



East Lothian and Midlothian Public Protection Committee

Practice Guidance for Care Homes Reporting Incidents and Adult Support and Protection Concerns

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1. Purpose

The purpose of this guidance is to establish a consistent and unified approach to the reporting of incidents and Adult Support and Protection concerns that occur in Care Homes across East Lothian and Midlothian.

The Adult Support and Protection (Scotland) Act 2007 (ASP Act) seeks to protect and benefit adults at risk of being harmed. The ASP Act requires East Lothian and Midlothian Councils as well as the Care Inspectorate, Health (NHS Lothian), Police Scotland, Mental Welfare Commission and The Office of the Public Guardian to work together to ensure that adults who are unable to safeguard themselves, their property, rights and other interest are supported and protected.

East Lothian and Midlothian Care Home providers have a responsibility under the ASP Act to share information with the Local Authority where they know or believe that an adult may be at risk of harm. This is also a requirement of the contractual arrangements between the care provider and the contracting Local Authority. When a Care Home provider becomes aware of a potential allegation about the risk of harm, they must also notify the Care Inspectorate.

2. Introduction

Care Home providers have a responsibility to protect and promote the well-being of all residents within their care. These responsibilities form part of the National Care Home Contract and are required as part of the Health and Social Care Standards (HSCS) linked to Protection *"I have confidence in the People who support and care for me."*

The other relevant standards are:

- HSCS 3.20: *"I am protected from harm, neglect, abuse, bullying and exploitation by people who have a clear understanding of their responsibilities."*
- HSCS 3.21: *"I am protected from harm because people are alert and respond to signs of significant deterioration in my health and wellbeing that I may be unhappy or may be at risk of harm."*
- HSCS 3.22: *"I am listened to and taken seriously if I have a concern about the protection and safety of myself or other, with appropriate assessments and referrals made."*
- HSCS 3.23: *"If I go missing, people take urgent action, including looking for me and liaising with the police, other agencies and people who are important to me."*
- HSCS 3.24: *"If I might harm myself or others, I know that people have a duty to protect me and others, which may involve contacting relevant agencies."*
- HSCS 3.25: *"I am helped to feel safe and secure in my local community."*

3. Prevention and Promotion of Safe Care

It is anticipated that all Care Home providers will have their own Adult Support and Protection (ASP) procedures which complement and support East Lothian and Midlothian Public Protection Committee's [Adult Support and Protection Policy and Procedures](#).

All Care Home Managers and staff are expected to familiarise themselves with the content of this guidance and that service providers work to prevent or minimise the risk of harm occurring, with:

- Safer recruitment practices ¹
- Safe and responsive staffing levels and staff that have the right skills to meet the needs of the service users;
- Appropriate training including Adult Support and Protection training;
- Staff who are able to demonstrate a clear understanding of their responsibilities to protect individuals from neglect, abuse, bullying and exploitation;
- Opportunities for regular supervision, observed practice and forums to discuss and review good practice guidance;
- A visible complaints, issues and concerns policy for residents, families, staff and others; and
- Access to an effective whistle blowing policy.

4. The Role of The Local Authority in Adult Support and Protection

East Lothian and Midlothian Councils have a legal responsibility for the support and protection of all residents in Care Homes. This includes residents that previously lived out with the Local Authority area and irrespective of whether the Care Home has signed The National Care Homes Contract.

For a Local Authority Care Home, the Local Authority should ensure they are cognisant of the need to manage any potential conflict of interest that may arise when investigation one of its own services.

Each Local Authority is responsible for determining if the "Three Point Test" is met and if any further investigative action is necessary by undertaking legal duties within the Adult Support and Protection (Scotland) Act 2007.

The ASP Act also places a legal duty on Social Work, Police Scotland, NHS Lothian and the Care Inspectorate to report concerns and to work together to share information where there is a concern that any adult(s) may be at risk of harm. If it is thought more than one resident is at risk of harm, then the Council may decide to progress to a Large Scale Investigation.

All Care Home staff must co-operate fully with Adult Support and Protection Investigations.

¹ [Care Inspectorate Safer Recruitment Through Better Recruitment Good Practice Guidance](#)

Where the referral does not meet the threshold for ASP, consideration will be given to the action and support required under other legislation. It may be that no further action is required by Social Work, however in some cases the matter may be referred to another agency to assess information and consider whether any further action is required.

5. Large-Scale Investigation

A Large-Scale Investigation is a multi-agency response to circumstances where there is concern about an adult, or adults, who may be experiencing harm or be at risk of harm. Where necessary, protective action will be taken during the course of an investigation to mitigate the risk to the user of that service. Please refer to Appendix 2.

6. The Role of The Care Inspectorate in Adult Support and Protection

The [Care Inspectorate](#) has a role to support the lead agencies that have responsibility for Adult Support and Protection. The Care Inspectorate has a duty of co-operation, and responsibilities for scrutiny and improvement activity in regulated services. In this way, they seek to protect adults at risk from harm.

The notifications registered services must make to the Care Inspectorate reflect the requirements of The Public Services Reform (Scotland) Act 2010 and associated regulations. These include:

- Accidents, incidents or injuries to a person using a service;
- Allegation of abuse in relation to a person using a service; and
- Allegation of misconduct by provider or any persons employed in care services.

When the Care Inspectorate receives a concern or complaint that indicates an adult may be at risk of harm, they will make a direct referral to the Local Authority. In making a referral, they are asking the lead agency (usually the Local Authority) if the concern meets the thresholds for further investigation within the legislative framework of the ASP Act.

The Lead Inspector will request information from the Care Home provider, the Local Authority and Police Scotland about the progress and outcome of the referral. Contact will be made with the lead agency within one month from a protection referral being submitted.

When a registered provider becomes aware of a potential allegation about the risk of harm, they must notify the Care Inspectorate immediately. The provider must make the notification using the e-Form for an 'allegation of abuse,' which can be generated in the provider's e-portal. The lead inspector for the service will request information to help inform further actions. This will include:

- Confirmation that an ASP concern was reported to the Local Authority;
- Sharing information appropriately;
- Contacting any relevant statutory agency;
- Follow-up by telephone, email or visit;
- Recording outcomes/actions; and
- Reviewing the inspection plan for the service.

The Care Inspectorate may carry out scrutiny activity (such as an inspection) in parallel with any ASP investigation in order to contribute to the multi-agency discussion, risk assessment and decision making as to how to proceed. This is particularly important where a risk of harm is identified and there is concern for the safety and welfare or the potential safety and welfare of other residents. This may also be necessary where there is a concern of the quality of care provision and the impact that this may have on the adult's wellbeing and care needs. For example:

- A report of harm to an individual which may affect several other individuals also in receipt of care;
- Concerns raised about systematic failure impacting on the quality of care delivered which may be placing individuals at risk of harm; or
- This may also occur where there have been three or more ASP Investigations within a 12-month period, relating to the same care provider where the collective outcome indicates that serious harm has occurred.

Where a referral does not meet the threshold for an ASP investigation the Police and/or Local Authority may decide not to investigate under the ASP Act. However, they may consider if the Local Authority or the Care provider needs to take any further action to ensure the adult's needs are met. The Care Inspectorate will assess the information shared by the Local Authority/Care provider and respond to any risk identified with appropriate scrutiny action. This may be a complaint investigation or an inspection to ensure the standards of care and support continue to meet the general health and wellbeing needs of all those experiencing care.

7. Consent and Information Sharing

The Data Protection Act 2018 and the General Data Protection Regulation (GDPR) underpin this Guidance. All agencies have a responsibility to share information where there is an identified risk to a person and/or to others.

Please be aware that a Next of Kin, Power of Attorney or Guardian should not be advised about concerns where they are the source of concern and/or the Police have stated not to as part of their consideration of the complaint. Confidentiality cannot be kept even when the adult at risk has requested this.

The Manager/senior person on duty or on call should ensure that the necessary practical steps have been taken to manage any immediate risk to the adult at risk and other service users. The Manager/senior person must report the concern and/or serious incident to the relevant Health and Social Care Partnership and the Care Inspectorate.

8. Reporting Concerns

Where a serious incident has occurred or staff know or believe that the adult has been harmed, this must be escalated immediately to the most appropriate senior member of staff available on duty.

This includes situations where there are concerns regarding the professional conduct of managers, colleagues, visitors or volunteers. It also includes situations where staff receive

information about such occurrences or behaviours that leads them to believe that an adult is being harmed or neglected out with the home.

- Staff must record the nature of their concern and include anything the adult at risk may have told them.
- Staff should as far as possible record the words used by the adult.
- Staff should not investigate the concerns but make a record of the key information and events.
- The most senior member of staff may wish to consider gathering relevant information, notes and records from other staff as required. This should be done before the members of staff go off duty.
- Notes and statements should be signed and dated by both the staff member(s) and the most senior person on duty. The notes and records of events may be required to be shared with police and/or social work.
- The Manager/senior person on duty should ensure that the necessary practical steps to manage any immediate risk to the adult at risk and other service users have been taken.
- In situations involving staff this may include pursuing disciplinary action including suspension of staff where required.
- Manager/senior person on duty making direct contact with Social Work Services and/or the Police must make a note of the following: date and time of contact, name and details of those contacted and who should be contacted for future follow up.

The Manager/most senior person on duty is responsible for ensuring that Adult Protection concerns and serious incidents are reported directly and within 24 hrs to Social Work Services, and where necessary immediately to the Police. If a senior member of staff is not available refer to one of the Core Agencies without delay.

Service	Contact Number	E-mail
East Lothian Council	01875 824 309	communityaccess@eastlothian.gov.uk
Midlothian Council	0131 271 3900	accenquiries@midlothian.gov.uk
Emergency Social Care Service	0800 731 6969 (out of office hours and weekends)	
Police Scotland	101 or in an emergency 999	

9. Responding and Reporting Guidelines

In the event that an adult at risk tells a member of staff about something that has happened to them that causes concern it is important that the member of staff acts in a supportive manner.

Staff should:

- Stop and listen with care;

- Try to keep calm;
- Reassure the adult at risk they were right to tell you;
- Acknowledge the adult at risks feelings as expressed by them;
- Protect evidence;
- Make brief notes of concern/injury/disclosure;
- Record the incident as soon as possible using the person’s own words; and
- Report the incident to senior member of staff.

Staff should not:

- Make a promise of confidentiality;
- Panic, or appear shocked or angry;
- Investigate;
- Show disbelief;
- Be judgmental;
- Introduce personal or third-party experiences of abuse;
- Display strong emotions; or
- Tamper or disturb any physical evidence. In cases of physical or sexual harm, this could include allowing or supporting the person to change clothing, clean themselves, wash clothing/bedding, clean, touch or remove items from the place where the harm happened.

10. Out of Area Placements

For ‘Out of Area Placements’ where there is a serious incident or an Adult Support and Protection concern/s regarding an adult residing in a Care Home within East Lothian or Midlothian, this should be reported to the relevant Health and Social Care Partnership. This includes residents placed by another Local Authority. It is good practice for the Care Home manager to notify the placing Authority that there are Adult Protection concerns and that a referral to the Health and Social Care Partnership has been made. The legal responsibility for undertaking inquiries under the Adult Support and Protection (Scotland) Act 2007 lies with the Local authority where the person is. The Health and Social Care Partnership will liaise with the placing Local Authority in order to progress any further action.

Where the adult has changing needs, the Local Authority that placed the adult in the home must be contacted. Responsibility for all care management issues lie with placing Authority that funds the placement including Free Personal Care. This is as agreed as part of the National Care Home Contract.

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Appendix 1 – Definition of Adult at Risk of Harm

Who is an Adult at Risk of Harm?

The legal definition of an Adult at Risk of Harm is a person (aged 16 years or over) who meets the following criteria known as the “3- Point Test”:

1. Unable to safeguard their well-being property, rights or other interests.
2. At Risk of Harm, and
3. 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 points of the test must be satisfied to meet the criteria of an Adult at Risk of Harm.

Risk of harm

The adult is at risk of harm because:

1. Another person’s conduct is causing the harm (or is likely to cause) the adult to be harmed; or
2. The adult is engaging (or is likely to engage) in conduct which causes self-harm (or is likely to cause) self-harm.

The definition of ‘conduct’ includes self-neglect or neglect or other failures to act by another person with caring responsibilities including paid carers.

The risk of harm is wide ranging; physical harm, sexual harm, acts of omission, financial harm, psychological harm, Financial Harm.

Appendix 2

EMPPC Practice Guidance for Care Homes – Reporting Incidents and Adult Support and Protection Concerns

Level of risk and type of harm	Incident		Adult Support and Protection Concern		
Medication Errors	Adult does not receive prescribed medication.	More than one adult does not receive medication (Missed or wrong dose).	Recurring errors (missed/wrong dose) that affect more than one adult and result in harm.	Covert or deliberate maladministration of medication, including missing medication (Controlled drugs).	Pattern of recurring errors or deliberate maladministration which results in ill-health or death.
Physical harm	Resident on resident harm that does not result in injury or distress to the adult.	A number of falls within a short period. This can be specific to one person or more than one person. Repeat service user on service user incident. Inexplicable marking or lesions, cuts or grip marks on a repeat basis. Witnessed accidental injury	Unexplained bruising – Please use body mapping to reflect bruising. Inappropriate restraint (n.b. Adult falls and sustains an injury.	Poor manual handling- Inappropriate use of a sling or the wrong size of sling used for the adult. Drag lifts and manual lifts without the use of the appropriate equipment. Adult falls and there is an absence of equipment that would have alerted someone or prevented the fall.	Adult falls and sustains a significant injury - fracture. Assault by a staff member this can include the following: Bite, kick, slap punch, nip, hair pulling, pushing. Physical Restraint Forcing a resident to eat or drink. Burns.

Level of risk and type of harm	Incident		Adult Support and Protection Concern		
		leading to hospital admission/medical treatment			Harsh, heavy-handed personal care.
Neglect/acts of omission	Adult not assisted with a meal or drink on one occasion and no harm occurs.	Adult without pressure mat or equipment to summon help and support. No access to aids for communication or independence.	Without access to food and water Inadequacies in the quality of care delivered, poor personal hygiene.	Withholding of food, drinks or aids to independence. Inexplicable fractures/injuries. Ongoing deficiencies in care which impact on health and wellbeing – e.g., pressure sores, urine burns, dehydration, malnutrition, loss of independence/confidence.	Delay or failure is seeking medical attention.
Sexual	Teasing or low level unwanted sexualised attention (verbal or touching) on one occasion – regardless of capacity.	Verbal sexualised teasing or harassment on one occasion.	Service user on service user incidents regardless of capacity. Recurring sexualised touch or masturbation without consent. Being subject to indecent exposure.	Evidence of sexual contact between two residents. Inappropriate sexual remarks. Reports of sexual contact from a resident against a member of staff.	Sex in a relationship characterised by authority, power inequality or exploitation as defined within the Sexual Offences Act. Indecent exposure,

Level of risk and type of harm	Incident		Adult Support and Protection Concern		
			Contact or non-contact sexualised behaviour which distresses adult.		indecent assault, rape. Voyeurism .
Psychological	Adult is spoken to in a rude or inappropriate manner on one occasion but is not distressed. Including a staff member.	Use of abusive language towards a resident or when addressing a resident.	Occasional demeaning or aggressive language which causes distress. Restricting choice and agency by withholding.	Care or treatment which undermines the adult's dignity Denying or failing to respect the adult's choice or opinion. Frequent demeaning or aggressive language. Deliberate humiliation.	Prolonged intimidation. Threatening and abusive behaviour.
Financial	Money is not recorded or stored appropriately.	Discrepancies regarding the adult's funds.	Adult does not receive adequate provisions – concern that funds may be misused.	Suspected theft of money from Care Home.	Misappropriation of funds, by person in apposition of trust Power of attorney, Welfare Guardian
Discrimination	Teasing motivated by prejudicial attitudes towards an adult who has one or more protected	Care planning fails to take account of impact of adult's protected characteristic(s) for a short period. This can be race,	Recurring failure to take account of impact of adult's protected characteristic(s); this can be race, disability including	Harassment on a regular basis linked to Protected characteristics.	Assault and injury linked to the adult's protected characteristics

Level of risk and type of harm	Incident		Adult Support and Protection Concern		
	characteristics on one occasion.	disability including mental health, gender, sexual orientation	mental health, gender, sexual orientation		
Institutional	Lack of stimulation/ opportunities to engage in social and leisure activities. Adult not enabled to participate in service.	Denial of individuality and opportunities to make informed choices and for positive risk taking. Care planning documentation not person-centred.	Rigid/inflexible routines. Dignity is undermined e.g., lack of privacy during provision of intimate care, pooled underclothes, dentures, shoes, slippers.	Poor practice not being reported and going unchecked. Unsafe and unhygienic living environments. Staff not adhering to SSSC Codes of Practice	Staff misusing power. Over-medication. Inappropriate restraint resulting in injury. Widespread, consistent ill-treatment
Professional Misconduct	Service design involves group living settings where residents are incompatible	Poor, ill-informed or outmoded care practice – no significant harm. Denial of access to professional support and advocacy.	Failure to report and refer disclosure of harm.	Failure to support adult to access health, care, treatments. Punitive responses to challenging behaviours. Practicing out with the SSSC codes of Practice.	Failure to whistle blow about serious issues where internal procedures does not result in a proportionate response to the concern or the concern is not acted upon.