

CONSULTATION QUESTIONS

1. Question 1 is about Chapter 3. The question is as follows -

"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? Our proposed comments are as follows:

a) The further clarification to the Code of Practice is welcomed, particularly paragraphs 11 and 12.

b) Paragraph 7 states- "There will be situations where their consideration [of the principles] produces conflicting drivers, such as occasions where the adult at risk refuses any form of intervention but professionals involved believe that Adult Protection intervention would provide benefit to them. In such circumstances, decision making should occur on a multi agency basis."

Our interpretation of the thrust of the Code of Practice is that decision making should always be on a multi-agency basis. This is highlighted particularly in paragraph 29 of Chapter 3. The proposed paragraph would tend to suggest that this should only be where there are "conflicting drivers".

In addition, in some situations, there are no other agencies involved. Perhaps the Code should take account of this and suggest that a Multi Agency approach should be taken 'where appropriate'.

c) Paragraph 8 states - "In all cases it is important to be clear about the adult's capacity. All adults who have capacity have the right to make choices about their lives and these choices should be respected if they are made freely."

The reality is, that in a not insignificant amount of cases, it is not possible to be clear about an adult's capacity. The question of dealing with adults with questionable capacity, under this legislation is very difficult. Clearer guidance, or at least a recognition that questions of capacity are frequently not clear cut, would be welcome.

d) Paragraph 17 appears to have words missing at the end of the last sentence. The sentence does not appear to be complete.

e) At Paragraph 18 it may be helpful to remind the reader that all looked after children are deemed to be in need of additional support (at least initially). It also might be helpful to remind the readers of the provisions in section 12(5) and 13(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 of the Education Authority's duties (which would be the Social Work Dept) when a child leaves school, to seek relevant advice and information and provide relevant agencies with information. The purpose of this is to prepare the child for life after school. This

transition planning may result in a young person becoming the subject of adult protection procedures.

Other than that I think the chapter does help the reader understand the legislation and to whom it applies.

2. The next question is on chapter 5. This is as follows -

"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?"

a) This chapter is silent on the question of undue influence which can be a significant feature of an Adult Protection investigation. Undue influence is mentioned under the chapter on Protection Orders but I think it would be appropriate to suggest that those carrying out investigations should be live to possibility that the adult is unable to participate fully because they are being unduly influenced by a third party.

b) Paragraph 9 of this chapter seems to be an exact replica of what is in paragraph 9, Chapter 3 of the present Code of Practice. Perhaps Paragraph 9 of Chapter 5 of the draft revised Code of Practice should be headed up 'safeguarders', as it is in the current Code.

3. Question 3 relates to chapter 6, as follows;-

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

The expanded guidance is certainly better than what is in the current Code, and the use of the word "essential" in reporting possible criminal offences to the Police highlights and underlines the importance and necessity of reporting matters to the Police. The necessity of doing so is sometimes questioned by workers on the basis that they question their locus to report matters to the Police.

4. Question 4 deals with chapter 11. The question is -

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

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

Paragraph 7 indicates that the person designated as chairperson should be at an appropriate level in the organisation taking the lead role in a particular case (usually

the Council). We cannot think of circumstances when the organisation taking the lead role would not be the Council. This sentence would appear to suggest that it could be another organisation taking the lead role. Perhaps this envisages an integration of health and community care functions at some point in the future. At the moment the functions under ASP are imposed on local authorities.

5. Question 5 is about users and carers. We have no particular comments about this.

6. Question 6 asks for general comments on the Code of Practice.

(a) There is an inconsistency which was in the previous Code of Practice and is carried through to the revised Code of Practice. This is relating to Protection Orders.

Paragraph 15 of chapter 12 states - "An application for an Assessment Order will be made by the Council's Legal Department. Evidence must be made on oath with both the Council's solicitor and the authorised Council Officer appearing before the Sheriff to present evidence."

In the similar paragraph in chapter 13 relating to Removal Orders, Paragraph 16 states - "Only the Council can apply for a Removal Order". No reference is made to the Council's Legal Department. s sets out who may apply for a Banning Order but there is again no reference to the Council's Legal Department.

I understand in practice the Local Authority Legal Departments are involved in preparing the applications and appearing in court. It would be helpful if the Code of Practice was consistent about this and reflected what is happening in practice. (In both our authorities, the legal department would present cases in court.)

(b) The draft Code contains an index at the start and is over 100 pages long. This is not particularly user friendly as it stands. It would be better to refer to page numbers of the Chapters and their headings.