

Adult Safeguarding: Care v Control – Protection v Autonomy

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Prevalence of abuse against 'adults at risk' (‘vulnerable adults’)

Wednesday 14 October 2015

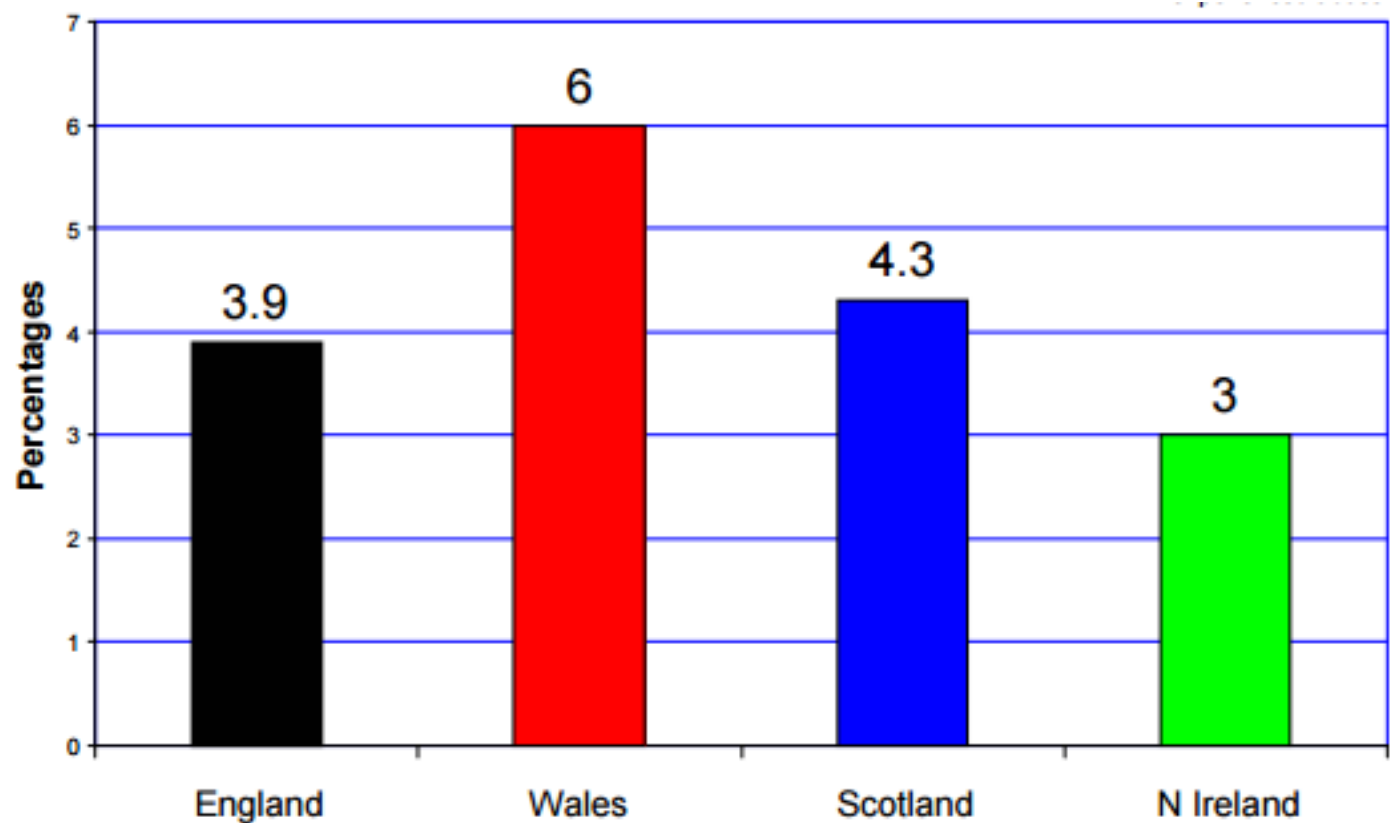
Hi 13°C | Lo 5°C Belfast | WEATHER

Belfast Telegraph

'Up to 10,000 older abuse victims'



Estimate that 500,000
older people are being
abused across the UK



UK Study of Abuse and Neglect of Older People –
2007 – Prevalence across the four nations

Human Rights

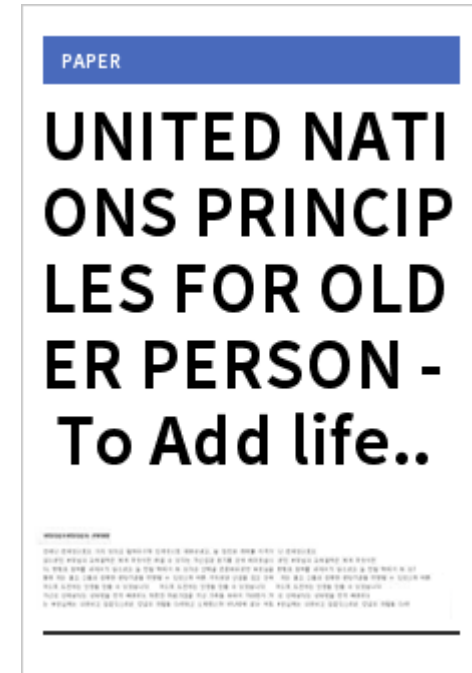
ECHR

- Article 2 right to have life protected;
- Article 3 right not to be subjected to inhuman or degrading Treatment
- Article 5 right to liberty and security
- Article 6 right to a fair hearing;
- Article 8 right to respect for private and family life, home, and correspondence

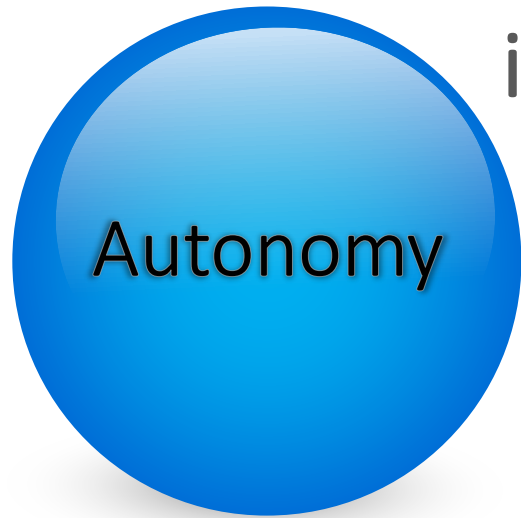
UN Principles for Older People

- Independence
- Participation
- Care
- Self-fulfilment
- Dignity

Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.



Legal, ethical, and practitioner dilemma – to intervene or not?



- Adults are not children – they have the right to decide for themselves
- Any powers of intervention could be abusive!



- We have a duty to protect people who are vulnerable – X v Netherlands – European Court of Human Rights
- Lack of free will on the part of the adult at risk

Legislation

S

- Complies with Art 3 ECHR
- Provides greater protection
- Clear legal procedures

O

- Preventative work
- Potential to change attitudes towards abuse

W

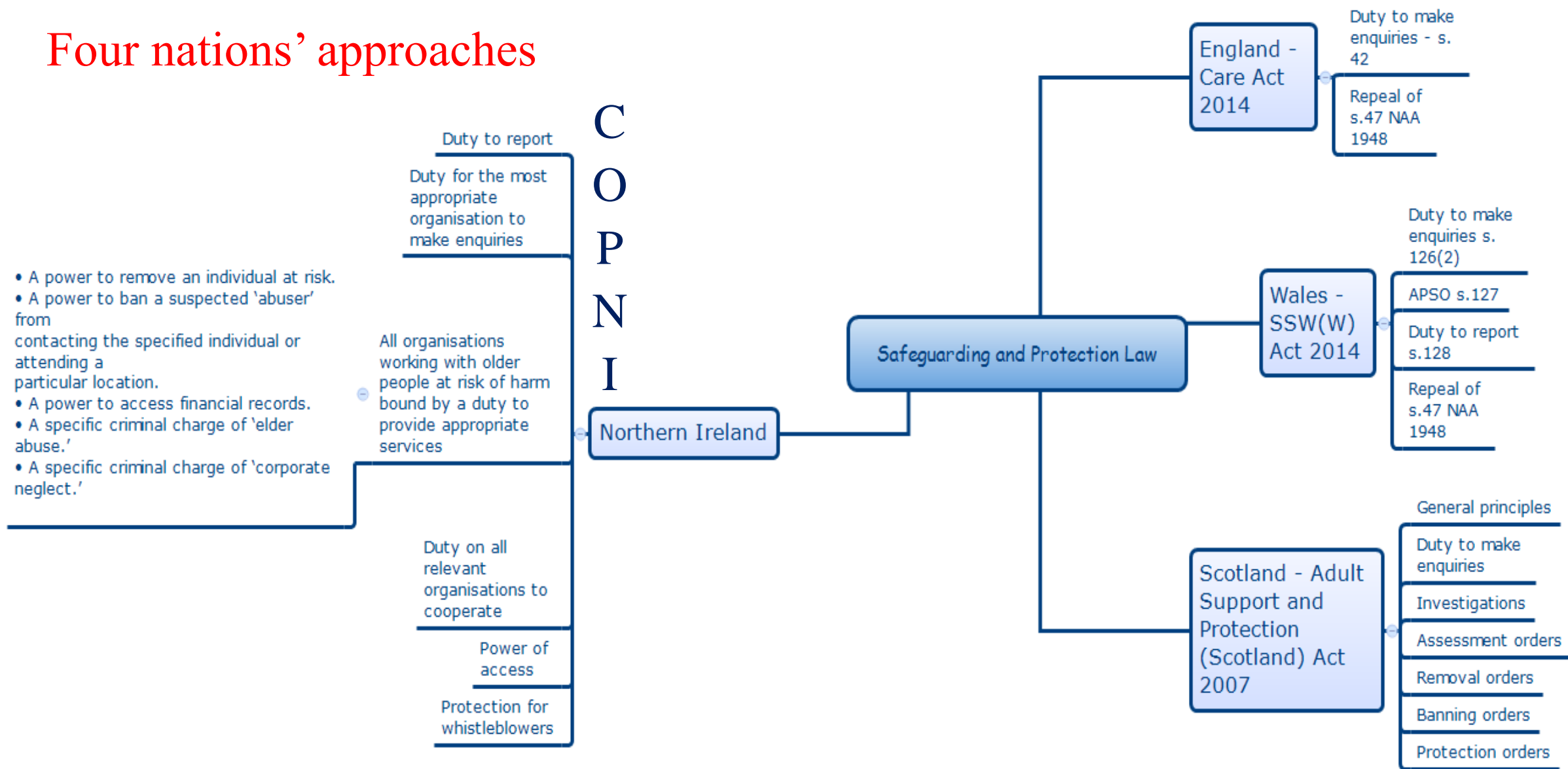
- Violates Art 8 ECHR
- Selective as to who it protects
- Inhibits preventative work

T

- Threat to autonomy and freedom of choice
- Does more harm than good

Asymmetry in the UK

Four nations' approaches



England – Care Act 2014



‘Whilst it is important to protect vulnerable adults, the government also believes that regard should be had to the rights of individuals to live in isolation if they so choose, even if at some degree of risk to themselves ...’

Lord Chancellor’s Department - 1997

- s.42 introduces a duty on local authorities to make enquiries - adult safeguarding is now within a statutory framework.
- The statutory guidance describes ‘abuse and neglect’.
physical, domestic abuse, sexual abuse, psychological abuse, financial abuse, modern slavery, discriminatory abuse, neglect and acts of omission, and self-neglect

(Department of Health, (2014) *Care and Support Statutory Guidance Issued under the Care Act 2014*. London, para 14.17).

Social Services and Well-being (Wales) Act 2014)



If a LA has reasonable cause to suspect that a person within its area (whether or not ordinarily resident there) is an adult at risk, it must—

- (a) make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken (whether under this Act or otherwise) and, if so, what and by whom, and
- (b) decide whether any such action should be taken.

Adult Protection and Support Order – s.127

An authorised officer may apply to a justice of the peace for an order (“an adult protection and support order”) in relation to a person living in any premises within a LA’s area.

- (2) The purposes of an APSO are—
- (a) to enable the authorised officer and any other person accompanying the officer to speak in private with a person suspected of being an adult at risk,
 - (b) to enable the authorised officer to ascertain whether that person is making decisions freely, and
 - (c) to enable the authorised officer properly to assess whether the person is an adult at risk and to make a decision on what, if any, action should be taken.

Criteria



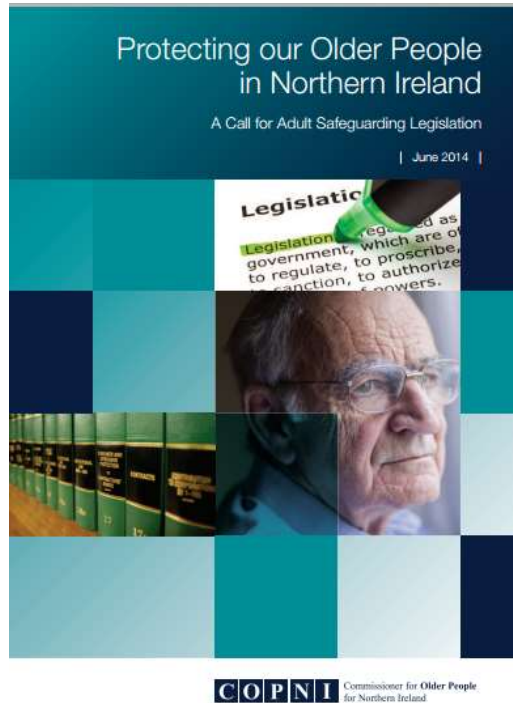
- A justice of the peace may make an APSO if satisfied that—
- a) the authorised officer has reasonable cause to suspect that a person is an adult at risk,
 - b) it is necessary for the authorised officer to gain access to the person in order properly to assess whether the person is an adult at risk and to make a decision as required by section 126(2) on what, if any, action should be taken,
 - c) making an order is necessary in order to fulfil the purposes set out in subsection (2), and
 - d) exercising the power of entry conferred by the order will not result in the person being at greater risk of abuse or neglect.

Adult Support and Protection (Scotland) Act 2007



<i>Section number</i>	<i>Power</i>
7	Visits – power of entry by council officer.
8	Interviewing adult at risk in private.
9	Medical examinations – health professional involved in s 7 visit may conduct a private medical examination.
10	Examination of health, financial or other records.
11, 12 and 13	Assessment order.
14, 15 and 16	Removal orders.
19–24	Banning orders.

Northern Ireland – Commissioner for Older People for Northern Ireland



‘Older people who have the mental capacity to make decisions but are under coercion from people with whom they have a relationship of trust or dependence can be particularly at risk of abuse. Currently there is no specific legal protection available for older people falling into this category and the recommendations made in this report focus particularly on addressing this gap and improving legislative protection to all older people at risk of harm or abuse.’



Commissioner for Older People
for Northern Ireland

Northern Ireland lacks a statutory framework for adult safeguarding.

Practitioners resort to an array of legislation designed for other purposes, including

- Family Homes and Domestic Violence (Northern Ireland) Order 1998,
- Criminal Law Act (Northern Ireland) 1967
- Terrorism Act 2000

Recommendations:

Power of access to a private home to conduct a private interview where access is denied (para 26).

- Applications made to a district judge. As with the Welsh APSO, the power is only to be used where it would not result in the older person being at greater risk of harm or abuse. This power would allow for an independent assessment of a person's situation.

The Commissioner requested that minsters consider a number of additional powers, including

- a power of removal of the adult at risk and a power to ban a suspected abuser
- a power to access financial records similar to that available in Scotland
- two new criminal offences, namely that of elder abuse and corporate neglect (paras 27–31).

Update for Northern Ireland

- The Northern Ireland Executive revised guidance on adult safeguarding (Department of Health, Social Services and Public Safety, and the Department of Justice, *Adult Safeguarding: Prevention and Protection in Partnership* (2014)).
 - The guidance aims to promote zero tolerance, change the way society thinks about abuse and neglect, and encourage multi-disciplinary working.
 - It recognises the rights of people to maintain control of their lives and make informed choices free from coercion
- Criminal Justice Inspection Northern Ireland emphasised the partnership approach to adult safeguarding between core departments such as health and justice and, in particular, social services and the police (Criminal Justice Inspection Northern Ireland, *The approach of the criminal justice system to investigating and prosecuting crimes against vulnerable adults* (2015)).
- The Commissioner's campaign for a legislative framework continues (press release, 9 September 2015).

Suggested reading

- A Mowlam et al, *UK Study of Abuse and Neglect of Older People: Qualitative Findings* (Department of Health and Comic Relief, 2007)
- K Mackay, 'The Scottish Adult Support and Protection Legal Framework' (2008) 10 *Journal of Adult Protection* 10, 25
- K Mackay et al, *Exploring How Practitioners Support and Protect Adults at Risk of Harm in the Light of the Adult Support and Protection (Scotland) Act 2007*
- J Williams, 'Public law protection of vulnerable adults' (2002) 2(3) *Journal of Social Work* 293
- Commissioner for Older People for Northern Ireland, *Protecting our Older People in Northern Ireland: A Call for Adult Safeguarding Legislation* (2014)
- Department of Health, Social Services and Public Safety, and the Department of Justice, *Adult Safeguarding: Prevention and Protection in Partnership* (2014)
- Criminal Justice Inspection Northern Ireland, *The approach of the criminal justice system to investigating and prosecuting crimes against vulnerable adults* (2015)