



**Submission on the Law Reform
Commission's Issues Paper A
*Regulatory Framework for Adult
Safeguarding***

May 2020



St. Patrick's Mental Health Services (SPMHS) is Ireland's largest independent, not-for-profit mental health service provider. St. Patrick's Mental Health Services' vision is a society where all citizens are empowered to live mentally healthy lives. SPMHS works to provide the highest quality mental healthcare, to promote mental wellbeing and mental health awareness, and to advocate for the rights of those experiencing mental health difficulties. SPMHS achieves this through a human rights-based approach, through the enhancement of evidence-based knowledge, and by striving to be at the cutting edge of new initiatives and advances in the field. SPMHS is committed to furthering the development of the competencies of those choosing to work in mental health and of the organisations providing mental health care services, and to enhancing partnership with service users. Our strategic plan for 2018-2022 – '[Changing Minds. Changing Lives](#)', is firmly rooted in these principles and commitments.

SPMHS welcomes the opportunity to contribute to this consultation on the very comprehensive Issues Paper produced by the Law Reform Commission on a regulatory framework for adult safeguarding.

Consultation questions:

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?

Response: Yes, the guiding principles set out in 1.14 are suitable to underpin adult safeguarding legislation.

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

Response: No further guiding principles are necessary.

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?

Response: No, the definition cited in section 2.9 of the Issues Paper from the *Care Act 2014* (England)-

(a) Has needs for care and support (whether or not, the authority is meeting any of those needs), (b) Is experiencing, or is at risk of, abuse or neglect, and (c) As a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it,



covers all necessary areas and helps to clarify specific cases and targets responses to specific areas of need (Law Reform Commission, 2020, p. 25).

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"; (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); (c) "neglect"; (d) "capacity"

Response: a) Safeguarding is well defined though an inclusion of a reference to the relevance of human rights would be preferable.

b) Abuse and harm should be defined separately. There is a need to give substance to both definitions which strengthens and clarifies.

c) The broader definition of neglect adopted by the HSE in 2019, and cited in section 2.44 of the Issues Paper, is preferable (Law Reform Commission, 2020). Separating self-neglect as an issue is preferable as interventions could vary greatly.

d) It is important and practical to maintain a consistency in defining capacity as per the Assisted Decision-Making (Capacity) Act 2015.

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?

Response: Yes, this should be included as statutory duty.

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?

Response: Yes, in as far as possible.

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?

Response: It should address prevention but be focused on intervention in known cases.

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?

Response: Yes



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?*

Response: This would be hard to prove as many elements in abusive situations are not within their control.

Q. 3.6 *If the answer to 3.2 is yes, do you consider that breach of such a duty by a person responsible for 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?*

Response: Yes

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?*

Response: Inclusion of all forms of misuse of technology to inflict abuse should be considered for introduction.

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?*

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; (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.*

Response: Both a financial protocol and a form of protected disclosure are necessary.

Q. 5.1 *The Commission has discussed the following 5 possible institutional or organisational models for the regulation of adult safeguarding: In your view: (a) which of the above is the most appropriate institutional or organisational model for the regulation of adult safeguarding?; (b) do you consider that any of the models discussed would be completely inappropriate? Please give reasons for your answers to (a) and (b).*



Response: a) Establishing a regulatory body as an independent agency is the most appropriate model for the regulation of adult safeguarding. The specialised nature of safeguarding requires a sole independent focus outside of service providers. This need for safeguarding adults requires promotion and education, and needs one body with power to coordinate responses in all areas of government provision from the Central Bank to Health and Social Care to the Department of Justice etc.

Should the option to amalgamate into an existing body prove preferable, the National Advocacy Service may be such a body to consider, in addition to those mentioned within the Issues Paper.

b)) No, many of the models would suffice. However, this is a neglected area and unfortunately an area which is growing in demand. Creating a new agency, while expensive and time consuming, would ensure a specialised robust and appropriate fit for service in its final iteration.

Q. 5.2 Do you consider that any, or all, of the 6 core regulatory powers that the Commission has identified in paragraph 5.38 of the Issues Paper should be applied in the case of adult safeguarding and, if so, whether they would be sufficient in the context of adult safeguarding legislation?

Response: All of the suggested regulatory powers would be sufficient.

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?

Response: A regional structure would be preferable to provide access, promote safeguarding, and be close to need and services. It could be regionalised in the way Tusla is provided, but be a smaller service for the time being.

Q. 6.1 Do you consider that adult safeguarding legislation 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.

Response: Yes. There are a small number of the most vulnerable adults who are excluded from care by a third party for the third parties gain. These



most vulnerable people should expect that every effort is made to uphold their rights.

Q. 6.2 If the answer to Q.6.1 is yes, do you consider that evidence of reasonable belief that a person may be at risk of abuse or neglect would constitute a sufficient safeguard to ensure that such a power would be used effectively and proportionately, or would any other safeguards be required

Response: No. All evidence of failed efforts to intervene should be presented to all professionals involved. This meeting should be chaired by an independent safeguarding professional, and any further efforts should be decided upon and tried. An application should be signed by the principal investigator and the independent chair to the judiciary for approval.

Q. 6.3 If the answer to Q.6.1 is yes, do you consider that such a power of entry and inspection: (a) should be conferred directly on a safeguarding professional, a health care professional or a member of An Garda Síochána, or (b) that such entry and inspection should require an application to court for a search warrant, whether in all instances or only where entry and inspection is to a private dwelling. Please give reasons for your answers to (a) and (b).

Response: a) The power could be conferred directly to both a professional and to a member of an Garda Síochána to ensure due process and safety for all.

b) An application to the court should be made in all cases. This underlines the seriousness of the matter and should be applicable to all circumstances wherever a person resides.

Q. 6.4 If a power of entry and inspection to a private dwelling were to be conferred on a member of An Garda Síochána, do you believe that a member should be permitted to use reasonable force, if necessary, to gain access to a dwelling?

Response: Given the seriousness of these extreme cases, reasonable force could be used as a last resort.

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.

Response: Yes. This is a complex area and it is important that there are powers to assist when it is difficult to gain access to the vulnerable person to



conduct an independent assessment. Access issues can be very challenging, and when all usual interventions have been tried, it may be necessary to use legislation to ascertain the circumstances of their situation. It is an option of last resort but may make earlier interventions more accessible.

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?

Response: No. It is important that powers should be enshrined in a safeguarding regulatory body that is ring-fenced, and include situations that are in addition to those addressed by the Domestic Violence Act 2018.

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 2018 or section 10 of the Non-Fatal Offences Against the Person Act 1997?

Response: Q 7.3 Separate provisions would be preferable. This would allow for an expertise to evolve in order to provide for rare situations where the most vulnerable have access to a robust knowledgeable system of protection.

Q. 8.1 There are four possible reporting models for suspicions of abuse or neglect concerning adults within the scope of adult safeguarding legislation: (i) permissive reporting; (ii) universal mandatory reporting; (iii) mandatory reporting by specific persons; (iv) a hybrid or "reportable incidents" model. In your opinion, which of these is the most appropriate model for reporting incidents of the abuse of adults within the scope of adult safeguarding legislation, or reporting reasonable suspicions regarding abuse of those adults? Please give reasons for your answer.

Response: A hybrid model is preferable. It will strengthen a permissive approach and ensure that serious cases are both reported and lawful, and will increase knowledge amongst a wide range of professionals. It will give scope for reasonable suspicions to be further investigated.

Q. 8.2 If the current permissive reporting model were to be retained, should it be placed on a statutory basis? If yes, should statutory protections be enacted for those who report concerns in good faith?

Response: It should be placed on a statutory basis and a protection for persons reporting abuse and reasonable suspicions should be in place.



Q. 8.3 If a hybrid or “reportable incidents” model were to be enacted, to what incidents of abuse or neglect should mandatory reporting apply? Should mandatory reporting apply to financial abuse, for example?

Response: It should apply to all areas of abuse including financial and institutional abuse.

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

Response: Yes there should be statutory provision for independent advocacy in the context of adult safeguarding.

Q. 9.2 If the answer to Q.9.1 is yes, do 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).

Response: a) No, this would not be sufficient.

b) More provisions would be necessary, along the lines of the provisions outlined in the Assisted Decision-Making (Capacity) Act. Advocacy should be provided at appropriate levels.

Q. 9.3 If the answer to Q. 9.2(b) 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 as an independent agency or that it should be located within an existing agency?

Response: There is a need for a national advocacy service in the context of adult safeguarding. This area is fraught with conflicts and an advocate devoted solely to a vulnerable person would be needed to navigate and continually assess that the process is understood, and that the person's rights are upheld. The service could be located within an existing agency such as the National Advocacy Service, with the potential to become a separate agency at a later stage if necessary.

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?

Response: No, these would not appear to be sufficient.



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.

Response: Arrangements should be in place between all care providers (statutory, private / independent) and regulatory bodies. The safety of vulnerable adults is paramount and supersedes the right to privacy where there is a reasonable suspicion of abuse.

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?

Response: a) No these would not appear to be sufficient.
b) Yes, a statutory duty to cooperate should be enacted.

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?

Response: The duty should apply to all care providers, An Garda Síochána, and financial institutions.

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

Response: Yes. This would ensure accountability for services that were not provided and responsibilities would be clearly defined.

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