



# **Law Reform Commission Issues Paper**

**A Regulatory Framework for Adult Safeguarding**

**SUBMISSION**

**MAY 2020**

## Introduction

Sage Advocacy welcomes the opportunity to respond to this consultation by the Law Reform Commission on its Issues Paper, *A Regulatory Framework for Adult Safeguarding*. This Paper is an important step in developing an adequate safeguarding system in Ireland for adults who may be vulnerable.

Sage Advocacy is a support and advocacy service with a particular focus on vulnerable adults and older people who have difficulty in asserting their legal and human rights. The mission of Sage Advocacy is to promote, protect and defend the rights and dignity of vulnerable adults, older people and healthcare patients. Its work with people is based on the principle of 'nothing about you/without you'.

A central focus of Sage Advocacy is safeguarding adults who may be vulnerable to abuse in any form – physical, financial, sexual or psychological.

In this submission, the LRC's questions listed under each Issue are addressed drawing on the experience of Sage Advocacy over the past five years of delivering independent advocacy to vulnerable adults. A summary of the main points included in the Submission is provided and some general comments relating to adult safeguarding in Ireland are included.

## Issue 1: Values and Principles underpinning Adult Safeguarding

*Q. 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?*

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

- *Respecting human rights ,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.*

### **Q. 1.1**

The principles set out in the Discussion Paper provide a necessary value base for legislation relating to adult safeguarding and Sage Advocacy is in agreement with them in that they broadly reflect international human rights provisions. It is suggested that the principle relating to accountability should be higher in the list, perhaps, at No. 2.

### **Q. 1.2**

Sage Advocacy suggests that three additional principles should be included:

- *Promoting equal treatment with other people in respect of access to basic goods, services and protections*
- *Enabling control over personal finances and property*
- *Balancing people’s right to take reasonable risks with safeguarding vulnerable adults*

## Issue 2: Defining Key Terms for Adult Safeguarding

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

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

*Q. 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”*

### Q. 2.1

The statutory regulatory framework for adult safeguarding should define the categories of adults who come within its scope. This would help to ensure clarity in relation to the roles of various agencies likely to be involved. It would also help to ensure that safeguarding interventions are targeted at those in need of safeguarding services and facilitate inter-agency working.

### Q. 2.2

'Vulnerable adult'

Broadly speaking, the term 'vulnerable adult' may inadvertently result in a tendency to locate problems in the individual person and not take into account the fact that vulnerability is relative and fluctuates and that it may be as much to do with people's living circumstances/environment as with their personal disposition, decision-making capacity or functional ability. It is also the case that vulnerability is a universal and constant aspect of the human condition and is ever-present over the span of an individual's lifetime and, therefore, not exclusive to any specific group or set of circumstances.

As acknowledged in the LRC Issues Paper, it is very difficult to come up with terms that fully encompass all of the complex aspects of abuse and the categories of people who may be subject to abuse in all its forms, including self-neglect. While an adult "at risk" is understood in England's *Care Act 2014* as a person is in need of "care and support", Sage Advocacy agrees with the LRC view that a person may be capable of living independently without care and support but may still be at risk of abuse or harm.

The definition of adults at risk of abuse outlined in the Adult Support and Protection (Scotland) Act 2007 refers to adults who:

- (a) Are unable to safeguard their own well-being, property, rights or other interests*
- (b) Are at risk of harm and/or abuse, and*
- (c) Because they are affected by disability and/or mental disorder, and/or physical ill health and/or mental infirmity, are more at risk of harm than adults who are not so affected.*

This definition is useful in that it can be interpreted as including both people who may be at risk of abuse by a third party and also those who may be self-neglecting. However, the use of the term 'disability' in (c) is problematic in that there are many people with a disability who are not at risk of abuse or harm. Also, there are people who have suffered various kinds of trauma, e.g., domestic violence, past sexual abuse, who may not have the ability to safeguard themselves or their property and may be subject to exploitation. The following wording may be more appropriate in (c):

*"People who as a result of the effects of various mental health, cognitive, physical/mobility or social or economic difficulties are unable to protect themselves against harm"*

While there is a plausible argument for using the term 'people at risk of abuse', on balance, Sage Advocacy is of the view that there is little to be gained from moving from the term 'vulnerable person' to 'person/adult at risk of abuse' since the term 'vulnerable' is now very much part of public and policy discourse and there is potential for confusion in introducing another term at this stage.

### Q.2.3

While the LRC Discussion Paper has provided a number of definitions of safeguarding, abuse and harm used in various policies and in different jurisdictions, it has not opted for or proposed any specific definition of these terms. The HIQA/MHC National Standards for Adult Safeguarding refers to the promotion of well-being in defining “safeguarding” in relation to adults. The principles of safeguarding adults set out in the UK Care Act 2014 (LRC Issues Paper 1.14) provide a useful insight into what safeguarding entails:

- ✓ Empowerment: presumption of person-led decisions and informed consent
- ✓ Protection: support and representation for those in greatest need
- ✓ Prevention: taking action before harm occurs
- ✓ Proportionate and least intrusive responses: appropriate to the risk presented
- ✓ Partnership: local solutions through services working with their communities
- ✓ Accountability: accountability and transparency in delivering safeguarding.

This approach recognises the importance of the person’s views and their wishes and preferences. It also references the need for a partnership approach and, very importantly, accountability.

The definition of ‘abuse’ outlined in the HSE’s 2014 **Vulnerable Adults** National Policy and Procedures, and in HIQA’s and the MHC’s National Standards for Adult Safeguarding is adequate “*A single, or repeated act, or omission, which violates a person’s human rights or causes harm or distress to a person*”. This might, however, be better referred to as ‘third party abuse’.

It must also be acknowledged that abuse can also arise from inappropriate or inadequacy of care and support services for those who need them.

The definition of ‘harm’ in the *Scottish Adult Support and Protection (Scotland) Act 2007* definition (LRC Issues Paper 2.34) is adequate and appropriate, particularly as it includes ‘self-harm’:

*“harm” includes all harmful conduct and, in particular, includes:*

- *conduct which causes physical harm;*
- *conduct which causes psychological harm (for example by causing fear, alarm or distress);*
- *unlawful conduct which appropriates or adversely affects property, rights or interests (for example theft, fraud, embezzlement or extortion); or*
- *conduct which causes self-harm.*

The definition of ‘neglect’ in the British Columbia Adult Guardianship Act 1996 (LRC Issues Paper 2.45) is clear and comprehensive and is the one that Sage Advocacy would favour.

“Any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage or loss in respect of the adult’s financial affairs, and includes self-neglect”.

In relation to ‘capacity’ it is critically important that there is consistency in the definition of ‘*capacity*’ set out in the safeguarding legislation with that provided for in the *Assisted Decision-Making (Capacity) Act 2015*. Safeguarding legislation should include reference to legal capacity (a person’s capacity to be both a holder of rights and an actor under the law

and to have entitlement to full protection of these rights) since this is something that is not always well understood by the public or by policy-makers.

### **Issue 3: Physical, Sexual, Discriminatory and Psychological Abuse, Neglect and Deprivation of Liberty**

*Q. 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?*

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

*Q. 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?*

*Q. 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?*

*Q. 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?*

*Q. 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?*

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

#### **Q.3.1**

Adult safeguarding legislation should provide for a general statutory duty of care to promote an individual's well-being and to protect an individual from abuse or neglect. As a general rule, all people in receipt of care services should have a personal care plan in place. This is usually a requirement under HIQA standards. Sage Advocacy believes that there would be merit in also having a specific Safeguarding Plan for people who have experienced significant abuse.

#### **Q.3.2**

Legislation should impose a duty on adult safeguarding service providers to provide safeguarding services. This is necessary in order to ensure consistency across the country. The *Assisted Decision-Making (Capacity) Act 2015* (Section 145) includes provision for an offence for decision supporters who ill-treat or wilfully neglect a relevant person. Safeguarding legislation should be consistent with this provision and include a similar requirement for people working in safeguarding services.

#### **Q. 3.3**

Safeguarding Plans should include the prevention of all forms of abuse – physical, sexual, financial and psychological, and neglect (including self-neglect).

#### **Q.3.4**

On balance, Sage Advocacy is of the view that failure by a safeguarding service provider to prepare a safeguarding plan for each individual in receipt of safeguarding services should give rise to a criminal liability rather than civil liability.

#### **Q. 3.5**

As in answer to Q. 3.4

#### **Q. 3.6**

Professional accountability should apply to all staff of an adult safeguarding service. Complaints of poor practice should be brought to the attention of both the safeguarding service provider and to the relevant professional body which should deal with such

complaints in accordance with requirements under Codes of Professional Conduct.

### Q. 3.7

A gap in the *Domestic Violence Act 2018* referred to in the LRC Issues Document is that the offence of coercive control does not extend to family relationships. The offence of coercive control should be extended to family relationships and take into account the fact that there are likely to be situations where inappropriate control is exercised over a vulnerable adult by another family member not living in the same household as the victim.

## Issue 4: Financial Abuse

*Q. 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?*

*Q. 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.*

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

### Q. 4.1

There is significant evidence that financial abuse of vulnerable adults is widespread in Ireland, particularly among older people.<sup>1</sup>

The Central Bank of Ireland and the Department of Employment Affairs and Social Protection each has strong regulatory powers to address financial abuse in the context of adult safeguarding. However, people who experience financial abuse may not always be aware of the roles of these bodies and, indeed, may not be in a position without support to seek redress.

There have been sustained efforts to address financial abuse in recent years by financial institutions. The Central Bank updates its *Consumer Protection Code 2012* on an ongoing basis. The current version states that “where a regulated entity has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer<sup>2</sup> is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity. The Banking

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<sup>1</sup> See Fealy, G., Donnelly, N., Bergin, A., Treacy, M. P., & Phelan, A. (2012). Financial Abuse of Older People: A Review. NCPOP, University College Dublin. <https://www.lenus.ie/bitstream/handle/10147/300701/599NCPOP.pdf?sequence=1&isAllowed=y>

<sup>2</sup> A vulnerable consumer is defined in the Code as a natural person who:  
a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or  
b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).

and Payments Federation of Ireland *Guide to Safeguarding your Money Now and in the Future*<sup>3</sup> is also a useful resource.

Many residential services for people with disabilities have developed protocols for maximising people's capacity to understand and manage their own finances and there is now a much greater awareness of people's right to make decisions about their own finances rather than the default position that tended to operate extensively where control was exercised by family members.

One important point is that financial abuse needs to be understood as broader than personal finances and should include the illegal or improper use of property and coercion in relation to transferring property or leaving it in a will.

#### **Q 4.2**

Sage Advocacy agrees with the LRC suggestion that a statutory financial abuse Code of Practice for Financial Institutions should be introduced to combat financial abuse. Additionally, as suggested in the LRC Issues Paper (5.37), the option of providing additional powers to the DEASP to investigate cases of suspected social welfare abuse of at risk adults should be considered further taking into account the fact that the provisions for social welfare agents will change with the implementation of the Assisted Decision-making (Capacity) Act 2015. Such Codes of Practice could usefully include the provision for protected disclosure to include both financial institutions and statutory agencies where financial abuse is suspected.

There are two specific areas which currently give rise to concern in relation to protecting people from financial abuse:

- 1) The opening of Joint Bank Accounts
- 2) The system for oversight of social welfare agents

#### Joint Bank Accounts

The potential for financial abuse arising from a person opening a Joint Account in a bank or credit union with another person have been referenced in the LRC Issues Paper (4.10). It is often suggested to people who are experiencing difficulty in managing their finances that placing their bank account into the joint names of themselves and the other person who is prepared to support them is a way of achieving this. This, however, can present a significant problem which is very difficult to address if this "arrangement" is not set up with due diligence and absolute clarity as to the intentions of the account owner. The putting of an account with a financial institution which contains money belonging to one party only into joint names with another party has serious legal consequences because of the operation in law of the concepts known as "resulting trusts" and "presumption of advancement". These legal concepts can operate to deprive the rightful owner of some or even all of their money and may make it impossible for them to access the funds without the approval and/or signature of the other party whose name is put on the account.

The only way of making sure that the legal concepts of "resulting trust" and "presumption of advancement" do not apply to an account in joint names and ensure that the money in the account continues to be the property of the original account holder or owner and is to be used for their benefit only, is to make sure that all of the parties involved are made aware in writing that the additional person whose name is being added to the account is being

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<sup>3</sup> <https://www.bpfi.ie/wp-content/uploads/2018/06/BPFI-Guide-to-Safeguarding-Your-Money-Now-and-in-the-Future.pdf>



appointed as *agent* for the original account holder only. These parties include the financial institution, the original account holder, the person whose name is to be added to the account and all other relevant parties (for example, a care provider or solicitor or family members). In the case of the financial institution, a note to the effect that the additional person acts only as an agent for the account holder should be put on the account. In banking terms this additional person is called a “third party signatory” being given third party authority.

The Law Society guidance on joint accounts<sup>4</sup> sets out the legal implications of such accounts. However, there is anecdotal evidence that some solicitors can give incorrect advice relating to the setting up of joint accounts which can result in financial abuse. Ensuring that joint accounts are set up properly and in accordance with the wishes and intention of the original account holder is an important safeguarding matter. There should be more statutory clarification with regard to such accounts, including, in particular, the need to clearly state the intention of the parties when opening a joint account.

### Social welfare agents

The mechanisms for the appointment of, review and oversight of social welfare agents may not be sufficiently strong to ensure that there is not financial abuse of people who do not fully understand how their personal finances operate. The agency system, while important in many respects, has inherent potential for abuse. While social welfare regulation provides for the payment recipient to request the discontinuation of an agent arrangement if at any time they are not satisfied with the arrangement, this presumes that the recipient has decision-making capacity and the ability and skills to do so which by the very nature of the agency requirement is frequently not the case.

The DEASP<sup>5</sup> is reviewing and revising the general use of Agents for receiving the State payments of adults who may be vulnerable to financial abuse and has established a Working Group to examine and make recommendations on the adequacy of the current procedures and processes for:

- Appointing agents for social welfare payments
- Reviewing existing agent arrangements
- Dealing with specific complaints regarding named agents when they arise (with the involvement of relevant external agencies as necessary) and
- Continuing to raise the awareness of staff on safeguarding and protection of vulnerable adults, with a particular emphasis on financial abuse

Sage Advocacy understands that the Working Group is also assessing the implications for agent arrangements in the context of the Assisted Decision-Making (Capacity) Act 2015 and the requirements necessary to comply with that legislation. A ‘Type 2’ Agent<sup>6</sup> is unlikely to be necessary following the commencement of the *Assisted Decision-Making (Capacity) Act 2015* in that the Act provides for reporting obligations to and oversight by the Director of the

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<sup>4</sup> <https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Joint-Bank-Accounts---Guidelines-for-Solicitors/#.XlJcdGj7Q2w>

<sup>5</sup>Source: <https://www.gov.ie/en/publication/3f6bc5-safeguarding-vulnerable-adults/#safeguarding-vulnerable-adults-at-risk>

<sup>6</sup> Type 2 agents are appointed where a person is deemed unable to manage his/her own financial affairs and an agent is appointed to collect the payment and act on behalf of the claimant. In all cases a medical practitioner must certify that the person is unable for the time being to manage his/her own financial affairs. It is likely that a significant number of Type 2 agents are service providers.

Decision Support Service of persons whose decision-making capacity is in question or who lack capacity and need support and assistance in relation to payments they are entitled to receive from the State. The 2015 Act requires the State to comply with its specific obligations under Article 12(4) of the UNCRPD to ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person and are free of conflict of interest and undue influence.

The potential for abuse by social welfare agents is high. For example a Red C public opinion poll carried out for Safeguarding Ireland<sup>7</sup> found that a majority of those surveyed were of the view that they could make decisions for another person who may be frail but have decision-making capacity and that the consent of the person is not required. There is a clear need to for more surveillance in order to ensure that “Type 1” Agents comply with their obligations. Adult safeguarding legislation should include a requirement for reporting and stronger oversight of Agents under the social welfare code and which are consistent with the *Assisted Decision-Making (Capacity) Act 2015* requirements for people providing decision-making supports.

The abuse of Carers Allowance is a matter which requires particular attention. Sage Advocacy regularly comes across cases where the allowance is being paid without any check on whether or not the care is being provided and where the recipient is neither providing care or a ‘suitable person’ to do so.

#### **Issue 5: What body or bodies should have responsibility for the Regulation of Adult Safeguarding?**

*Q. 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).*

*Q. 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?*

*Q. 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?*

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<sup>7</sup> <https://63273-593977-raikfcquaxqncofqfm.stackpathdns.com/wp-content/uploads/2020/02/426920-Safeguarding-Ireland-Place-of-Care-RED-Line-13022020.pdf>

### **Q. 5.1**

The organisational models outlined are largely based on existing organisational arrangements and responsibilities and each has some advantages as well as disadvantages. The HSE is currently the body with the main responsibility for the provision of adult safeguarding services and HIQA and the Mental Health Commission have responsibility for some aspects of safeguarding and protection in designated centres and settings. Safeguarding is clearly a matter which is broader than the HSE and involves a number of service providing agencies (statutory, financial institutions and voluntary/community organisations) as well as the general public. Frequently, safeguarding issues require a multi-agency engagement in both identifying where abuse is occurring or likely to occur and developing appropriate responses. Options for developing the Safeguarding Authority in either the HSE or as an executive office of the Department of Health are very likely to result in the Authority getting subsumed into the overall functional responsibilities of these bodies (which are multiple) and a consequent loss of the level of independent focus required.

Similarly, amalgamating the Safeguarding Authority with an existing agency may not be a viable option. The agencies suggested – the Mental Health Commission, the Health Information and Quality Authority and Tusla – each has a very specific remit and functions. Also, since Tusla is now well established and its focus on children well understood by the public, it would not seem at all appropriate to place an Adult Safeguarding Authority within its remit.

Sage Advocacy is strongly of the view that a National Support and Safeguarding Authority providing overarching governance to a National Safeguarding Service, Mental Health Commission, the Decision Support Service and independent advocacy services is required. This should be an independent agency established along the lines of the Office of the Ombudsman or HIQA in order to ensure that dedicated expertise is available within an organisation with a single area of functional responsibility. Sage Advocacy also believes that the Safeguarding Service should be removed from and be independent of the HSE.

### **Q. 5.2**

Sage Advocacy believes that the six regulatory powers outlined in the LRC Issues Paper (5.38) are sufficient and that all of these should be applied to adult safeguarding and vested in a National Support and Safeguarding Authority.

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

### Q. 5.3

Clearly, there is a need for regional oversight of adult safeguarding, especially given the likely extent of abuse (reported and unreported). A Red C Poll<sup>8</sup>, carried out for Safeguarding Ireland, found that one in six people reported experiencing or witnessing financial abuse. The HSE 2018 Annual Safeguarding Report<sup>9</sup> indicated that, for persons aged over 65, the third most alleged form of abuse was financial abuse (21%) with the highest level of reporting in those over 80 years.

As stated in the LRC Issues Paper (5.58), a Safeguarding and Protection Committee (Vulnerable Persons Safeguarding and Protection Committee (Vulnerable Persons)) has already been established by the HSE within each CHO area – these to varying levels of organisational development and operational maturity. Since these committees already exist, they could potentially act as a mechanism for the establishment of regional safeguarding offices across the country. However, reporting relationships with and accountability to an Authority would have to be clear.

## Issue 6: Powers of Entry and Inspection

*Q. 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.*

*Q. 6.2 If the answer to Q.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?*

*Q. 6.3 If the answer to Q.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).*

*Q. 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?*

### Q. 6.1

While most safeguarding cases will be dealt with without the need to resort to a power of entry, there are likely to be instances where abuse is alleged or suspected and where safeguarding services are prevented from entering a dwelling by an abusive person or, indeed, where independent advocates are refused entry into a residential care facility or a person's home. Psychological abuse and coercion may occur within families in parallel with other forms of abuse such as physical and financial abuse and neglect.

<sup>8</sup> <https://www.lenus.ie/bitstream/handle/10147/624090/Red-C-Survey-Vulnerable-Adults-in-Irish-Society-060417.pdf?sequence=1&isAllowed=y>

<sup>9</sup>

<https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/safeguarding%20report%202018.pdf>

Any powers of entry will need to be specific and ensure that, in keeping with the principle of proportionality, there is no disproportionate interference with people's right to privacy. This, however, will be a fine balancing act in that it is likely that cases where entry is prohibited by an alleged perpetrator, or by a person who is self-neglecting, are the ones of greatest concern. Currently, entry to a private dwelling, including a private nursing home, by members of the HSE's Safeguarding and Protection Teams can be refused.

#### **Q 6.2**

The Safeguarding Authority should have a statutory power to enter and inspect premises including private dwellings, where there is a reasonable belief that abuse of an unacceptable nature is occurring. Any such powers must be used appropriately and proportionally. In general, a safeguarding professional, a health or social care professional or a member of An Garda Síochána should be sufficiently skilled to gain entry where required without having to use power of entry. Circumstances where power of entry is used should be as follows:

- a) A reasonable concern on the part of a member of the safeguarding service of abuse, exploitation or neglect, coercive control or self-neglect
- b) Some objective evidence or rationale that supports such a belief
- c) A belief that any attempt by safeguarding staff to enter without such a warrant would defeat the object of the visit **or** all other reasonable avenues of entry have been explored and failed
- d) Generally, a requirement that a search warrant has been granted by the Courts.

#### **Q. 6.3**

As in Answer to Q. 6.2

### **Issue 7: Safeguarding Investigative Powers**

*Q. 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.*

*Q. 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?*

*Q. 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?*

#### **Q. 7.1**

There should be a statutory duty on the National Support and Safeguarding Authority to make enquiries, interview and/or make assessments in cases of concern reported and to act on these as required to safeguard individuals at risk of abuse. Legislative powers should be provided for these purposes. The Domestic Violence Act 2018 does not cover a large group of persons (mainly older people) some of whom may lack decision-making capacity and where they are subject to violence or coercive control. Further provision needs to be made to

permit applications to be made on behalf of such adults.

Sage Advocacy, therefore, believes that the 2018 Act should be amended as follows:

- ✓ To include the HSE in the definition of an ‘applicant’
- ✓ That the definition of ‘dependent person’ be replaced with a more appropriate definition to capture the living arrangements within families in a much wider context
- ✓ That an application may be made on behalf of a person who lacks decision-making capacity in accordance with the provisions of the Assisted Decision-Making (Capacity) Act 2015
- ✓ Amend the definition of a ‘relevant person’ in Section 39 (4) of the Act which defines a relevant person as a spouse or civil partner or a person who is or was in an intimate relationship with that other person

### **Q 7.2**

As in Answer to Q. 7.1 – the *Domestic Violence Act 2018* should be amended to empower bodies other than Tusla to apply to court for an order under the 2018 Act.

### **Q 7.3**

Sage Advocacy believes that an offence of coercive control irrespective of family relationships should be provided for in the legislation. While domestic violence legislation is an integral part of family law, adult safeguarding legislation can be understood as broader than domestic violence legislation and must be capable of addressing other abuse of adults, including financial abuse, perpetrated by relatives, neighbours, ‘friends’ or health and social care professionals or institutions.

## **Issue 8: Reporting**

*Q. 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 incidents 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.*

*Q. 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?*

*Q. 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?*

### **Q. 8.1**

Universal mandatory reporting is defined in the LRC Issues Paper (8.1) as *the introduction of legislation to make obligatory or mandate the reporting of specific incidents such as abuse situations, or the reporting of reasonable suspicions that such situations may have occurred.* The question of mandatory reporting is a difficult one in that it would be important to avoid a situation where the Safeguarding Authority would not be able to carry out its primary functions because of having to deal with a very high number of reports of alleged abuse. The experience of Tusla in relation to mandatory reporting of alleged or suspected child abuse would be very informative on the matter, particularly in relation to what parameters would be applied to mandatory reporting. On the latter point, there would be a need to set a threshold for reporting to the Adult Safeguarding Authority in order to ensure that smaller scale abuses are dealt through other mechanisms. Also, it would be hugely important that a requirement for mandatory reporting does not adversely affect the development and maintenance of good working relationships between families and professionals.

On a related matter, there should also be a strong emphasis in the legislation on the need for prevention of abuse in the first instance and vigilance on the part of social and health care services, financial institutions and the DEASP in relation to the monitoring of social welfare payment agents.

### **Q. 8.2**

Permissive reporting should be on a legislative basis and legal protection should be available to those who report concerns in good faith. Caution is, however, required in order to ensure that the potential for vexatious reports or allegations that cannot be subsequently followed through on because of lack of co-operation from the person making the allegation are minimised.

### **Q. 8.3**

A hybrid or a 'reportable incidents' model as described in the LRC Issues Paper would be likely to be difficult to implement especially in relation to which type of incidents and what degree of abuse would be reportable. There are clearly different degrees of abuse – for example, there is both small-scale and large-scale financial abuse.

## **Issue 9: Independent Advocacy**

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

*Q. 9.2 If the answer to Q.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).*

*Q. 9.3 If the answer to Q. 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?*

### **Q. 9.1**

Independent advocacy is regarded by Sage Advocacy as at the very core of safeguarding and protecting people's human and legal rights and their dignity. Independent advocacy is particularly important where people are vulnerable because of place of residence or a lack of



trusted relatives or networks characterised by trust, honour and integrity and, even more so, for people who have reduced decision-making capacity.

There is no current effective mechanism to compel service providers to support people with disabilities to exercise their autonomy and to assess an independent advocate which is a requirement under HIQA standards. Sage Advocacy notes that the National Advocacy Service for People with Disabilities (NASPWD) has sought legislation to give NASPWD statutory powers of access.<sup>10</sup>

Independent advocacy has been described as a practice without context or a legislative base.<sup>11</sup> This situation needs to be remedied with some urgency, especially in the context of the implementation of the Assisted Decision-making (Capacity) Act 2015. Legislative provision needs to be made for professional independent advocacy. Indeed, the 1996 Report of the Commission on the Status of People with Disabilities, *A Strategy for Equality*,<sup>12</sup> recommended that authority for independent advocacy should be set out in legislation and that access to an advocate should be a legislative entitlement, where necessary to ensure access to justice or access to essential social services.

The Mental Health Act 2001 provides for a person to be appointed independent legal representation in the review process of involuntary detention.<sup>13</sup> The Assisted Decision-making (Capacity) Act 2015 makes provision for the Director of the Decision Support Service to prepare and publish a code of practice (or approve of a code of practice prepared by another body) for the guidance of persons acting as advocates on behalf of relevant persons. The Adult Safeguarding Bill 2017 makes provisions for adults at risk to have access to an independent advocate<sup>14</sup>. Under the Bill, the Safeguarding Authority (to be established) can arrange for a person who is independent (an 'independent advocate') to be available to represent and support an individual. The condition for appointment of an independent advocate is that the Authority considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following:

- (a) Understanding relevant information;
- (b) Retaining that information;
- (c) Using or weighing that information as part of the process of being involved;
- (d) Communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means) 12(3);

#### **Q. 9.2**

In answering this question, it is important to note that the Personal Advocacy Service provided for under the Citizens Information Act 2007 was regarded as a significant

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<sup>10</sup> [https://www.citizensinformationboard.ie/downloads/advocacy/NAS\\_AnnualReport\\_2017.pdf](https://www.citizensinformationboard.ie/downloads/advocacy/NAS_AnnualReport_2017.pdf)

<sup>11</sup> Browne, M. (2018) <https://www.safeguardingireland.org/wp-content/uploads/2018/10/Advocacy-Scoping-Documents-Final-310818.pdf>

<sup>12</sup> Commission on the Status of People with Disabilities, *A Strategy for Equality* (Dublin: Stationery Office, 1996).

<sup>13</sup> Section 16(2)(b), Mental Health Act 2001. This narrow construction of advocacy was criticised at the time by the Forum of People with Disabilities who argued for a broader approach to advocacy and suggested that advocacy should be a legislative entitlement for all vulnerable individuals in society, not just people with disabilities.

<sup>14</sup> Adult Safeguarding Bill 2017, Section 12



development and was very much welcomed at the time by those who had been campaigning for equal rights for people with disabilities. However, the context and the dynamic have changed radically since then due to the publication of the UN Convention on the Rights of Persons with Disabilities and the development of a related policy emphasis on the rights of people with disabilities at international and national levels. In Ireland, clearly the Assisted Decision-making (Capacity) Act 2015 was a watershed.

It is now clear that the Personal Advocacy Service (PAS) as provided for in the 2007 legislation is no longer fit for purpose in that its provisions would seem contrary to international human rights norms, particularly the right to access justice and to receive an effective remedy.

- There is an absence of a requirement for pro-active outreach to vulnerable groups, e.g., those with reduced decision-making capacity and those in residential care services;
- Applicants for PAS must have already identified a need for a specific social service relating to their disability;
- Access to the PAS is contingent on whether or not other advocacy services were available;
- Personal advocates have the power to decide whether or not a particular course of action is appropriate – this approach does not allow for people’s right to assert their will and preferences.

New legal provision for an independent advocacy service is essential for the State to comply with the requirement of the UN Convention and the Assisted Decision Making (Capacity) Act. An independent advocacy service with statutory rights and provision for more proactive investigative mechanisms is clearly necessary, particularly to ensure that people with reduced decision-making capacity residing in institutions and congregated care settings (whether public, private or charitable) are informed of their legal rights and assisted in accessing them.

An advocacy service with statutory rights would also be important to underpin the practice of non-instructed advocacy where an advocate acts independently of the individual. This is necessary in some cases as an individual’s decision-making capacity may be significantly reduced as a result of reduced cognitive functioning and they may not be able to give consent to an advocacy intervention. Safeguarding often demands that independent advocates must intervene in order to ensure that those responsible for the care of such individuals are at all times guided by the legal and human rights of vulnerable adults in their care. The documented experiences of people in Leas Cross and Áras Attracta in recent years clearly make the case for such interventions and, in addition, highlight the need for legislative provision for independent advocacy.

### **Q. 9.3**

Given the increasing range of bodies involved in supporting and funding independent advocacy (HSE, DEASP, Department of Health, Mental Health Commission, Decision Support Service) and, also, the involvement of the Department of Justice, there is a clear

need for a Government-led and more integrated and streamlined approach to the matter. This is all the more important because of the number of agencies now delivering advocacy services to vulnerable adults – Sage Advocacy, NASPWD and the Irish Advocacy Network at national level and Cork Advocacy Service (CAS) – the latter an independent, volunteer-resourced advocacy project developed and operated by The Social and Health Education Project (SHEP).

Sage Advocacy strongly believes that a National Advocacy Body as outlined in the LRC Issues Paper (9.17) should be constituted in parallel with or as part of safeguarding legislation. This is necessary in order to ensure that there is a national integrated framework for developing independent advocacy and within which current arrangements, funding and reporting responsibilities could be better integrated.

The role and functions of the National Advocacy Body as set out in the LRC Issues Paper are appropriate and could be added or amended once a Safeguarding Authority was established.

- (a) Enabling access by all vulnerable or at risk adults to independent advocacy
- (b) Integrating the various funding strands for advocacy and related reporting structures
- (c) Providing for uniform access to independent advocacy by all vulnerable or at risk adults
- (d) Overseeing funding requirements
- (e) Setting standards, awarding qualifications and providing training
- (f) Preparing, publishing and monitoring the implementation of codes of practice
- (g) Conducting research, monitoring and evaluating services, and
- (h) Implementing and maintaining data information systems

While a National Advocacy Body could operate as an independent agency, this may not be realistic given the likely financial requirements of setting up a National Safeguarding Authority with regional offices. It may be possible to locate the National Advocacy Body within the Safeguarding Authority depending on how the role and functions of such an authority are constituted. There does not appear to be any obvious home for such a body within existing agencies but Sage Advocacy would like to see this matter explored further as independent advocacy needs to be consolidated and mainstreamed in its own right and, ideally, in parallel with the establishment of a National Support and Safeguarding Authority.

#### **Issue 10: Access to Sensitive Data and Sharing Information**

*Q. 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?*

*Q. 10.2 If the answer to Q. 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.*

#### **Q.10.1**

Multi-agency working is in many cases a prerequisite for adequate safeguarding. However, there may not always be clarity about information sharing between agencies and

professionals and personal privacy and data protection are major factors. Existing arrangements for sensitive data sharing are unlikely to be sufficient in situations where there are vulnerable adults who lack capacity and who may be experiencing abuse. The views of HSE Safeguarding Teams and independent advocacy providers should be considered when looking at what changes may be required to the data protection legislation in order to deal with difficulties arising from gaps in data sharing.

**Q. 10.2**

Inter-agency working, for it to be effective, requires the development of specific skills and a culture which focuses on outcomes and minimises ‘turf’. Better protocols for interagency cross-referring are clearly required and, in order to be meaningful and effective, would need to be supported by statutory powers.

**Issue 11: Multi Agency Collaboration**

*Q. 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?*

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

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

**Q. 11.1**

Multi-agency co-operation is vital in ensuring that there is an integrated and person-centred approach to supporting vulnerable adults generally. It is particularly important in the adult safeguarding context. The Joint Oireachtas Committee on Health in its Report on Adult Safeguarding recommended that safeguarding legislation should provide for inter-agency collaboration.<sup>15</sup> The need for strong collaboration and joined-up thinking from a number of Departments and State agencies to ensure best legislative solution to safeguarding vulnerable adults across all services provided by the State has been stated by the Minister for Health.<sup>16</sup>

It is the strong view of Sage Advocacy that there should be a statutory duty on agencies to collaborate in safeguarding situations and to collaborate with the National Support and Safeguarding Authority once this is established.

**Q.11.2**

Sage Advocacy identifies the following as bodies to which a statutory duty to co-operate should apply:

- The HSE and agencies that it funds through Section 38 and 39 agreements.
- Private and voluntary hospitals and nursing homes.

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<sup>15</sup> Joint Oireachtas Committee on Health, Report on Adult Safeguarding (Houses of the Oireachtas 2017)

<sup>16</sup> Minister Simon Harris, Adult Safeguarding Bill: Second Stage, Seanad Éireann debate - 5 Apr 2017 <https://www.oireachtas.ie/en/debates/debate/seanad/2017-04-05/9/>

- Private providers of Home Care
- HIQA
- Mental Health Commission
- Department of Employment Affairs and Social Protection
- Decision Support Service
- Independent advocacy providers
- Central Bank of Ireland
- Banks and Credit Unions
- An Garda Síochána
- CIB and the services it funds (CISs, MABS and NASPWD)

**Q. 11.3**

Sage Advocacy believes that there is a need for statutory transitional care arrangements between child care services and adult safeguarding services where there are safeguarding concerns. This is particularly important as illustrated by the Case Example in the LRC Issues Paper (11.10) which highlighted the absence of a proper and planned transition pathway and related case management.

Transitional care arrangements are required to ensure that: (a) there is a consistent approach across the country in liaison between Tusla and the HSE; and (b) where there are other agencies involved (e.g., Section 38 and Section 39 agencies), that there are proper, adequate and transparent protocols in place.

## Summary and Concluding Observations

### Restructuring and refocusing Safeguarding Services

The nature of safeguarding and the fact that it is part of a continuum of related, if distinct, supports and services suggests that any governance arrangements should reflect not just the continuum of related services but also the spectrum of issues which are involved in safeguarding practice. There is also a need to ensure that the forms of response required for the broad spectrum of safeguarding work is reflected in the composition of national and regional structures as well as regional teams.

Given the popular mantra that ‘safeguarding is everyone’s business’ and that human service providing organisations are generally obliged to have safeguarding policies, procedures and a Designated Safeguarding Officer, it is important that safeguarding services and systems be reorganised to reflect the wider safeguarding obligations and role of organisations other than the HSE.

In light of the above Sage Advocacy recommends the following:

1. A National Support & Safeguarding Authority with responsibility for oversight and governance of the work of the following agencies and services:
  - Decision Support Service
  - Mental Health Commission
  - Safeguarding Services
  - Independent Advocacy Services.
2. Safeguarding services to be managed and coordinated through a National Safeguarding Service, independent of the HSE and with the following range of

expertise represented on its management team:

- a. Social Work
  - b. Occupational Therapy
  - c. Public Health Nursing
  - d. Policing
  - e. Financial
  - f. Legal
  - g. Research & Communications
  - h. Data Analysis
3. Regional Teams covering the 6 new Health Regions should be developed based on multi-disciplinary teams which must include:
- a. Social Work
  - b. Public Health Nursing
  - c. Policing
  - d. Legal/financial
4. The role of Manager of such teams would be set out in a clear person and job profile and would be open to any suitable person with experience in any of the areas of expertise required on the national team.
5. Regional Safeguarding Forums to be established reflecting the broad spectrum skills indicated above and typically they would include:
- a. Independent Chair (Person & Job Profile to be developed)
  - b. Regional Team (4)
  - c. An Garda Síochána regional/divisional representatives at rank no less than Inspector who have specific responsibility for vulnerable persons / safeguarding
  - d. Two representatives from Regional leads for banks a financial services skilled in vulnerable customer issues, An Post, Credit Unions, insurance companies
  - e. Representatives of Independent Advocacy Services
  - f. Department of Employment Affairs and Social Protection
  - g. HSE Public Health Nursing
  - h. Representative of local/regional government
  - i. Designated Safeguarding Officers of service providers for key groups of potentially vulnerable persons
  - j. Area Based Partnerships
  - k. Religious/social organisations e.g. St Vincent de Paul
  - l. Public utility and retail interests
6. The establishment of a National Advocacy Body as part of, or separate from, the National Safeguarding Authority.

## Conclusion

As an independent advocacy service for vulnerable adults, older persons and healthcare patients, Sage Advocacy has a particular focus on safeguarding people at risk of abuse and has developed Quality Standards for Support and Advocacy Work with Older People<sup>17</sup> with six overarching standards: respect; social justice; competence and compassion; accessibility; independence; and accountability. It is suggested that these standards would offer a useful template to inform the *modus operandi* of the any Authority to be established.

Sage Advocacy believes that there is an absolute need for an overarching national framework for independent advocacy which would provide an integrated approach to attaining recognition for the practice of independent advocacy in its own right and which would develop a strong cross-departmental and inter-agency approach accordingly.

Sage Advocacy has previously highlighted<sup>18</sup> the fact that it is not uncommon for a third party, often a next of kin, to be asked to sign a contract for care or to consent to care although they may have no legal authority to do so. This is an important safeguarding matter that needs more focus and attention.

Sage Advocacy notes that, while context for and role of independent advocacy in Ireland and internationally has undergone major changes in recent years, legislation in Ireland has not kept pace with these changes. The need for stronger legislative provision for independent advocacy has become even more important as a result of the Assisted Decision-making (Capacity) Act 2015.

It is noted that legislation relating to safeguarding and protection in the jurisdictions of Scotland, and England and Wales recognise or give the right of access to an independent advocate. The Law Commission for England and Wales review of the Deprivation of Liberty Safeguards in place since 2009 reported that the provision of an advocate to represent and support the person is a safeguard, and "...that advocacy would be provided automatically and on an opt-out rather than an opt-in basis".<sup>19</sup>

The ADM Act 2015 recognises the concept of advocates as provided in Section 103(2)(x) and, in the context of safeguarding, the 'Adult Safeguarding Bill 2017' provides for the appointment of an independent advocate to represent and support the individual.

The LRC Issues Paper raises many important and complex questions. Many of these will require further consideration in the context of developing a timely response to safeguarding adults at risk of abuse, harm or neglect which, as research has repeatedly shown, is unfortunately all too endemic in Irish society.

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<sup>17</sup> <https://www.sageadvocacy.ie/media/1336/quality-standards-for-support-and-advocacy-work-with-older-people-final-061015.pdf>

<sup>18</sup> [https://www.sageadvocacy.ie/media/1151/sage\\_submission-dol-safeguards-proposals\\_09032018.pdf](https://www.sageadvocacy.ie/media/1151/sage_submission-dol-safeguards-proposals_09032018.pdf)

<sup>19</sup> Law Commission (2017), Mental Capacity and Deprivation of Liberty Summary (Law Com No 372), p. 20, available at [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/03/Mental\\_Capacity\\_Report\\_Summary.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/03/Mental_Capacity_Report_Summary.pdf)