



LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

EMBARGO: MIDNIGHT TUESDAY 28TH JANUARY 2020

**LAW REFORM COMMISSION PUBLISHES ISSUES PAPER ON
A REGULATORY FRAMEWORK FOR ADULT SAFEGUARDING**

Issues Paper considers a range of possible regulatory models for adult safeguarding, such as the body or bodies who should regulate adult safeguarding, which could include existing regulatory bodies

Issues Paper also seeks the public's views on the powers of such a body or bodies, the need for multi-agency coordination and collaboration and the rights-based guiding principles that should apply

WEDNESDAY 29TH JANUARY 2020 The Law Reform Commission has today published its *Issues Paper on A Regulatory Framework for Adult Safeguarding*. The Issues Paper is on a project that forms part of the Commission's *Fifth Programme of Law Reform*.

Regulatory framework needed to address risks of physical, psychological and financial abuse

The Issues Paper notes that there is widespread agreement on the need for a clear statutory framework on adult safeguarding, which would address risks of physical, psychological and financial abuse. The Commission's approach in the Issues Paper is, therefore, to examine what form that regulatory framework might take, building on existing arrangements and parallel policy and legislative developments.

The need for a clear framework is shown by recent studies that illustrate the prevalence of the range of risks that arise. For example:

- In 2016, a public opinion survey commissioned by Safeguarding Ireland found that:
 - 1 in 3 of respondents were not clear about who they could report adult mistreatment to;
 - 2 in 3 of respondents agreed that people suspecting mistreatment were, in any event, unlikely to report their concerns to an appropriate authority; and
 - over 80% said it was unclear to them what financial abuse meant.
- In 2017, there were 10,000 notifications of safeguarding concerns to HSE safeguarding teams, which shows that new HSE guidelines are identifying health-related abuse of at-risk adults, which also illustrates the scale of abuse;
- In 2018, a survey by the National Centre for the Protection of Older People (NCPOP) found that 2 in 3 bank staff surveyed had previously suspected that a customer had experienced some form of financial abuse; and a 2019 survey by Banking and Payment Federation Ireland (BPF1) found that up to 1 in 5 (20%) of adults have experienced financial abuse.



Legislative background to the Issues Paper

The Issues Paper notes that the *Assisted Decision-Making (Capacity) Act 2015* is based firmly on a rights-based approach, consistent with constitutional and international human rights standards. This includes a presumption of decision-making capacity for all persons aged 18 years upwards, which therefore promotes the empowerment of individuals in making decisions about a range of life events, such as financial as well as health care matters. The 2015 Act also provides for appropriate protections where a person's decision-making capacity may be in question about such decisions. When the 2015 Act is brought fully into force, the Director of the Decision Support Service (DSS) established under the 2015 Act will have responsibility for publishing a range of statutory codes of practice concerning such decision-making, including for assisted decision-making.

While the 2015 Act provides an important rights-based reference point, it is still the case that there is no overall regulatory framework for adult safeguarding in Ireland. Regulatory gaps exist, such as in the context of professional home care; and where there is statutory regulation, such as in financial services, there is no clear system of coordination or cooperation between the existing regulatory bodies. This is illustrated by the surveys already mentioned.

Against this background, the *Adult Safeguarding Bill 2017* (a Private Member's Bill) proposed a particular regulatory framework for adult safeguarding, which would be both rights-based and which also proposed additional preventative and protective measures for adults who may be at risk of exploitation or abuse. The Joint Oireachtas Committee on Health and the Minister for Health agreed that the issues in the 2017 Bill required further research, and the Commission agreed that the project was suitable for inclusion in its Fifth Programme of Law Reform, which was approved by Government in March 2019.

Regulatory framework needs to be rights-based, preventative and standards-based

Taking account of the legislative and policy context, the Commission's Issues Paper being published today suggests that the key elements of a regulatory framework for adult safeguarding should:

- be rights-based, ensuring an appropriate balance between empowerment and protection;
- be aimed at preventing, and protecting against, all form of abuse, including physical, psychological and financial abuse; and
- actively promote, supervise and enforce a culture of high standards of behaviour.

The Issues Paper then seeks the views of the public on 11 key issues that arise in this project.

Key issues on which the Commission seeks views

1. Guiding principles. In Issue 1, the Commission discusses the rights-based values and principles that would underpin any regulatory framework concerning adult safeguarding. These include notably the guiding principles enacted in section 8 of the



Assisted Decision-Making (Capacity) Act 2015. These principles provide for an important balance between rights-based empowerment and protection against abuse. They are thus fully consistent with the equality principle in the 2006 UN Convention on the Rights of Persons With Disabilities (UNCRPD), which also requires States to ensure appropriate protection against abuse and exploitation and accompanying enforcement mechanisms.

2. Defining key terms. In Issue 2, the Commission discusses the need to define a number of key terms in the context of any legislative framework for adult safeguarding. This includes the need to provide clear definitions of terms such as “safeguarding” itself, as well as related matters such as “abuse”, “harm” and “vulnerable”. Defining these terms will provide vital clarity concerning the roles and responsibilities of those involved in implementing adult safeguarding legislation, and also those who come within the scope of the regulatory framework.

3. Defining abuse and neglect. In Issue 3, the Commission discusses in more detail the different forms that the concepts of “abuse” and “neglect” can take in the context of adult safeguarding. Abuse in this context can include physical, sexual, discriminatory and psychological abuse. Neglect may include acts of omission such as ignoring medical or physical care needs, routinely depriving someone of essentials such as food and warmth and failing to provide access to appropriate health, social care or education services. It may also include failure to provide clothing, entitlements, hygiene, intellectual stimulation, supervision and safety, or attention.

4. Financial abuse. In Issue 4, the Commission examines the specific issue of financial abuse in adult safeguarding. This includes financial abuse in the banking and financial services context generally (including mis-selling of financial products), and also in the context of social welfare payments. The Commission then discusses current measures in place to prevent financial abuse, and then seeks the views of consultees as to what additional measures may be required in Ireland.

5. Body or bodies to regulate adult safeguarding. In Issue 5, the Commission discusses what body, or bodies, should have responsibility for the regulation of adult safeguarding in the State. The *Adult Safeguarding Bill 2017* proposed establishing a new overarching National Adult Safeguarding Authority with wide-ranging responsibility for adult safeguarding. The Commission discusses this proposal, and also other possible models, including integrating the proposed Authority into existing bodies or conferring additional functions on those existing bodies. Existing bodies with relevant responsibilities include:

- on health-related issues, the Department of Health, the Health Information and Quality Authority, the Health Service Executive and the Mental Health Commission;
- on financial matters, the Central Bank of Ireland; and
- on social welfare matters, the Department of Employment Affairs and Social Protection.



The Commission also discusses whether a core set of regulatory powers, along the lines recommended in its 2018 *Report on Regulatory Powers and Corporate Offences*, should be available in the context of adult safeguarding.

6. Powers of entry and inspection. In Issue 6, the Commission turns to discuss the first of a series of specific regulatory powers of relevance to adult safeguarding, namely, powers of entry and inspection. The Commission discusses the constitutional background to this, notably in connection with powers of entry to private dwellings.

7. Investigative powers, including barring and protection orders. In Issue 7, the Commission discusses the possible scope of safeguarding investigative powers, including the use of barring and protection orders. The Commission discusses current legislative powers in Ireland as well as comparable powers in other jurisdictions.

8. Reporting obligations. In Issue 8, the Commission discusses the question of reporting obligations that might arise where suspected or actual abuse or neglect arises. The Commission discusses current legislative provisions in the State on reporting abuse in the child care context, as well as comparable powers in other jurisdictions. The Commission discusses the arguments for and against a mandatory reporting regime, and then seeks the views of consultees as to whether such a reporting obligation should be a matter of relevant judgment or be mandatory in scope.

9. Advocacy service. In Issue 9, the Commission discusses the question as to whether there should be a statutory independent advocacy service established for adult safeguarding.

10. Access to sensitive data. In Issue 10, the Commission discusses the scope of access to sensitive personal data and data sharing, taking account of the requirements of the 2016 General Data Protection Regulation (GDPR), the *Data Protection Act 2018* and the *Data Sharing and Governance Act 2019*.

11. Multi-agency coordination and collaboration. In Issue 11, the Commission examines the need for multi-agency coordination and collaboration in adult safeguarding. The Commission explores the extent to which this is currently provided for, and then seeks the views of consultees on coordination and collaboration between relevant bodies.

Seeking views by 30th April

The Commission seeks the views of consultees on the issues raised in this Issues Paper by **Thursday 30th April** if possible.

**For further information / interview with Commission President Ms Justice Mary Laffoy or other Commission spokesperson contact:
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Background Notes for Editors

The Law Reform Commission is an independent statutory body whose main role is to keep the law under review and to make proposals for reform. To date, the Commission has published over 200 documents (Consultation Papers, Issues Papers and Reports) containing reform proposals. The majority of these proposals have influenced the drafting and content of reforming legislation. The Issues Paper will be available on the Commission's website, www.lawreform.ie, from 9.30 am on 29th January.