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Implications of divergences in Adult Protection Legislation

Abstract

Purpose -This study explores the similarities and differences of legal responses to older adults who may be at risk of harm or abuse in the UK, Ireland, Australia and the United States (US).

Design -The authors draw upon a review of elder abuse and adult protection undertaken on behalf of the Commissioner for Older People in Northern Ireland. This paper focuses on the desk top mapping of the different legal approaches and draws upon wider literature to frame the discussion of the relative strengths and weaknesses of the different legal responses.

Findings- Arguments exist both for and against each legal approach. Differences in defining the scope and powers of Adult Protection Legislation in the UK and internationally are highlighted.

Limitations-This review was undertaken in late 2013; whilst the authors have updated the mapping to take account of subsequent changes, some statutory guidance is not yet available. Whilst the expertise of a group of experienced professionals in the field of adult safeguarding was utilised, it was not feasible to employ a formal survey or consensus model.

Practical implications-Some countries have already introduced APL and others are considering doing so. The potential advantages and challenges of introducing APL are highlighted.

Social implications -The introduction of legislation may give professionals increased powers to prevent and reduce abuse of adults, but this would also change the dynamic of relationships within families and between families and professionals.

Originality-This paper's provides an accessible discussion of APL across the UK and internationally which to date has been lacking from the literature.

Keywords-Adult at risk; adult protection; elder abuse; legislation; Northern Ireland; social work.

Classification-General review

Introduction

International awareness of the human rights of older people has fueled an interest in legislative reform in response to the abuse of older people in hospitals, community and residential settings. However, whilst some UK countries are adopting the specialist Adult Protection Legislation (APL) that Scotland initiated in 2007, different models exist elsewhere. Some American states have adopted specialist elder abuse legislation, whereas Australia focuses instead on using existing civil and criminal law. Northern Ireland (NI) and the Republic of Ireland (hereafter referred to as Ireland) currently rely on a range of criminal and civil law in conjunction with adult protection policy and guidance. Given the complexity of adult abuse, an explicit legislative basis might be seen as giving adults at risk better support and improving welfare agency responses. Alternatively, APL or elder abuse legislation might be viewed as stigmatising, and therefore represents another form of potentially intrusive government involvement and surveillance (Killick *et al.*, 2015; Taylor *et al.*, 2014).

This paper aims to consider the relative merits of the different legal approaches to the abuse of older people, and the differences and similarities in APL in the UK and internationally. The authors start with a brief exploration of elder abuse: its definition, estimated prevalence and implications of keeping it as a distinct social problem separate to adult protection. Next, a review of the current debates for and against legislative change is offered. The methods and findings arising from the review are then presented. Three issues highlighted in this summary are then discussed, considering how they might be addressed in APL, and the potential practice implications of so doing. Conclusions highlight the increasingly divergent legal responses across UK and international jurisdictions in APL; and identify a range of issues that need to be considered in defining the scope and powers of such legislation.

Definition and Prevalence of Elder Abuse

Since elder abuse policies were first introduced in the Health and Social Care (HSC) sector in the UK in the 1980s and 1990s, there has been a growing awareness that a wide range of adults are at risk of harm from abuse, exploitation or neglect. The continuing evolution of legislation, policy and practice in relation to adult safeguarding is indicative of a growing understanding of the nature and extent of abuse (Stewart, 2012). Within the UK, the focus of adult protection is generic, encompassing adults at risk, regardless of age or type of impairment.

Internationally, the concept of elder abuse appears to be more widely acknowledged than the broader concept of adult protection. The World Health Organisation has made a significant contribution to a global understanding of elder abuse, arguing that it is a distinct social phenomenon, whilst promoting a human rights based approach (WHO, 2002, 2002a; Ife, 2001). It defines elder abuse as '*a single, repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust which caused harm or distress to an older person*'. This definition is not without challenge. For example, Dixon *et al.* (2010) highlight the assumptions that the presence of harm presupposes a relationship of trust, however, this is not always the case (Mackay *et al.*, 2011; Mowlam *et al.*, 2007). There is also a lack of clarity around what constitutes harm. Questions remain about whether elder abuse should be viewed separately from adult mistreatment. Whilst distinction highlights the discrimination that older people as a

group face (Begley *et al.*, 2012), it can weaken responses to, and awareness of, common issues such as institutional harm (Mandelstam, 2014) and the cultural nature of disability hate crimes (Quarmby, 2011).

Determining the extent of adult abuse is difficult as abuse often goes unreported and prevalence studies often utilise different definitions of abuse, different target populations and different measurement tools (Cooper *et al.*, 2008). More specifically, the WHO definition has enabled estimates of prevalence rates of abuse in older people in selected developed countries. These range from 1% to 10% (2002a). Cooper *et al.* (2008) in their systematic review of elder abuse studies globally, suggested that the best evidence indicates that 6% of older people reported significant abuse in the past month. The UK Study of Abuse and Neglect of Older People Prevalence Survey Report (O’Keeffe *et al.*, 2007) reported that the probable prevalence of abuse in the UK was 4%.

Current debates for and against adult protection legislation

In its favour, specific APL articulates the definitions, principles, pathways and scope of safeguarding, whilst promoting public and professional awareness (Ife, 2001) and parity of treatment for adult protection alongside child protection. Together these factors may encourage a more consistent approach over time, promoting coordination between agencies, common training and greater understanding amongst professionals (Stevens, 2013). This may be particularly important for social workers, who often lead investigations, and must balance complex ethical and practice dilemmas whilst working within structures which depend on interagency collaboration (Stewart, 2012; Taylor, 2013)

However, specific APL may privilege a legalistic ‘top-down’ approach to what is a complex social problem and risks individualising the problem to the vulnerabilities of the adult at risk (Sherwood-Johnston, 2014). Increased legalism could negate service user autonomy whilst also reducing the ethical challenges for practitioners to that of whether someone meets a legal threshold. Consequently professionals may find it difficult to exercise their professional autonomy, commitment to human rights and person-centered values.

Moreover, elder abuse cannot be simplistically compared to child abuse, as this tends to mask the issues involved. Different types of barriers to the legal reporting of elder abuse exist: the older person may be dependent on the perpetrator of abuse for their basic survival and fear retaliation or exacerbating the situation; the older person may assume the blame; the older person may fear being removed from home and institutionalised (Bergeron, 2006); the bonds of affection may be stronger than any desire to leave the situation. Additional factors may be: guilt and stigma at having raised a child who abuses them (Steinmetz, 1978); concern about jeopardising their family's status and standing within the community (Champlin, 1982); concern about what happens to the alleged perpetrator (Mowlam *et al.*, 2007) and influence of the societal view of the domain of the family as private.

The assumption that legislation is a panacea, ensuring protection of older people, is overly simplistic (Carter-Anand *et al.*, 2013; Phillips *et al.*, 2006). Moreover, legal measures may potentially over simplify the complexities of balancing protection with the prevention of harm and

the empowerment of victims. However, it is important not to view protection and autonomy as essentially conflicting; sometimes protective action can promote a person's autonomy in the long-term (Preston-Shoot and Cornish, 2014; Stevens, 2013).

METHODS OF THE REVIEW

The Commissioner for Older People in NI (COPNI) commissioned a review of elder abuse in NI and APL from a domestic, UK and international perspective. The review was undertaken by a multi-national team of academics, from the US, Australia, Scotland and NI, spanning law, policy and social work, and was led by academics in Queen's University Belfast and Ulster University. The review sought to identify specific practice issues and explore alternative approaches based on material sources from other jurisdictions, as opposed to undertaking a formal cross cultural or comparative analysis. It commenced with a desk top review of the current position of adult protection in NI, summarising existing policies, protocols and reports. Whilst the focus was on elder abuse in NI, adult protection policy and practice is generalist in scope (not specifically age-related), and therefore the broader concept of adult protection was explored. This was followed by consultations with 15 key stakeholders who were purposely selected based on their direct involvement with service provision and knowledge of the current legal challengers. Police officers, social workers, lead adult safeguarding professionals, and carers were interviewed either by phone or in person. A written record was made of each interview. As this was a consultation, formal ethical approval by the university ethics committee, was not required.

This review sought to explore legislation and the wider adult safeguarding literature in jurisdictions selected for their potential relevance to NI. As well as the joint British and Irish web resources Safeguarding Adults at Risk Information Hub (SAaRIH), the following bibliographic databases were searched: Medline, PsycInfo, SCOPUS and Social Care Online.

The jurisdictions of Scotland, Wales and England were selected, given current trends and developments in adult protection across the UK. The international jurisdictions of US, Australia and Ireland were selected as these are all countries with common law traditions which offer alternative legislative and policy models in response to adult protection. Ireland in particular was selected given its cultural and geographic position with respect to the UK. Consideration of other countries with different legal traditions and ethical cultures was beyond the scope of the review. This represents a limitation in reading the research as of general comparative value.

Mapping the different approaches

Three key aspects of law which were highlighted as issues by stakeholders and are prominent in the literature are explored: definitions of who is an adult at risk, definitions of the terms 'abuse' and 'harm', and the range of powers and duties afforded to professionals working in this area.

Defining who is an adult at risk

Each of the four UK countries have a generic definition of an adult at risk that has been revised in the last eight years. The term ‘adult at risk’ has come to replace ‘vulnerable adult’ to shift the emphasis (and by implication responsibility) away from the adult and onto those who pose a risk to the adult (Stewart, 2012). Three of these, England, Scotland and Wales, have established the definition in law and NI uses policy (Table 1). However, there are two key divergences within the UK countries. Firstly, only Scotland keeps the requirement for general support needs separate from protection needs. Secondly, there are differences in the levels of mistreatment that trigger a response under adult safeguarding: Scotland and NI have a threshold based on ‘harm’, whereas England and Wales narrow their response to ‘abuse’ or ‘neglect’. The other countries here reviewed, Ireland, and selected states of Australia and US, did not have specific APL nor a nationally agreed definition of an adult at risk.

In the US, while Congress declared “protection from abuse, neglect and exploitation” a national objective in its Older Americans Act in 1965, each state was free to define actionable conduct and to implement civil interventions and criminal penalties. Consequently, at most, US states have “similar” elder abuse systems. Federal funding grants influenced development of protective service systems in all states: eight states have laws specifically addressing elder abuse, 14 have laws which address protection of both vulnerable (or disabled) adults and older people and 29 have more generic adult protection laws. Growing awareness and concern about elder abuse led to enactment of the federal Elder Justice Act (2009), providing an opportunity for nationalised reporting and, thus, greater consistency in approaches; however, implementation has not been fully funded and state funding is often inadequate to provide timely support for at-risk individuals, with criminal sanctions of abusers an inadequate remedy (Jini, *et al.*, 2001; Jirik and Sanders, 2014; Pearson and Cowart, 2011).

In Australia, there are no mandatory reporting laws for elder abuse, and the law does not regard an older person differently from any other adult. Each state and territory provides information about abuse and abuse prevention and every state government, apart from the Northern Territory, has strategies or measures in place to prevent and respond to the problem of elder abuse (Kurrle and Naughtin, 2008).

Table 1: Definitions of adult at risk

Country	Status of definition	Age	Key differences in definitions
Scotland	Legal: Section (S) 3 Adult Support and Protection (Scotland) Act 2007	16	<ul style="list-style-type: none"> • Unable to safeguard own well-being property, rights or other interests • At risk of harm • Because of disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than someone not so affected
England	Legal: S 42 The Care Act 2014	18	<ul style="list-style-type: none"> • Has needs for care and support • Is experiencing, or is at risk of, abuse or neglect • As a result of those needs, is unable to protect himself or herself

Wales	Legal: S 126 Social Services and Well-being (Wales) Act 2014	18	<ul style="list-style-type: none"> • Has needs for care and support • Is experiencing, or is at risk of, abuse or neglect • As a result of those needs is unable to protect himself or herself
NI	National policy: Adult Safeguarding: Prevention and Protection in Partnership (2015)	18	<ul style="list-style-type: none"> • ‘Adult at risk of harm’: exposure to harm may be increased by personal characteristics and/or life circumstances • ‘Adult in need of protection’: exposure to harm may be increased by personal characteristics and /or life circumstances and the individual is unable to protect themselves from the action or inaction of another person
Ireland	No legal or policy basis		No specific definition of adult at risk
Australia	No legal or policy basis		No specific definition of adult at risk
US	Legal: Older Americans Act 1965 (as amended in 2006)		<ul style="list-style-type: none"> • Original Act defined an older person as 60 years or over • In some States, protections are available to any “disabled”, “dependent,” “incapacitated” or “vulnerable” adult, without regard to age

The impact of legalism on individuals’ rights and autonomy may result in the inflexible application of these definitions of abuse, potentially reducing the use of general social care or community approaches. These definitions have also been supplemented by further definitions, or guidance, about what constitutes harm, as outlined below.

Defining the terms ‘Abuse’ or ‘Harm’

Definitions of what constitutes abuse or harm varied across the countries reviewed, existing within legislation, policy or local guidance (Table 2). Most countries define abuse broadly, as a violation of an individual’s human and civil rights by any other person or person, acknowledging that this can relate to the physical, sexual, financial, psychological, or social mistreatment of an individual.

Table 2: Definitions of abuse or harm

Country	Status of definition	Key differences in definitions
Scotland	Legal: S 53 Adult Support and Protection (Scotland) Act 2007	<ul style="list-style-type: none"> • Concept of ‘harm’ preferred to ‘abuse’ • Includes self-harm and neglect
England	Legal: S 42 of The Care Act 2014 National policy ‘No Secrets’ (2000)	<ul style="list-style-type: none"> • Financial abuse defined in statute • Other forms of abuse defined in policy • Includes neglect but excludes self-harm

Wales	National policy 'In Safe Hands' (2000)	<ul style="list-style-type: none"> • Includes neglect but excludes self-harm
NI	National policy: Adult Safeguarding. Prevention and Protection in Partnership (2015)	<ul style="list-style-type: none"> • Concept of self-harm is excluded • Occurs within a relationship of trust • Includes lack of appropriate action and thus unintentional abuse • Introduces notion of serious harm
Ireland	Working Group on Elder Abuse (2002)	<ul style="list-style-type: none"> • Occurs within a relationship of trust • Excludes self-neglect and crimes or abuse committed by strangers.
Australia	Department of Health 'Elder abuse prevention and response guidelines for action' (2012-14)	<ul style="list-style-type: none"> • Occurs within a relationship of trust • Results in harm to an older person
US	Legal: Older Americans Act 1965 (as amended in 2006) S 38	<ul style="list-style-type: none"> • Abuse refers to the wilful actions, suggesting intent. • Neglect and self-neglect also included

Use of the term 'harm' is arguably less stigmatizing and emotive than discourses centred on 'abuse' (Taylor, 2013). It has a broader scope which incorporates unintentional actions, self-harm, self-neglect and acts of omission. In England, NI and Wales, self-harm is excluded. Whilst this recognises the role that relationships of power and control can play in abusive situations, it potentially excludes those who self-neglect. The US definition records 'intent' which is absent in other definitions reviewed, and is therefore likely to exclude self-harm but also may underplay unintentional abuse. Within NI, Ireland and Australia, a finding of 'abuse' is linked to an 'expectation of trust,' thus signaling the central place of betrayal of relationship; this linkage also recognizes and the psychological dimensions of abuse from the perspective of older people (Begley *et al.*, 2012). However, it may also exclude abuse that takes place outside of relationships of trust (Dixon *et al.*, 2010).

Variations in defining abuse or harm highlight the socially constructed (Penhale *et al.*, 2000; Stewart, 2012) and culturally relative (WHO, 2002a) nature of governments' responses to abuse. Governments' definitions are about determining their responsibility and some have chosen to set higher thresholds than others or to target certain groups of people or types of harm, but exclude others. As such, they may not reflect as, Begley *et al.* (2012) suggest, older people's conceptualisation of elder abuse around broader social, economic and cultural rights, such as a right to dignity and personhood, and family and community inclusion. This broader approach is reflective of a human- rights basis for adult safeguarding process (Stewart, 2012).

There can also be divergence of views between health and social care professionals, when working with safeguarding issues (Rees and Manthorpe, 2010). Some professionals appear to tolerate a considerable degree of risk and clear evidence of lack of mental capacity before intervening, while others appear to take a more proactive approach (Killick and Taylor 2009; McDermott, 2011).

Therefore, instituting legal definitions may not guarantee consistent responses, representing instead a first step towards agreed approaches. Scotland was the first UK country to establish APL in 2007 when the allied Code of Practice advised that *'no category of harm is excluded simply because it is not explicitly listed.'* (Scottish Government, 2009: 13). Its revised Code of Practice (Scottish Government, 2014) could be seen as a response to varying interpretations in practice that may have led to a higher threshold being applied than expected by the government. For example, it now includes guidance about the potential impact of substance misuse on a person's ability to safeguard themselves and the need to be cautious about once and for all determinations about whether someone meets the threshold.

Internationally, some countries, including Ireland, have avoided a generalist approach to adult protection, choosing to focus on older people and to adopt the WHO (2002) definition that requires that there be 'an abuse of trust', thus potentially excluding abusive actions outside trusting relationships. The Australian state of Victoria also locates adult protection primarily within police and emergency services. The legislative authority for intervention resides in a number of different locations. For example, the Victorian Family Violence Protection Act (2008) stipulates thresholds for legal intervention only by police and emergency services. In addition, approved providers of health and care services are required under the Aged Care Act (1997) to report to the police and the Commonwealth Department of Health incidents involving alleged or suspected reportable assaults. Pennsylvania's Older Adults Protective Service Act (OAPSA: 35) (first adopted in 1988) is an example of US practices to assist persons at risk of abuse. The type of investigation, depends on the level of suspected harm. For example, an emergency report must be investigated with a face-to-face visit within 24 hours, rather than mere inquiry by telephone within 48 hours, triggered by information showing a person is: "at imminent risk of death or serious physical harm." (OASPA Code: 6 Pa).

In summary, there are divergences in types of harm as well as levels of harm or abuse across countries studied. On paper, the Scottish legislative definitions appear more open to the different types of harm that people might experience. In contrast, the non-UK countries studied represent governments that have determined that their legal responsibility lies within a narrower portion of their population. The paper now turns to the powers and duties in place where someone meets the statutory or policy definition.

Stipulating powers and duties

The range of powers accorded by these countries (Table 3) reflects differing approaches, with Scotland having the largest number of APL measures, whilst at the other end of the spectrum, the Australian state of Victoria has limited many of the powers to the police.

Table 3: Powers and duties in respect of adults at risk

Country	Status	Powers and duties
Scotland	Legal: Part 1. Adult Support and Protection (Scotland) Act 2007	<p>Duties on local authorities to:</p> <ul style="list-style-type: none"> • make inquiries • provide services <p>Powers for local authorities to:</p> <ul style="list-style-type: none"> • carry out visits • conduct interviews • require records to be produced. <p>‘A Protection Order’ may be granted for</p> <ul style="list-style-type: none"> • assessment of the adult through private interview or medical examination • removal of the adult • banning the subject of the order from being in a specified place
England	Legal: S. 42 (1): The Care Act 2014	<ul style="list-style-type: none"> • Duty on local authorities to investigate • No power to remove a person from their home • Any further intervention requires recourse to wider civil law remedies
Wales	Legal: S.104-18: Social Services and Well-being (Wales) Act 2014	<p>Duties:</p> <ul style="list-style-type: none"> • on local authorities to make enquiries • on relevant partner organisations to report suspected abuse, to cooperate and provide information <p>‘Adult Protection and Support Order’ may be granted for</p> <ul style="list-style-type: none"> • power of entry to facilitate practitioners in speaking in private with adults suspected of being at risk of abuse • stops short of duty to investigate or power to remove
NI	Welfare, civil and criminal laws in conjunction with policy: Adult Safeguarding. Prevention and Protection in Partnership (2015)	<ul style="list-style-type: none"> • Powers and duties found in a range of welfare, civil and criminal legislation, through which adults at risk, as well as other members of the public, find protection • Policy stipulates a range of duties in respect of an adult at risk, but these lack legal basis
Ireland	Welfare, civil and criminal laws	<ul style="list-style-type: none"> • Powers and duties found in a range of welfare, civil and criminal legislation, through which adults at risk as well as other members of the public, find protection
Australia	<p>Legal: The Family Violence Protection Act 2008 (State of Victoria)</p> <p>Aged Care Act 1997 (amended 2007)</p>	<ul style="list-style-type: none"> • Police power to protect vulnerable family members • Alleged offenders can be removed from premises without waiting for criminal justice proceedings • Statutory sector Aged Care homes subject to compulsory reporting of sexual abuse and serious physical abuse of residents
US	Legal: Pennsylvania’s Older Adults Protective Service Act (OAPSA) (first adopted in 1988)	<p>Public authorities can:</p> <ul style="list-style-type: none"> • receive reports of suspected abuse, neglect or exploitation • offer services to potential victims • take specific steps to intervene to protect the victim

Wide variations exist in the powers and duties afforded to professionals working with adults at risk in the different UK countries that have developed APL. In England, the requirement to ensure enquiries are made into allegations of abuse or neglect might be characterised as a minimalist or least interventionist approach. Whilst it promotes the autonomy of the potential victim, it is considered by some key stakeholders to offer insufficient protection (Preston-Shoot and Cornish, 2014). The Welsh legislation goes further; in addition to the requirement that local authorities make enquiries, a power of entry to facilitate practitioners in speaking in private with adults suspected of being at risk of abuse is provided. The Scottish legislation contains a wider range of powers and duties that distinguish between initial inquiries and fuller investigations. Scotland also created ‘Protection Orders’ authorizing stronger action in response to higher thresholds of serious harm, such as: taking a person for assessment in another place; removal of the adult to a place of safety for up to seven days; or banning a third party from approaching an adult at risk’s home. The more formal powers, particularly those associated with investigations, such as the power to see someone privately and to access records, have been valued by practitioners (Mackay *et al.*, 2012). There has yet been no detailed study on the impact of Scottish Protection Orders, though research into Scottish APL generally reports that, on the whole, removal and banning orders are viewed as positive additions (Mackay *et al.*, 2012; Preston-Shoot and Cornish 2014).

Whilst there is currently no specific APL statute in Ireland, the Report of the Working Group on Elder Abuse (Health and Safety Executive, 2002) recommended legislation to provide for Garda (police, but not health and social care professionals) access in certain situations where there is a concern of elder abuse. In Australia, the Aged Care Act 1997 (amended 2007) required compulsory reporting of sexual abuse and serious physical abuse inflicted on residents of Australian Government subsidised Aged Care homes. There is however no mandatory reporting of elder abuse in community settings (Kurrle and Naughtin, 2008). For example, in the state of Victoria, powers of access and removal, in supporting vulnerable family members, are vested only in the police. In the US, although not uniform, all states have APL implementation systems whereby public authorities can receive reports of abuse, offer services and intervene to protect. Research conducted in the US has shown that careful training on classification and investigation of reports of suspected abuse is a key to a reliable protective services system (Kupris, 2013).

Discussion

This paper highlights the variances in approach to APL across the UK and internationally. Whilst other UK countries have stopped short of Scotland’s level of investigative powers and protection orders, initial research findings of the ASPSA suggest that the Scottish approach has improved safeguarding practice and practitioner confidence. This includes more effective and prompt responses, and clarity of role for professionals (Mackay *et al.*, 2011; Mackay *et al.*, 2012), alongside improved quality of life and safety for service users (Preston-Shoot and Cornish, 2014). However, other countries have chosen to focus statutory protection powers on elder abuse and to limit the powers of investigation and intervention that welfare professionals, as opposed to the police, can initiate outside of mental health or mental capacity law. Either way, an effective adult safeguarding framework should aim to give older people equal access to justice and protection systems: while fostering their safety, autonomy and confidence. Developing such a system engages intrinsic ethical concerns particularly in balancing service user autonomy and state protection and it

appears governments have divergent views about appropriate governmental roles and responsibilities *vis a vis* those of their citizens.

Moreover, the application of legislation and policy does not occur in a vacuum, but through the junction of political, cultural, historical and organisational factors. Such factors vary both within and between cultures. The relationship between legislation, policy and practice is multifaceted, subject to tensions and dilemmas, and competing philosophical and legal debates (Preston-Shoot and Höjer, 2012). For example, legislation may be seen as the core mandate underpinning professional intervention in social care; alternatively, a focus on the ethical duty of care may predominate (Braye and Preston-Shoot, 2006). Factors beyond legislative or policy directives which impact practice include the leadership and culture of professional teams (Killick and Taylor, 2009), the influence of managerial and civil libertarian principles upon practitioners (McDermott, 2011), or the knowledge and skills, training and confidence of the practitioner, and the interdisciplinary collaborations within which they work (Braye and Preston-Shoot, 2006).

Defining key statutory term such as ‘adult at risk’ and ‘abuse’ or ‘harm’ can be seen as the first step in promoting a unified understanding of who should be protected and what they should be protected from. However, definitions alone may not eradicate differences in interpretation that have been highlighted (Dixon *et al.*, 2010; Killick and Taylor, 2009), or lead to fewer complexities in practice (Sherwood-Johnson, 2014) or reflect the views of older people (Begley *et al.*, 2012). Moreover, the socially and politically constructed nature of the definitions is evident in the variation in concepts such as ‘harm’ or ‘abuse’, ‘intentionality’ or ‘breach of trust’.

Clearly there are concerns about overly-interventionist responses to low levels of abuse that may result in further trauma to the adult concerned or the inappropriate use of scarce resources. Conversely, minimalistic responses to serious cases can result in significant trauma for older people which has, on occasion, led to death. Ultimately, the success of any legal approach will rest with professional judgment, knowledge and skill in balancing autonomy with intervention (Preston-Shoot and Cornish, 2014; Stevens, 2013). Such decisions need to be made in the context of service-user capacity which assesses the ability to make a reasoned decision and then to act upon it (Braye *et al.*, 2011; Brown, 2011). As such, determining if, when and how to intervene, remains a professional as well as, governmental debate.

Conclusion

The arguments for and against unifying APL highlight an ongoing debate regarding three main dimensions: state responsibilities versus citizen rights; autonomy versus protection; and specialist welfare law versus general legal measures. The diversity across national and international jurisdictions identified reflects different approaches to adult protection, influenced by the cultural and political context of each jurisdiction. Legislation by itself is not a panacea and cannot guarantee safeguarding in each and every situation; this study has revealed a key lack of empirical research, needed to determine the actual, as opposed to presumed, strengths and weaknesses of the different approaches. In the UK, the time is right to undertake comparative research to explore the experiences and outcomes for adults at risk and the approaches taken by the practitioners and agencies in the four countries. It is also important not to divorce questions of adult protection from

general health and social care services, policing, community and public awareness strategies which also help to address the oppression or exploitation of discrimination against older adults.

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