

**Submission to Data Protection Commission on the DPC's Regulatory Strategy 2020 – 2025.**

**Submission completed: 16/01/2020.**

Safeguarding Ireland is a registered charity whose function is to promote the rights and independence of vulnerable adults and help safeguard them from abuse.

Safeguarding Ireland welcomes the **Public Consultation on the DPC's Regulatory Strategy 2020 – 2025 – Consultation Round 1 of 2: Target Outcomes**. Indeed, at the outset, it is fair to point out that both agencies, i.e., the Office of the Data Protection Commissioner and Safeguarding Ireland, are both passionate about safeguarding the rights of vulnerable people. In that context, we believe it to be very important that, in safeguarding those rights, one agency's focus in safeguarding those rights do not negatively impact on another's to the detriment of vulnerable people. One of the challenges for Safeguarding Ireland and for agencies dealing with abuses of vulnerable people is that there is no specific safeguarding legislation in Ireland. It is important then that vulnerable people do not suffer erosion of their rights in an area that is not enshrined in specific legislation while satisfying other legislative requirements.

It would potentially be of considerable benefit to vulnerable adults who lack capacity and who may be experiencing abuse, neglect and/or exploitation if a specific defence against liability, where there is an informed reasonable belief that there is a safeguarding issue, was included in data protection legislation.

Safeguarding Ireland's submission, as requested in the DPC's Consultation document, will focus on the specific consultation questions most relevant to its concerns.

**Consultation Question 1. Is there any other distinct outcome that the DPC should include and why? How would that additional outcome fit with the existing five target outcomes?**

Outcome no. 5 on page 12 states that "*Children are specifically protected*". Under this specific outcome, on page 23, the document states that "*we are especially passionate about safeguarding the rights of vulnerable people and most particularly the rights of children*". However, the specific activities outlined under this outcome relate specifically to children with no further mention of vulnerable adults. Safeguarding Ireland is fully supportive of the need to specifically protect children but would suggest that there is an equal need to protect vulnerable adults. Therefore, Safeguarding Ireland proposes that there be a separate section specifically on vulnerable adults. Putting children and vulnerable adults together may infer that both issues are similar which is not the case. In a separate section on vulnerable adults, Safeguarding Ireland proposes the following activities that the DPC should undertake in this regard –

- Initiating, developing through consultation with relevant agencies, and actively promoting codes of conduct on the processing of the personal data of vulnerable adults. These codes of conduct should address issues of consent in relation to vulnerable adults.
- Defining the specific protections required to safeguard the rights of vulnerable adults in the protection of their personal data, and providing guidance for people and organisations;
- Collaborating with and drawing from the advice and experiences of advocates and experts in the field of protection and promotion of the rights of vulnerable adults, including other regulators and statutory bodies;
- Conducting detailed research on how data protection law applies to vulnerable adults, both internally and through research partnerships.
- In making data sharing decisions and in assessing data protection concerns, cross-referencing decision-making capacity and the Assisted Decision Making Capacity Act, 2015.

Safeguarding Ireland's view is that the inclusion of these activities specifically related to vulnerable adults would play a significant part in safeguarding them from abuse and, in addition, provide clarity to agencies dealing with vulnerable adults on data collection and sharing in circumstances where people may be suffering abuse, neglect and/or exploitation. In addition, inclusion of the above would support the other four outcomes, especially

- Outcome 1 – Data Protection rights and obligations are regulated consistently.
- Outcome 2 – There is clarity and certainty in how data protection law is applied.
- Outcome 3 – Organisations operate and innovate in an accountable, compliant, ethical and fair way in their processing of personal data.

In relation to Outcome no. 2 above, Safeguarding Ireland has significant anecdotal evidence that there is a lack of clarity and certainty among individuals and agencies in relation to data protection law and dealing with cases of suspected abuse, neglect and/or exploitation of vulnerable people (see below).

### **Outcome 2 There is clarity and certainty in how data protection law is applied**

***Consultation Question 3. What are the most critical gaps in legal clarity and certainty that may be hindering organisations in being compliant or that may be negatively impacting the rights of individuals?***

As outlined above, Safeguarding Ireland has significant anecdotal evidence that there is a lack of clarity and certainty among individuals and agencies in relation to data protection law and dealing with cases of suspected abuse, neglect and/or exploitation of vulnerable people. This relates primarily to a fair degree of uncertainty among individual professionals and within statutory, voluntary and business organisations on what, if any, information can be shared within and between individuals and organisations where there are concerns of abuse, neglect and/or exploitation of a vulnerable adult. In many instances, the sharing of information can be

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vital in helping to prevent or stop abuse of a vulnerable adult. Lack of clarity arises particularly in cases where –

- (a) The vulnerable adult lacks capacity to give consent for sharing of information;
- (b) There is a need to share concerns/information between agencies in order to prevent/stop abuse.

***Consultation Question 4. Which of the DPC's activities have the greatest effect on achieving the target outcome on legal clarity and certainty?***

The most effective activities in relation to Safeguarding Ireland concerns are –

- Providing guidance to people so they are clear on how the law supports them in controlling the use of their personal data, so they are clear in how to exercise their data protection rights;
- Using a mix of formats and tools to deliver information, and prioritising the information that is needed by the most people, or that could have the biggest impact, or that could assist the most vulnerable;
- Providing guidance and case studies aimed at organisations on how data protection law should be applied both in general and in specific contexts, and prioritising the information we provide according to areas of non-compliance that we identify, or that could have the greatest impact in improving protections while still enabling innovation, service delivery and commercial gain;
- Assessing how an inquiry into a potential infringement might clarify how specific obligations apply to a particular context, when preparing for the scoping and commencement of that inquiry;
- Participating in discussion on issues that do not fall directly under data protection law but that are closely linked or intersect with data protection, particularly where there may be gaps in the law, in protections or in regulation, and collaborating with regulators in those linked areas, for example, digital safety, competition and consumer protection;

***Outcome 4. As many people as possible understand and have control over how their personal data is used.***

Safeguarding Ireland is fully supportive of this outcome.

***Consultation Question 8. How can we set the right balance between our work on individual complaints and our work on issues that can affect millions of people, so that we have the greatest impact for as many people as possible?***

Consistency in the application of data protection legislation and clarity for all agencies on their responsibilities and obligations are key. Vulnerable adults' rights in relation to the use of their data must be protected and afforded specific protection because of their vulnerabilities.

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Safeguarding Ireland believes that one of the activities in relation to this needs to be continued and expanded.

The activity in question is – *“Taking account of how data protection impacts vulnerable people, monitoring how organisations meet their data protection obligations in a way that considers the circumstances of vulnerable people, and seeking input from special interest groups that represent vulnerable people to assist with our own understanding”*. Safeguarding Ireland believes that this activity needs to be given much greater emphasis, not only in terms of ensuring the data protection rights of vulnerable people are promoted but that, if there are circumstances where sharing of data is needed to prevent or stop abuse, all agencies understand their obligations and apply them in a consistent way. This application must balance the need for data protection rights with the need to promote other rights.