Iriss

Adult Support and Protection

Everyone's business

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Contents

Key points

- Adult Support and Protection (ASP) is designed to support and protect adults who are unable to safeguard themselves, their property and their rights
- The Adult Support and Protection (Scotland) Act (2007) (ASPA) both defines and provides a legislative framework for ASP
- ASP is everyone's business – reliant on wider public awareness and effective multi-agency working, with some public bodies having duties prescribed under the ASPA
- There is an upward trend in ASP referrals and further ASP action undertaken following referral; and an upward trend in Large Scale Investigations (LSIs) where it is suspected that more than one adult is at risk of harm from the same service or harmer
- ASP is a relatively young and developing community of practice; it operates in a changed and changing policy and practice context, with growing appreciation that it can have direct relevance to a broader range of people than originally anticipated
- ASP increasingly sits within a wider discourse on Public Protection, with opportunities to further develop links across different services and policy areas
- A focus on improvement, learning and development has developed, with plans to strengthen this at both local and national level; to engage and support the rights of adults in decision-making and to take a trauma informed approach

1. Introduction

1.1. What is Adult Support and Protection?

Adult Support and Protection (ASP) is designed to support and protect adults who are unable to safeguard themselves, their property and their rights. The **Adult Support and Protection (Scotland) Act 2007** (ASPA) both defines and provides the legislation framework for all of this work.

ASP focuses on supporting a particularly defined group of vulnerable adults deemed to be 'at risk.' Under **Section 3(1) of the ASPA** an 'adult at risk' is defined as someone who is 16 years and over who meets **all three** of the following criteria (previously referred to as the three-point test):

- Unable to safeguard their own well-being, property, rights or other interests;
- At risk of harm; and
- That because they are affected by disability, mental disorder, illness or physical or mental infirmity they are more vulnerable to being harmed than adults who are not so affected.[1]

ASP, unlike the Adults with Incapacity (Scotland) Act 2000 is ***not*** contingent on capacity assessments. Instead, it relies upon an assessment of a person's ability to safeguard themselves within a specific context. Practitioners need to be alert to the fact that an individual's vulnerabilities, medical conditions and abilities can fluctuate over time, hence an individual's circumstances might require re-evaluation against the three-point criteria.

The type of harm experienced by adults at risk can take many forms: physical harm; psychological harm; self-harm; neglect or self-neglect; harm to their rights or financial interests such as theft, fraud, embezzlement or extortion. This is not an exhaustive list, and no category of harm is excluded simply

1 Physical or mental infirmity are distinct from a disability or a disorder, and are not defined in the ASPA. 'Infirmity' is no longer a term that is favoured when describing disability, nor does infirmity rely on a medical diagnosis, nor does having a disability necessarily mean you are unable to safeguard yourself. A dictionary definition of infirmity defines it as, 'weakness (or want of strength), an inability or lack of power to do something' which is how it should be understood in ASP. It may mean lacking the skills, means or opportunity.

because it is not named in the ASPA, including institutional harm. As such, harm can occur in any setting and can be caused by anyone, intentionally or otherwise. It can happen in an individual's own home, a care home, respite or hospital setting; in a public space or in the wider community. It can also be perpetrated by an unpaid carer, relative or spouse, a friend, neighbour or acquaintance as well as a stranger or deliberate fraudster. And of course, harm can be perpetrated by the individual themselves through self-harm, self-neglect or attempted suicide. In Large Scale Investigations (LSIs) – where it is suspected that more than one adult in a given health or care service may be at risk of harm – the harm may be due to another resident, a member of staff in a facility or a care at home service, or some failing or deficit in the management regime or in the environment.

Some types of harm may result in criminal charges – with a duty to notify police right away if it is known or suspected that a crime has been committed. In instances of 'adults at risk ' being 'vulnerable to being drawn into terrorism', there would be duties to both safeguard them and safeguard others under the Prevent duty (Counter-Terrorism and Security Act 2015).

As such, it is important to highlight that while the ASPA places particular duties on Councils[2] and other public bodies, it is also everyone's business to help identify and safeguard adults at risk of harm, as we will explore in this report.

1.2. Aims of this report

This report aims to raise awareness of ASP and its important role and contribution in keeping 'adults at risk' safe. It should be of interest to all stakeholders, whether they work in local authorities, health, police, fire and rescue, or the third sector; or the public themselves.

The report also recognises that the policy and practice landscape has changed significantly over the past 15 years since the introduction of the ASPA. These changes contributed to the decision to revise the ASP Code or Practice (CoP) and a raft of other updated guidance published in 2022, with a greater appreciation of the breadth of work that can fall within the provisions of the ASPA.

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2 Given that the ASPA was published before health and social care integration (2014), it should be noted that references in guidance and Codes of Practice to 'councils' should be taken to include bodies and partnerships with delegated social work functions.

More specifically, this report will:

- Introduce readers to key ASP definitions, duties, processes and stakeholders. This will begin with ASP's origin story, providing the rationale for the introduction of the Adult Support and Protection (Scotland) Act (2007) which gives ASP its name and legislative framework, and places it within a wider legislative context.
- Share what we know about adults at risk of harm, who they are and what harms they are experiencing, highlighting any significant trends and possible contributing factors, including COVID-19.
- Highlight key issues to consider when supporting and protecting adults at risk of harm and live issues going forward in a changing environment, with future implications for various sectors.

2. ASP in context

2.1. Historic origins

It is important to understand ASP's origin story. This helps place it in historical context and makes clear the rationale for the introduction of the legislation which has defined it. This section aims to do that in brief.

Social work, police and others have always had a responsibility to help support and protect adults from harm. Traditionally, however, greater focus has been placed on state interventions to protect children, with adults regarded as usually able to safeguard themselves and with rights to make free and informed choices within the law.

In the 1990s, however, the Scottish Law Commission, like its English and Welsh counterparts, turned its attention to how the law might be improved to protect more 'vulnerable adults'. The Scottish Law Commission's (1997) 'Report on Vulnerable Adults' highlighted a number of weaknesses in the existing legal provision; chiefly that many measures only covered people viewed as having a mental disorder and were focussed on removing the person from home to institutional care. It was a high-profile case in the Scottish Borders, however, that prompted action. In 2002 it came to light that a woman in the Scottish Borders with learning disabilities, had suffered serious sexual abuse over a 30-year period. Police investigations resulted in three men, including an unpaid carer, being convicted on assault charges, with the High Court awarding prison sentences of between seven and 10 years. Subsequent reports, following inspections by the Social Work Services Inspectorate and the Mental Welfare Commission, discovered that other individuals whose care was provided by Scottish Borders Council and the local health service had also been seriously sexually abused or physically neglected. Steps to address this were required.

This led to:

- A new joint inspection regime for learning-disability services across Scotland – with every council, health board and police force in Scotland to review their services for adults with learning disabilities

- A review of social work, and the establishment of a steering group to consider law reform, with this group uncovering systemic problems including: failure to appropriately investigate serious allegations of abuse; lack of information-sharing and co-ordination within and between agencies; poor knowledge about the existing law and how to assess and balance self-determination with protective intervention (Mental Welfare Commission and the Social Work Services Inspectorate, 2004).

Ultimately, the steering group's determinations culminated in the ASPSA in 2007 and its implementation in October 2008. The ASPA established a definition of an adult at risk of harm providing the three-point criteria outlined at the start of this paper; modernised and extended powers of inquiry and access; and created assessment, removal and banning orders, collectively known as Protection Orders.[3]

Stewart (2012) describes the ASPA as aiming to fill a perceived gap between general welfare law and mental health and mental capacity law; of trying to find the right balance between personal autonomy and protective intervention and giving greater powers to council officers[4] for use in the short term, in the hope of supporting an adult to increase their ability to safeguard themselves in the longer term (with this the least restrictive option that would provide benefit for the adult).

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3 Protection Orders encompass: Assessment Orders (to allow a Council Officer to apply to the Court to be given access to assess a suspected adult at risk of harm), Removal Order (to allow a Council Officer to apply to the Court to be able to remove an adult at risk of harm to a place of safety) and a Banning Order (to allow a Council Officer to apply to the Court to have a third party banned from making contact or entering a specific area to protect the adult at risk of harm). Further details can be found in the CoP (Scottish Government, 2022b).

4 'Council officer' refers to those defined by Section 53 (1) of the ASPA as follows: A council officer is an individual appointed by a council under Section 64 of the Local Government (Scotland) Act 1973. Section 52(1) of the Act enables Ministers to restrict the type of individual who may be authorised by a council to perform council officer functions under Part 1 of the Act.

It should be noted that a council must not authorise a person to perform the functions of a council officer under sections 7 to 10 of the Act (investigative functions) unless the person: is registered in the part of the SSSC register maintained in respect of social workers or social service workers or is the subject of an equivalent registration; is registered as an occupational therapist in the register maintained under article 5(1) (establishment and maintenance of register) of the Health Professions Order 2001; or is a nurse; and the person has at least 12 months' post qualifying experience of identifying, assessing and managing adults at risk.

Where a council and Health Board have made arrangements for joint working in relation to social care and health under the Community Care and Health (Scotland) Act 2002, the term 'council officer' can apply to a person employed by the Health Board.

2.2. ASPA and other legislation

We should also be clear that the ASPA does not absolve local authorities of responsibility for others at risk or vulnerable adults who do not meet the 'adult at risk' three-point criteria. Councils continue to have responsibility to consider interventions under other legislation, including general provisions in Section 12 of the **Social Work (Scotland) Act 1968**, **Mental Health (Care and Treatment) (Scotland) Act 2003**, **Adults with Incapacity (Scotland) Act 2000** and **Adult Support and Protection Act 2007**. This might also include preventative options to avoid an adult's situation escalating to a point where they are likely considered to be 'at risk of harm.' And of course, the full range of legislation may be used as appropriate to support 'adults at risk' as defined in the ASPA, including use of different pieces of legislation in tandem.

The definition of an adult at risk includes people aged 16 years and over but particular attention may be warranted to the needs and risks experienced by young people in transition from youth to adulthood, who are more vulnerable to harm than others. As other legislation and provisions exist which include persons up to 18 years (and sometimes up to age 26 years or even beyond), support under these other provisions may be more appropriate for some young persons. Situations may arise where there are legitimate interests and engagement from services for both children and adults. Where a young person under 18 is at risk of harm, **The National Guidance for Child Protection in Scotland (2021)** is relevant for reference, alongside local procedures for sharing information across children's and adult services. Children also have rights under the **United Nations Convention on the Rights of the Child (UNCRC)**. Additional information as relates to children's rights and the UNCRC in Scotland can be found in the **UNCRC advice and guidance information** pages.

Young people may already be receiving support from a range of children's services, or as looked after children. This is not to say that they will or will not become adults at risk in terms of ASPA simply because they have reached a particular age. Each case will need to be considered individually.

3. ASP: a multi-agency endeavour

3.1. Multi-agency oversight

The ASPA stresses the need for multi-agency working in support of adults at risk of harm. It requires the establishment of multi-agency Adult Protection Committees (APCs) for every council area, with S42 duties to: review procedures and practice, give advice or make proposals, and improve skills and knowledge within and across agencies (Scottish Government, 2022d). It must be chaired by an independent Convenor who is not affiliated with any of the agencies represented. Ultimately, an APC has the lead role in ensuring cooperation and communication between agencies.[5] In turn, APCs report to the Chief Officer Groups (COGs)[6] who are accountable, individually and collectively, for the leadership, scrutiny and direction of both adult support and protection and public protection more broadly.

APCs' responsibilities will manifest in: the setting of local protocols and procedures across agencies on information sharing and indicative timescales for completion of tasks; the analysis of data to measure performance and trends; and submission of Biennial Reports to Scottish Government every two years – reviewing achievements, current issues and sharing plans for improvement and development going forward. Similarly, APCs are responsible on behalf of COGs for multi-agency learning reviews as set out in the guidance (Scottish Government, 2022a), agreeing recommendations and overseeing improvement plans (and submitting these to the Care Inspectorate as the central repository for learning reviews in Scotland to improve dissemination and support learning both locally and nationally).

5 It should be noted that there is nothing to prevent APC functions being combined in an Adult and Child Protection Committee, or an APC covering more than one council area- albeit each council remains accountable for activities in its own area.

6 Chief Officer Groups (COGs) in the context of adult protection are the Chief Executives of Local Authorities, the Chief Executives of Health Boards and Police Scotland Divisional Commanders.

APCs must involve a minimum of specified public bodies[7], although wider representation and diversity is encouraged, with it remarked in the Guidance for AP Committees that 'effective adult protection can only be achieved when it is planned and delivered within the wider context of public protection and community safety' (Scottish Government, 2022d). The guidance advises that APCs consider inclusion of representatives from Child Protection services, Multi Agency Public Protection Arrangements (MAPPA), Criminal Justice and Scottish Fire and Rescue as well as advocacy and carer organisations.

The same guidance also advises that members representing their organisation should be of sufficient seniority to represent their organisation and be able to inform discussions and make decisions on policy, strategy and resourcing.

3.2. Public body duties and role of others

In addition to the requirement to establish an APC, the ASPA identifies a range of duties on councils, and other requirements for certain public bodies to cooperate with the council and each other. These responsibilities include:

- **Duty to make ASP referrals (S5)** where an adult is known or believed to be at risk;
- **Duty to inquire (S4) and cooperate during inquiries (S5)** – 'councils'[8] have a duty to lead inquiries (S4) using investigative powers (S7-10) as necessary. These might include a visit or an interview with an adult at risk, or involve a request for access to medical or other records. Public bodies have duties to cooperate in this.
- **Duty to consider the provision of advocacy or other services after a decision has been made to intervene (S6)** in supporting adults at risk to 'participate as fully as possible'.[9]
- This is connected to the **duty to balance the need for intervention with the adult's wishes and right to live as independently as possible**, and ensuing actions to ensure that they are safe, protected, supported,

7 These are specified as: the council, the Care Inspectorate, Healthcare Improvement Scotland, relevant Health Board, Chief constable's representative (often the Divisional Commander) and 'any other public body or office-holder as the Scottish Ministers may by order specify.'

8 The ASPA makes frequent references to Councils and their officers. The ASPA was passed and enacted prior to Health and Social Care integration. As such, continuing references to 'Councils ' in any guidance should be taken to include bodies and partnerships 'that have delegated social work functions.'

9 This is not an absolute right to advocacy as the practitioner has to consider whether or not it is helpful to the adult; excepting cases where the adult has a diagnosed mental health condition, where advocacy must be offered.

involved, and consulted. Case conferences provide important time and space for this as part of ASP processes, with multi-agency input (as relevant) encouraged in jointly assessing risk, protection planning and monitoring, along with input from the adult at risk themselves and/or those they choose to accompany or represent them.

- As mentioned, there is also the **duty to inform the police if criminal activity is suspected**.

Public bodies referenced in S5 of the Act include: The Mental Welfare Commission for Scotland; The Care Inspectorate; Healthcare Improvement Scotland; The Office of the Public Guardian; All councils; The Chief Constable of Police Scotland; All Health Boards. While it is not specified in the ASPA, other services with contributions to make include (non-exhaustive): GP practices, Scottish Fire and Rescue, Social Security Scotland and the Scottish Prison Service.

The Guidance for AP committees (Scottish Government, 2022d) remarks that while an organisation like the Mental Welfare Commission for Scotland has particular responsibilities under mental health and incapacity law, APCs will want to ensure that its relationship and intersection with ASP work is agreed and understood. It comments that similar understandings should occur with the Office of the Public Guardian (Scotland) too.

And of course, organisations and individuals who are not public bodies also have important roles to play in raising concerns, supporting inquiries or ensuring that the views of adults at risk are heard – from third sector organisations to independent health and care providers, from financial institutions to consumer protection/trading standard organisations, from community safety groups to independent advocates, and the public themselves.

4. Raising awareness of ASP

Awareness of adult support and protection with partner agencies and the wider community is critical, with training and guidance for workers and public campaigns all playing a part. Where harm is known or suspected and an adult is perceived to be at risk, an ASP referral should be made to the local social work department.[10]

As highlighted in the CoP (Scottish Government, 2022b) 'referrers do not need to have evidence that all elements of the three-point criteria have been met. Good practice would dictate that even if in doubt the referral should be made and should be counted as an ASP referral.' Ultimately, responsibility lies with 'the council' as to whether there is an ASPA S4 duty to inquire further and ascertain whether further ASP action is required.

GPs and General Practice staff for example, are well placed to identify adults at risk of harm and have an important part to play in multi-agency arrangements. In September 2022 new guidance was issued for GP and Primary Care teams (Scottish Government, 2022c) with the intention of optimising their contribution beyond that required by statute. It provided helpful advice on a range of matters including: doctor-patient confidentiality and where safeguarding duties override; patient consent and transparency; data protection, information sharing and recording of what is or is not relevant and proportionate in an ASP referral – with a helpful checklist and links to resources on duties and legal obligations. Arguably, much within this guidance is helpful and transferrable to other agencies who may come into contact with adults at risk of harm.

Both the CoP and Guidance for GPs and Primary Care teams also highlight that an ASP referral begins well before the completion of a form or the making a phone call, as illustrated in the following key steps. In fact, the referral begins with skills in, and awareness of, adult protection matters.

10 Local reporting arrangements can be found on the Act Against Harm website: **www.actagainstharm.org**

- **Recognise** – this includes knowledge of how an adult at risk of harm may present, consideration of trauma and undue pressure from others which can impact on an adult's ability to safeguard themselves.[11]
- **Report** – services are encouraged to use their internal advisers where these exist for adult protection matters or discuss the need to make a referral with colleagues (while ensuring this does not cause adverse delay)
- **Refer** – Refer the individual and information about their circumstances through local adult protection referral processes. Where the matter is urgent, contact the relevant emergency services without delay.
- **Record** – use the individual's record to note the issues that arose, the circumstances, the decisions made/actions taken and rationale for these, contributing knowledge about the adult in question.

Similarly, the Scottish Ambulance Service may provide an early warning system for adults at risk, with scope to play a bigger role also. The same may be true of the Prison Service in readying prisoners for release who are at risk, or independent and third sector organisations that provide direct services.

As previously noted, it is the responsibility of Adult Protection Committees (APCs) to help improve skills and awareness of ASP across agencies, and to support signposting to relevant services.

11 The Act Against Harm website provides further information, including examples of the type of support that can be provided once a concern has been reported.

5. A portrait of 'adults at risk' in Scotland

This section aims to provide a portrait of adults at risk in Scotland and identify any key trends, using **annual data returns provided to the Scottish Government (Scottish Government, 2023)**. This data and that below provides a helpful sketch, albeit there are challenges in providing comparable and robust data across all of Scotland's ASPC, with improving data one of the priority areas in the **Adult Support and Protection Improvement Plan 2019-2022** (Scottish Government, 2019). Work to improve the quality of data is currently ongoing.

5.1. Volume of 'adults at risk'

In 2021/22 there were an estimated 41,569 ASP referrals in Scotland where an adult is known or believed to be at risk, albeit an adult can be referred multiple times by different agencies. In 2021/22, the largest source of ASP referrals came from Police Scotland (28%), Social Work/Local authorities (17%) and from NHS/GP/Scottish Ambulance Service (15%). ASP referrals have been increasing. In 2019/20, there were 760 ASP referrals per 100,000 adults rising to 910 per 100,000 adults in 2021/22; an increase in estimated ASP referrals of around 20% over this two year period.

There is also an upward trend in the requirement for further ASP action in Scotland following an ASP referral shown over this same period (rising from 42% in 2019/20 to 51% in 2021/22). It is likely that the impact of COVID-19 will have been a factor.

During the same timeframe, there has been an upward trend in the number of Large Scale Investigations (LSIs) reported, which relate to circumstances in which it is suspected that more than one adult is at risk of harm from the same service, with potential for harm to occur at scale. LSI figures have risen from 60 in 2019/20 to 50 and 83 in the two subsequent years for which data is currently available.

The ASPA makes no reference to LSIs, but these have been increasingly prevalent across Scotland since the implementation of the Act. While there are no nationally agreed definitions of what warrants an LSI, or guidance for

conducting LSIs, the Scottish Government is committed to developing further guidance to build on what is already in the current CoP.

5.2. Profile of 'adults at risk' – demographic data

Annual ASP Data returns to the Scottish Government from APCs have provided profile data for adults known or believed to be at risk, during what has been termed 'investigations.' In simple terms, this was understood as a more detailed look into an individual's affairs after an initial inquiry where this was deemed necessary by the council. It should be noted that in the revised CoP (Scottish Government, 2022b) there is a clear and marked shift away from talking about inquiries and investigations as separate and distinct things, or there necessarily being a two-step process. Rather, there is a singular S4 duty to inquire, and during such inquiries there may be a need to use **investigatory powers** (S7-10) that require the involvement of a council officer. These powers relate to visits, interviews, a medical examination, or the examination of records as part of an inquiry.

In 2021/22, about 57% of 'investigations' were for women and 42% were for men – which equates to 136 per 100,000 adults and 108 per 100,000 adults respectively. On average, over the past three years, the adult population rate of 'investigations' for women is estimated to be 25% higher than for men. The data we have does not currently capture those who self-identify as trans or non-binary. And in 2021/22, while around 37% of 'investigations' were for people aged 25-64, and about 18% of investigations were for people aged 85 and over, the population rates for those age groups are 71 and 755 per 100,000 respectively. In terms of being at risk, people aged 85 and over were about 11 times more likely to be subject to investigation than those in the 25–64 age range.

Women aged 85 and over had the highest population rate (circa 840 per 100,000 population) of those subject to an investigation, with men aged over 85 having the second highest population rate (circa 600 per 100,000 population).

The ethnicity of adults at risk appears broadly in line with the most recent census data available at the time of writing, with White ethnicities accounting for 97% of adults who were subject to ASP investigations in 2021/22. The breakdown of other known ethnic groups reflects similar proportions to the general population, with the last three years of data indicating averages of Asian ethnicities (1%); African, Caribbean or Black (0.37%); and Mixed or Multiple ethnic groups (0.33%). However, 19% of those subject to an investigation had an

ethnic category of 'not known' so these percentages should be interpreted with caution. It should also be noted that the currently available data does not allow for any subdivision of these top-level ethnic groupings.

5.3. Profile of adults at risk – vulnerability and location and type of harm

Adults at risk of harm experience a wide range of underlying conditions including substance misuse, mental health problems, learning disabilities, physical disabilities, and infirmity due to old age. In 2021/22, 'Mental health problem' remains the top client category for people subject to ASP referrals (19%), despite dropping around 1% from the previous year. There are inconsistencies across local authorities in how client categories are defined, which has a direct impact on the consistency of data received nationally.

The majority of harm reported has consistently occurred in individuals' own homes. Notably, the percentage of investigations relating to harm in individuals' 'Own home' is estimated to have increased from 51%, in the previous two years, to 60% in 2021/22. We might reasonably surmise that the impact of COVID-19 has been a factor in this. 'Care homes' provided the second most common location, but much lower with 18% of those subject to investigation in 2021/22 residing in care homes.

In terms of the type of harm experienced, physical harm was the most common type of harm recorded. It accounted for one quarter of those subject to adult protection investigation; the next most prevalent harm type was 'financial' (19% in 2020/21 and 17% in 2021/22). The 2020/21 estimated increase in the proportion of people referred for risk related to self-harm was maintained in 2021/22 (11% in 2019/20, 14% in 2020/21 and 14% in 2021/22). There has also been a reported increase in 'neglect' (15% in 2019/20, 14% in 2020/21 and 18% in 2021/22). There are inconsistencies across local authorities in how types of harm are defined, which has a direct impact on the consistency of data received nationally. Compared to 2019/20 'Psychological', 'Neglect' and 'Self harm' are estimated to have increased, while 'Financial', and 'Sexual' harm are estimated to have decreased.

Clearly, it will be important to monitor the profile of those at risk. As the country takes steps to recover from COVID-19 whilst experiencing a cost of living crisis (or high inflation combined with wages that do not keep up), this may have a disproportionate impact on society's most vulnerable and poorest households.

6. Changing environment and future focus

Since 2007, there has been the integration of health and social care (2014), changes in terms of the governance of public protection at a local level and refinement of the expectations of the Scottish Government in relation to Child Protection processes with implications for adult protection.

Since the ASPA was introduced, there is also a much greater appreciation of the breadth of work that can fall within the provisions of the Act. This impacts on frontline practice, across agencies and disciplines, and has implications for APCs and chief officers. There is clearly a need to strengthen links across policy areas and a need for even closer partnership working.

The following sections draw attention to other changes in the landscape, practice and policy developments and cultural shifts.

6.1. Improvement and learning

A strong focus on continuous improvement and learning from practice has emerged since the ASPA. The **Adult Support and Protection National Strategic Forum and Improvement Programme** was launched in 2019 to provide a strategic and cross sectoral view of what is needed to improve ASP across Scotland, identifying key areas in its **Adult support and protection improvement plan 2029-22**,[12] informed by the **2018 thematic inspection by Care Inspectorate and scrutiny partners**.

Biennial reports submitted to Scottish Government also analyse, review and comment on APC functions in the preceding two years, and focus on future plans and improvement. Reports show a key focus on: multi-agency collaboration and practice, learning and development needs, service user engagement and feedback and awareness raising. Reports are used to share information with

12 The six priority areas for improvement identified were: assurance; governance; data and information; legislation, policy and guidance, practice improvement; prevention.

partners, external agencies, and the wider public and can be found published on local authority websites. They are also analysed for the Scottish Government to identify common themes across Scotland. In 2021, Iriss undertook this analysis, with a report submitted to the National Strategic Forum and shared with APCs.

A focus on learning and improvement is also reflected in the recent introduction of **Learning Review Guidance for Adult Protection Committees** (Scottish Government, 2022a). This mirrors guidance for Child Protection Committees and replaces the Interim National Framework for Adult Protection Committees for Conducting a Significant Case Review (2019).

Learning reviews happen in instances where an adult at risk of harm has: died; not died but is believed to have experienced serious abuse or neglect; or where an adult fits either of these two descriptions but has not been subject to adult support and protection processes but there is reasonable cause for concern about lack of involvement in relation to ASPA. Additionally, a learning review may be triggered when the Adult Protection Committee determines there may be learning to be gained through conducting a Learning Review.

The new guidance aims to shift focus to learning and organisational accountability, not culpability, and recognises: complexity in systems, resources available and the emotional impact of the work; the need to engage with multiple-agencies and relevant others in learning; a requirement to be transparent and disseminate learning widely. It identifies that learning should be supported, as well as proportional, flexible and that long review processes should be avoided.

The guidance provides further details on topics such as: who can request a review; decision-making processes in determining if a learning review should proceed or not; timescales for the learning review; engaging adults and family members; and good practice in collating information, reporting and considerations around publishing and dissemination. It also covers how to approach cross-authority cases and the need to agree roles and approaches involving both children and adult services; its relationship to parallel review processes such as criminal investigations or NHS Significant Adverse Event Reviews; and how to deal with issues of malpractice or staff competency if these emerge.

In terms of how learning reviews might be improved, we can be informed by the Care Inspectorate's (2023) **Triennial review of initial case reviews and significant case reviews 2019-2022** (henceforth to be known as Learning Reviews). This

report identifies that learning potential is maximised when frontline staff are involved in review processes – with a need to sometimes clarify legislative duties and role, address poor communication and information sharing that has led to poor outcomes, and strengthen risk assessment and management. It also calls for lived experience to be proactively embedded in review processes, with it reported that adults at risk, families and/or unpaid carers are not routinely involved at present. The report would also like to see greater transparency around decision-making on whether to proceed to or publish a learning review (with most not published). Currently, partnerships do not always notify the Care Inspectorate or Mental Welfare Commission about reviews in line with national guidance. Furthermore, the impact of learning reviews is hard to establish due to inconsistencies in approach. To address this, the authors of the report call for strong leadership to drive change and improvement, and support consistency by developing stronger links between local and national learning and a national infrastructure to support this. While there is no central system or national hub to share learning as with Child Protection, the Care Inspectorate has an important role to play in disseminating learning and there are opportunities for this to feed into strategic forums, identifying shared learning needs and priorities. They also identify that technology may have a part to play in wider sharing and engagement with learning.

The National Adult Support and Protection Coordinator has recently reconvened the National ASP Learning and Development Network (following a short-term vacancy in the post). One of the network's aims is to establish a platform for disseminating and supporting the embedding of national learning and innovative practice in relation to ASP on a multi-agency, multi-disciplinary basis.

6.2. Strengthening Public Protection

Since the implementation of the ASPA, governance arrangements for Public Protection at the local level have become more firmly established – with reporting arrangements managed through COGs and variously, through Integration Authorities or Community Planning Partnerships. That said, it should be noted that in some areas, APCs have become the main strategic forum for wider matters of Public Protection to be discussed.

Arguably, there are opportunities to strengthen links across services and policy-areas as part of a more joined-up approach. This might include strengthening links between ASP and Children and Families, Criminal

Justice and MAPPA, Domestic Abuse or substance abuse and recovery services, or suicide prevention strategies, amongst others.

The revised 2022 CoP comments that Adult Protection practitioners should pay attention to the needs and risks experienced by young people in transition from youth to adulthood. It asks that APCs, in conjunction with Child Protection Committees and other partnerships, ensure that young people considered at risk of harm are identified at the earliest possible stage for support. Adults at risk of harm may also be parents or guardians – so practitioners need to be alert to the fact that children in the same household may also be at risk of harm. Identification of vulnerable children and adults can help secure speedy and appropriate support for those in transition, 'in between' or 'not known' to services. This will require robust systems in place for the sharing of information and any necessary transfer of responsibilities between agencies and services, particularly for young adults. Where a young person under 18 is at risk of harm, **The National Guidance for Child Protection in Scotland (2021)** is relevant for reference, alongside local procedures for sharing information across children's and adult services.

6.3. 'Nothing about us without us'

Section 1 principles in the ASPA specify that any intervention in an adult's affairs should: provide benefit to the adult which could not reasonably be provided without intervening; and be the option that is least restrictive to the adult's freedom.

The CoP (2022) is clear that 'fullest regard should be given to the wishes and feelings of the adult' with section 2 principles enshrined to support this at each and every stage.

These are relevant to any public body or office holder performing a function under ASPA, and state that they must take into account:

1. **The wishes of the adult** – both past and present wishes in so far as they can be ascertained, with every effort made to: facilitate regular communication in ways and formats that are accessible and helpful to the adult; informed by their capacity; built on good relationships. This might also include the use of advocacy services or others chosen by the adult to accompany or represent their view, the use of professional interpreters or consideration of where and when meetings are held.

2. **The views of others** – the adult's nearest relative, primary carers, guardian or attorney, or person who has an interest in their well-being or property (taking care to consider the merits of this and possible undue pressure or risks to the adult). There can be significant complexity in a caring relationship, for example, creating the potential for both parties to be both victim and harmer at different times.
3. **Provision of support to the adult** – in addition to that support provided by existing networks, and with every effort made to ensure that any interventions do not have an adverse effect on existing relationships.
4. **As full participation by the adult as possible** – with support and information provided in a way that best delivers this for them and which inputs into decision-making. This must also include information about their right to refuse to participate. There should be an assumption that the adult will be involved in all meetings that are about them, unless it is not in their best interests (with the reasons for this recorded).
5. **That the adult is not treated less favourably** than a person who is not an 'adult at risk' in a comparable situation.
6. **The adult's abilities, background, and characteristics** – this would include consideration of protected characteristics in relation to duties in the Equalities Act 2010.

Of course, there may be instances where conflict arises, such as where an adult at risk prefers not to engage with any ASP intervention, but professionals believe that this would provide benefit to them. In these instances, the expectation is that decision-making should take place on a multi-agency basis to enable full and complete discussion of potential protective actions, application of principles, and clarity on and recording of the reasons for actions taken (or not) – with these also to be communicated to the adult (Scottish Government, 2022b).

It should also be noted that Scottish Government is looking into incorporating the principles of the United Nations Convention on Rights of Persons with Disabilities into Scots Law. While this doesn't call expressly for abolition of substitute decision-making, there is an implicit requirement for its replacement with supported decision-making.

There is, of course, also room for improvement with regards to adult's participation in ASP activity. Decision-making support for adults either unable or unwilling to participate in ASP, was identified as requiring improvement in The Care Inspectorate's Triennial review of initial case

reviews and significant case reviews for adults, 2019-2022 (2023). The CoP (2022) also advises that APCs should consider regular audits to monitor the extent to which adults are enabled to participate fully in decision-making, capturing attendance of the adult at risk at meetings, reasons for non-attendance or the uptake of advocacy services offered.

6.4. Trauma-informed

The 2022 COP highlights the need for a trauma-informed approach and consideration of coercion, control or undue pressure that can impact on an adult's ability to safeguard themselves. The National Trauma Training Programme (NTTP), launched in 2021 has the ambition of creating 'a trauma-informed and responsive workforce which recognises the effects of trauma, responds in ways that prevent further harm and support recovery, addresses inequalities and improves life chances.'

Like ASP, 'trauma is everyone's business' – and not everyone has to be a clinical trauma expert with specialist psychological skills to support recovery. It is important to recognise and understand the impact of trauma, taking time to understand people's life in context and the impact of adverse childhood experiences or more recent trauma; and how this impacts on their decision-making processes.

This may apply to someone subject to coercive control or undue pressure – in cases of domestic abuse for example – who ***may*** be rendered unable to make decisions to protect themselves. A trauma-informed approach can help practitioners understand how maintaining contact with an abuser, or use of drugs or alcohol (often related to physical and mental ill-health), self-harm, or hoarding or non-engagement might be coping strategies that someone has developed in response to trauma. Trauma may also manifest in the person becoming homeless. We know that trauma can affect a person's sense of self, their interpersonal relationships; and the complexity, severity and persistence of post traumatic reactions may impact the extent to which these individuals repeatedly take decisions that place them at risk of harm.

There is a growing appreciation that ASP may have direct relevance to a broader range of people than originally anticipated, with challenging implications for practitioners in applying the three-point criteria and determining whether or not an adult is 'unable' to safeguard themselves. For the practitioner, the CoP makes clear that it is critical for practitioners

to explore a person's decision-making processes and understand factors impinging on their abilities to make free, informed safeguarding decisions.

The Care Inspectorate's ***Triennial review of initial case reviews and significant case reviews for adults, 2019-2022*** (2023), identifies that neglect and self-neglect cases are complex and require practitioners to be trauma informed and use relationship-based practice.[13] It also highlights that neglect and self-neglect were the most prominent categories of harm in initial or significant case reviews, and that the circumstances of those affected by mental health and substance misuse were most frequently considered. And significantly, most adults subject to a review were either not known to ASP services, or were but were not being supported/ protected by a protection or risk management plan. To ensure that no one is missed and that lessons are learned, the report calls for concerted effort. While noting that some adult protection committees had begun to address this, it recommends a national response to show leadership in this area.

13 The Iriss outline on self neglect published in 2022 provides a helpful overview to build upon: **https://www.iriss.org.uk/resources/outlines/overview-self-neglect**

7. Summary and conclusion

Adult Support and Protection is defined and shaped by the ASPA. Arguably, it is a relatively young and developing community of practice. It arose to meet the needs of a particularly vulnerable group of adults, unable to safeguard themselves, and whose needs were not being met. This is both challenging and rewarding work. It is important that we understand increasing demands on services, and more about the people who come into contact with the ASP system.

In the years that have passed since the introduction of the ASPA, much has changed. We have seen the integration of health and social care; a workforce focus on improvement and learning at local and national level; closer links across policy areas, linking Child Protection and Adult Support and Protection as well as more joined up ways to deliver on Public Protection. At the same time, knowledge around trauma and its impact has developed, with key commitments from Scottish Government on rolling out training.

This presents new challenges and opportunities as implementation of the CoP and other guidance documents is underway, with scope for wider application of ASP to a greater number of adults. This will form part of ASP's ongoing evolution, as will commitments to further developing rights-based and person-centred approaches.

It is important to stress that ASP is everyone's business – albeit some public bodies have duties defined in law. Multi-agency working is at the heart of an effective approach. As the report makes clear, there remains work to be done. There is learning for all of us, but there is also the opportunity to make an important and growing contribution to the lives of adults at risk of harm, offering support as well as protection; preventing or reducing current or future harm. ASP is everyone's business.

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Useful links

Act Against Harm website

Iriss (2022) **Working together in adult support and protection**: an online learning resource

Iriss (2022) **Multi-agency adult support and protection conferences (case conferences)**: an online learning resource

Iriss (2022) **Large scale investigations**: an online learning resource

Iriss (2022) **An overview of self-neglect**, Iriss Outline

Learning reviews, initial case reviews (ICRs) and significant case reviews (SCRs) – Adults, Care Inspectorate

NASPC website

NHS Education Scotland, **National Trauma Training Programme (NTTP)**

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