may be likely to do so, to the physical, sexual, emotional, financial or material well being of an adult at risk. Harm may be caused by direct acts, or by failure to provide adequate care. It may be systematic and repeated or may consist of a single incident. In giving substance to this definition, consideration needs to be given to a number of factors. Abuse may:

- Be consist of a single act or repeated acts
- Be physical, sexual or psychological harm
- Be financial or material exploitation
- Be discriminatory harm
- Be misuse of medication
- Be dietary misuse
- Be an act of neglect or an omission to act

## **Consent**

Adults have the right to make their own decisions and choices regarding lifestyle and the lives that they lead. Therefore, the consent of the adult is generally required before anyone can intervene in their lives.

When intervening under the Shetland Inter Agency Adult Support and Protection Procedures, the consent and co-operation of the adult at risk is very important and must be considered at all times. The Adults with Incapacity Act 2000; the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adult Support and Protection (Scotland) Act 2007 all set out various principles to which regard must be given when exercising function under these Acts. They all include the principle that regard must be given to the past and present wishes of the adult.

## **Obtaining Consent – Who Obtains Consent?**

If the person who has the initial worry or concern, then they must report it to their line manager. The line manager will then obtain the necessary consent to follow the Shetland Inter Agency Adult Support and Protection Procedures. In the event that staff is unavailable or it is out-of-hours and it is an emergency situation the Duty Social worker should be contacted before any further action is taken. Volunteers will be provided with relevant contact numbers for out-of-hours support at their Keeping Children and Adults Safe initial training session.

## Capacity

The adult must be capable of giving consent. Being incapable means incapable by reason of mental disorder or of inability to communicate because of physical disability; of

- a) Acting; or
- b) Making decisions; or
- c) Understanding decisions; or
- d) Retaining the memory of decisions

Advice on capacity can be sought from the Council's Mental Health Officers or any appropriate health professional.

## How to Get Consent

In order for the adult's consent to be valid, it must be informed consent. This means that they have to understand fully what they are consenting to the implications of that consent.

When obtaining the adult's consent that an initial investigation of their circumstances can take place, which involves the sharing of personal information, it is important that they understand the Adult in Need of Support and Protection Procedures. The adult should then be asked to sign the Adult in Need of Support and Protection Consent Form (see Appendix 8.1 in Shetland Interagency Adult support and Protection Procedures).

## What if they say "No"?

If an adult refuses to give consent to an investigation into their circumstances and does not wish to accept any help or support to provide protection, then their wishes must be given due regard. However the local authority has a duty to inquire if it has reason to believe that an adult is at risk and may need intervention to protect them from harm. Anyone proceeding without the consent of the adult must record and justify that decision and should explain the decision to the adult at risk, except in exceptional circumstances.

## Recognition of limitations to action

Agencies have a duty of care to protect adults at risks from abuse and to recognise and take action.

Within the present legal framework, there will be occasions where adults at risk may choose to remain at risk in dangerous situations. Staff may find they have no statutory powers in cases where the adult is judged to have **sufficient capacity** to make his or

her own choices and refuses the help or treatment which staff feel is needed and where public interest considerations do not apply.

In these cases, the decisions of the adults at risk should be respected.

An accurate record should be made of the situation at the time including:

- The decision of the adults at risk
- The advice or information they were given
- Where indicated, a date at which the decision is to be reviewed with the adults at risk.

They could change their decision at some point in the future and should be given information about how to contact appropriate services.

There may be circumstances where the legal powers contained in the Mental Health Act 1983 or the National Assistance Act 1948 are not applicable so that powers to intervene to gain access to a particular adult, remove the adult or the alleged perpetrator from a risk situation, or investigate the financial affairs of adults at risk, are limited.

Staff will be supported to handle cases of adults at risk who remain in a high-risk situation provided that:

- There is evidence that the Policy and Procedures have been properly followed, including addressing any criminal act
- Every effort is made, in collaboration with other agencies, to intervene positively to protect the adults at risk
- Legal advice has been obtained

Decisions about capacity and the ability of the adults at risk to give ***informed*** consent are a matter of medical judgement and multi-disciplinary assessment. An opinion about the adults at risk's ability to make choices based on an understanding of all factors involved, free of undue influence or duress, must be reached.

**There should be no abandonment of the duty to care under the guise of "choice".**

### **Confidentiality and information sharing protocol**

Workers owe a duty of confidentiality to adults at risks. An adult at risk has a right to expect that information about them and held on them in whatever form, will be treated with due regard to the principle of confidentiality.

The adults at risk should be made aware that:

- Where staff work with other agencies or in a team some information will be shared between members of that team in order to provide the service

- Information given to an individual member of staff belongs to the agency and not to the individual employee. An individual employee cannot give a personal assurance of confidentiality to an adult at risk and should explain this to the adults at risk at the outset

Staff have a clear duty to report any concerns they have relating to the abuse, or suspected abuse of an adult at risk to their line manager at the earliest opportunity.

The duty of confidentiality owed to individuals is not affected by their vulnerability, but by their level of capacity and their wishes should be respected.

Where the adults at risk do not have the mental capacity to give informed consent, a decision to share information should be made on the basis of their best interests and a record made of that decision.

Difficulties in working with the principles of maintaining the confidentiality of the adults at risk should not lead to a failure to take action to protect that adult from abuse. Confidentiality must not be confused with secrecy.

### **Circumstances where it may be necessary to share information without consent**

There will be circumstances where the wider public interest will outweigh the responsibility to any one individual e.g. in situations where other at risk people may be at risk.

Confidential information may need to be disclosed in the best interests of the adults at risk, if the person lacks mental capacity.

However, if a mentally competent person made it previously known that they do not want information shared, their wishes should be respected. A decision to share information contrary to their wishes should only be made if other considerations apply e.g. on public interest grounds, as in situations where there is a risk of serious harm to a third party.

Information will only be shared on a need to know basis.

It is inappropriate for agencies to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations when other at risk people may be at risk.