

ISSUES PAPER IN PLAIN ENGLISH

# **A Regulatory Framework for Adult Safeguarding**

## **Issues Paper (Plain English Version)**

### **A Regulatory Framework for Adult Safeguarding**

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## What is the Law Reform Commission?

### **What work does the Commission do?**

The Commission reviews the law and recommends changes to the law.

### **What other work does the Commission do?**

The Commission also works to make the law:

- easier to access,
- easier to understand and
- easier to follow.

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## We would like to hear your views

An Issues Paper begins the Law Reform Commission's work to see if new laws or changes to the law are needed.

It includes:

1. A discussion of the key things the Commission would like to think about and discuss; and
2. Questions to help people to give their views on the matters to be discussed.

An Issues Paper does not usually contain any final view of the Commission. The aim of an Issues Paper is to give people a chance to give their views by answering the questions in the Issues Paper.

It is important to be aware that when a person sends their views to the Commission, another person or organisation can apply, under a law called the Freedom of Information Act 2014, to access the other person's views. Any person can send their views to the Commission stating that they are confidential, especially if it contains information about a specific person or specific people or circumstances, and we would treat it as confidential as much as we can.

If we are asked to give someone else information because of an application under the Freedom of Information Act 2014, we will contact the person or people who sent us that information before giving it to anyone else.

### Let us know your views:

1. By email: [p5p2@lawreform.ie](mailto:p5p2@lawreform.ie)
2. By post:

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3. By telephone: 01 637 7600

Please let us have your views by **5:30pm** on **Friday 29 May 2020**, if possible.

## What is this project about?

The law on adult safeguarding is a system of rules that:

- Protects adults at risk from abuse or neglect;
- Prevents the abuse or neglect of adults at risk;
- Promotes respect for the human rights of adults who are at risk of abuse or neglect.

“Adult safeguarding” is another way of saying keeping adults safe.

This project is about deciding how laws will be designed to make sure that those rules are followed.

By laws, we mean a set of legal rules that are made by the Irish parliament.

## Why is the Law Reform Commission doing this project?

We are doing this project to see what new laws are needed and how those laws should be designed to keep adults at risk of abuse or harm safe.

## What topics are discussed in the Issues Paper?

### **Chapter 1 Values and Principles Underpinning Adult Safeguarding**

The ideas behind and the reasons for putting in place an adult safeguarding system.

### **Chapter 2 Defining Key Terms for Adult Safeguarding,**

The definitions that should be given to important words in the laws on adult safeguarding.

### **Chapter 3 Different Types of Abuse and Neglect**

Here we:

- Discuss the different types of abuse and neglect that may be experienced by adults at risk;
- Make suggestions for new laws to prevent abuse and neglect of adults at risk;
- Ask for your views on our suggestions.

### **Chapter 4 Financial Abuse**

Here we:

- Discuss financial abuse;
- Look at what has been done in Ireland and in other countries to help prevent financial abuse;
- Ask for your views about any other measures that may be needed in Ireland.

## **Chapter 5 What Organisation or Organisations should have Responsibility for Making Sure that Adult Safeguarding Laws are Followed?**

Here we:

- discuss what organisation or organisations should have responsibility for making sure that any new adult safeguarding laws are followed;
- ask for your views on who you think should be responsible for making sure adult safeguarding laws are followed.

## **Chapter 6 Powers of Entry and Inspection**

Here we:

- Discuss powers to enter private homes to check that adults at risk of abuse or harm are safe;
- Ask for your views on possible powers of entry and inspection in adult safeguarding cases.

## **Chapter 7 Powers to Investigate**

Here we:

- Discuss possible new powers that could be used to protect adults who are at risk of abuse or neglect, including barring orders and protection orders;
- Ask for your views on what powers should be introduced in Ireland.

## **Chapter 8 Reporting Systems**

Here we:

- Discuss arguments for and against introducing a law that people **must** tell the authorities if they think or know that an adult at risk is being abused or neglected;
- Ask for your views on whether a law should be introduced so that people **must** tell the authorities if they think or know that an adult at risk is being abused or neglected.

## **Chapter 9 Independent Advocacy**

Here we:

- Discuss the benefits of an independent advocacy service. An advocate is a person who represents the views or wishes of another person if that person is unable to speak for himself or herself.
- Ask for your views on independent advocacy services for adults at risk of abuse or harm.

## **Chapter 10 Access to Sensitive Information and Information Sharing**

Here we:

- Discuss how private and personal information is shared to protect adults at risk of abuse or harm;
- Ask for your views on whether the existing ways that organisations in Ireland share information about safeguarding cases are enough, or whether new laws should be introduced to require organisations to share information to protect adults at risk of abuse or harm.

### **Chapter 11 Multi-agency Collaboration**

Here we:

- Discuss the need for different organisations to work together in safeguarding adults who are at risk of abuse or harm;
- Ask for your views on whether laws are needed to make sure that organisations work together to safeguard adults who are at risk.

## Chapter 1 Values and Principles underpinning Adult Safeguarding

### What is Chapter 1 about?

The Law Reform Commission has previously recommended that laws to protect adults at risk of abuse or harm should be based on some important values and principles:

- (i) Any action taken which interferes in the affairs of a person at risk of abuse or harm should be **necessary** and take account of the needs and **individual circumstances** of the person;
- (ii) Any action taken must achieve its aim, as far as is possible, in a way that is **least restrictive of the person's freedom**;
- (iii) **The person's wishes should be respected** where their wishes are known;
- (iv) The views of:
  - a. the person's relatives;
  - b. their primary carer;
  - c. the person that they live with;
  - d. any person named as someone who should be consulted;
  - e. any other person with an interest in the welfare of the personshould be respected where these views have been made known.
- (v) The need to respect the right of the person to **dignity, bodily integrity, privacy and autonomy** must be considered.

Other examples of values and principles in current laws and policies for adult safeguarding include:

- **Human rights:** making sure the rights of every person are respected.
- **Person Centeredness:** making sure that the people affected by the law or the policy are the main focus of the law or policy.
- **Advocacy:** supporting adults at risk of abuse or harm and representing their views
- **Confidentiality:** people's personal affairs and business are kept private and dealt with sensitively.
- **Empowerment:** supporting people to be more self-confident and independent in making decisions and doing things.
- **Collaboration:** organisations and people should work together.

### Proposed principles for new safeguarding laws

We suggest that new adult safeguarding laws might be based on these principles:

1. **Human rights:** making sure that the rights of every person are respected including the rights to dignity, bodily integrity, privacy and respect for culture and beliefs;

2. **Empowerment:**

This means presuming that every person has the capacity to make decisions for themselves.

It also means making sure that people are given explanations about all possible options for services and care that are available, so that they can choose what they think is the best option for them. This is called informed consent.

Empowerment also means making sure that people can take part in decisions affecting them and play as an active a part in society as possible.

It also means making sure that every person at risk of abuse or harm has access to an independent advocate. This means having someone to support them in making decisions and to represent their views on matters affecting them.

3. **Protection:** this means making sure that each person receives enough support and care so that they can live in safety and dignity, and to make sure that they enjoy individual physical, mental and emotional well-being;

4. **Prevention:** this means taking actions to make sure that safeguarding measures are in place to prevent abuse from happening;

5. **Proportionality:**

This means making sure that:

- (a) actions taken to safeguard an adult at risk of abuse or harm are necessary taking into account the circumstances of the person;
- (b) actions taken to safeguard an adult at risk of abuse or harm affects that person's freedom as little as possible; and
- (c) actions taken to safeguard an adult at risk of abuse or harm are appropriate for the level of risk that could be faced;

6. **Integration and cooperation:** this means making sure that different organisations work together to make sure that all adults at risk are properly safeguarded;

7. **Accountability:** this means making sure that all organisations and people that have a role to play in safeguarding adults must report on the work that they have done and are held responsible if they do not work to safeguard adults properly.

It also means making sure that there is transparency in adult safeguarding. Transparency means that people can easily understand how things work in adult safeguarding and understand who is supposed to do what.

## Questions for Chapter 1

We are looking for your views on the questions below.

**Question 1.1** Do you think that that any adult safeguarding law should be based on the principles we have suggested above?

**Question 1.2** Do you think there are any other important values and principles that the law should be based on? If yes, what values and principles are they?

## Chapter 2 Defining Key Terms for Adult Safeguarding

What is Chapter 2 about?

Chapter 2 is about deciding on a meaning for key words that will be used in any new safeguarding laws.

This is important to make sure that everyone understands and is certain about what the terms mean and who any new laws will affect.

The key words that we want to define are:

- “adult at risk”
- “adult safeguarding”
- “abuse”
- “harm”
- “neglect”
- “capacity”

We are looking for your views on how these key words should be defined in the legislation.

### Questions for Chapter 2

We are looking for your views on the questions below.

**Question 2.1** Do you think the law should clearly explain what groups of adults the law will affect?

**Question 2.2** If yes, how do you think the groups of adults that will be affected by the law should be explained?

**Question 2.3** How do you think the words below should be defined in adult safeguarding law? What do you understand by these words?

- “adult at risk”
- “adult safeguarding”
- “abuse”
- “harm”
- “neglect”
- “capacity”

## Chapter 3 Different Types of Abuse and Neglect

### What is Chapter 3 about?

Chapter 3 discusses abuse, neglect and deprivation of liberty as they relate to adult safeguarding. We discuss: physical, sexual, discriminatory and psychological abuse; as well as neglect and deprivation of liberty.

#### **Physical abuse**

Physical abuse can mean behaviour including:

- Hitting
- Slapping
- Pushing
- Kicking
- Giving people too much or too little medication or giving people the wrong medication
- Restraint (this could mean tying someone up or drugging them to control them and stop them from moving)
- Punishing people inappropriately

#### **Sexual abuse**

Sexual assault can include rape and sexual assault, or sexual activities that have not been consented or agreed to. Examples of sexual abuse can include:

- Intentional touching of a private area without consent
- Rape: having sex with a person without the person's permission or forcing a person to have sex against the person's will
- Unwanted sexually explicit comments
- Exposure of sexual organs
- Performance of sexual acts in the presence of an adult at risk of abuse or harm
- Exposure to sexually explicit material such as pictures or videos

#### **Discriminatory abuse**

Discrimination means treating someone less favourably because the person is seen to be different in some way or have a certain characteristic.

Discriminatory abuse can be defined as including:

- Ageism (discrimination based on age)
- Racism (discrimination based on race)
- Sexism (discrimination based on gender)
- Abuse based on a person's disability
- Others forms of harassment, insults or similar treatment

## **Psychological abuse**

Psychological abuse can be defined as including:

- Emotional abuse
- Threats of harm or abandonment (threatening to harm someone or leave them alone and uncared for or threatening to never see them again)
- Deprivation of contact (stopping someone from speaking to or seeing other people)
- Humiliation (doing things to embarrass someone)
- Blaming (telling someone that something is their fault even though it might not be)
- Controlling (doing things to make people behave in a certain way or to decide what people can and cannot do)
- Intimidation (doing things to frighten someone or to frighten someone into making them do something in particular)
- Coercion (convincing or persuading someone to do something using force or threats)
- Harassment (pressuring or intimidating in an aggressive or threatening way)
- Verbal abuse (abusive comments that are spoken or shouted by someone)
- Isolation or withdrawal from services or supportive networks (leaving someone alone and separated from other people)

## **Neglect**

Neglect can include failing to do things to ensure that someone is safe and well looked after including:

- Ignoring medical or physical care needs
- Failing to make sure that someone has essentials such as food and heating
- Failing to make sure that someone has access to the right health, social care or education services
- Failing to provide clothing
- Failing to ensure that someone is clean or that the person's home is clean and safe
- Failing to ensure that someone has enough attention or contact with other people

## **Deprivation of Liberty**

Deprivation of liberty can mean that someone is forced to go somewhere and stay there even though they do not want to. This could be in places like hospitals or nursing homes.

Sometimes doctors, nurses, other staff of those places and/or family members of a person might think that the person needs to stay in that place to make sure that they are getting the care that they need.

In these cases, if the person still does not want to stay, an assessment needs to be done to find out if the person is able to make their own decision to leave and go home.

## Possible new legal duties to prevent abuse or neglect of adults at risk

There are different laws in place to punish people who physically, sexually or psychologically abuse people. However, there are also other legal duties that could be introduced to protect adults who are at risk of abuse or neglect. These include:

1. a duty on organisations that provide adult safeguarding services to have a care plan in place for every adult that receives adult safeguarding services, and
2. a duty on organisations that provide adult safeguarding services to safeguard at risk adults.

### *1. A duty to have a care plan in place*

A care plan is a written document that describes a person's needs, views, wishes and choices.

A care plan also looks at resources that are needed and the resources that are available to meet the person's needs, preferences and choices.

We are looking for your views on:

- whether there should be a legal duty to have a care plan in place for adults who are at risk of abuse or neglect and who are accessing safeguarding services; and
- whether the care plan should discuss how abuse or neglect could be prevented.

### *2. A duty to safeguard*

A duty on organisations that provide adult safeguarding services to safeguard adults at risk would mean that organisations would have a duty to look after the welfare of adults at risk of abuse or harm.

In other countries, this includes:

- a duty to promote individual well-being
- a duty to prevent needs for care and support
- a duty to assess an adult's needs for care and support
- a duty to meet needs for care and support.

## Possible new laws to prevent abuse or neglect

We are looking for your views on whether any new laws should be introduced to prevent physical, sexual, psychological abuse or neglect.

## Questions for Chapter 3

We are looking for your views on the questions below.

- Question 3.1** Do you think that adult safeguarding laws should say that every adult at risk of abuse or harm must have a care plan?
- Question 3.2** If yes, should care plans discuss how abuse or neglect could be prevented?
- Question 3.3** Should organisations or persons that provide safeguarding services have a duty to make sure that adults who are at risk of abuse or neglect are safe from harm?
- Question 3.4** Should it be possible to take a legal case against organisations and individuals who fail in their duties?
- Question 3.5** Should it be a crime if an organisation or a person fails in their duties?
- Question 3.6** Should it be possible to make a complaint to a professional body if a person, for example: a social worker, fails in their duties?
- Question 3.7** Do you think there are any other laws that could be brought in to prevent physical, sexual, psychological abuse or neglect?

## Chapter 4 Financial Abuse

### What is Chapter 4 about?

Chapter 4 is about financial abuse. **Financial abuse can include:**

- Theft (taking someone else's property dishonestly with the intention of never returning it)
- Fraud (lying or deceiving to make a profit or gain an advantage or to cause someone else to make a loss or suffer a disadvantage)
- Exploitation (taking advantage of someone or treating them unfairly to benefit financially)

**There are many ways in which theft, fraud or exploitation can happen. Some of these are:**

- Theft or misuse of a person's social welfare payments including disability benefits and pensions.
- Giving someone incorrect information or lying to trick someone into giving money. This can include lottery or prize-draws that are not real, but that people pay to enter because they have been tricked.
- Financial abuse related to joint bank accounts. This can happen when someone (usually a family member) convinces a person with a bank account to add their name to the account, and then money is taken dishonestly from the account.
- Internet, telephone or text message scams such as sending emails or text messages to people looking for their bank details or other personal information.
- Bank staff or other financial services staff selling customers financial products like investment products or mortgages that are unsuitable for them.

**Financial abuse can be hidden because:**

- It often happens within families and in relationships where there is trust.
- People might not understand that what is happening is financial abuse.
- There is not enough training or support for bank and post office workers about how to recognise financial abuse.
- Sometimes people who have been trusted to take financial decisions and actions on behalf of someone else in an agreement called a Power of Attorney may abuse that trust.

- Bank or post office workers must keep information about people's bank accounts private. This can make it difficult to tell the authorities if they think financial abuse is happening because they are unsure if they are breaking the law by giving the information.
- There is a lack of agreements between different organisations about working together and sharing information to find out if financial abuse is happening and to stop financial abuse from happening.

### Measures already in place to identify and stop financial abuse

There are measures aimed at stopping financial abuse. These include:

- laws to hold people responsible and punish people if they have stolen money or other property or belongings; and
- information campaigns like ads on TV, radio and bus shelters to give people information about financial abuse so that they might be able to notice early signs of financial abuse and stop it from happening.

### New measures that could be introduced to identify and stop financial abuse

There are new measures that could be brought in to help with finding out if financial abuse is happening and to help with stopping financial abuse. These include:

1. A Banking Protocol. This would be an agreement of steps that all bank or post office workers would take if they think that financial abuse is happening.

It would mean that training would be given to bank staff and supports would be given to customers at risk to stop them suffering financial abuse.

2. A Code of Practice. This would be a set of actions that banks and post offices would take to make sure that they give more support to customers who may be victims of financial abuse. These actions could include:

- Making sure that more people know what financial abuse is and encouraging people to tell someone if they think that financial abuse is happening
- Training bank and post office workers about financial abuse
- Noticing that financial abuse is happening and taking steps to stop it
- Taking steps so that customers do not need to tell the same story more than once to different workers in the same bank or post office
- Helping vulnerable customers to get back control of their money
- Giving information to other organisations or services like the Gardaí and putting customers at risk in contact with other services that might help them.

3. Legal protections for bank and post office workers to protect them if they tell the authorities that they think financial abuse is happening because they want to protect a customer from abuse.

This means that that bank or post office workers would be protected from having a legal case taken against them because they told the authorities about things that turned out not to be financial abuse and someone involved may think that their reputation has been damaged.

Legal protections could be important to identifying financial abuse because without legal protections, bank or post office workers may be afraid to tell the authorities if they think that financial abuse might be happening.

## Questions for Chapter 4

We are looking for your views on the questions below.

**Question 4.1** Do you think that organisations like the organisations below have enough powers to prevent or find out about financial abuse?

- Central Bank of Ireland
- Department of Employment Affairs and Social Protection

**Question 4.2** If the answer to 4.1 is no, do you think that either (a) or (b) below or both would be needed to prevent or find out about financial abuse?

- (a) A law that a code of practice or protocol for banks, post offices and building societies must be in place
- (b) Legal protections, similar to the Protected Disclosures Act 2014, for banks, building societies and post offices that take action to deal with what they think might be financial abuse with good intentions.

**Question 4.3** Do you think that any other powers are needed to prevent or find out about financial abuse? If yes, please give examples.



## Chapter 5 What Organisation or Organisations should have Responsibility for Making Sure that Adult Safeguarding Laws are Followed?

### What is Chapter 5 about?

Chapter 5 discusses what organisation or organisations should have responsibility for making sure that adult safeguarding laws are followed and that adults who are at risk of abuse or harm are safe.

### A National Adult Safeguarding Authority

It has been suggested that a new organisation should be set up to make sure that the new system of rules to keep adults safe from abuse or harm is followed by all people and organisations.

This organisation could be called a national adult safeguarding authority.

The work of a national adult safeguarding authority could include:

- Investigating cases where there are reasons to believe that an adult at risk may be at risk of abuse or harm
- Receiving reports from people about cases of abuse or suspected abuse
- Sharing information about keeping people safe and setting safety and quality standards
- Giving information to adults at risk of abuse or harm
- Making recommendations to organisations about making changes to the way they work to make sure that adults at risk of abuse or harm are safe
- Making sure that any safeguarding laws are followed by all people and organisations

### Different ways for deciding how to make sure that adult safeguarding laws are being followed

We have identified 5 different ways to make sure that any adult safeguarding laws are being followed. Most of these 5 ways involve setting up an organisation called a national adult safeguarding authority which would make sure that people and other organisations are following the law.

The 5 different ways are:

1. Setting up the national adult safeguarding authority within the Health Service Executive (HSE)
2. Setting up the national adult safeguarding authority as an office of the Department of Health
3. Setting up the national adult safeguarding authority as an independent organisation
4. Merging the national adult safeguarding authority with a public organisation that already exists such as HIQA or the Mental Health Commission
5. Giving more legal powers to an existing organisation or organisations

#### *1. Setting up the national adult safeguarding authority within the Health Service Executive*

This means that the national adult safeguarding authority would be set up as an office within the Health Service Executive.

The Health Service Executive has already been involved in setting up adult safeguarding services and has valuable experience. However, its adult safeguarding policy and powers only apply to services that are owned or funded by the Health Service Executive so privately funded services are not covered.

If a national adult safeguarding authority were set up, it would need to work closely with the Health Service Executive to make sure that:

- the two organisations are not doing the same work twice;
- the organisations make the best use of experience; and
- the two organisations share learning and experience.

It is possible that there could be problems if the Health Service Executive is:

- an organisation that runs adult safeguarding services and provides the money for other safeguarding services
- **and** the organisation that makes sure that the adult safeguarding laws are followed by organisations.

To avoid any conflict of interest, it has been suggested that a national adult safeguarding authority would need to be an independent organisation.

Being an independent organisation means that the organisation in charge of making sure that people and other organisations are following the laws would not be an organisation that provides safeguarding services itself. It would have no other interests other than making sure that others are following the laws. This would mean that it would have no conflicts of interest.

## *2. Setting up the national adult safeguarding authority as an office of the Department of Health*

This option means that the national adult safeguarding authority would be set up as an executive office of the Department of Health.

Executive offices are not legally separate organisations from the civil service and do not have their own groups of people that make decisions about how the offices will be run. Even though they are not legally separate from the government department, an advantage of executive offices is that they can have their own organisation name and branding. This can help to make sure that the more people know about the work of the organisation.

It has been suggested that an executive office would not really be independent because:

- the Department of Health would be the employer of people that work for the executive office;
- the money to run the executive office would come from the Department of Health;
- and the Department of Health would be legally responsible for the actions of the executive office.

For these reasons, it is possible that staff of the Department of Health could become involved in the decision making in the national adult safeguarding authority without special knowledge and experience in adult safeguarding.

Special knowledge, experience and independence would be needed for some of the work of the national adult safeguarding authority. This means it could be important for the national adult safeguarding authority to be able to choose its own staff who could act independently.

### *3. Setting up the national adult safeguarding authority as an independent agency*

This option would mean that the national adult safeguarding authority would be set up as a separate organisation from other government organisations.

The main advantages of this option would be:

- (a) It would have more independence to make decisions, involve stakeholders in its work and make sure that services are delivered in the best possible way;
- (b) it would be able to choose its own staff and could hire staff with the special skills and experience needed for the work of the organisation;
- (c) there would be no conflict of interest such as the problems that could arise if it were to be set up in other organisations that fund or provide safeguarding services.

Article 16 of the United Nations Convention on the Rights of Persons with Disabilities states that all facilities and programmes designed to provide services to people with disabilities should be monitored by independent organisations.

The disadvantages of setting up the national adult safeguarding authority as an independent organisation are:

- (a) the costs could be higher than setting it up as part of another organisation; and
- (b) it could take more time to set up a new organisation than to set it up within an organisation that already exists.

### *4. Merging the national adult safeguarding authority with an existing public organisation*

This option would mean that the national adult safeguarding authority would be combined with an existing independent agency such as HIQA, the Mental Health Commission or the Child and Family Agency.

There are advantages and disadvantages to merging the national adult safeguarding authority with all of these organisations but it seems that merging it with the Child and Family Agency would appear to be less suitable than either of the other two options.

### *5. Giving more legal powers to an existing organisation or organisations*

This option would give more legal powers to existing organisations such as the Central Bank of Ireland, Department of Employment Affairs and Social Protection and HIQA.

This could possibly mean setting up a small organisation with its own board of directors to make sure that any new legal powers are used properly by the organisations and that the organisations work together in adult safeguarding.

We suggest that organisations responsible for making sure that people and other organisations are following laws could have a set of the same key powers that could be used in adult safeguarding cases. These would include the following powers:

- (a) The power to issue a range of warnings or notices to organisations, including to get information by asking in writing, and “cease and desist” notices that mean an organisation must stop doing a certain thing and not do it again;
- (b) The power to enter and search premises and take documents and other things;
- (c) The power to tell persons to come to a meeting with the national safeguarding authority to answer questions or show documents;
- (d) The power to tell an organisation that it must pay some money because the organisation has broken a law (a court would make sure that the national safeguarding authority uses this power fairly);
- (e) The power to make sure that organisations agree to follow all the laws and to tell the organisations what they must do to fix any damaged caused if they break the law; and
- (f) The power to bring a legal against an organisation or person for certain crimes related to failing in their duties.

There may also be other powers that might be needed by certain organisations.

### **Advantages**

Giving existing organisations more legal powers instead of setting up a new national adult safeguarding authority would the following advantages:

- (a) It would cost less as resources such as staff, office rental and legal costs that would be involved in setting up a new organisation would not be needed; and
- (b) it would allow organisations to use their existing experience in using the new powers.

### **Disadvantages**

The disadvantages of giving more powers to existing organisations instead of setting up a national adult safeguarding authority are:

- (a) there would not be a separate organisation to make sure that all of the organisations were using their powers correctly in adult safeguarding cases;
- (b) it could mean that the same organisation would be providing services and making sure that the laws are followed in those services rather than there being a separate independent organisation to make sure that the laws are being followed; and
- (c) organisations may not work together as well without a separate organisation to make sure that organisations are working together.

### **Overcoming disadvantages**

A way to overcome these disadvantages would be to set up an organisation by law that would have responsibility for making sure that all of the organisations use their adult safeguarding powers in the right way and work together in adult safeguarding.

An organisation like this would have less powers and responsibilities than a national adult safeguarding authority so it would need less resources and cost less to set up and operate but it could be less effective than setting up a national adult safeguarding authority.

#### Adult safeguarding in different parts of Ireland

If a national adult safeguarding authority were to be set up with its headquarters in one part of the country, it is possible that there would need to be smaller offices or structures like committees in different parts of the country.

These regional offices or committees could help to make sure that adult safeguarding laws are being followed and that adults at risk of abuse or harm are being kept safe throughout the whole country.

#### Questions for Issue 5

We are looking for your views on the questions below.

**Question 5.1** We have talked about 5 ways for deciding how to make sure that adult safeguarding laws are being followed.

Most of these ways involve setting up an organisation called a national adult safeguarding authority to make sure that the laws are being followed. The 5 ways are:

1. Setting up a national adult safeguarding authority in the Health Service Executive (HSE)
2. Setting up a national adult safeguarding authority as an executive office of the Department of Health
3. Setting up a national adult safeguarding authority as an independent organisation
4. Merging a new national adult safeguarding authority within an existing organisation such as HIQA or the Mental Health Commission
5. Giving more powers to an existing organisation or organisations

Please tell us what you think about these questions:

- (a) Which of the above would be best to make sure that adult safeguarding laws are being followed?
- (b) Do you think that any of the above would be completely unsuitable for making sure that adult safeguarding laws are being followed?

Please tell us why you have chosen your answers to (a) and (b).

**Question 5.2** Do you think that a national adult safeguarding authority or existing organisations with powers to make sure that laws are being followed should have any, or all, of the 6 powers below? Do you think any other powers are needed?

- (a) The power to give warnings or notices to organisations, including to get information by asking in writing, and giving “cease and desist” notices that tell an organisation that it must stop doing a certain thing and not do it again;
- (b) The power to enter and search premises and take documents and other things;
- (c) The power to tell persons to come to a meeting to answer questions or show documents;
- (d) The power to tell an organisation that it must pay some money because the organisation has broken a law (a court would make sure that the national safeguarding authority uses this power fairly);
- (e) The power to make sure that organisations agree to follow all the laws and to tell the organisations what they must do to fix any damaged caused if they break the laws; and
- (f) The power to bring a legal action against an organisation or person for certain crimes related to failing in their duties.

**Question 5.3** Do you think that there should be laws about what safeguarding offices there should be in different parts of the country and what responsibilities and powers those offices should have?

## Chapter 6 Powers of Entry and Inspection

### What is Chapter 6 about?

Chapter 6 is about powers of entry and inspection.

A power of entry and inspection means that whoever is given the power can go into the home or property of an adult who may be at risk of abuse or harm to check whether the person is safe and healthy.

Using a power of entry and inspection might mean that the person using the power also looks to make sure that a house is safe, clean, warm and dry enough for the adult at risk of abuse or harm to live in and that the person has enough food and medication there.

### Powers of entry and inspection and the Irish Constitution

There are many laws in Ireland that give a legal power of entry to premises including homes in certain cases. These powers are not used that often but can be important in some cases.

Article 40.5 of the Irish Constitution protects private homes from being entered by force without the permission of the people who live in that home except where some laws allow for a power of entry in certain circumstances.

The courts have said that the home should be protected and that the law must allow for a power of entry to a home only where it is necessary.

Permission from a court called a warrant is usually needed to use a power of entry. There are a small number of circumstances when a warrant is not needed.

### Current legal powers of entry where an adult may be at risk

These are some laws that give powers of entry and inspection that could be used if a person is thought to be at risk of abuse or harm.

These are:

1. The Mental Health Act 2001
2. The Domestic Violence Act 2018
3. The Criminal Law Act 1997
4. The Criminal Justice (Miscellaneous Provisions) Act 1997
5. Common law powers

These powers can only be used in certain cases. There may be cases in which a social worker, social care worker or another person may be worried that an adult may be at risk in which none of these laws may be used.

This is why it has been suggested that a new law could be introduced that would allow for a power of entry in all adult safeguarding cases where it is believed that an adult may be at risk of abuse or harm.

### Powers of entry and inspection in other countries

In some other countries, there is a power of entry and inspection in adult safeguarding laws.

In Scotland and Wales, there is a power to enter any building to carry out an investigation to decide whether anything needs to be done to protect an adult at risk from harm. There is also a legal power to interview any adult found in a building that is visited using a power of entry. The law in Scotland and Wales says that the person looking to use a power of entry must apply to a court for permission or a warrant to use the power first.

In England, there is no power of entry in the adult safeguarding laws.

In parts of Canada, the adult safeguarding laws say that organisations or certain people that are responsible for adult safeguarding can apply for an order to give them the power to enter a building where it is believed that an adult may be at risk. They can apply for an order to enter a building and carry out an interview if they have been not been allowed to enter the building by anyone including the adult who is believed to be at risk.

### Arguments for and against the introduction of a new power of entry to private dwellings

Research studies have found that there are arguments in support of and against a power of entry.

Arguments in support of a power of entry and inspection are:

- (a) A power of entry allows people like social workers or social care workers to go into a private home or property to check on an adult at risk of abuse or harm even where another person (it could be a family member of the adult at risk of abuse or harm) is trying to stop anyone from getting into the property
- (b) A power of entry allows safeguarding workers like social workers to enter a private home or property to check on an adult at risk of abuse or harm where the adult not have capacity to give consent to entry. This means that the person cannot understand the possible positive or negative effects of deciding to let someone into the home at that time.
- (c) A power of entry helps people like social workers to get access to a person who is being abused before the abuse can get any worse.
- (d) Other legal ways to enter the home or property are not useful to gaining access to adults at risk of abuse or harm in many situations. This means that a power of entry is needed as other laws that allow safeguarding workers to enter a home do not cover all safeguarding situations.
- (e) A power of entry is needed because when there is no power of entry, people like social workers are afraid to enter a home or property in case they would be breaking the law by going into the home or property.
- (f) A power of entry allows people like social workers to give information and advice and to make sure that people who cannot or do not want to ask for help can have their voices heard.

- (g) A power of entry may prevent someone from abusing an adult at risk of abuse or harm because they would know that social workers or Gardaí will be able to enter the home or property and investigate whether abuse has occurred.
- (h) Not having a power of entry can cost a lot in staff time. This means that when there is no power of entry, it can take a lot of working time for people like social workers to try to enter a home to check if a person is safe. This can mean that a lot of time is used that could be used to help the person or to keep other people safe.

Some arguments against a power of entry are:

- (a) There is no proof that a power of entry would not do more harm than good.
- (b) A power of entry may lead to at risk adults losing trust in professionals like social workers. This might happen if an at risk adult does not want anyone to enter their home but social workers use a power of entry to enter the person's home because they are worried that the person might be at risk of harm or abuse. Trust may be lost in the social workers then because they went against the person's wishes.

The arguments are that there should be more of a focus on different organisations and services working together to try to keep people safe and to gain access to a home, if needed, rather than bringing in a new power of entry.

- (c) There are existing legal powers that can be used to enter a private home or property in many cases. One of the arguments is that existing laws and orders from the High Court can be used to enter a private home or property. The argument is that more people need to know about those legal powers instead of introducing a new power of entry.
- (d) A power of entry might lead to more risk for adults at risk of abuse or harm. The argument is that a person who might be abusing an adult at risk might be angry if a social worker uses a power of entry. The abuser's anger might cause the behaviour of the abuser to get worse and they might do things to stop social workers visiting the house. This could leave a person more at risk of abuse or harm.
- (e) A power of entry could interfere with the human rights of adults. A power of entry could unnecessarily interfere with a person's rights to privacy and autonomy. This means it could possibly stop at risk adults from enjoying a private life and from making decisions about their lives including about who to allow into their home.
- (f) Social work skills should be able to help social workers to enter a home to check if a person is safe without the need for a power of entry. This argument is that social work skills like people skills and persuasion should help a social worker to get someone to agree to let them into a home without the need for a power of entry.

## Questions for Chapter 6

We are looking for your views on the questions below.

**Question 6.1** Do you think that adult safeguarding laws should include a power to enter and inspect properties, including a person's home, in the following circumstances:

- (a) where a safeguarding worker such as a social care worker or social worker or a police officer has reason to think that an adult may be at risk of abuse, harm or neglect; and
- (b) another person that is not the adult at risk of abuse or harm is stopping the professional from entering or it seems like an adult at risk of abuse or harm in the house does not have the capacity to refuse access.

**Question 6.2** Is the answer to 6.1 is yes, do you think that evidence that there is reason to believe that a person may be at risk of abuse or neglect would be enough to make sure that a power to enter and inspect a property would be used only where it is thought to be really necessary?

**Question 6.3** If the answer to 6.1 is yes, do you think that a power of entry and inspection:

- (a) should be given directly to a professional such as a social care worker, a social worker, a doctor or a nurse of a Garda, or
- (b) should mean that to use the power, a person must apply to a court asking for a search warrant, in all cases or only where they are seeking to enter and inspect someone's home?

**Question 6.4** If a power of entry and inspection were to be given to the Gardaí, do you think that a Garda should be allowed to use force, if needed, to get into the house?

This means that if a Garda had a power of entry and nobody opened the door that they could, for example, break a window or break down a door to get into the house if they had reason to think that someone inside the house might be at risk of abuse or harm.

## Chapter 7 Powers to Investigate

### What is Chapter 7 about?

Chapter 7 discusses whether there should be new legal powers to keep adults at risk of abuse or harm safe, and/or powers to investigate to check whether an adult at risk is safe from abuse or harm.

These powers could include:

- A **power of assessment** that would give social workers the power to take time to talk to a person and give the person a check-up to make sure that they are in good health and to check whether the person may have been abused or harmed or may be at risk of abuse or harm.
- A **power of removal** that would give social workers the power to take someone away from the place where they might have been abused or harmed to somewhere safe where they could check the person's health and welfare without the person who might have abused or harmed them being there.
- A **safety order** that would mean that a court could make an order forbidding the person who may be abusing or harming an adult at risk from abusing or harming the person anymore.

If the abuser lives with the adult at risk of abuse or harm, the abuser will not have to leave the home. If the abuser does not live with the at risk adult, a safety order would stop the abuser from watching the at risk adult or being nearer the at risk adult's home or following or trying to communicate (including text messages or emails or through social media) with the at risk adult.

A safety order can usually last up to 5 years.

- A **barring order** that would mean that a court could make an order telling a person that has been abusing or harming an adult at risk of abuse or harm to leave the home and forbidding the person from going back to the home.

A barring order would also forbid the person who may be abusing or harming an adult at risk of abuse or harm from harming or abusing the adult at risk of abuse or harm anymore. The order would also tell the abusive person not to watch or be near the home of the adult at risk or try to communicate with the adult at risk (including by text message, email or social media).

A barring order can last up to 3 years.

- A **protection order** would mean that the court could grant a temporary protection order while it decides whether to make a safety order or barring order. A protection order could be granted as there might be reason to believe that there is a risk to the safety or welfare of an adult at risk of abuse or harm.

A protection order would forbid an abusive person from abusing or harming the adult at risk of abuse or harm or from threatening to abuse or harm the person. If the abusive person does not live with the adult at risk of abuse or harm, it can also forbid the abusive person from watching the person or being near the person's home or trying to communicate with the person (including by text message or email or through social media).

## Legal powers that already exist in Ireland

### **Safety orders, barring orders and protection orders**

The Domestic Violence Act 2018 allows for the court to make barring orders, safety orders and protection orders in certain cases. Orders can be made in domestic violence situations in certain types of relationships.

There could be safeguarding issues in relationships to which the legal powers under the Domestic Violence Act 2018 do not apply. These relationships include relationships between:

- a formal carer and an adult at risk of abuse or harm, and
- an adult brother or sister and an adult at risk of abuse or harm who do not live together.

Only Tusla, the Child and Family Agency is allowed to apply for orders to be made under the Domestic Violence Act 2018. The Health Service Executive often works with people who need to apply for an order under the Domestic Violence Act 2018 but to make the orders, it must get permission from Tusla to apply for the order in its name. It has been suggested that it would be easier if the Health Service Executive could apply for orders itself.

### **Power of removal and assessment**

There are legal powers of removal and assessment under the Mental Health Act 2001. These powers only apply where a Garda has reason to believe that a person is suffering from a mental disorder and is very likely to cause immediate and serious harm to himself or herself or to other persons.

These legal powers would only apply in a small number of adult safeguarding cases.

### **Order under the Non-Fatal Offences Against the Person Act 1997**

If a person has been found guilty of an offence of harassment, a court can order that a person may not communicate in any way with a specific person or that the person must not go within a certain distance of the place where the specific person lives or works.

A court can also make an order if the person has not been found guilty of harassment, but the court thinks that it is the right thing to do.

Harassment means that without any legal power or reasonable excuse, a person harasses another person by regularly following, watching, pestering, constantly troubling or communicating with the other person.

If a person harasses another person, it means that he or she:

- Acts in way that intentionally or recklessly seriously interferes with the other person's peace and privacy or causes alarm, worry or harm to the other person, and
- Acts in a way that a reasonable person would realise that the actions would interfere with the other person's peace and privacy or cause alarm, worry or harm to the other person.

## Safeguarding powers in other countries

### Scotland

In Scotland, organisations that work to keep adults at risk of abuse or harm safe have these powers or duties:

- a legal duty to ask questions and investigate, if there is reason to believe that an adult may be at risk of abuse or harm, and a duty to take any action to keep an adult safe.
- a legal power to interview any person found in a place that is entered and searched using a legal power of entry and inspection.
- a power to conduct a medical examination of a person that is believed to be at risk of abuse or harm. The person must be told beforehand that they have the right to say that they do not want to be examined.
- a legal power to carry out an assessment to decide whether a person is an adult at risk and whether anything needs to be done to protect the person from harm.
- a power to apply for an order to move a person that might be at risk of abuse or harm to another specific place and take other steps to protect the person from harm.
- a power to apply a banning order that stops a person from being allowed to be in a specific place or close to that place or to take anything away from that place.

### Wales

In Wales, organisations that work to keep adults at risk of abuse or harm have these powers:

- a power to interview or speak in private to a person that is believed to be at risk of abuse or harm
- a power to check whether the person at risk of abuse or harm is making decisions without pressure from someone else
- a power to decide whether the person is at risk and if any action needs to be taken.

## England

In England, organisations that work to keep adults at risk of abuse or harm safe have the following powers:

- to investigate and ask questions if they have reason to believe that an adult has needs for care and support and has been abused or neglected or is at risk of abuse or neglect and is unable to protect himself or herself; and
- to decide if anything needs to be done in the adult's case.

### Arguments for and against the introduction of more safeguarding powers

Research studies have found that there are arguments in support of and against there being more powers to keep adults at risk of abuse or harm safe, and/or powers to investigate to check whether an adult at risk is safe from abuse or harm.

The arguments in support of more powers include:

- (a) More powers would improve outcomes in adult safeguarding cases. The introduction of similar powers in Scotland has helped to solve problems in cases of financial and/or physical abuse and has prevented at risk adults from suffering more harm. A report in Scotland found that adults feel safer when a protection order is in place.
- (b) A power of removal and a power of assessment would make sure that at risk adults could be interviewed alone. This is especially important for cases where they may be being abused by another person in their home or may be scared to talk if the person that abused them was there.
- (c) A power of entry to a person's home could not be effective without more safeguarding powers. This means that even where there is a power of entry that social workers cannot do enough to safeguard a person if they can only visit the person in the person's home but cannot remove the person from a potential abuser in the home.
- (d) Safeguarding powers would be rarely used and would only be used as a last resort in cases where social workers have reasons to believe that an adult is at risk of abuse or harm, and there is no other option to safeguard the at risk adult.

The arguments against there being more safeguarding powers include:

- (a) Safeguarding investigative powers could interfere with the human rights of adults. This argument means that a power of removal or a power of assessment could interfere with a person's right to privacy and right to autonomy. This means that a power of removal or a power of assessment could possibly stop at risk adults from enjoying a private life and from making decisions about their own lives.

- (b) More safeguarding powers could make the ways in which a case of suspected abuse or harm is dealt with become too formal or serious too soon and that more informal or less serious steps should be taken before using any legal powers.
- (c) Social work skills should be used to gain access to an adult at risk of abuse or harm to carry out an assessment of their health and welfare instead of using a legal power.

## Questions for Chapter 7

We are looking for your views on the questions below.

**Question 7.1** Do you think that it should be the law that organisations must make inquiries in cases where there are reasons to believe that an adult at risk may be being abused or harmed?

This means that an organisation involved in safeguarding adults would have to investigate or ask questions to decide whether to take action to safeguard an adult. These actions could include applying for a court order to remove a person or for a safety order, barring order or protection order.

**Question 7.2** Do you think that the Domestic Violence Act 2018 should be changed so that other organisations like, for example, the Health Service Executive or a new national adult safeguarding authority could apply to court for an order under the Domestic Violence Act 2018?

**Question 7.3** Do you think that a new adult safeguarding law should have its own provisions for barring orders, protection orders and safety orders that could apply to as many types of adult safeguarding cases as possible?

## Chapter 8 Reporting Systems

### What is Chapter 8 about?

Chapter 8 is about the different laws or systems of rules that decide whether people need to tell the authorities if they know or think that an adult at risk is being or has been abused, harmed or neglected.

Telling the authorities is called reporting.

The authorities are the Gardaí or an organisation such as a new national adult safeguarding authority.

There could also be no laws in place and people could be allowed to make their own decisions about whether to tell the authorities if they know or think that an adult at risk is being or has been abused, harmed or neglected.

There are four types of systems for reporting that can be in place. These are:

#### **1. Permissive reporting**

This means that people are allowed to decide themselves whether to report to the authorities if they know or think that an adult at risk is being or has been abused, harmed or neglected.

#### **2. Universal mandatory reporting**

This means that all people, no matter what their jobs are, must tell the authorities if they know or think that an adult at risk is being or has been abused, harmed or neglected.

#### **3. Mandatory reporting by specific persons**

This means that certain people, depending on what their jobs are, must tell the authorities if they know or think that an adult at risk is being or has been abused, harmed or neglected.

#### **4. A mixed reporting system**

A mixed reporting system is a system that has a mixture of both mandatory and permissive reporting. This means that if somebody knows or thinks that certain types of abuse, harm or neglect have been suffered by an adult at risk, they must report it to the authorities but people can decide themselves whether to tell the authorities about any other types.

The types of abuse, harm or neglect that people would have to tell the authorities could be those that would be serious or that could be signs that abuse, harm or neglect is happening and that it could get worse.

## Reporting systems in other countries

Other countries have different laws about whether people need to tell the authorities if they know or think that an adult at risk is being or has been abused, harmed or neglected.

### 1. Scotland

In Scotland, there is a system of mandatory reporting in place. Certain organisations or people, depending on what their job is, must tell the authorities about any cases in which they know or believe that something needs to be done to keep an adult at risk safe.

### 2. Wales

In Wales, there is also a system of mandatory reporting in place. Certain organisations and people must tell the authorities if they have good reasons to believe that a person is an adult at risk or abuse or harm.

### 3. England

In England, a system of permissive reporting is in place meaning that people can decide themselves whether to report or not.

### 4. Northern Ireland

A system of permissive reporting is also in place in Northern Ireland.

### 5. Australia

In Australia, a mixed model of mandatory and permissive reporting is in place. A system of mandatory reporting is in place in residential care settings (houses or homes where people live and are cared for) only. Under the system, organisations or people must tell the authorities about any physical or sexual assaults that take place in residential care settings.

## The reporting system in Ireland

Ireland has a permissive reporting system for reporting cases in which someone knows or believes that an adult at risk is being or has been abused, harmed or neglected. This means that a person can decide themselves whether to tell the authorities.

It has been suggested that a mandatory reporting system should be introduced in Ireland. This would mean that people would have to tell the authorities if they know or think that an adult at risk is being or has been abused, harmed or neglected.

In Ireland, people must already tell the authorities if they know or think that a child is being or has been abused or harmed.

## Arguments for and against mandatory reporting

Research studies have found that there are arguments for and against the introduction of a system of mandatory reporting in Ireland.

The arguments in support of a system of mandatory reporting include:

- (a) The authorities find out about more cases of abuse
- (b) Adults at risk of abuse or harm are safer
- (c) More people have an awareness and understanding of abuse

The arguments against the introduction of a system of mandatory abuse include:

- (a) People should tell the authorities because of a duty of care (where people have a personal duty to do what is best that is not a legal duty) and not because of laws
- (b) There are already systems and laws in place that allow people to tell the authorities so a law that people must tell the authorities is not needed
- (c) Organisations and professionals that work with adults at risk already have rules that must be followed by their staff including social workers and healthcare staff so mandatory reporting is not needed
- (d) Mandatory reporting does not mean that the authorities find out about more cases of abuse
- (e) Mandatory reporting would mean that resources like staff time and money would be used in acting on reports instead of working against abuse and helping people who have been abused
- (f) There is not enough evidence that mandatory reporting makes things better for at risk adults
- (g) Mandatory reporting can encourage negative beliefs that adults at risk are unable to make sensible decisions

### Questions for Chapter 8

We are looking for your views on the questions below.

**Question 8.1** There are four possible systems for deciding whether people must tell the authorities if they know or think that an adult at risk is being or has been abused, harmed or neglected. These four models are:

1. Permissive reporting
2. Universal mandatory reporting
3. Mandatory reporting by specific persons
4. A mixed reporting model

Which of these models do you think we should have in Ireland? Please give a reason for your answer.

**Question 8.2** If Ireland were to keep the system that allows people to decide themselves whether to tell the authorities if they think an adult at risk is being or has been abused, harmed or neglected (permissive reporting model), do you think it should be put into law that it is the model of reporting that will be followed?

If your answer is yes, do you think that legal protections should be introduced like the Protected Disclosures Act 2014 to protect people who tell the authorities about abuse, harm or neglect with good intentions?

These legal protections would protect people from having a legal case taken against them because of something that they said in telling the authorities about abuse or neglect if they told the authorities because they wanted an adult at risk of abuse or harm to be safe.

**Question 8.3** If people only had to tell the authorities about some types of abuse or harm (mixed reporting model), what types of abuse or neglect should people have to tell the authorities about?

For example, should people have to tell the authorities about financial abuse?

## Chapter 9 Independent Advocacy

### What is Chapter 9 about?

Chapter 9 is about advocacy services for at risk adults in Ireland and whether there should be a new law to make sure that all adults at risk of abuse or harm can access an independent advocate.

### What is an advocate?

An advocate is someone who represents another person's views or wishes when a person is unable to speak for himself or herself. An advocate can also ask for information and make complaints on behalf of another person.

### What does independent advocacy mean?

Independent advocacy means receiving support from an advocate linked to an organisation that is independent in how it is organised and funded from the services that provide health and social care, and also independent from the family of the person who is receiving the advocacy services.

### What is the benefit of advocacy?

Advocacy can help to prevent the abuse of adults at risk of abuse or harm. It can do this by helping at risk adults to learn about their rights and to support them to have their concerns, views and wishes heard.

### Advocacy services in Ireland

There are already some advocacy services provided in Ireland. The National Advocacy Service for People with Disabilities provides advocacy services for people with disabilities. The Patient Advocacy Services provides advocacy services to people about experiences they have had in public hospitals.

There is no law in Ireland that says that all at risk adults must have access to advocacy services. Some organisations say that this means that it is unclear about whether someone can access advocacy services and that lots of people have different understandings of what advocacy means because it is not defined in law.

It has been suggested that there should be a new law that all at risk adults must be able to access independent advocacy services.

There is a rule that is part of a law called the *Citizens Information Act 2007* that says that a Personal Advocacy Service must be set up by the Citizens Information Board to organise advocacy services for adults at risk but that rule has never come into effect. This rule could be brought into effect or a new law could be introduced.

### Independent advocacy services in other countries

#### England

In England, there is a law that says that adults at risk must have access to a person, who is independent of the organisation that works to keep them safe, to represent and support them so that they can be involved in making decisions.

The organisation that works to keep them safe must organise this when they think that without an advocate, at risk adults would find it difficult to do one or more of the following activities:

- understanding information that is about them or their lives;
- remembering that information
- using that information to make decisions and form opinions; and
- communicating with people about what they think, want or feel (either by talking, using sign language or in other ways like writing).

### **Scotland**

In Scotland, the law says that organisations that work to keep adults at risk safe have a duty to consider the provision of advocacy services to at risk adults.

### **Wales**

In Wales, there is a code of practice about advocacy that must be followed by law. The code of practice states that organisations that work to keep adults at risk safe must:

- (a) make sure that people have access to advocacy services and support to allow them to have their say and take part when safeguarding laws that affect them are being used
- (b) organise for an independent advocate to help people to take part in certain circumstances.

[Is a new independent advocacy law needed?](#)

Some organisations have said that a new law is needed to make sure that all adults at risk of abuse or harm have access to independent advocacy. These are 4 reasons why organisations think a new law is needed:

1. Many at risk adults do not know whether they can access advocacy services and do not know how to access independent advocacy. A new law would mean they would have to be helped to access advocacy services.
2. Some nursing homes do not make sure that all people living in them have access to independent advocates. There is some evidence that nursing home staff and doctors can sometimes side with the views of the family members of an adult at risk of abuse or harm because they think that the family members know best.
3. Research has also found that when family members represent adults at risk, there can be problems with family members voicing their own views rather than the views of the adult at risk.
4. Independent advocacy could also have an important role to play in bringing a new law called the *Assisted Decision-Making (Capacity) Act 2015* into effect because it could support at risks adults through assessments of whether or not the at risk adults have the capacity or understanding to

make decisions themselves. Independent advocates could also make complaints if they think that the law has been implemented incorrectly or unfairly.

### National advocacy organisation for adult safeguarding

It has been suggested that a national advocacy organisation for adult safeguarding could be set up. This could be a new organisation that could be set up to provide advocacy services for at risk adults, or an advocacy service could be set up within another organisation that already exists.

### Questions for Chapter 9

We are looking for your views on the questions below.

**Question 9.1** Do you think at risk adults should have a legal right to an independent advocate?

**Question 9.2** If the answer to the last question is yes, do you think that:

- (a) it would be enough to give effect to rules about independent advocacy in the Citizens Information Act 2007; or,
- (b) new laws should be brought in that would mean advocacy services would be available?

Please give reasons for your answer.

**Question 9.3** If your answer to Q. 9.2(b) is yes, do that think there is a need for a national advocacy organisation for adult safeguarding?

If yes, do you think that a national advocacy organisation should be set up as part of an existing organisation or do you think it should be set up as a new organisation separate from any other organisation?

A national advocacy body for adult safeguarding would be an organisation that would arrange advocacy services for at risk adults, represent the interests of advocacy and conduct research to contribute to policies about advocacy.

## Chapter 10 Access to Sensitive Information and Information Sharing

### What is Chapter 10 about?

Chapter 10 is about access to sensitive information and sharing information between different organisations and people in adult safeguarding cases.

Sharing information between different organisations and people in adult safeguarding cases can be important:

- (a) to finding out if adults may be at risk and to protecting them from abuse
- (b) to investigating cases of abuse
- (c) to planning to make sure that all care needs can be met properly.

There can be issues when organisations and people must make choices between protecting the privacy of a person and reasons for sharing information such as those listed above.

People and organisations are often unsure about whether the law allows them to share information with another organisation if a person that the information is about has not agreed to the information being shared or does not have the capacity or understanding to agree to the information being shared.

### Existing laws about protecting and sharing information in Ireland

There are some laws that make sure that personal information is protected but also allow for the sharing of information in some circumstances.

These laws might mean that information cannot be shared in some adult safeguarding cases depending on the circumstances of the cases.

Confusion about these laws might mean that information is not always shared in adult safeguarding cases.

### Access to information and information sharing in other countries

In Scotland, there is a legal power to access someone's personal records to collect information for an adult safeguarding investigation.

In England, the law is that if an organisation that works to keep adults at risk of abuse or harm safe needs information to allow or help it to carry out its work, a person must give the information to the organisation.

### Need for new laws or measures to improve access to information and information sharing

Research has found that a law that information must be shared with an organisation that is working to keep an adult at risk safe is needed or that clear guidelines and training about when information can be shared are needed.

A new law or clear guidelines and training may be needed for the following reasons:

- Research has found that bank workers are unsure whether they can share information in cases where they think that financial abuse may be happening. Other workers like social workers, doctors, nurses and others might also be unsure about when they can share information.

- The laws in Ireland say when personal information must be protected but also set out the circumstances in which information can be shared. None of the laws mean that public bodies or other organisations must share information with one another in all adult safeguarding cases.
- Even though there is an agreement between two organisations to share information with each other, information might not be shared or there might be delays in sharing information in some cases because organisations are unsure if the law allows them to share the information in those circumstances.
- A law that organisations must share information with an organisation that is working to keep an adult at risk of abuse or harm safe and could help with making it clear to organisations and people about when the law allows them to share information. This could help to protect at risk adults from abuse, harm or neglect.

## Questions for Chapter 10

We are looking for your views on the questions below.

**Question 10.1** Do you think that the way in which sensitive information is shared between organisations working with adults at risk of abuse or harm is good enough to continue when adult safeguarding laws are brought in?

**Question 10.2** If your answer to 10.1 is no, do you think that a new law should be brought in stating that an organisation must share information in cases where another organisation is trying to keep an adult at risk of abuse or harm safe and needs that information?



## Chapter 11 Multi-agency Collaboration

### What is Chapter 11 about?

Multiagency collaboration means organisations working together to keep adults at risk of abuse or harm safe.

Many different government departments and organisations have some responsibility for working to keep adults at risk of abuse or harm safe.

It would not be possible for any one government department or organisation to do all the adult safeguarding work so organisations must work with one another to keep adults at risk of abuse or harm safe.

### Multiagency collaboration in Ireland

In Ireland, there are already some examples of organisations working together in adult safeguarding. These include:

- (a) Safeguarding Ireland;
- (b) transitions in care; and
- (c) Health Service Executive multiagency structures.

#### **(a) Safeguarding Ireland**

Safeguarding Ireland is an independent body that has members from many organisations involved in adult safeguarding.

It works together with other organisations involved in adult safeguarding because it understands that one organisation cannot solve adult safeguarding issues on its own.

The main aims of Safeguarding Ireland are:

1. To help people to understand the attitudes, behaviour, circumstances and systems that cause people to be at risk of abuse or harm and understand why there might a need for safeguarding services to be made available
2. To encourage organisations and services to identify, prevent and work against abuse properly
3. To give views on laws about protecting the rights of adults who may be at risk.

#### **(b) Transitions in care**

Another example of organisations working together is the agreement between the Health Service Executive and Tusla, the Child Family Agency that agrees how people at risk who have been in the care of the State as a child will access disability services when they turn 18 years old.

In some other countries like England and Scotland, there are laws that mean organisations must arrange how people will move from children's care services to adult safeguarding care services.

### **(c) Health Service Executive Service multiagency safeguarding structures**

The Health Service Executive has set up Safeguarding and Protection Committees in each of the nine parts of the country that it works in.

People from different organisations involved in adult safeguarding in each of these parts of the country sit on the Safeguarding and Protection Committees. These organisations include the Gardaí, banks, social care services and others.

One of the aims of the Safeguarding and Protection Committees is support organisations to work together to keep adults at risk of abuse or harm safe.

However, the Health Service Executive has said that new laws are needed to make sure that organisations work together on adult safeguarding.

#### [Adult safeguarding and multi-agency collaboration in other countries](#)

##### **England and Wales**

In England and Wales, there is a law that the main government organisations working to keep adults at risk of abuse or harm safe must make plans to encourage its partner organisations to work together.

There is also a law that partner organisations must work together.

In Wales, the law says that organisations can work together to:

- (a) provide staff, goods, services, accommodation or other services;
- (b) set up a shared budget and keep it running; and
- (c) share information with each other.

##### **Scotland**

In Scotland, there is a law that says that the government services responsible for working to keep adults at risk of abuse or harm safe must work together to improve the ways in which other organisations work together.

#### [Need for a multiagency collaboration law in Ireland](#)

The following are 2 reasons why a new law that organisations must work together in adult safeguarding could be needed:

1. The Health Service Executive has said that a law that organisations must work together in adult safeguarding is needed because even where there is an agreement in place for organisations to work together, sometimes organisations concentrate on their own work and do not work together.

2. The Commission on the Future of Policing in Ireland has said that other organisations must work with the Gardaí to prevent harm which could include adult safeguarding cases, as sometimes partnerships with other organisations do not work as well as they could.

## Questions for Chapter 11

We are looking for your views on the questions below.

**Question 11.1** Do you think that:

- (a) informal agreements between organisations are enough to make sure that the organisations work together to safeguard adults; or
- (b) a law stating that organisations must work together to safeguard adults should be brought in?

**Question 11.2** If the answer to 11.1(b) is yes, which organisations do you think should have to work together under any new law?

Examples: the HSE, the Gardaí, agencies that care for at risk adults, Tusla, banks, the Department of Employment Affairs and Social Protection.

**Question 11.3** Sometimes children and young people that are in the care of Tusla continue to need care as an adult and move into the care of the HSE.

Do you think that there should be laws about how Tusla and the HSE must work together to ensure that people are fully safeguarded in the move from the care of one organisation to the other?

## Full List of Questions

We have listed all of the questions that we would like your opinions on here. You can answer some or all of the questions.

You can also give us any other information that you think might be important for making new laws about adult safeguarding.

**Question 1.1** Do you think that that any adult safeguarding law should be based on the principles we have suggested above?

**Question 1.2** Do you think there are any other important values and principles that the law should be based on? If yes, what values and principles are they?

**Question 2.1** Do you think the law should clearly explain what groups of adults the law will affect?

**Question 2.2** If yes, how do you think the groups of adults that will be affected by the law should be explained?

**Question 2.3** How do you think the words below should be defined in adult safeguarding law?

What do you understand by these words?

- “adult at risk”
- “adult safeguarding”
- “abuse”
- “harm”
- “neglect”
- “capacity”

**Question 3.1** Do you think that adult safeguarding laws should say that every adult at risk or abuse or harm must have a care plan?

**Question 3.2** If yes, should care plans discuss how abuse or neglect could be prevented?

**Question 3.3** Should organisations or persons that provide safeguarding services have a duty to make sure that adults who are at risk of abuse or neglect are safe from harm?

**Question 3.4** Should it be possible to take a legal case against organisations and individuals who fail in their duties?

**Question 3.5** Should it be a crime if an organisation or a person fails in their duties?

**Question 3.6** Should it be possible to make a complaint to a professional body if a person, for example: a social worker, fails in their duties?

**Question 3.7** Do you think there are any other laws that could be brought in to prevent physical,

sexual, psychological abuse or neglect?

**Question 4.1** Do you think that organisations like the organisations below have enough powers to prevent or find out about financial abuse?

- Central Bank of Ireland
- Department of Employment Affairs and Social Protection

**Question 4.2** If the answer to 4.1 is no, do you think that either (a) or (b) below or both would be needed to prevent or find out about financial abuse?

- (a) A law that a code of practice or protocol for banks, post offices and building societies must be in place
- (b) Legal protections, similar to the Protected Disclosures Act 2014, for banks, building societies and post offices that take action to deal with what they think might be financial abuse with good intentions.

**Question 4.3** Do you think that any other powers are needed to prevent or find out about financial abuse? If yes, please give examples.

**Question 5.1** We have talked about 5 ways for deciding how to make sure that adult safeguarding laws are being followed.

Most of these ways involve setting up an organisation called a national adult safeguarding authority to make sure that the laws are being followed. The 5 ways are:

1. Setting up a national adult safeguarding authority in the Health Service Executive (HSE)
2. Setting up a national adult safeguarding authority as an executive office of the Department of Health
3. Setting up a national adult safeguarding authority as an independent organisation
4. Merging a new national adult safeguarding authority within an existing public organisation such as HIQA or the Mental Health Commission
5. Giving more powers to an existing organisation or organisations

Please tell us what you think about these questions:

- (a) Which of the above would be best to make sure that adult safeguarding laws are being followed?
- (b) Do you think that any of the above would be completely unsuitable for making sure that adult safeguarding laws are being followed?

Please tell us why you have chosen your answers to (a) and (b).

**Question 5.2** Do you think that a national adult safeguarding authority or existing organisations

with powers to make sure that laws are being followed should have any, or all, of the 6 powers below?

- (a) The power to give warnings or notices to organisations, including to get information by asking in writing, and to give “cease and desist” notices that tell an organisation that it must stop doing a certain thing and not do it again;
- (b) The power to enter and search premises and take documents and other things;
- (c) The power to tell persons to come to a meeting to answer questions or show documents;
- (d) The power to tell an organisation that it must pay some money because the organisation has broken a law (a court would make sure that the national safeguarding authority uses this power fairly);
- (e) The power to make sure that organisations agree to follow all the laws and to tell the organisations what they must do to fix any damaged caused if they break the laws; and
- (f) The power to bring a legal action against an organisation or person for certain crimes related to failing in their duties.

**Question 5.3** Do you think that there should be laws about what safeguarding offices there should be in different parts of the country and what responsibilities and powers those offices should have?

**Question 6.1** Do you think that adult safeguarding laws should include a power to enter and inspect properties, including a person’s home, in the following circumstances:

- (a) where a safeguarding worker such as a social care worker or social worker or a police officer has reason to think that an adult may be at risk of abuse, harm or neglect; and
- (b) another person that is not the adult at risk of abuse or harm is stopping the professional from entering or it seems like an adult at risk of abuse or harm in the house does not have the capacity to refuse access.

**Question 6.2** Is the answer to 6.1 is yes, do you think that evidence that there is reason to believe that a person may be at risk of abuse or neglect would be enough to make sure that a power to enter and inspect a property would be used only where it is thought to be really necessary?

**Question 6.3** If the answer to 6.1 is yes, do you think that a power of entry and inspection:

- (a) should be given directly to a professional such as a social care worker, a

social worker, a doctor or a nurse of a Garda, or

(b) should mean that to use the power, a person must apply to a court asking for a search warrant, in all cases or only where they are seeking to enter and inspect someone's home?

**Question 6.4** If a power of entry and inspection were to be given to the Gardaí, do you think that a Garda should be allowed to use force, if needed, to get into the house?

This means that if a Garda had a power of entry and nobody opened the door that they could, for example, break a window or break down a door to get into the house if they had reason to think that someone inside the house might be at risk of abuse or harm.

**Question 7.1** Do you think that it should be the law that organisations must make inquiries in cases where there are reasons to believe that an adult at risk may be being abused or harmed?

This means that an organisation involved in safeguarding adults would have to investigate or ask questions to decide whether to take action to safeguard an adult. These actions could include applying for a court order to remove a person or for a safety order, barring order or protection order.

**Question 7.2** Do you think that the Domestic Violence Act 2018 should be changed so that other organisations like, for example, the Health Service Executive or a new national adult safeguarding authority could apply to court for an order under the Domestic Violence Act 2018?

**Question 7.3** Do you think that a new adult safeguarding law should have its own provisions for barring orders, protection orders and safety orders that could apply to as many types of adult safeguarding cases as possible?

**Question 8.1** There are four possible systems for deciding whether people must tell the authorities if they know or think that an adult at risk is being or has been abused, harmed or neglected. These four models are:

1. Permissive reporting
2. Universal mandatory reporting
3. Mandatory reporting by specific persons
4. A mixed reporting model

Which of these models do you think we should have in Ireland? Please give a reason for your answer.

**Question 8.2** If Ireland were to keep the system that allows people to decide themselves whether to tell the authorities if they think an adult at risk is being or has been abused, harmed or neglected (permissive reporting model), do you think it should be put into law that it is the model of reporting that will be followed?

If your answer is yes, do you think that legal protections should be introduced like the Protected Disclosures Act 2014 to protect people who tell the authorities about abuse, harm or neglect with good intentions?

These legal protections would protect people from having a legal case taken against them because of something that they said in telling the authorities about abuse or neglect if they told the authorities because they wanted an adult at risk of abuse or harm to be safe.

**Question 8.3** If people only had to tell the authorities about some types of abuse or harm (mixed reporting model), what types of abuse or neglect should people have to tell the authorities about? For example, should people have to tell the authorities about financial abuse?

**Question 9.1** Do you think at risk adults should have a legal right to an independent advocate?

**Question 9.2** If the answer to the last question is yes, do you think that:

(a) it would be enough to give effect to rules about independent advocacy in the Citizens Information Act 2007; or,

(b) new laws should be brought in that would mean advocacy services would be available?

Please give reasons for your answer.

**Question 9.3** If your answer to Q. 9.2(b) is yes, do that think there is a need for a national advocacy organisation for adult safeguarding?

If yes, do you think that a national advocacy organisation should be set up as part of an existing organisation or do you think it should be set up as a new organisation separate from any other organisation?

A national advocacy body for adult safeguarding would be an organisation that would arrange advocacy services for at risk adults, represent the interests of advocacy and conduct research to contribute to policies about advocacy.

**Question 10.1** Do you think that the way in which sensitive information is shared between organisations working with adults at risk of abuse or harm is good enough to continue when adult safeguarding laws are brought in?

**Question 10.2** If your answer to 10.1 is no, do you think that a new law should be brought in stating that an organisation must share information in cases where another organisation is trying to keep an adult at risk of abuse or harm safe and needs that information?

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Do you think that there should be laws about how Tusla and the HSE must work together to ensure that people are fully safeguarded in the move from the care of one organisation to the other?