26 February 2009

Dear Participant


I enclose a copy of the report of the user and carer conference “The Adult Support and Protection (Scotland) Act 2007 - What it Means to Me” which was held on 21st August 2008.

May I thank you for your participation on the day. I hope you found it interesting and useful. We are also providing the Chairs of Adult Protection Committees with a copy of the report. This will help to ensure that the views and concerns of people who use services and their family members will be taken into account in their strategic planning.

The report will also be made available on the Scottish Government website at: http://www.scotland.gov.uk/Topics/Health/care/VAUnit/ProtectingVA. Please let me know if there is anyone else who would like a copy of the report and does not have access to the internet.

Yours sincerely

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The Adult Support and Protection (Scotland) Act 2007

“What it Means to Me”

Report of a User and Carers Conference
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**Introduction**

This national conference was a partnership event between the Scottish Government, Age Concern Scotland, Inclusion Scotland, the Scottish Association for Mental Health and the Scottish Consortium for Learning Disability which was aimed at raising awareness of the new Act among people who use services and their family members. It was very much an event where audience participation was crucial to ensure that their views and concerns would be reflected through a conference report which would be sent to Chairs of Adult Protection Committees to assist them with their strategic planning.

This report highlights the themes that emerged on the day.

**Who was there?**

There was a diverse range of participants including older people, disabled people, people with learning disabilities, mental health issues, and family carers and supporters, many of whom were attending as representatives of national or local organisations. The only professionals there on the day were in support, facilitator, presenter or panel member roles. Over 120 people attended.

**What’s happening**

Jean MacLellan, head of the Adult Care and Support Division of the Scottish Government, welcomed everyone and said that the event was taking place because people wanted to know more about the new Act. This was also an opportunity to look at how people can be involved in the ongoing learning and development of good practice to ensure a better outcome for service users.

The Act would become law on 29 October 2008 and local authorities were being provided with nearly £8 million of additional funding to support its introduction.

The following work was underway

- Supporting regulations about who could act as a council officer and conduct investigations;
- Court rules relating to protection orders;
- Preparation of training materials, information and guidance about the Act;
- Multi-disciplinary training for over 300 professionals, who would then roll out training to other staff;
- Training staff from voluntary and other organisations, who would also go back and provide training within their own organisations.

The Act introduces measures in relation to adults who are at risk from harm, whether this is physical or psychological harm, neglect, sexual abuse or financial exploitation. The intention is to help identify and to support “adults at risk” and to achieve an appropriate balance between the rights of individuals to live their lives as they wish, to provide support to them when they need it, and to provide the means to reduce the risk of harm.
Setting the Scene for the day – Scenarios

The event started with a series of four scenarios illustrating some key issues of concern and how they would be addressed under the Act. Val de Souza, Adults & Older Peoples Services at West Lothian Council, outlined what the social work response to each would be.

**Scenario 1: William**

Leah McKend, Age Concern Scotland presented a scenario which illustrated the challenges an elderly person can present when bereaved and neglecting themselves.

Val demonstrated the extraordinary extent of response and resources that could be deployed to meet William’s needs locally and to support him remaining in his own home. The scenario also showed that other agencies have a clearer duty to co-operate to help the person. She said that the principles of the Act must always be taken into account, including his views and wishes, with many judgements being needed to be taken along the way. The Act also makes clear that any action must be the least restrictive option available and that this must be for the benefit of the individual. Although unlikely in this case, the council could apply for a warrant for entry to enable them to get a foot in the door to see how William was coping. The Act focuses on both support and protection. In this case the emphasis would be on offering additional support.

**Scenario 2: Jane**

Chris White, Scottish Association for Mental Health, presented a case that illustrated an extremely complex scenario.

This dealt with a woman in her 50s with early onset dementia living at home with her daughter. The daughter was suspected of neglecting the mother, not allowing her to see other people on her own and also of attempting to get control over all her mother’s resources.

Val was able to explain how the numerous issues would be assessed and responded to, offering a range of interventions should this be required. The least restrictive action should be taken, with risk assessment and other actions explored to maintain the family relationships. Val made clear that the Act does not introduce a whole new way of working for social work as many of the actions taken will have been common practice in the past. She advised that what the Act does is to introduce a clear duty of information sharing between certain bodies and introduces new powers with a range of Protection orders. However she emphasised that the Act should not be viewed as a stand alone - it should be viewed as introducing another part to a toolkit, for example to options such as adults with incapacity or mental health legislation, carers assessment or assessment and care management.
functions. The Act provides the means to ascertain if an adult is at risk of harm and to stop or prevent harm from occurring.

**Scenario 3: Saleem**

Sofi Taylor, Glasgow Learning Disability Partnership, presented an example to illustrate how a person could be protected from others.

The scenario concerned a young man with a mild learning disability, living independently in his own home, who was being seriously exploited and subjected to intimidation by local youths.

Val outlined the process of investigation and how they would work together with Saleem to change the situation (with the support of an independent advocate). Saleem was afraid of the youths and afraid of speaking out. Given the seriousness of the situation, the council could help Saleem apply for a banning order or could apply for one on his behalf. Val made clear that all actions/interventions should be clearly planned, progressed and recorded through the usual processes of risk assessment, case conferencing, protection planning, monitoring and reviewing. The Act could bring about considerable change to enable people to continue to live independently, free from fear and harm.

**Scenario 4: Shona**

Tressa Burke, Glasgow Disability Alliance, presented a scenario showing the complexities and dilemmas surrounding domestic violence where the adult has the capacity to consent.

This related to a physically disabled mother whose husband was under severe stress caring for her, causing him to drink and become increasingly violent towards her. However theirs had always been a volatile relationship, even before Shona’s accident. Through frightened and increasingly depressed, she was not prepared to ask for help and risk losing her independence.

Val explained that Shona would be considered to be an adult at risk of harm and there would therefore be a duty to inquire under the Act. Social work would assess the situation in terms of “risk of harm” and would also be required to assess the caring situation. Val demonstrated how the various issues would be responded to, including discussing the options with Shona and the provision of additional practical and psychological support for carers. A Protection order could only be applied for if Shona consented. As Shona has capacity, the sheriff would require to be convinced that she was being “unduly pressurised” not to consent and, in doing so, would also have to take account of the principles of the Act. When a person has the capacity to choose and is not under undue pressure, then that adult has the right to choose how to lead their own life - even if it means taking risks or action that people do not approve of.
Val said that the social work service may not always have received this kind of referral before the Act. This meant they would not be alerted to the situation before it reached crisis point. The duty to report and the requirement for interagency working under the new Act will be central to addressing these issues. However it will still be important for the general public, family, friends and others to alert social work to this kind of situation before it deteriorates.

Conclusions

• in the past there would have been a greater emphasis on individuals being able to get themselves out of harmful or difficult situations;
• there is now a greater recognition that harm is often hidden. Individuals cannot always take action to safeguard themselves as they are often being intimidated, exploited, living in fear or being silenced;
• what the Act does is provide the ability to inquire about an adult’s circumstances to allow a judgement call to be made about whether any action needs to be taken to provide support or protection. Previously social work would have not been able to do anything other than to offer support;
• considerably more could now be done to protect adults at risk from harm;
• the emphasis was about empowering the individual;
• the benefit of this will be to help people gain control and give them the opportunity to lead fulfilling lives.
Discussion Groups

The groups gave the participants an opportunity to discuss their understanding of the Act and to raise any concerns. There were 8 groups, all of which focussed on the same 3 questions:

1. What will be good about this law?
2. What worries you about it?
3. What questions do you want to put to the panel?

The following key findings emerged from the discussions:

The Act – general

**Positive**
- the Act raises awareness of harm and what to do about it
- it protects and recognises people’s rights
- people can get access to the help they need and feel safe doing so
- this will build confidence to come forward and report harm
- actions can be adapted to suit individual needs – giving people more choice
- there is a clearer pathway to bring about positive change
- could help to change public perceptions

**Concerns**
- fear of losing control, of not being able to make choices and decisions
- that social work will standardise procedures rather than tailor them to the individual’s needs
- the Act must be monitored to ensure a good outcome for service users
- adults are not children - the procedures and issues differ from child protection.
Disability issues

Positive

- raises the profile of the difficulties people with a disability may encounter

Concerns

- it is dependant upon the attitudes and perceptions of the professionals, which may differ from that of the individual
- that the system can “bully a person” in the early stages
- disabled people could be treated differently to others, particularly those with capacity
- there could be many "grey areas" in practice

Assessment and protection planning

Positive

- risk assessments will be undertaken
- could provide more support and choice for the adult, including risk enablement, to enable people to have control of their lives

Concerns

- that assessments should be undertaken prior to any action or intervention
- home care packages, assessment and care management must work alongside the Act
- insufficient resources are currently made available for good assessment and care management. This leads to increased spend and resources being required for crisis
- risk assessment may make professionals more risk averse resulting in service users leading more limited lives – “overprotective staff and parents”
- that people should be able to make their own choices and retain the right to decide how they are going to live
- carers assessments record unmet need - these should be met
- professionals should work in partnership with carers to enable risk taking and choice
- more than one social worker should make an assessment and/or decision
- all staff must be trained in person centred planning.
Support services

Positive

• the responsibility to support as well as protect provides the person with opportunities
• could change service attitudes
• the Act will build on what is already in place.

Concerns

• that there should be proper resourcing of care and support at the outset, rather than wait until crisis
• care assessment, carer support, assessment reviews, couple counselling and alcohol counselling do not always happen in practice
• domestic violence - there are few, if any, accessible refuges for disabled women. There are none for men
• people need options to enable them to make proper choices. If the options are few, then the choices are fewer
• support for carers should be properly funded
• whether sufficient resources will be provided to support the adult through the process
• that there may be an adverse effect on funding, with services lost to those who need low or moderate support
• there is a tension between a needs-led service and managerial budget driven policy.

Co-operation, Information sharing and disclosure of records

Positive

• the emphasis placed on organisations working together, in particular social work, health and the police
• will encourage better team work

Concerns

• information should be shared as early as possible, particularly information that concerns service issues for an individual
• it is vital that GPs also share information as they are often the first point of contact for an adult who has been harmed or neglected
• unclear what voluntary groups legal duties are if they are publicly funded. Could place too much responsibility on the voluntary sector
• there are currently issues about statutory and voluntary groups not working together
• the adult may not wish certain information to be shared or even be aware that it is happening
• confidential information could be made available to too many people
• that we are all “heading toward big brother”
Inquiries and investigations

**Positive**

- professionals now have a duty to report and to work together for the benefit of the person
- social work have a duty to respond, inquire, investigate and, where necessary, intervene
- individuals can still refuse and live the life they choose.

**Concerns**

- invasion of privacy and freedom
- malicious allegations
- reporting by people who disapprove of an adult’s choices
- professionals may jump to conclusions. "Things aren't always what they seem"
- an inquiry or investigation could cause the situation to deteriorate
- staff must ensure that the views of families and carers are taken into account
- that the final decision should not be taken by just one person
- whether sufficient funding and resources will be made available to improve/solve any problems recorded – if not, people will lose confidence in the process and will not disclose or report.

Protection orders

**Positive**

- the sheriff is independent and will decide in cases where there is conflict between the adult and professionals
- could help with domestic abuse cases - “I called for help from the police and they said they couldn’t do anything as it was classed as a domestic"
- staff know they can respond to people in need
- orders are only to be applied for in exceptional circumstances.

**Concerns**

- that people should be able to attend court, put their views forward and be legally represented
- disabled people rate their quality of life higher than professionals do, including sheriffs.
- capacity/incapacity to consent - how this will be evidenced
- the experience, background and training safeguarders have in disabled people’s values
- that access to appropriate support must be provided before an order is applied for
- a person could become distressed if removed from a familiar environment
- that removal orders could be used as a “back door” to put people into nursing homes
- that families could be split up. “A banning order could remove the most important people in the adult’s life”
- the adult may feel like it is they who are being punished
- that orders should be monitored to ensure that they are not misused
- the financial implications of court proceedings for users and their families
- outcomes should be assessed from the service user’s point of view
### Accessible information and communication difficulties

**Positive**
- the adult must participate as fully as possible and be provided with support to enable them to do so

**Concerns**
- “the voices of the disabled or elderly people in the community are never heard"
- different people have different ways of expressing things. Professionals must take time to make sure everyone involved understands
- the need for more information from a carers perspective
- how the Act interacts with existing legislation, for example guardianship for a relative
- that users and carers must be provided with good quality, accessible information in easily understood formats

### Independent advocacy

**Positive**
- the Act requires social workers to consider what support the adult requires, including access to independent advocacy

**Concerns**
- that everyone should have access to an independent advocate
- advocacy is not always accessible given disparity between areas/services
- it should be more widely advertised
- advocacy services and individual advocates should be regularly monitored to ensure quality of service

### Staff issues

**Positive**
- training for trainers has been rolled out to organisations
- good practice can be shared between professionals and organisations
- should lead to improved understanding of the issues and their client’s concerns
- that professionals are now aware that they have more power to become involved

**Concerns**
- that dedicated teams should be set up to deal with adult protection
- if resources will be available for sufficient social workers and ongoing staff training
- whether staff will have sufficient knowledge of capacity issues
- that there may be a fear of cultural change – for example, the principles provide for taking account of the adult’s views etc
- excessive paperwork could be generated - taking staff away from front line duties
### APCs

**Positive**
- APCs should appoint members who have the relevant skills and knowledge
- they will monitor the use of the Act, undertake training and raise awareness

**Concerns**
- the need to ensure service user involvement and representation from the outset
- service users and voluntary organisations should also be involved in other ways, e.g. training, best practice, service design
- service users must be able to provide feedback and evaluate the services received
- APCs need to put in place full and effective partnership working for the benefit of the individual
- that information is gathered and monitored consistently across Scotland to enable meaningful comparisons to be made

### Learning lessons
- ensure effective monitoring is in place
- ascertain how the situation arose
- what were the problems encountered
- could anything have been done differently
- ensure that there was full and effective partnership working between all involved
- consider how to ensure a good outcome for service users
- share success and disseminate best practice
- take steps to avert harm – and to stop crisis being reached
- provide sufficient resources to enable this to be done
A debate and discussion followed to explore the potential positive and negative impact of the Act. The questions from the discussion groups were split into 8 main themes. These were discussed by the panel members, with the audience playing an active role. (A list of the panel members is attached at the Annex)

1. **Why do we need the Act?**
   - Why do we need this Act?
   - Who does the act give power to? Could you explain the Act more?
   - Why can social work and other agencies not act sooner to prevent situations reaching this stage?

1.1 In 1997 the Scottish Law Commission published recommendations and a draft Bill in respect of ‘vulnerable adults’. Since then there have been several formal enquiries, where there have been failings in local services in individual cases, for example the Borders case. The adults with incapacity and mental health legislation then provided some protective measures for those with a mental disorder or incapacity of some sort, but there were still adults outwith their scope who suffered harm. The Act was therefore introduced to fill the gaps and complement existing legislation. It was needed to protect those people who couldn’t protect themselves.

1.2 The Act seeks to address the issue by defining what is meant by harm and an “adult at risk”. It introduces a series of measures to first of all identify those individuals and places an onus on councils to make inquiries and take action where needed. It gives councils the
necessary tools to stop or prevent harm. To improve co-ordination of efforts and to better protect adults at risk, there is a requirement for various public bodies, such as councils, the police and the NHS, to report and co-operate with each other where harm is known or suspected.

1.3 This means that support can be put in place more quickly before a situation deteriorates, for example to provide assistance earlier to ensure that a person can continue to live in their own home.

1.4 The Act also allows practitioners to get a foot in the door to assess whether any support or intervention is needed. It may be that a person harming the adult is barring the door and refusing to let anyone see or speak to the adult, in that case a warrant for entry could be granted. A social worker, doctor or policeman could then gain entry to look into the adult’s circumstances.

1.5 Where a crime has been committed, the police may still want to conduct their own investigation, but the Act means that there would be multi-disciplinary working and planning to support the adult throughout.

2. **Won’t the Act be discriminatory?**

- Why does this Act only apply to disabled people? Surely that is discriminatory?
- In the case study about Shona, why should there be an inquiry when she appears to have capacity? The Act means that she is being treated differently from other people because she is paralysed.
- What right of appeal does an individual have to challenge the disclosure of confidential information?

2.1 Many participants felt that the Act was discriminatory against disabled persons as it did not apply to the able bodied. During discussion most of the panel members considered that the Act is not discriminatory as it does not automatically apply to everyone with a disability. There is a three point test that must be met before a person may be regarded as an “adult at risk” - that the adult is unable to safeguard his/her well-being, property or financial affairs, that the adult is being or likely to be harmed, and that because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed that adults not so affected. All three of these conditions must be met.

2.2 An adult who is disabled may be well able to make their needs known or to defend themselves. However there are those who may find this more difficult - even impossible – and this Act will be an opportunity to focus on giving them a voice. In Shona’s case, she satisfied the three conditions and therefore the council had a duty to inquire, but they did not intervene given her capacity and that she was not being coerced. The principles of the Act were also taken into account, for example that she should not be treated any less favourably than any other adult in a comparable situation.

2.3 Another view was that it was hoped that the Act would be implemented as sensitively in practice. There was certainly a balance to be struck between protection and the right to self determination. The Act could be positive if it works well to safeguard people. However it could prove negative if it affected their civil liberties, particularly where a person has capacity.
2.4 Some participants were concerned that decisions could be taken by just one person. They considered that many professionals believed that they were acting in a person’s best interests when in actual fact they did not listen to or understand the individual’s perspective. There was “an attitude that they always think they know best”. Participants stated that it has been shown that disabled people tend to rank their quality of life as being higher than the professionals consider it to be. Those making decisions should therefore listen, engage, and work with the individual to increase their understanding.

2.5 The majority of panel members considered that decisions would be made by more than one person, and usually on a multi-agency basis. Although the Act sets out the council as the lead body, it emphasises that the council must consult and work in partnership with other professionals, such as the police and health professionals, all of whom would bring their own differing points of view to the discussion. In addition, the principles of the Act must always be applied, which means that the adult’s views, wishes and choices must be taken into account, as must the views of their nearest relative, primary carer and others. It would also be expected that professionals would abide by their own professional standards.

2.6 Turning to information sharing and access to records, several participants were concerned that an adult at risk may not wish their information to be shared with others, or be even aware that this is happening. This raised issues around confidentiality and the right to privacy and to have a private life under the ECHR. It was noted that existing law already allows information to be disclosed in certain circumstances (for example by law or a court order) or where it is considered to be in the public interest. Any disclosure must be proportionate to the seriousness of the situation. Crime detection, prosecution and prevention may also provide legitimate grounds for disclosure.

2.7 All legislation passed by the Scottish Parliament has to be ECHR compliant. The Act had also been subject to the full Parliamentary process, which included both public and Parliamentary scrutiny, and some of the participants had provided evidence to the Health Committee. This did not mean that disabled people and organisations could not still be actively involved and their perspectives taken into account. The challenge now was for everyone to ensure that the Act worked as intended.

3. **Risk assessment and support**

- Will risk assessment make professionals more risk averse?
- Will the fear of potential harm lead to people having to lead more limited lives?
- What assurances can you make that people will still be able to make their own choices?
- What about training people who are making decisions – like police, sheriffs, social workers? Are they going to be trained in a person centred way?
- What resources will be put in to support people through the process? What services and support will be provided? Will this be mandatory?
- A carer’s assessment can be conducted and unmet need recorded but left unmet. Why?
- This Act put money into crisis. Why isn’t it going into assessment and care management instead?

3.1 There was general agreement that the last few years had seen a growing awareness that lives can be limited as people are dealt with in an over protective way. Assessments should be made to enable people to be able to take risks and make their own choices. Risk is part of life. However some participants felt that it appeared that there may now be a counter movement to control people’s lives and that the answer to this does not lie in legislation alone. We should all be concerned with letting people lead the lives they want to live.
3.2 A few participants also felt that the scenarios painted an idealistic picture of how the Act would work in practice. Where resources are not available then people do not have options – which means no choices.

3.3 A National Conference was held in April on “Enabling risk in adult care and support”. The final discussion was chaired by the Minister for Public Health, who advised that the Scottish Government is committed to taking work forward in this area and promised that action would follow on from the conference. There are challenges in meeting everyone’s expectations but the Government was committed to increasing people’s choices about how they lead their lives. Greater flexibility also needed to be built into service delivery.

3.4 The role of relatives and carers was recognised as they can provide a large amount of support to the adult and may, in turn, need to be supported in their role. Protecting the adult’s well-being could include providing the carer with the additional support that they need. Any carer providing a substantial amount of care has the right to have their carer needs assessed by the council and must also be offered an assessment where they appear to have unmet caring needs.

3.5 The Act includes “support” in the title because the purpose of an inquiry is to determine whether any action is needed to support the person to avert or stop harm or neglect. So it is not only about crisis but about ensuring that people receive the help they need when they need it. Appropriate support can improve people’s quality of life. The Act makes clear that a council must consider the various types of support that can be provided, both practical and emotional, and tailor these to the individual’s needs. This support could be provided by way of mainstream services, voluntary or private sector providers, or by ensuring a carer receives support.

4. Protection orders

- Surely people might feel punished if they are the ones that are removed and not the people harming them?
- What happens after the six months banning order to ensure continued protection?
- What are the rights of appeal and how does this work? How accessible is this and what is the cost – is legal aid available?

4.1 Discussion clarified that an adult at risk should only be removed in exceptional circumstances where they are suffering serious harm. It should therefore not be viewed as a punishment for the individual, but as a means to protect them. There would also have to be a well thought out plan in place beforehand to minimise any possible distress to the adult. The plan could include specified conditions, such as contact between the adult and another person, for example a friend or relative, or supervised contact with the person who had harmed them. It may be that the person who harmed or neglected them also needs support put in place to enable them to cope or because the two of them need a bit space to work out their issues.

4.2 Before an order could be granted, the professionals would have had to come together to convince the sheriff that the order was required and to show that they had tried other ways to protect the adult. The sheriff would also require proof that the adult is to be taken to a “suitable” place. A “suitable place” will not always be a care home. It could be a friend or relative’s home instead. If it was thought that the order was not working as
envisaged then an application could be made to the sheriff to vary the order. The whole process should be creative and dynamic, constantly under review, not static.

4.3 It was emphasised that an assessment or removal order does not allow the adult to be detained once they reach the suitable place. The adult can choose to leave at any time and must be taken back to where they were taken from or to some other place of their choice, within reason. It could be that the adult would not want to go back to their home but to go somewhere else, such as to a daughter’s or friend’s house.

4.4 Discussion then turned to banning orders. It was considered that these must be viewed in the context of the whole of an individual’s circumstances. It was emphasised that the adult must be involved in the process and provided with appropriate support, such as an independent advocate. There would be a whole series of investigations and assessments conducted after the first referral to the social work service, for example risk assessment and risk management, putting the person at the centre of the process.

4.5 Although the banning order can only be granted for a maximum of six months, it would be hoped that the situation would have moved on, with any risks removed, minimised or managed. If not, another order may be applied for. The emphasis on protection orders was about managing situations in a very measured way and ensuring that plans are in place to allow the adult to move on in safety.

4.6 A few of the participants were concerned that banning orders could also have an attached power of arrest. They queried why these orders had been introduced when remedies were already available under criminal law. Clarification was provided. For action to be taken under criminal law the level of proof was “beyond all reasonable doubt”. This could mean producing forensic evidence or witness statements in court. With civil orders the level of evidence required was “on the balance of probabilities”. Domestic violence provides an excellent example of a civil order, as the abuse can be much more subtle. However banning orders under the new Act do not just apply to physical violence but can also be applied for in respect of psychological or other harm.

4.7 Participants were concerned that a hearing could be held without the adult’s knowledge or having the opportunity to attend court and put forward their views. They considered that this breached human rights legislation, particularly the right to a fair hearing and trial. However various panel members considered that not only is the Act ECHR compliant, but that it also mirrors other legislation. It was emphasised that only the sheriff can make such decisions and that he or she may only do so where the adult is at risk of serious harm and that the decision does not prejudice another person.

4.8 The reason that there is no right of appeal against an assessment or removal order is that they last for such short periods that it would be impractical for an appeal to the Sheriff Principal to be heard within that time. Neither do they allow for the adult to be detained. However there is a right of appeal against a banning order. The Scottish government was currently exploring extending access to legal aid.

5. Resource issues

- Who do you complain to if councils do not comply with the Act or provide services?
- Other legislation is meant to protect people but often doesn’t work. How will this legislation turn into a system that people can access?
- Are voluntary organisations covered by the Act with a duty to co-operate with statutory bodies (even if they do not receive any public funding)?
• What additional resources are going to be put in place to support the implementation of the Act?

5.1 Each APC should ensure that there is a complaints procedure in place. Where a council does not provide services, then it would be expected that the usual complaints procedures would apply.

5.2 A key element of the Act is partnership working and multi-disciplinary training. Initial training targeting “training the trainers” will be rolled out across Scotland. Participants will include social workers, NHS staff, the police, the Care Commission, independent advocates, the Office of the Public Guardian, voluntary groups, private and voluntary care sector staff, and service user organisations. It was vital to ensure that front line staff are aware of the part they have to play in adult protection. Although voluntary organisations do not have a specific legal duty to report, everyone should be aware of adult support and protection issues. Many organisations have a duty of care and should therefore have procedures in place to report concerns or disclosures and be aware of the “whistle blowing” procedures.

5.3 Funding of £8 million has been provided for the six month period to end of March 2009. Funding for future years would be negotiated.

6. **Adult Protection Committees**

• How will APCs ensure that there is full and effective partnership working between all the agencies involved for the benefit of the individual?
• Does the process require social work to reflect what lessons have been learned and what preventative action could have been taken?
• Will there be resources to ensure that such lessons can be acted upon?
• How will disabled people’s views be taken into account if they are not represented on APCs?
• Will service users be able to provide feedback and evaluate services received?

6.1 There has been a lot of past discussion around issues of harm and abuse. It was recognised that councils have a duty of care to the individual, the Care Commission deals with complaints relating to registered services and that the police investigate criminal activity. Who takes the lead in which circumstances was not always a clear cut issue. It was expected that this would be tested out over the next year when the Act goes live. Nevertheless, the council would still be expected to ensure that the adult is always supported throughout the process.

6.2 APCs should have robust systems in place to monitor the way the Act is being operated in their area. Their functions include encouraging and evaluating inter-agency working, developing and reviewing policies, monitoring, reviewing and training and awareness raising activities. The Act requires APC conveners to prepare a report to the Scottish Ministers every two years. The committee scrutiny and reporting arrangements should provide some reassurance that everyone is coming together to try to get it right.

6.3 Although not a statutory requirement, it would be considered good practice to appoint voluntary and service user representatives who would bring particular expertise and knowledge to the committee. However each APC must decide how it should be constituted to reflect the needs of the local population. This means that there may be different models in each area. APCs should ensure that they seek service users views and feedback on the most effective outcomes.
6.4 There was consensus that adult protection differed from child protection. Adults should be treated as such and have the right to make their own decisions where they have capacity and are not under undue pressure. The exact same processes, procedures and attitudes should not be transferred from child protection to adult protection. It was recognised that it would probably take time to get everything surrounding adult protection right.

7. **Independent advocacy**

- How can we ensure that people have access to advocacy?
- Will additional resources be made available?
- Will there still be the same need for advocacy when the social worker has more responsibility?
- Can advocacy (especially citizen advocacy) be included in the training as an aspect of support so that it won’t lead to crisis and protection?

7.1 Many of the participants believed that the Act should have made automatic access to independent advocacy mandatory. They considered that advocacy was crucial in preventing situations deteriorating and that advocacy was absolutely vital for people with dementia. There should also be the option of long term independent advocacy. One panel member provided the example of a frail elderly person where there was no social work involvement until crisis point and advised that this served to reinforce the fear that the Act may be used to remove a person to nursing care without them being able to put forward their views. However other panel members felt that this linked back to training around vulnerability.

7.2 It was explained that access to independent advocacy is not mandatory because each person’s circumstances are unique. The adult may not require an independent advocate and prefer to express their own views. What the Act does is ensure that the council must look at the various types of support that an individual requires. Anyone with a mental disorder, including learning disability and dementia, was already automatically entitled to access independent advocacy under the Mental Health (Care and Treatment)(Scotland) Act 2003, whether or not they were being treated formally under those provisions.

7.3 With regard to funding for independent advocacy services, participants felt that the lack of resources could mean that people could miss out on vital support. However others thought that it would be impractical for the Scottish Government to fund all independent organisations direct or to try to determine a level of central funding. Funding decisions should be decided locally on the basis of local need and this was an area where the APCs role in monitoring the Act could prove crucial.

7.4 Training on the Act would also be rolled out to advocacy organisations.

8. **Publicity**

- How can we raise the wider public’s awareness of what they can do to help support and protect people?
- Will there be a helpline for supporting people?

8.1 It was explained that a wide range of information, guidance and training materials were being produced, not only to raise awareness of the Act but to highlight the signs of harm. It was essential that people are alerted to the benefits of the legislation and also to alter behaviours towards some of the most disadvantaged in our society. The Scottish Government was exploring ways to ensure that the right people get the right information in the best available format to enable them to have the confidence to come forward and disclose their concerns, and to reassure them that something can be done to help.
Annex

Panel Members

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West Lothian Council

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Chief Executive
Glasgow Centre for Inclusive Living

Bert Calder
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Nurse Consultant - Learning Disabilities
NHS Highland

Marcia Ramsay
Director of Adult Services Regulation (Acting)
Care Commission

Neil Robertson
Civic Centre Project Team
Lothian and Borders Police

Andy Miller
Policy and Practice Development Manager
Scottish Consortium for Learning Disability

Paula Docherty
Age concern Scotland

Peter Sabine
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