Factsheet 1: Deprivation of Liberty

Ireland does not have adequate legislation and procedures prescribed in law to address deprivation of liberty. For a person whose capacity is being questioned or who lacks capacity, there are no adequate legal safeguards and procedures to prevent the person being *de facto* detained in a residential care setting/nursing home/designated centre for people with disabilities/hospital. Due to the current lack of legislative safeguards there is no process of automatic review to determine if a person admitted to a residential care centre has consented to be there, and be subject to the institutional supervision related to this.

A third party, often a next of kin, can apply for the statutory financial support scheme for nursing home care on behalf of an older person, the third party may be asked to sign the contract consenting to care although they may have no legal authority to make decisions for that person. In the absence of a statutory assisted decision-making mechanism, it is commonly misinterpreted that the next of kin has authority to decide the person will be admitted to residential care, which residential care setting they are admitted to, and making care related decisions for the person.

Older people and vulnerable adults are at risk of *de facto* detention in residential care centres in buildings secured by key code locks as a safety mechanism, requiring residents to ask permission to leave the premises. In Sage’s experience, the *de facto* detention can extend as far as limiting a person’s access to recreational grounds outside of the building, justified by assessments of risk. [Pages 15 & 16, Sage Submission]

**Chemical Restraint**

There are no legislative safeguards to prevent the use of sedation purely for the management of a person’s behaviour for convenience within care settings, both residential and acute. There are no legislative safeguards to ensure the continued monitoring and review of the use of sedation.

There is misunderstanding about the distinction between medication being used for therapeutic reasons and medication used to control behaviour in violation of basic human rights. Safeguards and a right of complaint and investigation is required to ensure vulnerable adults are not at risk of chemical restraint which amounts to inhuman or degrading treatment [Pages 17, 18, 28, 30, 31, Sage Submission].

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**Facts and Figures**

- 637,567 people are aged over 65 in Ireland
- 436 people delayed discharge from acute hospital in 2016
- 4,873 people aged 65 and over resident in hospital (Census 2011)
- 580 residential centres for older people with capacity for 30, 369 people
- 1,055 residential centres for adults and children with disabilities
- 4,000 people with a disability reside in an institution
**Recommendations**

- State to enact legislation on Deprivation of Liberty, which adequately restricts the use of chemical restraint, and is in accordance with international human rights standards and norms regarding use of detention and restraint including the UN Convention Against Torture, the UN Convention on the Rights of Persons with a Disability and the European Convention on Human Rights.

- State to immediately implement and adequately resource provision of care in the community to prevent a person being *de facto* detained and to enable people to receive care at home in accordance with their wishes and in response to their individual care needs in a timely manner, which respects, protects and upholds their human rights.

- State to immediately address delayed discharge of vulnerable adults from acute hospitals, enabling timely assessments of care needs and provision of care to meet needs elsewhere in accordance with wishes, which respects, protects and upholds their human rights.

- State to scrutinise and address the systemic bias towards long-term residential care for older people in congregated settings in preference to care at home or in a less institutionalised environment, from a human rights, societal and public interest perspective.

- Repeal the Lunacy Regulations (Ireland) Act 1871 and commence the ADM (Capacity) Act 2015 without further delay ensuring adequate resources for implementation, and a detailed timeframe for commencement.

**Recognition of Capacity**

Ireland continues to operate a ward of court system under the Victorian-era legislation *Lunacy Regulations (Ireland), Act 1871*. Despite the signing into law in December 2015 of the Assisted Decision-Making (Capacity) Act 2015 this legislation has not been commenced. Due to the delay in commencement of the provisions of the ADM (Capacity) Act Ireland has been unable to ratify the United Nations Convention on the Rights of People with Disabilities.

The current legal framework (Wardship) for substituted decision making for people deemed of "unsound mind" amounts to a complete denial of a vulnerable adult’s human rights. Nonetheless, from 2012 to 2015 there was a 36% increase in wardship applications, and indications of the inappropriate use of the wardship process to enable the discharge of vulnerable older people from acute hospitals.

Furthermore, people who are existing wards at the time of the commencement of the ADM (Capacity) Act 2015, and whose capacity will be reviewed to bring them within the new supported decision making regime, will be further subjected to degrading treatment as the new legislation does not grant the rights to legal aid or other representation in the reviewing court. [Pages 13-15, Sage Submission]

**Investigations, Complaints, Redress & Advocacy**

Due to the delay in commencement of the ADM (Capacity) Act 2015, lack of legislation relating to safeguarding vulnerable adults at risk of abuse and legislation on deprivation of liberty, there is a lack of an appropriate complaints, investigation and process of redress for people affected. Current regulation, inspection and complaints bodes are inadequate in addressing this. [Pages 26 & 27, Sage Submission]

**Recommendation**

- The State should ensure that a statutory right to independent advocacy for vulnerable adults is provided for within legislation on Deprivation of Liberty, and on Safeguarding.

- State to take steps towards the ratification of OPCAT and establishment of a National Preventative Mechanism (NPM), and to include residential care centres/congregated settings for older people and people with disabilities in the places of detention to be monitored by the NPM.