Safeguarding Ireland response to:

'Public Consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector'

April 2024

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Part 1. About you

Question 1:
Are you providing feedback as: an individual
X on behalf of an organisation

If answer is “an individual”
Which of the following best represents your view?
A service user
A family member or legal representative of a service user A social worker
A healthcare worker or a social care worker (not including a social worker) A carer of a service user (informal)
A member of the public
Other (Please give details below):

If you selected 'Other' above, please give details here:

If you are providing feedback on behalf of an organisation please give the name of the organisation.
Safeguarding Ireland

Is the organisation?
An advocacy organisation or a representative organisation for service users?X A professional body?
A trade union or worker representative body? A social care or healthcare provider?
A public sector body or regulator?

- ○ A healthcare or medical organisation or body?

Other (please give details below):

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Preface

Safeguarding Ireland welcomes the opportunity to provide feedback on the Department's Public Consultation on 'Policy Proposals on Adult Safeguarding in the Health and Social Care Sector' ('the Policy Proposals').

Safeguarding Ireland welcomes the Department's development of important Policy Proposals for the Health and Social Care sector and acknowledge the considerable efforts made by the Department to formulate proposals that aim to expand and enhance the safeguarding landscape within the Health and Social Care sectors.

Safeguarding Ireland notes that submissions in response to this consultation must be made no later than 2nd April 2024. At the time of responding, Safeguarding Ireland therefore awaits an opportunity to consider how the Department's Policy Proposals fit within recommendations expected in the Law Reform Commission's (LRC) report on a 'Regulatory Framework for Adult Safeguarding', and with the revised/updated HSE Policy on Adult Safeguarding (also awaited). In this context, Safeguarding Ireland's response is informed by its origins, (the aftermath of the Áras Attracta scandal), operational experience over the last several years and its own comprehensive Discussion Paper- Identifying Risks - Sharing Responsibilities published in May 2022.

(It is acknowledged that proposals forthcoming via the LRC and HSE reports listed above may address some of the gaps or deficiencies Safeguarding Ireland highlights in the remainder of this response and provide greater assurance as to what the Department's Policy Proposals will achieve within the overall response to Adult Safeguarding in Ireland).

As a final and important observation, Safeguarding Ireland is concerned that the consultation format i.e., the use of a questionnaire, which is separate to the detailed text of the proposals, may give rise to misleading or unreliable feedback. In several areas, the questions are summaries of the intended proposals and respondents are asked to respond to questions that do not align fully with the actual text of the proposals. The question relating to the 'Duty to prevent abuse' is one such example.

Part 2. Overall feedback

This part seeks high level feedback on the overall Policy Proposals on Adult Safeguarding in the Health and Social Care Sector.

Question 2: (relates to Chapter 1 Policy scope, aims and principles)

Overall, do you agree with the following in the Policy Proposals?

Vision and Key Messages

Safeguarding Ireland agrees with the intent of the vision which, as outlined in the Department's Policy Proposals, will cover a significantly expanded scope but is still limited to the health and social care sector. Safeguarding Ireland believes it should encompass all sectors of society, where an adult may be subject to/at risk of harm, exploitation, and abuse. There is a wider societal need for Adult Safeguarding and strong public support for a

National Authority to strengthen policies and services[1]. (85% of respondents to a RedC poll commissioned by Safeguarding Ireland in December 2020 supported an overall national authority on Safeguarding, 87% said a dedicated authority should have enforcement powers).

1.2 Aims and Objectives

'Prevention: Reduce and, as far as possible, prevent abuse from occurring, to support adults at risk who use our services in exercising their autonomy and decision-making rights and to have a preventative culture of safeguarding in place so that their environments are safe'.

Safeguarding Ireland notes that the 'prevention objective' is caveated here and elsewhere (Chapter 4) in the document, '*in so far as possible*', '*strive to prevent*', '*when receiving services*' and is unclear why the Department has not been more unequivocal in stating its commitment to the prevention of abuse or providing a rationale for the approach[2]. The HSE's current Adult Safeguarding Policy states that *'The HSE is committed to upholding this right and has endorsed the principle of 'zero-tolerance' of abuse wherever it occurs policy… all services have a publicly declared 'No Tolerance' approach to any form of abuse*[3], the Department of Justice's '*Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022-2026*'[4] embeds 'Zero Tolerance', throughout.

Additionally, Safeguarding Ireland suggests that the wording of this objective should be clearer, (perhaps via changing the words 'to' with 'by' ('by supporting' and 'by having'). Supporting and empowering adults to exercise their autonomy and decision-making rights is a major component of the 'prevention objective', Safeguarding Ireland suggests that the planning, design, delivery, and resourcing of safer services/environments should also be referenced under the 'Prevention objective', and that the adults that use these services are also involved in those processes.

'Cooperation: Promote and facilitate cooperation and appropriate information-sharing across the sector and with other sectors'.

Safeguarding Ireland's view is that cooperation and appropriate information sharing must be **mandatory** both within in the Health and Social Care sector and across other sectors, where required to prevent harm /safeguard an adult who is at risk of harm or abuse. While **Chapter 7** 'Interagency and inter-sectoral cooperation' provides further description of how this objective will be achieved, Safeguarding Ireland is not convinced by the mechanisms described in that regard (viz. *'partnership framework'* , '*the development of protocols or guidance*', *'partnership or cooperation agreements on adult safeguarding (e.g. Memoranda of Understanding) with relevant public sector bodies in other sectors'* and the responsibilities shared between the '*Department of Health (or, in relation to a specialist community-based disability service, the Department of Children, Equality, Disability, Integration and Youth) …. for any related inter-Departmental engagement that may be appropriate or necessary to facilitate the Sectoral Adult Safeguarding Office in carrying out this role'*.

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[1] https://safeguardingireland.org/wp-content/uploads/2021/06/Safeguarding-Ireland-RED-C-Public-Awareness-Research-Summary.pdf See : 'Legislation, a safeguarding authority and reporting' – December 2020.

[2] The Steering Group to assist Department of Health in its development of a national policy on adult safeguarding in the health sector – notes in the minute of the meeting of 07 October 2021 (Meeting 10) that: The zero-tolerance approach in the 2014 HSE policy served to embed adult safeguarding in services, but a more sophisticated / proportionate approach (like the proposed tiered one) is now more appropriate. • The current zero-tolerance approach can generate a large number of reports that aren't relevant. (These observations relate solely to reporting).

[3] https://www.hse.ie/eng/services/publications/corporate/vulnerablepersonsfaq.pdf p1.

[4] In the foreword to that Strategy the Minister for Justice provides the following rationale *'Zero Tolerance means realising that we have allowed gender based violence and abuse, and the attitudes and assumptions which underpin it, inflict misery on too many for too long, but know now that radical change is required.* and further states *'we can and must do everything in our power to bring about change and achieve Zero Tolerance'* https://www.drugsandalcohol.ie/36540/1/Third-National-DSGBV-Strategy.pdf (p 3).

As currently described, it appears that implementation of this critical aspect of the Policy Proposals rests on a complex and potentially confusing and unwieldy set of voluntary arrangements which will require negotiation, resourcing and ongoing monitoring and oversight. Moreover, these arrangements may not provide the necessary speed and flexibility to achieve the objective (to safeguard adults at risk from harm), particularly where such co-operation is urgent. In addition, locating and embedding accountability and responsibility will remain as key challenges to the effective implementation of these proposals.

'Research: Ensure best outcomes for adults at risk who use our services through building a well-researched evidence base that supports effective prevention and protection interventions'.

Safeguarding Ireland suggests that evidence-based research should be a cornerstone of the Department's (and the State's) response to Adult Safeguarding. It must start with the establishment of a comprehensive baseline study on the incidence /prevalence of abuse, including a categorisation of type, setting, profile of person who has been abused and profile of persons/entities reported to have perpetrated the abuse. Thereafter, and in addition to thematic or issue-based research, ***all*** Policy Proposals should be measured against change in the baseline data to ensure 'best outcomes' are achieved. (Consideration also needs to be given to what constitutes 'best outcomes'). 'Other outcomes', must form part of the evidence base to ensure that there is an understanding of the barriers that exist to achieving 'best outcomes' in each case.

1.3 Principles

'Support for rights:' Staff and volunteers in health and social care services must respect and support adults' human and constitutional rights. An adult at risk may not be treated less favourably in a similar circumstance than a person who is not considered at risk.

Safeguarding Ireland suggests that specific reference is also made to owners /Boards of Health and Social care services. (The language used in the Policy Proposals should be standardised throughout to denote the responsibilities of owners/Boards, management, staff and volunteers. Accountability should be clear at all levels).

Human and constitutional rights must be respected by all sectors interacting with adults at risk. Such principles must be set out in the Policy Proposals but must be underpinned by legislative provisions which apply to all sectors otherwise the current inconsistencies in approach will continue.

Question 3: (relates to Chapter 1 Section 1.1 and also to introductory text (Scope of Policy Proposals p7)

Do you agree that the scope of the Policy Proposals should:

Cover the full spectrum of public, voluntary and private healthcare services and social care services?

Yes. For the purposes of Policy Proposals relating to the Health and Social Care sectors it is appropriate that the 'full spectrum' of service provision is covered.

The inclusion of 'private healthcare or social care services' is a significant enhancement within the Policy Proposals however, there are confusing references elsewhere in the document to 'All staff and volunteers' 'leadership' 'management' 'organisations'. For example, under 'good governance', it is proposed that '*Safeguarding policy is owned and championed at leadership level'* this should be made more explicit to delineate the responsibilities of the

owners/Board and management and the responsibilities of staff/volunteers at all levels.

Given the privatisation of significant aspects of the Health and Social Care sectors, Safeguarding Ireland would wish to see specific reference throughout the document to the owners/Boards of the entities. In the case of services provided by charities – the Boards are 'volunteers' (as are some of those directly involved in service provision) in the case of commercial entities and in particular 'private equity funds', the governance structures are varied. Safeguarding Ireland suggest that the Policy Proposals specifically highlight the responsibilities and accountabilities of the Boards/beneficial owners of private entities providing health and social care services. The Policy Proposals must address new and evolving business models and governance structures for the delivery of services in the Health and Social Care sectors.

Support every adult service user who may be at risk of being abused or harmed by another person?

Yes. For the purposes of Policy Proposals relating to the Health and Social Care sectors it is appropriate that the scope aims to 'include, support and benefit' every adult service user who may be at risk of being abused or harmed ('by another person').

Safeguarding Ireland notes the reference to '*another person'* and suggest that the proposals should be explicit in referencing that they encompass 'Organisational or Institutional abuse' i.e. *the mistreatment of people brought about by poor or inadequate care or support, or systematic poor practice that affects the whole care setting. It occurs when the individual's wishes and needs are sacrificed for the smooth running of a group, service or organisation*[5][6]*'.*

Other observations on 'scope'

'It should be noted that while self-neglect is excluded from the above definition, the HSE has developed a specific policy on this issue (see Section 3 of the HSE's 2014 operational policy document Safeguarding Vulnerable Persons at Risk of Abuse – National Policy and Procedures). (Under definition of 'Abuse' on page 3 of Key Terms in Department's Policy Proposals).

Safeguarding Ireland notes that the broadening of scope envisaged by these proposals will inevitably give rise to a significantly increased number of services/personnel coming into contact with adults who face serious risk of harm as a result of what is termed 'self-neglect'. The exclusion of 'self-neglect' is therefore considered to be a missed opportunity to provide direction to service providers on how they should respond in such cases, where to sign-post, and how to assist a person at risk to avail of support. Self-neglect may be a manifestation of other forms of abuse – such as financial abuse, coercive control, psychological abuse, sexual or physical abuse or may be the result of past trauma. (See Chapter 7 'Self-Neglect'. Identifying Risks - Sharing Responsibilities)

In describing the existing legislative framework, the proposals refer to 'Criminal justice more generally' (particularly criminal law relevant to different types of abuse *e.g. on sexual offences, domestic, sexual and gender-based violence, physical assault, theft or fraud, coercive control etc.)*'
Safeguarding Ireland highlights that existing legislation in relation to '*coercive control'* is confined to intimate partner relations. In the context of the Department's proposals this creates a significant gap in 'scope' terms of adult safeguarding. Coercive control is undoubtedly a major strand in the abuse of adults at risk which underpins

[5] https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/appendix%201-3.pdf and also
[6]https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/types%20of%20abuse.pdf

and co-exists along with several other types of abuse. (See Chapter 6 'Coercive Control'. Identifying Risks - Sharing Responsibilities.)

It is further noted that this section does not reference the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Safeguarding Ireland suggests that in the context of the Department's Policy Proposals and the broader need for stronger legislation, regulations and changes in practice, the requirements of Article 4 of UNCRPD[7] are pivotal and should be highlighted.

'As these Policy Proposals focus specifically on the health and social care sector, safeguarding issues relating to other sectors are beyond its scope. The policy, however, includes referral of suspected or reported abuses to the correct sector (see 5.1 and 6.6). It also includes cooperation on safeguarding with other key sectors and agencies, for example An Garda Síochána (see Chapter 7),(at page 7 of Department's Policy Proposals)

Safeguarding Ireland notes the limitations, but highlights that the proposals cannot be fully effective unless there is a mandatory coordinated and commensurate approach across other sectors. Currently, there is no uniform framework for regulation safeguarding across all settings or contexts. See Chapter 2 'Current Safeguarding and Regulatory Framework in Ireland: Existing Provisions and Main Shortcomings' and Chapter 11: 'Developing an Integrated Safeguarding Policy Response' Identifying Risks - Sharing Responsibilities. The Department should also recognise, that even within the current health and social care sector, there are large gaps where no functioning service is being provided and where there is no regulation. In spite of recommendations of the Law Reform Commission back in 2011[8] for the regulation of homecare service and the promise of legislation since then, there is still no legislative framework to provide for homecare services and there is no reference to the regulation of homecare services in the Department's Policy Proposals.
These are major limitations and are not addressed in the Department's Policy Proposals.

Question 4: (relates to Chapter 2, 3, 4 and 7)

Will the overall Policy Proposals achieve:

A strengthened culture of safeguarding?

There are various references to 'culture' throughout the proposals[9]. While it is clear that the Department's Policy Proposals' intention is that adult safeguarding is an integral part of organisational culture across all services in scope, it is not clear other than through training, 'embedding', 'awareness raising', and other activity aimed at 'fostering' such a culture how the strengthened culture will emerge.

The Policy Proposals would therefore benefit from a specific section that focuses on 'culture', that delineates who is responsible for leading and driving it at national level, at service level (we suggest senior management), and specifically setting out where legislation/regulation is required as a backdrop for the desired strengthening of

[7] https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf
[8] *Legal Aspects of Professional Home Care* LRC 105 2011
[9] *('ensure that a culture of safeguarding is fostered "on the ground" within every service', 'fostering a rights-based culture of safeguarding', 'Foster a preventative and responsive culture of safeguarding in all health and social care services', 'to have a preventative culture of safeguarding in place', - Processes are in place to foster a culture of safeguarding in every service'*, as a rationale for retaining structures within the HSE – '*to Facilitate the key aim of developing a strong safeguarding culture on the ground throughout the HSE and all health and social care services, by embedding preventative and protective safeguarding approaches within day-to-day care provision model's*, as a rationale for not requiring elements of the policy to have a legislative underpinning *many elements of the policy will not require legislative underpinning and may be more appropriately implemented through non-legislative measures such as awareness-raising, training and other initiatives to foster a safeguarding culture, 'foster a strong rights-based culture of safeguarding in every health and social care service'. must foster an organisational culture of safeguarding, Preventative culture • Services must foster a preventative culture of safeguarding emphasising the importance of targeted action to prevent abuse and to support the delivery of safe environments, A preventative culture will be further supported by targeted actions in relation to public awareness, - Staff and volunteers contribute meaningfully towards fostering a culture of safeguarding as part of the provision of day-to-day care in every service'*

culture. The Policy Proposals should address how the desired strengthened culture of safeguarding, will override other competing /or dominant or harmful aspects of culture, such as the lack of respect of individual rights, risk aversion, lack of trust or an undue focus on profitability to the detriment of service users and also specify related responsibilities of owners /Boards for organisational culture.

Safeguarding Ireland has stated previously *'A culture that is dismissive of certain forms of abuse, that trivialises others and that plays down the human and legal rights of adults at risk, persists in Ireland. There is a need for an effective dismantling of this culture*[10]*'*

It is also important to highlight that service users, their families, staff and professionals as well or owners and management of services may have very different views and perspectives on a 'culture of adult of safeguarding' and therefore there is a significant body of work required to first 'dismantle' legacy/existing cultures, then shape a new and shared culture and thereafter to strengthen it. Again, in this regard, we highlight how important it is that there is a 'whole of Government' approach to Adult Safeguarding.

Safeguarding Ireland has also stated that - *'Much of the potential for abuse, neglect and exploitation of adults at risk, especially in subtle forms, is rooted in a culture that accepts and condones certain attitudes, practices and behaviours that deprive people of their basic human rights. Challenging and changing this culture, both within institutions and across society as a whole, is an integral part of safeguarding. There is a clear need for a new and overarching legislative and regulatory approach to adult safeguarding in order to adequately protect people's human and legal rights'*[11]*.*

A strengthened culture of adult safeguarding should come from 'the top down' and be echoed from 'the bottom up'. A key component of changing culture would be to impose a statutory obligation on state bodies, agencies and organisations to prevent the abuse of adults at risk in all its forms rather than having the focus on responses when a crisis occurs.

Meaningful support for the autonomy of at-risk adult service users?

This is primarily described in Chapter 3 under the following headings:

3.1 Supporting autonomy

Safeguarding Ireland is in agreement with the measures set out in this section but is surprised that there is no reference (as part of meaningful support for autonomy) to encourage persons, in order to prevent abuse and to protect themselves, to put in place an Advance Healthcare Directive, an Enduring Power of Attorney and a Place of Care Decision. In addition to supporting individual autonomy, these are essential safeguarding measures that can come into effect when a person lacks the capacity.

3.2. Advocacy

Safeguarding Ireland is in broad agreement with this section; however, the resourcing of advocacy must also be considered, as well as the urgency that may apply where an adult at risk requires an advocate to attend on site. It is also important that adults at risk have a statutory right to access an independent advocate. Access to independent advocacy (independent of service provider and family) is an important component of adult safeguarding.

[10] https://safeguardingireland.org/wp-content/uploads/2022/05/6439-Safeguarding-Risks-Resp-Report-FA4_lowres.pdf (p24).
[11] https://safeguardingireland.org/wp-content/uploads/2022/05/6439-Safeguarding-Risks-Resp-Report-FA4_lowres.pdf (p21).

3.3 Consent

Safeguarding Ireland is in agreement with this section but highlights that a failure to comply with the Assisted Decision-Making (Capacity) Act 2015 and/or the HSE National Consent Policy, as appropriate, could be an abuse by a service regardless of whether the matter relates to safeguarding concerns or otherwise. In this regard the Guiding Principles of the 2015 Act should underpin Policy Proposals for adult safeguarding.

An effective safeguarding structure for the sector? (Set out in Chapter 2 of the Department's Policy Proposals)

For Safeguarding Ireland this aspect of the Policy Proposals is the most problematic. The Department's thinking and intentions are set out in Section 2.1, which provides a *'Summary of issues considered regarding structural alternatives'* of 'two key structural alternatives'.

First, as Safeguarding Ireland has highlighted throughout, while welcoming the development and reform of sectoral Policy Proposals, it is not in agreement with the limitation of scope to Health and Social Care.

With regard to the summary of issues regarding structural alternatives. Safeguarding Ireland suggests there are 3 alternatives (the first 2 of which have been grouped together in this section).
They are:
(1) the new independent statutory safeguarding body (which Safeguarding Ireland favours)

(2) transferring the HSE's safeguarding responsibilities to an existing sectoral body (for example, the Mental Health Commission, HIQA) where it would be independent from service delivery.

(3) retaining these functions and structures within HSE, while expanding and enhancing them as part of a new Government-approved national policy on adult safeguarding in the sector based on these Policy Proposals.

While accepting this section is a 'summary of issues', Safeguarding Ireland suggest that far greater attention should have been given to a rigorous and transparent appraisal of the options as an aspect of advancing these proposals[12].

The most significant weakness arises from the limitation of the Policy Proposals to Health and Social Care and the consequent limitations on the proposals for enhancement /reform of existing HSE structures including the establishment of a 'Sectoral Adult Safeguarding Office'. Safeguarding Ireland cannot see how the proposed structure will address the current fragmented nature of the national safeguarding response, the gaps in provision, or the gaps in needed expertise beyond the domain of social work.

Safeguarding Ireland does not accept that the establishment of an Independent Authority would necessarily result in 'risks of stripping safeguarding and social work expertise from the HSE' as the HSE would be required to retain both. In respect of 'Value for Money advantages', Safeguarding Ireland suggests that there is a significant resourcing requirement, regardless of which model is adopted and Value for Money can only be assessed based on a detailed appraisal of the effectiveness of the delivery model that is proposed. Safeguarding Ireland's view is that there is a considerable risk that resourcing a partial response that lacks the necessary statutory powers to compel co-operation between agencies may prove to be a less effective and a more costly use of the State's resources.

[12] Some of the relevant issues are presented in a 2017 paper prepared by the IPA.
https://www.ipa.ie/_fileUpload/Documents/National_Safeguarding_Authority_Options_Paper.pdf

More costly, as it will simply further fragment an already fragmented system with no clear responsibilities or accountabilities and leave many at risk adults without a safeguarding response and will ultimately require more costly resources to be provided by the State to resolve unmet needs.

In addition to its operational roles, (listed at 2.1 bullet 4) it is clear from Chapter 7 that the 'Sectoral Adult Safeguarding Office', will need to advance protocols and MOU's with other parts of the HSE, with a much expanded range of services which will now be brought in scope, as well as Government Department, Agencies and regulators as follows:

- Department of Justice
- Department of Social Protection
- Department of Health
- Department of Finance
- Department of Children, Equality, Disability, Integration & Youth Affairs
- Decision Support Service
- Mental Health Commission
- HIQA
- Tusla
- The Charities Regulatory Authority
- Office of the Ombudsman
- An Garda Síochána
- Community and voluntary organisations
- Financial institutions
- Independent advocacy providers.

Safeguarding Ireland caution that by proposing that relevant operational responsibility rests with the 'Sectoral Adult Safeguarding Office' that the Department may have severely underestimated the extent to which the active co-operation of all of the above is required in order to achieve the desired outcomes within Health and Social Care (and ideally beyond) and also does not appear to understand the need to address high levels of certain forms of abuse e.g. coercive control and financial abuse which calls for integration and collaboration across a number of sectors and cannot be resolved on a limited sectoral basis. Moreover, there is an evident 'governance gap' in terms of the required authority of the Office to mandate the Departments and Agencies listed to co-operate effectively.

A further serious issue which is unresolved within the Department's Policy Proposals is the challenge this aspect of the proposals presents with regard to the HSE "investigating" issues within the HSE's own services or involving its own staff. We note that the Policy Proposals state that '*mechanisms are being considered to ensure that investigation of serious safeguarding issues arising within HSE's own services can be assigned to teams or individuals without potential conflicts of interest'*.
Safeguarding Ireland is concerned with the vagueness of this proposal and questions the appropriateness of such a proposal. Having the HSE carry out investigations in relation to its own services breaches one of the fundamental legal principles of natural justice - *nemo judex in causa sua (no one shall be a judge in their own cause)*. No matter what efforts are made to deal with potential conflicts of interest, the issue of objective bias arises immediately, and such provision could clearly give rise to judicial review.

Safeguarding Ireland would also draw the Department's attention to Article 16 of the UNCRPD which provides – *In*

order to prevent the occurrence of all forms of exploitation, violence and abuse, State Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

It is further noted (on page 15) that, '*The governance and reporting lines of the Sectoral Adult Safeguarding Office and the social work-led Regional Adult Safeguarding Teams are being examined as part of overall considerations in relation to the establishment of Health Regions and as part of the HSE's own review of its safeguarding policy, procedures and structures which is being undertaken by an independent safeguarding expert*'. Safeguarding Ireland would again wish to see a clear and detailed description of the governance and reporting processes that are envisaged.

A strong legal basis and effective legal powers?

The related proposals are described in Section 2.2, 5.6. and 6.3. Safeguarding Ireland is in agreement that these powers are needed but notes that proposals do not specify who/which entity will have these powers, refence is made to 'appropriate authorities', 'Specified bodies and/or authorised officers with safeguarding functions'. Safeguarding Ireland presumes it is intended that these powers will apply to the Regional Adult Safeguarding and Protection Teams and view it as essential that these teams have and use these powers. Again, Safeguarding Ireland will await the LRC's recommendations in this regard.

Safeguarding Ireland is of the view that the Adult Safeguarding and Protection Teams should be independent of any particular service, have an overarching remit and be multi-disciplinary service units. The reform and development of the current teams are essential to meet the requirements of a fully developed cross-sectoral safeguarding service. The Adult Safeguarding and Protection Teams should in due course come within the oversight remit of the National Adult Safeguarding Authority.

Effective cooperation and information sharing between services and agencies?

The absence of a statutory mandate for inter-agency co-operation and information sharing is one of the key causal factors enabling the abuse and harm of adults who are at risk. Safeguarding Ireland has set out its views on this issue in previous responses.

Question 5:

What do you consider will be the benefits of introducing the new policy as set out in these proposals?

The primary benefit is the recognition of the need for a policy response to Adult Safeguarding by a main Government Department. The Policy Proposals are an important but insufficient step towards the comprehensive and unified approach to Adult Safeguarding that is required across all main Government Departments, agencies and regulators and service providers (public and private). While recognising that Health and Social Care play central roles in the provision of supports to some adults at risk of harm and abuse, many adults who face significant risk of /exposure to harm have limited and sometimes no involvement with these sectors or are subjected to serious harms (including, for example, in relation to coercive control and financial abuse) in their interactions outside of these sectors.

Question 6:

Do you have any concerns about the Policy Proposals?

Safeguarding Ireland's primary concern relates to the potential efficacy of the proposals in the context that a coordinated 'whole of Government' response to Adult Safeguarding is long overdue and must be addressed. As they stand, the generality of the proposals are to be welcomed, but the Policy Proposals should not be advanced on a 'stand-alone' basis and will not work effectively unless addressed in an overarching adult safeguarding policy and legislative framework.

Part 3. Feedback by chapter

In this part we would particularly welcome your views on the following specific Policy Proposals on Adult Safeguarding in the Health and Social Care Sector.

Question 7:

Do you agree with the Policy Proposals on safeguarding structures that:

Safeguarding is everyone's responsibility –

Safeguarding Ireland agrees with this statement as it applies both within Health and Social Care and across society. There are, however, specific accountabilities that arise as a consequence of the nature of their responsibility for service provision that attach to certain roles – owners/Boards, management, staff and volunteers in Health and Social Care services as well as to others in these sectors and others, including policy makers, legislators, and regulators.

Adult Safeguarding is grounded in a multi-disciplinary approach.

Safeguarding Ireland is in strong agreement with this statement but cannot see significant evidence of this in the Department's Policy Proposals. By contrast, throughout the proposals there is reference to aspects of the proposals which are, and will continue to be, 'social work-led'. While acknowledging that social work has traditionally been the 'lead' profession and remains centrally important, both a broadened understanding of adult safeguarding and the related risk issues and the broadening of policy as envisaged in the Department's proposals, require that expertise and 'ownership' develops across a range of professions both within and outside of Health and Social Care. One of the fundamental flaws in the current system is the lack of a multi-disciplinary approach. In many cases, in the experience of Safeguarding Ireland, the lack of multi-disciplinary input leaves many at risk adults without an appropriate response. This could be given greater focus in the proposals.

Services will be required to have one or more nominated Designated Adult Safeguarding Officers?

Safeguarding Ireland agrees with the requirement to have one or more Designated Adult Safeguarding Officers but envisages that the training, formation and ongoing development of personnel and clarity of this role is key.

The Health Service Executive (HSE) will continue to have the lead operational safeguarding role for the sector, subject to strengthening and expanding its safeguarding remit, structures and functions, as proposed in the policy?

Safeguarding Ireland acknowledges the need for the HSE to have a much-strengthened operational response with regard to the delivery of its own services and the need for it to lead on the development of sectoral expertise and competence. However, Safeguarding Ireland has serious reservations about the HSE's current and future operational capacity in the context of the scale of the current gaps in the sector that needs to be addressed. The proposals acknowledge that the related governance and reporting arrangements are still in development within the HSE. Further, the Department's proposals require a wide-ranging and transformative approach to adult safeguarding and seem to rely heavily on protocols, MOU's etc. with third parties. Safeguarding Ireland is unconvinced that even with an expanded remit and commensurate resources, the HSE and the Sectoral Adult Safeguarding Office will be positioned to leverage the required levels of co-operation and engagement with third parties outside of health/social care all of which, in Safeguarding Ireland's view, do require to be underpinned by clear statutory obligations.

The remit of the HSE's operational safeguarding structures (encompassing the Safeguarding and Protection Teams and the National Safeguarding Office) should be extended to now include all public, voluntary and private healthcare and social care services?

As above, Safeguarding Ireland believes that all public, voluntary and private health care settings should be brought in scope, but has reservations about the capacity and governance regime of the related operational structures within the HSE, notwithstanding the revised remit and the new powers that may be assigned to the Regional Safeguarding and Protection Teams. Additionally, Safeguarding Ireland can find no indication within the Department's Policy Proposals as to the scale of the extension i.e. number of entities, volume of staff, volume of service users and the related requirements this will impose on the HSE. This information would be of assistance to enable a considered response to this question.

Question 8:

Do you agree with the Policy Proposals on the legal framework for adult safeguarding duties that:

The HSE should be given explicit functions and duties in relation to adult safeguarding across the health and social care sector?

Safeguarding Ireland has reservations about this fundamental aspect of the model, based on the gap between the status quo and the required organisational capacity (in terms of operational span and necessary authority) needed to embrace a more substantial and significantly enhanced role, as well as much extended reach, to include all health and social care services including community and homecare services. Again, the development of multi-agency, multi-disciplinary approach is required by the HSE to operate safeguarding within the health and social care sector effectively.

All providers of health and social care services should have a duty to safeguard the adults at risk who use their services against abuse?

Safeguarding Ireland agrees with this statement, but highlights that limiting the duty to safeguard to service users in Health and Social care – limits adult safeguarding generally. A commensurate duty is required across other key sectors. Aa failure to require a safeguarding duty in other sectors means that the HSE will inevitably be the locus for all concerns about adult safeguarding in addition to its sectoral responsibilities. The scale of non-health and social care safeguarding issues is significant and growing, as novel abuse types emerge – digital /online, human trafficking, etc. and as the population ages and incidence of disability increases. Many people who are not sectoral 'service users/ adults at risk who use a service', or who only marginally engage with services within health and social care are exposed daily to serious harms and abuses that occur outside of these settings.

All providers of health and social care services and relevant agencies should have a duty to cooperate for safeguarding purposes?

Safeguarding Ireland contends that all providers of health and social care services **must** have a duty to cooperate for safeguarding purposes. 'Co-operation' needs to be a clearly defined, statutory, mandatory requirement with a duty to share data being specifically provided for. Again, the ambition of this aspect of the Policy Proposals is limited by the lack of an analogous duty on other sectors (other Government Departments and Agencies, State bodies, regulators, financial services/essential services providers, community and voluntary organisations, sporting and cultural bodies etc.). Safeguarding Ireland has experience of major weaknesses and related frustrations in the response at present, where there are divergent approaches to co-operation within and between sectors, where different sectors take different operational approaches, interpret signals of abuse differently and ultimately respond in different ways. Lack of shared cross-sectoral accountability and responsibility is perhaps the biggest enabling factor in the abuse and harm of at-risk adults.

All providers of health and social care services should have to conduct Service Safeguarding Risk Evaluations and publish Adult Safeguarding Statements?

Safeguarding Ireland strongly agrees with this statement.

Safeguarding risk assessment should form part of any assessments for the admission of an adult at risk to a residential health or social care service?

Safeguarding Ireland agrees that Safeguarding risk assessment should form part of any assessments for admission of an adult at risk to a residential or social care service. The nature of this assessment should be specified and should include (*inter alia*) an assessment of the risk to the person arising because of an inappropriate placement. Such risk assessments should be undertaken periodically, particularly where there is evidence that a person is distressed post admission or does not agree with their admission to a residential service.

It appears that the emphasis here is on the admission of an adult at risk to a residential placement rather than respecting the right of the person to choose where he or she will reside and also having access to appropriate community care.

Surprisingly, although one of the key messages set out in Section 1 of the Department's Policy Proposals is to foster a rights-based culture of safeguarding, there is little reference in the document to specific constitutional rights, rights provided for in the European Convention of Human Rights and under the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Specifically, as to where a person at risk should live, regard must be had to the constitutional right not to be deprived of liberty and the specific provision of Article 14 and 19 of the UNCRPD.

Adult Safeguarding policy and legislation must align with the forthcoming Deprivation of Liberty legislation.

Providers should have to prepare and implement an Individual Adult Safeguarding Plan when recommended following an assessment?

Safeguarding Ireland agrees with this statement. Safeguarding Ireland suggest that such plans may need to address the safe management of the person's finances, and this may require liaison with non-health /social care entities including banks, financial services providers, or the providers of key payments to the person – such as the Department of Social Protection or the National Shared Services Office.

Safeguarding Ireland is aware that a not insignificant number of applications to the Circuit Court, under the provisions of Part 5 of the *Assisted Decision-Making (Capacity) Act 2015,* relate to persons who lack capacity to manage their finances. The arrangement consented to by the court is to enable the discharge of maintenance charges for their care. Equally people who are in this group, who are resident in care facilities, suffer a high level of financial abuse which is currently not being adequately addressed.

In order to adequately prepare and implement an Individual Adult Safeguarding Plan, for example, in the context of financial abuse, there is a requirement for interagency cooperation and the sharing of data with both the public sector and private sector (financial institutions). The Department's Policy Proposals need to describe how this will be achieved in a clear and systemic manner and what body has oversight of the respective 'providers' in such situations.

Question 9:

Do you agree with the Policy Proposals that new laws should be introduced to provide legal powers for specified safeguarding bodies or personnel to:

Enter service premises and meet patients/residents (in privacy, where appropriate) to assess a safeguarding allegation?

Safeguarding Ireland agrees with this proposal.

Access relevant records of service providers to assess a safeguarding allegation?

Safeguarding Ireland agrees with this proposal.

Protect an at-risk patient or resident against abuse by moving them temporarily to a place of safety?

Safeguarding Ireland agrees with this proposal -but stress that the temporary 'place of safety' must be appropriate to the needs of an at -risk patient or resident.

Protect an at-risk patient or resident against abuse by prohibiting a named person from visiting / contacting them?

Safeguarding Ireland strongly agrees with this proposal – however such decisions must be informed by, and in so far as possible aligned with, the wishes of the person.

In this regard, Safeguarding Ireland awaits with interest the recommendations of the LRC.

Question 10:

Do you broadly agree with the Policy Proposals set out in the following Chapters and sub-Chapters?

Chapter 3 – Supporting the decision making autonomy of adults at risk who use services?
Yes – see previous responses.

Do you broadly agree with the Policy Proposals set out in the following sub-Chapters?

3.1 Supporting autonomy

3.2 Advocacy

3.3 Consent

Yes – See previous responses.

Additional commentary

3.1 Supporting Autonomy

Safeguarding Ireland strongly agrees with the proposals in relation to supporting autonomy but highlight again that no reference is made to the UNCRPD in the Department's Policy Proposals and this is a deficit. Safeguarding Ireland agrees that the Assisted Decision-Making (Capacity) Act 2015, and the presumption of capacity, is fundamental to adult safeguarding across society. However, Safeguarding Ireland suggests that the approach to its implementation is too narrow. Service users should be supported not just via 'information' but at a much earlier stage, in describing their own vision for their interaction with a service, the systems and the processes that will support and safeguard them, the value they aim to derive from the use of a service, as well as their preferences for engaging with a service. This also relates to having the possibility to input into the design and delivery of services that are provided for them. For example, under this heading, the consultation paper states:
'Services must ensure that each service user who is an adult at risk has a meaningful say in how safeguarding decisions are made and is afforded assistance in decision-making where required'.

Certain Safeguarding decisions, i.e. those related to the governance model, or the physical design, or location of a service, are made ***before*** service users start to use a service and Safeguarding Ireland suggests that this proposal will only be fully realised if users, current and future, are encouraged to participate in discussions about service design and delivery.

3.1 Supporting Autonomy

'Providers must regularly seek the views of adults at risk who use their services on how best to communicate with them individually in relation to safeguarding matters and respect those views. Where appropriate, the views of relatives, friends, decision supporters, advocacy services or other relevant individuals and organisations should also be considered'.

Safeguarding Ireland suggests that the text here is too ambiguous and services will need a more defined approach to 'seeking and respecting views' and this should not be confined to *'safeguarding matters'.* Safeguarding Ireland is aware that since the implementation of the ADMC Act, some difficult issues have arisen within services, where the views and decisions of a service user are incompatible with the stated policy of a service, or the perspectives of family. The resulting failure to recognise or support the decision of a service user, or to enable the realisation of that decision represents a denial of their rights under the ADMC Act and under the provisions of the UNCRPD. Moreover, in some cases staff have not been trained or supported to manage the sometimes-competing interests of their employer and those of the service user. In Safeguarding Ireland's view, there is a requirement to build the capacity of service users to express their views and for service providers to meaningfully respect their views as a cornerstone of adult safeguarding. This requires skill and investment.

3.2 Advocacy

'Providers must support adults at risk by ensuring that they have access to advocacy services when needed for safeguarding purposes. Services should pay particular attention to the needs of those who have difficulty expressing their views'.

As already stated, access to ***independent*** advocacy (independent of the service and family) must be a central component in the sectoral response to adult safeguarding, however the terminology here is too restrictive, i.e., '*when needed for safeguarding purposes'.* Access to advocacy should be encouraged and resourced as a means of

empowering people to articulate their wishes, and have their voice heard in decisions that relate to them, and therfore early access to advocacy should be promoted and supported routinely and not just for 'safeguarding purposes'.

3.3. Consent

'Services and their staff and volunteers recognise and respect that adults at risk who use their services have a right to give consent, refuse consent and withdraw consent on safeguarding matters in relation to themselves.
Services must seek the consent of an adult at risk to any safeguarding intervention in relation to them and should respect their decision, subject to the need to comply with relevant legal obligations (e.g. to report certain offences to Gardaí) and the need to safeguard other potentially affected adults at risk from abuse or harm.
When a service user does not consent, or does not have capacity to consent, to a safeguarding intervention that has been designed to support them in the context of a safeguarding concern, services should refer to and be guided by the Assisted Decision-Making (Capacity) Act 2015 and the HSE National Consent Policy.'

Safeguarding Ireland is in full agreement that there is a requirement to recognise and respect adults' right to give, refuse and withdraw consent on 'Safeguarding matters', but stresses that that right relates to all aspects of the services they receive from providers in scope of the Policy Proposals. The updated HSE National Consent Policy[13] is very important in providing guidance to stakeholders on consent, a failure to support service users to give, refuse or withdraw consent in line with this policy or a lack of familiarity with this policy can result in harms and abuse and as such, Safeguarding Ireland suggest that compliance with this policy should be prioritised within this section.

Chapter 4 – Preventing abuse
Do you broadly agree with the Policy Proposals set out in the following sub-Chapters?

4.1 Duty to prevent abuse

'All health and social care services, and everyone who provides or manages them, must have a specified duty to strive to prevent abuse of adults at risk who use health and social care services'.

Safeguarding Ireland concurs with this proposal, however suggests there is consistency in the language – i.e., 'everyone, who '***owns***, manages and delivers' them. It is important that the Policy Proposals are explicit in stating that the duty to prevent abuse is one which specifically and unequivocally applies to the 'owners' of a service, the governance structure – i.e. the Directors/Trustees, those charged with management, all staff and volunteers.

Safeguarding Ireland acknowledge that it may be difficult to find appropriate wording to describe the 'prevention duty' but suggest that 'strive' is insufficient in the context that adults at risk and in scope for these Policy Proposals are people who *'need help to protect themselves or their interests at a particular time'*.

This applies also in 4.1. where the term 'in so far as is practicable' is inserted. The terminology changes again at a bullet beneath 4.2 *'their duty of care to strive to prevent abuse'*

Safeguarding Ireland suggests that the duty to prevent abuse of adults in the provision of services is closer in nature to an 'absolute duty' and that ***if*** the duty is to carry caveats, the related rationale should be clearly explained.

As stated in Section 3 above, Safeguarding Ireland is of the view that a key component of adult safeguarding would be to impose a statutory obligation on state bodies, agencies and organisation to prevent the abuse of adults at risk

[13] https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/consent/

in all its forms.

4.2 Preventative culture

Yes – see also previous comments on culture.

Under this section it is noted that this objective will be achieved by (amongst other actions) '*Ensuring access to specialist safeguarding resources, including Designated Adult Safeguarding Officers and regional social work-led Adult Safeguarding and Protection Teams'.*

While acknowledging the importance of 'specialist safeguarding resources', there is no reference here or elsewhere in the Department's Policy Proposals to the role of 'expertise' (from other areas or disciplines). Safeguarding Ireland suggests that a preventative culture could be enhanced at both strategic and operational levels by formal measures to include and draw on expertise from other areas/disciplines – e.g. financial services, digital experts etc. as well as service-users who are 'experts by experience'[14].

4.3 Public awareness and communication

This section also refers to 'education' which is mentioned several times throughout the Policy Proposals, however no further detail is provided as to what is intended with regard to education. If, as we understand it, these references relate to the education of service users or to improvements/changes in the education of health, medical, social work, and social care professionals, and, Safeguarding Ireland suggest, other professions (legal, financial services, those working in the community and voluntary sector) this should be specified.

4.4 Training

'All staff and volunteers within health and social care services must be adequately trained to undertake the level of safeguarding duties appropriate to them, including recognition of signs of different types of abuse of adults at risk. There will be a requirement for staff in these sectors to attend such training'.

Safeguarding Ireland welcomes the emphasis on training and suggests that all Board members, staff and volunteers are required to have induction as well as ongoing training i.e. CPD. Safeguarding Ireland further suggests that the training should be both broad-based to ensure that participants understand key concepts and corresponding duties as well as specific to the context in which the service is delivered, in order that participants understand the specific risks and the related responses appropriate to the service setting and the risks to which individual service users may be exposed. The training (and this section of the Department's Policy Proposals) should make specific reference to reporting.

Safeguarding Ireland highlights that weaknesses in the current approach to the provision of training[15] and related recommendations have been highlighted elsewhere and is of the view that opportunities to avail of face to face

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[14] See for example : Montgomery, L., Davidson, G., Kelly, B., McKendry, L., Newton, L.-A., Webb, P., & Wood, L. (2021). *Getting our voice heard: empowering people with a learning disability to influence adult safeguarding policy*. Journal of Adult Protection, 23(6), 384-396. https://doi.org/10.1108/JAP-07-2021-0023
https://pureadmin.qub.ac.uk/ws/files/526433065/Getting_our_Voices_Heard_empowering_people_with_a_learning_disability_accepted_for_Publication.pdf

[15] https://www.hse.ie/eng/services/publications/independent-review-of-the-governance-arrangements-in-a-hse-nursing-home.pdf
'All staff working in HSE community facilities caring for vulnerable people should receive face to face/group training on the signs and symptoms of elder abuse and should include direction on how to respond appropriately to allegations that are brought to their attention.
4. The HSE should review the policy of moving much of their safeguarding training to an on-line platform. Group learning and sharing provides a valuable way of ensuring untrue myths around the sexual abuse of older people are debunked in a supported environment and inappropriate cultures and inaccurate staff beliefs are challenged.

training should be provided to all staff.

'The Minister for Health, in consultation with the Minister for Children, Equality, Disability, Integration and Youth, the Sectoral Adult Safeguarding Office and the relevant regulatory bodies, will periodically consider whether and to what extent training on adult safeguarding for staff in particular professions or roles should be mandatory and/or should be subject to regulatory compliance checks'.

Safeguarding Ireland is disappointed that mandatory training is not specified in advancing these Policy Proposals.

4.6 Good Governance

Unsure

A key weakness in the Policy Proposals results from the vagueness with which the ***overarching*** governance regime for adult safeguarding with the Health and Social Care sector is described.

The governance requirements for services contained in the Policy Proposals are variously described as 'good' 'strong', and 'excellent' and Safeguarding Ireland suggest that a uniform approach is needed and that the Department should stress an ambition to achieve 'excellence' in the governance approach to adult safeguarding.

'Service Safeguarding Risk Evaluation'

'This must be completed in compliance with HSE operational safeguarding guidelines and in consultation with key stakeholders, including the adults at risk who use their services, their families/representatives and relevant advocacy groups. (at page 22)

Safeguarding Ireland suggests that the requirement for consultation with key stakeholders is important but suggests that the Department consider the impact on '*relevant advocacy groups'* in providing a meaningful input to such consultation processes, particularly in the context of the expanded scope envisaged by these proposals. (It may be a more useful exercise to involve relevant advocacy groups in the formulation of the related HSE operational guidelines for the conduct of Service Safeguarding Risk Evaluations).

'Services must display the Adult Safeguarding Statement publicly, circulate it to all staff members, and make it available upon request to the adults at risk who use their services and their family members, advocates or decision supporters, to the relevant service regulator (where applicable), to the relevant Regional Safeguarding Team and to members of the public'.(at page 22)

Safeguarding Ireland suggest the Adult Safeguarding Statement must be provided to the adults at risk who use the services and made available on request to all others listed.

Individual Service User Safeguarding Risk Assessments and Individual Service User Adult Safeguarding Plans

An adult at risk may object to their admission to /participation in/with the service and this may be a key safeguarding risk at point of assessment. Safeguarding Ireland would wish to see the Policy Proposals specifically address this issue. The enactment of specific Deprivation of Liberty legislation also needs to be in place to deal with these issues as they arise.

This section does not specify, whether, if at all, the risk assessment /safeguarding plan will be shared with the adult

at risk, but noting that a key objective of the proposals is to '*Uphold the rights and autonomy of adults at risk who use our services to make their own decisions about their own lives'* , Safeguarding Ireland, suggest that it should be, and/or should be available to their decision supporter with their consent where relevant.

'In the event that an alleged abuse is suspected or reported (or when otherwise determined appropriate e.g. following assessment of an individual's safeguarding risks), the service must prepare an Individual Adult Safeguarding Plan. This Plan will set out the safeguarding needs of the adult at risk concerned and the measures to be implemented. This must be reviewed and updated as frequently as required, taking account of the service user's stated preferences'. (at page 22)

Safeguarding Ireland is in agreement with this proposal; however, we anticipate that potentially in many cases, certain measures within this plan may fall outside the scope of Health or Social Care providers, this is particularly the case for risks related to the finances and property of an adult who may be at risk (as stated previously)..In Safeguarding Ireland's view this point underlines the need for cross-sectoral adult safeguarding policy.

Services providing governance documentation to regulatory and/or safeguarding bodies:

Safeguarding Ireland suggests that the requirement here should be for services to maintain and to retain (for a period to be specified) governance documentation as well as to provide it to the relevant regulatory body and /or regulatory body.
Safeguarding Ireland also notes the specific provisions of Article 31 of the UNCRPD.

Chapter 5 – Reporting and assessing suspected abuse
Do you broadly agree with the Policy Proposals set out in the following sub-Chapters?

5.1 There is "No Wrong Door" for reporting abuse

'Each health or social care worker must take responsibility for routing every safeguarding issue reported to them to the correct person or body. This requirement applies to all our staff and volunteers, regardless of whether the issue reported occurred within or outside the person's service or within or outside the health and social care sector'.

Safeguarding Ireland is broadly in agreement with the intent of this statement, and the intended outcome (which we take to be) to encourage greater reporting of abuse but is concerned about its implementation. It is not clear that the act of reporting does lead, as it should, to assessment, action, and resolution (as required). It is also not clear whether it is proposed that issues are to be 'triaged' within services before being reported to Regional Teams or how data on reporting will be recorded through these channels. It appears to place heavy reliance on the person the abuse is reported to, to convey such reports to a person with the skills /expertise necessary to act.

As a general observation, there is a requirement for greater transparency about what happens when a report is made. Safeguarding Ireland relatively frequently receives queries from the public about what happens when a report is made, together with related concerns that the act of reporting could aggravate the situation for the victim. There is also often a desire for assurances in relation to confidentiality. These factors can inhibit reporting. Therefore, we suggest that an 'easy read' process map setting out reporting options and describing 'what happens when a report is made' should be published and disseminated as part of these proposals.

While recognising that it is a discrete role within the HSE (which is not solely confined to Adult Safeguarding), we note that the role/function of the 'Confidential Recipient' is not referenced in the proposals and question whether it

is intended that the remit of this function will expand in line with these Policy Proposals.

5.2 Reporting abuse - Communication channels must also be made available for the public to report adult safeguarding concerns in the health and social care system.

Safeguarding Ireland has previously highlighted the need for a single point of contact i.e. a broadly advertised phone number for the reporting of abuse or concerns of abuse of adults at risk. The service should be available 365 days a year on a 24-hour basis. Safeguarding Ireland offers no support to the public with concerns (and specifies in all media the relevant third-party numbers/contacts for reporting), but nonetheless receives queries and concerns from the public with some regularity. All queries are triaged, and the person is signposted to the Regional Adult Safeguarding and Protection Teams, the relevant advocacy services or An Garda Síochána. Safeguarding Ireland strongly encourage the Department, ideally in conjunction with other relevant Departments or regulators, to launch and promote a 'Report Adult Abuse' phoneline as a keystone of the implementation of these Policy Proposals.

Safeguarding Ireland is strongly of the view that the proposed 'communication channels for the public to report concerns' must not be limited solely to the health and social care sector. Very often the queries Safeguarding Ireland receives relate to persons who may have some engagement with the health and social care system but whose safeguarding issue may not be directly within the remit of these services and/or do not obtain a response or direction at the first attempt to report. It is not clear how these concerns will be addressed via a communication channel which is confined to health and social care and there is a consequent risk that they will be missed.

'We know and comply with all relevant legal reporting obligations In particular, every person must report to An Garda Síochána any information they have about the commission or suspected commission of certain offences against children or "vulnerable persons" (i.e. adults at risk) under the Criminal Justice (Withholding of Information on Certain Offences against Children and Vulnerable Persons) Act 2012. (at page 24)

It is imperative that training for service owners, boards management, staff and volunteers includes training on the Criminal Justice *(Withholding of Information on Certain Offences against Children and Vulnerable Persons) Act 2012* and the provisions of the *Criminal Law Act 1997* (where it is an offence to conceal an offence, for example the theft of a person's property) and what is required of them. Safeguarding Ireland suggests that there is a written policy in relation to these requirements in all services encompassed by the Policy Proposals which will include a requirement for CPD training in this context. In addition, and in conjunction with An Garda Síochána, data on the number of reports made under these Acts must be collected and monitored and outcomes logged. (The definition of a 'vulnerable person' within the 2012 Act is not aligned with the definition of an 'Adult at risk' in the Department's Policy Proposals and makes no reference to 'personal circumstances').

5.3. Reported peer abuse

Safeguarding Ireland has recently commissioned HIQA to carry out research on 'Peer to Peer' abuse. The complexity of the issues involved with regard to definitions and thresholds, and the lack of current research or 'best practice' on the subject in Ireland/internationally are evident from the initial work. Safeguard Ireland therefore reserves providing commentary on this aspect of the Department's Policy Proposals until that research is completed (estimated June/July 2024). Safeguarding Ireland will share the research with the Department when it is finalised.

5.4. Standardised recording of data on safeguarding concerns and incidents

Safeguarding Ireland is strongly of the view that recording of data on adult abuse (including safeguarding concerns

and incidents and other metrics) in Ireland should be undertaken on a cross sectoral basis. This would require that a central body is charged with the collation and analysis of all concerns/incidents of adult abuse regardless of the sector in which the concern/incident emerges or where it is reported. With regard to the reporting framework, reporting of 'concerns and incidents' only gives a partial and, we suggest, unreliable depiction of the extent or severity of adult abuse. There must also be reporting of outcomes, in terms of the sectoral response. Many abuses are regulatory breaches and /or crimes and the outcomes of investigation and sanction/prosecution should also be reported.

It is essential that the data is provided in a format that is capable of being easily tracked and analysed by third parties with an interest in Adult Safeguarding (i.e., researchers, regulators, State bodies, advocacy groups etc.[16]) Policy and legislation for adult safeguarding can only be developed appropriately if data is collected. Again, under Article 31 of the UNCRPD there is a specific requirement to collect appropriate information, including statistical and research data.

5.5. Assessing and reviewing reported concerns of abuse

Safeguarding Ireland strongly disagrees that the HSE should be responsible for the investigation/review of abuses that occur in its own services. As stated above, this approach breaches one of the fundamental legal principles of natural justice. This and related issues are discussed in detail in Safeguarding Ireland's 2022 Report 'Identifying Risks – Sharing Responsibility'.

'There is no independent body with overarching responsibility for regulating adult safeguarding generally in terms of: receiving and investigating individual complaints; overseeing the investigation of complaints where a person is not in receipt of any care services; overseeing the investigation of complaints of various types of abuse including financial and social welfare abuse; oversight of critical incidents including deaths and matters of abuse and neglect relating to at risk adults; and carrying out statutory inspections'. (p201).

5.6. Powers/orders

'Speak in private to a service user who may be at risk of abuse or may have experienced abuse'

Safeguarding Ireland suggests that the service user's advocate or decision supporter may be in attendance if appropriate.

'Access relevant records and/or personal property of a health and social care service user for appropriate safeguarding assessment purposes.'

Safeguarding Ireland recognises that access to such records or property may be needed and, in this regard, also highlight the relevance of financial records and phone data, however we have some concerns about how this proposal is worded and suggest that such powers, where warranted, should also extend to the records of the

[16] In line with the Open Data Directive: https://data.gov.ie/pages/open-data-directive. See also for example: Safeguarding Adults Collection - NHS Digital

service provider, its management, staff or volunteers.

Chapter 6 – Interventions and sanctions
Do you broadly agree with the Policy Proposals set out in the following sub-Chapters?

6.1. Principle of proportionality

'The autonomy of each adult at risk will be supported through proportionate use of interventions. This includes only intervening in ways that will provide benefit to the adult which could not reasonably be provided otherwise. Interventions must be the least intrusive or the least restrictive to the adult's freedom. It also includes seeking the consent of the people who use our services to interventions concerning them (see Chapter 3 above)'.

As stated at Chapter 3 above, this needs to be developed in line with clear legislation and standards to protect a person's individual human rights when such interventions are used. Safeguarding legislation and Deprivation of Liberty legislation must align in this regard.

6.2. Individual Adult Safeguarding Plan

'Where an alleged abuse is reported and reasonable grounds for concern are established upon assessment, the health and social care service must follow the operational policy issued by the Sectoral Adult Safeguarding Office, including the preparation and implementation of a detailed Individual Adult Safeguarding Plan. This plan must set out the safeguarding needs of the adult at risk concerned and the safeguarding measures the service proposes to put in place to protect the person. Services must comply with the operational policy requirements for forwarding this plan to the Regional Safeguarding Team and engaging as appropriate'.

In the above contexts, Safeguarding Ireland has concerns about the limitations of this policy to the Health and Social care sector and the consequent limitations of the scope of the Individual Adult Safeguarding Plans, particularly as they relate to issue of financial abuse, online abuse or abuses within the home of a service user.

In order to be effective an 'Individual Adult Safeguarding Plan' may rely on immediate access to, and co-operation of, agencies outside the service, outside the Regional Adult Safeguarding Team, beyond the HSE and the sector.

The oversight of such operational policy must come within the remit of the National Adult Safeguarding Authority and must be reviewed on a periodic basis.

6.3. Powers/orders

'In limited circumstances, where necessary to protect an adult at risk from abuse or harm, the appropriate authorities will be empowered to intervene by making, or obtaining from a Court, an appropriate order to protect the person, including:

- *A removal order authorising, where necessary, the removal of an adult at risk to a place of safety for a specified period, where there is a likelihood of serious abuse or harm if they are not moved.*
- *A no contact order prohibiting a person from being in a specified place for a specified period, where an adult at risk is likely to be seriously harmed and where an order for no contact with that person will more effectively safeguard the adult at risk than removing the adult at risk from that place.*

Safeguarding Ireland notes the importance of the powers listed but also notes that 'the appropriate authorities' are not identified in this section.

6.4. Sanctions – corporate

Service regulatory authorities (HIQA, Mental Health Commission) will continue to have authority to take

enforcement action against regulated service providers that fail to comply with legislation and national policy on adult safeguarding.

Any matter which may constitute a criminal offence must be referred to An Garda Síochána.

• *Certain non-criminal safeguarding issues may potentially also be appropriate for referral to and/or joint working with An Garda Síochána e.g. in the context of the [proposed] functions of An Garda Síochána, on foot of the* Policing, Security and Community Safety Bill 2023*, to prevent harm to individuals, in particular individuals who are vulnerable or at risk.*

Clarity on both criminal and non-criminal issues which should appropriately be referred to An Garda Síochána is important, as is the timeliness of making such reports and the expected response by An Garda Síochána. Safeguarding Ireland notes that the Policing Security and Community Safety Act includes both a definition of a 'vulnerable person' and 'a person at risk'.

Chapter 7 – Interagency and inter-sectoral cooperation
Do you broadly agree with the Policy Proposals set out in the following sub-Chapters?

7.1 Duty of services and agencies to cooperate for adult safeguarding purposes

- *All relevant services and agencies must work within a partnership framework in relation to their adult safeguarding duties. This partnership approach is vital to ensuring expertise sharing and coordinated responses between public sector bodies and agencies.*

Restricting cooperation for adult safeguarding purposes to public sector bodies and agencies is not consistent with the stated aim set out in Chapter 1 to include all public, voluntary and private healthcare or social care services, and generally this approach is not acceptable. Adult safeguarding is a societal issue that needs to be addressed across all sectors, both public and private.

7.2 Cooperation across the health and social care sector

7.3 Cooperation with other sectors

Identifying RISKS – Sharing RESPONSIBILITIES, in its title and content, explicitly affirms that preventing and confronting adult abuse is a shared responsibility, requiring a legislative framework that underpins that shared responsibility. This shared responsibility can best be organised through a central agency linked to a government department with wide government and societal responsibilities.

Safeguarding Ireland remains of the view that overarching responsibility for the regulation of adult safeguarding can only be achieved by the establishment of an independent National Adult Safeguarding Authority.

Part 4. Overall comment (Final question)

Question 11:
Please use the box below to provide any additional comments you have about the Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (optional) - max 1200 characters (approx. 200 words)

Safeguarding Ireland has provided considered responses to all questions, drawing on its experience and research. While welcoming the investment the Department has made in developing these proposals, and its commitment

to enhance and expand Adult Safeguarding within the Health and Social care sectors, Safeguarding Ireland must nonetheless highlight the limitations of Policy Proposals that are confined to these sectors. In practice, adult safeguarding cannot be limited by sectoral boundaries or Departmental remits. It is multi-faceted in nature, with many being subject to multiple, and sometimes related, forms of abuse which may occur both within Health and Social Care and beyond; in their home lives, in their engagements with family and trusted third parties and in their financial lives. Each sector must both recognise, and be held accountable for, the risks that occur in their own sectors and be mandated to co-operate to prevent abuse – wherever it occurs. Adult Safeguarding is centrally concerned with the abuse of adults who cannot protect themselves from such harm or abuse. It is essential therefore, that the State recognises this risk and the very serious harms that occur and recognises its responsibility to mandate and legislate for a much-improved response across ***all*** sectors – together with a related Independent Authority with necessary statutory powers.