

A Regulatory Framework for Adult Safeguarding

Closing date for submissions: Thursday, 30th April 2020

Contact p5p2@lawreform.ie

With this issues paper, the Commission is seeking views in relation to the following:

Q. 1.1 Do you consider that the proposed guiding principles, as set out above in paragraph 1.14 of the Issues Paper, would be a suitable basis to underpin adult safeguarding legislation in Ireland?

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

Q. 2.1 Do you consider that the statutory regulatory framework for adult safeguarding should define the categories of adults who come within its scope?

Q. 2.2 If the answer to Q. 2.1 is yes, what definition of the categories of adults who come within its scope would you suggest?

Q. 2.3 Do you consider that the Commission has, in Issue 2 of the Issues Paper, defined the following terms with sufficient clarity:

(a) “safeguarding”;

(b) “abuse” and “harm” (including whether you consider that the definition of “abuse” should include “harm” or whether “abuse” and “harm” should be separately defined);

(c) “neglect”;

(d) “capacity”.

Q. 3.1 Do you consider that adult safeguarding legislation should impose a statutory duty on an adult safeguarding service provider to prepare a care plan for each adult in receipt of safeguarding services?

Q. 3.2 Do you consider that adult safeguarding legislation should impose a duty on an adult safeguarding service provider to safeguard adults at risk?

Q. 3.3 If the answer to 3.1 is yes, do you consider that such a care plan should address the prevention of physical, sexual or psychological abuse, or neglect?

Q. 3.4 If the answer to either 3.1 or 3.2 is yes, do you consider that breach of such a duty or, as the case may be, duties should give rise to civil liability on the part of an adult safeguarding service provider?

Q. 3.5 If the answer to either 3.1 or 3.2 is yes, do you consider that breach of such a duty or, as the case may be, duties should give rise to criminal liability on the part of an adult safeguarding service provider?

Q. 3.6 If the answer to 3.2 is yes, do you consider that breach of such a duty by a person responsible for providing adult safeguarding services, where this occurs in the course of his or her duties or, as the case may be, within the scope of employment of an adult safeguarding service provider, should give rise to a complaint to a professional body with regulatory functions in relation to a person who is a member of that professional body?

Q. 3.7 Do you consider that there are any additional legal measures that could be introduced to prevent physical, sexual, psychological abuse or neglect?

Q. 4.1 Do you consider that sectoral regulators and bodies such as the Central Bank of Ireland and the Department of Employment Affairs and Social Protection currently have sufficient regulatory powers to address financial abuse in the context of adult safeguarding?

Q. 4.2 If the answer to 4.1 is no, do you consider that either or both of the following would be suitable to address financial abuse:

(a) a statutory financial abuse code of practice or protocol;

(b) a statutory form of protected disclosure, along the lines of the Protected Disclosures Act 2014, for financial institutions that engage in responses to suspected financial abuse in good faith.

Q. 4.3 Do you consider that further additional regulatory powers are required to address financial abuse? If yes, please give examples.

Q. 5.1 The Commission has discussed the following 5 possible institutional or organisational models for the regulation of adult safeguarding:
In your view:

(a) which of the above is the most appropriate institutional or organisational model for the regulation of adult safeguarding?

(b) do you consider that any of the models discussed would be completely inappropriate?

Please give reasons for your answers to (a) and (b).

Q. 5.2 Do you consider that any, or all, of the 6 core regulatory powers that the Commission has identified in paragraph 5.38 of the Issues Paper should be applied in

the case of adult safeguarding and, if so, whether they would be sufficient in the context of adult safeguarding legislation?

Q. 5.3 Do you consider that there is a need for a statutory regional adult safeguarding structure, which would have a broad remit in respect of all safeguarding services for adults? If so, how would such a regional structure be best integrated into existing structures?

Q. 6.1 Do you consider that adult safeguarding legislation should include a statutory power of entry and inspection of premises, including a private dwelling, where there is a reasonable belief on the part of a safeguarding professional, a health care professional or a member of An Garda Síochána that an adult within the scope of the legislation may be at risk of abuse or neglect in the premises or dwelling, and where either a third party is preventing them from gaining access or an adult within the scope of the legislation appears to lack capacity to refuse access? Please give reasons for your answer.

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

Q. 6.3 If the answer to Q.6.1 is yes, do you consider that such a power of entry and inspection:

(a) should be conferred directly on a safeguarding professional, a health care professional or a member of An Garda Síochána, or

(b) that such entry and inspection should require an application to court for a search warrant, whether in all instances or only where entry and inspection is to a private dwelling.

Please give reasons for your answers to (a) and (b).

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

Q. 7.1 Do you consider that adult safeguarding legislation should include a statutory duty on relevant regulatory bodies to make inquiries with a view to assessing whether to apply for a court order for the removal of a person or for a safety order, barring order or protection order, similar to the orders in the *Domestic Violence Act 2018*, as discussed in Issue 7 of the Issues Paper? Please give reasons for your answer.

Q. 7.2 Do you consider that the *Domestic Violence Act 2018* should be amended to empower bodies other than the Child and Family Agency, such as for example the Health Service Executive or any other adult safeguarding regulatory body, to apply to court for an order under the 2018 Act?

Q. 7.3 Do you consider that adult safeguarding legislation should include separate provisions for barring orders, protection orders and safety orders that would apply in situations outside of the circumstances set out in the *Domestic Violence Act 2018* or section 10 of the Non-Fatal Offences Against the Person Act 1997?

Q. 8.1 There are four possible reporting models for suspicions of abuse or neglect concerning adults within the scope of adult safeguarding legislation:

- (i) permissive reporting;
- (ii) universal mandatory reporting;
- (iii) mandatory reporting by specific persons;
- (iv) a hybrid or “reportable incidents” model.

In your opinion, which of these is the most appropriate model for reporting incidents of the abuse of adults within the scope of adult safeguarding legislation, or reporting reasonable suspicions regarding abuse of those adults? Please give reasons for your answer.

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

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

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

Q. 9.2 If the answer to Q.9.1 is yes, do you consider that:

- (a) it would be sufficient to commence the relevant provisions of the Citizens Information Act 2007 providing for a Personal Advocacy Service; or
- (b) additional statutory provisions should be enacted providing that advocacy services could be provided in addition to those under the 2007 Act?

Please give reasons for your answer to (a) and (b).

Q. 9.3 If the answer to Q. 9.2(b) is yes, do you consider that there is a need for a national advocacy body in the context of adult safeguarding? If yes, do you believe that

this should operate as an independent agency or that it should be located within an existing agency?

Q. 10.1 Do you consider that existing arrangements for access to sensitive data and information sharing between relevant regulatory bodies are sufficient to underpin adult safeguarding legislation?

Q. 10.2 If the answer to Q. 10.1 is no, should arrangements for access to sensitive data and information sharing between relevant regulatory bodies include interagency protocols coupled with statutory powers? If so, please indicate your view on the form of such powers.

Q. 11.1 Do you consider that:

(a) non-statutory interagency protocols are sufficient to ensure multi-agency cooperation in adult safeguarding, or

(b) a statutory duty to cooperate should be enacted?

Q. 11.2 If the answer to Q. 11.1(b) is yes, to which bodies with adult safeguarding regulatory responsibilities should the duty apply?

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