

Factsheet 2: Protection from Abuse

Abuse and neglect of vulnerable adults is significantly underreported in Ireland, due to lack of public awareness of what constitutes abuse, and lack of comprehensive policy and legal safeguards to protect vulnerable adults from abuse. There is no legislative framework to provide safeguards to protect vulnerable adults from abuse, to ensure a standardised process of reporting and investigation of allegations of abuse by an independent body with authority, and to ensure an outcome and redress for the person affected by the abuse

Differing mechanisms for reporting and responding to incidents and allegations of abuse within residential care settings to the State's Safeguarding Protection Teams (SPTs) and to the Health Information and Quality Authority (HIQA) leads to ambiguity. It is not a mandated requirement for private providers of residential care to report allegations of abuse to the State's Safeguarding and Protections Teams, and there is discretion applied. The majority of residents within privately operated residential care settings receive funding for their care from the State under the Nursing Home Support Scheme, however the State body SPTs do not have statutory powers to adequately investigate and enter a private residential care centre without the permission or invitation of the provider. Therefore they can in principle be refused entry to meet with a person who has experienced abuse. A private provider can refuse entry of a person to the building and thereby prevent a resident in their care from accessing a service. [Pages 20-22, Sage Submission]

Case examples

Footage taken from a congregated residential setting for adults with intellectual disabilities, showed vulnerable adults being subjected to abuse, including force feeding, slapping, kicking, physical restraint and shouting.

Speaking at the time the then Minister for State at Department of Health said "I refuse to believe Áras Attracta is the only place where this is happening."

HIQA cancelled registration of residential care settings due to inadequate safeguarding measures to protect people from abuse. HIQA sought to cease admissions to a State run residential care setting for older people noting institutionalised practices, poor levels of privacy, degrading treatment caused by inaccessible shower and toilet facilities including urinals hanging beside beds. [Pages 28-30, Sage Submission]

Facts and Figures

7,884 cases of alleged abuse and neglect of adults in 2016

424 allegations of suspected or confirmed abuse of residents in residential care settings for older people in 2015

1,799 allegations of suspected or confirmed abuse of residents in designated centres for adults and children with disabilities in 2015

One in two adults in Ireland experienced at least one form of abuse to a vulnerable adult

41 safeguarding concerns of a vulnerable adult reported to the State's Confidential Recipient

Recommendations

- State to take immediate action to ensure State Agencies responding to suspicions or allegations of abuse of a vulnerable adult have a right of access to all premises and relevant documents where there is a safeguarding concern.
- Adequate safeguards against abuse are fundamental to ensuring a person is protected from experiencing torture, or other cruel, inhuman or degrading treatment or punishment. The State should introduce statutory provisions to protect all people at risk of abuse, and ensure that the State's Safeguarding policies and procedures are underpinned by a robust statutory framework.
- State to ensure a function to promote education and training is maintained in the Adult Safeguarding Bill 2017, or any future statutory provisions relating to safeguarding.
- State to ensure that a process of investigation and redress for a person who has an abusive act perpetrated against them is included in any Safeguarding legislation.
- 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 bodies 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.

Sage Support and Advocacy Service