

CONSULTATION QUESTIONS

This consultation questionnaire sets out the consultation questions from within the relevant sections of the revised Adult Support & Protection Code of Practice.

The revised Code of Practice is a larger and more comprehensive document than the original Code and we welcome your views on any of the changes made. In particular, we would appreciate your views on the following matters.

Please insert your response to the questions in the text boxes provided.

Question 1: Chapter 3

This chapter of the Code sets out the principles of the Adult Support and Protection legislation and the definition of an adult at risk.

Does this chapter help in your understanding of the legislation and whom it applies to?

If not, what changes would you suggest?

Clarification of S (3) (2) (b)

We consider that it would be very helpful if the revised code of practice provided clarification of Section (3) (2) (b) of the Adult Support and Protection (S) Act 2007:

Adults at risk

(1) "Adults at risk" are adults who—

(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 vulnerable to being harmed than adults who are not so affected.

(2) An adult is at risk of harm for the purposes of subsection (1) if—

(a) another person's conduct is causing (or is likely to cause) the adult to be harmed, or

(b) the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

From our inspections of social work services, we have evidence that local authorities and their partners have to process considerable numbers of adult protection referrals which many others would not regard as being triggered by sufficiently serious incidents. We believe that a key reason for the number of inappropriate referrals is how referring agencies and individuals interpret section (3) (2) (b) of the Act. We consider there is a need for clear guidance in the revised code of practice on the appropriate application of this section; a concise, clarifying statement that is helpful to professionals on the ground, particularly police officers who often have to

face very difficult and complex situations involving adults who may be at risk of harm. We believe many local authority colleagues who have a responsibility for managing adult protection services will agree with our view.

There is a wide range of conduct and behaviour, which could cause harm to an adult and carries some element of risk (for example, some sport), but which is clearly not intended to fall within the scope of the Act.

We therefore believe that section (3)(2)(b) would benefit from clarification, and that such clarification should address two questions:

1. What is the nature of the conduct referred to?
2. What specific types of conduct / behaviour might this sub-section relate to?

In relation to the first question, we suggest that this provision relate to **detrimental and injurious** conduct / behaviour, which reasonably might be considered to carry a high probability that the adult indulging in the conduct will be harmed or seriously harmed.

With regard to the second question, we believe it is not possible or desirable to try to define all of the conduct / behaviour which would lie within the scope of this sub-section, but some examples of such conduct are:

- Serious and injurious self-neglect.
- An adult who is living in dangerous, squalid and unsanitary conditions.
- An adult, who by virtue of their recurring highly antagonistic and provocative behaviour, renders it likely that they will be assaulted or seriously assaulted (the likelihood that the adult will be assaulted may increase if the adult persistently associates with troublesome individuals).
- An adult who has a pre-existing mental disorder (severe and enduring mental illness or severe learning disability) who indulges in persistent injurious substance misuse, which is highly likely to cause significant harm or death.

Perceived harm resulting from trivial incidents

In our inspection and other regulatory activities, we have received formal notifications where providers have made an adult protection referral to the local authority following a minor incident, for example:

- A resident having their cardigan tugged by another resident.
- A resident raising their voice to another resident.
- A family member raising their voice to a resident.

We consider that the revised code of practice should include a clear statement that the harm or serious harm which falls within the scope of the Act is not negligible harm resulting from trivial or minor incidents such as those set out in the list above. It would be impractical to try to list or specify what constitutes a trivial or minor incident, as the consequences or perceived severity of any incident will depend on the individual circumstances of the adult. Sound professional judgement should be applied in all cases.

Question 2: Chapter 5

This chapter of the Code considers the principle of ensuring full regard is given to the wishes of the adult, and ensuring that the adult participates in decisions as fully as possible.

Does this chapter adequately cover the issues arising from ensuring as far as possible full participation by adults in decision making?

If not, what changes would you suggest?

We consider that the revised provisions relating to participation of the adult at risk in adult protection case conferences should be strengthened. The evidence from our scrutiny is that adults at risk are not always invited to adult protection case conferences. The revised code of practice should state that the adult at risk **must** be invited to attend adult protection case conferences and be provided with the support they require to attend and participate. If there are compelling reasons why the adult at risk should not be invited, then these reasons must be recorded in the minute of the case conference and in the person's local authority case record.

We are also aware of instances where adults at risk have not received proper feedback after a case conference. The revised code of practice should clearly state that where the adult at risk did not attend the adult protection case conference, for whatever reason, the local authority must ensure that timely feedback, preferably face-to-face, is given to the adult at risk and, if appropriate, their unpaid carers.

Question 3: Chapter 6

This chapter includes new guidance on large-scale inquiries. Does this provide sufficient clarity for this type of inquiry or are there additional matters you would wish considered?

Care Inspectorate staff, who have participated in large-scale inquiries, commented that all members of the inquiry team need to be given the necessary time, from their agency, to allow them to fully participate.

The need for effective communication and information-sharing among the inquiry team was also highlighted by staff. We consider that establishing a clear and concise written remit at the outset of large-scale inquiries would

be helpful.

Question 4: Chapter 11

This chapter is a new addition to the Code and considers a multi-agency approach. Does this provide sufficient clarity and support for your organisation in handling multi-agency assessments and practice?

Are there other matters that you consider should be included in this chapter?

There is confusion between different types of meetings (please note this comment also applies to other chapters of the revised code of practice).

The adult at risk should be invited to attend multi-agency adult protection case conferences and review case conferences. Adult protection partners can, in certain circumstances, hold a multi-agency professionals' meeting to discuss an adult at risk and the adult at risk would not be invited to attend this meeting.

From our scrutiny of social work services, we have evidence of multi-agency professionals' meetings taking place as a substitute for adult protection case conferences. When we found this practice, we made a recommendation that the practice should cease.

We also suggest that the importance of information sharing be highlighted in section seven. The boundaries around consent and capacity should be clear in advance of meetings so that all of the issues arising can be properly addressed.

Question 5: Users and Carers

The Code seeks to develop and articulate good practice as regards service user and carer involvement, particularly in chapters 5 and 16. Does it succeed in this? If not please suggest ways in which this area could be improved on.

The involvement of the Care Inspectorate in adult protection committees is covered in Chapter 16. We believe there is an opportunity to enshrine in the revised code of practice the new arrangements for Care Inspectorate participation in adult protection committees. We suggest the following addition to Chapter 16:

“While a Care Inspectorate representative should not be a member of an adult protection committee, because this would conflict with the Care Inspectorate’s role to independently inspect adult protection services, it is highly desirable that the Care Inspectorate is involved in the work of adult protection committees. Care Inspectorate staff have particular knowledge and expertise, and can offer invaluable insight to adult protection committees. Chairs of adult protection committees should routinely invite a representative from the Care Inspectorate to attend meetings when there are items on the agenda where the discussion would be enhanced by the

knowledge and expertise of a Care Inspectorate representative. Chairs of adult protection committees should engage with the Care Inspectorate about who from the Care Inspectorate should attend adult protection committee meetings.”

Question 6:

Do you consider this revised Code of Practice will enable you to carry out your professional responsibilities effectively? Please feel free to comment on any areas of the Code which you consider could be improved in any way.

Yes, we consider that this revised code of practice will enable adult protection partners to carry out their roles and responsibilities effectively. We also believe that the inclusion of comments we have made in this document will enhance the revised code as sound and comprehensive guidance for adult protection partners.

Any further comments

Chapter 3

- Section 17 – the wording is incomplete at end of the last sentence in the paragraph, “harm than those...”
- Section 23 – add ‘and the commissioning of services’ to the final sentence in the paragraph.
- Section 24 – “emphasis” should read “emphasises”
- Section 29 and elsewhere in the revised code of practice – There is confusion between different types of meetings. The adult at risk should be invited to attend multi-agency adult protection case conferences and review case conferences. Adult protection partners can hold a multi-agency professionals’ meeting to discuss an adult at risk, and the adult at risk would not be invited to attend this meeting.

Chapter 4

- This chapter would benefit from stressing that the general public have a role in ensuring that adults at risk of harm are safe and protected.

Chapter 5

- The description in section eight of advocacy is poor and should be reworded. Advocacy supports vulnerable individuals (who may have difficulty expressing their views) to articulate their views and make sure that adult protection partners take account of those views. Advocacy provides vulnerable individuals with support which is independent from official bodies.
- There is no discussion of consent or capacity issues in this chapter and

we consider that inclusion of such content would be beneficial.

Chapter 6

- Section 8 – This section should clarify that harm can be caused by unpaid carers either by deliberate actions or by negligent actions; that is, acts of commission or omission.

Chapter 16

- Sections 19 to 23 – The involvement of service users and carers in adult protection committees should be purposeful and not tokenistic. Service users may require support to participate in adult protection committees.