

EAST AYRSHIRE COUNCIL

SOCIAL WORK COMMITTEE: 8 SEPTEMBER 2005

CONSULTATION PAPER – PROTECTING VULNERABLE ADULTS – SECURING THEIR SAFETY

Report by the Executive Director of Educational and Social Services

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek Social Work Committee endorsement of an East Ayrshire response to a Scottish Executive Consultation on the Protection of Vulnerable Adults.

2. BACKGROUND

- 2.1 The Scottish Executive have issued a consultation paper regarding the protection of vulnerable adults, for response by 30 September 2005.
- 2.2 An initial consultation was undertaken in 2002 asking if a new legislative framework was needed to protect Vulnerable Adults outwith the protection currently afforded through mental health legislation.
- 2.3 A second consultation sought views in 2004 with respect to the creation of a list of people disqualified for working with vulnerable adults.
- 2.4 This third consultation paper seeks views on the protection measures for vulnerable adults and updated views on the initial 2002 consultation document.

3. CURRENT SITUATION

- 3.1 People affected by mental disorder are currently able to be protected by a range of mental health and incapacity legislation.
- 3.2 A group of individuals who may be deemed vulnerable are currently outwith this protection.

This consultation proposes to define people as being vulnerable if they are:-

- a) Aged 16 or over.
- b) Are unable to safeguard their personal welfare, property or financial affairs.

- c) May be in need of Community Care Services by reason of mental disorder or disability, age or illness.
 - d) Are unable to care for themselves, or to protect themselves against significant harm or exploitation.
- 3.3 The consultation proposes to define “abuse” as a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes the adult distress.
- 3.4 At present, East Ayrshire Council are party to Vulnerable Adult Procedures with health and police partners which serve to ensure the investigation and effective care management and monitoring of adults who have been at risk of or experienced abuse. To date 27 adults have been considered under these procedures.

4. CONSULTATION RESPONSE

- 4.1 East Ayrshire draft response to “Protecting Vulnerable Adults – Securing Their Safety” is attached as Appendix 1(a). Updated views on the initial 2002 consultation document are attached as Appendix 1(b)
- 4.2 In summary the proposed legislation would:
- Introduce a new definition of vulnerable adult (paragraph 2.2)
 - Introduce a new definition of abuse (paragraph 2.3)
 - Proposes the creation of Adult Protection Committees
 - Proposes the development of strategic and operational procedures in relation to adult protection including, risk assessment, mediation and use of existing legislation
- 4.3 The full consultation paper is available at the Members Information Point.

5. PERSONNEL IMPLICATIONS

- 5.1 Should new Vulnerable Adult Legislation be introduced there will inevitably be personnel resource implications to both implement and respond to the Act. The level of staff required cannot be determined at this stage.

6. FINANCIAL IMPLICATIONS

- 6.1 No financial implications at present.

7. POLICY / LEGAL IMPLICATIONS

- 7.1 No policy or legal implications at this stage.

8. COMMUNITY PLANNING IMPLICATIONS

- 8.1 This report supports the improving health and improving opportunities themes of the community plan.

9. RECOMMENDATIONS

- 9.1 It is recommended that the Committee:
- (i) agree the attached response to the Scottish Executive; and
 - (ii) otherwise note the content of this report.

John Mulgrew
Executive Director of Educational and Social Services
19 August 2005
Enc (1)

LIST OF BACKGROUND PAPERS

1. Protecting Vulnerable Adults, Securing Their Safety
2. Adults with Incapacity (Scotland) Act 2002
3. The Mental Health (Scotland) Act 1984
4. The Mental Health (Care and Treatment) (Scotland) Act 2003
5. East Ayrshire Council Multi Agency Procedures for the Protection of Vulnerable Adults

For further information please contact:
Eddie Fraser, Senior Manager Community Care, telephone: 01563 554825

IMPLEMENTATION OFFICER: JACKIE DONNELLY

**PROTECTING VULNERABLE ADULTS – SECURING THEIR SAFETY –
CONSULTATION QUESTIONS**

Question 1: Do you agree with the revised definition of a vulnerable adult?

Response: Yes

Question 2: If you do not agree with the revised definition of a vulnerable adult, what changes do you think require to be made of it?

Response: N/A

Question 3: Do you agree with the definition of abuse?

Response: Yes, based on the interpretation that “expectation of trust” includes the view all adults deemed as vulnerable should expect to be treated with respect and consideration. The “expectation of trust” definition implies the existence of a relationship between the victim and the perpetrator. Abuse may be inflicted by someone outwith any relationship and this is not addressed.

Question 4: If you do not agree with the definition of abuse, what changes do you think require to be made?

Response: Not applicable.

Question 5: Do you agree that Adult Protection Committees should lead the investigation of abuse, including investigations of abuse in regulated care services?

Response: Adult Protection Committees should be created in order to lead on all issues relating to abuse within a locality. The Committee should be accountable and could sit within the Joint Future Structure.

A clear and defining reporting and responsibility structure would be required, particularly in areas where NHS authorities cover a number of Councils

Question 6: If you do not agree, what objections do you have and what alternatives do you consider possible or desirable?

Response: See Question 5.

Question 7: Should the structure and powers of Adult Protection Committees be defined in statute or a statutory instrument or not?

Response: Yes, to ensure all partners are aware of their duty to protect.

Question 8: When abuse of a vulnerable adult is proved, what risk assessment and management should take place?

Response: Multi agency risk assessment to determine and apply control measures to protect are required.

A lead person should be identified with responsibility to monitor and care manage the control measures.

This will generally be a social work officer and on occasion a member of health staff. Cases where abuse has been proved should be monitored via the adult protection procedures by the means of multi agency case conferences with clear recording protocols established in terms of case files, case conference minutes and on electronic systems such as social work, health and police information systems.

Question 9: Do you agree that mediation should be offered to all those who are subject to abuse? If you do not agree, please state your key reservations.

Response: Mediation may be appropriate in some circumstances where the pressures of caring could have contributed towards abuse. This should be considered in the multi agency case conference based on the risks of further abuse, wishes of the vulnerable adult subject to abuse and the nature and extent of the abuse.

Question 10: If mediation were to be offered, how could this be done?

Response: The involvement of advocacy and the responsible care manager in discussion with the vulnerable adult and the perpetrator to ensure the victim is not pressurised into a position. Mediation in these circumstances should be formal, recorded and reported via the multi agency case conference which will have ultimate responsibility for agreeing the re-establishment of contact and defining on what basis this will be.

Question 11: Do you agree that guardianship is the most appropriate method to protect and control some people with a learning disability who may also exhibit challenging behaviours?

Response: Yes, with powers to remove the individual from situations where there may be risk to the wider community, eg a mentally disordered sexual offender where the guardian has powers to decide the individual's proximity to children.

Question 12: If you do not agree, what alternative methods could be provided other than detention under the 2003 Act?

Response: Explore the potential to implement interdicts enforcing the exclusion of individuals subject to guardianship accessing localities where there is a known risk for them or the community.

Question 13: Is it preferable to make a different provision for the compulsory care of people with a learning disability outwith the 2003 Act?

Response: Access to the tribunal service under the 2003 Act will ensure close and independent monitoring of the compulsory care of people with a learning disability. At this point there is no obvious reason to make separate provision.

Question 14: What would the implications of change be in practice?

Response: Alternative provision for people with learning disability may lead to confusion and risks that people may fall between two pieces of legislation, particularly in cases of complex dual diagnosis.

The 2003 Act's definition of mental disorder provides an opportunity to close existing gaps in provision.

SCOTTISH EXECUTIVE CONSULTATION ON VULNERABLE ADULTS 2002

UPDATED VIEWS

Question 1: Do you agree with the SLC (Scottish Law Commission) that a new legislative framework is required to protect vulnerable adults, beyond those with a mental disorder? If not, why not?

Response: Yes

Question 2: If you have answered yes to Question 1, do you agree with the definition of vulnerable adults? (NB this has been altered in the present consultation to take account of original responses)

Response: Yes

Question 3: If you do not agree with the definition, what changes do you think require to be made of it?

Response: N/A

Question 4: What principles do you think should underpin any legislation extending the vulnerable adults provisions to persons outwith mental disorder?

Response: The principles of self determination are respected however a multi agency group have the capacity to override this where significant risk of actual or anticipated abuse is evidenced.

Question 5: Do you agree that the local authority should be entitled to demand admission, and if necessary, obtain a warrant for forcible entry, to premises where a vulnerable adult or suspected vulnerable adult is present, whether or not the adult objects?

Response: Yes, on the basis that significant risk of actual or anticipated abuse is evidenced.

Question 6: Do you agree that there should be no examination, assessment or removal of an adult who objects and who has sufficient understanding of what is involved, unless those authorising or carrying out the intervention reasonably believe that the adult is vulnerable and is subject to undue pressure?

Response: Yes, where definitions of undue pressure are detailed and clear recorded reasoning for actions taken are provided.

Question 7: Do you agree that local authorities should be the responsible agencies under any provisions which are brought forward relating to non-mentally disordered vulnerable adults?

Response: Yes, given social work's experience and knowledge of protection, however there should be provision for multi agency overview within CHP areas.

Question 8: Do you agree that collaboration between local authorities and agencies such as NHS Scotland and the police is a matter best dealt with in a code of practice rather than legislation?

Response: Legislation would ensure all agencies are informed of and can plan for their duties to protect.

Question 9: Which classes of officers of the local authority do you consider should be authorised under provisions relating to non-mentally disordered vulnerable adults?

Response: Qualified social work officers with access to additional Vulnerable Adult specific training.

Question 10: In principle, do you agree with the SLC that the court should have the power to exclude a person living with a vulnerable adult, if necessary for the protection of the adult? If you answer no to this, please explain your key reservations.

Response: Yes

Question 11: Do you agree that the exclusion provisions would apply only where a vulnerable adult has entitlement to occupy the home? If not, please say in what circumstances they should apply.

Response: This would require to be considered on an individual basis as there may be circumstances where the vulnerable adult does not have right to tenure but to remove them would cause significant physical and emotional stress.

Question 12: Do you agree with the grounds of exclusion set out in paragraph 4.45 of the SLC's report?

Response: Where the vulnerable adult does not have tenure consideration should be made of the physical and emotional risks of removing them from the home.

Question 13: Do you agree that an exclusion order should not be granted if the vulnerable adult objects, unless it is reasonable to believe that the objection is wholly or mainly a consequence of mental disorder and/or under pressure?

Response: Yes

Question 14: Do you agree with the SLC that there should be a maximum 6 month time limit on an exclusion order?

Response: This may not be justifiable or appropriate in some cases. There should be a statutory right to review of exclusion orders within 6 months but not an automatic right after this period to return to the home of the vulnerable adult.

Question 15: Do you agree with the SLC that the excluded person who occupies by virtue of the adult's permission should not be re-entitled to occupy just because the period of the exclusion order has lapsed?

Response: Yes

Question 16: Do you agree with the SLC that there should be no statutory provisions preventing a person excluded under the vulnerable adult provisions from disposing of the home or bringing an action for the division and sale?

Response: The rights of the excluded person should also be considered and disposal of the home may be required to facilitate securing alternative permanent accommodation for them.

Question 17: Do you agree with the SLC that, pending the making of an exclusion order, a sheriff should be able to make an interim exclusion order, provided the person who may be excluded has been given an opportunity to be heard?

Response: Yes, where there is evidence of immediate risk to the vulnerable adult.

Question 18: Do you agree with the SLC that the sheriff, in granting an exclusion order should have power to grant an interdict against re-entry, a warrant for summary ejection and other appropriate orders (including attaching a power of arrest to any interdict and granting the interdict against re-entry subject to conditions)?

Response: Yes

Question 19: Do you agree that the sheriff should have the power to vary or recall any exclusion order, interim order or associated ancillary order?

Response: Yes

Question 20: Do you agree that where the vulnerable adult is able to apply for an exclusion order only he or she may do so?

Response: This places the vulnerable adult under considerable pressure for a variety of reasons and there would require to be alternative routes to secure such an order.

Question 21: Do you agree that if the vulnerable adult is not able to make an application, it may be made on the adult's behalf by an appointee under the Adults with Incapacity (Scotland) Act 2000 or by the local authority?

Response: Yes

Question 22: Do you agree that the local authority should have a duty to apply if satisfied that no-one else was doing so, no other proceedings for the removal of the abuser where pending or under consideration; and the grounds for exclusion were met?

Response: Yes, on behalf of the vulnerable adult multi disciplinary team accessing and reviewing the case with the statutory inclusion of an advocate.

Question 23: Do you think that, before a local authority could take action under these provisions, where it was not an appointee under the 2000 Act, it should be necessary for a doctor to certify that the adult is incapable of making the application for the exclusion order?

Response: Where the person is incapable of making an application for reasons other than physical or mental health there should be provision for action to be taken without medical certification but with multi agency, including advocate direction.

Question 24: Do you agree that the courts should be able to consider appointing a safeguarder to the vulnerable adult where the application is made on the adult's behalf?

Response: Yes

Question 25: Do you think that the courts should be able to consider appointing a safeguarder to a vulnerable adult in relation to any proceedings before the sheriff court under vulnerable adults provisions?

Response: Yes

Question 26: Do you agree that a person who is entitled to occupy a home which he or she shares with the vulnerable adult and any other person should be able to apply for that other person's exclusion on the same grounds as in paragraph 4.45 of the SLC's report?

Response: Yes.

Question 27: Do you have any views on the resource implications of the legislation discussed in this paper?

Response: There will be resource implications to ensure there is sufficient, trained staff to meet the requirements of any new legislation. There will also be significant resource implications to provide supports to vulnerable adults either in their own homes or in alternative community settings.

Post Script – The role and contribution of Independent Advocacy is rarely referred to throughout the consultation document, however this provision would potentially address some of the safeguarder and exclusion issues.