

Large Scale Investigations - A National Framework?

Discussion Paper

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Background

The NAPC was asked by Scottish Government to develop a discussion paper on the topic of Large Scale Investigations. This paper draws upon a recent survey of activity during September 2021, the ongoing development of a training tool and discussions with interested parties. This paper, the work it is based upon and the discussions it is designed to promote, will inform consideration of the need for a national LSI framework.

Background Data on LSIs

Analysis by IRISS below shows the number of LSIs per area between 2014 and 2021 in Table 1 below. The yearly average over this same period was 59. The totals over this same period are shown below in Table 2. It is important to note the initial high figures relate to Perth and Kinross holding a notably higher number of LSIs than others in the earlier years of data collection. Since this area amended its criteria, we can see that numbers have dropped across the board, although the national data indicates they may now be slowly rising. The reasons for the apparent rise would require further exploration but may relate to the pandemic or perhaps more straightforwardly to the increasing awareness of issues requiring such a response and the knowledge that such a response is available.

The survey in September 2021 (Appendix 1) found that in just under 5 months since April 2021, nine partnerships had initiated 18 LSIs. Based upon previous years, the nine partnerships represent 45% of partnerships likely to carry out an LSI in a year and the 18 LSIs represents 30% of the annual average over the last seven years. Given the variance and range in the data it is difficult to project further, other than to state numbers are likely to be somewhere between 50 and 60 for 2021/22. It is also noteworthy that these are actual numbers and when adjusted to population rates they may seem quite low. Actual numbers have been used here to recognise the resource that is required which may not be as apparent if presented differently. However, the data gathered by the survey reflects the number of LSIs undertaken but not the number of service users involved in each LSI. It is noteworthy that each LSI may therefore have a different planning and resource impact depending upon the numbers involved. This in turn may require suggestions in any guidance for different approaches where large numbers are involved and/or where the LSI relates to a community based situation. Considerations in this regard being around adults at risk being resident in different areas across an area and even in different local authority areas.

The September 2021 survey and smaller poll also found the following:

- The vast majority have not been triggered by Covid-19 related issues and those that were also highlighted other issues requiring investigation.
- The average timeframe for completion of a LSI is between 2 and 4 months with the longest period reported as 7-9 months.
- The majority of LSIs were located in residential units with four being located within a person's individual home.
- Agencies participating in the investigation other than LA social work included Police Scotland, Care Inspectorate; Health and Social Care Partnerships (HSCPs); Local Authority other than social work e.g. Housing; Secondary Care e.g. mental health or Learning Disability services.
- The majority of LSIs have an outcome that enables services to continue with support/improvement plans, with the majority also being inspected by the Care Inspectorate
- Most areas report in some way to the Adult Protection Committee (APC) and/or the Chief Officers Group (COG), either on the commencement or outcomes of an LSI. However, reporting varies

Table 1 Total LSIs held by area 2014 - 2021

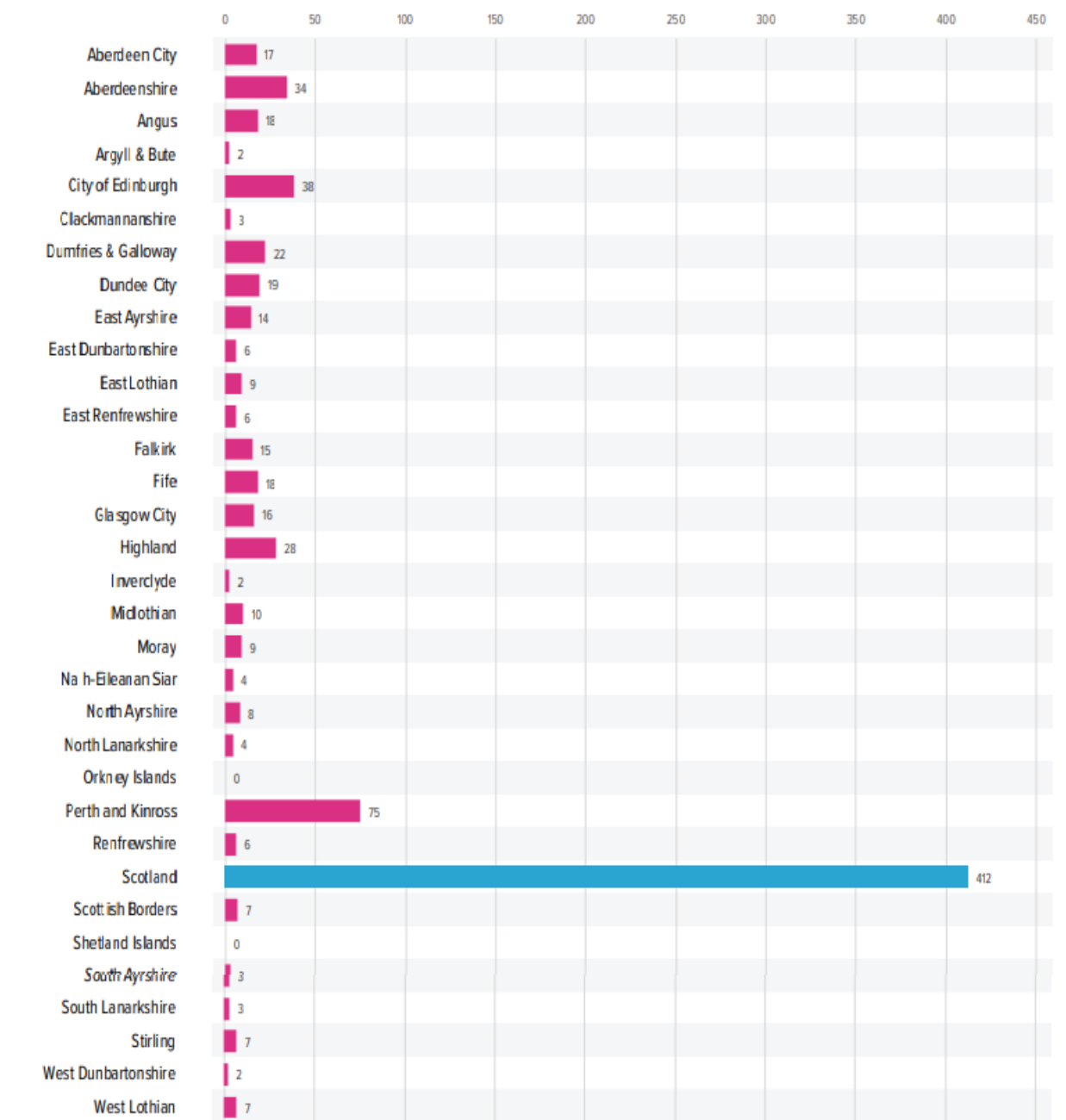
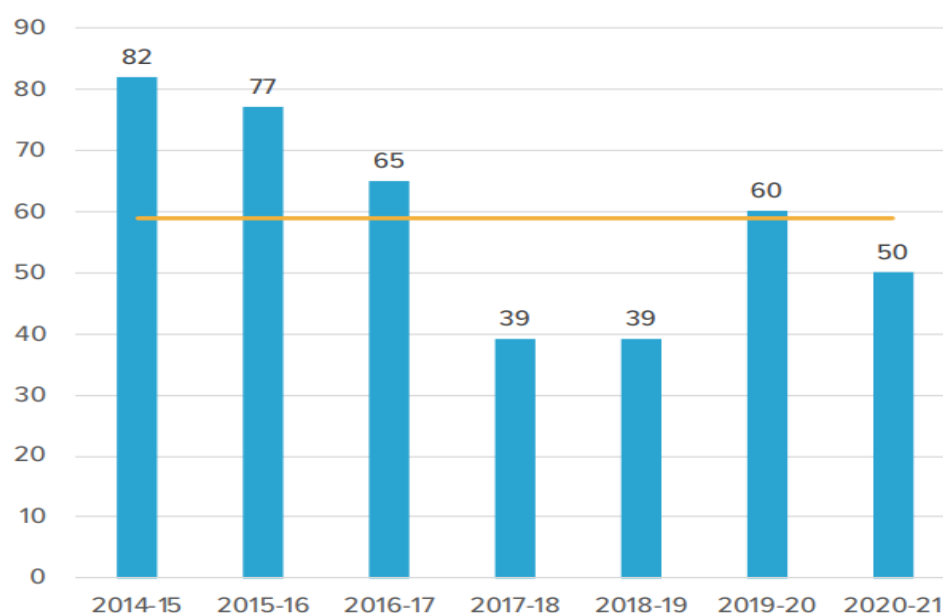


Table 2 Total LSIs commenced by year 2014 - 2021



Language and Definitions

Any development of a national framework would need to be based upon the statutory definitions of the Adult Support and Protection (Scotland) Act 2007 i.e. Section 3. Such a framework would also have to be informed by, and adhere to, the principles laid out in Sections 1 and 2. The framework would also have to offer clarity around several areas. For example, the purpose of an LSI in terms of being a strategic or practice review, whether it replaces the need for individual inquiries and at what point specific agencies should be involved.

Thresholds

Thresholds are difficult to define in all elements of adult support and protection practice, similar to issues experienced in other areas of public protection work. A number of documents and articles have been produced over time^{1 2 3}. However, it can prove difficult to articulate a threshold that covers all eventualities which is not open to interpretation. In fact, it could be argued that in attempting to further clarify thresholds, the opportunity for greater interpretation increases. Devaney (2019)⁴ in discussing thresholds in the child care context highlights three issues relating to; their inconsistent application, being set at a level which excludes service users (gatekeeping), and prioritising some harms over others. Where the issue of thresholds is to be considered, it may be useful to consider a framework to address these issues at the outset. Morgan (2012)⁵ suggests considering five key concepts:

¹ ADASS (2011) SAFEGUARDING THRESHOLD GUIDANCE 2011

https://www.adass.org.uk/adassmedia/stories/Regions/North%20East/Safeguarding_thresholdsNEJan12.pdf

² Collins, M. (2010), "Thresholds in adult protection", *The Journal of Adult Protection*, Vol. 12 No. 1, pp. 4-12. <https://doi.org/10.5042/jap.2010.0089>

³ Perth and Kinross (2015), Threshold of Harm, Adult Support and Protection (Scotland) Act 2007 Multi-Agency Guidelines

⁴ Devaney J. (2019) The trouble with thresholds: Rationing as a rational choice in child and family social work. *Child & Family Social Work*. 2019;24:458–466. <https://doi.org/10.1111/cfs.1262>

⁵ Morgan H. The Social Model of Disability as a Threshold Concept: Troublesome Knowledge and Liminal Spaces in Social Work Education. *Social Work Education*. 2012;31(2):215-226. doi:10.1080/02615479.2012.644964

- i. Transformative – will the threshold transform the way in which the need to carry out an LSI is considered? This includes considering the way in which the threshold is constructed e.g. the need to use a social model of disability as opposed to an individual model
- ii. Irreversible – the imperative of being aware that having put a threshold in place it is a concept that is usually irreversible
- iii. Integrative – the threshold needs to assist practitioners in seeing connections and interrelated issues that may not have been identified before and which create the need for an LSI
- iv. Boundedness – the need to consider whose threshold it is and how it interacts with other thresholds. This may relate to other agencies' thresholds or roles e.g. the role of the Police or COPFS where a crime is suspected, the Health and Safety Executive (HSE) or Office of the Public Guardian (OPG) etc.
- v. Troublesome – does the threshold build upon concepts that may be uncomfortable for those applying them, creating a need for awareness and training to facilitate a full understanding of the concepts upon which the threshold is devised? For example, this may relate to the understanding of the concept of infirmity or executive as opposed to decisional capacity. The focus here is upon ensuring that staff using the threshold understand it and the concepts and values upon which it is built. It is also perhaps about being clear what the purpose of an LSI is alongside the way it will support and integrate with the principles, processes and practices under the auspices of ASPA

As an example, the threshold could be based around the health and social care standards that relate to adult harm around the principles of dignity and respect, compassion, inclusion, responsive care and support and wellbeing⁶ alongside the ASPA principles.

- I am protected from harm, neglect, abuse, bullying and exploitation by people who have a clear understanding of their responsibilities.
- I am protected from harm because people are alert and respond to signs of significant deterioration in my health and wellbeing that I may be unhappy or may be at risk of harm.
- If I go missing, people take urgent action, including looking for me and liaising with the police, other agencies and people who are important to me.
- If I might harm myself or others, I know that people have a duty to protect me and others, which may involve contacting relevant agencies.
- I am helped to feel safe and secure in my local community.

The development of a national framework may need to review a sample of the work undertaken to date. This would assist any working group come to a view as to whether any guidance should be provided in this regard or whether it should simply refer to the relevant sections of legislation and the Code of Practice.

Information Sharing

As noted above, a Large Scale Investigation is a process carried out under the auspices of the Adult Support and Protection Scotland Act 2007. The statutory mechanisms for information sharing in this regard are therefore already in place. This should limit the need to develop specific Information Sharing Protocols (ISPs) between agencies, as for data protection purposes they can rely upon public task and public benefit, as well as and importantly, the duties placed upon most of the agencies involved under Section 5.

⁶ Scottish Government (2017) Health and Social Care Standards My Support My Life, <https://www.gov.scot/publications/health-social-care-standards-support-life/>

Potential Issues Arising through the Development of an LSI Framework

As noted above, a national framework for Large Scale Investigations highlights the need for a model of joint investigative interviews, especially between Council Officers and Police Officers. Consideration may also be required as to any other consequences of introducing such a framework. These may include:

- Consultation with advocacy and care provider representatives such as Scottish Care, Care and Support Providers in Scotland (CCPS) and the Scottish Independent Advocacy Alliance (SIAA) etc.
- Amendments to national guidance
- Potential changes to practice or procedures in areas who operate a different process to that which is nationally agreed
- The need for nationally agreed clarification regarding the way in which an LSI links to other ASPA process, contracts and commissioning processes, inspection and registration processes etc.
- Developing a national framework may generate media interest and preparing a media pack around LSIs maybe required
- The need to engage the Crown Office and Procurator Fiscal (COPFS) to develop a protocol noted below.
- Impact of the National Care Service and mental health Legislative Review in terms of roles and responsibilities
- Will the criteria need to provide flexibility for the recording of those situations where an LSI did not proceed on the basis that other actions were taken e.g. supports put in place to address potential risks, meaning there was no benefit (in terms of ASPA principles) to carrying out an LSI.

Risk, Responsibility and Multi-agency Involvement

Where a framework is developed, in consultation with the Care Inspectorate and HIS, it may need to consider defining the difference between poor care and harm. It may also suggest including this topic as a standing agenda item at an Initial/Inter-agency Referral Discussion (IRD) or other multi-agency LSI planning or pre-planning fora. This would enable such issues to be formally managed and recorded on a case-by-case basis.

With regard to location of an incident and geographical responsibility, this is addressed in the current Code of Practice at paragraph 14, page 21 and states that:

Specifically, it should be noted that under Section 5(3), if the public body or office holder knows or believes that a person is an adult at risk of harm and that action needs to be taken to protect them from harm then the facts and circumstances of the case must be reported to the council for the area in which the public body or office holder considers the person to be located. The public body or office-holder who knows or believes an adult is at risk of harm has a legal duty to make a referral to the council, taking into account the principles of the Act. Even in doubt the referral should be made and should be counted as a referral by the council. The council must then make inquiries and may take such investigative steps as considered necessary to establish whether the adult is an adult at risk of harm and what action should be taken.

However, it may be of benefit to include this in any framework and importantly to consider how things should proceed post referral in terms of which Local Authority takes the lead. This is of particular significance where someone is placed by one local authority/health and social care partnership in another area. This would also need to include cross border

placements from other jurisdictions within the UK and the consideration of any relevant case law.

Key issues arising relate to when and how the agency, company or organisation that is the subject of such an investigation is involved and to what extent. A recent survey highlighted that many areas do involve the subject of the inquiry but care is required in the event that criminal proceedings are taken forward. This highlights a key issue around responsibility. The lead agency for Adult Support and Protection and therefore LSIs, is the Council. However, where a crime has been committed, the Police are the lead agency in that regard. This raises the potential need for any LSI framework to be supported by a nationally articulated model of joint investigation, which balances these issues and guides staff in the deployment of the right skill set at the right time within the investigation. Similar issues may also arise where the incident relates to a fire where the Scottish Fire and Rescue Service (SFRS) may have duties to investigate.

In addition to the above, other agencies that may need to be involved include the Mental Welfare Commission, Care Inspectorate, HIS and Office of the Public Guardian. Again a national framework would therefore need to articulate their role within an LSI and ensure that roles and responsibilities are clear in order to avoid parallel inquiries (where possible) and where not possible, outline the way in which they can be conducted whilst respecting service users and not subjecting them to repeated and potentially traumatic conversations. In addition to this, it may be able to offer guidance on the level of seniority required in terms of agency representation within the process.

One further agency that would require consideration where services are being provided on premises other than the service user's own home (though not exclusively), is the HSE. Similarly, where a service provided is a registered charity the framework would need to indicate how and when the Scottish Charity Regulator (OSCR) should be involved. In addition to the above, a framework would also need to address when and how staff registration bodies would be involved.

There may be benefit to clear criteria being developed as to when other agencies should be involved which can support and highlight the difference between a duty to cooperate in terms of providing intelligence or data and being formally and actively involved in an investigation. For example, the Police Scotland Storm pilot. This gathers intelligence upon the attendance frequency and reasons for attendance at care provider establishments. This is currently shared with the Care inspectorate and referred directly to the LA where an adult is believed to be at risk. However, this intelligence may be useful in informing initial decisions and pre-planning/planning forums with regard to LSIs, even though there may be no apparent need to involve the Police in the actual investigation.

In addition to all of the above, it is important to specifically mention the role of contract and commissioning services within health and social care partnerships. Indeed, involving them in the development of a national framework is essential in order that reference can be made to new paradigms such as ethical commissioning and how to consider potential resource implications for services being investigated. In this regard, the lessons from the Winterbourne View and Mid Staffs enquiries should also be considered. The involvement of local partnership legal service representation would also offer an essential perspective regarding the potential legal implications of an LSI.

Finally, it may be necessary to develop a protocol with the COPFS in terms of notification, perhaps similar to that developed by CPC Scotland around SCRs. This would ensure that LSIs do not impede a criminal investigation or contaminate evidence etc.

Data Collection and Reporting

The issue of collecting data is impacted upon by the differences in terms of local process, overall purpose, interpretation and location within the process itself. Therefore, any national framework may need to consider reviewing existing local procedures. The aim of this task would be to generate a framework that provides a useful baseline predicated upon existing practice, strategic issues and knowledge. This may be an area that the national data group could consider, in terms of what would be useful as an ongoing enhancement to current data collected, which could be included in the framework.

Conclusions

Although the data shows a varying picture over time there are a substantial number of LSIs each year, especially when considering the resource intensive nature of such work. The work done to date has indicated some differences in the way LSIs are approached locally which may impact upon data analysis. There may therefore be an advantage at national level in this regard. Initial enquiries suggest there is no equivalent model within child protection but further exploration with child protection colleagues may be useful in this regard.

There are also potential advantages to a national framework given the number of national agencies that can be involved locally, making it easier to promote the approach and expectations in terms of roles and responsibilities. It may also assist in developing criteria for involvement and a shared understanding of key issues e.g. the difference between poor care and harm. The code of practice states that, '*Local multi-agency adult protection procedures should include a procedure for large-scale Investigations.*⁷' APCs should have an LSI protocol in place but this is not the case in all areas and a national framework would therefore complement the Code of Practice, providing more detail on the areas that should be incorporated.

There also appears to be a need to consider whether a level of standardisation is required regarding the way in which LSIs are reported locally to ensure that APCs and COGs are aware of them at the outset, to inform any media inquiries and to assist in developing local strategy and service provision based upon LSI outcomes. This may also provide the opportunity for reporting on outcomes and themes at a national level, if this is thought to be useful in terms of local benchmarking and national policy development.

It may be advantageous to consider a sample of the work undertaken on thresholds to inform a decision as to whether a national framework should include a threshold or simply refer to existing legal criteria and the Code of Practice. This could inform a decision as to whether the development of a specific threshold for LSIs is required, noting the potential unintended consequences in terms of broader application.

One key element that would be required to ensure an effective local approach is that of joint investigative interviewing. This would need to consider an effective methodology, role clarification and resource implications, drawing upon work undertaken in child protection and locally by APCs, around investigative interviewing and second worker training.

Finally, other elements a national framework could incorporate include:

- Realistic time frame for completion based upon the survey (noted above),

⁷ Scottish Government (2014) Adult Support and Protection (Scotland) Act 2007 Code of Practice page 42

- Potential differences between LSIs involving people in their own homes and those living in residential/nursing care, NHS and private health facilities
- Specific issues arising in statutory sector provision,
- Articulating roles and responsibilities of all those that may be involved
- Whether a stated outcome should be around service improvement and how services can be supported to improve if required.
- How the process links to inspection and registration processes, especially where de-registration becomes a possibility.
- Receipt of referral and responsibility for LSI e.g. ordinary residence etc.
- Communications plan outline
- Family and Carer engagement standards

Discussion Questions

This paper has been drafted to promote discussion and it is suggested that relevant national forums consider the following based upon the above:

1. Should consideration be given to the development of a national framework, providing more detail than in the Code of Practice to promote key definitions, enabling more effective benchmarking and improving the quality of national data?
2. Which if any of the issues noted in the Risk, Responsibility and Multi-agency Involvement and Conclusion sections above should be considered for development within or out with a national framework?
3. Should specific consideration be given to thresholds in terms of LSIs, noting the complexity of threshold models and the difficulties in creating one that is applicable and effective in all contexts, situations and places?
4. Does existing guidance offer enough in terms of promoting information sharing? Where issues are noted could the generic Section 10 protocol be promoted to address them?
5. Is there a need to develop a basic joint investigative interviewing model for Council Officers and Police Officers?
6. Does the national data set need to include a more refined approach to recording/reporting LSIs?
7. Are there similar models in other areas of public protection that could be drawn on in developing the approach to LSIs?
8. Should there be an agreement within or outwith a framework regarding the way in which LSIs are reported locally?