



INCLUSION IRELAND

National Association for People with an Intellectual Disability

**Submission on A Regulatory
Framework for Adult
Safeguarding
To the Law Reform Commission**

May 2020

**This document is written in font 12 Verdana in line with Inclusion
Ireland plain English guidelines**

About Inclusion Ireland

Established in 1961, Inclusion Ireland is a national, rights based advocacy organisation that works to promote the rights of people with an intellectual disability.

The vision of Inclusion Ireland is that of people with an intellectual disability living and participating in the community with equal rights.

Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy and we use the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) to guide our work.

Introduction

As the national organisation for people with intellectual disabilities and their families, Inclusion Ireland has been advocating for safeguarding protections and policies to be put in place for many years. Inclusion Ireland welcomes the opportunity to contribute to this consultation process on a regulatory framework for adult safeguarding.

In this submission we will outline specific concerns and actions related to each of the eleven issues as it relates to the 66,000 people with intellectual disabilities who may be affected by this framework.

Issue 1 – Guiding Principles

Inclusion Ireland welcomes the guiding principles outlined in the issues paper. The inclusion of human rights as a guiding principle is most welcome and should serve to signal a commitment to ensuring the rights of people with intellectual disabilities are respected and promoted in any safeguarding process.

Article 14¹ of the UNCRPD, in particular, is a significant pillar of persons with disabilities' human rights and any safeguarding framework must pay close attention to ensuring that people with disabilities are not deprived of their liberty by fact of having a disability, or residing in an institutional or residential setting.

¹ Article 14, UNCRPD

Issue 2 – Defining key terms for Adult Safeguarding

Inclusion Ireland welcomes the move away from using words such as “vulnerable” to describe people at risk of abuse. As outlined in the paper, such descriptors of people with intellectual disabilities serve to provide an overprotective attitude towards people with intellectual disabilities, and is an outdated approach toward viewing this group in society.

Adults at risk

The definition outlined (on page 24) of “adult at risk” is more appropriate and intends to capture a more functional approach to abuse and safeguarding concerns. It is important that any definitions included in this framework do not classify people according to their status; such as those who have an intellectual disability. Definitions must be functional in their approach and not predicate risk or vulnerability in their application to groups of people.

Within this definition it would be worth acknowledging that risk may change over time. This will allow people who may at one given time be at risk of abuse, to develop capacity to no longer be at risk at some point in the future. Having this flexibility within the definition can give people a sense of autonomy and opportunity to no longer be at risk in the future, and also to develop the capacity to safeguard themselves.

Neglect:

The definition of self-neglect must be consistent with the Assisted Decision Making (Capacity) Act 2015. People with intellectual disabilities are presumed capable of making their own decisions and will have a right to have their own will and preferences respected. While people may inherently disagree with decisions, if a person understands the consequences of decisions related to their health or personal care needs, this should not be termed self-neglect, and this is not the basis of a safeguarding issue. If there are any personal care issues these may be more appropriately addressed through a person-centred care plan.

Issue 3 – Physical, sexual, discriminatory and psychological abuse, neglect and deprivation of liberty

The section defining “sexual abuse” should be cognisant that the Criminal Law (Sexual Offences) Act 2015, part 3, could have a disproportionate effect on the rights of people to have intimate relationships of their choosing therefore it should not be misconstrued in this context.

Inclusion Ireland would argue that the legislation interferes with the rights of two people who are defined as “mentally impaired” to have an intimate relationship. This directly conflicts with Article 25², the right to health, as well as the right to dignity, physical and mental integrity within the UNCRPD which Ireland has ratified this year and has legal obligations under.

Issue 4 – Financial abuse

Through our advocacy work, Inclusion Ireland is aware of many individuals with an intellectual disability who regularly encounter barriers in using financial services.

Many people with intellectual disabilities also report difficulties in engaging with new technologies introduced by banks and other institutions. These new measures have had the effect of adding a new barrier to accessing bank accounts, and the addition of these technologies can inadvertently increase the risk of financial abuse, as people are forced to get additional support from others to use financial services.

For example, when using online banking with some financial institutions, the addition of an extra security features recently introduced, involves receiving a code through text to your smartphone in order to access online banking. This has in fact created an extra barrier for some people who have difficulty using their phones, or who do not have a phone at all.

Another of these barriers is the lack of awareness and at times poor attitudes toward people with intellectual disabilities from staff members of financial institutions.

As mentioned in the issues paper, there is a need to provide training to staff of financial institutions, in particular in relation to the Assisted Decision-Making Act, as well as capacity and consent more generally. It is also important that staff working in services, families of people with intellectual disabilities and the individuals themselves receive training on these topics.

Where a person has a lack of control or involvement with their financial matters; this has the potential to bring about more instances for abuse –

² Article 25, UNCRPD

such a misuse of funds. The lack of involvement of people with intellectual disabilities in their financial affairs is multi-faceted and not solely the responsibility of financial institutions.

Inclusion Ireland supports introducing additional measures to prevent financial abuse. In addition to education and training, a type of banking protocol and financial abuse code of ethics, outlined in the issues paper would be desirable.

Issue 5 – Bodies to regulate safeguarding

It is important that any safeguarding agency has the confidence of the public upon whom it will rely on for many complaints or reports of safeguarding issues.

Inclusion Ireland believes that the most appropriate model is to establish an independent agency to investigate safeguarding complaints or to confer additional powers upon an existing organisation such as the Health Information and Quality Authority (HIQA) or the Mental Health Commission (MHC). There are pros and cons to either option.

On the positive side, each option offers true independence which is important to the public. HIQA and the MHC have a presence throughout Ireland at present and already regulate in the health and social care arena.

The HSE or an agency in a government department does not offer independence in the public's eyes. This perceived lack of independence was previously highlighted by the office of the Ombudsman when it investigated the HSE complaint system. The Ombudsman's investigation found that people were not inclined to raise an issue for fear of repercussions on their care or that of a family member still receiving care.³

Inclusion Ireland would have concerns if the proposed new agency were located within Tusla. To date the experience of Tusla has been the investigation of child safeguarding issues and not those of adults. In addition, Inclusion Ireland has previously expressed concern about Tusla's supports to children with intellectual disabilities and parents with intellectual disabilities.

In addition to the six powers detailed in the issues paper, any new agency must have the power to:

³ Learning to get better, Office of the Ombudsman, 2015.

- conduct investigations into reports of abuse or safeguarding concerns about individuals or groups of people. Refer to an Garda or other agencies as appropriate. This includes investigations of allegations of abuse or safeguarding concerns in private homes and other non-state funded settings.
- instigate proceedings/take action to remove an individual from a situation where there are significant safeguarding concerns and/or immediate welfare concerns.

If the new agency is to be an entirely new entity, it will require a presence within each region of the country. This is essential to ensure a uniform service to safeguarding across the country.

Issue 6 – Powers of entry and inspection

It is essential that the legislation allows for some organ of the state to enter a private home where there is a belief that abuse and/or neglect is occurring and entry is being denied. There is a history of cases in Ireland where various organs of the state have failed to adequately protect where there were obvious signs of abuse such as the Roscommon abuse case⁴ and the ongoing Grace case⁵.

There must also be clear protections for individuals against entry to a private dwelling. There must be evidence of abuse or neglect, or grounds for reasonable suspicion.

It must also be remembered that in line with peoples free will, they may be engaged in 'unwise behaviour'. The new agency needs to be mindful of the conflict that can at times arise between will and preference and best interests.

Social workers or providers of social services (or other) must make credible evidence available to An Garda Síochána to enter a dwelling where there it is alleged abuse or neglect occurring. An Garda Síochána should then use all legal means available to them to enter a home if there is credible evidence of abuse or neglect, or reasonable suspicion of same.

In cases where an individual believes there has been an abuse of these significant powers, they must have redress to an independent redress process. Such a mechanism must be set up on the principle it will protect individuals against abuse of powers of entry.

⁴ <https://www.rte.ie/news/2009/0122/113023-roscommon/>

⁵ <https://www.irishtimes.com/news/social-affairs/who-is-grace-and-what-happened-to-her-1.2992650>

Issue 7 – Investigative powers, including barring and protection orders

As noted, Inclusion Ireland’s preference would be for an independent agency, or to have adult safeguarding as a function of another regulator such as HIQA or MHC.

Whichever agency is responsible for adult safeguarding, it must be mindful of the Assisted Decision-Making Act 2015 (yet to be fully commenced). Capacity must be assumed to be present unless proven otherwise. In this regard, people should be supplied with information and supported to apply for court orders as appropriate and in line with their will and preferences. In certain circumstances, a legally appointed decision-making representative can take on this task.

It should not be the remit of the new safeguarding agency to undertake obtaining court orders, as this may be undertaken by any decision-making supports that are in place. If a person has no decision-making support mechanism, or their supporter is the safeguarding issue, it is important that they have an independent advocate appointed to support them through any complex legal proceedings they may wish to or need to undertake.

Issue 8 – Reporting obligations

Inclusion Ireland believes that any reporting mechanism should be in line with the Assisted Decision-Making Act 2015. A person with a disability should in the first instance be supported to make a report of abuse or neglect themselves, or in certain circumstances this is done by their decision-making representative. Capacity should be assumed to be present unless otherwise proven.

Independent advocacy is of critical importance in assisting people with intellectual disabilities to report safeguarding concerns about themselves.

Any reporting mechanism that is put in place must seek to support people to report themselves while ensuring that a report is made in cases where capacity to report may be an issue. It must not disempower the individual.

Issue 9 – Independent advocacy

Inclusion Ireland believes that a statutory provision for independent advocacy must be introduced. Advocacy is a key component of

safeguarding. “Advocacy ensures that services remain person-centred, that all involved consider the person’s rights and wishes and that their decisions are respected and acted upon where possible”.

The role of independent advocates in supporting persons with disabilities is of fundamental importance and Inclusion Ireland strongly believes that independent advocacy can play a key role in facilitating persons to understand and to exercise choice over their decision-making rights. This is particularly the case for persons living in residential care settings.

The current National Advocacy Service (NAS) which provides a representative advocacy service to persons with disabilities is limited in reach and not resourced to adequately support all persons with disabilities. Advocates possess no statutory powers at present and there are long waiting lists reported. The provision of statutory powers would involve commencing and updating the Citizens Information Act, 2007.

The assertion that there may be occasions when advocacy is necessary is not a commitment by the National Safeguarding Office or the HSE to arrange independent advocacy to individuals who may be at risk or harm should they need it.

The Assisted Decision-Making Act could usefully be amended, through this legislation to provide for the right to an independent advocate, not only where there is a deprivation of liberty but where there is a decision making representative appointed.

As mentioned in the issues paper, it is important that any independent advocacy provides the opportunity for people to develop the capacity – where possible- to self-advocate for themselves. This is in keeping with a rights-based approach to independent advocacy, as well as a functional approach to capacity.

A National Safeguarding Policy needs to give a commitment to providing independent, effective and timely advocacy to those at risk of abuse or harm should they need and/or want it. This could be provided through existing advocacy structures or through the establishment of a National Advocacy Authority.

The benefits of establishing a separate entity than one operating within already established structures includes protecting the independence of the provision of advocacy, and that such an authority would be independent of services and agencies that typically fund advocacy services presently.

Regardless of the operation of the advocacy, under this policy the HSE should make provision to ensure independent advocacy is available when needed to ensure individuals who may be going through or impacted by the safeguarding process to have their voice heard.

Issue 10 – Access to sensitive data and information sharing

Similar to issue 8 on mandatory reporting, tensions can arise where a person – who has the capacity to make a decision - does not want an issue being reported. In these instances, there is a need for advocacy supports to be provided to the person, as it is important that the will and preference of the individual is respected, while also balancing the duty of care in this respect. Any sharing of information must where possible come with the consent of the individual. This includes individuals who may need support to understand the consequences of allowing information to be shared among agencies.

Inclusion Ireland has identified a concern relating to sharing information with statutory agencies on a “need to know basis”. It has been reported that Tusla have been reluctant to share information with An Garda Síochána in the past. Recent reports detail an Garda Síochána having to go to court to get full information on possible crimes⁶ .

There is a need for clear roles set out in legislation, clear memorandums of understanding between agencies and proper induction and training for all staff to ensure they know and understand the legislation they work under.

Issue 11 – Multi-agency collaboration and co-ordination

Over the past number of years, a lot of work has been done in respect to safeguarding adults in Ireland in general. At this point, there needs to be interagency work and collaboration between all the bodies and organisations that adult safeguarding applies to so that work is consistent, effective and inclusive of adults that may be at risk of abuse or harm.

Interagency work hinges on the willingness of all public agencies to coordinate and share information in order to ensure the safety of every person at risk of abuse. The role of the Confidential Recipient, who is independent of the HSE and whose remit includes investigating abuse and harm of people with disabilities must be clarified to ensure all the reporting procedures and thresholds are satisfied in line with this new policy. More interagency work and collaboration will avoid future doubling

⁶ Garda Síochána Inspectorate Press Release, Publication of Garda Inspectorate Report

up of consultation work and will support a more cohesive and effective approach to safeguarding for everyone.

Conclusion

Inclusion Ireland welcomes many aspects of the issues paper. The emphasis on having human rights principles enshrined in the framework is most welcome, as is the promotion of the Assisted Decision Making (Capacity) Act and its principles.

It is important that people with intellectual disabilities have access to supports when it comes to safeguarding, and that the will and preference of the person involved is respected at all times, throughout any safeguarding process.

A central theme of any safeguarding framework is that of advocacy for the individual. People with intellectual disabilities must be given access to independent advocacy and any advocacy authority must have independence from services and structures which typically provide service provision.

Inclusion Ireland receives support from the Scheme to Support National Organisations (SSNO) for this work. The SSNO is government funding administered by Pobal.



Rialtas na hÉireann
Government of Ireland

**For further information, contact;
Robert Murtagh, Advocacy (Policy) Coordinator, Inclusion Ireland.**

01 855 98 91 / robert@inclusionireland.ie
