Safeguarding Ireland – Opening Statement
Disability Matters Committee

21st February 2024

Chair and Committee members, Safeguarding Ireland welcome the invitation to appear before the Committee today. I am Patricia Rickard-Clarke, Chair of Safeguarding Ireland, and I am joined by Annmarie O'Connor and Ronan Cavanagh of Safeguarding Ireland.

The National Safeguarding Committee was established by the HSE in December 2015 in the aftermath of the investigation of the adult abuse issues within the Áras Attracta facility, to bring together the views and perspectives of a multi-sectoral group on how the issue of adult safeguarding could be addressed in health and social care services in Ireland under an independent Chairperson. In 2017, the National Safeguarding Committee evolved into an independent entity, National Safeguarding Ireland clg., and is also a registered charity, trading as Safeguarding Ireland.

Safeguarding Ireland's primary objectives are to promote safeguarding of adults who may be vulnerable, protect them from all forms of abuse by persons, organisations and institutions and develop a national plan for promoting their welfare. This is achieved by promoting inter-sectoral collaboration, developing public and professional awareness and education, and undertaking research to inform policy, practice and legislation in the Republic of Ireland.

The Board of Safeguarding Ireland brings together individuals with extensive experience and expertise in legislation, regulation, policy and practice in the areas of health, social care and finance. Its work is informed by, and delivered in collaboration with, a National Safeguarding Advisory Committee. This is a very significant grouping comprising almost 40 bodies from across a very wide range of sectors and organisations with an extensive national reach. Under its current strategy Safeguarding Ireland has focused on three main objectives:

1. The promotion and pursuit of the introduction and enactment of Adult Safeguarding Legislation.
2. The establishment of an independent over-arching National Safeguarding Authority.
3. Raising public and organisational awareness of issues of abuse, neglect and exploitation and of the need for a rights-informed approach to adult safeguarding issues.

To support these objectives in 2022, Safeguarding Ireland published the most comprehensive overview and analysis of adult Safeguarding issues in Ireland to date. In a discussion paper called *Identifying RISKS Sharing RESPONSIBILITIES The Case for a Comprehensive Approach to Safeguarding Vulnerable Adults*, Safeguarding Ireland described the nature of adult abuse in Ireland, the patchwork of legislation that exists to protect people, the deficits in terms of what is known about adult safeguarding, the current policy and legislative response and importantly, the absence of an overarching governing body to ensure that there is accountability, collaboration and coherence across all sectors.

Gaps include:

- Adult Safeguarding Legislation.
- Social Care legislation.
- The absence of a uniform regulatory framework (legislation, policies, accountability, and enforcement) across all settings.
- Legislation on Deprivation of liberty / Place of Care.
- Regulation of Home Care Services[1].
- Legislative underpinning for the practice of independent advocacy in Ireland.
- Multi-disciplinary /cross sectoral policy on self-neglect.
- Guidance / Regulation on Data Sharing.
- A comprehensive cross-sectoral framework for data collection on abuse of adults
- Departmental / Agency policy and related accountabilities, procedures, and training for staff outside of health and social care – this applies to all government departments and agencies providing services to adults who may be at risk of harm or abuse[2]. (The requirement for policy extends to the private sector[3] also and, in particular, to the providers of essential services such as financial services and utilities).
- Recognition/ criminalisation of coercive control in non-intimate partner relationships.
- Access to Legal Aid / Representation.
- A single point of contact for any adult who is at risk or has experienced abuse.

There are vast gaps in terms of the shared and co-ordinated response that is required to effectively empower people to exercise their human rights, to protect themselves and also, in the collective national response to preventing harm and abuse.

Despite growing awareness, a culture that is dismissive of certain forms of abuse and that trivialises others, and that also plays down the human rights of many adults in vulnerable circumstances, persists in Ireland[4]. Deep cultural change is required. Regrettably it is still the cases of abuse suffered by individuals such as 'Emily' that bring the greatest degree of focus and attention.

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[1] The Health (Amendment) (Licensing of Professional Home Support Providers) Bill, the purpose of Bill is stated to be: '*A regulatory framework comprising of primary legislation for the licensing of home support providers, secondary legislation in the form of regulations, and HIQA national standards with the aim of ensuring that all service users are provided with high quality care. This is in line with Programme for Government and Sláintecare commitment.*'

[2] The relevant Government Departments include: Justice, Finance/Department of Public Expenditure and Reform, Health, Social Protection, Children, Equality, Disability, Integration & Youth Affairs, Housing, Local Government and Heritage
The related key statutory agencies are: National Safeguarding Office & Teams, Decision Support Service, HSE Health & Social Care Services, Mental Health Commission, HIQA, Citizens Information Board, Courts Service, Data Protection Commissioner, Central Bank, Irish Human Rights and Equality Commission, An Garda Síochána, The Housing Agency.

[3] There is currently a requirement for Charities to have a policy https://www.charitiesregulator.ie/media/1866/safeguarding-guidance-for-charitable-organisations-adults-final.pdf, and some (limited) relevant regulatory requirements exist in other sectors such as financial services and utilities.

[4] https://safeguardingireland.org/wp-content/uploads/2022/12/6516-Safeguarding-REDC-FINAL-blue.pdf

There have been some positive developments:

- April 2023 – the new Assisted Decision-Making laws commenced.
- January 2023 – the Department of Health established a Protection of Liberty Safeguards Expert Advisory Group.
- June 2023 – HSE CEO, Bernard Gloster, announced the appointment of an external expert, to conduct a high-level review of the HSE safeguarding policy, procedures, structures and advise on possible options for the future of safeguarding. The report is expected to issue in coming weeks.
- January 2024 – Minister Butler launched the Department of Health's Public Consultation on Policy Proposals on Adult Safeguarding in the Health and Social Care Sector (but limited to this sector)[5].
- It is expected that the Law Reform Commission will publish its report on a Regulatory Framework on Adult Safeguarding in the near future.

Safeguarding Ireland cannot anticipate what the landscape may look like when these important policies / reports are published but we are clear that the creation of an adequate legislative foundation is crucial if Ireland is to have a fit-for-purpose safeguarding capability, not just to address the gaps and deficits I have outlined, but also to ensure compliance with Article 16 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD)[6].

The current organisational response is too fragmented and far from cohesive. There is a need for a national body that can address the issue in a comprehensive and all-encompassing manner, compelling inter-agency co-operation and collaboration in identifying and responding to abuse of adults at risk[7].

An independent body with overarching responsibility for regulating adult safeguarding generally is a key requirement.

A new safeguarding regulatory authority should have at its core the overall goal of zero tolerance in our society of adult abuse, emphasised through the four key pillars of prevention, protection, prosecution, and policy coordination.

Thank You.

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[5] https://www.gov.ie/pdf/?file=https://assets.gov.ie/282259/c941dc0c-c220-4a3a-8da5-460ba6af51bd.pdf#page=null

[6] [6] Which provides that State Parties shall take all appropriate legislative, administrative, social, educational, and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence, and abuse, including their gender-based aspects. Article 16.5 of the UNCRPD requires that effective legislation and policies are put in place *"to ensure that instances of exploitation, violence and abuse are identified, investigated and, where appropriate, prosecuted."*
[6] https://www.gov.ie/pdf/?file=https://assets.gov.ie/282259/c941dc0c-c220-4a3a-8da5-460ba6af51bd.pdf#page=null

[7] This is described in detail in Chapter 11 https://safeguardingireland.org/wp-content/uploads/2022/05/6439-Safeguarding-Risks-Resp-Report-FA4_lowres.pdf

APPENDIX: Political Agenda for Adult Safeguarding, February 2024

Current gaps

Safeguarding Ireland commissioned the Discussion Paper *Identifying RISKS – Sharing RESPONSIBILITIES: The Case for a Comprehensive Approach to Safeguarding Vulnerable Adults* (2022) which comprised the most comprehensive analysis and recommendations ever carried out on adult safeguarding in Ireland. It found the following shortfalls:

- The need for immediate enactment of Deprivation of Liberty legislation. The Department of Health is about to produce a consultation. This is urgent for transitional care and delayed discharge, as two court applications are required. This would reduce huge stress for families and professionals and reduce cost of the State.
- The absence of a uniform regulatory framework (legislation, policies, accountability, and enforcement) across all settings
- The limitations on the role of HSE safeguarding personnel.
- The restrictive scope of the Domestic Violence Act 2018 in dealing with coercive control.
- Absence of regulation of Home Care Services.
- Limited form of protection afforded by regulation of Nursing Homes.
- No overall regulatory body with responsibility for receiving complaints.
- No regulatory body with responsibility for, and powers to, investigate individual cases of abuse reported in residential care settings / community services.
- No framework for inter-agency co-operation, collaboration, and data sharing between agencies with a safeguarding role.
- No statutory provision for independent advocacy.
- No statutory provision for dealing with self-neglect.

What needs to happen?

The commencement of the Assisted Decision-making (Capacity) Acts in April 2023, and the work of the Decision Support Service, are very welcome recent developments. However, further structural and legislative developments are now needed which include:

- Safeguarding legislation.
- A **National Adult Safeguarding Authority** – led by the Department of Justice with the involvement of a number of Government Departments to include: Health, Social Protection, Housing, Finance and Children, Equality, Disability, Integration & Youth Affairs.
- Participation by key statutory agencies – the National Safeguarding Office & Teams, Decision Support Service, HSE Health & Social Care Services, Mental Health Commission, Citizens Information Board, Courts Service, Data Protection Commissioner, Central Bank/Financial Services Regulator, An Garda Síochána.
- Oversight by an Oireachtas Committee.
- Independent advocacy services.

A National Safeguarding Authority

A key structural requirement is an independent Safeguarding Authority whose role would include:

- 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 income abuse and human trafficking.

- Oversight of critical incidents including deaths and matters of abuse and neglect relating to adults at risk.
- Carrying out statutory inspections – existing provision is effectively limited to the health and social care domain, and even within that sector, is constrained and fragmented.
- Relevant statutory bodies (HSE, the Decision Support Service, HIQA, the Mental Health Commission) would have a statutory obligation to report to, and interact with, the Authority on safeguarding issues, as part of the interagency collaboration required in relation to safeguarding adults at risk.
- There is a logical argument for transfer of the role of the National Safeguarding Office to within the structure of a new National Adult Safeguarding Authority
- There is a very strong argument that Safeguarding and Protection Teams (SPTs) should be independent of the HSE.
- Responsibility for ongoing awareness among professional and the public – particularly with regard to supporting decision-making, empowering people with reduced capacity, using independent advocacy, identifying risk and when and how to report concerns.

Current Status

A Bill including: 1) adult safeguarding legislation and 2) establishment of an independent safeguarding authority was brought forward in 2017 and, despite having all party support, has not progressed.

Safeguarding Ireland welcomes work, including current Public Consultation, on the Health (Adult Safeguarding) Bill and encourages that work on the Bill be completed. However, it will only address some specific health sector related aspects of what's needed and not the comprehensive and cross-sectoral asks as set out below.

Safeguarding Ireland currently looks forward to the long-awaited **report of the Law Reform Commission on a legislative framework for adult safeguarding during 2024**, which will address many of the recommendations highlighted above.

3 Asks of Oireachtas members.

Safeguarding Ireland is making the following **3 asks** of Oireachtas members:

1. Cross-political support that the **Adult Safeguarding Bill is revisited, taken up and progressed** (following publication of the legislative framework)
2. Cross-political support for **establishment of a National Adult Safeguarding Authority**, preferably under the Dept of Justice
3. Issues that to be addressed separately and urgently through legislative change are:
   - Enactment of Deprivation of Liberty legislation.
   - A change to Coercive Control legislation to relate it to people in non-intimate relationships. (An amendment was tabled in July 2023 by Senators Frances Black and Eileen Flynn and the Minister accepted that legislation is necessary).
   - Address the lack of data sharing between agencies. This is caused by the way GDPR legislation is being interpreted and impeding tackling abuse.

* A Safeguarding Ireland commissioned survey in 2020 found that 91% favoured stronger safeguarding laws and 85% supported a national body dedicated to adult safeguarding.

A *Summary of Safeguarding Ireland commissioned RED C awareness polls 2017-2022 is at:*
https://safeguardingireland.org/wp-content/uploads/2022/12/6516-Safeguarding-REDC-FINAL-blue.pdf