Understanding age in Child Protection guidance and Adult Support and Protection legislation

Hannah Martin

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1. About this work

The Scottish Mental Health Law Review recommendation 12.13 proposed that "the Scottish Government should take forward detailed analysis of the implications of changes in age limits in the child welfare system for the interface with adult support and protection."

Since both **Adult Support and Protection (ASP) legislation** and **Child Protection (CP) guidance** might be applicable to young people aged 16 and 17; it is necessary to understand the specific experience of working with this age group, and the challenges or opportunities this overlap in guidance and legislation poses for practitioners. This report supports the recommended analysis by the Scottish Mental Health Law Review in two ways:

1. The Guidance and Legislation table (Appendix 1) which sets out the scope of both CP and ASP processes
2. The discussion section detailing the experience of working with 16 and 17 year olds from practitioner input, and available literature

The Guidance and Legislation table provides a practical tool for social workers and other professionals working with 16 and 17 year olds, to view side by side, the policy and guidance options available to them. The exploration and discussion of the tensions and challenges around supporting 16 and 17 year olds complements the table; by providing a qualitative understanding of some of the experiences practitioners encounter in their work with this age group. Together, the table and the discussion begin an analysis on what the overlap in ASP and CP means for 16 and 17 year olds, and the practitioners supporting them.

2. Guidance and legislation table: process comparison

The Guidance and Legislation table (Appendix 1) sets out the scope, aims and processes of ASP legislation and CP guidance. The intention of the table is to inform future discussions relating to the Mental Health Law Review recommendation 12.13; to inform future discussions relating to the comparison of ASP and CP processes; and to support practitioners and operational managers in their implementation of both CP and ASP policy and guidance, particularly when working with 16 and 17 year-olds.

While the table aims to have comparable processes next to one another, the processes do not necessarily mirror one another. It should be noted that as a result of eligibility criteria, CP does not automatically lead to ASP; and that adults in ASP may not have experienced CP.

The role of social workers as teams and individuals is also important to hold in mind. The table outlines the legislation and processes that are available to social workers – as well as multi-disciplinary teams – in ASP and CP. Much of the work they do with the people they work with, involves using their knowledge and understanding of various pieces of legislation and guidance; to apply those that are most appropriate for the situation, noting that multiple pieces of legislation can be used in tandem.

The table does not capture the analysis and professional judgement that underpin and contribute to the application of the legislation and/or guidance. It is intended as a resource to be used by social workers and others, to assist them in their decision making processes.

Having the processes broken down in a table of this kind also allows for identification of distinct differences and similarities; gaps between them; or where the process may require further clarity, which could be via subsequent guidance.

3. Understanding age in Child Protection guidance and Adult Support and Protection processes

3.1 BACKGROUND

The following section focuses on six key areas impacting practitioners in their consideration of CP processes, or ASP legislation, being most suitable for supporting 16 and 17 year olds.

A review of Significant Case Reviews and Learning Reviews revealed that there are few published that are specifically regarding a person aged 16-17 under either ASP legislation or CP guidance. This makes it difficult to understand the experience of a young person aged 16-17, and the social workers supporting them, using only this data. Additionally, when they are published, Significant Case Reviews and Learning Reviews do not necessarily detail the specific considerations that were made by practitioners when deciding whether to implement CP or ASP processes for a young person.

Other available literature presented similar issues in understanding the tensions around supporting 16 and 17 year olds. In the **Care Inspectorate's Triennial Review of initial case reviews and significant case reviews** from 2018 – 2021, 30 of the total number of ICRs and SCRs carried out involved those over 12 years old (Care Inspectorate, 2021) While some of the conclusions of the Review are useful for this work, there is not enough clarity in the age breakdown to be able to

make conclusions about the specific experiences of 16 and 17 year olds. In the Care Inspectorate's (2023) **Triennial review of initial case reviews and significant case reviews for adults 2019-2022**, there were no initial or significant case reviews notifications for 16 and 17 year olds.

In order to give greater depth to the issues highlighted in Learning Reviews, two discussion groups were held with practitioners and managers from education, children's services and adults' services, with contributions from 11 practitioners overall. Their experiences, wider literature and key points in Learning Reviews, complement the Legislation and Guidance process comparison table; giving depth of understanding to the interaction between child protection processes and adult support and protection legislation.

3.2 SUMMARY OF KEY POINTS FROM DISCUSSION GROUPS

- There are competing and cross over definitions of 'children' and 'adults' across Scottish policy and legislation. In some cases, delineation is more simple for practitioners; while in others, questions of capacity and the impact of trauma makes it more elusive to fit young people into either category.
- There is a distinct literature on how to work with young people, rooted in recognising the challenges that come with honouring the wishes and autonomy of young people; while acknowledging they have not reached full maturity.
- Knowing whether to apply ASP legislation or Child Protection guidance to a 16 or 17 year old is driven by local guidance and convention, and can be difficult for practitioners to decide. Having non-overlapping age criteria for Child Protection measures; and for Adult Support and Protection legislation, might support some practitioners in their application of policy.
- Transition points are a challenge in and of themselves, as moving service can be difficult for young people who may have experienced the most stability in their lives from their Children and Families social worker or other children's service. However, transitions might also be difficult when they are age driven, and a young person does not feel ready for adult services.
- There are material differences between adult and child services, including what support can be provided; and the thresholds that must be met to be eligible for support. This can add to a lack of coordinated working between child and adult teams, and inappropriate referrals.
- The role of parents was discussed distinctly, as both a protective factor for young people; and as a potential challenge to supporting a young person. Having the ability to be flexible in the application of legislation and guidance for 16 and 17 year olds allows for families and parents to be included or excluded, depending on the best interests of the young person.

4. Key areas of discussion

4.1 DEFINING 'CHILDREN' AND 'ADULTS'

Across legislation and guidance, 'children' and 'adult' are varyingly defined, based on the legal context they are used in. Scottish Adult Support and Protection legislation defines an adult as anyone over the age of 16 (Scottish Government, 2007). The National Child Protection Guidance applies to anyone under the age of 18, in step with the United Nations Convention on the Rights of the Child (UNCRC), (United Nations, 1989) which is embedded in Scotland through The UNCRC (Incorporation) (Scotland) Act (2024). However, while these policies are applicable to those under the age of 18, the National Child Protection Guidance also states that:

> *The individual young person's circumstances and age will dictate what legal protections are available. For example, the Adult Support and Protection (Scotland) Act 2007 can be applied to over-16s when the criteria are met (Scottish Government, 2023).*

The Guidance highlights that 'childhood and adulthood are variously defined' (Scottish Government, 2023). This is reflected in other parts of Scottish legislation. For example, Continuing Care allows eligible young people to remain in their care setting up to the age of 21 , in recognition that their circumstances mean they require additional support (**Scottish Government, 2021**). Similarly, children and young people were defined as anyone under the age of 18 by the Scottish Mental Health Law Review (SMHLR, 2022). In legislation and in policy, there are differing definitions of 'children' and 'adult'.

More broadly, understandings of children and adults are linked to age; and the accrued responsibility and particular milestones associated with each stage of maturity. There was evidence in the discussion groups

that for those working in education, defining a child was clear, as they considered anyone still in school to be a child regardless of their age:

> *I don't know if it's clearer for us, because I work in a secondary school, and so a 16 year old in a secondary school we very much deal with it just under your normal child protection. So I think it's clearer for us because they are children in a school – whether they are 16 or 17.*

This made the application of Child Protection processes, rather than ASP legislation clearer. However, for other practitioners, making this distinction was less clear; particularly, as was highlighted by a discussion group participant, when taking a trauma-informed approach. This approach recognises the interruption that traumatic events can have on brain development and cognition, meaning that an individual's behaviour does not correlate to their chronological age. This complicates the delineation between adult and child, as the participant described:

> *I think it's really interesting, particularly for young people who are care experienced, capacity is a really interesting aspect in all of this. That one day someone is 15 and the day after suddenly we're sitting talking about issues of capacity. And we know if you're gonna go at things from a trauma-informed perspective actually that makes things really murky. And the majority of the young people we're working with, while chronologically their age is sitting at 16 or 17 or 18 – emotionally they're functioning at a much younger age but yet we're bringing them into processes that probably they don't understand; asking them to take responsibility for the decisions they're making...*

This understanding of age and maturity is reflected in other policy areas, including the Sentencing Young People guidance (**Sentencing Council, 2022**). The guidance suggests: "The court should not rely solely on age when determining the maturity of a young person." This is based upon research into how young people develop physically and psychologically, recognising a young person will generally have a lower level of maturity, and a greater capacity for change and rehabilitation, than an older person (Sentencing Council, 2022). The guidance highlights that young people may lack the maturity needed to fully understand the consequences of their actions, as well as their vulnerability to negative pressure from peers.

Discussion groups also considered that young people aged 16-18 who have social work involved in their life, are at times considered to be ready for independence that might not be expected of other young people, who do not have social work involvement in their life:

> *...when you take the trauma and the challenges and the attachment and the care experiences away from it, and you look at any other 16 or 17 year*

old... and to say are they ready, and they've got good boundaries and good relationships and are they ready to move out, and be on their own? In their own accommodation, even with a wide family network, support to help out – the answer to that is no, and working in a school, what 16 or 17 year old is?

4.2 WORKING WITH YOUNG PEOPLE

There is an extensive literature on the particular challenges for practitioners in their work with young people; the potential vulnerability of young people; and how to appropriately assess their capacity. In general, working with teenagers around safeguarding has challenges.

At a stage in life when they are developing a sense of autonomy and personhood, they may be clear on what they believe is the best for them. However, the independence and wishes of young people must be balanced with what is in their best interest, recognising that there may be instances when these two are out of alignment (NSPCC, 2021; Lightlower 2020). As they grow further into adulthood, children and young people may come to view preferences they had in their younger years, as not being in their best interests; for example preferring a young offenders institution over secure care (Lightowler, 2020).

Practitioners must therefore aim to balance young people's views about what is best for them, with their right to be protected by adults and professionals (Haydon, 2018). This balance is further highlighted in a 2020 Learning Review which concludes that a young person was inappropriately considered to be responsible for where they should be placed, as a result of frequently changing their mind, and practitioners attempting to 'respect their wishes' (Lee and Gilling, 2020).

Children's organisations caution against understanding young people as adults, as this can limit the professional curiosity with which they are approached. As would happen in work with children, practitioners should exercise curiosity as to the motivation of a young person's behaviour, rather than categorising them as 'challenging' or 'risk taking' (NSPCC, 2021). There is concern that viewing young people through a more adult lens could result in their vulnerability as a child being overlooked (NSPCC, 2021). While different organisations may impose different age structures, NSPCC guidance is consistent with the UNCRC, in advising that practitioners that 16-18 year olds are children; and while their voice is important, their interests should be protected as such (NSPCC, 2021).

4.3 APPLYING LEGISLATION AND GUIDANCE

Young people aged 16 and 17 are covered by both ASP legislation – where they meet the eligibility criteria – and CP guidance. As a result, discussion groups shared there can be ambiguity with which measures to apply to 16 and 17 year olds. While this is notable, understanding the frequency of when practitioners find ambiguity or challenge in which measures to apply to a young person's situation was not possible to determine from discussion groups, or from published Learning Reviews.

Practitioners shared experiences of young people being ineligible for ASP, as they did not meet the threshold for support. In these circumstances, practitioners could only support the young person using CP processes until they turned 18. How frequent an experience this is for practitioners across Scotland, could also not be ascertained from discussion groups or published Learning Reviews.

However, where ASP criteria is met, discussions with practitioners revealed that there is sometimes a lack of clarity for social workers in which legislation to apply to a young person. Groups shared that local guidance, service age ranges and other working conventions guide social workers on what legislation is most applicable for a young person:

> *....plus we operate under two different health boards as well, so that can cause us issues in various respects so yeah it can be very, very murky. Particularly in the cross over between child protection and adult protection as well. Just where that sits and with whom. I'm pretty clear that somebody in education under the age of 18 would sit with children and families , but as a local authority we're not entirely clear on that.*

Local guidance varies across Scotland; however, even within local authorities, there may be different decision making processes and guidance that mean someone of the same age could be supported by different processes. Some participants discussed that it would be easier for them to have a clear line between each piece of legislation, rather than an overlap in the legislation applicable to young people; as the following reflections detail:

> *...it's saying 16 is really young, you know we've spoken about that in continuing care, it's too young to expect them to go out and stand on their own two feet. And it is that kind of... should it just be 18 across the board?*

> *I think in some ways it might be easier if [legislation] was clearly defined and it wasn't both, because maybe then it would provide more consistency when planning for transition, where it introduces more debate just now ... and would that make it a lot clearer and defined for us, and clearer for young people and their families as well...*

Other factors might complicate the decision of which process to use, such as how a young person becomes known to services; and what age they are at this time. When a young person is new to social work, rather than transitioning between children and adult services, this can give less clarity about which team would be responsible for their support:

> *I think what happens is if there is an open case to children and families then there is joint working between adult services and children's services, but actually I am realising I am not clear on that...*

There was some evidence in the discussion groups that a young person at the same age, might be supported by different processes, depending on the way they have become known to social work services:

> *...I think we've got very clear guidelines in regards to when it's child protection or adult protection, and more recently that's become a wee bit unstuck with kinda recent changes but previously it's been very clear you know, if we've had somebody that's on an order, they're still under a supervision order through the children's hearing, that's children legislation so it would always be a child protection... young people that come into after care in the local authority are not on an order and have left school, so it's very clear they're not a child and they're kinda in the adult system...*

In discussion groups, frustration emerged that deciding which team should be responsible for a young person is not necessarily determined by the needs of that individual; but instead by age, and other age related milestones, such as if they are in education, or involvement with other formal systems:

> *...if a concern comes in for someone who is 16-18... if they are in school it's likely to go to child protection, if they're not in school it's likely to go to [adult protection] ... kinda cut down this barrier of if they're in school they go one way, and if they're not in school they go the other way, I think we're really gonna have to get rid of that unwritten structure, unspoken structure, and actually define it 'well, what is best to safeguard this 16, 17 , 18 year old? Who is best to do it'...*

Relatedly, practitioners shared that the legislation that is applicable to a young person's chronological age may not always feel like the most appropriate legislation needed for their individual circumstance:

> *...there's times where I've seen ... the ASP Act might be the best act to use to safeguard a 16 or 17 year old, and [then with] an 18 year old you're thinking, 'do you know what, that would be better from child protection, or from the Children and young people's act'...*

Defining a person as either a child or an adult for the purposes of ascertaining which processes to apply to them was raised as having the possibility to limit the understanding of the young person and the support they need:

> *...young people who are 16, 17, 18 and beyond that, I don't know if either one of those two categories best meet their needs. Probably some combination of both, where they could be supported in one system be that children's but we work alongside adult services in a more child centred way, rather than working in a way that is very adult and they're not ready for...*

However, it was also highlighted that deciding if adult legislation or children's processes are most appropriate, and which team should be responsible for a young person, can be a distraction from the needs of the individual:

> *...and certainly the sense was people are spending more time trying to think about why it would not sit with them than try and figure out what's in the best interests of a young person... it tends to be who shouts the loudest about not wanting the adult protection concern, tends to end up with it...*

4.4 TRANSITIONS FROM CHILD TO ADULT SERVICES

Transitioning from children's to adult services is largely driven by age, rather than the readiness of the young person to move into adult services. This is singled out in Learning Reviews as being particularly difficult for young people. When transitions happen based on age, rather than the readiness, situation and context of the young person; then transition may occur at a particularly vulnerable stage for young people. Young people might be unable to cope with the change, or to engage in the necessary, new relationship building that accompanies a change in service (Blackburn with Darwen Safeguarding Children Board, 2020).

Additionally, planning for transitions can be difficult as a result of the overlap in legislation and guidance; and so transitions and transitions planning differs across Scotland. For some young people, they are transitioning out of services altogether, as they do not meet the eligibility criteria for ASP. Literature highlights the transition between children and adult services – across a range of services – as a particular challenge for young people, often exacerbated by additional pressures and complexities that a young person might have in their life (ARC Scotland, 2019). This was echoed in the discussion groups, where participants shared that for some young people, their service is the constant in the young person's life:

...through a continuing after care perspective, I would say [transitions are] really difficult for the majority of the young people in our team... we are often in terms of involvement we are one of the most stable and longest involved services in a young persons life, so that transition across to adult services can be really challenging...

A well-managed transition is important to the wellbeing of young people, and the planning and consideration that practitioners give to a young persons move to adults services was shared in the discussion groups (Blackburn with Darwen Safeguarding Children Board, 2020):

When we're becoming aware of the concerns, we are going in and we're looking at that screening taking place to try and ascertain does that person meet the three point test under adult legislation and what support across the partnerships needs to be put in place. And we're looking at ensuring that professionals attend children's services meetings to try and support the smooth transition...

However, in discussion groups, it was shared that how successful the transition between services is for a young person can be down to individual workers' practice; staff workload and time pressures; and even if the teams are co-located or not:

Our team's just new but once a young person gets to 16 the Children and Families team ... we get a wee notice in saying they'll be moving on to your team. Some really good practises, and it is down to the individual worker... it's about planning, meeting the young person, taking time for the young person to get to know me, because it's gonna be scary. They've been maybe working with the same social worker for a number of years and then all of a sudden, it's like oh you're getting moved on...

Justice social workers highlighted that they might find themselves supporting a child who is subject to child protection measures, but who is also engaged with the adult justice system. In this case, the young person might have more than one social worker. While this is not necessarily a transition between services, practitioners shared that it can be challenging for young people to keep up with several social workers; as well as understand and navigate both the child and adult systems, and the different responsibilities and requirements of each.

4.4.1 Mental health services

Mental health challenges are prominent for many young people who are the subject of Learning Reviews; and discrete groups of children and young people such as care experienced young people, continue to find particular challenge in accessing mental health support (Lee and Gilling, 2020, Care Inspectorate, 2022; MHLR, 2022). Providing the right mental health support to older young people specifically, is highlighted as a persisting challenge

in the National Overview Report on Learning reviews for Children (**Care Inspectorate, 2022**). In particular, the transition process from child to adult mental health services emerges as a difficult one to get right for young people (Lee and Gilling, 2020, Care Inspectorate, 2022). Specifics include poor record keeping and communication between services, resulting in a young person being unable to access the necessary mental health supports, and so left in a vulnerable position (Lee and Gilling, 2020).

Relatedly, the MHLR (2022) found support for access to CAMHS up to the age of 18 to be underpinned by law. The transition age was found to be viewed as arbitrary and there was a strength of feeling that the transition age from child to adult mental health services should be more flexible; in order to allow the needs of the young person to lead and direct the time at which they are ready to transition. The review found that the move from child to adult services can feel very extreme, and some organisations such as SAMH, supported the extension of the CAMHS to those up to age 25 if that is what a young person feels is best for them (MHLR, 2022).

4.5 DIFFERENCES BETWEEN SERVICES

As well as recognition that changing services in and of itself can be a challenge for young people; efforts to ease the transition are challenging as a result of the material difference in what support can be provided to young people in children's services versus adult services. In this practitioner example, it is clear how the particular processes that support a young person impact on the course that support takes, including who is involved in their care:

> *I think it does get into that dubiety... we're all starting to have discussions 'I wish the age was now 18' because then it would be very clear... we had a young person, was not open to children's services at all came to the attention, four days before being 16 due to child protection or adult protection concerns, and it was coming out in kinda mental health concerns as well... we automatically go it's child protection, it's a child, and you know, keeping the child safe... and we'll have a meeting and we'll include the family in this because that's part of our safety planning, our protective factors. The parents were very protective and this young person was giving a very clear message, I don't want my family to know. I don't want them to know these risks, and our legal team were saying you can't share it. Now for us in child protection that was very, that was a very different feeling, very alien to us not getting round the table ...*

Some practitioners felt that the difference in support between the services was as a result of adult services being more resource-led than children's. Additionally, there are different thresholds to be entitled to support between adults and children's services. This can be difficult for both staff and young people to navigate, and has been explicitly picked out as an issue across Learning Reviews (Care Inspectorate, 2022). The following experience illustrates how children's and adult's services operate differently and provide different support; and how this can be difficult for children and young people to manage:

> *...sometimes what we can do in children's services under protection and support and guidance is a lot higher than what can be done in adult services ... in children's services when we've had a lot of scaffolding around young people and all of a sudden that has to come down that young person's left really vulnerable. And that has been about legislation, about 'we can do it under this', and 'we can't do it under that.'*

There was a sense from some child protection practitioners that child protection processes are better placed to support young people under 18, in part because risk to a child is more immediately understood as harmful or serious, than risk to an adult:

> *There's better multi agency buy-in to child protection than there is to other frameworks, I think probably just because it's been around for longer. People understand child protection a bit better... I don't know if it is just the language that's not helpful, because people hear the word child, they recognise the vulnerability and see how serious that could be...*

However, it was also acknowledged that young people who have been involved with services for quite some time can become weary of child protection processes. It was the view of some participants that adult protection processes do not involve the voice and views of the young person as fully as child protection processes.

> *...what we're finding is that by the time young people are getting to the 16, 17 they are sick of processes, and you know, I think that's one reason why we try to look at thing other than child protection, because they're sick of... care experience reviews... and I guess what I've seen... is that actually child protection process are pretty good at including young people. Whereas I don't feel that in some of the adult processes. You know, I'm quite surprised at the lack of co-production and joint working in terms of developing plans for young people... really young people are sitting there, feeling very judged. In terms of involving them in discussion, it's very much an afterthought, and they just leave those processes feeling totally disempowered, 'what's the point', they never actually see a plan. So as much as we can be critical of child protection processes sometimes and not getting that quite right, I think we're definitely ahead of the curve there...*

In the discussion groups, some practitioners shared the challenges of engaging with wider services and supports for young people who are treated under adult legislation. One participant gave an example of their partnership working with local supported accommodation services:

> *...we don't have as many residential houses, and our supported accommodation providers... are saying 'the young people are too young coming here, they're not ready for support accommodation at 16, 17.' ... 16, 17 year olds in aftercare they're in crisis... They're not 16, they're functioning at 12...*

4.5.1 Misunderstandings

Across Learning Reviews, poor communication and a lack of collaborative working is highlighted as causing challenges for young people transitioning from children's to adult's services. This was echoed in the discussion groups:

> *Our group is 16-26 year olds... But there are some young adults and it's very clear that they will need support beyond their 26 years, and for me trying to get the adult team to take them on board, it's so difficult... I just feel that there's too many tick boxes that you need to tick for somebody to be taken on by adult services...*

In the discussion groups, some tension between the adults and children's services' ways of working was touched upon. Participants from each service shared examples of clashing working philosophies and practices, which the following quotes exemplify:

> *I feel there's often a lot of criticism of my team for this, because we are working with young adults, but with an understanding... about their emotional functioning. And we are doing, I suppose a lot of really basic tasks for them, parenting tasks if that's the right term for it, what people would describe as lifting and laying. But sometimes it's the only way to get someone along to the GP, along to a college appointment, to get them to do their journal... but those things when they transfer into adult services, aren't done ... despite their chronological age being 25, they're not able to manage those things. And yeah, maybe that's a failure of our system within child care, that's maybe a bigger debate, but given the trauma the majority of young people have been through, they do pretty damn well on a day to day basis.*

And:

> *I'm not saying this happens in every case, but I do think sometimes there will be a request or a referral for transition where things have become challenging on the child's side and its like well lets try this approach... so a referral is made... sometimes I maybe think in frustration linked to that...*

It was also discussed by practitioners that a young person could find themselves supported throughout their childhood through CP measures, but not meet the three point eligibility criteria for ASP. What should happen in this instance, and which team would be best to refer a young person on to, was widely shared by practitioners to be challenging to work out:

> *...the biggest sticking point is where does the young person fit depending on their needs? ... we've been really trying to make sure that relevant professionals from adult services are invited to start attending the children's meetings that are taking place and that it's being flagged up to adult services that this person is going to be coming your way...*

There was a feeling that there were few options for young people, despite their need for continued support. An additional perspective on onward referrals was given in the discussion groups, offering that a lack of understanding between child and adult protection teams, results in inappropriate referrals:

> *I suppose it's about understanding what type of referrals we are making between the two departments... childcare services, they can make an ASP referral and that criteria has to be met and there won't be intervention if it's not met, whereas, if it was a referral for a community care assessment it would be a different consideration ... if that's difficult for us to understand in the professional arena and there needs to be some training there, it's difficult for a young person to understand what that means...*

This can leave a young person without input from any services; but without any material change to their support needs. One participant shared that this is where robust understandings of alternative frameworks and other applicable legislation among professionals is important, recognising that this is not uniform across Scotland:

> *...there will be young people aged 16 and around about those ages who won't meet that criteria. But I'm aware of many local authority areas that are aware that then means that there's a group of young people who fall below that statutory intervention because it's not ASP, they might not meet the criteria for mental health legislation and that's where some of the other frameworks come in... these things are always in development, it's not standardised across Scotland...*

4.6 PARENTAL INVOLVEMENT

The role of parents appears in Significant Case Reviews (now Learning Reviews) and was also a distinct discussion in the group setting. In child protection processes, families are included in the plans as part of the process of protecting the young person. Families are often an important part of supporting a young person, and it is important that they are informed of any risks to young people so that they can protect them. However, there are examples in Learning Reviews of where parental involvement has in fact hindered a young person, as services have overestimated the protective role the parents are playing; or have given greater weight to the parents account of the child's wellbeing, rather than centring on the child's voice.

While involving families might often be a protective factor for a young person; there may be occasions where it would be beneficial not to include them, as was highlighted in the group discussions:

> *I think in the past, where we've really seen implications from family... the ASP Act does not legislate in a way that we need to inform family as much as we do with the Children and Young Persons Act... so we've found nuanced ways of how we truly safeguard this person, particularly if there's risk coming from family... we didn't have to go back to uncle, or mum at the time, till such times as we felt that we were able to, and such times as we had a plan in place and we felt that the time was right to do that.*

In these circumstances, being able to support young people under ASP legislation was highlighted in discussion groups as giving social workers an additional tool to support young people, and may open up the ability to empower young people in their choices:

> *I think if you've got a child protection and an adult protection group of services that are happy to meet in the middle and go hold on this is not about eligibility or thresholds, this is about the best interests of that 16,17,18 year old, then I think potentially you've got an extra tool in your bag, because it's not just about ASP, it's not just about child protection. It's about ... what's best to safeguard this kid?*

However, one practitioner shared that although they had an experience of using ASP to support a 16-year-old who did not want their parents involved; they felt confident that given the circumstances, their colleagues in children's services would have also have been able to appropriately support this young person without their parent's input.

Additionally, practitioners highlighted that parental involvement might commonly be difficult for young people in 16-17 age range. Rather than treating

them under ASP, national guidance and tools for professionals on how to sensitively involve a young person's wider support system, could be considered:

> *I expect that [not wanting parental involvement] is quite common in that age range [16-17]... and I think having a very black and white approach to that probably isn't that helpful. And is there something that we could develop nationally around tools where that is a dynamic, so it could be for example that the young person doesn't want a certain person to be part of that meeting but is there other methods and ways of supporting that outwith the big group... is it just around a wee bit of a toolkit or a framework around how do we do that in a way that's acceptable and comfortable to the young person. Because they are part of a family and network and they're not going to get the best protection if people aren't aware of the circumstances and the risk in their life...*

5. Discussion

This work begins a discussion on the areas that are challenging for practitioners when supporting 16 and 17 year olds under ASP and CP.

First, the varying definitions of children and adults in legislation and guidance is mirrored in the challenge that practitioners have in defining children and adults. Practitioners recognised that age-based understandings of adults and children, is not always useful when considering the developmental stage young people are at; and the trauma and challenge that are part of the histories of some of the young people they are supporting. In addition, wider literature details the delicate balance practitioners working with 16 and 17 year olds need to strike; between respecting their autonomy as they move to adulthood, and making decisions that are in their best interests.

Social workers shared that they make the decision on which legislation to apply to a young person's situation based on local convention and practise, and by discussion within their teams. However, there are broadly agreed norms, such as if a young person is 16 or 17 and still in school, then they are likely to be referred to the children and families' team. Applying appropriate legislation might also depend on the route that the young person has taken to services; for example, if the person is already involved with social work, or if the referral is new.

There was a sense among the participants that it would make it easier for them to make decisions, and to support a young person, to have a defined age at which one legislation ends, and the other starts. However, contrasting this, was the sense that age-based decisions distract from the more important question of what legislation is best suited to support a young person, given the personal circumstances and needs of different individuals. This was exemplified in the discussion around the role of

parents; when it was shared that the ability to be flexible in the definition of adult and child, and in turn flexible with the application of legislation; can be positive for the young person in question. That social workers can make the professional call on which legislation to apply, could be considered as an additional tool that they have to support a young person.

Differences between the services for children, and those for adults was highlighted by practitioners as a challenge for young people. The level of support available and the eligibility criteria for support differs between adult and children's services, from some perspectives, there being increased scaffolding and a lower threshold for support from children's services. However, creating a hard border between ASP legislation and Child Protection guidance will not necessarily result in better support for young people moving between services. It was suggested that a defined transition age might better support services to prepare themselves and young people, but the material differences between services would be unchanged.

Additionally, a defined age at which someone must change service still necessitates a transition for young people. Transitions in and of themselves were felt to be a challenge for young people among participants, which is a view supported by wider literature. It was shared that often a supported transition is dependent on individual practise, as well as resourcing and capacity of social work teams. Age and/or service-led transitions for young people are found to be particularly difficult for young people in mental health services where the difference in support can feel extreme. Transitioning into a different service at a particularly vulnerable time can mean that young people lack the ability to engage in important relationship building, and they can feel particularly vulnerable. Good transitions principles require to be followed to ensure robust support for young people moving between services, regardless of their age. Those young people who are not eligible for ASP may find they are negotiating a transition out of services altogether, even though some practitioners mentioned they felt support was still needed.

It was clear in the discussion that misunderstandings between practitioners in children and families services, and adult services, can add to the challenges for young people. There was experience of inappropriate referrals from CP teams to ASP teams; as well as the perception that ASP teams misunderstand support for young people with significant challenge, as a lack of preparation for adult services. These challenges would likely still exist if legislation applied up to a defined age. Some participants suggested that training for professionals, and measures including co-location of teams and professional awareness of other legislation that can support young people ineligible for ASP; would better support for young people.

6. Areas for further investigation

This work is a beginning in understanding the challenges and opportunities that arise for practitioners when working with 16 and 17 year olds. Some of the key topics and challenges that social work teams face when supporting this age group, with either ASP legislation or CP guidance, have been identified. To further understand the considerations that can apply to this age group; and to understand what impact having a discreet age group for each would have; further investigation in the following ways would support this:

1. There are different ways to define an adult and a child. Further investigation into how common an experience it is that social workers struggle to decide which team is best suited to meet the needs of a young person who is new to service should be undertaken. This would allow an understanding of the frequency and prevalence of this decision making; what information they use to inform and come to this decision; and what, if any, implications there are on the support for a young person as a result of the decision-making process.
2. In this piece of work, the impact of ambiguous or competing definitions of adults and children on legal teams in local authorities was not discussed. Further research to understand if, or how, legal teams are impacted by the crossover in definitions of children and adults; and if this in turn impacts social work teams, both operationally and in terms of resourcing.
3. There is evidence in the experiences of practitioners that young people of the same age might be treated differently depending on their geographical location, or on how they come to be referred to services. While this might result in inconsistencies, it was also suggested that being able to decide which legislation between

ASP and CP best serves the needs of a young person can be an asset. Further work could better understand how often this occurs, and what the implications are on support for young people.

4. Transitions between children's and adults' services continues to be a challenge for young people. The transitions literature is well developed; there are published principles of **good transitions**; and there are groups that meet specifically with this in mind. Transitions between services will continue to occur, even if a fixed age at which this happens is implemented. As such, further implementation; or consideration of how to implement good transitions principles, could be considered.
5. Additionally, social work teams across Scotland have, and continue to give, consideration to how they support transitions from children's to adults' services, with some creating specialised transitions teams. A mapping exercise of transition teams and/or contextual safeguarding processes could support understanding of how social work teams engage with 16 and 17 year olds on the ground, and in their daily practice context.
6. Social workers from child protection and adult protection teams shared that there can be a lack of knowledge of the eligibility criteria for referral; the support that is given by each team; and general understanding of their colleagues' work, within the other team. This can result in inappropriate referrals, and tensions between adult and children's teams. Further work could understand the differences in thresholds between services; the different approaches taken in each service; and the impact that inappropriate referrals might have on a young person's support.
7. Relatedly, future work could consider the frequency of practitioners finding 16 and 17 year olds ineligible for ASP; and develop an understanding of what other legislative frameworks and support options might be available to them.
8. The National Care Service is currently being developed through co-design and engagement with those who have lived and living experience of accessing and delivering community health, social work, and social care support. The Scottish Government is exploring whether including certain children's services in the scope of the new National Care Service (NCS) might be beneficial, recognising there are a range of views on this issue. To inform the decision on the future of children's services, independent research has been commissioned, and carried out by CELCIS (The Centre for Excellence for Children's Care and Protection). This research supports the identification of what is needed to ensure that children, young people, and families get the help they need, when they need it; and should be considered as part of any wider work regarding children's services.

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Appendix
Guidance and legislation table

CHILD PROTECTION GUIDANCE

The **National Guidance for Child Protection in Scotland 2021 – updated 2023** – outlines child protection processes. This non-statutory guidance is underpinned by the following key pieces of legislation:

The Children (Scotland) Act 1995 covers parental responsibilities and rights, and the duties and powers local public authorities have for supporting and promoting the safety and welfare of children.

The principles behind the Act (The Scottish Office, 1993) were that:

- Each child has the right to be treated as an individual
- Each child who can form a view on matters affecting him or her has the right to express those views if he or she so wishes
- Parents should nominally be responsible for the upbringing of their children and should share that responsibility
- Each child has the right to protection from all forms of abuse, neglect or exploitation
- So far as is consistent with safeguarding and promoting the child's welfare, the public authority should promote the upbringing of children by their families
- Any intervention by a public authority in the life of a child must be properly justified and should be supported by services from all relevant agencies working in collaboration

There were three main themes including that:

- The welfare of the child is the paramount consideration when his or her needs are considered by the Courts and Children's Hearings
- No Court should make an Order relating to a child and no Children's Hearing should make a supervision requirement unless the Court or Hearing considers that to do so would be better for the child than making an Order or supervision requirement at all
- The child's views should be taken into account where major decisions are to be made about his or her future

ADULT SUPPORT AND PROTECTION LEGISLATION

The Adult Support and Protection (Scotland) Act 2007 provides measures to identify, and to provide support and protection for, those individuals who are vulnerable to being harmed whether as a result of their own or someone else's conduct. These measures include:

- A set of principles which must be taken into account when performing functions under the Act
- Placing a duty on Councils to make the necessary inquiries to establish whether or not an adult is at risk of harm and whether further action is required to protect the adult's well-being, property, or financial affairs
- Placing a duty on certain public bodies and office holders to cooperate in inquiries
- Introducing a duty to consider the provision of advocacy or other services after a decision has been made to intervene
- Permitting, in certain circumstances, the medical examination of a person known or believed to be at risk of harm
- Requiring access to records held by agencies in pursuance of an inquiry
- Introducing a range of protection orders which are defined in the Act, namely:
  - Assessment orders
  - Removal orders
  - Banning orders
- Requiring the establishment of multi-agency Adult Protection Committees

The Adult Support and Protection code of practice can be accessed on the Scottish Government website.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
The Children's Hearings (Scotland) Act 2011 sets out the legal basis for the care and protection of children by the imposition of Compulsory Supervision Order. The Act sets out the duties and powers of local authorities, police officers and others to make a referral to the Principal Reporter. The act also sets out the legislation governing emergency measures for child protection of children, including child protection and child assessment orders, emergency applications to justices of the peace and the powers of a constable to remove a child to a place of safety. **The Children and Young People (Scotland) Act 2014** amends the Children (Scotland) Act 1995 to ensure children's rights are upheld. The **Police and Fire Reform (Scotland) Act 2012** places a statutory duty on police officers to, amongst other things, detect and prevent crime. Therefore child protection is a fundamental part of the duties of all police officers. The non-statutory National Guidance for Child Protection in Scotland (2021) updated 2023 describes the responsibilities and expectations for all involved in protecting children in Scotland. The Guidance refers to child protection as the processes involved in consideration, assessment and planning of required action, together with the actions themselves, where there are concerns that a child may be at risk of harm. Child protection procedures (as described in Part 3) are initiated when police, social work or health professionals determine that a child may have been abused or may be at risk of significant harm. Child protection involves: • Immediate action, if necessary, to prevent significant harm to a child • Inter-agency investigation about the occurrence or probability of abuse or neglect, or of a criminal offence against a child. Investigation extends to other children affected by the same apparent risks as the child who is the subject of a referral	

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
• Assessment and action to address the interaction of behaviour, relationships and conditions that may, in combination, cause or accelerate risks • Focus within assessment, planning and action upon listening to each child's voice and recognising their experience, needs and feelings • Collaboration between agencies and persistent efforts to work in partnership with parents in planning and action to prevent harm or reduce risk of harm • Recognition and support for the strengths, relationships and skills within the child and their world in order to form a plan that reduces risk and builds resilience	
SUBJECT TO PROVISION	
The National Guidance for Child Protection 2021 – Updated 2023 defines children as follows: *In general terms, for the purposes of this Guidance, the protection of children and young people includes unborn babies, and children and young people under the age of 18 years.* There is some variance in how children and adults are defined across legislation and guidance. For 16 and 17 year olds, this means there might be occasions where they are considered and treated as children; and others where they are considered and treated as adults. The **Adults with Incapacity (Scotland) Act 2000** safeguards people who do not have capacity in relation to making decisions about their welfare and/or finances. This legislation defines 'adults' as those who have attained the age of 16.	Adults at risk: 1. "Adults at risk" are adults (aged 16 and over) who— - Are unable to safeguard their own well-being, property, rights or other interests, - Are at risk of harm, and - Because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected. 2. An adult is at risk of harm for the purposes of subsection (1) if - Another person's conduct is causing (or is likely to cause) the adult to be harmed, or - The adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm. **Section 3(1)** defines an 'adult at risk' as someone who meets all of the following three-point criteria: • They are unable to safeguard their own well-being, property, rights or other interests;

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
	• They are at risk of harm; and • 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. It should be noted and strongly emphasised that the three-point criteria above make no reference to capacity. For the purposes of the Act, capacity should be considered on a contextual basis around a specific decision, and not restricted to an overall clinical judgement. It is recognised that, due to many factors in an individual's life, capacity to make an authentic decision is a fluctuating concept. Thus, even if deemed to possess general capacity, attention must be paid to whether a person has clear decisional and executional ability (i.e. to both make and action decisions) to safeguard themselves in the specific context arising. When an adult does not meet the three point criteria, other legislation/ interventions might be considered.
DEFINITIONS OF HARM	
The National Guidance for Child Protection in Scotland 2021 – Updated 2023 defines harm and significant harm in the following way: Protecting children involves preventing harm and/or the risk of harm from abuse or neglect. Child protection investigation is triggered when the impact of harm is deemed to be significant. 'Harm' in this context refers to the ill treatment or the impairment of the health or development of the child, including, for example, impairment suffered as a result of seeing or hearing the ill treatment of another. 'Development' can mean physical, intellectual, emotional, social or behavioural development. 'Health' can mean physical or mental health. Forming a view on the significance of harm involves information gathering, putting a concern in context, and analysis of the facts and circumstances.	Section 3(2) of the Act defines an adult as being at risk of harm if: • Another person's conduct is causing (or is likely to cause) the adult harm; or • The adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm. Adults can be at risk of harm in various settings, be it in their own homes, in the wider community, or in a hospital setting. They also may be placed at risk through inappropriate arrangements for their care in a range of social or healthcare settings. Perpetrators of harm can include families and friends, informal and formal carers, fellow users of residential and daycare services, fraudsters and members of the public.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
For some actions and legal measures there will be an essential legal test of significant harm. There is no legal definition of 'significant harm' or the distinction between harm and significant harm. It is a matter for professional judgement as to whether the degree of harm to which the child is believed to have been subjected, is suspected of having been subjected,or is likely to be subjected is 'significant,' and relates to the severity or anticipated severity of impact upon a child's health and development. **CHILD ABUSE AND CHILD NEGLECT** Abuse and neglect are forms of maltreatment. Abuse or neglect may involve inflicting harm or failing to act to prevent harm. Children may be maltreated at home; within a family or peer network; in care placements; institutions or community settings; and in the online and digital environment. Those responsible may be previously unknown or familiar, or in positions of trust. They may be family members. Children may be harmed pre-birth, for instance by domestic abuse of a mother or through parental alcohol and drug use. Further detail on different types of abuse and neglect can be found in Part 1 of the National Guidance.	Section 53 states that "harm" includes all harmful conduct and gives the following examples: • Conduct which causes physical harm; • Conduct which causes psychological harm (for example by causing fear, alarm or distress); • Unlawful conduct which appropriates or adversely affects property, rights or interests (for example theft, fraud, embezzlement or extortion); • Conduct which causes self-harm. The list is not exhaustive and no category of harm is excluded simply because it is not explicitly listed. In general terms, behaviours that constitute harm to a person can be physical, sexual, psychological, financial, or a combination of these. The harm can be accidental or intentional, as a result of self-neglect, neglect by a carer or caused by self-harm and/ or attempted suicide. Other forms of harm can include domestic abuse, gender-based violence, forced marriage, female genital mutilation (FGM), human trafficking, stalking, scam trading and hate crime. Some such cases will result in adults being identified as at risk of harm under the terms of the Act, but this will not always be the case. The criteria for granting an assessment order (s12); removal order (s15); or banning order (s20) includes reference to the likelihood of the adult being "seriously harmed."

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
DUTY ON THE AUTHORITIES TO INVESTIGATE/INQUIRE	
Everyone has a responsibility, individually and collectively, to protect vulnerable people in our communities. This cuts across all aspects of private life and professional business. Supporting individuals at risk of harm is best done through collaboration and with a sense of community responsibility. The expectation is that decision-making should take place on a multi-agency basis to enable full and complete assessment and discussion of potential protective actions. The multi-agency nature of adult and child protection work is crucial to the work of protecting individuals from harm.	
Section 19 of The Children (Scotland) Act 1995 places a duty to safeguard and promote the welfare of children on the local authority as a whole, and encompasses social work services, education, housing and any other relevant services required to safeguard and promote the welfare of such children. A constable may remove a child to a place of safety under section 56 of the Children's Hearings (Scotland) Act 2011 if the provisions of the legislation are met. The Act also states that the local authority must make all necessary inquiries into the child's circumstances if it appears that the child is in need of protection, guidance, treatment or control, and if it might be necessary for a Compulsory Supervision Order to be made in relation to the child. The local authority must give the Principal Reporter any information they have about the child. Police will share child concerns and concerns relating to children coming into conflict with the law with the Reporter where children are considered in need of protection, guidance, treatment or control and maybe necessary for a Compulsory Measure of Supervision Order or who are already subject to a Compulsory Supervision Order in terms of Section 60 the Children's Hearing (Scotland) Act 2011. The duty to undertake a child protection investigation is outlined in the non-statutory National Guidance for Child Protection in Scotland 2021 – updated 2023. This guidance outlines the immediate actions that may be necessary to protect a child i.e. Child Protection Order (CPO) but also highlights an Inter-agency Referral Discussion (IRD) as the next critical phase in risk assessment and response following notification of a child protection concern.	A council must make inquiries about a person's well-being, property or financial affairs if it knows or believes that the person is an "adult at risk" and that it might need to intervene (by way of this Act or otherwise) in order to protect the person's well-being, property or financial affairs. The Act places duties upon the council to: • Make inquiries if it knows or believes that a person is an adult at risk of harm and that it might need to intervene under the Act or otherwise to protect the person's wellbeing, property or financial affairs (Section 4); • Undertake investigative activity, as part of its inquiries, involving council officers who have certain powers under the Act (Sections 7-10); • Co-operate with other councils and other listed (or specified) bodies and office holders (Section 5); • Have regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services), where the council considers that it needs to intervene in order to protect an adult at risk of harm (Section 6); • Make visits, with right of entry, for the purpose of conducting interviews and arranging medical examinations (sections 7, 8, 9 & 36 – 40); • Protect property owned or controlled by an adult who is removed from a place under a removal order (Section 18); • Set up an Adult Protection Committee to carry out various functions in relation to adult protection in its area, and to review procedures under the Act (Section 42).

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
	It should be recognised that an individual's vulnerabilities, health conditions and abilities can fluctuate and evolve over time. Practitioners should be alert to the need for re-assessment or for re-evaluation of an individual's circumstances against the three-point criteria. The Act requires the principles to be applied when deciding which measure will be most suitable for meeting the needs of the individual. Any person or body taking a decision or action under the Act must be able to demonstrate that the principles in sections 1 and 2 have been applied. The principles in section 1 require that any intervention in an adult's affairs under the Act should: • Provide benefit to the adult which could not reasonably be provided without intervening in the adult's affairs; and • Be the option that is least restrictive to the adult's freedom. A public body or office holder performing ASP functions must take into account the views of the adult and their family/carers; guardian or attorney of the adult; and any other person who has an interest in the adult's well-being or property, which are known to the public body or office-holder. The adult must also be provided with the information needed to keep them involved in any decision, recognising their background and treating them equally as they would treat others.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
ASP/CP REFERRALS AND REPORTS OF CONCERN (CHILD)	
Any individual can identify a concern that a child or young person may be at risk from abuse, neglect, exploitation or violence. Consent is not required when making a referral about a child or young person who may be at risk from abuse, neglect, exploitation or violence. Concerns about risk to a child or young person should be reported without delay to social work or, in situations where risk is immediate, to Police Scotland.	An ASP referral can be submitted to the council where the person is by any individual, including by the individual themselves. In some areas where health and social care is integrated, referrals may be made directly to social work departments. Referrals can be made anonymously. Section 5(3) of the Act places a duty on certain public bodies or office holders who know or believe that a person is an adult at risk of harm and that action needs to be taken to protect them from harm, to make a referral by reporting the facts and circumstances of the case to the council for the area in which the person is considered to be located. It is not the referral source's responsibility to confirm that the adult meets the three-point criteria; it is enough that one believes the individual to meet the criteria to warrant an ASP referral. Any information that can be provided at the referral stage will assist the local authority in undertaking adult protection inquiries. Good practice would dictate that even if in doubt the referral should be made and should be counted as a referral by the council/receiving social work department.
ROLE OF CONSENT REGARDING REFERRALS	
Consent of the child is not required for a child protection referral to be made.	**The adult's consent is not required for a referral to be made.** Whilst adults with capacity have the right to consent or otherwise, there may be a lawful basis to share information – including information shared to make a referral – under the 2007 Act without this consent. There is a difference between medical consent and data sharing consent. It is important to be open and transparent with the adult, and vital that all decisions and rationale are recorded.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
SHARING INFORMATION WITH OTHERS, INCLUDING PARENTS	
Regardless of age, the individual will be asked if relevant information can be shared with parents, carers and relevant others. For all 16/17 year olds who are referred for ASP or CP, consideration should be given to sharing information with parents, carers, and/or other professionals to inform risk assessment and protection. Decisions on sharing information with or without permission for this age group are informed by the individual circumstances of the case. Guidance about involving children and families in child protection processes are detailed in paragraphs 3.127-3.138 of the National Child Protection Guidance, with particularly 3.133 and 3.135 relevant. In certain circumstances, information must be shared, as a key part of keeping a child safe from harm. Where there is a child or adult protection concern, relevant information should be shared with the relevant professionals without delay (including social work, health and police), provided it is justifiable, proportionate and lawful to do so, based on the potential or actual harm to adults or children at risk. The rationale for decision-making should always be recorded. People should not be pressured to consent to their information being shared. However, there may be times where sharing information is shared lawfully, without gaining the consent of the people to whom the information pertains. Further information around UK GDPR and consent in respect of data sharing can be found on the **Information Commissioner's Office website**.	
Guidance highlights that practitioners should presume that children have the capacity to form their own views; and make decisions based on those views. Where there is evidence to suggest that the child does not have this capacity, consent should be sought from the parent, unless there are reasons not to do so.	Further information regarding the sharing of information under Adult Support and Protection processes can be found in the **ASP Code of Practice**, including a checklist for practitioners, to guide decisions about whether or not to share information. If possible, the individual's consent should be attained prior to sharing information (e.g., sharing records) but, for the avoidance of doubt, where disclosing information to the appropriate authorities seeks to address a perceived risk of harm to that individual, it is in the public interest to do so. This legal duty applies to all employees and officers of the relevant public bodies and overrides any general duty of confidentiality. Where the adult is incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney may consent on their behalf. Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use the provisions in the Adults with Incapacity (Scotland) Act 2000 or Section 34 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
INTER-AGENCY REFERRAL DISCUSSIONS (IRDS)	
When information is received by police, health or social work that a child may have been abused or neglected and/or is suffering or is likely to suffer significant harm, an IRD must be convened without undue delay. An IRD will coordinate decision-making about such investigation and action as may be needed to ensure the safety of children involved. In the National Guidance for Child Protection, an IRD is defined as follows: *An inter-agency referral discussion (IRD) is the start of the formal process of information sharing, assessment, analysis and decision-making following reported concern about abuse or neglect of a child or young person up to the age of 18 years, in relation to familial and non-familial concerns, and of siblings or other children within the same context. This includes an unborn baby that may be exposed to current or future risk.* Practitioners in police, social work and health must participate in the IRD; participation of other professionals, particularly those from education or ELC, should be considered based on their involvement with the child.	Some areas in Scotland have ASP procedures that involve IRDs (sometimes also called Initial Referral Discussions) but these are not statute. An IRD is a professional discussion held with relevant representatives from social work, health, police and any other agency with knowledge of the adult at risk of harm; IRD processes, including criteria for convening them, vary. The sharing of information and planning of approaches can be conducted by phone, electronically, or in person. IRDs provide a forum for inter-agency discussion and decision-making about the next steps in protecting an individual. As such, they will broadly address the same matters as outlined above in the initial stage of an inquiry but build in an expectation of inter-agency engagement and discussion to the process. It is for local partnerships to decide if they include IRDs in their processes.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
CHILD PROTECTION PLANNING MEETINGS AND ASP CASE CONFERENCES	
CHILD PROTECTION PLANNING MEETINGS (CPPM) These meetings follow on from IRDs, to decide whether the child requires a Child Protection Plan, and should be placed on the Child Protection register. All relevant agencies share information, and children and their families are supported to attend where possible. The CPPM is a formal multi-disciplinary meeting, which must include representation from the core agencies (social work, health and police) as well as any other agencies currently working with the child and their family, including education. The child and relevant family members should be invited and supported to participate, as appropriate in each situation. Where they are unable to participate in person if possible their views should be sought and represented at the meeting.	**ADULT SUPPORT AND PROTECTION CASE CONFERENCES** Subsequent to inquiries and investigative activity, the multi-agency assessment may be considered by an inter-agency Adult Support and Protection Case Conference. A case conference could be convened when there are concerns that an adult is at risk of harm and the engagement of the adult and all relevant agencies in the assessment of risks and strengths, and in planning for next steps, is required. This will be assisted by the collation, in advance of the case conference, of up to date and well-balanced inter-agency chronologies. The collated chronology may be updated to reflect information arising from the case conference. Such meetings should be as inclusive as possible with the presumption that, barring serious risks to attendance, the adult themselves will be in attendance or that arrangements have been made to ensure that the adult's views and wishes can be conveyed to the meeting. The needs of many people may mean that a case conference convened as part of adult support and protection concerns may also need to consider other options for protecting people including under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003, and the Adults with Incapacity (Scotland) Act 2000. However, such considerations should not compromise any actions that may need to be taken under Adult Support and Protection legislation. It may be helpful to have a Mental Health Officer present at a case conference. A support and protection plan may be agreed across all relevant agencies, including identification of who is responsible for each aspect of the support and protection plan, the anticipated timetable, and reporting arrangements.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
	If a review meeting has been agreed, the decision may also be taken to convene a core group between case conferences. A lead professional – likely to be the council officer – should be identified to be kept informed of relevant updates relating to the adult and implementation of the support and protection plan; and lead professionals to comprise the core group who will work with the plan should be identified.
ORDERS AND/OR INTERVENTIONS	
For ASP, consent from the adult is required before any of the protection orders can be carried out. The only exception to this would be in the event that a Sheriff found that the adult declined to consent to the order, as a result of undue pressure from another individual. **Section 5** of the ASP (Scotland) Act 2007 provides further information about undue pressure.	
CHILD PROTECTION ORDER (CPO) In practice, child protection orders are usually applied for by a local authority. However, anyone, including the local authority, can apply for a Child Protection Order under the following criteria when there are reasonable grounds to believe that: the child has been, or is being, treated in such a way that the child is suffering or is likely to suffer significant harm; or the child has been, or is being, neglected, and as a result of the neglect the child is suffering or is likely to suffer significant harm; or the child is likely to suffer significant harm if the child is not removed to and kept in a place of safety; or the child is likely to suffer significant harm if the child does not remain in the place at which the child is staying (whether or not the child is resident there) and the order is necessary to protect the child from that harm or from further harm (s39 of the Children's Hearings (Scotland) Act 2011).	**REMOVAL ORDER** Allows the council to remove the adult at risk to a specified place in order to assess their situation and to support and protect them. The adult must be moved within 72 hours of the order being made and expires up to 7 days after the day the adult is moved. Application can be made to vary or recall a removal order. A warrant for entry will also be granted. A removal order expires 7 days (or such shorter period as may be specified in the order) after the day on which the specified person is moved in pursuance of the order. Application may be made to a Justice of the Peace under certain circumstances. In this case the adult must be moved within 12 hours and the order may only be granted for up to 24 hours (s14-18 and s39-40).

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EXCLUSION ORDER This may be granted when on application of a local authority a Sheriff is satisfied that excluding a named person from the family home is necessary for the protection of the child, irrespective of whether the child is for the time being residing in the family home. The order will only be granted if it better safeguards the child's welfare than the removal of the child from the family home, and if there will be a person specified in the application who is capable of taking responsibility for providing appropriate care for the child and any other member of the family who requires care, and who is, or will be, residing in the family home. The test for granting is that the child has suffered, is suffering, or is likely to suffer, significant harm as a result of any conduct, or any threatened or reasonably apprehended conduct, of the named person (s76 Children (Scotland) Act 1995). A power of arrest may be attached to an interdict associated with such an order. The maximum duration of such an order is six months (s78 and 79 of the 2011 Act).	**BANNING AND TEMPORARY BANNING ORDERS** These orders will only be granted where the adult at risk is in danger of being seriously harmed. The order bans the subject of the order from being in a specified place and may have other conditions attached to it. A banning order may also: • Ban the subject from being in a specified area in the vicinity of the specified place; • Authorise the summary ejection of the subject from the specified place and the specified area; • Prohibit the subject from moving any specified thing from the specified place; • Direct any person to take measures to preserve any moveable property owned or controlled by the subject which remains in the place while the order has effect; • Require or authorise any person to do, or to refrain from doing, anything else which the Sheriff thinks necessary for the proper enforcement of the order The Sheriff may grant a temporary banning order pending determination of an application for a banning order. A banning order may last for up to 6 months. Any decision to grant or refuse to grant a banning or temporary banning order can be appealed to the Sheriff principal.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
CHILD ASSESSMENT ORDER The 2011 Act (sections 35 and 36) makes provision for the local authority to apply for a child assessment order if it has reasonable cause to suspect that a child has been, or is being treated or neglected in such a way that the child is suffering or is likely to suffer significant harm; that an assessment is needed to establish whether there is reasonable cause to believe that the child is being so treated or neglected; and that it is unlikely that an assessment to establish this could be carried out (or carried out satisfactorily) without obtaining the order (for example, where those with parental responsibility are preventing an assessment of the child being undertaken to confirm or refute the concern). The child assessment order can require the parents or carers to produce the child and allow any necessary assessment (subject to the consent of the child) to take place so that practitioners can decide whether they should act to safeguard the child's welfare. On application to the Sheriff for a child assessment order, if the Sheriff believes that the conditions for making a child protection order exist, he/she may issue a child protection order instead.	**ASSESSMENT ORDER** Allows a council officer to conduct a private interview, and a health professional to conduct a medical examination in private. The adult must be informed of their right to refuse. This order would be necessary only if it were not possible to carry out the interview or examination at the place of the visit. A warrant for entry will also be granted. Valid from the date specified in the order and expires 7 days after that date. Only be granted by a Sheriff (s11-13, s38).
CHILDREN'S HEARINGS The children's hearings system is a system of statutory intervention in the life of a child and their family. The statutory intervention takes the form of an order such as Compulsory Supervision Order (CSO), and a CSO is issued by a children's hearing or by a Sheriff. The children's hearings system deals with referrals in the same way, regardless of the ground on which the child has been referred e.g. whether they have been referred for care and protection concerns or as a result of their own behaviour, which can include offending.	

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
LARGE SCALE PROTECTION ACTIVITY	
There is not a large-scale investigation framework under child protection guidance. For children or young people at risk in a residential children's home, for example, standard child protection measures should be followed. The responsible local authority social work department (lead professional agency) would lead for each young person at risk, although in many cases this will be jointly investigated with police. Where there is a need to investigate the circumstances of more than one child, it may be that these investigations are coordinated jointly. Scrutiny activity of the Care Inspectorate would also be triggered via mandatory reporting processes to them. By law all care services must notify the Care Inspectorate immediately if **certain events** take place.	**LARGE SCALE INVESTIGATIONS (LSI)** An LSI is specific to adult support and protection processes. • An LSI may be carried out if one or more of the following criteria is present: • An adult protection referral is received that involves two or more adults living within or cared for by the same service or care provider • A referral is received regarding one adult, but the nature of the referral raises queries regarding the standard of care provided by a service • Where more than one perpetrator is suspected • Institutional harm is suspected • A whistle-blower has made serious allegations regarding a service • There are significant concerns regarding the quality of care provided and a service's ability to improve. These concerns could come from a regulatory body such as the Care Inspectorate or Healthcare Improvement Scotland • An adult or adults are living independently within the community but are subject to harm from a perpetrator or group of perpetrators, or it is strongly suspected that more than one adult is subject to such harm • Concerns regarding an adult are raised following their admission to hospital or discharge. This may include concerns about a care service that are evidenced by an admission to hospital, or concerns regarding an NHS service area • Concerns are raised via a complaint to the Care Inspectorate, NHS Board, or the local Council or Health and Social Care Partnership • Concerns are raised by GPs, District Nurses, Dentists, Allied Health Professionals, social workers, social care staff, etc. who attend a service. ***The Adult Support and Protection National Large Scale Investigation Framework*** lays out how LSIs should be carried out and is accessible on the Iriss website.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
PARTICIPATION OF CHILD OR ADULT AT RISK OF HARM AND THE ROLE OF ADVOCACY	
Paragraphs 1.136-.141 of the National Guidance are about the involvement of children. Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) must inform the approach to participation of children in child protection processes. This makes no restrictive presumption about age. Article 12 states: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." There is no age limit on the right of the child to express their views. Practitioners must not begin with the assumption that a child is incapable of expressing her or his own views, but rather presume that a child has the capacity to form their own views and recognise that she or he has the right to express them. Advocacy, translation or communication support may be needed. Practitioners must consider whether the child has the capacity to make their own decisions. Under the Data Protection Act 2018, a child under the age of 16 must be treated as though they have capacity to exercise their rights under that Act, if there is reason to believe that the child has a general understanding of what it means to exercise those rights. If a child is too young or immature to understand the full implications of information sharing practitioners should seek the consent of the parent on behalf of their child unless there are good reasons not to do so, in which case these reasons should be recorded. In general, it should be assumed that a child who is over the age of 12 years has reached the age where they have the necessary level of maturity to have this understanding, unless there is evidence to the contrary.	The adult's views and wishes are central to adult support and protection, and every effort should be made at each stage of the process to ensure that barriers to the adult's participation are minimised. Undue pressure on the adult from another party is one barrier which can occur. It is good practice to consider the best ways to check at various stages with the adult how included they feel and ensure they have the opportunity to highlight if they feel excluded at any point. **Supported decision making** may be appropriate to consider for some people. All decisions must be clearly recorded and explained to the adult. The adult should be provided with assistance or material appropriate to their needs to enable them to make their views and wishes known. There should be a basic assumption that the adult will be involved in all meetings that are about them. There will be times when this will not be appropriate but, in all cases, reasons should be recorded in the minute of the meetings explaining why the adult was not present. If the fullest possible participation of the adult at risk in decision-making, supporting, and protecting them from harm is to be achieved, they should be included in ways that take into account their needs and ability to participate. Good practice in adult protection is no different from good practice in other areas such as care and treatment of mental illness, self-directed support, or commissioning of services to meet assessed individual needs. Section 6 of the Act places a duty on the council, if it considers that it needs to intervene to protect an adult at risk of harm, after making inquiries under Section 4 of the Act, to have "regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services) to the adult concerned". Independent advocacy aims to ensure that a person's voice is listened to and their views taken into account; to support access to information; and to assist people to navigate systems.

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
Implementation of Article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences. There is also a section in Part 3 of the National Guidance on Consideration of the child's involvement in Child Protection Planning Meetings.	The adult should be asked if they know about and would like advocacy support. Where advocacy is offered, declined by the adult, or not deemed appropriate, the reasons for this should be clearly recorded, as should the reasons for not referring to any other 'appropriate' services. This decision should be re-visited and recorded at each formal review e.g. multi-agency meetings, reviews or professional meetings.

APPROPRIATE ADULTS

Appropriate Adults provide communication support to vulnerable victims, witnesses, suspects and accused persons, aged 16 and over, during police investigations. The role of the Appropriate Adult is to facilitate communication between a person with communication support needs and the police and, as far as is possible, ensure understanding by the individual. Communication support needs may be due to mental health challenges, learning disability, personality disorder and/or other factors including brain injury, cognitive impairment and neurodiversity such as autism and ADHD.

Although not a statutory responsibility, a small number of services provide Appropriate Adult support to people during Court processes.

Appropriate Adults:

- Identify how a person's communication support needs may impact their understanding of proceedings
- Raise any concerns about the person's communication needs or welfare with the police or other relevant organisations
- Ensure, as far as possible, the person understands their rights and any questions asked of them
- Always remain impartial
- Have an awareness of police procedures
- Where applicable, ensure, as far as possible, that the person understands a procedure so they can decide whether to consent or not
- Are not protected by confidentiality. This means anything they become aware of must be shared with the relevant authorities including concerns of harm
- Are not qualified to provide a formal assessment of an individual's health or communications issues

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
MEDICAL EXAMINATIONS	
Carrying out a medical assessment, and deciding which type of medical examination is made, is a decision made by a doctor informed by multi-agency discussion with police, social work and any other relevant health staff. Planning should keep the number of examinations to a minimum. The decision to conduct a medical examination may: • Follow from an IRD and inter-agency agreement about the timing, type and purpose of assessment • Follow when a person presents to health services The main types of medical examination that may be undertaken within the Child Protection process are: • Joint Paediatric Forensic Examination (JPFE): Examination by a paediatrician and a forensic physician. This is the usual type of examination for sexual assault and is often undertaken for physical abuse, particularly infants with injuries or older children with complex injuries. • Single doctor examinations with corroboration by a forensically trained nurse. These are sexual assault examinations undertaken for children and young people aged 13-16. In some areas/situations a JPFE would occur, and in all areas/situations JPFE should be considered. • Specialist Child Protection Paediatric/Single Doctor/Comprehensive Medical Assessment. This type of examination is often undertaken when there is concern about neglect and unmet health needs but may also be used for physical abuse and historical sexual abuse. Comprehensive medical assessment for chronic neglect can be arranged and planned within localities when all relevant information has been collated. However there may be extreme cases of neglect that require urgent discussion with the Child Protection Paediatrician.	Where this person is under 18, the Code of Practice suggests that liaising with children's services and paediatrics may be relevant with regards to medical examinations. A medical examination may be carried out on an adult believed to be at risk of harm. A council officer must be responsible for arranging a medical examination, which must be carried out by a qualified health professional. Consideration must be given to how and where medical examinations are undertaken; however examinations can happen at a place being visited under Section 7 of the Act, or at the premises where the adult has been taken under an assessment order granted under Section 11. A medical examination may be required as part of investigation activity for a number of reasons including: • The adult's need of immediate medical treatment for a physical illness or mental disorder; • To provide evidence of harm to inform a criminal prosecution under police direction or an application for an order to safeguard the adult; • To assess the adult's physical health needs; or • To assess the adult's mental capacity. Adults must give informed consent for the carrying out of a medical examination. Where this is not possible, a guardian or attorney must be consulted for consent. Examples of circumstances where a medical examination should be considered include: • The adult has a physical injury which he or she states was inflicted by another person; • The adult has injuries where the explanation (from the adult or other person) is inconsistent with the injuries and an examination may provide a medical opinion as to whether or not harm has been inflicted, or whether there are concerns around self-harm

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The health assessment of a child for whom there are child protection concerns aims: • To establish what immediate treatment the child may need • To provide a specialist medical opinion on whether or not child abuse or neglect may be a likely or unlikely cause of the child's presentation • To support multi-agency planning and decision-making • To establish if there are unmet health needs, and to secure any on-going health care (including mental health), investigations, monitoring and treatment that the child may require • To listen to and to reassure the child • To listen to and reassure the family as far as possible in relation to longer-term health needs The Age of Legal Capacity (Scotland) Act 1991 allows a child under the age of 16 to consent to any medical procedure or practice if in the opinion of the qualified medical practitioner the child is capable of understanding the nature and possible consequences of the proposed examination or procedure. Children who are assessed as having capacity to consent can withhold their consent to any part of the medical examination, for example, the taking of blood, or a video recording. Consent must be documented within medical notes and must reflect which parts of the process have been consented to and by whom. This includes consent to forensic medical examination. In order to ensure that children and their families give properly informed consent to medical examinations, it is the role of the examining doctor, assisted if necessary by the social worker or police officer, to provide information about all aspects of the procedure and how the results may be used; and to ensure informed consent has been obtained. Where a medical examination is thought necessary for the purposes of obtaining evidence in criminal proceedings but the parents/ carers refuse their consent, the Procurator Fiscal may, in exception al circumstances, consider obtaining a warrant for this purpose.	• There is an allegation or disclosure of sexual abuse and the type of assault may have left physical evidence (following local procedures for liaison with the police); • The adult appears to have been subject to neglect or self-neglect and is ill or injured and no treatment has previously been sought. Adults have the right to refuse to consent to a medical examination, and they must be made aware of this before an examination. The capacity of the adult to consent to a medical examination needs to be ascertained. When practitioners are unsure of the adult's capacity, they can consider: • Does the adult understand the nature of what is being asked and why? • Is the adult capable of expressing their wishes/choices? • Does the adult have an awareness of the risks/benefits involved? • Can the adult be made aware of their right to refuse to answer questions as well as the possible consequences of doing so

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However, where a child who has legal capacity to consent declines to do so, the Procurator Fiscal will not seek a warrant. The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021) ("FMS Act"), creates a statutory duty for health boards to provide Forensic Medical Services (FMS) for victims of sexual offences and will establish a legal framework for consistent access to self-referral so a victim can access healthcare and request a Forensic Medical Examination (FME) without first having to make a report to the police. This service is called 'self-referral' and will be available to those aged 16 and over, subject to professional judgement. Subject to that professional judgement, a self-referral service allows young people aged 16 and 17 years, who have experienced rape or sexual assault the opportunity to access appropriate support and healthcare services as well as a FME to collect any potential evidence, at a time when they do not feel ready to report to the police. The ***Clinical Pathway for Health Care Professionals Working to Support Children and Young People who may have Experienced Child Sexual Abuse*** supports practitioners to consider vulnerability when making judgements about referring the young person to IRD. The following list, whilst in no way exhaustive, provides examples of potential indicators of vulnerability that should be considered for further discussion with partners and, based on professional judgement, could indicate the need for referral to child or adult protection procedures, including an IRD. It should be noted that this list is only an indication, it is not absolute and clinicians can and should refer any young person to IRD should they believe they are, or another child may be, at risk of significant harm. The young person self-referring: • Lacks capacity to consent to the medical examination • Is defined as a child for the purposes of the Children's Hearings System • Is a Looked After Child or has experience of care	

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• Self-referred previously • Was under the influence of drugs or alcohol at the time of the offence • Intimate that they may have been drugged • Has other injuries such as bruising, which may indicate a violent assault • Provides an address in a different area or locality, which may indicate they have been trafficked • Has any indicators of Child Sexual Exploitation or Child Criminal Exploitation • Has any indicators of Honour Based Violence or FGM In addition, if a young person provides information about a perpetrator or these indicators are present then Police Scotland should be contacted immediately: • If the perpetrator is an adult family member with potential continued access to the young person or other children • If the perpetrator is a sibling of the young person • If the perpetrator holds a position of trust such as teacher, police officer, medical professional, social worker, youth worker, foster parent, runs/ involved in a club or organisation that other children attend	

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
LEARNING REVIEWS	
ASP Learning Review Guidance is largely similar to that for Child Protection and some local areas have (or are taking steps to) amalgamate their local Learning Review procedures to apply across all ages. The national guidance for **child protection** and **adult protection** learning reviews can be accessed on the Scottish Government website. At the time of writing (October 2023), one noteworthy distinction between the two sets of guidance is the Tripartite Protocol to be followed between CPCs, Police Scotland, and the Crown Office Procurator Fiscal Service when a CP Learning Review is underway and certain circumstances are applicable. * For both children and adult Learning Reviews, the guidance identifies the Care Inspectorate as the central repository for all learning reviews, enabling learning from these reviews to be shared more widely. As such, it is important that all case reviews or reflective learning reviews that are similar in purpose though not labelled as a learning review, are also submitted to the Care Inspectorate.	
Learning Reviews (formerly known as Initial Case Reviews and Significant Case Reviews) replace initial or significant case reviews and are not investigations. They intend to move away from apportioning blame and create a learning culture. A Child Protection Committee will undertake a Learning Review in the following circumstances: When a child has died or has sustained significant harm or risk of significant harm as defined in the National Guidance for Child Protection in Scotland 2021 and there is additional learning to be gained from a Review being held that may inform improvements in the protection of children and young people and one or more of the following apply: - Abuse or neglect is known or suspected to be a factor in the child's death or the sustaining of or risk of significant harm - The child is on, or has been on, the Child Protection Register (CPR) or a sibling is or was on the CPR or was a care experienced child (i.e. looked after, or receiving aftercare or continuing care from the local authority).	An Adult Protection Committee will undertake a **Learning Review** (formerly known as Initial Case Reviews and Significant Case Reviews) in the following circumstances: 1. Where the adult is, or was, subject to adult support and protection processes and the incident or accumulation of incidents gives rise for reasonable cause for concern about how professionals and services worked together to protect the adult from harm, and one or more of the following apply: (i) The adult at risk of harm dies and - Harm or neglect is known or suspected to be a factor in the adult's death; - The death is by suicide or accidental death; - The death is by alleged murder, culpable homicide, reckless conduct, or act of violence. or (ii) The adult at risk of harm has not died but is believed to have experienced serious abuse or neglect

CHILD PROTECTION GUIDANCE	ADULT SUPPORT AND PROTECTION LEGISLATION
This is regardless of whether or not abuse or neglect is known or suspected to be a factor in the child's death or sustaining of significant harm, unless it is absolutely clear to the Child Protection Committee that the child having been on the CPR or being care experienced has no bearing on the case - The child's death is by suicide, alleged murder, culpable homicide, reckless conduct, or act of violence Learning Reviews may also be undertaken where effective working has taken place and outstanding positive learning can be gained to improve practice in promoting the protection of children and young people. **CHILD DEATH REVIEWS** Hosted by Healthcare Improvement Scotland and the Care Inspectorate, the National Hub for Reviewing and Learning from the Deaths of Children and Young People will ensure reviews are conducted on the deaths of all children up to the date of their 18th birthday, or 26th birthday for care leavers who are in receipt of aftercare or continuing care at the time of their death. If the child or young person who was the subject of the Learning Review has died, then the National Hub requires the completion of the Core Review Data Set at the conclusion of the Learning Review Process. More information about the National Hub can be found on the Healthcare Improvement Scotland website.	2. Where the adult who died or sustained serious harm was not subject to adult support and protection processes (i) When the findings of an inquiry or review by another organisation or court proceedings, or a referral from another organisation gives rise to reasonable cause for concern about lack of involvement in relation to the Adult Support and Protection (Scotland) Act 2007 or (ii) The Adult Protection Committee determines there may be learning to be gained through conducting a Learning Review. **WHO CAN REQUEST A LEARNING REVIEW?** Any agency with an interest in an adult's wellbeing and safety can request that a case be considered for review by the Adult Protection Committee where they consider the criteria for review is met. It should be noted that concerns raised by families and addressed through the relevant agency's normal complaints procedure may also be a trigger for a Learning Review, where the agency considers the criteria for a review is met. The agency addressing the complaint should refer the circumstances to the Adult Protection Committee for their consideration at the earliest opportunity. **INTER-RELATED INVESTIGATIONS, REVIEWS AND OTHER PROCESSES** There are a number of other processes, including criminal investigations and NHS Significant Adverse Event Reviews, that could be running in parallel with a Learning Review. Depending on the case, there could be a number of processes which come into play which are driven by considerations wider than service failure or learning lessons across agencies. These can include disciplinary processes, criminal investigation, report of death to Procurator Fiscal or a Fatal Accident Inquiry. In addition to this, agencies should ensure that the areas for improvement identified and shared learning are directed through the relevant clinical and care, or quality assurance, governance arrangements.

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	These processes may impact on whether a review can be easily progressed or concluded; criminal investigations always have primacy. To help establish what status a Learning Review should have relative to other formal investigations, on-going dialogue with Police Scotland, COPFS or others to determine how far and fast the Learning Review process can proceed in certain cases. There could be cross-cutting issues, for example, gender-based violence, human trafficking, or problematic alcohol and drugs use. Processes can, and do, run in tandem, and the basic principles to follow are: check if there are other processes going on from the start; ensure good communication with each other; and ensure the relevant information is shared with the right parties. Above and beyond this, the priority is that the adult is, and remains safe, regardless of other ongoing investigations (including criminal investigations). Consideration should be given to the safety of other adults who could also be at risk of harm. The rights of staff or others who are under investigation, but have not been charged or found guilty, is another factor to be taken into account.

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