



7th Annual ICJA Conference

A Regulatory Framework for Adult Safeguarding

Patricia T Rickard-Clarke

4 June 2021



Safeguarding Ireland



Safeguarding Ireland

- Established December 2015 as part of HSE Safeguarding agenda
- Independent of HSE – company limited by guarantee with charitable status
- 9 Board Members
 - National Safeguarding Advisory Committee – over 30 Organisations
 - State Payments Group
 - Public Awareness – ad hoc
- **Main object** – to promote safeguarding of adults who may be vulnerable, protect them from all forms of abuse by persons, organisations and institutions and develop a national plan for promoting their welfare. This will be achieved by promoting inter-sectoral collaboration, developing public and professional awareness and education, and undertaking research to inform policy, practice and legislation.



Vulnerabilities



Suspects and their Vulnerabilities (1)

- Much abuse is perpetrated by people for own gain without any underlying predispositions.
- However, sometimes ‘perpetrator’ of abuse can also be vulnerable.
- Perpetrators commonly have one or more of following characteristics –
 - Mental illness
 - Drug/alcohol dependence
 - Inadequate coping skills
 - Past history of abuse
 - Low self-esteem
 - Autism – research aggressive behaviour (US studies)
- People with such dispositions can themselves be more vulnerable to different types of abuse
- There is need for a comprehensive health and social care service that identifies and supports people in relation to their needs and risks



Suspects and their Vulnerabilities (2)

- Informal carers – lack of coping skills, poor support from family or statutory agencies and financial dependence on the person in receipt of care
- In formal care settings, abuse can arise due to
 - Poor leadership and management
 - Inadequate staffing
 - Inadequate training
 - Staff burnout
 - Poor recruitment practices.
 - Suggests the need for strong regulation and a broad focus on the needs of those in 'care' to include 'soft' issues such as staff recruitment and training.
- Societal tolerance or lack of recognition of some types of abuse. Examples, racism/ageism/homophobia.
 - Very important that laws encourage a tolerant and inclusive society



Suspects and their Vulnerabilities (3)

- In some conditions, the ‘perpetrator’ of abuse may not realise that their actions are abusive –
 - People with dementia, acquired brain injury, stroke, brain tumour or other neurological disorders can display uncharacteristic behaviours.
 - Loss of recognition – family may not recognise family, friends or surroundings – may become aggressive or abusive as a result of not knowing surroundings or people caring for them
 - Loss of reality, such as paranoia, delusions and hallucinations can lead to abusive behaviour
 - Depending on the parts of the brain affected by disease or injury, this can affect behaviours
 - Loss of understanding can lead to abusive behaviour
 - Physical illness, particularly in older people, can lead to abusive behaviours



Offenders also Victims of abuse

- Ageing sexual offenders in Ireland
 - Family estrangement and high care needs
 - Post release requirements – long term care
 - Have same rights as all
 - Right to be treated with respect
 - Right to receive appropriate care
 - Right to be safeguarded from abuse.
- Suggests that we need a comprehensive social care service that identifies and supports people in relation to their needs and risks

Sex Offenders (Amendment) Bill 2018 – General Scheme

- Department of Justice states the new law would include a raft of measures to monitor sex offenders on their release.
- Other side of the coin – care needs/supports assessment



Research Findings



Awareness Research Findings 2017-2021

- Irish public believes abuse of vulnerable adults is widespread
- 50% say they have experienced the abuse of vulnerable adults either through being abused themselves or seeing somebody else close to them.
- Tougher laws would encourage more people to 'call out' abuse of vulnerable adults
- Public seeks dedicated 24 hour helpline for adult abuse
- 91% supported stronger laws to safeguard people from abuse or neglect
- 85% of public support establishing a national authority for safeguarding
- Almost one in four do not know who to report adult abuse to



Legislation/ Regulatory Framework

The background features a dark green field with several horizontal, wavy bands of varying shades of green and a prominent red band. The bands flow from the right side towards the left, creating a sense of movement and depth.

Legislation

- No Social Care legislation
- No Adult Safeguarding legislation
 - Adult Safeguarding Bill 2017
- Assisted Decision-Making Capacity Act 2015 – commencement 2022
 - Has clear safeguarding provisions
 - UNCRPD – ratified March 2018 but principles not yet embedded in practice
- Data Protection Act 2018 and Data Sharing and Governance Act 2019
 - Lacks safeguarding lens
 - GDPR + LED provide for sharing in certain circumstances and in an appropriate manner but not yet given full effect to in the Irish legislation
- Generally – A lack of a Human Rights-based approach in legislation
 - *Guidance on a Human Rights-based Approach in Health and Social Care Services*
– Safeguarding Ireland and HIQA



Criminal Law Legislation

– without a safeguarding lens

- Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012
 - Definitions
 - Offences
- Domestic Violence Act 2018
 - Definitions
 - Offence of Coercive control – limited application
- Sexual Offenders (Amendment) Bill (to update Sexual Offenders Act 2001)
 - Purpose
 - Definitions
 - Care arrangements and lack of integration with other state services



Social Care Legislation

- No Social Care legislation
 - In developing our legislation, it is necessary to impose a statutory obligation on state bodies and organisations to prevent or reduce the need for care and support and not to be focussed on the management of crises/acute responses
 - Purpose – well being and the prevention of abuse, preventing needs for care and support, promoting integration of care and support with health services, providing information and advice, promoting diversity and quality in provision of services
- Critical issues – assessment of needs and assessment of risks
 - Examples
 - Younger people falling into a black hole
 - Homeless people/people with addiction
 - People with a mental illness
 - Older people
 - Persons who are suspects or who have served a term in prison



Adult Safeguarding Legislation

- Adult Safeguarding Bill 2017 (Restoration Order March 2021)
 - Introduced Private Members Bill Seanad February 2017
 - Received all party support
- Law Reform Commission – *A Regulatory Framework for Adult Safeguarding*
 - Some key issues include –
 - What body should have responsibility for regulation of Adult Safeguarding
 - Power of Entry and Inspection
 - Safeguarding Investigative Powers
 - Reporting
 - Independent Advocacy
 - Access to Sensitive Data and Information Sharing
 - Multi-Agency Collaboration
- Department of Health – developing policy with a view to legislation
 - Legislative programme – Health (Adult Safeguarding Bill) To underpin a planned national health sector policy on safeguarding vulnerable or at-risk adults in the context of their interactions with the health sector
- Safeguarding Ireland – Research Project *The Regulatory and Policy Framework for Safeguarding Vulnerable Adults in Ireland: Challenges and Best Practice Considerations'*



Scope of proposed legislation

- Set out principles which
 - Promotes individual well-being
 - Recognises every adult's right to respect and dignity, honesty, humanity and compassion in every aspect of their life (NI Policy)
 - Protection from abuse and neglect
- Duty to assess needs
- Duty to meet needs for care and support (English Care Act 2014)
- Access to Independent Advocacy
- Interagency Collaboration



Required Legal Framework

- National Safeguarding Authority to provide overarching governance to
 - ✓ National Safeguarding Service (independent of service provider)
 - ✓ Mental Health Commission
 - ✓ Decision Support Service
 - ✓ National Council for Advocacy

The National Safeguarding Authority (independent of all services with independent chair) will have multi-agency/multi-disciplinary representation with will include the Policing Authority, legal and financial regulatory bodies, HIQA, HSE, Local Authorities, NGO's and others



Conclusion

- Safeguarding is for everyone and is everyone's business
- Effect must be given to human rights obligations set out in Constitution and in national and international legal instruments
- There are large gaps in legislation, practices, systems and organisations that are very costly on individual lives and do not respect the dignity of each person as an individual with his or her own rights.
- There is an urgent need for the enactment of Adult Safeguarding legislation and this legislation is crucial in providing protection to adults at risk. (Oireachtas Joint Committee on Health 2017)



Q and A



THANK YOU.

