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?

SAMH welcomes the opportunity to respond to this legislation and hope that it contributes to the reinforcement of Scotland's adult protection regime. Prior to answering the consultation questions we have a number of general points we would like to raise.

General points

We believe that it is essential that adult protection decision makers have an awareness of the impact that mental health problems can have on an individual's ability to safeguard themselves and make considered choices, especially in relation to alcohol and drug use. Those involved in adult protection inquires and adult protection committees must be provided with the skills and training to adequately evaluate an individual at risk's presentation so as, for example, not to misinterpret an individual as 'unwilling' to safeguard themselves when they may be 'unable' to do so due to the impact of a mental health condition, diagnosed or not.

SAMH is concerned about the inconsistency of choice of language, which we believe could create confusion in the weight given to the wishes of the adult at risk. SAMH feel that the wording throughout the code of protection often leaves an unacceptable level of ambiguity in terms of direction. The term 'should' is frequently used throughout the Code; for example, in chapter 5 paragraph 2 regarding the adult's views and in chapter 16 paragraph 30 concerning what Adult Protection Committees procedures reflect. The replacement of 'should' and similar terms with 'must' throughout the document would strengthen the code significantly, and give greater clarity to the roles and responsibilities outlined throughout the code's provisions. This would also allow for greater consistency of adult protection procedures and practices across local authority boundaries as guidance from the code would provide stronger direction.

A final general concern is the need for the adult at risk, and their individual wishes and involvement, to always be central to the whole adult protection process. This would facilitate co-production by allowing the adult at risk to fully participate in the process, unless they wish otherwise. At times the wording of the code places too much emphasis on the direction of the inquirer rather than the adult at risk, for example in the decision making around the need for independent advocacy as outlined in chapter 5.

Question 1

SAMH suggests the following changes in chapter 3.

In paragraph 6, Principles *for performing functions,* under *the wishes of the adult* the 'due consideration' which should be given to an adult's Advance Statement should be strengthened, with an explanation documented in all cases where advance statements directives are not followed. Similarly in the section *the views of others* in paragraph 6 qualification is required on what constitutes 'relevant', and who makes the judgement of relevancy. The views of 'others' whether determined relevant or otherwise should be recorded to facilitate transparency of decision making.

In paragraphs 10-12,*Who is an adult at risk?,* SAMH welcomes the three-point criteria in determining if an adult is at risk of harm, but believes that there should be clarification on what constitutes 'unable' as defined in paragraph 11. As stated in our general comments above, the 'unable' vs 'unwilling' dichotomy has significant potential to be problematic in terms of investigating bodies correctly determining an adult's presentation, particularly where the adult has a mental health problem which may contribute to behaviour that gives the impression that the adult is unwilling to safeguard themselves. Due to the importance of robust inquiry procedures to determining an adult's ability to safeguard themselves, SAMH believes that all professionals expected to undertake adult support and protection investigations should be adequately trained to recognise all circumstances which could result in harm. This must include the role that a person's mental health may have on an individual's ability, and their presentation of their ability, to safeguard themselves from harm. Secondly we believe that it is essential that adult support and protection investigations are rigorous, transparent and audited to a high standard. The findings of any investigation must be made available to the adult under investigation and any partner organisations involved with the adult's care or support

Alcohol & drugs

In paragraphs 13 and 14, *Problematic alcohol and drug use,* there are a number of terms which require clarification. While we feel that the Code should not be overly prescriptive in defining problematic alcohol and drug use, it should recognise that what constitutes problematic alcohol or drug use for one person may not be the same for someone else, so the term 'temporary' in paragraph 13 requires some qualification. In paragraph 14, the phrase "ongoing problematic use of drugs or alcohol" needs some guidance to be meaningful. The draft code of practice allows a great deal of subjectivity on behalf of the inquirer in regards to what qualifies as temporary, ongoing or problematic in terms of

alcohol and drug use.

SAMH believes that paragraph 15 could be strengthened by mandating multi-agency inquiries to gather information on the adult's condition, rather than use the more ambiguous term "should". We believe the knowledge and expertise of service provider staff involved with the care or support of the adult at question should be utilised to help inform any determination of the nature of the adult's alcohol or drug use. The adult themselves should also be fully involved in any investigation of their alcohol and drug use.

Young people in transition

In paragraph 10, and paragraphs 17-19, SAMH is concerned that the Code defines an adult as a person aged 16 and over. The UN Convention on the Rights of the Child, ratified by the UK in 1991 defines a child as a *"human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier"*[1]. The Victims and Witnesses (Scotland) Bill, currently before the Scottish Parliament, raises the legal definition of a child witness from 16 to 18. SAMH believes that the Code should not deviate from domestic legislation and international conventions in recognising the particular vulnerabilities of young people in regards to risk of harm. We are concerned that the proposed definition of a child could lead to individuals at risk of harm being investigated and assisted by those not best qualified to do so, in this instance Adult Protection Committees and not Child Protection Committees.

Harm

In paragraph 20, SAMH welcomes that the examples of harm outlined are not exhaustive and no category of harm is excluded due to not being explicitly stated in the code, but we believe that harm resulting from neglect (by a care giver or self) should be given greater definitional prominence in the code. SAMH welcomes the wide ranging definition of neglect outlined in the '*Tell Someone: Implementing the Adult Support and Protection (Scotland) Act 2007 – Promoting the Care & Protection of Adults in Scotland's Care Services, A Guide and Training Pack'* Section 3 page 34, and believes this should be reflected in the Code. In addition any changes to the Code must be reflected in changes to training materials.

Self-Directed support

Due to the large-scale move towards self-directed support in the organisation and delivery of social care, SAMH welcomes the inclusion of this within the Adult Support and Protection Code. We endorse the aim of paragraphs 23 and 24 to highlight the rights of individuals who are directing their own support have the same statutory protection from harm as people receiving traditional care packages. In order to support this, SAMH believes that there should be a formal requirement within in the Code placed upon social care providers and any private individual contracted to provide a service by a person managing their own care budget to receive guidance and training regarding adult

[1] Article 1 UN Convention on the Rights of the Child http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf

protection and their duties under the Act.

SAMH believes that the Code should place a duty on local authorities to ensure that individuals who are managing their care through self-directed support should receive information, in the most accessible and understandable format, outlining their rights to be free from harm and how local authorities and other statutory bodies will uphold these rights and ensure their protection.

In Paragraph 24, clarification is required about the scrutiny of self-directed by local authorities, including where recipients of care are employing private individuals, friends and family to provide services, in terms of risk. This is due to the array of complexities and variety of care packages that the move to self-directed support entails, with the possibility that some individuals could fall through the gaps in terms of the scrutiny of their care by local authorities. It is essential that no individual is placed at greater risk of harm simply as a result of choosing to make their own care arrangements and local authorities must ensure that they have adequate policies and procedures in place to prevent this.

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?

SAMH has a number of comments and recommendations regarding chapter 5.

In paragraph 3, SAMH recommends that the Office for Disability Issues (ODI) guidance for alternative formats of communication (found here http://odi.dwp.gov.uk/inclusive-communications/alternative-formats.php) is more thorough, and provides better guidance for implementation than the Royal Society of Speech and Language Therapists guidance linked to in the Code, and that this should be used in its place or alongside it.

The Code should also make explicit reference to the need to provide qualified translators to facilitate adequate and understandable communication to individuals whose first language is not English.

Independent advocacy services

In paragraphs 5-9, Independent Advocacy services, SAMH welcomes the outlining of the duty for local authorities to consider the provision of an independent advocacy service when making inquiries under the Act, to better enable the participation of the individual at risk. SAMH would like to highlight that independent advocacy services are currently oversubscribed and that effective timely provision of independent advocacy for adults at

risk must be adequately funded and prioritised by relevant statutory bodies.

In conjunction with SAMH's opening, general points, we believe that the wishes of the adult must always be central to the processes and decision making of any adult protection investigation to facilitate co-production and a person centred approach. SAMH believes that paragraph 5 should therefore include a reference to the need for the adult in question to be facilitated to take a full role in the decision of whether an independent advocacy service is required.

SAMH would also welcome the inclusion of a provision within the Code which permits the adult at risk to highlight to the local authority if they feel excluded from the inquiry process at any stage. It is imperative that this opportunity is provided to the individual as their vulnerability increases the potential for them to feel excluded from the inquiry process.

Multi-agency meetings

In paragraphs 10-17, Multi-agency meetings, SAMH's comments concern the role and rights of the adult at risk. In general we welcome the Code's commitment to full involvement of the adult at risk in any multi-agency meetings but we recommend that the terminology in paragraphs 11 and 13 is strengthened replacing 'should' in relation to invitation and participation at meetings with 'must'.

In paragraph 15, SAMH believes that greater detail is required outlining how the decision to not include the adult at risk in the meeting is made in terms of processes. The code should also mandate that the reasoning for not inviting the adult at risk is recorded, with the reasons communicated to the adult at risk in a format that he or she can understand. There should also be a mechanism for the adult at risk to appeal against such a decision.

In paragraph 16, where an adult at risk is not present at a multi-agency meeting but represented by an advocate or other 'designated person', the Code should give details of who may act as a designated person and how that decision is arrived at. Greater clarity should also be given detailing what procedures will be utilised to ensure that any designated person can best represent the interests of the adult at risk.

Carers

In paragraphs 18-22, Carers, SAMH acknowledges the complexities that can occur, which require any adult protection investigation to undertake a high level of scrutiny of the carer – adult relationship. We believe that it would be helpful to people who use to Code to reiterate here that the adult at risk remains the central focus of any investigation, whilst also recognising the needs and rights of the carer.

In paragraph 22, SAMH believes that the health and wellbeing needs of the carer and the responsibilities of a local authority to safeguard their needs should be reinforced. The statement that "it would be good practice" to advise a carer of their right to an assessment or reassessment of their care needs must be strengthened, making the

provision of this information mandatory.

In the same paragraph, the Code states that a carer has the right to a reassessment where their needs have not been met after an initial assessment under The Community Care and Health (Scotland) Act 2002. SAMH is extremely concerned that the needs of these carers may not have been met by local authorities, when a need was previously identified and there is a mandatory duty under this legislation to provide them with support. Local authorities should meet their statutory duties in this regard.

Appropriate Adult Schemes

In paragraph 23, SAMH welcomes the inclusion of the role of appropriate adults in the code of practise, especially where the adult at risk may have a mental health problem. SAMH is aware however that the current provision of appropriate adult support across Scotland is not equal. There are significant disparities of provision across the country, with a distinct lack of availability of appropriate adults in remote and rural areas. Further investment and commitment to providing adequate levels of trained and resourced appropriate adults to all individuals who need their service is required, and a strengthened paragraph within the Code could help to support such schemes. As the Criminal Justice Bill may shortly be placing such schemes on the statute, demand for support is likely to increase and resources will be required to ensure that vulnerable people can access these services.

Audit

In paragraph 25, SAMH supports the factors outlined for inclusion in an audit of Adult Protection committees, but we also believe that any waiting times for the adult at risk (or carer) has had to wait for advocacy should also be investigated alongside the examination and recording of the 'uptake and quality' of advocacy services. We believe that this would help to inform statutory and non-statutory bodies of the local provision of independent advocacy services available and any gaps in provision, and whether additional resources were required.

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?

A general comment concerning chapter 6 is that there appears to be very little reference, apart from paragraph 3, to the inclusion of non-statutory bodies, including third sector care providers, in the inquiry process. SAMH believes that explicit reference in the code should be made to the importance of fully utilising and including non-statutory bodies in the inquiry process where relevant, in terms of whether the adult at risk was receiving social care from an independent or third sector provider. Clearly, no action should be

undertaken, including the disclosure of sensitive information that could jeopardise the legitimacy of any adult protection inquiry and any subsequent investigation.

Referrals

In paragraphs 4-5 Referrals, SAMH believes that a standardised referral form, available at any agency or first point contact where adult at risk referrals\inquiries are likely to occur would aid the process. We recognise that referrals regarding a possible adult at risk may originate from a variety of sources and be lodged with a number of different agencies, so a standardised referral form, designed to facilitate the recording of as much information regarding the adult at risk and the circumstances of the potential risk could assist the inquiry process as well as providing a physical record of the outlying the details and context of any referral.

In paragraph 5 where the code states; *"it would be good practice to ensure staff, in any agency, who may be the first point of contact with the public is aware of the main provisions of the Act"* SAMH recommends that this should be replaced with a requirement that such staff must undertake mandatory training regarding the Act and their duties in the referral process. The competent, confident gathering of information at the beginning of an inquiry is critical to a positive outcome of an investigation.

Large-scale inquiries

In paragraphs 10-14, in relation to large-scale inquiries SAMH would like to highlight the importance of transparency and full disclosure of information between partners during any inquiry and in its aftermath. As such we would like paragraph 13 amended to include the requirement that the outcome and any actions resulting from a large scale inquiry, including where an inquiry finds no case to answer, are publically published and shared between all relevant agencies, including contracting and commissioning bodies. Full public transparency contributes to organisational accountability, as well as the dissemination of good practice where investigated organisations, such as a social care provider, are found to have robust internal adult protection procedures**.**

Possible intervention outwith or in conjunction with the Act

In paragraph 19, SAMH believes that the code should detail what is considered 'suitable advice and support' and who can provide such advice in relation to assisting an adult in any intervention out with or in conjunction with the Act. Any such advice and support including signposting an adult to agencies providing support should be recorded and documented.

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?

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

SAMH believes that this must be strengthened in terms of scrutiny and the adult at risk's involvement. This could be achieved by mandating in the code that a copy of the minutes from every multi-agency protection planning (and review) meeting is provided to the adult, and if applicable their carer or other designated person, in an accessible and understandable format.

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.

SAMH believes that service users and carers must always be provided with the opportunity to fully participate in managing their own care. As stated in our general points and throughout our answers to the other consultation questions, we believe that the code can be amended to reduce any ambiguity in the role of the adult at risk during the adult protection process. This answer will focus on chapter 16 as our comments regarding chapter 5 were outlined in question 2.

Chapter 16: Representation of service user and carers' interests

In paragraph 6, In terms of membership of the Adult Protection Committees, SAMH believes that consideration should be given to the inclusion of a representative from outwith the statutory sector, where the adult at risk is receiving community care by a third sector or independent service provider, thus providing a key perspective to the committee. In this regard paragraph 17 should be edited to mandate service provider representation, in a way which does not lead to a conflict of interest between the provider and the adult at risk.

SAMH recognises that the structures and procedures of adult protection committees will vary across local authority boundaries; however, we believe that local authorities should be required to provide third sector care providers with full information outlining their adult protection committee structures, procedures and members, with minutes of committee meetings made publically available. We believe this will increase confidence in a local authority's adult protection procedures, whilst also providing clarity to third sector service providers, who may be expected to engage with a number of different adult protection committees across local authority boundaries.

SAMH has a number of concerns regarding service user and carers' involvement in this section of the code. In paragraph 20, SAMH believes that the final sentence should be strengthened with all means of facilitating service user and carers participation not just 'considered' but mandated wherever possible. If reasonable adjustments are not possible to facilitate participation the reasons for this should be documented and shared with the

adult at risk and their representatives.

In paragraph 23, where it is stated that “regular” self-assessments by adult protection committees are to be undertaken to consider if adults at risk have been able to participate, we believe that “regular” requires quantification. SAMH recommends that self-assessments are undertaken at least annually, and the findings and any actions resulting from these are fully recorded and made publically available.

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.

In general SAMH welcomes the revision of the Code. SAMH would again stress that for any successful adult protection procedure the active and full participation of the adult at risk or their representatives is essential, with the adult and their needs always at the heart of the process. As stated throughout our consultation response SAMH believes that the revised Code, while stating this principle, could be strengthened, largely through the replacement of ambiguous language in relation to the duties of local authorities and other statutory bodies to facilitate the active participation and support of the adult at risk and their representatives, carers or supporters.

In particular we welcome the inclusion of self-directed support due to the radical way its uptake will alter the delivery of social care in the community, so therefore it is important to consider the potential new risks of harm and exploitation which could arise from this changing landscape. As stated in our response to question 1, SAMH recommends that further emphasis should be placed on the new complexities in terms of risk of harm that SDS has the potential to present, with training about SDS and processes of scrutiny of care delivered through SDS explicitly recognised in the Code.

SAMH would also like to highlight the importance of the forthcoming integration of health and social care in terms of community service development and delivery. Integration provides a good vehicle to enhance multi agency working, which is essential in mitigating and responding to risks of harm. Caution must be taken to ensure that no agency, including third sector service providers, are excluded from newly integrated bodies, especially in regards to their responsibilities and views of potential risks of harm to service users and recipients of care.

Any further comments

Comments