



# World Elder Abuse Awareness Day

## International Conference

### Developing a Roadmap for Adult Safeguarding in Ireland

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# Overview

- Safeguarding Ireland
- Data
- Current Position / What we have and do not have
- Current considerations
- Scope of required legislation
- Conclusion



# Safeguarding Ireland

Safeguarding  
I R E L A N D



- Established December 2015 as part of HSE Safeguarding agenda
- Independent of HSE – company limited by guarantee with charitable status
- 9 Board Members
  - National Safeguarding Advisory Committee – over 30 Organisations
  - State Payments Group
  - Public Awareness – ad hoc
- Main object – 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 will be achieved by promoting inter-sectoral collaboration, developing public and professional awareness and education, and undertaking research to inform policy, practice and legislation.

# Some Data



# SI Awareness Research Findings 2017-2021

- Irish public believes abuse of vulnerable adults is widespread
- 50% say they have experienced the abuse of vulnerable adults either through being abused themselves or seeing somebody else close to them.
- Almost one in four do not know who to report adult abuse to
  
- Tougher laws would encourage more people to 'call out' abuse of vulnerable adults
- Public seeks dedicated 24 hour helpline for adult abuse
  
- 91% supported stronger laws to safeguard people from abuse or neglect
- 85% of public support establishing a national authority for safeguarding



# Abuse Figures (HSE) (limited data)

- HSE Open Your Eyes Reports 2009 – 2014 **2014 = 2000**
  - Older People
  - Psychological and Financial abuse
- HSE Safeguarding Office 2014/2015 **2014/2015 = 7500**
  - Disability and Older People and others
- HSE Safeguarding Office 2016 **2016 almost 8000**
  - Disability and Older People and others
    - Perpetrators – mainly family/community
    - Reporting low (confined to HSE Social Care)
- HSE Safeguarding Office 2017 **2017 = 10,118 (25% increase)**
  - Numbers + 28% - impact of public awareness campaign of SI
- HSE Safeguarding Office 2018 **2018 = 11,780 (14% increase)**
- HSE Safeguarding Office 2019 **2019 = 11,929 (more limited data)**



# Legislation/ Regulatory Framework



# What have we in place?

- 2014 *HSE Safeguarding Vulnerable Persons at Risk of Abuse: National Policy & Procedures*
  - Services for Older People and Persons with Disability
  - Community, acute care settings and mental health services???
  - Limited to HSE services – not a national policy
  - Inconsistent approach – CHO teams operating independently
  - No independent oversight distinct from service provider
  - Health-centric view of safeguarding – does not deal with multifaceted nature of abuse

## 2018-2019 Review of HSE Policy (not yet published)

- 2019 *Guidance on a Human Rights-based Approach in Health and Social Care Services (HIQA and SI)*
  - FREDA Principles (Fairness, Respect, Equality, Dignity, Autonomy)
- 2019 *National Standards for Adult Safeguarding (HIQA and MHC)*
  - Key Principles: Empowerment, **A rights-based approach**, Proportionality, Prevention, Partnership and Accountability.



# Criminal Law Legislation

## – without a safeguarding lens

- Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012
  - Definitions
  - Offences
  - Limitations of 2012 Act not understood
- Domestic Violence Act 2018 (updating 1996 Act)
  - Definitions
  - Offence of Coercive control – limited application
- Sexual Offenders (Amendment) Bill 2018 (to update Sexual Offenders Act 2001)
  - Purpose (to protect victims)
  - Definitions
  - Care arrangements and lack of integration with other state services

Limited in purpose/vision, outdated definitions and not taking account of research/debate in recent years in the context of adult safeguarding



# Legislation

- Assisted Decision-Making Capacity Act 2015 – commencement due 2022
  - Has clear safeguarding provisions
  - UNCRPD – ratified March 2018 but principles not yet embedded in practice
  - Assisted Decision-Making (Capacity) (Amendment) Bill – rights of wards +++
- Data Protection Act 2018
  - Lacks safeguarding lens
  - GDPR + LED provide for sharing in certain circumstances and in an appropriate manner but not yet given full effect to in the Irish legislation
  - Regulations required to give legal basis for ‘processing for a task carried out in the public interest or in the exercise of official authority’
- Data Sharing and Governance Act 2019
  - Most of the Act not yet commenced
  - Provides for the sharing/collection of **public service information** between public bodies but not for safeguarding purposes to protect an individual
  - Compare with English Act – specific provision for statutory code of practice for sharing information in the context of safeguarding children and vulnerable adults..
  - Interagency sharing in the context of safeguarding is a key requirement



# Social Care Legislation

- No Social Care legislation
  - Currently there is no clear obligation on the State, state agencies or organisations to prevent harm or generally to protect adults at risk
  - In developing our legislation, it is necessary to impose a statutory obligation on state bodies and organisations to prevent or reduce the need for care and support and not to be focussed on the management of crises/acute responses
  - Purpose – well being and the prevention of abuse, preventing needs for care and support, promoting integration of care and support with health services, providing information and advice, promoting diversity and quality in provision of services
- Critical issues – assessment of needs and assessment of risks
  - Examples
    - Younger people falling into a black hole
    - Homeless people/people with addiction
    - People with a mental illness
    - Older people – ageism/financial abuse/deprivation of liberty
    - Persons who are suspects or who have served a term in prison



# Deprivation of Liberty

- No Protection of Liberty Safeguards legislation
  - Deprivation of Liberty – constitutional right, ECHR right and UNCRPD right
- Deprivation of Liberty – abusive practices imbedded in culture and practice
  - Greatest impact on older people
- Abusive practices
  - Will and preference of person not ascertained
  - Decision made, person not consulted even when person has capacity
  - Associated with financial abuse/coercive control
  - Often Wards of Court used inappropriately
  - AC v Cork University Hospital & others [2019 IESC 73]
  - COVID-19 learning
- Deprivation of Liberty: Safeguard Proposals
  - Preliminary Draft Heads of Bill and Consultation Paper (Dec 2017)
  - Update????



# Adult Safeguarding Legislation

- Adult Safeguarding Bill 2017
  - Introduced Private Members Bill Seanad February 2017
  - Received all party support
  - Main Provisions
    - National Adult Safeguarding Authority
      - Functions
      - Investigations by Authority
      - Determining if adult needs support and assistance
      - Provision of Independent Advocate
      - Right of entry and inspection
    - Reporting
- Oireachtas Joint Committee on Health 2017
  - *There is an urgent need for the enactment of Adult Safeguarding legislation and this legislation is crucial in providing protection to adults at risk*
- Restoration Order March 2021



# Towards Adult Safeguarding Legislation

- Law Reform Commission – *A Regulatory Framework for Adult Safeguarding* (Issues Paper 2019)
  - Some key issues include –
    - Values and principles underpinning legislation
    - What body or bodies should have responsibility for regulation of Adult Safeguarding
    - Power of Entry and Inspection
    - Safeguarding Investigative Powers
    - Reporting models – ‘permissive, mandatory, hybrid/reportable incident’
    - Independent Advocacy
    - Access to Sensitive Data and Information Sharing
    - Multi-Agency Collaboration
  - Report end 2021/early 2022
- Department of Health – developing policy with a view to legislation
  - Legislative programme – Health (Adult Safeguarding Bill) To underpin a planned national health sector policy on safeguarding vulnerable or at-risk adults in the context of their interactions with the health sector
- Safeguarding Ireland – Research Project *The Regulatory and Policy Framework for Safeguarding Vulnerable Adults in Ireland: Challenges and Best Practice Considerations*



# The State's Obligations - UNCPRD

- Implication of the Ratification of the UNCPRD – requires that the State puts in place effective legislation and policies to ensure instances of exploitation, violence and abuse are identified, investigated and, where appropriate, prosecuted.
- Article 12.4 - It provides that States Parties shall...provide for appropriate and effective safeguards **to prevent abuse in accordance with international human rights law**. Such safeguards shall ensure that measures relating to the exercise of legal capacity –
  - respect the rights, will and preferences of the person,
  - are free of conflict of interest and undue influence,
  - .....
  - are subject to regular review by a competent, independent and impartial authority or judicial body.



# Scope of proposed legislation

- Legislation must set out principles which place human rights at the core of legislation around wellbeing, care, support and safeguarding
  - Promotes individual well-being
  - Recognises every adult's right to respect and dignity, honesty, humanity and compassion in every aspect of their life (NI Policy)
  - Empowerment: presumption of decision-making capacity, informed consent and the right to participation
  - Prevention – putting measures in place
  - Protection from abuse and neglect
  - Accountability
- Duty to assess needs
- Duty to meet needs for care and support (English Care Act 2014)
- Access to Independent Advocacy
- Interagency Collaboration: multiagency approaches to ensuring effective safeguarding for all at risk adults.



# Required Legal Framework

- National Adult Safeguarding Authority to provide overarching governance to
  - ✓ National Safeguarding Service (independent of service provider)
  - ✓ Mental Health Commission
  - ✓ Decision Support Service
  - ✓ National Council for Advocacy (yet to be established)

The National Adult Safeguarding Authority (independent of all services with independent chair) will have multi-agency/multi-disciplinary representation with will include the Policing Authority, legal and financial regulatory bodies, HIQA, HSE, Local Authorities, NGO's and others

Clear statutory duties and powers



# Conclusion

- Safeguarding is for everyone and is everyone's responsibility
- Effect must be given, in adult safeguarding legislation, to human rights obligations set out in Constitution and in national and international legal instruments
- There are large gaps in legislation, practices, systems and organisations that are very costly on individual lives and do not respect the dignity of each person as an individual with his or her own rights.
- There is an urgent need for the enactment of Adult Safeguarding legislation



# THANK YOU.

