



Protection of vulnerable groups (Scotland) Bill

WRVS Written Evidence to the Scottish Parliament Education Committee

9 November 2006

WRVS in SCOTLAND

WRVS in Scotland helps older people get more out of life. Our 12,000 Scottish volunteers provide services to older people in their neighbourhood to help them stay safe and well at home, remain active and independent in their community, and have a better experience in hospital. In Scotland our 150 community-based schemes offer support to people who are facing loneliness or who have limited mobility at home. Our 60 hospital projects provide key services, such as cafés and volunteer guides, for patients, visitors and NHS staff. Our 230 emergency services teams are on call 24/7 to assist communities affected by crises or disasters. Working with local councils, NHS Boards and other organisations, we deliver services right across the country. WRVS is one of the largest charities working in Scotland.

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WRVS has welcomed the Scottish Executive's commitment to improve the Disclosure system in Scotland to ensure the best possible protection for children and adults at risk of abuse. We are supportive of many of the principles of these proposals, including the provision for adult barred lists, access to ongoing, "live" Disclosure records for employers and improvements to the vetting system. However, we are deeply disappointed in the drafting of key elements of this Bill with regards to the protection of adults.

After detailed discussion with the Scottish Executive and taking our own legal advice on the draft legislation, we have concluded that, at best, this Bill-as-introduced is unclear and ambiguous; at worst it does not meet the policy intentions of the Bill at all with regards to protecting vulnerable adults.

Whilst we have concerns about the proposed operation of the Scheme, which we are more than happy to discuss with Members separately, this submission of written evidence will focus on the core definitions of "protected adults" and "regulated work with adults". In our opinion, if fundamental amendments are not made to these two sections of the Bill, then the Scheme will exclude WRVS services and fail to provide protection to many adults in Scotland who are at risk of harm because of disability, mental disorder, illness, infirmity or ageing.

Last year WRVS' community-based services alone delivered support to 38,000 vulnerable adults in Scotland. Most of these services involve individual volunteers supporting people, who are vulnerable by reason of disability, illness, or age, through one-to-one contact in the home and the community. Volunteers now offering themselves for this type of project work are subject to Enhanced Disclosure checks, and rightly so; they are in positions of great trust, given the close bonds they build with vulnerable service users, often behind closed doors over extended periods. However, under the Bill as drafted, we believe all of these volunteers will be actively excluded from joining the Vetting and Barring Scheme because WRVS does not provide "regulated work" to "protected adults" as defined in the Bill.

WRVS appreciates that the inclusion of our workers in the Vetting and Barring Scheme will result in us facing significant additional administration and increased costs. As a result, we would ask for a phased entry to the Scheme to give us time to adapt our internal systems and prepare appropriately. However, as a responsible employer and a charity campaigning for the independence and dignity of older people living in the community, we believe it is essential that the Bill is re-drafted to ensure all vulnerable adults, including those receiving WRVS services, can receive protection under these laws – as the Bill before Westminster does.

WRVS calls on the Education Committee to:

- 1. Amend the definition of "protected adult" to match the definition of "adult at risk" in the Adult Support and Protection Bill (ASP Bill)**
- 2. Subsequently amend the definition of "regulated work" to clarify relevant service delivery**
- 3. Provide for phased, but not retrospective, entry to the scheme on the face of the Bill**

Section 94 – the definition of a "protected adult"

We are surprised that, between the consultation period for this Bill and the production of the draft legislation, the Executive has shifted its focus from "vulnerable" or "at risk" adults, to "protected adults". WRVS cannot emphasise enough to the Committee how this apparently small change in the relevant definition will have radical consequences for the operation of the Scheme.

In order for WRVS volunteers and employees to be included in the Scheme – and our service users to gain full protection under this legislation – we need to be able to confirm that, first, the service user we are working with is a "protected adult". If they are, we then need to establish, in turn, whether we are providing them with "regulated work". If WRVS cannot confirm that a vulnerable service user is

“protected” under the terms of Section 94, then we are immediately providing services outside of the Scheme. This is at the heart of our serious concern about the Bill as it stands. Below, we outline the practical difficulties inherent in the Bill at present.

Section 94 of the Bill appears to state that adults are only “protected” whilst in receipt of specific services from any individual or organisation providing one or more of the statutory services detailed in this section. As such, adults are never “protected” per se by virtue of their condition. Protection arises only as a result of the type of service being received – and the only services included are those provided under particular statutes. So, an elderly Mr Brown with mild dementia would be a “protected adult” whilst receiving a service at home from his local social worker (i.e. a service provided under the 2001 Act). However, he would not be a “protected adult” for the purposes of WRVS service provision, whatever his particular circumstances or condition; this is because WRVS does not generally provide any of the statutory services listed in section 94. This alone would mean that no WRVS volunteer or employee working with Mr Brown would be permitted to join the Vetting and Barring Scheme and Mr Brown would not be assured of protection under this legislation whilst receiving our services. This is a wholly unsatisfactory situation and one that we think the general public will find as difficult to understand as we do at WRVS.

However, the Scottish Executive has advised WRVS that it *intends* this section to mean that any adult in receipt of any of the section 94 services is “protected” for the purposes of all provision of “regulated work”. Unfortunately, even if this were a possible, literal interpretation of the draft - which in our view it is not - it is not a preferable reading of the Bill: such an outcome would be, quite simply, operationally unworkable. Under such an interpretation WRVS, when providing any service “regulated” under Schedule 3, would be expected to know the full and ongoing care package received by every service user in receipt of this service in order to ascertain whether or not the service user were a “protected adult” under the terms of Section 94. Only then could WRVS know whether an individual is party to the protections afforded under this Bill and be sure of remaining within the law. Whilst this interpretation might provide a very neat solution on paper, on the ground, for reasons of resources, confidentiality, communication and human fallibility, it would result in chaos. The details of integrated care packages rarely exist in a clear, accessible, properly documented and up-to-date form – particularly in respect of low-level care services in the voluntary sector, where the provider is unlikely to be party to statutory-led care discussions. Here are four all-too-possible cases where, under the Executive’s intended definition, WRVS would be – unjustifiably – at serious risk of breaking these new laws.

1. Mr Brown self-refers to a WRVS good neighbours scheme and refuses to divulge details of other services received. WRVS would be unable to ascertain whether he is a “protected adult”.
2. Mr Brown self-refers to a WRVS good neighbours scheme and, as a result of his mild dementia, he simply does not know what other services he receives. WRVS would be unable to establish whether he is a “protected adult”.
3. Mr Brown receives no statutory services when he self-refers, but then goes on to receive a statutory service under Section 94. WRVS would be unlikely to know that he has become a “protected adult”.
4. WRVS knows that Mr Brown is receiving a listed statutory service that results in him being a “protected adult” at the start of our service provision. However, we are not informed when this service ends. WRVS does not know that Mr Brown is no longer a “protected adult”.

We question whether Mr Brown would even know whether the services he receives from other providers fall under the 1968 Social Work Act, or any other listed Act under Section 94 of this Bill.

Neither of these two quite different interpretations of the “protected adult” definition in the Bill – the WRVS reading of the Bill and the Executive’s - provides WRVS with any clear access to the Scheme. Any attempt to classify a “vulnerable group” by virtue of the receipt of a particularly defined service alone is not going to provide the answer to ensure that adults at risk can be assured of receiving the very best protection under the new Scheme. Indeed, we would argue that it is often those not in receipt of any heavily-regulated, statutory services at all who are the most vulnerable to abuse. Adults are vulnerable because of their condition, not because of a set of particular narrowly-described services received.

We simply do not understand the Executive’s reasoning in moving from a focus on protecting vulnerable (or at-risk) adults in the consultation process and the title of the Bill, to a focus on “protected adults” in the Bill’s definitions. The Executive’s explanation for focusing on a service-based definition, rather than

using the person-centred definition of “adults at risk” in the Adult Support and Protection Bill is twofold. First, it is to avoid friends and family providing informal support being caught by the provisions in this legislation; second it is because they claim the intentions of the ASP Bill differ from the intentions of the Bill in hand. On the first point, we would ask the committee to note that the Safeguarding Vulnerable Groups Bill passed by Westminster, includes a vulnerability definition for adults and simply adds a clause to remove friends and family from the provisions of the Act (section 43). We believe that section 95 of the Scottish Bill already excludes family members and friends from the definition of “work”. On the second, we would challenge the emphasis on difference between the sister-Bills passing through parliament. The ASP Bill is designed to give new powers to authorities to protect those adults at most risk of harm; the Protection of Vulnerable Groups Bill is designed to set up lists of barred workers and improved disclosure mechanisms to protect children and those adults most at risk of harm. The most vulnerable adults are at the heart of both Bills.

We believe that the Scottish Parliament could assist those of us implementing such legislation on the ground by ensuring consistency between the definitions of adults at risk. Amending the definition accordingly in this Bill would also include WRVS services clearly within the remit of the Scheme. We call on the Committee to amend the definition of “protected adults” in this Bill to match the definition of “adults at risk” in the ASP Bill.

Schedule 3 – the definition of “regulated work with adults”

We understand the Executive wishes to define the regulated work of “caring” (schedule 3, part 2 (3)) as widely as possible (though our discussions to date have not entirely clarified for WRVS the clear edges of this scope and this will cause difficulties in interpretation unless it is addressed in the passage of the Bill). Whilst the definition of “protected adults” continues to exclude WRVS services however, the definition of “caring” is irrelevant as it refers only to caring for “protected adults”. However, if the Committee amends the definition of the adult vulnerable group embraced by this Bill, we believe that this schedule relating to regulated work with adults will need to be reviewed to define more clearly the types of services delivered to “adults at risk”. A key difference in definition from the Westminster Bill is that MPs have defined regulated work as being “carried out frequently by the same person”. As a starting point, it would be helpful to include this in the Scottish Bill. The drafting should also be amended to ensure consistency between the phrases “regulated work to protected adults” and “regulated work to adults”.

The consequences of WRVS services being excluded from the Scheme

From our conversations with the Executive we are assured that it is not its intention that we should be excluded from the Scheme. We are delighted to hear this and happy to work with all parties to resolve these key issues. However, intentions aside, the wording of the current Bill results in WRVS’ services remaining outwith the remit of this Bill. As such we, and our service users, face a number of serious consequences:

1. WRVS will be unable to ensure that all its relevant volunteers and employees, working with adults at risk, are subject to the rigorous checks and measures recommended in the Bichard Inquiry
2. Although we will be able to continue to access the current Enhanced Disclosure system, if the Bill is passed as tabled, we do not believe it makes clear any possible link between Enhanced Disclosure and the CBU. So, for example, Mr Smith is a retired plumber who approaches WRVS to volunteer in a good neighbours project. He has never worked in the “regulated workforce” before. He is put forward for an Enhanced Disclosure check and information is disclosed that shows he has been convicted twice for defrauding adults with learning disabilities prior to the passing of this Bill. We believe that, as he is not providing “regulated work” to “protected adults” Mr Smith could not be referred to the CBU to be considered for inclusion on the barred lists.
3. We will not be party to ongoing Disclosure and will be forced to rely on the current, inefficient “snapshot” approach to protecting our service users from harm.
4. Our volunteers will continue to face the barrier of completing new Disclosure forms each time they wish to take up a new volunteering opportunity – this is a major barrier to older volunteers.
5. Unless we are clearly providing regulated work to the adult “vulnerable group” WRVS will have no duty and, more significantly, no powers to refer issues of serious concern regarding an employee

or volunteer to the Central Barring Unit. This simply replicates the current, unsatisfactory, system with POVA in England and Wales, which has given us serious cause for concern for some time. The Safeguarding Vulnerable Groups Bill now addresses this situation south of the border. We would not want to see this initial POVA difficulty recreated in Scotland.

6. The Bill, as it stands, risks opening voluntary sector service users and organisations to a dangerous loophole, whereby those determined to abuse adults at risk may attempt to gain access to potential victims through services such as ours, which exist outwith the provisions of the new Vetting and Barring Scheme.
7. As a charity providing services across Britain, we will be required to monitor and administer two very different schemes. Under the Westminster Bill we will have the power to opt-in to the scheme in England and Wales, though as yet no duty to do so; in Scotland we believe that we shall have neither the power nor the duty to do so. This inconsistency is not acceptable.
8. Finally, we believe this Bill will have a negative impact on our relationship with the statutory sector. Local authorities and NHS Boards commission many of our services and we, like the rest of the voluntary sector, are increasingly reliant on working together with statutory agencies to fund and deliver services. Currently we can assure our statutory partners of parity in the protection of service users through our access to Enhanced Disclosure checks – the same checks available to their own staff. Under this Bill, as drafted, this parity disappears as the “gold standard” Vetting and Barring Scheme is unavailable to WRVS volunteers. We believe that statutory commissioners will not look favourably on future working with us, and other third sector agencies in the same situation, if we cannot match the levels of protection expected by them in their own services. This would have extremely serious consequences for the future of our services to older people across Scotland.

Retrospective Vetting and Barring checks

We do not have the space in this written evidence to detail all our concerns about the operation of the Scheme. However, we are particularly concerned by the signalled intention in the financial and policy memoranda to require retrospective checking of the whole relevant workforce within three years of the passing of this Bill. WRVS believes that this single intended action could result in the failure of the whole Scheme – thereby opening vulnerable groups to increased risk of harm. First, we question the ability of the new Executive Agency to be set up, establish new procedures, communicate guidance, take delivery of the integrated ICT systems required to realise this Bill, and then vet every single relevant worker, within three years. This is vastly ambitious given the difficulties that Disclosure Scotland has had in the past in delivering on the much simpler current system.

Second, the cost to the voluntary sector is prohibitive. WRVS estimates the administrative costs of checking all of our 12,000 **volunteers** in Scotland under the new Scheme, were we included, would be £250,000. This does not include administration costs and fees for checking relevant paid staff, nor any outlay on internal training. With no additional revenue being offered to service providers by the Executive to cover such costs, we would be obliged to draw funds from frontline services or reserves. Neither is in the best interest of our services in Scotland. We are not facing such a demand on our services in England and Wales.

We call on the Committee to amend the Bill to include a provision that initial entry point to the Scheme for all should be either on changing positions with a current employer or on accepting a post with a new employer. We would like to see regulations then issued, following the passing of the Bill, to define a stepped approach to the inclusion of each sector of the relevant workforce to comply with this entry point over a period of 3-5 years. WRVS is under no illusions that to be included fully in this Scheme, as we are asking, we will need time and resources to adapt our own internal systems to respond. Such an amendment would allow us to participate fully and efficiently. It would more naturally phase the roll-out of the Scheme over time and ensure capacity to deliver. It would avoid a serious financial crisis in the voluntary sector. And, importantly, it would ensure a level of proportionality that will help secure the efficient implementation of the Scheme by all involved.

WRVS would be happy to speak to any MSP in person to clarify any of the issues arising in this written evidence.