



IASW

Irish Association of Social Workers
Cumann na hÉireann um Oibrithe Sóisialta

Law Reform Commission,
Styne House,
Upper Hatch Street,
Dublin 2,
Ireland

Subject: Issues Paper A Regulatory Framework for Adult Safeguarding

**Issue Paper
A Regulatory Framework for Adult Safeguarding
(LRC IP 18 – 2019)**

We welcome the inclusion of this issue under the Commission's Fifth *Programme of Law Reform* and for the opportunity to express the views of the Irish Association of Social Workers (IASW) on the questions that arise in the Issues Paper. The investigation of and interventions on, the alleged abuse of vulnerable adults has become an important feature of social work and other professional practice in Ireland. It is likely that many enquiries will require the input and supervision of a social worker, particularly the more complex situations and to support the adult to realise the outcomes they want and to reach a resolution or recovery. For example, where abuse or neglect is suspected within a family or informal relationship it is likely that a social worker will be the most appropriate lead. Adult safeguarding remains an area in which social work knowledge and expertise makes a most vital contribution.

The rights- based framework is closely linked to Ireland's ratification in 2018 with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and subsequent measures to ensure its implementation. A human rights approach strong focus on respecting the rights of adults as individuals treating all adults with dignity and respecting their right to choose. It involves empowering and enabling all adults to manage their own health and well-being and keep themselves safe. The IASW fully supports that the project 'will build on an existing rights-based analysis and policy development, as well as legislation, notably the *Assisted Decision-Making (Capacity) Act 2015*' (Law Reform Commission, 2019, p.1 par.1).

However, IASW is very concerned that at the time of writing this submission (April 2020) the majority of the provisions of the 2015 Act have not been brought into force. IASW views the implementation of the 2015 Act as absolutely vital before the introduction of a regulatory framework for adult safeguarding is introduced. The IASW views the 2015 Act as a vital foundation and not just a rights-based reference point for this project. The new administrative processes and support measures that are being put in place before the 2015 Act can be fully commenced must be completed concurrent with the implementation of the proposed adult safeguarding regulatory

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framework. The 2015 Act is a key element in the reform and implementation is central to safeguarding adults.

The shift from a narrative of abuse and vulnerability to a narrative of capacity and empowerment is hugely positive, and is something that should be built on in any further policy and legislation (LRC, 2019, p.5, par.16)

The need for a legislative provision to safeguard adults from harm and abuse that goes beyond what is currently provided through existing regulatory bodies has been highlighted by various bodies and IASW supports this given the scale of the abuse of adults at risk as identified in statistics (Health Service Executive, 2017). However, the following quote is particularly pertinent when considering the introduction of safeguarding statutory framework:

Legislation is not a panacea to safeguarding and must be accompanied by education and preventive measures across wider society (Donnelly and O' Brien, 2018, p. 28)

ISSUE 1 VALUES AND PRINCIPLES UNDERPINNING ADULT SAFEGUARDING

Q.1.1 Do you consider that the proposed guiding principles as set out above in paragraph 1.14 of the Issues Paper, would be a suitable basis to underpin adult safeguarding legislation in Ireland?

The underpinning of the safeguarding legislation with a strong 'well-being principle' is strongly recommended as proposed in the *Adult Safeguarding Bill 2017*.

The principles as outlined in 1.14 of the Issues Paper are a suitable basis to underpin safeguarding legislation in Ireland.

It would be preferable that the right to independent advocacy is separately addressed from the principle of empowerment.

It is important that the guiding principles underpinning safeguarding legislation are consistent with the final *HSE Adult Safeguarding Policy*.

Q.1.2 Do you consider that additional guiding principles should underpin the legislation? If yes, please outline the relevant additional guiding principles.

- (1) That a strong 'well-being principle' underpins the proposed legislation. The inclusion of 'well-being' as a guiding principle rather than just as an element of any definition of

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safeguarding is recommended. The promotion of the well-being of in relation to and adult could be defined as outlined in the Issue Paper 2.20 citing the *Social Services and Well-being (Wales) Act 2014 S 2(2) and 2(4)* (Law Reform Commission, 2019, p.29, par. 2.20).

- (2) The right to independent advocacy: when the person has substantial difficulty in being involved and where there is no one appropriate to support them.
- (3) A guiding principle that refers to the importance of knowledge of the relevant legal provisions and the lawful exercise of legal powers in adult safeguarding interventions. How practitioners understand the legal framework within which they work has powerful influence on professional judgement.

ISSUE 2 DEFINING KEY TERMS FOR ADULT SAFEGUARDING

Q.2.1 Do you consider that the statutory regulatory framework for adult safeguarding should define the categories of adults who come within its scope?

Yes.

The need for clear definitions in the legislation that set up the parameters of the problem of adult safeguarding is central. Lack of definitions contributes to lack of clarity about roles and responsibilities.

There is a widespread move away from the use of the term 'vulnerable' to describe adults in need of safeguarding. IASW supports this, recognising that it is important to avoid unhelpful assumptions regarding inherent vulnerability and stigmatising of particular groups of people.

However, it is important to recognise that a more inclusive understanding of the concept of vulnerability can be empowering in policies concerned with mistreatment. This understanding would acknowledge that all people experience vulnerability to a greater or lesser degree across the life-course and would be important perspective in the legislation.

Q.2.2 If the answer to Q.2.1 is yes, what definition of the categories of adults who come within its scope would you suggest?

'Adult at risk of abuse or neglect'

A person who has attained the age of 18 years who is:

- At risk of abuse or neglect

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- Experiencing abuse and/or neglect
- Is unable to protect himself or herself against the abuse or neglect or the risk of it
- Is unable to safeguard his or her own well-being, property, rights, or other interests

IASW would not favour any criteria that specify that an adult at risk 'has needs for care and support' and supports the statement:

However it could be possible that a person may be capable of living independently without care and support but may still be at risk of abuse or harm or at risk of their needs changing very rapidly if there was a deterioration in their condition and as such may need to be monitored or to benefit from protection under safeguarding legislation (Law Reform Commission, 2019, p.25, par. 2.10).

The definitions of the categories of adults who come within the scope of the proposed safeguarding legislation should be **consistent** with the definition in the HSE *Adult Safeguarding Policy* to be ratified.

Q.2.3 Do you consider that the Commission has in Issue 2 of the Issues Paper, defined the following terms with sufficient clarity:

(a) "safeguarding"

- The inclusion of human rights in the definition of "safeguarding" would emphasise that adult safeguarding is based on fundamental human rights, respecting such rights, and treating all adults with dignity.
- "Safeguarding" should be used in the broadest sense to encompass activity that PREVENTS harm from occurring as well as activity which PROTECTS adults at risk where harm has occurred or is likely to occur without intervention. This is clearly outlined in the Northern Ireland Policy, *Adult Safeguarding: Prevention and Protection in Partnership* (2015).
- This is consistent with the *Draft HSE Adult Safeguarding Policy* (2018, p.9):

'Safeguarding' should also be seen as responding to concerns to prevent abuse across a continuum of care. Thus, Safeguarding focuses on:

- Prevention of abuse
- Identification of abuse
- Identification and implementation of measures that reduce/eliminate the risk of recurrence of abuse.

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- A focus on prevention leads to interventions which may change societal structures or attitudes.

(b) “abuse and “harm” (including whether you consider that the definition of “abuse” should include “harm” or whether “abuse” and “harm” should be separately defined.

“Abuse” and “Harm” should be separately defined.

“Abuse”

Generic definitions attempt to encapsulate the issues. They attempt to provide a comprehensive meaning. The World Health Organisation defines elder abuse as:

Elder abuse is a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm to an older person (World Health Organisation, 2008:6).

The proposed legislation would benefit from including a generic definition of abuse which is then expanded by defining types/categories, behaviours, and effects.

An established relationship connoting trust between the victim and the perpetrator of abuse or neglect has been seen as an important aspect, distinguishing it from mistreatment by strangers and acquaintances. However, there are difficulties in operationalising the notion of trust in relationships with reference to perpetrator groups. The proposed legislation could distinguish between trust in affective relationships and ‘positions of trust’. The position of trust is highly relevant in an institutional setting and covers all forms of caregiving, the routines and practices within the care home and the maintenance and the management of the care home environment. There is an emerging consensus that betrayal of trust is an essential part of the experience of abuse. While the relevance of trust in descriptions of mistreatment requires critical examination, it is an important aspect as it is far likely that the person responsible for abuse is known and in a position of trust and power.

“Harm”

It is the impact of an act, or omission of actions on the individual that determines whether harm has occurred. The impact can be immediate or longer term. This is consistent with the *HSE Final Draft Safeguarding Policy 2018* which refers to the impact of any action which may cause impairment of physical, intellectual, emotional, or mental health and wellbeing (HSE, 2018, P.6).

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It should be very clear that “harm” refers to the effects/impact of the behaviours which come under the definition of abuse or neglect. The effect of the behaviours should be clearly separated from (a) the types or categories of abuse/neglect and (b) the behaviours that comprise the various categories or types.

Thus, a clear framework for the Safeguarding legislation and Safeguarding Policy would follow the structure:

- Type or Category;
- Behaviour or behavioural manifestations/ or Conduct of the Perpetrators;
- Effects on the victim.

(c) “neglect”

Neglect should be considered separately as a category within safeguarding legislation as neglect often exists in conjunction with other types or categories of abuse.

Within the wide definition of Safeguarding as proposed in the legislation, it is important that **Self-neglect** is included within the statutory remit of safeguarding. It is one of the most challenging aspects of safeguarding practice. The exclusion of Self-neglect is not consistent with the purpose of the Draft HSE Adult Safeguarding Policy 2018 or the definition of Safeguarding:

Putting measures in place to promote people’s human rights and their health and wellbeing, and empowering people to protect themselves (HSE, 2019, p. 7).

(d) “capacity”

IASW is in agreement that it is particularly important that there is consistency in the definition of “capacity” adopted in the proposed adult safeguarding legislation and the yet to be fully implemented *Assisted Decision-Making (Capacity) Act 2015* (Law Reform Commission, 2019, p. 35, par 2.48).

However, while IASW is committed to support individual decision-making autonomy, the proposed statutory framework and guidance must address the serious failings of care and protection shown in serious case reviews and research, when no inquiry is made of a person’s decision-making abilities or of a person’s presumed competent wishes.

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ISSUE 3 PHYSICAL, SEXUAL, DISCRIMINATORY AND PSYCHOLOGICAL ABUSE, NEGLECT AND DEPRIVATION OF LIBERTY

The Issue Paper lists the various forms of abuse as: physical abuse, sexual abuse, financial abuse, psychological abuse, discriminatory abuse, neglect, and deprivation of liberty.

The reference to various forms of abuse should include the interface with Domestic Violence and Human Trafficking.

A separate category of **Institutional** or **Organisational** abuse should be included:

The mistreatment or abuse or neglect of an adult at risk by a regime or individuals within settings and services that adults at risk live in or use, that violate the person's dignity, resulting in lack of respect for their human rights (Care and Support statutory guidance, 2014 ii).

Safeguarding Adults also involves assessments and enquiries into the issue of peer on peer or resident- to- resident aggression in institutional care settings. The consequences of this behaviour on victims must be taken seriously. This necessitates a model which takes into account the behaviour of the resident, the people with whom he or she interacts and the social and physical environment of the facility. This issue must be clearly dealt with in processes for Safeguarding adults at risk.

Q. 3.1 Do you consider that adult safeguarding legislation should impose a statutory duty on an adult safeguarding service provider to prepare a care plan for each adult in receipt of safeguarding services?

Yes- but the Care plan needs to include a plan of care and support for those caring for the adult at risk and where appropriate for the alleged perpetrators of the abuse. This is particularly important in cases involving formal or informal carers, and perpetrators with physical or mental health needs and substance abuse issues for example. The plan must have involvement of the adult at risk and all relevant stakeholders and set out goals and a date for review.

This is linked to a statutory duty to make enquiries in cases of suspected abuse (Issue 7).

Q. 3.2 Do you consider that adult safeguarding legislation should impose a duty on an adult safeguarding service provider to safeguard adults at risk?

Yes.

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An additional legal measure to prevent abuse and neglect should include provisions such as: duty to promote individual well-being, a duty to prevent needs for care and support, a duty to assess an adult's needs for care and support; and a duty to meet needs for care and support.

However, such duty to promote individual well-being as in the UK *Care Act 2014* and the *Social Services and Well-being (Wales) Act 2014* would ideally be part of a broader similar *Care Act* in Ireland of which *Safeguarding* would be an integral part.

Q 3.3 If the answer to 3.1 is yes, do you consider that such a care plan should address the prevention of physical, sexual, or psychological abuse or neglect?

Yes.

Q. 3.4 If the answer to either 3.1 or 3.2 is yes, do you consider that breach of such a duty or, as the case may be, duties should give rise to civil liability on the part of an adult safeguarding service provider?

Q. 3.5 If the answer to either 3.1 or 3.2 is yes, do you consider that breach of such a duty or, as the case may be, duties should give rise to criminal liability on the part of an adult safeguarding service provider?

In relation to Q. 3.4 and 3.5 it is vital to critically question the fact that the policies and services themselves or the lack of these resources, may be part of the problem leading to the harms experienced by an adult and also the difficulties in preparing and implementing care plans or prevention strategies. This issue is important in that offences of wilful neglect or ill-treatment of adults can apply to individual professionals or by corporate bodies and has for example in the *Scottish Adult Support and Protection (Scotland) Act 2007*, S 26,27. This offence is aimed at penalising institutional abuse. However, the issue of abuse in the community setting also needs to be explored in the context of duties that give rise to criminal liability.

Q.3.6 If the answer to either 3.1 or 3.2 is yes, do you consider that breach of such a duty by a person responsible providing adult safeguarding services where this occurs in the course of his or her duties or, as the case may be, within the scope of employment of an adult safeguarding service provider, should give rise to a complaint to a professional body with regulatory functions in relation to a person who is a member of that professional body?

Yes.

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Q. 3.7 Do you consider that there are any additional legal measures that could be introduced to prevent physical, sexual, psychological abuse or neglect?

- Amendments to the *Domestic Violence Act 2018* to include victims of abuse perpetrated by individuals whose relationship or connection with the at-risk adult does not fall within the scope of the relationship prescribed under the Act.
- Amendments to the *Domestic Violence Act 2018 S 39 (1) (2)* to extend the offence of coercive control to family relationships that are not intimate relationships.
- Reform of law to deal with crimes such as hate speech, hate crime with a discriminatory motive, and criminal acts committed with a bias motive to protect a wide range of persons including disabled people, transgender people, and refugees.

ISSUE 4 FINANCIAL ABUSE

Q. 4.1 Do you consider that sectoral regulators and bodies such as the Central Bank of Ireland and the Department of Employment Affairs and Social Protection currently have sufficient regulatory powers to address financial abuse in the context of adult safeguarding?

The recognition by the Central Bank of Ireland that financial institutional institutions have a particular responsibility to vulnerable customers is very welcome. Sufficient training and support for banking staff is an important aspect of responding to this issue. The task is especially difficult by the finding that a large percentage of cases, the perpetrators of financial abuse are in a close relationship with the victims, leading to a reluctance to report for fear of harming this relationship. However, it is acknowledged that forms of financial abuse such as theft and scams do not require the relationship of trust between the victim and the perpetrator.

The Department of Employment Affairs and Social Protection – processes for collaboration with safeguarding teams and Gardai are required in particular in relation to appointment of 'agents. The implementation of the *Assisted Decision-Making (Capacity) Act 2015* could be a key intervention in this issue replacing the 'agency' process with appropriate oversight by the Decision Support Service.

A key consideration is that financial capacity has been found to be an advanced activity of daily life, conceptually distinct from household activities and basic activities of daily life. Research has shown that financial capacity is already significantly impaired in mild Alzheimer's Disease especially in the more complex domains of cheque book use and management, bank statement management, bill payment and financial judgement (Marson et al, 2000, 2009). It is important to note that the decline in financial capacity can be rapid in Alzheimer's Disease. Poor physical and mental health as well as having an intellectual disability, place individuals at greater risk of financial exploitation.

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However, inadequate legislation and policy in this area is an important issue.

Q.4.2 If the answer to 4.1 is no, do you consider that either or both of the following would be suitable to address financial abuse

(a) A statutory financial abuse code of practice or protocol;

A code of practice that gives guidance on the links to Human Rights instruments and the safeguards against abuse they provide would be useful e.g. the United Nations Convention on the Rights of People with Disabilities (UN,2012) provision of safeguards from undue influence.

A Code of practice or protocol would be particularly helpful in providing guidance in relation to the use of coercion and undue influence as key components of financial abuse. It would be important that this code would give officials or service providers power to act without the permission of the older person where coercion is suspected.

A code of practice or protocol should also address the issue of liaising with the Police in dealing with the perpetrators of financial abuse. This would be very helpful in giving clarity about the definitions of what financial abuse is and raising the profile of financial abuse as a crime by outlining its criminal aspects.

A code of practice should also address the duty of care approach to disclosure. Inter sectoral approaches would be an integral aspect of code of practice.

(b) A statutory form of protected disclosure along the lines of the *Protected Disclosures Act 2014*, for financial institutions that engage in responses to suspected financial abuse in good faith.

It would be important to issue guidance that reporting suspicions of financial abuse to external agencies does not violate customer privacy or GDPR.

Consider a clear legislative mandate to report to a regulatory body such as the proposed National Safeguarding Authority.

Q. 4.3 Do you consider that further additional regulatory powers are required to address financial abuse? If yes, please give examples.

The Central Bank of Ireland has an important guidance function related to adult safeguarding.

It is necessary to raise the profile of financial abuse as a crime and promote appropriate actions such as legal redress by outlining the existing legal provisions.

The implications of the *Assisted Decision-Making (Capacity) Act 2015* when fully implemented will need to be fully outlined for each of the regulatory bodies including the banking sector and current

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codes and protocols reviewed accordingly. The implementation of comprehensive capacity legislation is central.

There is a need to address the issues of coercion, undue influence and coercive control and consider enhancing the provisions of the *Domestic Violence Act 2018* to include such behaviour beyond the current boundaries of occurring within intimate relationships.

Clarity about the safeguarding approach to fraudulent scams, which are generally perpetrated by persons unknown to the victim, in particular collaborative working with the Gardaí.

Issues of safeguarding in the area of survivorship rights and joint accounts.

ISSUE 5 WHAT BODY OR BODIES SHOULD HAVE RESPONSIBILITY FOR THE REGULATION OF ADULT SAFEGUARDING?

Q. 5.1 The Commission has discussed the following 5 possible institutional or organisational models for the regulation of adult safeguarding:

- **Establishing a regulatory body within the Health Service Executive;**
- **Establishing a regulatory body as an executive office of the Department of Health**
- **Establishing a regulatory body as an independent agency;**
- **Amalgamating a regulatory body within an existing agency**
- **Conferring additional regulatory powers on an existing body or bodies.**

In you view:

(a) which of the above is the most appropriate institutional or organisational model for the regulation of adult safeguarding?

Establish a National Adult Safeguarding Authority, independent in the exercise of its functions and powers.

However, the proposed Authority would preferably be confined to oversight, promoting safety and quality standards, providing information to adults at risk, making recommendations for change of practices of service providers and supervising compliance with duties imposed under the legislation.

The proposed National Safeguarding Authority should be an independent oversight body **separate** from the investigative body. The power to conduct enquiries where there is reason to believe on reasonable grounds that there is a risk of abuse or harm to an adult at risk, receive reports from mandated persons and including powers of entry (should such be provided for in the legislation) should remain with the Health Service Executive. Staff with specialist or generic skills relevant to adult safeguarding should not transfer to the National Safeguarding Authority but remain in the

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broader remit of the Health Service Executive as this ensures a more collaborative approach. The Health Service would hold the day-to-day responsibility for adult safeguarding. The National Safeguarding Authority would not conduct enquiries and assessments of individual cases of abuse or suspected abuse.

The National Safeguarding Authority would provide a single point of oversight for adult safeguarding.

Q.5.3. Do you consider that there is a need for a statutory regional adult safeguarding structure, which would have a broad remit in respect of all safeguarding services for adults? If so, how would such a regional structure be best integrated into existing structures?

Yes.

An Adult Protection Committee (as in Scotland) with multi-agency membership placing the Irish Safeguarding and Protection Committees (Vulnerable Persons) on a statutory footing to ensure regional oversight of adult safeguarding.

ISSUE 6 POWERS OF ENTRY AND INSPECTION

Q. 6.1 Do you consider that adult safeguarding should include a statutory power of entry and inspection of premises, including a private dwelling, where there is a reasonable belief on the part of a safeguarding professional, a health care professional or a member of An Garda Síochána that an adult within the scope of the legislation may be at risk of abuse or neglect in the premises or dwelling, and where either a third party is preventing them from gaining access or an adult within the scope of the legislation appears to lack capacity to refuse access? Please give reasons for your answer.

There appears to be a lack of research or published evidence in the Irish context regarding the need for a statutory power of entry to private dwellings for the purposes of adult safeguarding. The key question is whether this would cause more harm than good overall.

A statutory power of entry could be beneficial in a very small number of cases. This is in cases where it is necessary to gain access in order to properly assess whether the person is an adult at risk and to make a decision on what, if any action should be taken.

However, the simple fact of being refused should not automatically lead to consideration of the use of legal powers. Such situations are often complex and highly sensitive and will need sensitive handling by skilled practitioners. Legal action should be a last resort.

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It is important to explore the reasons some families refuse access to safeguarding professionals. Code of practice should emphasise that establishing a relationship with the person in and through building trust is a recommended pathway that changes could be negotiated.

Q. 6.2

There is a risk that powers of entry and inspection have a negative impact on adults at risk and their families. Practitioners also need to be aware of existing legal powers in addition to introducing new powers.

In making an order for such powers it is necessary as far as possible to be satisfied that exercising the power will not result in the person being at greater risk of abuse or neglect.

It is important to note the problem with the issuing of notice to the occupier and the person at risk that an application will be made and the possible impact on others affected by the application within the domestic setting. Giving notice might prejudice the safety of the adult considered to be at risk.

Q.6.2

A power of entry under safeguarding legislation should require an application to court in all instances.

Q. 6.4

At all times there should be guidance to minimise the risk of a force or highly confrontational entry to the premises.

ISSUE 7 SAFEGUARDING INVESTIGATIVE POWERS

Q.7.1 do you consider that adult safeguarding legislation should include a statutory duty on relevant regulatory bodies to make inquiries with a view to assessing whether to apply for a court order for the removal of a person or for a safety order, barring order or protection order, similar to the orders in the *domestic Violence Act 2018* as discussed in Issue 7 of the Issues Paper? Please give reasons for your answer.

Powers of entry alone, without the addition of extra investigative powers could increase the risk of harm simply because of the raising of emotions within the household and potentially alerting members of the family to the enquiry, without being able to change the situation quickly.

The powers should be relied on as a last resort when all other options have been considered

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Q. 7.2 Do you consider that the *Domestic Violence Act 2018* should be amended to empower bodies other than the Child and Family Agency, such as for example the Health service Executive or any other adult safeguarding regulatory body, to apply to court for an order under the 2018 Act?

Yes.

Q. 7.3 Do you consider that adult safeguarding legislation should include separate provisions for barring orders protection orders and safety orders that would apply in situations outside of the circumstances set out in the *Domestic Violence Act* or section 10 of the *Non-Fatal Offences Against the Person Act 1997*?

Yes.

ISSUE 8 REPORTING

Mandatory: Children First Act 2015 commenced in December 2017

Ireland currently has a permissive reporting model for adult safeguarding. Individuals use their personal or professional judgement and duty of care to determine whether or not to make a report supported by mandated duties or response processes.

As there is a lack of research evidence to support mandatory reporting as effective in dealing with safeguarding adults, it is more important to assist all staff and professionals in developing competency in this area of practice. The resourcing and education of Social Work as a key discipline to lead investigation are vital.

Focus on greater investment in resources to support service providers to identify and respond to abuse. Sustainable resources both at the preventative and protection stage are imperative in addition to adequately resourced adult safeguarding teams.

Reporting systems must necessarily traverse the complicated ethical terrain involving sometime contradictory judgements about binary of rights versus protection (Speaking Up Donnelly and O'Brien, 2018, Speaking Up About Adult Harm, p 22, University College Dublin. Dublin).

Striking a balance between protection and rights is salient to all reporting systems, as is 'whistle-blower' protection (Donnelly and O'Brien, 2018, Speaking Up About Adult Harm, p 27. University College Dublin. Dublin).

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Issue 9 Independent Advocacy

Q. 9.1 Do you consider that there should be statutory provision for independent advocacy in the context of adult safeguarding?

Yes. But the statutory provision is not required in the context of safeguarding alone. In England, the *Care Act 2014 S 67,68* stated that the provision of an independent advocate applies to a wide range of situations:

if an adult at risk has substantial difficulty being involved and where there is no one appropriate to support them, the local authority must arrange for an independent advocate to represent them for the purpose of facilitating their involvement (9.5).

IASW recognises the important role of independent advocacy in adult safeguarding but advocacy has a broader remit in supporting decision- making in a wide range of situations and as an integral part of rights protection and service delivery structure.

Q. 9.2 If the answer to Q.9.1 is yes, so you consider that:

(a) it would be sufficient to commence the relevant provisions of the *Citizens Information Act 2007* providing for a Personal advocacy service; or

(b) additional statutory provisions should be enacted providing that advocacy services could be provided in addition to those under the 2007 Act?

Please give reasons for your answer to (a) and (b).

The remit of the Personal Advocacy Service is too narrow to incorporate the new context of developments in safeguarding, and capacity legislation and human rights instruments now ratified in Ireland.

(b) Since the Personal Advocacy Service was proposed in 2007, a different model is required to mirror the focus of the Assisted Decision-Making (Capacity) Act 2015 and UNCRPD which underpin the legal entitlement to independent advocacy, the emphasis on the will and preferences of the person and the enforcement of human rights.

Q. 9.3 If the answer to Q. 9.2 is yes, do you consider that there is a need for a national advocacy body in the context of adult safeguarding? If yes, do you believe that this should operate and an independent agency or that it should be located within an existing agency?

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The establishment of a national advocacy body as outlined in 9.17 and 9.18 of the issue paper is necessary in particular 'to create a context within which the practice, skills development and coordination of advocacy can be effectively realised (Law Reform Commission, 2019, p. 153)

Issue 10 ACCESS TO SENSITIVE DATA AND INFORMATION SHARING

Q.10.1 Do you consider that existing arrangements for access to sensitive data and information sharing between relevant regulatory bodies are sufficient to underpin adult safeguarding legislation?

Sharing information is fundamental to good practice in safeguarding adults but this has been highlighted as a difficult area of practice. The issue of access to sensitive data and information sharing in day to day safeguarding practice, in particular the duty of confidentiality, is already covered in common law, as outlined in this Issue Paper. Information can be shared within the parameters of the common law duty of confidentiality and the existing laws i.e. *Data Protection Act 1988 8(d)* privacy set aside to save someone's life or protect someone's health; *Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012*; *General Data Protection Regulation (May 2018)*; *Data Protection Act 2018*; *Data Sharing and Governance Act 2019* sharing between public bodies (once commenced); and *National Vetting Bureau (Children and Vulnerable Persons) Act 2012*.

The proposed legislation and code of practice guidance needs to emphasise that the duty to share information can be as important as the duty to protect patient confidentiality. It appears that the disclosure of personal information between agencies without the consent of the person concerned poses the greatest uncertainty with regards to data protection law in the context of adult safeguarding. This aspect emphasises the urgency of the full implementation of the *Assisted Decision-Making (Capacity) Act 2015* as the assessment of capacity is a vital component of a person's decision-making ability and information sharing.

It is clear that failure to share information can lead to failures in safeguarding with serious consequences for those harmed. Therefore, IASW believes that existing arrangements are insufficient to underpin adult safeguarding legislation. The legislation and associated codes of practice guidance need to outline processes for Information Sharing Agreements

Q. 10.2 If the answer to Q. 10.1 is no, should arrangements for access to sensitive data and information sharing between relevant regulatory bodies include interagency protocols coupled with statutory powers? If so, please indicate your view on the form of such powers.

The importance of interagency protocols and local agreement setting out the processes and principles for sharing information between organisations is absolutely essential.

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Clarity on the restrictions of data protection legislation and the thresholds for processing or sharing personal data without consent is also required to ensure that all service providers have a clear understanding of the law and are following the same standards in ensuring that information is shared where it is vital to the safeguarding of at risk adults.

Policies should be clear about how confidential information is shared. This needs to be integrated with Professional Codes of Conduct for those registered with a body and governed by a professional code of conduct or practice and any relevant voluntary codes of practice

In addition to interagency protocols and the role of codes of Professional Conduct, the statutory powers that are essential in this area are:

- (1) Duty to cooperate with relevant partner and duty of relevant partner to cooperate with law
- (2) A statutory 'request for supply of information' in the face of continued reluctance from one partner to share on a safeguarding concern. And clarity on the grounds for a reluctant party to refuse.

Issue 11 Multi-Agency Collaboration

Q.11.1 Do you consider that:

- (a) non-statutory interagency protocols are sufficient to ensure multi-agency cooperation in adult safeguarding, or**
(b) a statutory duty to cooperate should be enacted?

Yes to (b).

This duty would include a duty to cooperate with the proposed National Safeguarding Authority as the regulatory body and the Health Service Executive in its function of investigation and intervention and prevention of cases of abuse or suspected abuse of adults at risk.

However, the findings of the HSE Case Review is instructive in relation to the issue of multi-agency cooperation:

From the evidence available in the form of files and interviews, the issue of a shared understanding of referral processes appears to have been at least as significant as the more generic issue of interagency cooperation (Tusla, HSE Case Review Mary, 2017, p. 53).

Q.11.2 If the answer to Q. 11.1.(b) is yes, to which bodies with adult safeguarding regulatory responsibilities should the duty apply?

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- Health Service Executive
- HIQA
- Central Bank
- Department of Employment Affairs and Social Protection
- Department of Justice
- Police
- Public Legal and Financial Services
- Housing and Environmental Health
- NGOs especially in the area of Domestic Violence, Advocacy, Substance Abuse, Housing, Human Rights, Ageing and Disability sectors, Carers, Home carers and institutional care providers

Q.11.3 Do you consider that there should be statutory provision for transitional care arrangements between child-care services and adult safeguarding services?

It is vitally important that the proposed Adult Safeguarding Legislation addresses the statutory provision for transition from child-care services to adult services where a child is assessed as likely to have needs for care and support after becoming 18 years. The multiagency protocol agreed between the Health Service Executive and the Child and Family Agency should be on a statutory footing with statutory Code of Practice ensuring transitional arrangements are in place.



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