



An Roinn Sláinte
Department of Health

Primary Definitions

National Policy on Adult Safeguarding Policy for the health sector

Adult Safeguarding Policy Steering Group meeting
27 March 2018



Considered in developing definitions:

Existing definitions within:

- Ireland (legislation, health policy and standards)
- International jurisdictions (common law)
- Existing safeguarding literature

Taking account of this policy's scope:

- Health Sector Policy
- Alignment with other Irish health sector definitions preferable
- Less role for local government in provision of health and social care compared to other jurisdictions



Not an extensive list of every definition that will be in the final policy, rather the **core definitions**



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Discussion document

- Definition title
- Ireland
- International context
- Definition for the purposes of this policy
- Factors considered in choosing the definition
- Questions



1 Term for affected people

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 characteristics or circumstances, 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.



Key considerations

“Vulnerable adult” vs “adult at risk”:

- Vulnerability can be associated with personal characteristics and may imply those characteristics put them at risk rather than those who do harm
- Move away from “vulnerable adult” towards “adult at risk” internationally
- Describing someone as “vulnerable” can be insensitive

Key factors considered



- Important that being recognised an “adult at risk” must be determined by assessing the situation at a particular point in time rather than putting them in a category in perpetuity,
- Important to recognise that a person has the right to make unwise choices if deemed to have the capacity to do so and the consequences are not criminal in nature
- Recognising that safeguarding is not solely the responsibility of the health sector, and that a person should not be defined by their personal characteristics, it was deemed important that no requirement be in place for the person to have care or support needs to meet the definition

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:
 - A. “abuse” (i.e. the action or omission causing harm), or
 - B. “harm” (i.e. the result or impact of the abusive action / omission), or
 - C. both “abuse” and “harm”?



2 Safeguarding

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.



Key considerations

- The Definition needs to be sufficiently wide enough to encapsulate all safeguarding activity
- Reference to human rights is appropriate given this policy's aim to protect and promote the rights of adults at risk and ensure that a person is not treated less favourably than someone who is not deemed an adult at risk at a specific point in time
- Important to recognise empowerment of people and self-safeguarding as a powerful tool in safeguarding

Questions



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



3

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

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.

Key considerations



- Harm caused by self-neglect, although a serious issue, is not included within the scope of this policy, except where it crosses over with safeguarding issues. Self-neglect is its own discrete issue

Harm vs Abuse

- Significant overlap between “harm” and “abuse” in other jurisdictions
- Whereas some jurisdictions use the term “harm” for “harmful behaviour”, others describe all negative effects and actions as “abuse”
- Some contend that “harm” is less stigmatising than “abuse”
- Harm generally means the negative result of abuse on a person rather than the action which causes the abuse

Questions



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



4 Abuse

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.

Key considerations



- Whether to require that a relationship of trust exists to categorise actions as “abuse”
- Whether “neglect” and “exploitation” should be categories of abuse
- Significant overlap between “abuse” and “harm” or “harmful behaviour” in other jurisdictions
- Some contend that the term “abuse” can be considered stigmatising

Key considerations



- The various forms of abuse are very serious issues e.g., discriminatory abuse, domestic violence, organisational abuse, financial abuse, modern slavery, etc. , but it is not proposed that this policy or the resultant legislation will put measures in place in settings outside of the health sector to deal with these issues, as this is outside of the Department's area of expertise, remit and ability to resource
- However, safeguarding staff will continue to support, refer and advise in relation to abuse, with this national 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 e.g. financial / other abuse / harm

Questions



- Is it appropriate to define whether “abuse” is something which happens within a relationship of trust or authority?
- 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?



5 Neglect

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.]

Key considerations



- Whether Neglect is a subcategory of abuse, or should have a separate definition
- Neglect can occur as a result of failure to act given the knowledge available at that time, as well as omission due to lack of knowledge or awareness
- The Neglect is on the part of a responsible party

Key considerations



- Whilst it is of the upmost 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

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

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.

Key considerations



- Whether “exploitation” is a subcategory of abuse
- Whether it is important to specify that the exploiter usually gains from the exploitation
- Exploitation is a purposeful act rather than an omission of some kind

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

Definition for the purposes of this Policy



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.**

Key considerations



- Important to have a comprehensive definition that includes, all health and social care services and professionals, public private and voluntary as well as all agencies, and bodies created by the Health Acts

Questions



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



8 Capacity

Definition for the purposes of this Policy



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 2015

“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.”

