

Adult Support and Protection (Scotland) Act 2007
Draft Code of Practice
Response from Community Care Providers Scotland
March 2008

Community Care Providers Scotland (CCPS) is the association of voluntary sector organisations providing care and support services in Scottish communities. Our membership comprises over 60 of the leading national non-profit and charitable providers in Scotland. CCPS members provide a variety of services for children and adults, both in registered residential settings and in their own homes. The majority of these services are provided under contract on behalf of local authorities.

CCPS has been involved in the development and implementation of the Adult Support and Protection (Scotland) Act through membership of the Bill Steering Group, Implementation Group and Code of Practice Working Group. Given this level of involvement, particularly in the drafting of the Code of Practice, CCPS does not have extensive comment to make at this stage. However, there are a couple of issues raised in the code of practice on which we think further clarification may be useful to voluntary sector providers; these are highlighted below.

Voluntary sector involvement

Chapter 1, paragraph 2 (page 11) is slightly ambiguous regarding who is covered by the general principles of the Act. While it is CCPS' understanding that the two categories of 1) public bodies and 2) those carrying out a function under the Act (who are likely in most cases to be public bodies) would *not* cover voluntary sector providers, including those operating under contract to local authorities, the wording that “any...**care provider**...intervening or performing a function under the Act” [our emphasis] could be read as suggesting that voluntary sector care providers *would* be covered. We would appreciate clarification on this issue.

This issue is further complicated by chapter 2, paragraph 11 (page 16), which states that “councils may therefore wish to review their contract agreements with voluntary or private sector providers to ensure that their services are consistent with the principles of the Act”. While it seems unlikely on a purely practical level, that many contractors do not provide services consistent with the principles, we have some concerns about it being suggested to councils that they should ask external providers to fulfil obligations that the legislation does not put on them (if, indeed, our understanding is correct that voluntary organisations are not covered by the general principles).

Information sharing

Paragraphs 12 and 13 of chapter 2 (page 17) set out best practice on voluntary sector involvement in inquiries and investigations. Many voluntary organisations have concerns about information sharing, both in relation to the dangers of falling foul of data protection legislation and in relation to maintaining a good relationship with clients; further clarification of what is expected of voluntary organisations would therefore be welcome. Chapter 8, paragraph 3 (page 33) and paragraph 26 (page 36) make it clear that information requested by the council during an investigation must be given – this is unlikely to present any problem to providers. What may cause some unease is the expectation that voluntary organisations will provide information ‘proactively’ as for example in chapter 2, paragraph 13 (page 17) “These organisations should discuss and share with relevant statutory agencies information they may have about adults who may be at risk of harm” or chapter 4, paragraph 3 (page 21) “A council may be assisted in its duty to inquire through various sources, for example ...independent sector providers.” There appears to be no obligation on providers to supply this information, and it is possible that some providers will therefore be nervous about perceived conflict between confidentiality, trust and information sharing. It may therefore be

useful to provide further clarification on this issue, as it is not clear on what basis providers would be sharing information, other than that “As care providers, they have a responsibility to involve themselves with the Act where appropriate” . While the vast majority of providers will be happy to provide any information they see as relevant, it is important to clarify both to providers and others what voluntary organisations are and are not obliged to do; this links with the point above about local authorities having expectations about how voluntary sector providers will act which are not in fact required of them by the legislation. We understand that the cross-sectoral group looking at training requirements coming from the Act is considering this issue, but feel that it could also be clarified in the code of practice.

Also in relation to information sharing, we note that in chapter 8, paragraph 4 (page 33) it states that “in accordance with the principles in sections 1 and 2 of the Act, the adult’s consent should be obtained prior to the information being obtained” – it is not clear whether this relates only to information provided when councils ask for it, or also to information which organisations might provide ‘proactively’. It seems to us that consent should be obtained prior to any information being shared, but this could be spelt out more clearly, to help allay some of the fears described above.

Adult Protection Committees

We look forward to the opportunity to comment on separate guidance for Adult Protection Committees, but are pleased to note in the meantime that chapter 13, paragraph 6 (page 65) states that some APCs may wish to appoint someone from the voluntary sector, a point made consistently by CCPS throughout the passage of the Bill.

Please do not hesitate to contact me should you have any questions on any of the issues raised in this submission, or if further information would be helpful.

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Respondent Information

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I am responding on behalf of an organisation, and am content for my submission to be made publicly available, and for the Scottish Government to contact me in future.