



**INCLUSION IRELAND**

National Association for People with an Intellectual Disability

**Submission on the Draft HSE Adult  
Safeguarding Policy 2018**

**August 2018**

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

## **Introduction**

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 as citizens, to live the life of their choice to their fullest potential. Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy.

Everybody deserves to be safe and everybody has the right to expect protection by the State.

There are circumstances where citizens are subjected to abuse, not because they are inherently vulnerable, but rather that the systems that are designed to protect are not familiar, accessible to the person or equipped to deal with their specific needs.

It is essential that any conversation about adult safeguarding examines the disabling environment and what other steps can be taken to equip people to protect themselves from risk.

Safeguarding issues are common. HSE figures<sup>1</sup> for 2017 show that there were 10,118 concerns received by the Safeguarding and Protection Teams, an increase of 28% on the previous year. 70% of those cases came from a service setting and 30% from a community setting.

The high numbers involved show that a robust, open and easy to use policy relating to reporting of safeguarding concerns is urgently needed and Inclusion Ireland welcomes the opportunity to comment on the review of the Safeguarding Policy.

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<sup>1</sup> Safeguarding Data Report 2016 – HSE National Safeguarding Office



## **Draft Adult Safeguarding Policy September 2018**

### **Easy to Read Summary**

The HSE has made a draft Adult Safeguarding Policy 2018.

Safeguarding is about keeping people safe from abuse and harm.

Sometimes people with disabilities are more at risk of abuse or harm than other people.

The HSE is making this policy for adults that use HSE services so that people can be safe in those services.

Inclusion Ireland has looked at the draft policy and there are some changes we would like to see happen before the policy is put into action

The policy document needs to say clearly who the policy is for. Is it for staff, is it for people who use the service or is it for everyone together?

The policy needs to have Plain English and Easy to read versions so that everyone can understand what the policy is about. If people cannot understand the policy, they will not know how to use it when they need to.



Deprivation of liberty is about taking somebody's freedom away.



The policy talks about "Inappropriate deprivation of liberty". We think it should talk about "unlawful deprivation of liberty", because the only time freedom should be taken away is if the person breaks the law.



There are 5 stages in this policy. We need to know the most amount of time it should take someone to go through the stages if they have a safeguarding concern.



The HSE must make sure that independent advocacy is available when someone needs it so that individual's voices are listened to throughout the safeguarding process.



Different state agencies and organisations must share information with each other to prevent and address any abuse or harm.



The role of the Confidential Recipient in this safeguarding process needs to be clear. At the moment we are not sure how the confidential recipient and this policy will work together.

## **Scope of the Policy: Who is it for?**

It is clear from the entire draft document that the policy is aimed primarily at staff in services or those that provide any support to adults who may be at risk of abuse and harm.

“This policy applies to all HSE and HSE funded services providers working with adults at risk of abuse. This policy also applies in situations where formal health or social care services are not in place but where concerns have been raised by, for example, the person themselves, family members, neighbours and members of the public in relation to the safeguarding of an individual and a response is required”<sup>2</sup>.

Despite having values of person centredness, empowerment and collaboration and having an explanation of each value in the lens of “what it means for me” people at risk of abuse or harm or those who may need to use the policy for their own protection are largely left out of the policy in a number of ways. The above definition does not include adults who may be at risk of abuse and harm themselves. It should be made clear in the scope of the policy that this policy is for everyone, including those who may need to use the policy as demonstrated in the first person narrative of the explanation of the values. This is a good way to describe the values but there needs to be more consistency and clarity that this policy includes and is for everyone. This will make the policy stronger, more inclusive and more user-friendly. In order to do this, the policy needs to include accessible information and user-friendly guides to support everyone to understand and be in a position to use the policy effectively.

## **Accessible Information**

In order for this policy to be useful for everyone, the people that may be at risk of abuse or harm need to understand the policy. If a safeguarding concern is raised about them then they have a right to the information to understand the process of what will happen, why it will happen, how it will happen, when it will happen and where it will happen. The possible outcomes of safeguarding concerns are also important. To this end, accessible information detailing the steps of safeguarding concerns is vital. These should be in the form of Plain English guides, Easy to Read guides and charts and video presentations so that the information is accessible to as many people as possible.

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<sup>2</sup> Draft HSE Adult Safeguarding Policy 2018, National Safeguarding Office, pg 11.

For staff who may need to use the policy, the flowchart needs to be simpler and easier to follow so that staff know exactly what they must do and when they must do it. A user-friendly guide would be beneficial in this regard also, so that a policy document of over 80 pages is not the document that people are referring to regularly to ensure steps are followed.

Good accessible and easy to understand information will ensure that the policy is used to its optimum and that it is a policy that is relevant to everyone.

## **Language and Terminology**

Inclusion Ireland supports the HSE's use of terminology, moving away from paternalistic language of "vulnerable" towards disability neutral terms such as "adults at risk of abuse" in line with the values proposed by the draft policy and the International Convention on the Rights of Persons with Disabilities (UNCRPD).

Inclusion Ireland welcomes the position the HSE was taken on self-neglect and its definition. This view is 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, 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.

The use of term "organisational abuse" rather than "institutional" abuse is also endorsed by Inclusion Ireland as it is widely known that abuse can happen outside of an institutional setting. An individualised service is essential to maintain a person's dignity and reduce the potential for organisational abuse.

The appendix 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 25, 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.

## Deprivation of liberty

Considering that the Department of Health has drafted a Heads of Bill for part 13 of the *Assisted Decision-Making (Capacity) (ADM) Act 2015* on deprivation of liberty safeguards, it is surprising to note that there is no reference to this in the draft policy under "Additional Considerations". Inclusion Ireland would welcome at minimum the recognition in this draft policy that deprivation of liberty safeguarding legislation is pending with serious implications for the HSE adult safeguarding policy as a consequence. There will be a need for coherency within the HSE adult safeguarding policy and the deprivation of liberty safeguards that eventually will be legislated for by the Department of Health.

Article 14, of the United Nations Convention on the Rights of Persons with Disabilities, ratified by the government earlier this year, stipulates the right to liberty and security of person conferring the right of all people with disabilities to have the right to exercise their freedom. Article 14 is read in conjunction with the right to be free from discrimination, article 12, in exercising this right, therefore a person with a disability cannot be deprived of their liberty due to their "impairment" (actual or perceived). These rights must equally inform the adult safeguarding policy. A policy on the safeguarding of adults must include a robust policy on safeguarding against deprivation of liberty.

In the draft policy appendix 1, physical abuse is defined to include "inappropriate deprivation of liberty". Inclusion Ireland would agree that deprivation of liberty is a form of physical abuse however Inclusion Ireland is highly concerned with the use of the word "inappropriate" including limiting deprivation of liberty to "e.g. being locked in/forced confinement in an area"<sup>3</sup>. Inclusion Ireland would recommend that "inappropriate" be replaced with "unlawful" to ensure there are no misinterpretations of the words by professionals who will be relying on this policy. The word "inappropriate" qualifies the use of deprivation of liberty without a definition of what is inappropriate and what is not. There is not a single mention of "inappropriate deprivation of liberty" in the draft heads of bill on deprivation of liberty. The policy on adult safeguarding must be consistent with the impending deprivation of liberty safeguards legislation, considering the seriousness of the issues at the centre of this policy.

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<sup>3</sup> *Ibid*, pg 44.

The draft policy has one further mention of deprivation of liberty as a behaviour under the example of “Emotional/Psychological Abuse (including Bullying and Harassment)” There is no expansion on the definition of deprivation of liberty in this section and clarity on this terminology would be useful for any professionals using this policy to identify the behaviour traits they need to be cognisant of. Again consistency of terminology between public bodies is crucial to ensuring the policy works to protect adults at risk of abuse.

### **Stages in the safeguarding process**

Inclusion Ireland welcomes that all staff and volunteers have a responsibility to report a safeguarding concern, including extending reporting on issues raised outside the context of HSE funded services, “appl[ying] in situations where formal health or social care services are not in place”<sup>4</sup>. This is recognition that safeguarding occurs outside formal health and social care settings, reflecting the reality on the ground today.

From a professional and service user perspective there is no explicitly clear timeframe that must be met to complete the process from stage one to stage five. From the perspective of an adult at risk of a safeguarding concern this is worrying. A person that engages in the safeguarding process is not provided with a clear time expectation as to when the safeguarding matter will be addressed, this is necessary to ensure people feel safe in coming forward regarding all forms of abuse. Professionals and service users need confidence in the safeguarding procedures. There are timelines around making assessments, plans and reviews but the person at the centre of the safeguarding concern should know that their concern will be addressed by within a specific timeframe.

The safeguarding process from a visual aspect i.e. the flowchart looks very cumbersome and convoluted, presenting a challenge to professionals and service users to clearly understand the stages of the process and what is expected at each stage.

Explicit timeframes as to when steps of the process are to be completed are not consistently expressed throughout the document, “immediate”, “appropriate timeframe” are overused and not clearly defined. Some of the language in outlining the purpose of the safeguarding initial assessment is not robust enough, “*consider* [emphasis added] if the

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<sup>4</sup> *Ibid*, pg 11.



information indicates an adult at risk of abuse” rather than a more affirmative action.<sup>5</sup>

Inclusion Ireland believes that this review of the safeguarding policy is a great opportunity for the HSE to instil a culture of awareness and reporting and preventing abuse within all services. The safeguarding process therefore must be clear, efficient and easy to navigate for all people involved in initiating concerns and at the centre of these concerns.

## **Advocacy**

Inclusion Ireland welcomes that advocacy is a value in the policy as detailed below. 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”.

*“There may be occasions when I require the support of an advocate, particularly if I am unable to seek or understand information, if I struggle to express my views or make choices and if I require assistance to access services and supports”<sup>6</sup>.*

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. 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. 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.

## **Interagency Working**

Over the past number of years, a lot of work has been done in respect to safeguarding adults in Ireland in general. There have been consultations and standards developed by HIQA, the Mental Health Commission and the

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<sup>5</sup> *Ibid*, pg 19.

<sup>6</sup> *Ibid*, pg 13.

HSE. There has been work done on the Safeguarding Bill as championed by Senator Colette Kelleher and work by the National Safeguarding Committee. 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.

Inclusion Ireland has identified a concern relating to sharing information with statutory agencies on a “need to know basis”, in the section on the 11 fundamental principles underlying this policy, point 8. We are aware that Tusla have been reluctant to share information with an Garda in the past. Recent reports detail an Garda Síochána having to go to court to get full information on possible crimes<sup>7</sup>. 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 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 up of consultation work and will support a more cohesive and effective approach to safeguarding for everyone.

## **Conclusion**

Inclusion Ireland supports the process that the HSE has undertaken to review the adult safeguarding policy. The safeguarding structures in Ireland in the recent past have not been robust enough to ensure adults are protected from abuse and harm while taking account of their will and preference, therefore this opportunity to re-engage is very welcome.

The change in terminology to “adults at risk of abuse” aligns with the principles of the UNCRC, the duties of which the state is legally bound by. This shift expresses the intent and commitment by the HSE that Inclusion Ireland believe is driving this draft policy.

Greater clarity on the process is necessary for ease of use by professionals and adults at risk of abuse to ensure a common expectation and confidence in the efficacy and purpose of the policy. Supports to

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<sup>7</sup> Garda Síochána Inspectorate Press Release, Publication of Garda Inspectorate Report “Responding to Child Sexual Abuse – A follow up Review”, February 2018 & Garda Inspectorate Report, “Responding to Child Sexual Abuse – A follow up Review”, December 2017.

engage with this policy such as advocacy must have a firm commitment behind them to ensure a person's rights are respected.

Due to the various actors involved in their own respective work on safeguarding of adults within different arenas, interagency work should not be duplicated but rather reinforced via collaborative working relationship where the person is at the centre of the process.

## **Recommendations**

- This policy document needs to be more explicit that both professionals and people in and outside of services are its intended audience.
- A range of accessible materials and formats must be produced to ensure all people at risk of abuse can understand and engage with the safeguarding policy if/when necessary.
- "Inappropriate deprivation of liberty" should be replaced with "unlawful deprivation of liberty"
- A maximum timeframe to address a safeguarding concern from stage one to five should be explicitly outlined in the policy.
- The HSE must ensure that independent advocacy is available when needed to ensure that individual's voices are listened to throughout the safeguarding process.
- Statutory agencies must commit to sharing information to prevent and address any abuse or harm.
- The role of the Confidential Recipient in the draft policy must be clarified in how he/she engages with the new process to ensure the safeguarding procedures are not comprised and a person is not left a risk of abuse or harm.