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?

Comments

The definitions outlined in the draft code restate and reinforce what have become well established definitions established by the legislation and the previous COP, and emerging Adult Protection practice both locally and nationally.

As with the previous COP the Principles outlined in Section 2 of the Act are restated. It is felt that the direct reference to section 275 of the Mental Health (Care and Treatment) (Scotland) Act 2003 in relation to Advanced Statements helps to reinforce the links that exist across a number of pieces of legislation pertinent to the support and protection of adults. It would have been helpful to have clearer guidance in relation to the principle "that the adult is not treated less favourably…", particularly in terms of the avoiding the assumption that all incidents of harm affecting adults at risk must be dealt with through formal adult protection procedures.

It is also welcomed that issues around professional judgements and possible differences of opinion should be subject to multi agency decision making, and that no further action decisions should be robust and in line with previous guidance be clearly and timeously recorded as a matter of good practice.

We welcome the section in relation to people with problematic substance misuse which lends clarity about the application of the legislation.
The multiagency approach to inquiry and decision making in relation to adults at risk with problematic alcohol or substance use is particularly welcomed.
The emphasis on the need to assess each case on its own merits recognising cumulative factors which might increase risk to the individual is

helpful.

In relation to young people in transition the final sentence on page 27 appears to be incomplete.

The section on young people in transition offers clarity in this area of ASP practice and is welcomed. It also sounds an appropriate note of caution of assuming that children at risk routinely become adults at risk. We also welcome that paragraph 19 stresses the need for further development of a public protection approach to the protection of vulnerable individuals whether adults or children.

This section on transitions might also usefully refer to the Children Scotland Act 1995 and the powers, provisions and duties to support young people 17-18 and in some circumstances up to age 25. Support under these provisions may be more appropriate for some individuals than intervention under the Adult Support and Protection Scotland Act 2007. (Similarly under the proposed Children and Young People Scotland Bill when this is enacted). There is some concern about the differing age thresholds of "child" and "adult" in legislation. A reference to these differences might be made here along with some clarification or guidance.

The reference to "multi-agency meetings" in this chapter and in Chapters 3 and 5 we assume refers to adult support and protection case conferences. Multi-agency meetings are held in a variety of circumstances (multi-agency planning meetings, IRDs, multi-agency network meetings, multi-agency CPA meetings, multi-agency meetings to review care arrangements, multi-agency discharge meetings etc). These meetings could potentially be misunderstood to be a substitute for an adult protection case conference. It is confusing and potentially a step backwards to avoid the term case conference. Adult support and protection case conferences have been of considerable help in formally considering specific identified risk and have the gravitas to be prioritised by professionals. Professionals understand what a case conference is and the practice is in line with child protection practice. In addition adult protection committees will be asked to provide data in relation to case conferences and it would reduce clarity and consistency if local authorities provide data in relation to multi-agency meetings. It is therefore recommended that the term case conference is used when referring to a formal consideration of risk and consideration of intervention under the Adult Support and Protection Scotland Act 2007.

The final sentence on page 30, paragraph 29 could be helpfully reviewed as it appears over-long and ungrammatical.

The section on SDS is welcome but could be improved by re-drafting. It is over long and wordy and its meaning is unclear in places which does not make it easy to read. For example the sentence beginning "they rest on good quality assessment....." is long and over complex. This section's juxtaposition with the section on risk and harm may give the impression that SDS is inherently a risk. We suggest that this section is moved.

Chapter 3 might helpfully include a section on self-harm and suicide and also on capacity and consent.

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 covers the issues arising from ensuring as far as possible full participation by adults in decision making?

If not, what changes would you suggest?

The above comments in regard to multi agency meetings/case conferences apply here.

In general, the issues that arise from full participation of adults at risk in decision making about their own support and protection are well covered in this chapter. It is felt that this chapter underlines and reinforces good anti-oppressive and inclusive practice. The reference made to the "communication toolkit" accessible via the included web link is helpful and will assist practitioners in facilitating the appropriate inclusion and participation of service users and their carers.

Similarly the reference to "Working together in Adult Support and Protection – Views and Tools of People who Access Support" is helpful and reinforces the importance of facilitating the participation of adults at risk in decision making. Practitioners find that the levels of facilitation needed to enable full participation can be problematic in relation to timescales for completing inquires, investigations, and case conferences.

The importance of Independent Advocacy is clearly stressed in the draft COP and is welcomed, particularly in its reference to the Mental Health Care and Treatment Scotland Act 2003 and the right of all people with a mental disorder to have access to advocacy.

Whilst in principle we fully support the section on service user involvement in case conferences it does not take full account of people who are unable to attend due to ill health, lack of or loss of capacity. There is also a danger that in making "best efforts" at "facilitating" attendance the service user might have some pressure put upon him or her to attend which would not be good practice. Some "where appropriate" or "where the service user is able to attend" caveats might help in this section.

In paragraph 17 it may not be always appropriate to fully inform a carer of the outcome of a case conference if the adult at risk does not wish them to have particular sensitive information or if the carer is the source of harm or

where there are strained relationships. Some "where appropriate" caveats may be helpful here.

The section on carers is helpful. Page 40 paragraph 20 uses the word "abuser" in the last sentence. We do not consider this word to be in line with the terminology in the Act and it also implies intent which is not always present. Either the word "harmer" or "perpetrator" could be used.

The section on the Vulnerable Witnesses Act 2004 is positive but it may be helpfully strengthened. It appears to practitioners that sometimes Procurators Fiscal do not seriously consider its provisions when deciding whether to prosecute, citing unreliable witness or that it would be too distressing for the adult. Victims' access to justice may therefore be seriously compromised. It may be helpful to include a sentence saying that PFs should seriously consider alternative ways of adults giving evidence before making a decision about whether to prosecute.

We question whether the quality of advocacy services should be specifically highlighted in multi-agency audits. The audit assesses the quality of the service to the individual from all the services involved and would identify a need for improvement if advocacy was not offered. The Forth Valley Adult Support and Protection Committee collects data in relation to advocacy activity and monitors uptake of advocacy, which is the appropriate arena for its consideration. The quality of advocacy services would be appropriately monitored through the service level agreement as with all commissioned services.

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?

Paragraph 6 uses terminology which is not in the Act i.e. "initial inquiry" and "preliminary inquiries". It would be more helpful to refer to inquiry as in the primary legislation.

Paragraph 6 also refers to the council's social work service. Not all councils have a social work service and some have delegated their social work functions to the NHS. In light of forthcoming integration it may be helpful to refer to "....social work service or the delegated authority".

Paragraph 9 refers to guardians potentially being the source of risk. This should include all proxies (attorneys and appointees also). While this paragraph is an acknowledgement of the added complexity of encountering a Guardian who is the source of harm it does not offer guidance to practitioners working with the complexity. This section may be an opportunity to add in the duty of cooperation of the Office of the Public Guardian to share information and make referrals and the cooperation of

the DWP as per the national protocol. The provisions of the Adults with Incapacity Scotland Act 2000 to apply to the sheriff for removal of powers might also be included in this section. We consider that these additions would make this paragraph more helpful to practitioners.

On page 44 paragraph 17 "....the council and *it's* partners...." should read "....the council and *its* partners....". (It's is an abbreviation for it is).
We suggest an insertion into this paragraph to make inquiry, investigation, intervention and risk management without the adult's involvement or consent compliant with the Human Rights Act. The second sentence should read "Whilst the adult has a right not to engage in any such process, *where there are serious risks* the council and its partners should still work together to offer any advice, assistance and support to help manage any identified risks. *Any action should be proportionate to the risk identified.* It is recognised the success of any intervention.....*"*

Paragraphs 18-22 relating to intervention under other legislation is helpful. It should include provisions under the Children Scotland Act 1995 to support young people up to the age of 25 in some circumstances. The Sexual Offences (Scotland) Act 2009 applies to young people up to the age of 18 and to sexual contact with people with a mental disorder where there is a position of trust; therefore this Act should also be included in this section.

The new guidance in the draft COP in relation to Large Scale Inquiries is welcome. It is positive that the draft COP is flexible in its guidance i.e. "*may* require initiation of…." rather than "*will* require initiation of…." This flexibility allows for proportionate responses based on local intelligence.

It is welcomed that the roles of the Care Inspectorate and Health Improvement Scotland are recognised and reinforced. This highlights the importance of strong links being developed and maintained between CI and HIS to ensure consistency and clarity of approach.

Paragraph 23 and 24 refer to a "range of inquiries" (this sounds like an investigation) and later to an "initial inquiry". It would be helpful to keep to the same language as the legislation i.e. investigation and inquiry. "Investigation" and "inquiry" seem to be interchangeable in this section. We suggest that where concerns warrant the initiation of a large scale formal process then the term "investigation" is most appropriate.

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?

The previous comments in relation to multi-agency meetings applies here. Also the previous comments in relation to service user involvement.

The new addition to the Code in relation to multi-agency approach is welcome. This section may be further strengthened by referring to the statutory duties to make referrals, share information and to cooperate with the council in its inquiries. It should also state that where there is no statutory duty (e.g. third sector providers, general practitioners) that it would be regarded as good practice for those professional groups and agencies to be involved, share information and to cooperate.

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 remarks in relation to chapter 5 in relation to service user involvement in case conferences apply to this chapter also.

The section on representation of service user and carer views at the APC is useful and gives flexibility on how each committee achieves this.

Page 110, third bullet point should read "types of harm" instead of "types of abuse".

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.

The contents pages 13-16 would be improved by adding page numbers.

Chapter 1 would be improved if the last part of chapter 2 was included which is headed "How is this Code structured?" Chapter 2 would then have this part deleted.

Chapter 4 page 33 paragraph 9, fourth bullet point a " nurse" should be a "nurse registered with the Nursing and Midwifery Council".

Paragraph 16 would benefit from an additional bullet point inserted after prison service "other crown bodies, e.g. The Crown Office, Procurator Fiscal Service". Including solicitors in a final additional bullet point may also help to engage them particularly in relation to granting power of attorney.

Paragraph 18 page 35 is potentially confusing and suggests that an agency which has a UK wide remit is exempt from the Act. This would mean that a care provider based in England or Wales would not be required to provide records under section 10 when operating a facility in Scotland. Or does this

paragraph refer to government agencies? This needs to be clarified further.

Chapter 9
Page 57, second bullet point "abuse" should read "harm".

Chapter 10
Page 58, the fact that records can be shared electronically should be mentioned here in addition to on page 59 under the heading "what records may be shared?".

Chapter 12
On page 65 paragraph 1 the word "form" should read "from".

Page 65, the purpose of assessment orders. The purpose of an assessment order is very clearly stated in the Act:
Those purposes are to enable or assist the council to decide-
(a) whether the person is an adult at risk
(b) if it decides that the person is an adult at risk, whether it needs to do anything (by performing functions under this Part or otherwise) in order to protect the person from harm.

The Code however (as in the original) is much less definitive:
"The purpose of an assessment order is to determine whether the adult is an adult suspected to be an adult at risk". Presumably if there was no suspicion then there would be no need for anyone to do anything under the Act including make an application for an assessment order. We therefore recommend the words "suspected to be" are deleted to avoid confusion.

Chapter 16 Page 105 **"**Criminal Justice Authorities" should read "Community Justice Authorities".

In the Glossary on page 116 it states that an investigation follows on from an inquiry. This is not necessarily the case. If there is sufficient evidence an investigation may follow on from a referral or where the case is already open, an incident or general escalation of risk.

There is some Americanised spelling (substituting Z for s) which appears out of place in a Scottish code of practice.

In general abbreviation (SDS, APC etc) is over used and although the first abbreviation follows the proper term (Self Directed Support, Adult Protection Committee) it may make for difficult reading when abbreviations are used in long sections of text.

Any further comments

We welcome the review of the Code of Practice and consider it to be a positive development. We broadly welcome the emphasis given to the inclusion of users and carers. We also welcome the increasing clarity and

guidance offered in this area, particularly references given to the Altrum research and guidance available via the communications toolkit accessible through the Royal College of Speech and Language Therapists'. While we have suggested a number of changes we consider that the draft is positive and in general the revised Code would be helpful and supportive of professionals carrying out their responsibilities.

As a further general comment the Code of Practice is an opportunity to strengthen the cooperation of public bodies. This is not as clearly emphasised as it could have been in this draft. Working together to protect adults at risk has been the great strength of this legislation and the Code should seek to support this. For example chapter 1 paragraph 8 it would help if the statutory bodies who have duties under the Act were listed - it is not until chapter 3 page 34 that the statutory bodies and duties of cooperation are made explicit. Chapter 11 on multi-agency working could also use the opportunity to re-iterate statutory duties to refer and to cooperate and for those who have no statutory duties principles of good practice could be added.

Language used in the primary legislation should be used in the Code and for clarity and consistency new terminology should not be introduced. The Code is intended to reflect developed practice and therefore if there is no reference in the Act then commonly used terminology (such as "case conference") should be used. Clarity of definition and shared terminology across local authority areas are important to ensure that future data collection is accurate.