

Submission to Joint Committee on Disability Matters

Introduction

The Irish Association of Social Workers (IASW) welcomes the setting up of the *Joint Committee on Disability Matters* in particular its focus on monitoring the implementation by Ireland of the *United Nations Convention on the Rights of People with Disabilities*. The stated emphasis on the lived experience of people with disabilities on the issues that affect them and their families and /or carers is particularly welcome. This emphasis on understanding and hearing the perspectives of people and their families is consistent with the core values and principles of the social work profession. This includes social work's commitment to a human rights approach, to promoting each individual's right to self-determination and building trusting relationships which support individuals to make informed decisions about their own lives. Social Workers also support those who cannot voice their perspective to exercise their human rights and live safe and happy lives.

This submission is made by the Adult Safeguarding and Protection associate Group within the IASW, a group composed of social workers with academic and practice expertise in the field of adult safeguarding. Our members work with adults with disabilities and their families in acute, community and residential settings across Ireland and have expert knowledge of the challenges of providing safeguarding support in the current policy and legislative framework in Ireland. As the only registered health and social care profession with professional expertise in supporting human rights and challenging systemic social injustice, social work has a vital contribution to make to the development of a safer Ireland for adults with disabilities. The Associate 'group has developed this submission in order to highlight key concerns and makes clear recommendations in the area of adult safeguarding and protection of individuals with disabilities, for consideration by the Committee. While social workers work with adults and children with disabilities and their families across Ireland, this submission focuses on the specific needs and experiences of adults with disabilities who require safeguarding

This submission is consistent with the standards set out in the theme of Person-centred Care and Support as set out in the National Standards for Adult Safeguarding (HIQA and MHC 2019), with the United Nations Universal Declaration of Human Rights (1948) and other related UN declarations on rights and conventions derived from those declarations, including the UN Convention on the Rights of People with Disabilities. . It is also highlighted in the principle of Fairness as a component of the recognised framework through which a human rights-based approach can be implemented in day-to-day practice in health and social care services (HIQA and Safeguarding Ireland, 2019). This submission addresses a number of key issues in the area of Adult Safeguarding and Protection in order to assist Members of the Committee in deciding what they need to focus on in developing their future work programme.

1.1 Person Centredness

Person centredness is essentially focused on putting people at the heart of care delivery where they experience positive benefits. The core principles are intrinsically linked to the wider concept of rights, autonomy and self-determination. Person Centred Care relates to personhood as the inherent essence of humanness. All human beings are persons regardless of attributes and in particular avoids

the dangers of relating personhood solely to cognitive function. A major issue within safeguarding is upholding an individual's rights particularly in relation to free choice and making decisions autonomously. An important focus for the Committee on Disability Matters is how to ensure participation in decision-making and keeping the person central to the decision-making process.

1.2 A Human Rights- Based Approach

The ratification by Ireland in 2018 of the *United Nations Convention on the Rights of People with Disabilities* represents a major step forward as the first comprehensive human rights treaty of the 21st century. It adopts a broad categorisation of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. Article 4 sets out the general obligations for States to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized by the CRPD and to undertake all appropriate measures, including legislation, to modify or abolish existing laws regulations, customs and practices that constitute discrimination against persons with disabilities. The State is obliged to ensure that its domestic legislation complies with the treaty provisions. IASW views this as a major focus for the work of the Committee and its terms of reference in particular in relation to the full implementation of the *Assisted Decision-Making (Capacity) Act 2015*.

1.3 Decision Making Capacity

Maintaining a person's will and preference is paramount, regardless of cognition challenges, or physical appearance. All people have a right to make an uninfluenced and informed decision and this is fundamental to quality of life. Article 12 of the United Nations (UN) Convention on the Rights of People with Disabilities states that persons with disabilities have the right to recognition as persons before the law but also to recognize that person with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Article 14 relates to liberty and security of person and the duty to provide a legislative framework for the protection of liberty safeguards. IASW is very concerned that at the time of writing this submission (November 2020) the majority of the provisions of the 2015 Act have not been brought into force. IASW views the 2015 Act as a vital foundation for a human right-based approach for people with disabilities and necessarily concurrent with the proposed adult safeguarding regulatory framework as proposed by the Law Reform Commission in their Issue Paper *A Regulatory Framework for Adult Safeguarding* (2019). The IASW recommends the urgent implementation of the 2015 Act and in particular on the accessible continuum of support and enabling conditions such as advocacy, advanced care decisions and providing many different methods and means of communication in order to prioritize a person's will and preferences.

1.4 Adult Safeguarding Framework

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

There is need for a comprehensive safeguarding framework to protect adults from abuse harm and neglect in a broad range of institutional or quasi institutional settings. A comprehensive safeguarding framework must have a firm legislative basis. It must set standards for provision that ensure the well-being and protect the dignity of service users. It must provide for effective monitoring and enforcement and it must include support for advocacy and self-advocacy.

The current law policy and protections are inadequate to safeguard the wellbeing of adults in certain situations. The *Adult Safeguarding Bill 2017* was introduced by Senator Collette Kelleher in Seanad in April 2017 in recognition of the vulnerability of some people to harm and abuse and the imbalance of protections available to them. There have been limited studies to examine the prevalence of mistreatment, abuse and neglect in institutional and residential care settings.

A recent research report reveals how the absence of adult safeguarding legislation in the Irish context may result in adults 'falling through the cracks' within the current safeguarding system. The research report *Falling Through the Cracks: the case for change* (Donnelly and O'Brien, 2019) identifies five key areas where it can be difficult to protect the wellbeing and human rights of adults at risk. These include (i) where adults are prevented from activating their autonomy including examples of older individuals with intellectual disability; situations of self-neglect of adults with poor social networks; (ii) coercive control and undue influence of older adults or adults with intellectual disability by family members or friends acquaintances living in their locality; (iii) lack of services and resources creating barriers to safeguarding adults at risk especially to those with dementia, brain injury or mental health difficulties; (iv) The challenges of carrying out safeguarding investigations and lack of access to information in the context of *General Data Protection Regulations 2016* (GDPR); (v) lack of consistency in safeguarding practice, issues dealing with financial abuse and addressing safeguarding concerns in private nursing homes. The research strongly endorses the need for additional legislative provisions and duties to help in safeguarding work.

1.5 Domestic Violence

Social workers regularly encounter coercive control in adult relationships, outside intimate relationships. Adults may experience coercive control from parents, siblings, neighbours, friends and others. Safeguarding Measures in the *Domestic Violence Act (2018)* should be extended so that it is not limited to persons who are in an intimate relationship but includes coercive control by another regardless of the relationship. The Act should be amended to empower the HSE Safeguarding Social Workers to have authority to make applications directly to the Court for Protection Orders on behalf of vulnerable adults.

1.6 Self- Neglect

Self- neglect is an under-discussed public health issue. Self -neglect can manifest as environmental neglect and behaviours such as service refusal, isolation, reduced engagement, poor self- care, neglect of health, hygiene nutrition and finances. Self-neglect can have a significant impact on people with disabilities, family members and communities. Safeguarding and protection of adults who self-neglect is one of the most challenging and frustrating issues encountered by health and social care professionals. Meaningful engagement and building trust relationships is important.

The issue of self- neglect should be included within the statutory remit of adult safeguarding. The exclusion of self-neglect is not consistent with the purpose of the Draft HSE Adult Safeguarding Policy 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).

1.7 Resident-to- resident aggression

Only recently have phenomena of aggression and violence among residents started to gain attention in particular in the area of research into the phenomenon. The issue is regularly referred to the HSE Safeguarding and Protection Teams and is a source of serious concern. This includes physical aggression, humiliating behaviour and forms of social exclusion. Resident to resident aggression is an important issue and highlights the necessity of adequate staffing and appropriate placement of residents with behavioural problems. Vulnerable residents should be protected by the facility and safeguarded to make sure they are not abused by other residents. Issues around training staff to adequately respond to these occurrences, its frequency and intensity, can be regarded as a quality indicator in institutional long-term care. As well as training in detection and strategies of de-escalation and handling violent incidents, attention need to be given to the design of the environment in order not to create spaces where overcrowding and violation of personal space are highly probable. These must be implemented to address the risk of resident to resident aggression and ensure all residents live safely within their home environment.

1.8 Allocation of Resources and Provision of Services

The need to allocate public financial resources alongside the legislative reform process is key. As evidenced during Covid-19, disability services were disproportionately impacted by redeployment of vital staff and closure of support services. A rights- based approach to supports and services must be enshrined for all people with disabilities, in recognition that their needs are permanent and require a fixed and permanent service response, protected from budgetary measures, redeployment or cuts.

The law must require the allocation of resources.

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)

