An Roinn Sláinte
Department of Health

Law Reform Commission Issues Paper: A Regulatory Framework for Adult Safeguarding

A response from the Department of Health

August 2020

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Overview

The safety and protection of adults at risk of abuse or harm is a fundamental concern of the health and social care sector. Safeguarding adults at risk in the context of their interactions with the sector is a key objective of the Department of Health, every statutory body under its aegis, and every health and social care service that interacts with such adults.

A framework of standards, policies and procedures for the safeguarding of adults who may be at risk of abuse, harm and exploitation is currently in place in the health and social care sector including:

- joint national adult safeguarding standards developed by HIQA and the Mental Health Commission, approved by the Minister for Health and launched in 2019;

- the significant inspection and other regulatory powers of HIQA and the Mental Health Commission in relation to the quality and safety of healthcare and social care provision generally (under the Health Act 2007 and the Mental Health Acts);

- a range of structures and processes established by the HSE to support and further develop its national operational policy *Safeguarding Vulnerable People at Risk of Abuse – Policy and Procedures* (2014), including:

    - clear guidelines set out in the existing policy for HSE and HSE-funded staff to follow in cases of suspected abuse or neglect of adults at risk;

    - a HSE National Safeguarding Office leading policy development and oversight;

    - specialist Safeguarding and Protection Teams in each of the 9 HSE Community Healthcare Organisation (CHO) areas;

    - a programme of safeguarding policy and procedures training for HSE and HSE-funded staff generally, attended by large numbers of staff;

    - over 1,700 designated safeguarding officers nominated by service providers and provided with additional training; and,

    - preparation of a revised HSE operational safeguarding policy (final draft published in 2019), which, when implemented, envisages the extension of the policy's application (currently operational in social care settings primarily) to cover the full spectrum of HSE and HSE-funded healthcare and social care services.

In 2017, the Minister for Health sought and obtained Government approval to develop a national adult safeguarding policy for the health sector, together with such legislation as may be required to underpin that policy.

Development of an overarching sectoral policy of this nature is a complex undertaking, not least because the health sectoral policy will cover the public, voluntary and private sector and will include cooperation, collaboration, information-sharing and referral arrangements between the health and social care sector and other relevant sectors.

To date, evidence base and policy development has progressed well:

- A high-level Steering Group has been established to assist the Department in its development of the policy, its papers are available on the Department's website;

- Focus group consultation research was undertaken between November 2019 and March 2020 by the Institute of Public Health on the Department's behalf, to ensure that the voices of the most directly affected service users are heard; and,

- An independent evidence review research project to inform the policy has been conducted.

Both the Institute of Public Health focus group research and the independent evidence review are expected to be published later this year.

Taken together, the Department's overarching national policy on adult safeguarding in the health sector, the HSE's revised operational policy and HIQA and the Mental Health Commission's joint national standards are aimed at ensuring the continued evolution and improvement of the safeguarding of adults who may be at risk in the health and social care sector.

The Department welcomes the publication of the Law Reform Commission's Issues Paper on *A Regulatory Framework for Adult Safeguarding*. It covers a comprehensive range of key topics and advances debate on these issues. It is a major and welcome contribution to the debate on how best to develop an appropriate legislative basis for adult safeguarding in Ireland and, in particular, the appropriate regulatory framework(s) for all public services in Ireland that interact with adults at risk.

The Department anticipates that the Commission's Report, when published, will inform the development of legislation on adult safeguarding in the health and social care sector and no doubt other key sectors, including equality, disability, integration, justice, social protection, finance and across all public services.

In this context, it will be crucial for the Commission to ensure that key terms used in describing the issues, roles and responsibilities are clearly defined. Clarity of definition can help ensure that

all Departments, agencies and individuals with relevant functions and duties share a common understanding and can more readily align their approaches within the national regulatory framework for adult safeguarding expected to emerge based on the Commission's recommendations.

Issue 1: Values and principles underpinning adult safeguarding

1.1 Do you consider that the proposed guiding principles, as set out above in paragraph 1.14 of the Issues Paper, would be a suitable basis to underpin adult safeguarding legislation in Ireland?

The Department agrees that the principles listed (Appendix 1) would form a good basis for any future safeguarding legislation in Ireland.

The principles are congruent with the majority of international safeguarding guidance and legislation and align with those in the Assisted Decision-Making (Capacity) Act 2015. They are also consistent with the Department's own draft principles for the health sector safeguarding policy (see also 1.2 in that regard) and with the principles underpinning joint adult safeguarding standards prepared by the Health Information and Quality Authority (HIQA) and the Mental Health Commission (MHC) and approved by the Minister for Health.

1.2 Do you consider that additional guiding principles should underpin the legislation? If yes, please outline the relevant additional guiding principles.

The Commission may also wish to consider the relevant deliberations of this Department in its ongoing development of a national policy (including any necessary legislation) on adult safeguarding in the health sector. In that regard, a published discussion paper presented to the relevant Departmental Steering Group considered potential underpinning principles which are broadly in line with those set out in the Issues Paper (Appendix 2).

The Commission could also consider expansion of its suggested principles to include, for example:

- under the "empowerment" heading, a reference to the adult at risk being consulted throughout the process; and,

- under the "integration and cooperation" heading, a reference to the alignment of any national sectoral policies to a wider regulatory framework for adult safeguarding, in the context of consistency of practice, policy and/or legislation across sectors.

Issue 2: Defining key terms for adult safeguarding

2.1 Do you consider that the statutory regulatory framework for adult safeguarding should define the categories of adults who come within its scope?

The Department believes such a definition would be a central component of any adult safeguarding framework (subject to its response to 2.2 below).

2.2 If the answer to 2.1 is yes, what definition of the categories of adults who come within its scope would you suggest?

The Department is of the view that care should be taken to avoid an approach whereby individuals are permanently assigned a status of "adult at risk", based on their characteristics. The definition of "adult at risk" who should come within the scope of any statutory regulatory framework for adult safeguarding should:

- be based on a functional definitional approach, determined by assessing each person's situation at a point in time;

- be aligned insofar as possible (in relation to capacity) with Ireland's assisted decision-making (capacity) legislative framework, focussing on risk arising from an adult's inability, at a particular point in time, to adequately protect him/herself from potential or actual abuse (or to arrange for his/her protection from such abuse by availing of the "mainstream" protections and supports generally made available within the State to all persons) and his/her consequent requirement to avail of additional or specialised safeguarding measures;

- actively avoid risks of discrimination / paternalism e.g. an adult should not be defined as being "at risk" solely by reference to membership of a cohort based solely on age, disability or mental health status. The definitional approach should therefore factor in not only the adult's need for appropriate protection but also their right to be treated equally before the law.

Consultation with the Department of Children, Disability, Equality and Integration is recommended in relation to these definitional issues, and also with the Decision Support Service in relation to assisted decision-making capacity issues.

2.3 Do you consider that the Commission has, in Issue 2 of the Issues Paper, defined the following terms with sufficient clarity:

(**a*) "safeguarding";***

(b) "abuse" and "harm" (including whether you consider that the definition of "abuse" should include "harm" or whether "abuse" and "harm" should be separately defined);

(c) "neglect";

(d) "capacity".

The Commission's analysis is clear and helpful, presenting and discussing a range of existing definitional approaches in respect of each term considered, without endorsing specific definitions or presenting new definitions for use in an Irish regulatory framework for adult safeguarding. The Department agrees that this is the appropriate approach at the consultative stage of this project.

The Department has considered the four terms specified above in (a) – (d) below. However, taking a broader view, the Commission's Report might usefully consider how universal definitions may interact with sectoral definitions, depending on how unitary and/or sectoral safeguarding frameworks develop in Ireland. In this context, a number of key developments across and within different sectors in recent years are noted, including

- cross-sectoral policy and legislation led by the former Department of Justice and Equality (now the Departments of Justice and of Children, Disability, Equality and Integration) in such areas as assisted decision-making, employee and volunteer vetting and equal status (including disability inclusion strategies);

- the *Report of the Commission on the Future of Policing in Ireland* and associated planned reform programme, including a proposed new Policing and Community Safety Bill, which it is understood will redefine policing to explicitly include the prevention of harm to vulnerable people;

- justice and equality sector approaches including legislation on reporting offences against children and vulnerable adults and policy on prevention of domestic, sexual, and gender-based violence;

- health sector policies on adult safeguarding including

    - national standards (prepared by HIQA and the Mental Health Commission and approved by the Minister for Health),

  - the HSE's operational policy (under revision), and

  - the development by this Department of an overarching national policy and underpinning legislation for the health sector;

- social protection sector initiatives to safeguard adults at risk from welfare fraud, led by the Department of Social Protection;

- other Departmental or sectoral initiatives (e.g. in respect of financial abuse in banking contexts); and,

- the Commission's examination of a regulatory framework for adult safeguarding.

The Department recommends that the Commission explore the merits of defining:

- "abuse" as an act or omission (potentially including "exploitation" and/or "neglect" as defined abusive acts/omissions) by a person or body which may adversely affect an adult at risk and

- "harm" as the resulting, or potentially resulting, adverse effect on that adult at risk;

- "neglect" as a specific form of abuse, potentially in terms of an omission causing, or potentially causing, harm to an adult at risk, through the withholding of required care, for example by a person or body with a definable duty of care for that adult at risk; and,

- "exploitation" as a specific form of abuse, taking note of recent discussions relating to the UK's modern slavery legislation and in consultation with the relevant Government Departments addressing human rights, employment rights and criminal justice.

(a) "safeguarding"

The Department notes that, in the equality and justice sectors in particular, essential safeguarding concepts are deeply embedded core functions, whether or not the language of "adult safeguarding" is explicitly employed in definitions of key terms in related legislation. These include both supporting fundamental personal rights, including the rights of vulnerable adults, and protecting citizens, including those same vulnerable adults, from abuse and harm.

In its discussion on definitions, the Commission's Report could reflect in a strong and clear manner these equality and justice dimensions of safeguarding, which are directly relevant to many key principles considered in the paper, including those relating to its proposed principles of human rights, empowerment, protection and proportionality. From a definitional and regulatory perspective, it may perhaps focus more on cohorts requiring protection rather than on the State's

duties in relation to the autonomy and self-determination rights of each individual adult at risk, including the right to make "unwise" decisions.

A related challenge is to frame key definitions in a way that may assist those charged with implementing adult safeguarding regulatory frameworks to strike an appropriate balance between safeguarding in a "least interventionist" sense of supporting autonomy and self-determination rights and safeguarding in the "more interventionist" sense of specific additional protection measures for "adults at risk".

The distinction between "preventative safeguarding" and "protective safeguarding" in the Northern Ireland safeguarding policy approach is also interesting. The Department recommends that the Commission considers the merits of exploring this dichotomy in bringing forward any recommended definition(s) in its Report.

(b) "abuse" and "harm"

In addition to the general comments included above on definitions of abuse, harm, neglect and exploitation, the Commission may wish to consider whether "peer-to-peer" interactions potentially or actually causing harm should be defined as "abuse", and particularly whether an adult at risk who may lack sufficient capacity to fully understand his or her actions should be treated within a regulatory adult safeguarding framework as a perpetrator or abuser if he / she causes harm to another adult at risk.

(c) "neglect"

The Department acknowledges that the Issues Paper clearly sets out the key considerations relevant to defining "neglect". It appropriately considers the HSE's definitional approach to neglect. The HSE, having regard to its statutory functions, defines neglect in relation to health and social care contexts, but this may not be sufficiently broad to serve as a suitable definition of neglect outside of these contexts (for example, neglect within the home environment).

While important differences between the concepts of child protection and adult safeguarding should be borne in mind when seeking to draw lessons for adult safeguarding from child protection legislation and policies, the Children First Act 2015 definition nonetheless appears worth considering closely as a possible model for a definition of neglect, adapted to neglect of adults at risk. Consistency between child protection and adult safeguarding approaches is desirable where appropriate, while recognising and having regard to the significant differences between them (for example as regards issues of an adult citizen's right to autonomy including the right to make "unwise" decisions", referred to under the response to Q2.2).

The Department notes that the discussion in the Issues Paper included reference to the definition of neglect in the Adult Safeguarding Bill 2017 (Private Members Bill). That definition addressed neglect of an "adult", whereas it may be more appropriate in a regulatory framework for adult

safeguarding to define neglect more tightly, i.e. specifically in respect of neglect of an “adult at risk”.

(d) “capacity”

The Department agrees that it is important that there is consistency in the definitions set out in adult safeguarding legislation and particularly important to have consistency with the Assisted Decision-Making (Capacity) Act 2015 in relation to the definition of “capacity”.

Issue 3: Physical, sexual, discriminatory and psychological abuse, neglect and deprivation

3.1 Do you consider that adult safeguarding legislation should impose a statutory duty on an adult safeguarding service provider to prepare a care plan for each adult in receipt of safeguarding services?

The terms “adult safeguarding service” and “adult safeguarding service provider” used throughout the Issues Paper are not familiar to this Department as they are not in general use in the health system, resulting in a potentially problematic lack of clarity on these centrally significant concepts. The Department has been unable to find a definition of the term in the Issues Paper or in any existing legislation or policy. Were such terms to be employed in the context of a new statutory regulatory framework for adult safeguarding, they would be centrally important concepts, requiring careful definition and wide-ranging consultation.

A related concern is a degree of ambiguity in the Issues Paper between the separate concepts of “safeguarding plans” and “care plans”. The Department’s view is that it would be important to distinguish the concept of “safeguarding” from the broader and separate concept of “care”, in consultation with all Government Departments that provide services to adults at risk or oversee the delivery of such services.

It is important to ensure that any safeguarding framework avoids defining every adult recipient of “care” as an “adult at risk”, and avoids definitions based on the subjective perceptions of recipients of public services as to whether they are at risk. Within many healthcare and social care services, adults at risk constitute a subset, not the totality, of care recipients, and indeed there may be many such services where none of the service recipients would be defined as “at risk”.

There is potential for confusion or conflation of the very broad concepts of “care” and “care plan” with the narrower and different concepts of “safeguarding” and “safeguarding plan”. Both sets of terms should be clearly understood as referring to distinct and separate concepts, albeit with potential for some overlapping elements.

Within the health and social care sector, “care plans”, “individual care plans” (or "personal plans") tend to have specific contextual meanings, some of which may be internationally recognised and understood, and may or may not address safeguarding issues. For example, such plans may relate to clinical planning in a hospital context, comprehensive residential care planning or other relevant individualised plans, rather than safeguarding. Conversely, recipients of a variety of public services in other sectors may also have individualised plans of different sorts and for different reasons, whether referred to as “care plans” or not.

The Department of Health would be broadly supportive of the introduction of provisions in safeguarding legislation which would require service providers in all sectors to:

- adopt an adult safeguarding policy and procedures for that service, regardless of sector;
- prepare high level risk assessments for regular service users who are adults at risk; and,
- where deemed advisable on foot of such a risk assessment, prepare an individual safeguarding plan for the adult at risk concerned.

However, the Department would caution against blurred lines between eligibility for care (or other public services) on the one hand and safeguarding needs on the other. A lack of clarity in this regard could result in the application of safeguarding legislation becoming inappropriately conflated with systems of eligibility for entitlement to service provision across different sectors.

The Department would also encourage the Commission to consider how to ensure that any proposed regulatory framework avoids an over-emphasis on safeguarding the most visible or identifiable adults at risk, such as those in receipt of structured care services, to avoid the risk of a two-tier safeguarding system.

3.2 Do you consider that adult safeguarding legislation should impose a duty on an adult safeguarding service provider to safeguard adults at risk?

As stated in the response to 3.1, above, it is not clear what is being referred to by the use of the centrally significant term "adult safeguarding service provider".

However, the Department would be broadly supportive of the introduction of provisions in safeguarding legislation which would impose a duty on service providers across all sectors, including healthcare and social care, to safeguard their regular service users who are adults at risk. Legislation could provide, for example:

- that there should be an adult safeguarding policy in place;
- that appropriate staff are trained on adult safeguarding relevant to the service context; and,
- that there is a designated safeguarding officer who can make reports to the relevant safeguarding agency (similar to the child protection context).

3.3 If the answer to 3.1 is yes, do you consider that such a care plan should address the prevention of physical, sexual or psychological abuse, or neglect?

In the context of the Department's response to 3.1 in relation to the term "adult safeguarding service provider" and ensuring that safeguarding legislation is used only in respect of a "safeguarding plan" as opposed to a "care plan" in order to avoid creating confusion between these two separate and distinct concepts, the Department considers that an individual safeguarding plan, if required, should address the prevention of all relevant risks of abuse in respect of the adult at risk concerned, having particular regard to the outcome of the envisaged risk assessment.

For the sake of clarity and brevity, it should be noted here that the responses to the remaining questions in this section are similarly caveated for each occasion that the terms "adult safeguarding service provider" and "safeguarding plan" are used.

In preparing its Report, the Commission might consider whether legislation in relation to an individual safeguarding plan should specify that such a plan may or shall include elements relating to supporting the adult at risk's rights to autonomy (including the right to make "unwise" decisions and take positive risks) and to have assistance in decision-making, whether from a formal intervener as set out in assisted decision-making legislation or by having access to assistance from a trusted friend, advocate or family member.

3.4 If the answer to either 3.1 or 3.2 is yes, do you consider that breach of such a duty or, as the case may be, duties should give rise to civil liability on the part of an adult safeguarding service provider?

The Commission's recommendations in relation to civil liability in the context of adult safeguarding should be broadly consistent with the approach to civil liability in other similar legislation. Subject to that caveat, the Department suggests that the Commission consider whether or not a (non-minor) breach of the duties suggested by this Department at 3.1 and 3.2 should give rise to civil liability on the part of on the part of a relevant service provider, including a relevant healthcare or social care provider.

3.5 If the answer to either 3.1 or 3.2 is yes, do you consider that breach of such a duty or, as the case may be, duties should give rise to criminal liability on the part of an adult safeguarding service provider?

The Commission's recommendations in relation to criminal liability in the context of adult safeguarding should be broadly consistent with the approach to civil liability in other similar legislation. Subject to that caveat, the Department suggests that the Commission consider whether or not, on balance, it may be disproportionate for breach of the duties suggested by this Department at 3.1 and 3.2 to give rise to criminal liability on the part of a relevant provider, including a relevant healthcare or social care service provider, or at least to do so in all circumstances.

The Department also sees merit in further exploration in the Commission's Report in relation to criminal liability arising in relation to more serious breaches of duty.

3.6 If the answer to 3.2 is yes, do you consider that breach of such a duty by a person responsible for providing adult safeguarding services, where this occurs in the course of his or her duties or, as the case may be, within the scope of employment of an adult safeguarding service provider, should give rise to a complaint to a professional body with regulatory functions in relation to a person who is a member of that professional body?

The Department of Health considers that the Commission's Report may benefit from careful consideration of the strengths and weaknesses of existing provisions in relation to pathways for addressing complaints, disciplinary concerns and professional fitness to practice issues across all relevant sectors. This may include consideration of whether or not existing complaint pathways in relation to service managers and/or owners, as distinct from professional staff, are sufficiently clear and strong in an adult safeguarding context.

In that context, it may be appropriate that a non-minor breach of the duties, occurring in the course of a healthcare or social care professional's duties, or, as the case may be, within the scope of employment of a provider of healthcare or social care services to adults at risk, should give rise to

a complaint to a professional body with regulatory functions in relation to a person who is a member of that professional body.

3.7 Do you consider that there are any additional legal measures that could be introduced to prevent physical, sexual, psychological abuse or neglect?

The Department of Health suggests that consideration be given to the inclusion of enabling provisions in a regulatory adult safeguarding framework whereby Ministers could make regulations and/or specified public bodies could set standards (subject to preparing a standards impact assessment) and/or issue guidance on preventative measures and measures to mitigate risk such as:

- setting minimum education and training / ongoing training requirements for employees and volunteers of relevant public bodies working with adults at risk, commensurate with their role in providing them with services and interacting with them;
- entering into formal agreements, such as Memoranda of Understanding, for purposes of abuse prevention, with other relevant public bodies e.g. on inter-agency coordination, cooperation, information-sharing, referral/transition etc;
- requiring relevant public bodies to include adult safeguarding goals in business plans, corporate plans, codes of practice, guidelines, etc and to publish reports on performance outcomes in respect of such goals;
- requiring relevant public bodies to nominate designated safeguarding officer(s) as authorised confidential report recipients / investigators and with responsibilities to refer to or liaise with other bodies, including the justice system, as appropriate;
- requiring relevant public bodies to provide access to relevant records and information to specified bodies and/or authorised officers;
- requiring relevant public bodies to notify and/or confirm abuse allegations and confirmed abuse to other involved agencies who have a valid need for such information in order to ensure that the adult at risk is appropriately supported and protected by all agencies interacting with them; and,
- requiring relevant public bodies to enable access to an appropriate advocate in the context of safeguarding.

The Commission might also note that the use or definition of the term “advocate” and related terminology may differ significantly in different contexts within the Irish system (for example as applied in the Assisted Decision-Making (Capacity) Act and as applied to the Patient Advocacy Service) and that drafting care may be needed to ensure the avoidance of any potential confusion.

Issue 4: Financial Abuse

4.1 Do you consider that sectoral regulators and bodies such as the Central Bank of Ireland and the Department of Employment Affairs and Social Protection currently have sufficient regulatory powers to address financial abuse in the context of adult safeguarding?

The Department would support measures to ensure that relevant regulatory bodies across all sectors have sufficient oversight and legal powers to refer individual safeguarding complaints in relation to financial abuse to the appropriate body. Where fraud or theft is suspected, it is presumed that the appropriate body to receive such referrals would be An Garda Síochána, rather than a public service provider such as the HSE. However, service providers should have sufficient powers to undertake such preliminary investigations as would be required in order to refer a financial abuse concern appropriately.

The Department considers that, in relation to the health and social care sector specifically, the Health Information and Quality Authority (HIQA) has significant powers to address financial and other abuse concerns at service provider level through its registration and inspection powers under the Health Act 2007. While the HSE does not have specific legal powers to investigate an individual financial or other abuse concern, it does have internal policies and regulations on the management of Personal Private Property Accounts of residents in the care of the HSE or of HSE-funded services, which provide significant safeguards against financial abuse. The Department is not aware of any particular legal barriers to the referral of individual financial abuse concerns to the appropriate authorities, such as An Garda Síochána, by health and social care service providers.

Appropriate remedies to any gaps in the management of financial abuses that come to the attention of public sector bodies could include formal inter-agency agreements between relevant agencies and/or assignment of new regulatory powers to An Garda Síochána and any other appropriate agencies.

More generally, this Department would support the strengthening of regulatory powers, if deemed necessary and appropriate in the Commission's Report, to address financial abuse of adults at risk in all relevant contexts, including in respect of abuse of a person's welfare payments or bank, post office or other deposits, or personal private property entrusted to another person or body (for example, a public service provider).

4.2 If the answer to 4.1 is no, do you consider that either or both of the following would be suitable to address financial abuse:

(a) a statutory financial abuse code of practice or protocol;

(b) a statutory form of protected disclosure, along the lines of the Protected Disclosures Act 2014, for financial institutions that engage in responses to suspected financial abuse in good faith.

The Department of Health is of the view that both could be helpful.

4.3 Do you consider that further additional regulatory powers are required to address financial abuse? If yes, please give examples.

The Department of Health considers that it may be useful to provide for powers for the Central Bank, Consumer Protection Agency or other relevant regulators and/or agencies to investigate suspected financial abuse (within their remit, and in liaison with An Garda Síochána and any other relevant bodies).

Issue 5: What body or bodies should have responsibility for the regulation of adult safeguarding?

5.1 The Commission has discussed the following 5 possible institutional or organisational models for the regulation of adult safeguarding:

- ***Establishing a regulatory body within the Health Service Executive***
- ***Establishing a regulatory body as an executive office of the Department of Health***
- ***Establishing a regulatory body as an independent agency***
- ***Amalgamating a regulatory body with an existing agency***
- ***Conferring additional regulatory powers on an existing body or bodies.***

In your view:

(a) which of the above is the most appropriate institutional or organisational model for the regulation of adult safeguarding?

(b) do you consider that any of the models discussed would be completely inappropriate?

Please give reasons for your answers to (a) and (b).

Each public body and Department has important sector-specific adult safeguarding duties. At the wider societal level, adult safeguarding is about balancing individuals' equality rights (e.g. to autonomy, including the right to make "unwise" decisions) with the requirements of justice and public safety (particularly society's duty to protect the vulnerable from harm). Accordingly, this Department considers that the equality sector (perhaps in partnership with the justice sector) is best placed to lead and coordinate these policy areas across all sectors.

The Department requests also that the Commission consider the important, central and significant responsibility that public service providers have in addressing, in the first instance, safeguarding issues in relation to their service users and complying with the relevant regulatory framework, rather than shifting the responsibility to respond to a regulatory body, which could prove unduly resource-intensive. A more efficient approach may be to involve a regulator if a service provider's initial response has not resolved the issue.

(a) which of the above is the most appropriate institutional or organisational model for the regulation of adult safeguarding?

Subject to the comments above regarding public service providers having responsibility in the first instance to address safeguarding issues relating to their service users, this Department would be supportive of any of the following options, which would be best led or coordinated by a non-Health Government Department:

- *Conferring additional regulatory powers on an existing body or bodies*

In this regard the Commission should consider the very significant differences between different types of existing bodies with regulatory powers. For example, the functions, structures and processes of a financial regulator, a professional regulatory body, a sectoral service regulatory agency or a cross-sectoral authority (such as the Disability Authority) may differ very significantly and may potentially require significant re-engineering to fulfil new regulatory roles in relation to adult safeguarding across all sectors.

The Commission may also wish to consider the merits of cross-sectoral, inter-sectoral or cross-Departmental collaborative or partnership structures, which would be in keeping with the Commission's suggested principles of integration and cooperation. This could potentially be modelled on existing multi-sectoral coordination frameworks (e.g. National Disability Inclusion Strategy); cross-sectoral partnership approaches (e.g. Northern Ireland's adult safeguarding system); or, multi-agency structures (e.g. Criminal Assets Bureau).

- *Establishing a regulatory body as an independent agency / Amalgamating a regulatory body with an existing agency*

In relation to options for leadership / coordination of a new regulatory framework, consideration could be given to the role for Government Departments that already have clear policy responsibilities in this area, including:

  - the opportunities that may arise from the creation of the Department of Children, Disability, Equality and Integration (DCDEI), which might take the view that its new, combined policy responsibilities uniquely position it to take a leadership role in relation to safeguarding, in line with its equality functions in particular.

    The experience of this Department's predecessor with the Child and Family Agency / Tusla might be of particular relevance, and it may be that there is scope for an expansion of its existing safeguarding functions and structure to cover adults at risk as well as children, or to create a parallel structure for adult safeguarding;

- a structure under the aegis of the Department of Social Protection, which might involve new functions in addition to the existing role of the Citizens Information Board; or,

- a cross-sectoral partnership led by the DCDEI and the Department of Justice, with, perhaps, significant partnership roles also for other key Departments such as Health, Social Protection and Finance.

The main advantage of aligning a new adult safeguarding structure with the equality functions of DCDEI would be to flag clearly the central importance of respect and support for the human rights of adults at risk and facilitate its delivery within a new adult safeguarding framework. The advantages of an expansion of the functions of Tusla would be that this agency already has the most similar function of any existing body, is the largest social work agency in the country, and has the requisite experience for its new role, which would reduce start-up costs and lead-in time.

An advantage of a structure under the aegis of the Department of Social Protection / Citizens Information Board, would be that CIB has experience in, and already oversees, a number of similar and relevant services including the Money Advice Bureau (MABS) and the National Advocacy Service for People with Disabilities, which is an independent, government funded, service (with a statutory basis under section 7 of the Comhairle Act 2000 as amended by Section 4 of the Citizens Information Act 2007) to support people with disabilities to access public services across departments, e.g., health, housing, education, social welfare, etc.

Advantages of a multi-sectoral, inter-sectoral or cross-sectoral partnership approach led by DCDEI and the Department of Justice include a strong focus on ensuring the appropriate balance between supporting the human rights of adults at risk on one hand and intervening to protect them from harm and abuse on the other. Additional consideration should be given in the Commission's Report to the differing roles of a regulator of services, as defined in the Issues Paper (5.22), and a responsible agency for investigation and intervention in cases of abuse.

In discussing the role of a regulator it is important to consider the important, central and significant responsibility that the service provider has in addressing safeguarding issues, and complying with the relevant framework, and to avoid the shifting of responsibility solely to a regulator or safeguarding agency.

(b) do you consider that any of the models discussed would be completely inappropriate?

The mission of the Department of Health is to improve the health and wellbeing of people in Ireland by keeping people healthy, providing the healthcare people need, delivering high quality

services and getting best value from health system resources. This does not include a policy role (outside the health system) in relation to the regulation of adult safeguarding.

The HSE similarly does not have any statutory functions relating to adult safeguarding. The HSE's object, set out in section 7 of the Health Act 2004, is to use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public. Related functions, as specified in section 7 (and in the Health Acts more generally) focus on managing, delivering, or arranging for the delivery of, health and personal social services.

Accordingly, it is clear that the regulation of adult safeguarding would not be a fit with the roles of either the HSE or the Department of Health.

The Department also considers that the health sector would not be an appropriate institutional or organisational home for a cross-sectoral regulatory agency for adult safeguarding due to the potential for conflict of interest and because neither the Department of Health nor any agency under its aegis has a policy, regulatory or operational responsibility for the core issues of equality and justice which lie at the heart of adult safeguarding in and across all sectors. The references to this Department and to the HSE in the first two models suggested by the Commission would therefore be inappropriate.

Assignment of a central role to the health sector would carry a number of substantial risks:

- Inevitable conflicts of interest would arise if the HSE, the State's largest provider and commissioner of health and personal social services to adults at risk, or the Department of Health which oversees the HSE's performance and negotiates its funding, were to be simultaneously responsible for holding the HSE and the wider health and social care sector to account in relation to adult safeguarding.

- Adoption of a paternalistic approach rather than a rights-based approach, by designating "vulnerable" or "at risk" adults as health system clients in respect of their safeguarding needs, including safeguarding needs unrelated to health or social care service provision. This would envisage health bodies addressing abuse prevention, detection, investigation, determination and intervention across a wide range of non-health areas such as, for example, social welfare fraud; abuse in the context of personal financial management (in banks, post offices and credit unions); abuse within the family home; clerical abuse; abuse concerns related to participation in sports clubs; etc.

- It would disconnect governance of adult safeguarding at the widest societal level from the sector responsible for addressing the key rights at issue (equal treatment before the law and protection from unjust attack).

- It would run counter to the Government's long-standing mainstreaming policy in relation to people with disability under the National Disability Inclusion Strategy.

5.2 Do you consider that any, or all, of the 6 core regulatory powers that the Commission has identified in paragraph 5.38 of the Issues Paper should be applied in the case of adult safeguarding and, if so, whether they would be sufficient in the context of adult safeguarding legislation?

The Department considers that 5 of the 6 powers set out within paragraph 5.38 (Appendix 3) should be applied within an Irish adult safeguarding regulatory framework.

In relation to point 4 (imposition of administrative financial sanctions), research (Gneezy and Rustichini, 2000[1]) shows that this can send a message that non-compliance is something that can be "paid for", rather than something which is non-negotiable. In addition, this may have the effect of diminishing the capacity of a service provider to comply with a constitutional or regulatory requirement. Alternative compliance incentives and or non-compliance disincentives could be considered (for example, a power to publish information identifying non-compliant service providers).

The Department considers that, in the context of the health sector, the application of the five powers referenced above, and of an appropriate alternative to the power at point 4, allied with the existing regulatory powers of HIQA and the Mental Health Commission in respect of care provision centres and of professional regulatory bodies such as the Medical Council, the Nursing and Midwifery Board of Ireland (NMBI), CORU, Pharmaceutical Society of Ireland (PSI), Pre-Hospital Emergency Care Council (PHECC) and the Dental Council in respect of individual professionals, should be sufficient in the context of adult safeguarding legislation.

There is some conflation between the concept of a "safeguarding service" and a regulator of safeguarding in this text. It seems unlikely that a regulator would also be providing a social work service, thus making it both a regulator of services and a regulated service.

5.3 Do you consider that there is a need for a statutory regional adult safeguarding structure, which would have a broad remit in respect of all safeguarding services for adults? If so, how would such a regional structure be best integrated into existing structures

The Department of Health sees significant potential merit in the development of regional adult safeguarding structures, from the outset or following a bedding in period. However, it may perhaps be a little premature at this point to be over-prescriptive in relation to the optimum internal structure of a new adult safeguarding regulatory framework.

[1] https://rady.ucsd.edu/faculty/directory/gneezy/pub/docs/fine.pdf

It may be preferable to provide in enabling legislation that any new coordinating body would be afforded a degree of flexibility in respect of its internal structures, subject to the approval of the relevant Minister(s), perhaps by way of a provision whereby aspects of organisational structure may be prescribed by Regulations. This may allow space for decisions by Government, in consultation with key Departments such as Children, Disability, Equality and Integration, Justice, Health, Social Protection, Finance and others, on whether and how to reflect key boundaries, for example those between:

- abuse types (physical, sexual, financial, psychological-emotional, institutional etc);
- sectors (based on functions of Departments and bodies under their aegis); and,
- geographical regions (based on appropriate boundaries, e.g. coinciding with Garda regional boundaries or local authority functional areas or health system catchment areas or other regional breakdowns, etc). Consideration may need to be given to how to address boundary differences as between An Garda Síochána and other relevant agencies.

There is a potential difference between such regional governance structures and regional interagency collaboration structures for adult safeguarding. There may be a strong case for regional inter-sectoral “adult safeguarding boards” , similar to the UK context, with membership representative of the main bodies relevant to safeguarding within a region, and for those boards to be put on a statutory basis. There could also be a “national board”, to coordinate safeguarding issues on a national level.

However, the Department considers that this type of board should not have a direct management role in relation to safeguarding services in regions. Instead, the relevant managers within each agency and sector relevant to safeguarding in that region would be members of the boards, and boards should be responsible for ensuring co-ordination between the sectors, joint training, awareness of safeguarding within the region, publishing safeguarding activity data within that region and commissioning “serious case reviews” where incidents have occurred. Membership could, for example, include An Garda Síochána, Revenue, relevant representatives of health services (including the HSE), the Department of Social Protection, relevant advocacy bodies, public interest representatives, private health care representatives and the lead / coordinating agency that is responsible for adult safeguarding.

The boards could have some case-conference and joint working functions and protocols, which could be activated to facilitate agencies working together in complex and more serious cases. It is important that there be some facility for the boards to meet with only the relevant public sector members of the board for specific purposes (such as for case conferences), meaning it will be necessary to have subgroups which only the public sector organisations would be members of, for privacy and security reasons.

Any related legislation should clearly define the membership agencies, aims, powers, responsibilities and purposes of any regional safeguarding structures, which would only be subject to change under Ministerial direction / regulations. If there were to be regional structures or boards, an oversight body or structure would be advisable, for accountability, for example to check whether one region or area was commissioning much fewer “serious case reviews”.

Issue 6: Powers of entry and inspection

6.1 Do you consider that adult safeguarding legislation should include a statutory power of entry and inspection of premises, including a private dwelling, where there is a reasonable belief on the part of a safeguarding professional, a health care professional or a member of An Garda Síochána that an adult within the scope of the legislation may be at risk of abuse or neglect in the premises or dwelling, and where either a third party is preventing them from gaining access or an adult within the scope of the legislation appears to lack capacity to refuse access? Please give reasons for your answer.

The Department considers that adult safeguarding legislation should include the assignment to statutory adult safeguarding authorities of appropriate statutory powers of entry to and inspection of public and private premises where adults at risk reside (potentially subject to warrant in respect of a private family home). This would apply where there is a reasonable belief by a Garda member or statutorily authorised officer (which could include, designated professionals in each relevant sector) that an adult at risk may be at risk of abuse or neglect in the premises or dwelling, and where either a third party is preventing them from gaining access or an adult within the scope of the legislation appears to lack capacity to refuse access.

With reference to the undefined term “safeguarding professional”, this Department notes the very significant role suggested and the need for clarity in the Commission’s Report on the meaning assigned to this key term.

The Department would not support adult safeguarding legislation providing blanket powers to every person who would fit the description of “health professional”. It suggests instead that any new legislation could provide for authorised officers for the purpose of the legislation to be nominated by each relevant public body and appointed by the lead safeguarding agency, the lead Minister or the Minister for the relevant sector.

There are a number of complex issues at play. The “reasonable grounds” may be difficult to establish and would have to be defined very clearly. It is uncertain how the status of the person at risk would be ascertained if a person causing concern is blocking access to the person. There is also the safety of the authorised safeguarding officer to consider in entering a premises.

6.2 If the answer to 6.1 is yes, do you consider that evidence of reasonable belief that a person may be at risk of abuse or neglect would constitute a sufficient safeguard to ensure that such a power would be used effectively and proportionately, or would any other safeguards be required?

The Department considers that evidence of reasonable belief by a person appointed as an authorised officer under adult safeguarding legislation may frequently constitute, but would not be guaranteed to always constitute, a sufficient safeguard to ensure the effective and

proportionate use of the power. It would be important to clearly define what would constitute evidence of "reasonable belief". Consideration could be given to providing that a documented risk assessment and/or documentary evidence of the nature and seriousness of an allegation could constitute such evidence.

The Commission's Report should, if possible, discuss further safeguards that might be appropriate to put in place. Possible examples might include:

- provisions relating to Garda members accompanying authorised officers (or vice versa) when entering a premises insofar as is practicable;

- an appropriate complaints and appeals process (albeit perhaps having only retrospective application in circumstances where delay in entering premises is deemed potentially detrimental to the adult at risk concerned); and,

- provisions requiring publication by the lead statutory agency of (anonymised) outcome data in relation to the use of such statutory entry powers (including outcomes of appeals).

6.3 If the answer to 6.1 is yes, do you consider that such a power of entry and inspection:

(a) should be conferred directly on a safeguarding professional, a health care professional or a member of An Garda Síochána, or

(b) that such entry and inspection should require an application to court for a search warrant, whether in all instances or only where entry and inspection is to a private dwelling.

Please give reasons for your answers to (a) and (b).

The Department considers that the Commission's Report should consider carefully the question of who should have powers to enter a private family dwelling in connection with an adult safeguarding concern and whether there are any circumstances where power of entry without a warrant would be deemed appropriate.

Consideration should also be given to whether a Garda member entering a premises in the circumstances suggested should, where possible, be accompanied by an appropriate authorised safeguarding officer, and vice versa. Option (b) appears to have the merit of ensuring an extra layer of scrutiny in the process, and that the warrant / order was approved at the appropriate level. This is similar to the Scottish system of "orders". It is possible that specific "orders" could be created expressly for these purposes.

6.4 If a power of entry and inspection to a private dwelling were to be conferred on a member of An Garda Síochána, do you believe that a member should be permitted to use reasonable force, if necessary, to gain access to a dwelling?

The Department of Health considers that policy on policing powers in this regard is primarily a matter for the Department of Justice, while noting also the importance of consulting the Department of Children, Disability, Equality and Integration on implications in relation to rights.

Issue 7: Safeguarding investigative powers

7.1 Do you consider that adult safeguarding legislation should include a statutory duty on relevant regulatory bodies to make inquiries with a view to assessing whether to apply for a court order for the removal of a person or for a safety order, barring order or protection order, similar to the orders in the Domestic Violence Act 2018, as discussed in Issue 7 of the Issues Paper? Please give reasons for your answer.

The Department of Health considers that if, upon analysis, the Commission concludes that the existing powers and duties of the Child and Family Agency under domestic violence legislation to apply for safety, barring or protection orders may not adequately cover certain adult safeguarding incidents, policy in relation to addressing any identified gaps is primarily a matter for the Department of Children, Disability, Equality and Integration and the Department of Justice, and that appropriate amendment of the Domestic Violence Act 2018 may be preferable to addressing violence against adults at risk through a separate or parallel framework.

7.2 Do you consider that the Domestic Violence Act 2018 should be amended to empower bodies other than the Child and Family Agency, such as for example the Health Service Executive or any other adult safeguarding regulatory body, to apply to court for an order under the 2018 Act?

The Department notes that policy on protection against domestic violence generally is primarily a matter for the existing lead Department(s). It should also be noted that the HSE is not an "adult safeguarding regulatory body" and should not be presented as such.

Accordingly, the Department considers that, were the Commission to see merit in amending the Domestic Violence Act 2018 to separately address domestic violence against "adults at risk" as distinct from other adults, the question of possible extension of powers to apply for orders under that Act should focus on the lead/coordinating body for adult safeguarding, rather than on the HSE, or on extending the existing powers or the Child and Family Agency.

More generally, should the Commission propose to recommend changes to the existing domestic violence protection framework, it may wish to present in its Report:

- an analysis of the existing powers of the Child and Family Agency to apply for related court orders;
- an identification of any gaps relating to adult safeguarding incidents; and,
- based on those, a case for extending new powers to the Child and Family Agency or for assigning parallel powers to any other body or bodies.

7.3 Do you consider that adult safeguarding legislation should include separate provisions for barring orders, protection orders and safety orders that would apply in situations outside of the circumstances set out in the Domestic Violence Act 2018 or section 10 of the Non-Fatal Offences Against the Person Act 1997?

The Department considers that all provisions for court orders in respect of offences such as those referred to should continue to be addressed in justice legislation**.**

Issue 8: Reporting

8.1 There are four possible reporting models for suspicions of abuse or neglect concerning adults within the scope of adult safeguarding legislation:

(i) permissive reporting;

(ii) universal mandatory reporting;

(iii) mandatory reporting by specific persons;

(iv) a hybrid or "reportable incidents" model.

In your opinion, which of these is the most appropriate model for reporting incident of the abuse of adults within the scope of adult safeguarding legislation, or reporting reasonable suspicions regarding abuse of those adults? Please give reasons for your answer.

The Department would support the application, at least initially, of either:

- a permissive reporting model (option i), supported by legislation to protect individuals reporting abuse of an adult at risk in good faith (on the general lines of existing legislation relating to reporting child abuse concerns, viz. the Protections for Persons Reporting Child Abuse Act 1998) and to protect and support appropriate inter-professional and inter-agency reporting of such abuse concerns; or,

- a hybrid or "reportable incidents" model (option iv), possibly allied to appropriate policy instruments (e.g. guidance and/or legislation) providing for the application of appropriate professional judgement as set out in the response to 8.3 below. In this context, the Commission could usefully consider how to design appropriate escalation provisions in relation to abuse concerns that may arise in different types of service contexts or come to the attention of different types or grades of managers, employees or volunteers. It may also consider whether it may be appropriate to create specific duties for those whose roles involve significant interaction with adults at risk, including certain health and health-related professionals.

Option (iv) may have the advantage of ensuring that suspected abuses above defined thresholds of seriousness are always reported, whilst allowing the relevant professionals to use their best professional judgement on how to report incidents below a certain level. This could allow for the benefits of permissive reporting, whilst ensuring certain incidents get priority attention. Key issues to work through would be defining thresholds as to which "reportable incidents" generate a reporting requirement. Potential disadvantages could include the risk of a culture of "reporting but

not acting" developing and of focussing resources on reporting frameworks at the expense of abuse prevention and/or intervention.

In evaluating the options relating to mandatory reporting, the Commission may wish to reflect on the potential timing of the introduction of any such models (options (ii) or (iii)). Rather than providing from the outset for a uniform system of mandatory reporting across diverse sectors, it may be prudent to review these options after new adult safeguarding structures have had a number of years to "bed down". This would allow time for analyses to emerge in relation to the impact of mandatory reporting provisions in relation to the child protection framework in Ireland over a number of years.

8.2 If the current permissive reporting model were to be retained, should it be placed on a statutory basis? If yes, should statutory protections be enacted for those who report concerns in good faith?

The Department agrees with both suggestions and would, in any event, favour the introduction of statutory protections for all persons reporting suspected abuse of an adult at risk in good faith, along broadly similar lines to the Protections for Persons Reporting Child Abuse Act 1998.

8.3 If a hybrid or "reportable incidents" model were to be enacted, to what incidents of abuse or neglect should mandatory reporting apply? Should mandatory reporting apply to financial abuse, for example?

The Department favours, at least initially, an approach involving a statutory requirement to comply with national guidance on defined thresholds[2] for reporting, which should continue to include offences as set out in the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012. This could possibly be allied to a requirement for designated professional bodies with regulatory functions to prepare professional scope of practice guidance which would specify how each profession should address suspicions regarding abuse of adults at risk, subject to:

- requirement that each such code of practice or guidance be approved by the relevant Minister;

- mandatory duty on each person who is a member of a relevant professional body to comply with the body's code of practice or guidance; and,

- provision that breach of this duty by person who is a member of a relevant professional body shall give rise to a complaint to that body in relation to that person.

[2] An example of a threshold guidance document (in use in Sunderland, England) is attached at the following link: Sunderland.gov.uk: Safeguarding Adults Threshold Guidance Risk Assessment Tool

Issue 9: Independent Advocacy

9.1 Do you consider that there should be statutory provision for independent advocacy in the context of adult safeguarding?

The Department notes that Department of Social Protection (DSP) legislation currently provides that the functions of the Citizens Information Board (CIB) include supporting or directly providing independent information, advice and advocacy services.

The Department considers that any new initiatives in relation to statutory provision for "independent advocacy" would require careful consideration in consultation with the DSP, Department of Justice, Department of Children, Disability, Equality and Integration, this Department and other key stakeholders including the Citizens Information Board, Decision Support Service, HIQA and the Mental Health Commission, in relation to how the concepts of "independent advocacy" and "independent advocate" may interact with, diverge from or overlap with the existing concepts of:

- "advocacy services", "Personal Advocacy Service" and "personal advocate" under the Comhairle Act 2000 / Citizens Information Act 2007;
- "advocate" under the Assisted Decision-Making (Capacity) Act 2015;
- "advocate", "advocacy" and "advocacy services" under residential and adult safeguarding standards prepared by HIQA and/or the Mental Health Commission and approved by the Minister for Health; and,
- the role of the HSE's Confidential Recipient for Vulnerable Persons.

In the interim, the Department could support policy or legislative provisions for the purposes of an adult safeguarding regulatory framework adapted from one or more of the following existing approaches:

- a standards-based approach – for example, in a health sector context, compliance with approved HIQA standards - including affording residents access to advocacy services - is a condition of registration for social care residential centres;
- the provisions of the Comhairle Act 2000, as amended by the Citizens Information Act 2007, in relation to "advocacy services" and/or the role of a "personal advocate"; and/or,
- the provision(s) of the Assisted Decision-Making (Capacity) Act 2015 in relation to "advocate".

9.2 If the answer to 9.1 is yes, do you consider that:

(a) it would be sufficient to commence the relevant provisions of the Citizens Information Act 2007 providing for a Personal Advocacy Service, or

(b) additional statutory provisions should be enacted providing that advocacy services could be provided in addition to those under the 2007 Act?

Please give reasons for your answer to (a) and (b).

The Department is not aware of a decided schedule for commencement of the provisions referred to: this would be a matter in the first instance for the Minister for and Social Protection.

In any event, 9.2(a) refers to legislation that would have, upon commencement, a remit for people with a disability that does not match the necessary remit for an adult safeguarding regulatory framework; an "adult at risk" is not necessarily a person with a disability, while a person with a disability is not necessarily an "adult at risk". In addition, advocacy as defined in the relevant provisions of the Comhairle Act (as amended) is only available to assist in accessing statutory publicly provided social services, or needs assessment, which further narrows the remit.

Accordingly, the Department of Health neither considers commencement of the cited provisions to be a given (within a specific timeframe) nor considers that, upon commencement, those provisions would be sufficient to address advocacy issues within an adult safeguarding regulatory framework.

This Department could support, instead of or supplementary to the cited provisions (when commenced), an approach broadly based on one or more of the following existing approaches and tailored to an adult safeguarding framework:

- a standards-based approach (for example, in a health sector context, under residential standards prepared by HIQA and approved by the Minister for Health, it is a condition of HIQA registration that each registered centre must afford residents "access to advocacy services");

- the provision(s) of the Assisted Decision-Making (Capacity) Act 2015 in relation to "advocate"; and/or,

- the provisions of the Comhairle Act 2000, as amended by the Citizens Information Act 2007, in relation to "advocacy services" and/or the role of a "personal advocate".

9.3 If the answer to 9.2(b) is yes, do you consider that there is a need for a national advocacy body in the context of adult safeguarding? If yes, do you believe that this should operate as an independent agency or that it should be located within an existing agency?

Before considering the establishment of a new national body, significant preliminary discussion and appropriate consultation would be required in relation to the concepts (under social protection legislation, equality legislation and health legislation / policy) of "independent advocacy" and "independent advocacy services" and their potential interaction with existing statutory and policy provisions relating to the concepts of "advocacy", "advocacy services", and "personal advocacy" (see response to 9.1 above).

More generally, it would seem more appropriate, were a new national advocacy body to be established, to assign it a wide remit rather than limiting its scope solely to an adult safeguarding context. The Citizens Information Board may be an appropriate agency to accommodate any national advocacy body, were such a body to be established. Other jurisdictions are moving in the direction of grouping various forms of advocacy together: in England, for example, advocacy hubs are government-funded via local authority structures and offer advocacy in such areas as mental health, disability and health complaints.

Issue 10: Access to sensitive data and information sharing

10.1 Do you consider that existing arrangements for access to sensitive data and information sharing between relevant regulatory bodies are sufficient to underpin adult safeguarding legislation?

Existing GDPR-related legislation may enable information-sharing for specified purposes, but in practice appears to have been perceived as a barrier. This may need to be addressed.

It would assist if there was a positive and statutory duty on agencies to cooperate in relation to adult safeguarding, particularly in relation to sharing information. A positive duty would ensure that data sharing is mandated and implemented, rather than simply enabled.

10.2 If the answer to 10.1 is no, should arrangements for access to sensitive data and information sharing between relevant regulatory bodies include interagency protocols coupled with statutory powers? If so, please indicate your view on the form of such powers

The Department would welcome the inclusion in the Commission's Report of a section detailing the existing statutory basis, governance arrangements and related privacy and data protection safeguards, together with the Commission's proposals for addressing any identified gaps, relating to provisions whereby:

- public bodies may share relevant information and provide access to relevant data, including sensitive data, and generally cooperate and collaborate to the extent necessary to fulfil their assigned functions, including adult safeguarding functions, if any; and,

- other bodies and persons are legally protected when affording appropriate access to information and data to facilitate public bodies to fulfil their assigned functions, including adult safeguarding functions, if any.

Issue 11: Multi-agency collaboration

11.1 Do you consider that:

(a) non-statutory interagency protocols are sufficient to ensure multi-agency cooperation in adult safeguarding, or

(b) a statutory duty to cooperate should be enacted?

The Department considers that a statutory duty should be enacted requiring appropriate cooperation between relevant agencies in relation to adult safeguarding in relation to such areas as referral, transition and handover protocols, and sharing of relevant information and/or data subject to appropriate data protection and privacy safeguards.

11.2 If the answer to 11.1(b) is yes, to which bodies with adult safeguarding regulatory responsibilities should the duty apply?

The Department considers that every public body has a duty to safeguard any adults at risk that interact with it.

This Department would favour the enactment of a general provision creating a duty on every public body (i.e. not only bodies with adult safeguarding regulatory responsibilities) to cooperate as far as practicable with every other public body where necessary for the purposes of safeguarding an adult at risk from abuse.

The Department would also favour the enactment of provisions requiring agencies with particularly significant responsibilities relevant to adult safeguarding to make and agree formal adult safeguarding cooperation protocols and/or Memoranda of Understanding, such as, for example:

- Relevant regulatory bodies (and parent Departments) including but not limited to
- HIQA and the Mental Health Commission (Department of Health)
- Health and social care professional regulatory bodies (e.g. Medical Council, Nursing and Midwifery Board of Ireland, CORU, Dental Council etc)
- Central Bank (Department of Finance)
- Tusla (Department of Children, Disability, Equality and Integration)
- An Garda Síochána

- HSE
- Decision Support Service
- Department of Social Protection
- Irish Prison Service
- The Probation Service
- National Disability Authority (Department of Children, Disability, Equality and Integration)
- An Post
- Irish Human Rights and Equality Commission (Department of Children, Disability, Equality and Integration)
- Department of Housing, Planning and Local Government / local authorities
- Data Protection Commission
- Consumer Protection Agency
- The Ombudsman.

11.3 Do you consider that there should be statutory provision for transitional care arrangements between child care services and adult safeguarding services?

As has been noted previously, it is important to avoid conflating the very broad concept of "care" with the narrower and different concept of "safeguarding", and there is a lack of clarity on the definition of an "adult safeguarding service".

Subject to these significant caveats, the Department of Health considers that it would be appropriate to make statutory provision for transitional safeguarding arrangements to be in place, where appropriate, during a period when a person transitions from child care services and requires adult safeguarding interventions.

Appendices

Appendix 1: Proposed principles set out by the Law Reform Commission

An extract from the Law Reform Commission Issues Paper *A Regulatory Framework for Adult Safeguarding*:

The following is a list of proposed principles, which could underpin the statutory regulatory framework for adult safeguarding:

- **Human rights:** ensure that the rights of an individual are respected including the rights to dignity, bodily integrity, privacy and respect for culture and beliefs;

- **Empowerment:** presumption of decision-making capacity, informed consent and the right to participation and independent advocacy;

- **Protection:** provision of support and care to ensure safety and dignity, and to promote individual physical, mental and emotional well-being;

- **Prevention:** taking proactive steps to ensure that safeguarding measures are in place to prevent abuse from occurring;

- **Proportionality:** ensuring: that any interventions are necessary with regard to the circumstances of the individual; that any interventions are the least intrusive and restrictive of a person's freedom as possible; and that any interventions are proportionate to the level of risk presented;

- **Integration and cooperation:** multiagency approaches to ensuring effective safeguarding for all at risk adults on a local level;

- **Accountability:** accountability and transparency in adult safeguarding.

Appendix 2: Principles proposed by the Department of Health for its adult safeguarding policy for the health sector

The following principles were set out in the Department of Health's *Discussion Paper: Underlying Principles National Policy on Adult Safeguarding for the Health Sector*:

Human rights: The national health sector policy and legislation on adult safeguarding should be rights-based, respecting individuals' rights to independence, dignity, equality, privacy and choice.

Person-centredness / empowerment: The national health sector policy and legislation on adult safeguarding should be person-centred, respecting individuals' rights to autonomy (including the right to make "unwise" decisions) and empowering them to understand abuse, minimise risk, make their own decisions and remain in control of their lives.

Advocacy: The national health sector policy and legislation on adult safeguarding should value advocacy as a key support for adults who may be at risk.

Comprehensiveness: The national health sector policy and legislation on adult safeguarding should cover the entire health sector i.e. public, private and voluntary (including social care services for which the health sector has statutory responsibility).

Consistency: The national health sector policy and legislation on adult safeguarding should be consistent with the Assisted Decision Making (Capacity) Act.

Prevention: The national health sector policy and legislation on adult safeguarding should recognise the importance of prevention to reduce the likelihood of opportunities for abuse occurring.

Proportionality / minimal intrusiveness: The national health sector policy and legislation on adult safeguarding should be proportionate, favouring least intrusive responses appropriate to risks, in line with individuals' will and preference and rooted in evidence-based practice and partnership working.

Partnership: The national health sector policy and legislation on adult safeguarding should foster a partnership approach between individuals, professionals and agencies.

Collaboration: The national health sector policy and legislation on adult safeguarding should recognise the need for good collaboration, including appropriate information-sharing, with other sectors and within the health sector and clearly defined referral pathways to other sectors.

Awareness: The national health sector policy and legislation on adult safeguarding should recognise the importance of education, training, awareness and cultural change.

Everybody's business: The national health sector policy and legislation on adult safeguarding should recognise that safeguarding is "everybody's business".

Appendix 3: Core regulatory powers identified by the Law Reform Commission

An extract from the Law Reform Commission Issues Paper *A Regulatory Framework for Adult Safeguarding*:

In its Report on Regulatory Powers and Corporate Offences, the Commission recommended that financial and economic regulators should have at least the following 6 "core" regulatory powers:

(1) Power to issue a range of warning directions or notices, including to obtain information by written request, and "cease and desist" notices;

(2) Power to enter and search premises and take documents and other material;

(3) Power to require persons to attend in person before the regulator, or an authorised officer, to give evidence or produce documents (including provision for determining issues of privilege);

(4) Power to impose administrative financial sanctions (subject to court oversight, to ensure compliance with constitutional requirements);

(5) Power to enter into wide-ranging regulatory compliance agreements or settlements, including consumer redress schemes;

(6) Power to bring summary criminal prosecutions (prosecutions on indictment are referred to the Director of Public Prosecutions).