

Scottish Council on Human Bioethics

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Consultation response to the Scottish Executive – Health Department

Protecting Vulnerable Adults – Securing their Safety

Third consultation paper on the protection of vulnerable adults and related matters

The **Scottish Council on Human Bioethics** (SCHB) is an independent, non-partisan, non-religious registered Scottish charity composed of doctors, lawyers, psychologists, ethicists and other professionals from disciplines associated with medical ethics. The principles to which the Scottish Council on Human Bioethics subscribe are set out in the **United Nations Universal Declaration of Human Rights** which was adopted and proclaimed by the UN General Assembly by resolution 217A (III) on 10 December 1948.

The SCHB is very grateful to the Health Department of the Scottish Executive for this opportunity to respond to the consultation on the **Third consultation paper on the protection of vulnerable adults and related matters**. It welcomes the Department's intent to promote public consultation, understanding and discussion on this topic.

In addressing the consultation, the SCHB has formulated the following responses:

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

Yes. The SCHB agrees with the proposed revised definition of a vulnerable adult, namely that persons aged 16 or over are vulnerable if they:

- are unable to safeguard their personal welfare, property, or financial affairs.
- may be in need of community care services by reason of mental disorder or disability, age or illness.
- are unable to care for themselves, or unable to protect themselves against significant harm or exploitation.

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?

Not applicable.

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

Yes. The SCHB agrees with the definition of abuse but would like to see the proposed definition amended (in bold) to:

"Abuse" is a single or repeated act or **the withholding or the withdrawing** lack of appropriate **care action**, occurring within any relationship where there is an expectation of trust, which causes the adult distress.

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

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?

Yes. The SCHB agrees that Adult Protection Committees should lead the investigation of abuse in all settings, including investigations of abuse in regulated care services.

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

Not applicable.

Question 7: Should the structure and powers of Adult Protection Committees be defined in statute or a

statutory instrument or not?

The SCHB agrees that, at present, there is no general statutory duty on public authorities to investigate where a vulnerable person, or a person suspected of being vulnerable but not mentally disordered, seems to be at risk from abuse. For example, elder abuse in Scotland is emerging as a social problem on the basis of anecdotal evidence from social and healthcare professionals.

Age Concern Scotland now has an Elder Abuse Project which aims to raise awareness and improve intelligence gathering. It estimates that between 7% and 9% of older people in Scotland are victims of at least one form of abuse, with over 40% of victims experiencing more than one kind of abuse.

Thus the SCHB concurs that the structure and powers of Adult Protection Committees should be defined in statute or a statutory instrument.

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

The SCHB agrees that exploring the possibility of mediation where abuse has taken place is important as practical experience indicates that some abuse takes place because of the stresses of caring and being cared for. Both parties may sometimes wish to continue to live together. Mediation is thought to be a valuable means through which to review what has happened and to agree a plan for the future, based on risk assessment of the factors that led to the abuse.

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

The SCHB is of the opinion that, subject to the specific situation being considered, a guardianship may be the most appropriate method to protect and control some people with a learning disability who may also exhibit challenging behaviours.

Question 12: If you do not agree, what alternative methods could be provided other than detention under the 2003 Act?**Question 13: Is it preferable to make a different provision for the compulsory care of people with a learning disability outwith the 2003 Act?**

The SCHB is of the opinion that since the Mental Health (Care and Treatment)(Scotland) Act 2003 is expected to become operational in October 2005, it may be impossible to fully assess the different effects of the provision included in this Act. Indeed, there is no information as yet on how its provisions will work in practice.

The Act will cover all those with a mental disorder which is defined as any mental illness, personality disorder or learning disability. So those with a learning disability without further mental illness or personality disorder will be covered by the Act.

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