

APPENDIX 6 ACCESS TO RECORDS (SECTION 10 OF THE ACT)

1. Accessing Records

- 1.1** Existing procedures relating to the sharing of information should be followed wherever possible. Where appropriate, 'Consent to Share Information' forms should be signed by the adult. If the adult lacks capacity to make informed decisions about their future, their Welfare Guardian or Welfare Power of Attorney should sign the form. If the adult lacks capacity and there are no details of a Welfare Guardian or Power of Attorney, the Office of the Public Guardian should be contacted to check whether or not one exists. Where there is no Welfare Guardian or Power of Attorney, consideration should be given to using the provisions in the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, or to sharing without consent if required to protect the adult or others.
- 1.2** If there is reasonable concern that an adult at risk is being harmed or is at risk of harm, this will always override a professional or agency requirement to keep information confidential. If it is not possible to obtain consent from the adult, for example, if the situation is so urgent that obtaining consent would cause an unacceptable delay or where the adult cannot consent, the adult should be informed about the information sharing wherever possible. If the adult lacks capacity, their Welfare Guardian or Welfare Power of Attorney should be informed about the information sharing unless it is felt that this may be detrimental to the adult. The Council has discretion regarding whether or not a Welfare Guardian or Power of Attorney is informed.
- 1.3** Section 10(1) of the Adult Support and Protection Act (Scotland) 2007 states that 'a Council Officer may require any person holding health, financial or other records on an individual the Officer knows or believes to be an adult at risk to give the records, or copies of them, to the Officer.'
- 1.4** Any decision to access records under the 2007 Act should be made by the relevant Community Care Team Manager to admin staff to arrange retrieval of record. File location should be logged on K2/event recording. When a Council Officer requests access to records he or she should explain:
 - what information is needed;
 - why it is needed;
 - what will be done with the information;
 - with whom the information will be shared; and
 - how long the records will be kept and whether or not they will be returned or destroyed.
- 1.5** 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.
- 1.6** Records can be requested from a variety of agencies and this should be undertaken in writing in all practicable circumstances. Written requests can also be made electronically. The designated Council Officer must have

appropriate identification with him or her when requesting and accessing records from other agencies. Examples of records that may be useful in an investigation include bank statements, employers' records, records held by Department of Work and Pensions or records held by voluntary agencies. This is not an exhaustive list. All formats of records such as computer, audio and visual are covered by the legislation.

- 1.7 If it appears an offence may have been committed, the police should be contacted and a joint investigation carried out. Only original documents or certified copies can be used in court. If computer records are to be submitted as evidence, they must be printed off and signed by the holder to confirm they are a certified copy. It is the responsibility of the police to gather evidence in a criminal investigation. The designated Council Officer should request copies of the records and ensure that original documents remain with the source of the information.
- 1.8 Section 49 of the Act states it is an offence of obstruction for a person to fail to comply with a requirement to provide information under Section 10 of the Act. Reasonable efforts should be made to resolve disagreements through informal means, initially, before considering any legal action.

2. Accessing Health Records

- 2.1 If the designated Council Officer knows or believes an adult is at risk under the 2007 Act, he or she has the right to request any person holding health records to give access to the records or copies of them. Health records are any record made by or on behalf of a health professional relating to an individual's physical or mental health. Records include notes written by GPs, occupational therapists, physiotherapists and nurses, either written or electronic.
- 2.2 Health records may only be inspected by a registered health professional for example doctor, nurse or midwife.
- 2.3 If possible, an appointment should be made in advance to allow the author of the record time to gather the relevant information. It is best practice for the designated Council Officer, with the assistance of the health professional reading the records if appropriate, to interview the author. However, it may not always be possible to interview the author especially if records contain entries made by a large number of different Health professionals. During the interview, the designated Council Officer should record any statements made by the health professional inspecting the records. In certain circumstances, it may be appropriate to request the records or copies of them e.g. for inspection by another health professional for a second opinion.
- 2.4 In some cases it may be sufficient for a health professional to provide a written summary of his or her involvement and of the adult's physical and mental health along with any relevant documents or reports. However, it should be noted that Section 10 of the Act refers to existing records held by a professional or an organisation rather than information created specifically to meet a request.