



Vulnerable Adults Unit
Scottish Executive
Area 2-ER
St Andrew's House
Regents Road
Edinburgh
EH1 3DG

26 September 2005

Dear Sir or Madam

Consultation on Protecting Vulnerable Adults – Securing their Safety

YouthLink Scotland is the national youth work organisation for Scotland. We support the development of accessible, high quality youth work services which promote the well-being and development of young people. We are a national voluntary organisation working with both statutory and voluntary bodies. YouthLink Scotland's membership includes nearly 50 voluntary organisations, and all 32 local authorities in Scotland. YouthLink Scotland welcomes the opportunity to respond to the Scottish Executive's current consultation on *Protecting Vulnerable Adults – Securing their Safety* ("the Consultation"). YouthLink Scotland's raises certain general issues around protecting vulnerable adults, as well as focusing on a number of the specific questions set by the Consultation.

In summary, YouthLink Scotland's main points are:

- **YouthLink Scotland welcomes the Scottish Executive's commitment to introducing new measures to protect vulnerable adults**
- **We believe that the proposed Vulnerable Adults Bill could make a significant contribution to protect vulnerable adults as part of a wider package of safeguards**
- **YouthLink Scotland would welcome further details about the likely interface between the Disqualified from Working With Children List ("DWCL") established under the Protection of Children (Scotland) Act 2003 ("POCSA"), and the proposed list of people disqualified from working with vulnerable adults**
- **Further thought should be given to ensuring that the trigger for a referral to the list of people disqualified from working with vulnerable adults is closely aligned with the trigger for a referral to the DWCL**

General

YouthLink Scotland welcomes the Scottish Executive's commitment to introduce measures to protect vulnerable adults. We believe that the introduction of a Vulnerable Adults Bill could make a significant contribution to help protect vulnerable adults.

We take the view, however, that legislation will not, by itself, be sufficient to safeguard vulnerable adults, and that the Scottish Executive should introduce this Bill as part of a wider package of measures designed to protect vulnerable adults. In this respect, YouthLink Scotland considers that increased publicity to highlight vulnerable adults' rights, and the importance of protecting them from harm, could also play an important role.

In addition, providing more information to carers and other health professionals, and to families, about the steps they should take where they suspect a vulnerable adult has been abused, or is at risk of such abuse, would also be welcome.

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

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?

YouthLink Scotland believes that further thought should be given to issues around the definition of a 'vulnerable adult'. One aspect of this is where someone who would be considered a 'vulnerable adult' under the Consultation undertakes a leadership role for a voluntary organisation working with children, i.e they hold a 'child care' position for the purpose of POCSA. YouthLink Scotland strongly believes there must be clarity about whether the individual in this context will be classed as a 'vulnerable adult' or as someone in a 'child care' position.

Further consideration should also be given to issues around the age used to define a 'vulnerable adult' in the Consultation, and to how this contrasts with the age definition used in other legislation. We note, for example, that the definition of 'vulnerable adults' in the Consultation is "persons aged 16 or over who are vulnerable". By contrast, the Protection of Children (Scotland) Act 2003 ("POCSA") states that a 'child', in the context of an individual harming, or placing a child at risk of harm, is "a person under the age of 18". Against this background, YouthLink Scotland considers it essential that the Scottish Executive should provide further details about the likely interface between the proposed list in relation to people disqualified from working with vulnerable adults outlined in the Consultation, and the DWCL established under POCSA.

YouthLink Scotland's concern is that the different age definitions for a 'child' proposed in the Consultation, and enshrined in POCSA, could create a real risk of conflict between the two lists, as well as serving to confuse organisations seeking to refer individuals to Scottish Ministers for inclusion on either of the lists. Reflecting this, a vulnerable young person under 18 would currently be considered a 'child' in terms of POCSA, but would be deemed to be a 'vulnerable adult' if this aspect of the consultation becomes law. To avoid any such conflict, the definition of 'vulnerable adult', and any related guidance published by the Scottish Executive, will have to be very clear. Statutory guidance to determine which list an individual should be referred to where they have caused harm to

a child or vulnerable adult, or placed them at risk of harm, will also be essential. Alternatively, further thought should be given to establishing a single list to cover those who have harmed a child or vulnerable adult, or placed them at risk of harm.

There is also a need for more information about how the proposed list, and the DCWL, will interface with the post-Bichard system of child protection, which YouthLink Scotland understands is to be put in place. YouthLink Scotland would welcome an early opportunity to discuss these issues further with Scottish Ministers.

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

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

Given that many vulnerable adults under 18 could also be deemed to be a child for the purposes of POCSA, we believe it is essential that the trigger for referring an individual to the list of people disqualified from working with vulnerable adults should be similar to that for referring individuals to the DWCL under POCSA.

In this respect, our understanding is that individuals will be referred to the list of people disqualified from working with vulnerable adults where a vulnerable adult has been “abused”. We further note from Paragraph 2.6 of the Consultation that it is intended 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.” YouthLink Scotland takes the view that the definition of “abuse” should be widened to include action or lack of action which causes the vulnerable adult harm, or places the vulnerable adult at risk of harm. This would be consistent with the provisions of POCSA.

Significantly, Section 18 of POCSA provides that “harm includes harm which is not physical harm”. By way of further background, the guidance pack on POCSA commissioned by the Scottish Executive and prepared by a consortium, including YouthLink Scotland, for the voluntary sector clearly states:

“This means that “harm” would not only cover the deliberate infliction of physical or mental harm but also where harm resulted, or might have resulted, from a degree of carelessness or neglect which amounted to misconduct”; Protecting Children and Young People, A Guide and Training Pack for the Voluntary Sector.

Ensuring that there is consistency in the triggers for referring individuals to the list of people disqualified from working with vulnerable adults, and to the DWCL, will help to protect vulnerable adults and children.

Further consideration must also be given to the definition of ‘abuse’ which relies on the adult being ‘distressed,’ given that inappropriate behaviour, although completely unacceptable, may in the first instance not cause the vulnerable adult distress. An example could be where a vulnerable adult with Downs Syndrome who is very tactile may not realise that a response in a similar manner by a responsible adult is totally inappropriate. YouthLink Scotland strongly believes that, in order to protect vulnerable adults, the definition of ‘abuse’ should, therefore, clearly state that abuse will occur whether the vulnerable adult displays distress or not.

Question 5: Do you agree that Adult Protection Committees should lead the investigation of abuse, 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?

YouthLink Scotland would welcome further information about the proposed make up of these committees.

YouthLink Scotland notes it is anticipated “that investigative procedures will be conducted in a wide range of settings, including regulated services”, and that it is proposed Adult Protection Committees “should lead on investigating allegations of abuse in all settings, including allegations of abuse in regulated care settings”. We would welcome further information about the level of resources which will be available to enable the Adult Protection Committees to fulfil this significant role, particularly in relation to leading “investigations into alleged abuse of vulnerable adults”. Further information about the steps which will be taken to ensure that each committee has sufficient specialist staff to conduct investigations would also be helpful. In addition, clarification of the committee’s powers to take evidence, and to question witnesses, would be welcome. Furthermore, it would be helpful if guidance could be prepared outlining when the ‘abuse’ of a vulnerable adult will merit investigation by the Procurator Fiscal Service and the Police, rather than by the Adult Protection Committee. Similarly, confirmation should be provided of the procedures and mechanisms which will apply in determining when an investigation initially launched and conducted by an Adult Protection Committee would become a matter for the Procurator Fiscal Service and for the criminal courts. In this context, clear guidance should be provided to the committees to ensure that any evidence gathered during a preliminary investigation does not become tainted for the purposes of any subsequent criminal proceedings which may be brought against a person alleged to have abused a vulnerable adult.

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

YouthLink Scotland takes the view that the structure and powers of the Adult Protection Committees should be clearly defined in statute. This will provide useful clarity for staff working for these committees, and also for any individuals, agencies or organisations subject to an investigation.

Setting these powers out on the face of the legislation will also help to ensure that the Scottish Parliament has an opportunity to fully debate these provisions during its detailed analysis of the legislation.

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

Risk assessment should be put in place as soon as someone is deemed to be a vulnerable adult. This will help to minimise the risks of abuse taking place.

Where such abuse does take place, however, key agencies should, as a matter of urgency, provide assistance on a co-ordinated basis to address the victim's welfare needs. Steps should also be taken, as part of any investigation of the abuse by the Adult Protection Committees or by the Procurator Fiscal Service and the police, to determine if any other vulnerable adults or children have been abused.

In the medium to long term, where abuse has taken place all relevant agencies and organisations should review their risk assessment and management to prevent similar abuse or harm taking place in future. In this context, the Adult Protection Committees' could play a key role in promoting Best Practice.

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.

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

We consider that the use of mediation should be determined on a case by case basis. YouthLink Scotland considers that the appropriateness of mediation will depend on the capacity of the individuals concerned to participate in that process. Indeed, it is often the case that, where the situation of care has created such stress as to result in harm or abuse, one or either party would be unable to participate in a mediation process.

YouthLink Scotland believes that mediation would also be completely inappropriate in cases where the circumstances of the case require criminal charges to be brought against the person who has abused a vulnerable adult.

Please do not hesitate to contact either myself or Robert McGeachy, Senior Development Officer (Policy and Practice), on 0131-313-2488 if you require more information, or would like to discuss any of the issues raised in our response further.

Yours faithfully

Margaret McLeod
Head of Development