



An Roinn Sláinte
Department of Health

Discussion Paper: **Primary Definitions** National Policy on Adult Safeguarding for the Health Sector

DRAFT SUBJECT TO A DELIBERATIVE PROCESS

Contents

1. Term for affected people	4
Ireland	4
International Context	6
Definition for the purposes of this policy: Adult at risk	8
Discussion Questions	9
2. Safeguarding	11
Ireland	11
International Context	12
Definition for the purposes of this policy: Safeguarding	12
Discussion Questions	13
3. Term for negative effect on a person caused by the actions (or lack of action) of another party	14
Ireland	14
International Context	15
Definition for the purposes of this policy: Harm	16
Discussion Questions	17
4. Abuse	18
Ireland	18
International Context	19
Definition for the purposes of this policy: Abuse	20
Discussion Questions	21
5. Neglect	22
Ireland	22
International Context	23
Definition for the purposes of this policy: Neglect	24
Discussion Questions	25
6. Exploitation	26
Ireland	26
International Context	27
Definition for the purposes of this policy: Exploitation	27
Discussion Questions	28
7. The Health Sector	29
Discussion Questions	29
8. Capacity	30

Draft: Primary Definitions for a National Policy on Adult Safeguarding for the Health Sector

Term	Definition
Adult at risk	<p>A person who is aged 18 or over who needs help to protect themselves or their interests at a particular point in time, whether due to personal characteristics or circumstances, and is at risk of experiencing harm [/abuse] by another party.</p> <p><i>A distinction is made between an adult unable to safeguard themselves or their own interests at a particular point in time, and one who is deemed to have the skill, means, capacity and / or opportunity to safeguard themselves in a similar situation, but chooses not to.</i></p>
Safeguarding	Putting measures in place to reduce the risk of harm [/abuse], promote and protect people's human rights and their health and wellbeing, and empowering people to protect themselves.
Harm	The impact of abuse, exploitation or neglect on the person. Harm arises from any action, whether by a deliberate act or an act of omission, that may cause impairment of physical, intellectual, emotional, or mental health and wellbeing.
Abuse	A single or repeated act, or omission (including within a relationship where there is an expectation of trust), which violates a person's civil or human rights and / or causes harm or distress to that person. For the purposes of this policy, abuse is understood to mean abuse by a third party.
Neglect	<p>Withholding or failure, by a responsible party, to provide appropriate and adequate care and / or support which is required to another person which is likely to result in an impairment of the person's health or wellbeing. It may be through a lack of knowledge or awareness, or through a failure to take reasonable action given the information and facts available to them at the time.</p> <p><i>[For the avoidance of doubt, this is not intended to include, in the normal course of events, issues of access to services such as waiting times etc.]</i></p>
Exploitation	Deliberate manipulation of, or abuse of power and control over, another person: to take unfair advantage of another person or situation.
Health Sector	<p>For the purposes of this policy the health sector is defined as:</p> <ul style="list-style-type: none"> • all health and personal social services provided for in the Health Acts (including all services provided on the HSE's behalf under section 38, or grant-aided by the HSE under section 39, of the Health Act 2004), and all analogous services provided by voluntary bodies and private service providers, • all professionals, practices or premises regulated, licenced or accredited under the Health Acts and all analogous voluntary and private professionals, practices or premises, and • all bodies and agencies established under the Health Acts.
Capacity	For the purposes of this policy, capacity has the same definition as defined in Section 2(1) as construed in section 3 of the Assisted Decision Making (Capacity) Act 2015 (see section 8).

1. Term for affected people

Ireland

In Ireland there are already a number of existing terms and definitions, within the health sector and beyond, for the affected adults concerned. Until recently, these have been mainly framed around concepts of vulnerability relating to a person's personal characteristics, using the term "*vulnerable person*" or "*vulnerable adult*" which was in line with international definitions and literature at that time. Since then, both in Ireland and internationally, there has been a move away from the older definition of "vulnerable adults" towards the term "adult at risk".

The National Vetting Bureau (Children and Vulnerable Persons) Act 2012¹ defines a "vulnerable person" as

"a person, other than a child, who—

- (a) is suffering from a disorder of the mind, whether as a result of mental illness or dementia, (b) has an intellectual disability,*
- (c) is suffering from a physical impairment, whether as a result of injury, illness or age,*
or
- (d) has a physical disability,*

which is of such a nature or degree—

- (i) as to restrict the capacity of the person to guard himself or herself against harm by another person, or*
- (ii) that results in the person requiring assistance with the activities of daily living including dressing, eating, walking, washing and bathing."*

Whilst the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012² defines a "*vulnerable person*" as

"a person

(a) who—

- (i) is suffering from a disorder of the mind, whether as a result of mental illness or dementia, or*
- (ii) has an intellectual disability, which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person,*
or

(b) who is suffering from an enduring physical impairment or injury

which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person or to report such exploitation or abuse to the Garda Síochána or both"

¹ <http://www.irishstatutebook.ie/eli/2012/act/47/enacted/en/html>

² <http://www.irishstatutebook.ie/eli/2012/act/24/enacted/en/html>

Both of these legal definitions frame vulnerability as being related to the person's personal characteristics, which defines the person's status as a Vulnerable Adult.

Whilst still defined in terms of vulnerability the HSE's 2014 Safeguarding Vulnerable Persons At Risk of Abuse National Policy and Procedures³ (which currently applies to HSE social care division) shows a growing recognition, reflected in the literature at the time, that susceptibility to harm by others may be contextual and influenced by circumstances alongside personal characteristics. It defines the affected cohort of adults as "*Vulnerable Persons*" described as

"an adult who may be restricted in capacity to guard himself /herself against harm or exploitation or to report such harm or exploitation. Restriction of capacity may arise as a result of physical or intellectual impairment. Vulnerability to abuse is influenced by both context and individual circumstances."

There is a growing consensus, both in Ireland and the international context that the use of the term "*vulnerable*" in relation to describing those adults affected is insensitive to the people concerned and may stigmatise and imply that a person's personal characteristics cause them to be at risk of being harmed, rather than those who cause the harm. As previously mentioned, this change in thinking has been reflected in a move towards the use of the term "*adult at risk*" in recent safeguarding initiatives under development in Ireland. For example, the HSE's (unpublished) draft revised safeguarding policy defines those affected as "*adults at risk of abuse*" described as

"an adult aged 18 years or over, who is at risk of experiencing abuse, neglect, or exploitation by a third party and lacks mental or physical capacity to protect themselves from harm at this time in their lives".

This shows stronger recognition of both the situational nature of being "at risk", as well as demonstrating that it is the actions of a third party rather than an inherent "vulnerability" due to the individual's characteristics and circumstances which cause the person to be at risk of abuse. The Joint HIQA and Mental Health Commission (MHC) National Adult Safeguarding Standards (*final version unpublished*) use the broader term "*adult at risk*" defined as

"a person who is aged 18 years or older who needs help to protect themselves from harm at a particular time. A distinction should be made between an adult who is unable to safeguard him or herself, and one who is deemed to have the skill, means or opportunity to keep him or herself safe, but chooses not to do so."

This definition recognises that a person who has the ability to keep themselves safe may choose to make informed decisions to the contrary which cause them to become unsafe.

³ <https://www.hse.ie/eng/services/publications/corporate/personsatriskofabuse.pdf>

International Context

This move from the terms “*vulnerable person*” or “*vulnerable adult*” to “*adults / adult at risk*” has been similarly witnessed in the international context: in England the Care Act (2014)⁴, which is supported by statutory guidance⁵, uses the term “*adult at risk*” which is defined as

“a person who has needs for care and support (whether or not, the authority is meeting any of those needs), and is experiencing, or is at risk of, abuse or neglect and, as a result of those needs, is unable to protect himself or herself”

All three criteria must be met to be considered an “*adult at risk*”. Unlike any current Irish definitions, this defines a requirement that the person concerned has specific needs for care and support to fit the definition, a theme which recurs in some of the other international definitions. For example, the Welsh Social Services and Well-being (Wales) Act 2014⁶ defines an “*adult at risk*” as being:

“An adult who is experiencing or is at risk of abuse or neglect, has needs for care and support (whether or not the council (local authority) is meeting any of those needs) and, as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it. This may include people with physical, learning or sensory disabilities. Factors that increase vulnerability include age, mental health problems, chronic illness, challenging behaviour, lack of mental capacity, social and emotional problems, poverty, homelessness or substance misuse.”

Again, identifying a requirement for the person to have needs for care and support, to be classified as an adult at risk, whilst recognizing that these may not be currently met. It should be noted that, like Ireland, the term “social care” is not defined in law in England, Wales and Scotland, but it appears to be understood⁷ more broadly than in Ireland and support may include social care support provided through local councils as an integrated service (these services are currently provided via various different sectors and agencies in Ireland). Unlike many of the Irish examples, both of these definitions explicitly include the possibility that the adult may currently be experiencing harm, rather than being at risk of harm.

Scotland also uses “*adults at risk*”, defined in the Adult Support and Protection (Scotland) Act (2007)⁸ as

“..individuals aged 16 years or over who are unable to safeguard themselves, their property, rights or other interests and are at risk of harm because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to

⁴ <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

⁵ <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

⁶ <https://www.legislation.gov.uk/anaw/2014/4/contents>

⁷ See for reference the National Health Service and Community Care Act 1990

<http://www.legislation.gov.uk/ukpga/1990/19/contents>

⁸ <https://www.legislation.gov.uk/asp/2007/10/contents>

being harmed than others who are not so affected. An adult is at risk of harm.....if another person's conduct is causing (or is likely to cause) the adults to be harmed or the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm"

Of note in this definition is its explicit connecting of personal characteristics to vulnerability, as well as what could be described as a protectionist attitude towards making unwise choices for adults at risk. This may reflect the Act's earlier publication (2007).

Northern Ireland's Adult Safeguarding: Prevention and Protection in Partnership policy (2015)⁹ defines two categories of adults:

An "adult at risk of harm" defined as:

"A person aged 18 or over, whose exposure to harm through abuse, exploitation or neglect may be increased by their personal characteristics and (or) life circumstances."¹⁰

And an "Adult in need of protection" which is defined as:

"a person aged 18 or over, whose exposure to harm through abuse, exploitation or neglect may be increased by their personal characteristics and (or) life circumstances; and who is unable to protect their own wellbeing, property, assets, rights or other interests; and

where the action or inaction of another person or persons is causing, or is likely to cause, him or her to be harmed."

The Northern Irish policy may be seen as a "holistic approach" which recognises that exposure to harm may be increased due to both personal characteristics and life circumstances, as well as taking a broad view of life circumstances which encapsulates socio-economic factors. A line is clearly drawn between those who may be at risk and those who are in need of protection. An "adult at risk of harm" as defined by this policy seems initially to apply to a large cohort of people (particularly given the wide breadth of life circumstances, as defined) whose likelihood of exposure to harm may be increased by personal characteristics of life circumstances. However, in actuality the definition of personal characteristics is similar to the Scottish Act, and definitions of personal circumstance similar to the Welsh Act, although not requiring a need for care or support significantly widens scope.

⁹ <https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/adult-safeguarding-policy.pdf>

¹⁰ Personal characteristics may include, but are not limited to, age, disability, special educational needs, illness, mental or physical frailty or impairment of, or disturbance in, the functioning of the mind or brain. Life circumstances may include, but are not limited to, isolation, socio-economic factors and environmental living conditions

In British Columbia, Canada, the Public Guardian and Trustee Act (1996)¹¹ and the Adult Guardianship Act (1996)¹² use the term “*Adult who has been abused or neglected*” defined as

“adults who are abused or neglected and who are unable to seek support and assistance because of: physical restraint, a physical handicap that limits their ability to seek help; or an illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.”

The use of the term “handicap” to refer to a disability, the definition of “*adults who are abused or neglected*” as well as the Act’s defining of the relevant cohort by their personal characteristics may reflect this Act’s much earlier publication compared to previously mentioned pieces of legislation, although the act’s recognition of physical restraint is of note as well.

Definition for the purposes of this policy: Adult at risk

A person who is aged 18 or over who needs help to protect themselves or their interests at a particular point in time, whether due to personal characteristics¹³ or circumstances¹⁴, and is at risk of experiencing harm [/abuse] by another party.

A distinction is made between an adult unable to safeguard themselves or their own interests at a particular point in time, and one who is deemed to have the skill, means, capacity and / or opportunity to safeguard themselves in a similar situation, but chooses not to.

Factors considered in choosing this definition

It is important that the definition recognises that determining whether a person is an “*adult at risk*” in a given situation must be informed by assessing the situation as well as the abilities and capacity of the adults concerned at that particular point in time. This also implies that a person should not be categorised as an “*adult at risk*” in perpetuity, nor should it imply that the person’s characteristics or circumstances are the cause of the harm being inflicted on them. Although certain factors increase the likelihood of an adult being at risk of harm, such as personal characteristics or circumstances, it should be recognised that it is those who cause the harm that are a contributory factor to the risk, as opposed to the person at risk, and it is

¹¹ http://www.bclaws.ca/civix/document/id/complete/statreg/96383_01

¹² <https://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-6/latest/rsbc-1996-c-6.html>

¹³ personal characteristics can include, but are not limited to, age, disability, special educational needs, illness, mental or physical frailty or impairment of, or disturbance in, the functioning of the mind or brain.

¹⁴ Circumstances may include, but are not limited to, isolation, socio-economic factors and environmental living conditions.

possible for every adult to be at risk of harm from others at various points in their lives. It is also important to recognise that a person, if deemed to have capacity, has the right to make unwise decisions, if the harm caused is not criminal in nature.

The term “*adult at risk*” is preferable to “*vulnerable adult*” as the term vulnerable may be stigmatising, implying that a person’s needs or personal characteristics are to blame for harm. This definition of “*Adult at Risk*” is broadly in line with the HSE’s draft revised operational safeguarding policy, as well as HIQA and the MHC’s draft joint national safeguarding standards, ensuring integration between these initiatives and the over-arching national policy for the health sector. “*Adult at Risk*” is also consistent with many relevant international policies and legislation.

In analysing the terms used for affected individuals, both nationally and internationally, it is worth noting that although much of the policy and legislation compared has been developed in the context of an adult safeguarding policy or legislation covering wider society (except in Wales and England which require the person concerned to have care needs whether they are being met or not). This policy will be one which aims to safeguard people in terms of their interactions with the health sector. However, while recognising that this policy will put in place safeguarding requirements (for e.g. reporting procedures, requirement to have a safeguarding statement, lines of local safeguarding responsibility, requirement for safeguarding training) in health services only, taking a broad view of the health and social care sector, it may be deemed that adults who are not in a health sector setting and are experiencing harm (i.e. those who come into contact with HSE safeguarding services as “community concerns”), although not covered by the same policies in place within health services, are in need of support and advice from specialist adult safeguarding social workers, which is a service currently provided solely by the HSE. However, recognising that successful safeguarding is not solely the responsibility of the Health Sector, and that a person should not be primarily defined by their characteristics or circumstances, it was deemed important that no requirement be in place for the person to have care or support needs to meet the definition.

Discussion Questions

- Do you agree that this policy should not define whether or not a person is in need of care or support to qualify whether they are “at risk” or not? And does the exclusion of such a requirement confuse the boundary between the health sector and other sectors?
- Should the definition of “adult at risk” (and “safeguarding”) focus on
 - “abuse” (i.e. the action or omission causing harm), or
 - “harm” (i.e. the result or impact of the abusive action / omission), or
 - both “abuse” and “harm”?

DRAFT SUBJECT TO A DELIBERATIVE PROCESS

2. Safeguarding

Ireland

Both internationally and in Ireland, the term Safeguarding has, as often as not, been defined through what it does rather than being explicitly defined. Although formal health sector Adult Safeguarding has been present in Ireland for at least the past five years (twelve if taking into account the HSE's elder abuse service, which is the predecessor of its current safeguarding service), there are relatively few definitions of Safeguarding, and these can be found in more recent developments. Although the HSE's 2014 *Safeguarding Vulnerable Persons At Risk of Abuse National Policy and Procedures* was the first major comprehensive national operational policy on adult safeguarding in Ireland, it does not provide a definition of what "safeguarding" actually means, perhaps presupposing some safeguarding knowledge. The HSE's draft revised adult safeguarding policy defines safeguarding as

"Putting measures in place to promote people's human rights and their health and wellbeing, and empowering people to protect themselves."

Whilst HIQA and the MHC's draft standards state

"Safeguarding means putting measures in place to promote people's human rights, health and wellbeing, and empowering people to protect themselves. Safeguarding is fundamental to high-quality health and social care."

The definitions are the same, but with an additional qualifying statement on the importance of safeguarding in HIQA and the MHC's draft standards. Both of these recognise the importance of self-safeguarding and empowerment as well as the importance of a person's human and civil rights.

The HSE's draft policy further elaborates that

"Safeguarding focuses on prevention of abuse, identification of abuse and identification and implementation of measures that reduce/eliminate the risk of recurrence of abuse."

Thus, it can be inferred that it is through these measures that people's civil and human rights, health and wellbeing are promoted, empowering people to protect themselves.

While it is important to acknowledge that the adult safeguarding context is different from the child safeguarding context, given the lack of current legislation for adult safeguarding in Ireland, some useful legal definitions can be found in the Children First Act (2015)¹⁵, which describes a child safeguarding statement as follows:

¹⁵ <http://www.irishstatutebook.ie/eli/2015/act/36/enacted/en/html>

“a written statement that specifies the service being provided and the principles and procedures to be observed in order to ensure, as far as is practicable, that a child availing of the services is safe from harm”

Although there is no actual definition of “safeguarding” in the Act, from this one can attempt to infer that child safeguarding means “*putting principles and procedures in place to ensure that a child is safe from harm*”. This definition is sufficiently wide enough to include measures such as protection, prevention and intervention.

International Context

In the international context, safeguarding has often been defined through what it does rather than defined explicitly. This has often meant that safeguarding has been more definitively defined through statutory guidance rather than the Acts which define safeguarding functions and structures.

In England, Statutory Guidance to the Care Act 2014 describes safeguarding as:

“... protecting an adult’s right to live in safety, free from abuse and neglect. It is about people and organisations working together to prevent and stop both the risks and experience of abuse or neglect, while at the same time making sure that the adult’s wellbeing is promoted including, where appropriate, having regard to their views, wishes feelings and beliefs in deciding on any action. This must recognise that adults sometimes have complex interpersonal relationships and may be ambivalent, unclear or unrealistic about their personal circumstances.”

This description defines safeguarding as protection and describes an entire approach towards safeguarding within the UK, including maximum involvement of the adult concerned, a partnership approach, and promotion of the adult’s wellbeing.

Definition for the purposes of this policy: Safeguarding

Putting measures in place to reduce the risk of harm [/abuse], promote and protect people’s human rights and their health and wellbeing, and empowering people to protect themselves.

Factors considered in choosing this definition

As Safeguarding consists of putting in place a number of different measures and procedures to reduce harm, both passive and active, including protective, preventative, empowerment, promotion or awareness and interventionist, the term “measures” is considered sufficiently wide to encapsulate all activities without needing to provide an exhaustive list.

An explicit recognition of the human and civil rights of adults at risk in defining safeguarding is appropriate, given that much safeguarding literature contends that all safeguarding policy and legislation is by nature human-rights based, in its aim to protect and promote the rights of adults at risk and ensure that the person is not treated less favourably than someone who is not deemed an adult at risk at a specific point in time.

Discussion Questions

- What specific human and civil rights are particularly relevant in safeguarding?
- Should the definition of “safeguarding” (and “adult at risk”) focus on
 - “abuse” (i.e. the action or omission causing harm), or
 - “harm” (i.e. the result or impact of the abusive action / omission), or
 - both “abuse” and “harm”?

3. Term for negative effect on a person caused by the actions (or lack of action) of another party

Ireland

In Ireland and the international context, it can prove difficult, in describing the negative effect on an adult at risk caused by a third party, to unpick definitions of harm, abuse, exploitation and neglect. Amongst these terms, there are no generally agreed definitions in safeguarding literature, legislation, and policy. This is a recurring theme when comparing safeguarding legislation, standards and policy, and whilst some developments prefer to use the same term for both the actions which cause the negative effects and the negative effect itself, this is not always the case. In the Irish context, there has generally been a preference for the use of the term “*harm*” as a catch-all term to describe the impact on adults at risk of various forms of abuse, neglect and exploitation. And whilst there has not been a move, as yet, to describe abuse as or neglect as “harmful behavior”, adults are in effect, described as being at risk of harm.

The HSE’s 2014 Policy describes a vulnerable adult as being

“restricted in capacity to guard himself / herself against harm or exploitation or to report such harm or exploitation”

Thus the adult is at risk of “harm or exploitation”

The HSE’s revised policy states

“an Adult at Risk of Abuse is an adult aged 18 years or over, who is: at risk of experiencing abuse, neglect, or exploitation by a third party, and lacks mental or physical capacity to protect themselves from harm at this time in their lives”

Although the term itself describes the danger or ill-effect that the adult is at risk of as abuse, the meaning of the term “Adult at risk of abuse” is later defined as one who is at risk of “abuse, neglect or exploitation” by another party which is, in effect, the same as the HSE’s definition of harm in the same document, defined as:

“Harm: The impact of abuse, exploitation or neglect on the person. Harm arises from any action, whether by a deliberate act or omission, which may cause impairment of physical, intellectual, emotional, or mental health and well-being”

Thus, whilst the HSE’s definition of the person is an “*adult at risk of abuse*” the meaning which is then given for that term is one who is “at risk of neglect and exploitation”. As harm is defined as “*the impact of abuse, exploitation or neglect on a person*”, the HSE’s policy, *inter alia*,

describes the adult being at risk of harm, as harm encapsulates the effect on the person of all three: abuse, neglect and exploitation.

HIQA and the MHC's draft national adult safeguarding standards describe:

"a person who is aged 18 years or older who needs help to protect themselves from harm at a particular time"

There is no deviation of note between the HSE's definition of harm for the purposes of its draft revised policy and HIQA and the MHC's definition.

As can be seen, this definition of harm is sufficiently wide enough to include that abuse, neglect and exploitation are the causes of harm. This wider definition may be of particular importance given the passive nature that neglect may have, which may not sit well with "abuse" which implies a more active role. "Exploitation" could be seen as a sub-category of abuse, when using this definition, but perhaps recognises that "abuse" can assume a relationship of trust, or expectation of trust, which may not apply to "exploitation".

The Non-Fatal Offences Against the Person Act (1997)¹⁶, has two statutory definitions of harm:

"'harm' means harm to body or mind and includes pain and unconsciousness..."

'serious harm' means injury which creates a substantial risk of death or which causes serious disfigurement or substantial loss or impairment of the mobility of the body as a whole or of the function of any particular bodily member or organ"

Importantly, this legislation recognises that harm can effect both the body and mind, but does not recognise harm's mental effects as "serious harm".

International Context

Both England and Wales have a preference for using the term "abuse" rather than harm, and to defining various categories of abuse often accompanied with the term "neglect" (which is generally seen as a sub-category of abuse). In the 2014 Care Act in England and the Social Services and Well-being (Wales) Act 2014, an adult at risk is described as "experiencing, or is at risk of, abuse or neglect". The Welsh act defines both abuse and neglect:

"Abuse' means physical, sexual, psychological, emotional or financial abuse taking place in any setting, whether in a private dwelling, an institution or any other place.

'neglect' means a failure to meet a person's basic physical, emotional, social or psychological needs, which is likely to result in an impairment of the person's wellbeing."

whilst the English Care Act does not define "abuse" or "neglect", and instead relies on Statutory Guidance to define these terms:

¹⁶ <http://www.irishstatutebook.ie/eli/1997/act/26/enacted/en/html>

“abuse is defined in relation to physical abuse, domestic violence, sexual abuse, psychological abuse, financial or material abuse, modern slavery, discriminatory abuse, organisational abuse, neglect and acts of omission and self-neglect.”

Of note is the inclusion of discriminatory abuse, organisational abuse and self-neglect in the statutory guidance to the English Act, as well as the inclusion of financial abuse in both this and the Welsh Act. In the English Statutory Guidance to the Act, the preference for using “abuse” as a “catch-all” term for all categories of ill-treatment can be seen. In both the English and Welsh Act, there appears to be a focus on the actions (or failure to act) which cause ill-effect on a person rather than the resultant damage or harm which it causes.

The Adult Support and Protection (Scotland) Act 2007 describes an adult at risk as being

“at risk of harm because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than others who are not so affected.”

The definition of harm in the Scottish context is very comprehensive, but particularly refers to the conduct or actions of another person, and refers to both harmful conduct as well as the harm caused by that conduct, including exploitation:

“‘harm’ includes all harmful conduct and, in particular, includes conduct which causes physical harm, conduct which causes psychological harm (for example by causing fear, alarm or distress), unlawful conduct which appropriates or adversely affects property, rights or interests (for example theft, fraud, embezzlement or extortion), conduct which causes self-harm.”

Definition for the purposes of this policy:

Harm

The impact of abuse, exploitation or neglect on the person. Harm arises from any action, whether by a deliberate act or an act of omission, that may cause impairment of physical, intellectual, emotional, or mental health and wellbeing

Factors considered in choosing this definition:

As has been seen, there is significant overlap between the terms “harm” and abuse” in Irish and international contexts. For the purposes of this policy “harm” will refer to the impact of the actions (or inaction) of another party on a person caused by neglect, abuse and/or exploitation. This is in line with other future safeguarding developments in the health sector within Ireland and helps to separate the causes of harm from the effects.

Whilst some jurisdictions have a strong preference to describe all ill-effects as different categories of abuse (e.g. England and Wales) others either prefer to focus on the effects of abuse in the form of “harm”. Conversely the Scottish Act uses the catch-all term “*harmful*

behaviour” to describe all ill-behaviour towards an adult at risk, in the same manner that “*abuse*” is used in England and Wales. Safeguarding literature generally recognises that the use of the term “harm” over “abuse” is less stigmatising as the term “*abuse*” implies a reliance on another person and has been associated with a loss of power. Furthermore, it is contended that “*abuse*” and “*vulnerability*” are intertwined concepts, and that it is difficult to use one without the other.

It is not proposed that this health sector policy include provisions for abuse or harm (such as physical harm, financial harm etc.) outside of the health sector, as this is outside of the Department’s area of expertise, remit and ability to resource. However, with community concerns raised outside health settings, HSE safeguarding staff will continue to support, refer and advise in relation to financial abuse, as currently provided for in HSE policy, with this national operational policy providing for inter-agency collaboration, co-operation, referral and data sharing arrangements with the sectors with the requisite expertise and powers in relation to investigating and dealing with financial harm. This is in line with this policy’s partnership approach which will aim to foster co-operation between agencies, individuals, communities and sectors.

Harm caused by self-neglect, although a serious issue, is not included within the scope of this policy. Self-neglect is its own discrete (but related) issue with an associated area of knowledge and expertise as large as that of adult safeguarding.

Discussion Questions

- How should financial harm within the health sector be covered in the definitions and/or policy?

4. Abuse

Ireland

As mentioned in the preceding section on harm, concepts of abuse, neglect, harm and omission are often difficult to separate. There are many forms of abuse, and while some jurisdictions use the term abuse to mean the various specific forms of abuse by a third party where there is a reasonable expectation of trust e.g. sexual abuse, physical abuse, psychological abuse, emotional abuse, financial abuse etc, in other jurisdiction this extends to abuse becoming a catch-all including instances of neglect or exploitation under the heading “*abuse*”. In Ireland, there has been a shift away from “*abuse*” as a catch-all for all ill-treatment or omission, towards abuse as a cause of harm to a person: the HSE’s 2014 safeguarding policy defines abuse:

“any act, or failure to act, which results in a breach of a vulnerable person’s human rights, civil liberties, physical and mental integrity, dignity or general wellbeing, whether intended or through negligence, including sexual relationships or financial transactions to which the person does not or cannot validly consent, or which are deliberately exploitative. Abuse may take a variety of forms”

This catch-all definition includes, neglect, exploitation, abuse, as well as omission to act and focuses on the act or failure to act rather than the effect. In the draft HSE 2019 Policy abuse is defined as

“A single or repeated act, or omission, which violates a person’s human rights or causes harm or distress to a person. For the purposes of this policy, abuse is understood to mean abuse by a third party”

Whilst HIQA and the MHC’s Draft Standards definite it as

“A single or repeated act, or omission, which violates a person’s human rights or causes harm or distress to a person. The main areas of abuse which cause people harm are physical abuse, emotional abuse, sexual abuse, neglect of the person and financial abuse. It is important to note that this is not an exhaustive list.”

International Context

As previously discussed, in both England and Wales there is a preference for the term “abuse” or “abuse and neglect” over the term harm, including providing lists of behavior which constitutes abuse. In Statutory Guidance¹⁷ to the UK Care Act,

“abuse is defined in relation to physical abuse, domestic violence, sexual abuse, psychological abuse, financial or material abuse, modern slavery, discriminatory abuse, organisational abuse, neglect and acts of omission and self-neglect.”

It can be seen that this very wide definition also includes acts of neglect, and omission, exploitation as well as, self-neglect. The Welsh Act states:

“‘abuse’ means physical, sexual, psychological, emotional or financial abuse taking place in any setting, whether in a private dwelling, an institution or any other place.”

This provides clarity on the applicability of the term abuse within any setting (although, as previously noted, in England and Wales a person is required to have care and support needs, whether they are being met or not, to meet the criteria of being an “adult at risk”).

The Northern Irish Policy states that:

“Abuse is ‘a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to another individual or violates their human or civil rights.’”

There is a focus here on the human and civil rights of the person concerned, and particularly qualifies abuse as occurring within relationships where there is an expectation of trust.

This expectation of trust or duty of care is reflected in South Australia’s Office for the Ageing (Adult Safeguarding) Amendment Act 2018¹⁸

“physical, sexual, emotional or psychological abuse of the vulnerable adult; and financial abuse or exploitation of the vulnerable adult; and neglect of the vulnerable adult; and abuse, exploitation or neglect consisting of a person’s omission to act in circumstances where the person owes a duty of care to the vulnerable adult; and the abuse or exploitation of a position of trust or authority existing between the vulnerable adult and another person; and a denial, without reasonable excuse, of the basic rights of the vulnerable adult; and any other act or omission”

¹⁷ <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

¹⁸

[https://www.legislation.sa.gov.au/LZ/V/A/2018/OFFICE%20FOR%20THE%20AGEING%20\(ADULT%20SAFEGUARDING\)%20AMENDMENT%20ACT%202018_34/2018.34.UN.PDF](https://www.legislation.sa.gov.au/LZ/V/A/2018/OFFICE%20FOR%20THE%20AGEING%20(ADULT%20SAFEGUARDING)%20AMENDMENT%20ACT%202018_34/2018.34.UN.PDF)

Definition for the purposes of this policy: Abuse

A single or repeated act, or omission (including within a relationship where there is an expectation of trust), which violates a person's civil or human rights and / or causes harm or distress to that person. For the purposes of this policy, abuse is understood to mean abuse by a third party.

Factors considered in choosing this definition

As previously mentioned, there are many instances of the terms "*abuse*", "*harm*", "*exploitation*" and "*neglect*" overlapping when contrasting existing Irish and international definitions. As discussed in the section on harm, whilst some jurisdictions use the term "harm" to describe the negative effect on a person caused by the actions and/or inactions of another person, other Jurisdictions (e.g. Scotland) use harm as a catch-all term which also describes "*harmful conduct*" towards a person.

The same is true of "*abuse*", as previously stated, some jurisdictions use the term "*abuse*" as a catch-all term to encompass all forms of ill-treatment or omissions, often using long lists of the various forms which abuse takes. Further complicating the issue is that in both the HSE's revised policy and HIQA and the MHC's standards, abuse is possible through "*action or omission*", whilst also having a separate definition for "*neglect*". However, whereas neglect specifically references the withholding of care and support to an adult at risk, the passive form of abuse references an omission in acting, which is wider than withholding care. It is also possible that instances of neglect and abuse are not mutually exclusive, and an action or omission may be described both as an act of abuse and of neglect. For the purposes of this policy "*abuse*" will refer to harmful actions or omission to act by a third party (including within a relationship of reasonably expected trust or authority) which violates another person's civil or human rights, and/or which causes distress.

As discussed in the preceding section on harm, safeguarding literature generally recognises that the use of the term "*harm*" over "*abuse*" is less stigmatising as the term "*abuse*" implies a reliance on another person and has been associated with a loss of power. Furthermore, it is contended that "*abuse*" and "*vulnerability*" are intertwined concepts, and that it is difficult to use one without the other.

As previously discussed in relation to harm, although the Department accepts that various forms of abuse are very serious issues e.g., discriminatory abuse, domestic violence, organisational abuse, financial abuse, modern slavery, etc. , it is not proposed that this policy or the resultant legislation will put measures in place outside of the health sector to deal with or report on these issues, although HSE safeguarding staff will continue to support, advise on and refer to, or request assistance from, other sectors in relation to such issues outside of the health sector, where requested (i.e. "community concerns").

Discussion Questions

- Do the various forms that abuse takes need to be listed, or is it sufficient to describe what abuse consists of?
- Should exploitation and neglect be defined separately, or as forms of abuse?
- Is the term “abuse” offensive?
- Is it appropriate to define “abuse” as something which happens within a relationship of trust or authority?

DRAFT SUBJECT TO A DELIBERATIVE PROCESS

5. Neglect

Ireland

In the Irish context, existing (and draft) definitions of neglect recognise that neglect can occur both through purposeful decisions such as willfully withholding or ignoring another person's essential needs, or via a failure to take action by omission. Overall, there is a recognition that Neglect is the withholding or failure, by a responsible party, to provide what another person requires, which can occur through lack of information, knowledge or awareness as well as a failure to act given the information which is available to them.

In the Irish and international context, neglect and acts of omission are often both conceptualised together under the term “*neglect*” but when defined separately they are generally mentioned together. Again, there is much overlap in both the Irish and international context between the terms “*neglect and/or acts of omission*” and “*abuse*”, with some countries having extended categories of specific types of abuse which include several categories of neglect. The HSE's 2014 Safeguarding Policy describes neglect and acts of omission as the following:

“Neglect and acts of omission include ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life such as medication, adequate nutrition and heating.”

As can be seen, naturally, apart from “*educational services*” (which may apply to those with Intellectual Disability under the age of 18 in HSE care) the focus is on services which are provided within HSE settings and includes ignoring care needs, failure to provide access to appropriate services and withholding of essential necessities.

The HSE's Draft Revised Operational Policy defines neglect as

“Withholding or failure to provide appropriate and adequate care and support which is required to another person. It may be through a lack of knowledge or awareness, or through a failure to take reasonable action given the information and facts available to them at the time.”

This further recognises that neglect or omission can occur through a lack of information or awareness on the part of the person who is responsible, as well as failure to act appropriately.

Whilst acknowledging that the Adult Safeguarding context is different, the Children First Act defines the neglect of a child:

“*neglect*” means, in relation to a child, to deprive the child of adequate food, warmth, clothing, hygiene, supervision, safety or medical care.

Similar to the HSE's definitions, there is a focus on the provision of adequate basic care that is required of someone.

International Context

In England Statutory Guidance (2017) to the Care Act (2014) describes neglect as the following:

Neglect and acts of omission include(e)

- *ignoring medical, emotional or physical care needs*
- *failure to provide access to appropriate health, care and support or educational services*
- *the withholding of the necessities of life, such as medication, adequate nutrition and heating*

In the Welsh Act this is defined as:

‘a failure to meet a person’s basic physical, emotional, social or psychological needs, which is likely to result in an impairment of the person’s wellbeing.’

Both of these include in neglect or acts of omission ignoring or failure to meet a person's emotional and social needs, although these needs are not specifically defined in either the Welsh Act or statutory guidance. However, worked examples in the English statutory guidance provide some examples of, e.g. needs for a person to socialise with peers, participate in activities they enjoy etc.

The Northern Irish Policy states:

Neglect occurs when a person deliberately withholds, or fails to provide, appropriate and adequate care and support which is required by another adult. It may be through a lack of knowledge or awareness, or through a failure to take reasonable action given the information and facts available to them at the time. It may include physical neglect to the extent that health or well-being is impaired, administering too much or too little medication, failure to provide access to appropriate health or social care, withholding the necessities of life, such as adequate nutrition, heating or clothing, or failure to intervene in situations that are dangerous to the person concerned or to others, particularly when the person lacks the capacity to assess risk.

This definition is similar to that used within the HSE's draft revised policy, whilst listing causes of neglect more explicitly. It includes over-medication or chemical restraint, as well as under-medication as a form of neglect.

In the Scottish Act, “*harmful conduct*” is clarified, adding that “*“conduct” includes neglect and other failures to act*”

In British Columbia, Canada

“Neglect means any failure to provide necessary care, assistance, guidance or attention to an adult that causes the adult, or is reasonably likely to cause, within a short time; serious physical, mental or emotional harm, or substantial damage to or loss of assets. Neglect may or may not be deliberate or it can be unintentionally caused by lack of experience, information, knowledge or support. Neglect includes self-neglect and means any failure of an adult to take care of himself or herself that causes, or is reasonably likely to cause, within a short time; serious physical or mental harm, or substantial damage to or loss of assets.”

Definition for the purposes of this policy: Neglect

Withholding or failure, by a responsible party, to provide appropriate and adequate care and/or support which is required to another person which is likely to result in an impairment of the person’s health or wellbeing. It may be through a lack of knowledge or awareness, or through a failure to take reasonable action given the information and facts available to them at the time.

[For the avoidance of doubt, this is not intended to include, in the normal course of events, issues of access to services such as waiting times etc.]

Factors considered in choosing this definition

Although the resulting effect on the adult at risk is the same, it is important to recognise that neglect can occur both as a result of a failure to act given the knowledge which is available at the time as well as omission due to lack of knowledge or awareness. Further to this, it should be recognised that any failure is on the part of a party who is deemed to have responsibility for providing for the adult’s needs or has a wider duty of care. The term “*wellbeing*” is deemed to sufficiently capture the various forms of wellbeing that a person may require, including their physical mental and social wellbeing.

As stated in the preceding section on harm, self-neglect, although a serious issue, is not included within the scope of this policy. Self-neglect is its own discrete (but related) issue with an associated area of knowledge and expertise as large as that of adult safeguarding.

Whilst it is of the utmost importance that a person is not neglected and deprived of access to the appropriate care and support that is required by them, it is important that this not be confused with policy on eligibility for health and personal social services. The provision of health services is most often determined by greatest need, but also has regard to a wide range of other needs, demands and service issues. Health and Personal Social Services are provided within the context of existing policy and legislation, having regard to the finite financial resources available, which must be carefully managed. It must therefore be clear that where

a particular level of health or personal social services cannot be provided (e.g. where waiting times are in operation) this is not regarded as an act of omission or neglect by a health service in the context of this policy.

Discussion Questions

- Does this definition sufficiently capture the causes, or reasons for neglect? If not, what could be added?
- Is it important to define the responsibility of a “responsible party”?
- Should a definition include a list of the various forms which neglect may take?
- Is “neglect” a form of “abuse” or a concept requiring separate definition?

6. Exploitation

Ireland

In Ireland, definitions of exploitation in relation to adult safeguarding have been defined as abuse of power over another person, for financial gain or other reason, or taking unfair advantage of a person or situation. Although the HSE's 2014 policy does not define exploitation, it does mention exploitation as a facet of financial or material abuse. The HSE's draft revised policy defines exploitation as:

“The deliberate maltreatment, manipulation or abuse of power and control over another person: to take advantage of another person or situation”

This definition makes explicit the control or power which the exploiter has in the situation.

The Criminal Law (Human Trafficking) Act 2008, (revised 2017) provides the following definition:

exploitation ' means —

(a) labour exploitation,

(b) sexual exploitation,

(c) exploitation consisting of the removal of one or more of the organs of a person,
or

(d) exploitation consisting of forcing a person to engage in —

(i) an activity that constitutes an offence and that is engaged in for financial gain or that by implication is engaged in for financial gain, or

(ii) an activity in a place other than the State that —

(I) constitutes an offence under the law of that place and would, if done in the State, constitute an offence, and

(II) is engaged in for financial gain or that by implication is engaged in for financial gain;

This definition, although focussed on human trafficking, provides a very definitive list of various forms of exploitation.

International Context

In the UK, the area of exploitation has a longer history of development in safeguarding, and is defined in more detail than in Ireland, reflecting several high-profile incidents in the UK relating to both Adult Safeguarding and Child Safeguarding.

The English_statutory guidance to the 2014 Care act describes:

“...Exploitation, in particular, is a common theme in the following list of the types of abuse and neglect (long list of categories of abuse and neglect follows)

This is another example of the preference in England for using the term “*abuse and neglect*” to cover all categories, and recognises that different types of abuse or neglect can be exploitative too.

The Northern Irish policy describes exploitation as follows:

“Exploitation is the deliberate maltreatment, manipulation or abuse of power and control over another person; to take advantage of another person or situation usually, but not always, for personal gain from using them as a commodity. It may manifest itself in many forms including slavery, servitude, forced or compulsory labour, domestic violence and abuse, sexual violence and abuse, or human trafficking.”

This very comprehensive definition aptly describes exploitation as taking advantage of someone or a situation by using them as a commodity, while accepting that this may not always be for personal gain.

Definition for the purposes of this policy: Exploitation

Deliberate manipulation of, or abuse of power and control over another person: to take unfair advantage of another person or situation.

Factors considered in choosing this definition

Exploitation can happen both within a relationship of trust, and one where there is none. It is important to recognise that another person, whether in a relationship of trust or not is taking advantage of a person or situation and may be (but is not always) using the person for personal gain in some way. This is a deliberate action taken by the exploiter, rather than an act of omission or neglect, can take the form of sexual exploitation, labour exploitation, financial exploitation, mate crime, modern slavery, and in many other ways.

Similar to the discussion in the sections on harm and abuse, although the Department accepts that the various forms of exploitation are very serious issues, it is not proposed that this policy

or the resultant legislation will put measures in place outside of the health sector to deal with or report on these issues, although HSE safeguarding staff will continue to support, advise on and refer to, or request assistance from, other sectors in relation to such issues outside of the health sector, where requested (i.e. “community concerns”).

Discussion Questions

- Is it important to define that exploitation is usually for personal gain?
- Is it necessary to provide a list of the various forms of exploitation?
- Is “exploitation” a form of “abuse” or a concept requiring separate definition?

7. The Health Sector

For the purposes of this policy the health sector is defined as:

- all health and personal social services provided for in the Health Acts (including all services provided on the HSE's behalf under section 38, or grant-aided by the HSE under section 39, of the Health Act 2004), and all analogous services provided by voluntary bodies and private service providers,
- all professionals, practices or premises regulated, licenced or accredited under the Health Acts and all analogous voluntary and private professionals, practices or premises, and
- all bodies and agencies established under the Health Acts.

Discussion Questions

- Does this definition cover all necessary health and social care services?
- Is there something which this definition misses?

8. Capacity

For the purposes of this policy, capacity has the same definition as defined in Section 2(1) and as construed in section 3 of the Assisted Decision Making (Capacity) Act 2015¹⁹:

“2 (1) “capacity” means decision-making capacity and shall be construed in accordance with section 3;

3 Person’s capacity to be construed functionally

(1) Subject to subsections (2) to (6), for the purposes of this Act, a person’s capacity shall be assessed on the basis of his or her ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by him or her in the context of the available choices at that time.

(2) A person lacks the capacity to make a decision if he or she is unable—
(a) to understand the information relevant to the decision,
(b) to retain that information long enough to make a voluntary choice,
(c) to use or weigh that information as part of the process of making the decision, or
(d) to communicate his or her decision (whether by talking, writing, using sign language, assistive technology, or any other means) or, if the implementation of the decision requires the act of a third party, to communicate by any means with that third party.

(3) A person is not to be regarded as unable to understand the information relevant to a decision if he or she is able to understand an explanation of it given to him or her in a way that is appropriate to his or her circumstances (whether using clear language, visual aids or any other means).

(4) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him or her from being regarded as having the capacity to make the decision.

(5) The fact that a person lacks capacity in respect of a decision on a particular matter at a particular time does not prevent him or her from being regarded as having capacity to make decisions on the same matter at another time.

(6) The fact that a person lacks capacity in respect of a decision on a particular matter does not prevent him or her from being regarded as having capacity to make decisions on other matters.

(7) For the purposes of this section, information relevant to a decision shall be construed as including information about the reasonably foreseeable consequences of—

- (a) each of the available choices at the time the decision is made, or*
- (b) failing to make the decision.”*

¹⁹ <http://www.irishstatutebook.ie/eli/2015/act/64/enacted/en/pdf>

