

Adult Protection Bill: Supplemental evidence submitted by the GMC, December 2025.

- 1 We understand that the definitions of adult at risk in s3 of the Adult Support and Protection (Scotland) Act 2007 ('the Scotland Act') and s126 of the Social Services and Well-being (Wales) Act 2014 ('the Wales Act'), and clause 2 of the Bill all capture adults with and without capacity. We have therefore considered the Codes of Practice issued in Scotland and Wales to better understand how the duty to report an adult at risk in those countries interacts with the duty of confidentiality.
- 2 Our understanding is that registrants should exercise their professional judgment in deciding whether to refer by weighing the relevant considerations and applying them to the facts and circumstances of the individual case. This balancing exercise will include consideration of the duty to report in clause 4 of the Bill, the duty of confidentiality, relevant Convention Rights such as the Article 8 (right to private and family life), data protection legislation and our professional standards and guidance.
- 3 In terms of application of the above to the Bill as currently drafted, it seems that an appropriate approach for our registrants when deciding whether to report an adult at risk would involve:
 - 3.1 Assessing whether the adult is likely to meet the definition of adult at risk in clause 2 of the Bill. We understand each of the requirements in (1)(a)-(c) must be met. This means that the adult at risk is:
 - 3.1.1 unable* to protect A's own well-being or property;
 - 3.1.2 the conduct of another person is causing (or is likely to cause) A to be harmed; and
 - 3.1.3 A's personal circumstances increase A's exposure to harm.
 - 3.2 The registrant should assess whether the grounds in clause 4(2) are met, namely:

*In the Scottish Code of Practice, we note that a distinction is drawn between an adult that is **unable** to protect themselves and an adult who is **unwilling** to protect themselves. Under the Scottish approach, an adult with capacity that can protect themselves but freely chooses not to won't meet the definition of an 'adult at risk'.

there is reasonable case to suspect that the person is an adult at risk **and** that action needs to be taken in order to protect that person from harm. If it appears that the adult meets the definition of an adult at risk **and** action under clause 4(2) is required, the registrant should then consider whether they have capacity:

3.2.1 if they do not have capacity, the doctor should assess whether it is in their best interests for the referral to be made:

3.2.2 if they do have capacity, discuss the referral with them and seek their views

3.3 If the adult either

3.3.1 does not have capacity to decide whether to agree to referral but referral is deemed in their best interests or

3.3.2 has capacity and consents to the referral being made

then referral of necessary information under clause 4(2) can be made.

3.4 If the adult does not consent to the referral being made, then, in our view there may be cases where not referring could be justified, even where the grounds are met. For example, where there is no risk of harm to others, the patient has capacity and does not consent to the referral and the duty of confidentiality / right to privacy outweigh the duty to report in the circumstances. In complex cases we would expect doctors to discuss the issues with an experienced colleague and document this discussion. When deciding the appropriate way forward an assessment should be made as to whether the risk of harm that may follow breaching confidentiality can be justified where the risk of harm that may follow not making the referral is greater.

4 The above approach is consistent with our understanding of the policy intention. In a meeting with the Bill team on 9 September 2025 we were advised that the intention is for practitioners to use their professional judgement to arrive at decisions that centre the interests and rights of adults at risk, and having further clarity on this point would be helpful.