

## Response ID ANON-PG9S-F9N8-8

Submitted to **Clinical Pathways and Guidance for Healthcare Professionals Working to Support Adults who Present Having Experienced Rape or Sexual Assault in Scotland**

Submitted on **2019-02-04 18:43:58**

### Section 1: The pathway

#### 1 Is the pathway person-centred?

Not Answered

##### 1. Is the pathway person-centred?:

#### 2 Does the pathway show understanding of trauma and reduce the risk of causing further trauma to an individual?

Not Answered

##### 2. Does the pathway show understanding of trauma and reduce the risk of causing further trauma to an individual?:

#### 3 Is the pathway easy to navigate?

Not Answered

##### If no, what would make it easier?:

#### 4 Are there any gaps in the pathway?

Yes

##### If yes, please provide details on where the gaps are and how they can be filled.:

At section 3.2 Social Factors, we suggest adding an additional paragraph highlighting the vulnerability of people with disabilities, particularly learning disabilities, to sexual abuse. There is considerable evidence that the prevalence of sexual abuse of people with learning disabilities is higher than the general population . Factors contributing to their vulnerability may include difficulties in understanding the context of abusive behaviour, resisting unwanted behaviour or communicating their experience to others, and wider stigma and marginalisation, leading to their being targeted by abusers.

In relation to people with disabilities, including learning disabilities and mental illness, it is important to be aware of the context of the UN Convention on the Rights of Persons with Disabilities, particularly the provisions of Article 12 - that in all aspects of life, persons with disabilities enjoy legal capacity on an equal basis with others, and that States must provide appropriate support to exercise their legal capacity; Article 13 - that States should ensure effective access to justice; and Article 16 - that States shall take all appropriate legislative, administrative etc. measures to protect persons with disabilities from exploitation, violence and abuse.

#### 5 Does the pathway reflect the processes and research outlined in the guidance document?

Not Answered

##### If no, please be specific with your reasons.:

### Section 2: Healthcare

#### 1 Is the healthcare component of the pathway person-centred?

Not Answered

##### If no, please be as specific as you can with your reasons and include any resources or references about this topic we should consider.:

#### 2 Does the healthcare component show understanding of trauma and reduce the risk of causing further trauma to an individual?

Not Answered

##### If no, please be as specific as you can with your reasons and include any resources or references about this topic we should consider.:

#### 3 Do you agree with the healthcare components:

##### a) Emergency contraception - a) Emergency contraception:

If no, please be as specific as you can with your reasons and include any resources or references about this topic we should consider.:

##### b) Pregnancy risk - b) Pregnancy risk:

If no, please be as specific as you can with your reasons and include any resources or references about this topic we should consider.:

**c) Sexually transmitted infections (STIs) –including hepatitis vaccines and HIV post-exposure prophylaxis - c) Sexually transmitted infections (STIs) –including hepatitis vaccines and HIV post-exposure prophylaxis:**

If no, please be as specific as you can with your reasons and include any resources or references about this topic we should consider.:

**d) Psychosocial risk assessment, including domestic abuse and suicide risk assessment - d) Psychosocial risk assessment, including domestic abuse and suicide risk assessment:**

No

If no, please be as specific as you can with your reasons and include any resources or references about this topic we should consider.:

We have no issues with the guidance so far as it goes, but suggest there could be greater detail in 7.2 in relation to Adult Support and Protection, giving information on when to make a referral and linking to appropriate guidance.

Each health and social care partnership will have developed multi-agency ASP procedures as a guide for professionals. Police Scotland also have a Public Protection hub and health and social care professionals will work in partnership with the Police on sexual abuse cases.

The Adult Support and Protection Code of Practice 2014 gives clear guidance on ensuring full participation by the adult in an investigation, as laid out in section 2 of the Act. There is less on when to intervene in cases of sexual assault, but this document should be referenced.

At 7.2.3, the reference to support for people with learning difficulties should be broadened – we suggest it should say 'Local pathways should be in place for use of interpreters including British Sign Language interpreters, for support for people with learning disabilities or other communication needs (e.g. Speech and language therapists), and for general support and advocacy for anyone with a learning disability or mental illness.'

Again, the Adult Support and Protection Code of Practice Chapter 5 gives clear direction on this highlighting the use of advocacy services, clear communication aids and the use of reasonable adjustments to ensure barriers to the process are eliminated.

[http://www.rcslt.org/asp\\_toolkit/adult\\_protection\\_communication\\_support\\_toolkit/welcome](http://www.rcslt.org/asp_toolkit/adult_protection_communication_support_toolkit/welcome)

[odi.dwp.gov.uk/inclusive-communications/alternative-formats.php](http://odi.dwp.gov.uk/inclusive-communications/alternative-formats.php)

The above links have been produced by The Royal Society of Speech and Language Therapists and the Office of Disability to combat such barriers and aid professionals.

**4 Do you have any further comments or additions about the healthcare component of the pathway?**

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### **Section 3: Preserving Forensic Evidence**

**1 Is the forensic examination process person centred?**

Yes

**Please provide further comments to support your answer.:**

In general we agree that it is person-centred, but would comment as follows in relation to 7.4.2:

We agree that issues of sexual orientation or identity are relevant, but not sure they should be classed as 'Vulnerabilities'.

Mental illness should be added to the list of 'Vulnerabilities'.

**2 Does the forensic examination process show understanding of trauma and reduce the risk of causing further trauma to an individual?**

Not Answered

**Further comments:**

**3 To your knowledge, does the forensic examination component support and enable the legal process?**

No

If no, please be as specific as you can with your reasons and include any resources or references about this topic we should consider.:

Again, we have no issues with the content as it stands, but it would be helpful to consider adding some cross-referencing to Adult Support and Protection procedures where appropriate. Section 9 of the Adult Support and Protection (Scotland) Act 2007 is clear on the requirement for medical examinations and the Code of Practice has given as an example:

Where there is an allegation or disclosure of sexual abuse and the type of assault may have left physical evidence.

Section 9 (2) of the 2007 Act states that the person to be examined must be informed of their right to be refused to be examined.

The Code of Practice Chapter 9 gives further guidance on how to proceed if consent is refused. This is also relevant to section 8.3 of the Pathway.

Both the issue of communication with adults and disabilities and obtaining consent in relation to incapacity, may require training / awareness raising for professionals in this area.

**4 Do you agree with the guidance on colposcopy outlined in this document?**

Not Answered

If no, please be as specific as you can with your reasons and include any resources or references we should consider in relation to colposcopy.:

## 5 Do you agree with the guidance in this pathway on informed consent?

Yes

If no, please be as specific as you can with your reasons and include any resources or references we should consider in relation to informed consent.:

## 6 Do you agree with the guidance in this pathway on incapacity?

No

If no, please be as specific as you can with your reasons and include any resources or references we should consider.:

We believe this section requires a considerable amount of further work to accurately reflect the law and provide the most helpful guidance. It would be helpful to do this with a small group of people or agencies with expertise in this field.

Most importantly, some clarity is needed on the position of forensic examinations which go beyond what is required for medical treatment. The provisions of Part 5 of the Adults with Incapacity (Scotland) Act are specifically directed at authorising medical treatment to safeguard or promote the physical or mental health of the adult. An intrusive examination to gather forensic evidence may not fall within that category, so may not be covered by the authority to treat.

We suggest the guidance should set out the following approach in relation to the forensic aspect of the examination

- The primary focus should be on assessing and treating the healthcare needs of the adult
- It is acceptable to collect forensic evidence where doing so is incidental to the consideration of the adult's healthcare needs
- Where the forensic examination involves more intrusive interventions, e.g. to take samples, this should normally only be done where the adult is not resisting the intervention and there is minimal discomfort and risk to the adult.

We are not expert in the nature of current forensic examinations, and are not sure if this approach might rule out any particular approaches which may generate important evidence. If so, we'd be happy to discuss what further refinements might be added.

In relation to the Flow Chart at page 50, this sets out the procedure for treatment in non-emergency situations, where there is time for the medical practitioner to complete a certificate under s47 of the Adults with Incapacity (Scotland) Act. We are not sure whether this is practical in the context of a medico/forensic examination following a sexual assault. If it is not, it would be important to set out what should happen, drawing on the relevant Code of Practice for Part 5 of the Act - <https://www2.gov.scot/Topics/Justice/law/awi/010408awiwebpubs/cop>. There should still be an assessment of the patient's capacity to make a decision, and of the appropriateness and extent of the interventions, taking account of the adult's wishes and feelings, so far as they are ascertainable.

Incidentally, the word 'Incapacity' is missing from the heading of the flow chart.

The document covers loss of capacity due to intoxication, but we would like more advice on the situation of impaired or lost capacity due to trauma and shock.

It should be made clearer whether the section beginning 'Each patient and their condition should be evaluated ...' on pages 51-52 applies only to the heading above of 'Patient with Serious Injury/Unconscious Patient' or is intended to apply to the whole of 8.2. Assuming it is the latter, as we set out above, the statement that 'forensic medical examination should be undertaken if it is considered to be in the best interests of the patient' requires a more nuanced consideration of the purpose of the examination.

The first and fourth paragraph on page 52 cover the same point. We would suggest combining them as follows:

'The Forensic Examiner should consult any legally appointed welfare attorney or welfare guardian. They should also consider speaking to family members or others close to the patient about the nature and purpose of the proposed examination in order to determine and take into account the person's past and present wishes and feelings, beliefs and values.'

## 7 Do you have any further comments or additions about the guidance on preserving forensic evidence?

### 7. Do you have any further comments or additions about the guidance on preserving forensic evidence? :

We have comments on 8.3 Refusal of any Elements of the Examination

This implies that it is only people with capacity who can refuse an examination. Some guidance should be given on the situation where a person without capacity refuses or resists the examination. We suggest something on the following lines –

"Where a person with incapacity refuses or resists any part of an examination, appropriate support and reassurance should be given. If this is unsuccessful, the examination should not proceed in the face of resistance unless there are compelling reasons to do so. Force must not be used except where absolutely necessary, for example a medical emergency."

## Section 4: Follow-up care and referrals

### 1 Is the follow-up care component person-centred?

Not Answered

If no, please be as specific as you can with your reasons and include any resources or references we should consider.:

### 2 Does the follow-up care component show understanding of trauma and reduce the risk of causing further trauma to an individual?

Not Answered

If no, please be as specific as you can with your reasons and include any resources or references we should consider.:

### 3 Are there any gaps (such as services or referrals) in the follow-up care component?

Not Answered

If yes, please be as specific as you can with your reasons and include any resources or references we should consider.:

**4 Does the follow-up care component support smooth transitions between services?**

Not Answered

If no, please be as specific as you can with your reasons and include any resources or references we should consider.:

**5 Do you have any views or comments on the information that survivors should receive after accessing healthcare and forensic medical examination services?**

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**Section 5: The National Form**

**1 How would the national form support implementation of this pathway?**

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**Section 6: Final comments**

**1 Are there any key areas of research missing?**

Not Answered

If yes, what would you like to see considered? Please provide a link to the research/publication where possible and flag which elements of the guidance they relate to.:

Do you have any comments or additions on topics which are not covered in previous sections? Please be specific in your reasons and include any resources or references we should consider.

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**About you**

**What is your name?**

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**Are you responding as an individual or an organisation?**

Organisation

**What is your organisation?**

**Organisation:**

Mental Welfare Commission for Scotland

**The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:**

Publish response only (without name)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

**Evaluation**

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

**Matrix 1 - How satisfied were you with this consultation?:**

Slightly dissatisfied

**Please enter comments here.:**

The questions did not all clearly relate to the contents of the document which was the subject of the consultation - it would have been easier to navigate if the relevant paragraph numbers had been given throughout

**Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:**

Neither satisfied nor dissatisfied

**Please enter comments here.:**