# Chapter 7: Interviews conducted as part of the adult support and protection process

This chapter provides guidance on [Section 8](https://www.legislation.gov.uk/asp/2007/10/section/8) of the Act, which permits a council officer and any person accompanying them, to interview any adult present at the place of the visit under section 7. This therefore applies to any adult from the point at which an inquiry has been initiated until such times as adult support and protection procedures have ended.

# What is an interview?

Section 8 permits a council officer, and anyone accompanying the officer, to interview an adult in private within the place being visited as part of undertaking adult protection inquiries.

This power applies regardless of whether a sheriff has granted an assessment order authorising the council officer to take the person to another place to allow an interview to be conducted.

The purpose of an interview is to enable or assist the council to gather information directly from an individual to assist the council in determining if the individual is at risk or harm, and/or what action may be required. The interview may include:

* establishing if the adult has been subject to harm;
* determining whether the adult is at risk of harm;
* establishing if the adult feels their safety is at risk and from whom;
* discussing what action, if any, the adult wishes or is able to take to protect themselves; and
* discussing what action, if any, others can take to protect the adult.

Officers conducting interviews will need to ensure appropriate recording of the content of the interview and any decisions made by the adult, including those about who attends e.g. a family member. Local multi-agency procedures will give guidance to such officers on the expectations of recording and what format this should take.

# Where can an adult be interviewed?

An interview may take place within any place being visited. This could be, for example, the adult’s home, a day centre, care home or hospital. The decision about where to conduct the interview will be taken by the council officer and all those involved in planning of the detailed investigations on the basis of information received. This will involve a judgement based on the wishes of the

adult themselves and ensuring that the adult can participate as fully and freely as possible. The council officer may also make available an independent advocate to assist the adult with the interview.

The timing of the interview should be guided by a planned process of investigation, taking into account local inter-agency protocols and procedures.

# Considering the adult’s rights during an interview

Section 8(2) provides that the adult is not required to answer any questions. The adult **must** be informed of that fact before the interview commences. The adult can choose to answer any question put to them but the purpose of this section is to ensure that they are not forced to answer any question that they choose not to answer. Support must be provided where necessary in order to enable the adult to come to a decision on whether to answer any questions – for instance, where they have some level of incapacity.

In keeping with the Act’s principles, an adult must be assisted to participate as fully as possible in any interview(s). Where an adult can make some contribution (or participate to some extent), the planning process for the interview must consider all appropriate ways of assisting the person to participate. This might include the use of communication aids, consideration of the location of the interview and of the personnel present during an interview. The purpose of support will be to assist the adult to contribute whilst always protecting the rights of the adult.

The use of independent advocacy and/or the presence of other support people during an interview are some options the planning process might consider.

Seeking the consent of the adult to be interviewed requires a more proactive approach than simply advising the adult that they are not obliged to answer questions. The point is to ensure that the adult is given reasonable opportunity and encouragement to answer questions whilst respecting their right not to.

[Section 35(6)](https://www.legislation.gov.uk/asp/2007/10/section/35) does not permit a council officer or medical practitioner to ignore an adult’s refusal to be interviewed or medically examined even after an assessment order has been granted.

# Capacity

In any interview, gaining the consent of the adult to be interviewed should be the norm. The council officer should also consider the adult’s capacity and promote the adult’s participation in the interview.

A person’s capacity can vary over time and in respect of different types of decision making. While capacity or lack of capacity does not determine an assessment of the three-point criteria, capacity is relevant in relation to the ability to consent to, for example, a medical examination or to take decisions relating to care arrangements or financial dealings**. Capacity applies to both decision making and the implementation of decisions**. A person can have the capacity to make a particular decision but through illness, traumatic event, or infirmity may not have the physical or emotional capacity to retain a memory of a decision and/ or to implement that decision.

A person’s capacity can be transient, vary over time and vary in respect of different types of decision making. As capacity can change over time, it should be assessed at the time that consent is required. When considering capacity,

practitioners must also consider factors such as the adult’s mood or state of mind, lack of confidence - or lack of experience - in making decisions or carrying out decisions, and the individual’s ability to retain the memory of the decision.

In seeking advice regarding a person’s capacity it is important that the determination of capacity is specific in relation to which areas of decision making and executive action the person may lack capacity.

Some or all of the following factors may be considered where there is doubt about the adult’s mental capacity:

* does the adult understand the nature of what is being asked and why?
* is the adult capable of expressing their wishes/choices?
* does the adult have an awareness of the risks/benefits involved?
* can the adult be made aware of their right to refuse to answer questions as well as the possible consequences of doing so?

The possible scenarios that may emerge include the following:

* 1. the adult has capacity and agrees to be interviewed;
  2. the adult has capacity and declines to be interviewed;
  3. the adult lacks capacity and is unable to consent to being interviewed
  4. the adult has capacity but is thought to have been influenced by some other person to refuse consent

If the adult is thought to have been influenced to refuse consent, consideration should be given to whether there has been undue pressure applied . It may then be necessary to consider applying for an Assessment Order in order to, for example, interview the adult in private.

A lack of capacity to consent to being interviewed may not prevent the adult participating in the interview process.

If the adult lacks capacity to consent, or lacks capacity to refuse to consent to interview and/or interventions, such as protection orders under the Act, the council should contact the Office of the Public Guardian to ascertain whether the person has granted a welfare power of attorney or if there is a welfare guardian with the relevant powers to consent (or refuse to consent) on their behalf. Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use provisions in the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003.

In relation to protection orders, the sheriff has discretion to appoint a safeguarder to safeguard the interests of the adult at risk before deciding the application, as per Section 41(6) of the Act.

Capacity and consent is a complex area. Additional resources can be found here: [Adults with incapacity: guide to assessing capacity](http://www.scotland.gov.uk/Publications/2008/02/01151101/0)

The council also must promote the adult’s participation in interview by taking account of the adult’s needs, where these are identified. Further guidance regarding how to implement the principle of participation in adult support and protection activity can be found in Chapter 4.

# Can an adult be interviewed with others present?

It is good practice to ask an adult whether they would wish another person to be present during the interview, and to facilitate this where possible. For example, a family member, paid carer or an independent advocacy worker may be requested by the adult. Consideration should be given to potential undue influence; be mindful of the situation and environment in which the adult is asked about their preferences for the presence of another person. Also be mindful of the impact of any interview on others. It is **inappropriate to use children as interpreters**.

Children, for example, should not be present to discuss complex concerns or risks. Depending on the content of the interview, those present could also experience vicarious trauma through listening to sensitive and distressing information concerning the individual’s experiences.

[Section 8](https://www.legislation.gov.uk/asp/2007/10/section/8) allows a council officer, and any person accompanying the officer, to interview the adult in private. Whether or not the adult should be interviewed in private will be decided on the basis of whether this would assist in achieving the objectives of the investigation. The council officer or persons accompanying them may decide to request a private interview with the adult where:

* a person present is thought to have caused harm or poses a risk of harm to the adult;
* the adult indicates that they do not wish the person to be present;
* it is believed that the adult will communicate more freely if interviewed alone; or
* there is a concern of undue influence from others.

# Can anyone else be interviewed?

[Section 8](https://www.legislation.gov.uk/asp/2007/10/section/8) allows the interviewing of any adult found in a place being visited under Section 7 of the Act. For example, in some circumstances it may be in the interest of the adult for another person to also be interviewed. For example, an interview may be helpful with someone who shares their home with the adult or, in a regulated care setting, a care worker. Section 8(2) provides that anyone interviewed under this section is not required to answer any questions, and that they must be informed of this before the interview commences.