COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ
LAW REFORM COMMISSION

PLAIN ENGLISH REPORT

A REGULATORY FRAMEWORK FOR ADULT SAFEGUARDING

(LRC PE 128 - 2024)

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About this document

You are reading our plain English Report on adult safeguarding in Ireland. In this short introduction to our Report we tell you:

- what the Law Reform Commission does;
- some background on our work on adult safeguarding; and
- how to get what you want from this Report.

What we do in the Law Reform Commission

The Law Reform Commission reviews the law and recommends changes to it. The Commission also works to make the law easier to:

- access;
- understand; and
- follow.

Background about our work on adult safeguarding

In 2019, we wrote an Issues Paper which asked questions about adult safeguarding (keeping at-risk adults safe from harm) in Ireland. We read the responses that people sent us, and continued to research the situation in Ireland and in other countries. We also had lots of meetings with people and organisations so that we could understand their views and concerns. After comparing laws and the ways of safeguarding at-risk adults in other countries, we found that at-risk adults in Ireland need more support to protect themselves from harm.

We are now clear that many people and sectors need to work together to improve adult safeguarding in Ireland. This work needs to be supported by changes in the law and elsewhere.

How to get what you want from this document

There are 20 chapters in our Report. The list of chapter titles is available on page 6 after this introduction. In part 1, we summarise each of the 20 chapters. In part 2, you can read each of the chapters in full.

To get the most from this report, it helps to know that it covers three main areas:

1. The current situation around adult safeguarding in Ireland

We set out the current situation in terms of the law, policies and other measures in Ireland that are relevant to adult safeguarding. We explain how they work and why they are important. We also explain the approaches to adult safeguarding in other countries.

2. Gaps in adult safeguarding

We identify gaps in adult safeguarding in Ireland. For example, we explain how there is currently no law in Ireland that:

- requires different people, bodies and organisations to work together to safeguard at-risk adults; or
- requires people, bodies and organisations to take active steps to prevent harm to at-risk adults.

We also explain that there are gaps in criminal law that make it hard to prevent some types of harm towards at-risk adults.

3. Our recommendations to improve adult safeguarding in Ireland

We make many recommendations that we think are needed to improve adult safeguarding in Ireland. We recommend a number of changes to the law. For example, we recommend that new adult safeguarding laws should be created in Ireland. These laws should include things like:

- setting up a Safeguarding Body that is responsible for adult safeguarding;

- making sure that certain people, bodies and organisations like the Gardaí and the HSE work together to safeguard at-risk adults;
- making sure that certain people, bodies and organisations take steps to prevent harm to at-risk adults.

The laws should also give new powers to the Gardaí, Safeguarding Body and courts that allow them to take action in urgent cases. Finally, the laws should make new crimes that will help to prevent harm to at-risk adults.

We also make suggestions for government and others to consider, to improve adult safeguarding.

We recommend that you read Chapter 2. It lists some of the main terms you need to know in one place. We explain other specialist words in the relevant chapters. We also have a longer glossary of terms that you can refer to as you read. This is available in a different document, which you can read on our website, if you click here.

What status does this document have?

Our plain English report is a guide to make our Report more accessible. It is not comprehensive. To see the Commission's definitive recommendations, you should consult the full Report.

Have a question about our work?

If you do, you can contact us at:

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Contents

Part 1: The plain English Summary of our Report on a regulatory framework for adult safeguarding in Ireland

Chapter 1: The need for a regulatory framework for adult safeguarding

What is this chapter about?

In chapter 1, we talk about the need for clear laws to safeguard adults who might be at risk in Ireland. We describe these clear laws as a "regulatory framework".

What do we mean by an "adult at risk of harm" or an "at-risk adult"?

An "adult at risk of harm" is someone over 18 who, because of their physical or mental health, personal traits or life situation, needs help to keep themselves safe from harm at a particular time.

If an adult can keep themselves safe from harm without help and chooses not to, they are not considered an "adult at risk of harm".

We also use the words "at-risk adult" throughout the Report, which means the same as an "adult at risk of harm".

The term "vulnerable person" does appear in some Irish laws. However, we believe the word "vulnerable" is outdated, so we don't use the words "vulnerable", "vulnerable adult", or "vulnerable person" in our Report, unless we are talking about laws which use those words.

What supports are there for at-risk adults at the moment?

Currently Ireland has **some laws** that help to support at-risk adults and keep them safe from harm, like the Assisted Decision-Making (Capacity) Act 2015. However,

these laws do not cover everything needed to make sure that at-risk adults are safe from harm.

There are also some policies that help, but these policies do not cover everything. It can also be hard to enforce policies because they are not laws, so the consequences for not following them are not as serious. This means there are big gaps that impact on how Ireland keeps at-risk adults safe from harm.

We think that the situation right now is not good enough and should be improved.

What laws would provide better support?

It would be much better if there were clearer laws on adult safeguarding. We explain what safeguarding means in chapter 2, but generally we are talking about preventing harm to at-risk adults, protecting their rights, and helping them to keep themselves safe. These laws would make sure that:

- different bodies are responsible for making sure that steps are taken to keep at-risk adults safe from harm, and
- people have the power to support at-risk adults when they need to.

These laws would also require different public bodies and service providers (such as a service that provides day services to older people) to work better together and share information to prevent harm to at-risk adults. Having these laws would fill the current gaps in the law, and make it easier to keep at-risk adults safe from harm. The main goals are to:

- empower at-risk adults to keep themselves safe;
- protect the rights of at-risk adults;
- prevent harm to at-risk adults; and
- encourage everyone to actively keep at-risk adults safe.

We think that our suggested changes to the law should not affect people who are prisoners or who are being held in cells in Garda stations. We think these people should be kept safe by the laws and rules around conditions in prisons and Garda station cells.

What other changes are needed apart from laws?

Changing laws is helpful but not good enough on its own. We also need to make sure people know about these changes, understand them, and have the support they need to follow the law. This requires:

- training;
- resources; and
- changing how things are done to make sure the new laws are effective.

It will make the new laws more effective, if for example, people, bodies and organisations who work with adults:

- receive regular training on adult safeguarding;
- are aware of the issues and risks that may arise; and
- know what they must do to keep at-risk adults safe.

Social care is a system that provides support to people that need help with daily life. For example, this support can be providing at-home carers or services like 'meals on wheels'. We recognise that the way social care is provided in Ireland could be improved, especially when we look at countries like England and Wales, where there are strong social care laws. These laws cover things like personal budgets and how support should be given to people who need it. There are few laws about the way social care is provided in Ireland. Making the laws for social care stronger could help to prevent harm to at-risk adults at an earlier stage.

We suggest that the government think about making stronger social care laws.

Chapter 2: Defining key statutory terms for adult safeguarding legislation

What is this chapter about?

In chapter 2, we explain the meaning of certain words that we think should be used in new adult safeguarding laws. Some of these are statutory (legal) terms. You may be familiar with many of these words, but they have specific meanings when it comes to preventing harm to at-risk adults. It is important that everyone understands these words as we use them in the **two draft Bills.** These draft Bills are model laws that the government can use as a starting point if it decides to make new adult safeguarding laws. This will help all people to understand the changes we recommend in our Report.

What are the important words for new adult safeguarding laws?

On the next page is a table with words you need to know to understand the rest of this summary and our Report. We explain the meaning of each of these words in new adult safeguarding laws. You can return to these definitions at any time.

We created new words or descriptions that currently don't exist in Irish laws but we think are needed to help keep at-risk adults safe. We list the words to know in the order in which you need to know them.

Words to know	Meaning
Adult at risk of harm or at-risk adult (words we use and want to continue using when talking about adult safeguarding laws)	An adult at risk of harm or at-risk adult is an adult who, because of their physical or mental health, personal traits or life situation, needs help to keep themselves safe from harm at a particular time.
Safeguarding	Taking actions to: • reduce the risk of harm to at-risk adults; • protect their rights; • look after their health, safety and well-being; and • help them keep themselves safe.
Safeguarding plan	A document that sets out the steps that need to be taken to: • improve an at-risk adult's health, safety or well-being; • reduce the risk of harm to them; and • help them keep themselves safe.
Capacity **(The following definition of capacity has the same meaning it does in the Assisted Decision-Making (Capacity) Act 2015.)**	This is a person's ability to understand the nature and consequences of making a decision at the time they make the decision. A person does not have "capacity" to make a decision when they cannot: • understand information relevant to the decision; • remember the information; • use the information when making the decision; or • communicate their decision.

Words to know	Meaning
Harm (in civil law – this is used for many of the other definitions in the non-criminal adult safeguarding law, including in the context of "adult at risk of harm")	"Harm" includes: • assaulting an at-risk adult; • neglecting (failing to properly care for) an at-risk adult; • sexual abuse of an at-risk adult; or • damaging an at-risk adult's property by stealing from them or tricking them into giving away their property or money.
Reportable harm (in civil law, but only for the purposes of reporting which is discussed in chapter 9)	This is a type of harm that has a significant impact on an at-risk adult's health, safety or well-being. It includes: • sexual abuse of an at-risk adult; or • serious financial abuse of an at-risk adult. **Note:** We decided that a different definition to the general civil definition (explained above) is needed for the type of harm that must be reported when someone suspects that an at-risk adult is being abused or neglected.
Harm (in criminal law – where people are punished for committing crimes)	This covers physical or mental pain, any injury to physical or mental health or well-being, and loss to a person when another person unlawfully takes their property, money, pension or social welfare payments.
Serious harm (in criminal law – where people are punished for committing crimes. We discuss criminal law in chapter 19.)	This includes any injury that: • creates a big risk of death; • is psychological and has a significant impact; • causes serious loss of function or changes to the body.

Words to know	Meaning
	Note: Later, in chapter 19, instead of using "at-risk adults", we use "relevant person" to describe particular "at-risk adults". We do this because it's important for the criminal law to be precise about who is protected by the law. The definition of "relevant person" is narrower and more specific than the definition of "at-risk adult". People need to know who a relevant person is in order to understand that certain actions or inactions against relevant persons are a crime.
Neglect	This means: • failing to take proper care of someone who is in your care, • not providing them with basic needs like food, clothing or medicine, or • not getting help to provide those needs if you cannot provide them yourself.
Self-neglect	When a person does not take proper care of their own basic needs, and this seriously affects their well-being.

There are lots of other terms that it will be useful to know about when reading this plain English summary of our Report, such as:

- Safeguarding Body;
- Authorised officers;
- Relevant person; and
- Interventions.

We explain these in the relevant chapters as you come across them. (They are also in the full glossary, which is accessible on our website at this link.)

Chapter 3: Guiding principles underpinning adult safeguarding legislation

What is this chapter about?

In chapter 3, we recommend seven guiding principles for adult safeguarding laws. These guiding principles should be kept in mind when making laws for at-risk adults or taking action to prevent harm to at-risk adults.

How did we select these guiding principles?

We looked at:

- international human rights principles;
- the principles in adult safeguarding laws and social care laws in countries like England and Wales;
- the principles in Irish laws and policies to prevent harm to at-risk adults; and
- the principles used in the National Standards for Adult Safeguarding.

What are our guiding principles for adult safeguarding?

There are seven guiding principles for adult safeguarding.

Figure 1: Guiding principles for adult safeguarding

1. A rights-based approach

This principle is about making sure that an at-risk adult's rights are respected. This includes:

- their freedom to make their own choices;
- being treated with respect;
- keeping control over their own body, privacy, money and property;
- being treated fairly; and
- having their beliefs and values respected.

(Chapter 4 focuses on this rights-based approach and explains individual rights in more detail.)

2. Empowerment and focusing on the wishes of the at-risk adult

This principle is about:

- respecting that at-risk adults can make their own decisions;
- helping them make decisions when they need help or ask for help;
- making sure they understand what they are agreeing to, and that other people include them when making decisions that affect them;
- respecting their independence and their right to be fully involved in society;
- helping them get support from an independent advocate if they want it;
- listening to what they want and respecting their choices;
- protecting their right to have risks and the options available to them explained; and
- consulting them if **adult safeguarding interventions** are needed to protect them from harm. These are serious actions that may be taken by the Safeguarding Body or the Gardaí, usually with the court's permission, to improve a situation and protect an at-risk adult's rights. We explain these interventions in chapters 10, 11, 12 and 13.

3. Protection

Protection means taking steps to prevent harm to at-risk adults and to help them keep themselves safe from harm.

4. Prevention

Prevention means stopping harm before it starts. To do this, it is important to:

- be organised and take steps in advance to stop abuse from happening;
- provide support to keep at-risk adults safe and uphold their dignity and their mental, physical and emotional health; and
- make sure that everyone involved in preventing harm to at-risk adults knows the law and how to carry out their duties properly, and that they receive training and guidance on their duties.

5. Proportionality

Proportionality is about keeping things balanced. It means making sure that any adult safeguarding intervention (as explained in point 2 above) taken:

- is necessary for the particular situation;
- limits the at-risk adult's freedom as little as possible;
- matches the level of risk;
- lasts only as long as needed;
- recognises the negative effect that trauma may have on an at-risk adult; and
- is checked and reviewed regularly, in line with best practices worldwide.

6. Integration and cooperation

Integration and cooperation mean different agencies and services working together to prevent harm to at-risk adults. This involves:

- making sure agencies and services work together in an organised way to stop and address safeguarding concerns; and
- bringing national policies in line across different areas to make sure practice, policies and laws are consistent.

7. Accountability

Accountability is about everyone taking responsibility for their actions and being open and honest if something goes wrong. Accountability makes sure that:

- actions taken to keep at-risk adults safe are clear and everyone knows what is required of them;
- health and social care services and other agencies are responsible for their actions and can explain how they protect at-risk adults;

- service providers are open and honest about how they handle safeguarding issues; and
- there are proper systems for managing risks, sharing information and reporting.

Chapter 4: A rights-based adult safeguarding framework

What is this chapter about?

In chapter 4, we discuss the rights that need to be looked at when introducing new laws to prevent harm to at-risk adults.

Adult safeguarding actions and interventions can affect the rights of at-risk adults, so we carefully considered their rights when making suggestions about how the law should be changed.

Chapters 10, 11, 12 and 13 suggest interventions, which are serious actions that may be taken by the Safeguarding Body or in some cases the Gardaí, usually with the court's permission, to improve a situation and protect an at-risk adult's rights. However, these interventions could interfere with the rights of at-risk adults, their family members and other people. These interventions include entering homes and places where at-risk adults live, moving them to a safe place, or preventing someone from contacting the at-risk adult.

What rights should be considered?

It is important to consider rights:

- under the Constitution of Ireland; and
- under the European Convention on Human Rights.

We look at rights under each of these, starting on the next page.

Rights under the Constitution of Ireland

The interventions we are recommending could affect several important rights under the Constitution, such as the right to:

- life (Article 40.3.2°);
- personal freedom (Article 40.4.1°);
- privacy (Article 40.3.1°);
- bodily integrity (Article 40.3.1°);
- make your own decisions (Article 40.3.1°);
- dignity (Article 40.3.1°);
- be protected as a person (Article 40.3.2°);
- the security of your home (Article 40.5); and
- be treated equally by the law (Article 40.1).

Some of these rights are written in the Constitution. Other rights are not written in the Constitution but are recognised by the courts as being part of the Constitution.

The changes we suggest could support **or** interfere with these constitutional rights of at-risk adults, and others who may care for or live with at-risk adults. Although these rights are very important, they have limits. In some situations, it is possible to limit these rights. Before suggesting changes to the law, we carefully thought about how these changes could limit the rights of at-risk adults and others, and whether there are good reasons for limiting their rights in some cases.

We believe that preventing harm to the health, safety or well-being of an at-risk adult is a strong enough reason **to limit a constitutional right** in some cases. However, it's very important that the way we prevent harm to at-risk adults does not go beyond what is needed to keep them safe from harm. To make sure any interventions taken are appropriate and only used when needed, we suggest there be:

- specific conditions that need to be met, and
- time limits for each intervention.

For example, we recommend that courts should use the "least intrusive means" (the way to keep at-risk adults safe that causes the least amount of interference) to keep at-risk adults safe when making safeguarding orders. This means only making a safeguarding order when no less intrusive (causing the least amount of inference) action could be taken to prevent harm to an at-risk adult.

We think actions or interventions to keep at-risk adults safe should have as little impact on their rights, and the rights of others, as possible.

Rights protected by the European Convention on Human Rights

Many rights that are protected by the Constitution of Ireland are also protected by the European Convention on Human Rights. These include the right to:

- a private and family life (Article 8);
- freedom and security (Article 5);
- life (Article 2); and
- not experience torture or cruel treatment (Article 3).

Just like constitutional rights in Ireland, rights under the European Convention on Human Rights can be limited, if needed, provided that the limitation does not go beyond what is required. For example, even though the European Convention on Human Rights protects a person's right to freedom and security, there are some limits to this protection. A person's right to freedom can be limited if they commit a crime and are sent to prison to protect public safety. We considered how the rights protected by the European Convention on Human Rights might be affected by our suggested changes to the law to prevent harm to at-risk adults.

Chapter 5: A Safeguarding Body: functions, duties and powers

What is this chapter about?

In chapter 5, we talk about the need for a Safeguarding Body that would be responsible for adult safeguarding in Ireland.

The main **function** of the Safeguarding Body would be to promote the health, safety and well-being of at-risk adults and help to keep them safe from harm. Currently, the HSE National Safeguarding Office and its Safeguarding and Protection Teams are responsible for adult safeguarding in some services (services for older people or people with disabilities) that are owned or funded by the HSE. But the HSE National Safeguarding Office and the Safeguarding and Protection Teams do not have legal roles and powers. This makes it difficult for them to do their jobs to keep at-risk adults safe from harm.

Other public bodies, agencies and services also have responsibilities for adult safeguarding in Ireland, for example the Gardaí and regulators of health and social care services.

We think there needs to be a Safeguarding Body that leads and coordinates adult safeguarding responses in Ireland. **The Safeguarding Body should exist in law.**

What should the Safeguarding Body do?

The Safeguarding Body's main function should be to promote the health, safety and well-being of at-risk adults who may need support to protect themselves from harm at a particular time. The Safeguarding Body should have clear duties and powers. It should receive reports or allegations of abuse or neglect of at-risk adults.

We think that the law should say that the Safeguarding Body has a **duty** to take any action that it thinks is needed when it believes that there is a risk to the health, safety or well-being of an at-risk adult.

The Safeguarding Body should be given legal powers to take action when an at-risk adult:

- has been harmed;
- is being harmed; or
- is at risk of being harmed in the future.

We think that the Safeguarding Body should have the **powers** that it needs to carry out its main role to promote the health, safety and well-being of at-risk adults in Ireland.

These powers would include powers to make enquiries to help the Safeguarding Body in carrying out its main role. Making enquiries could involve asking questions and checking to see if an at-risk adult needs support to protect themselves from harm at that time.

We do not think that the Safeguarding Body should have regulatory powers. Regulatory powers are powers that some bodies have to make sure that other organisations, services or professionals are doing their work correctly and in a safe way. We think that those kinds of powers should be given to bodies called regulators that already exist. The government could also decide to set up new bodies called regulators in the future. We talk more about powers of bodies called regulators in the summary of chapter 6 below.

We think that the Safeguarding Body should be able to do the following.

1. **Report abuse or suspected abuse to the Gardaí**

The Safeguarding Body should be able to report abuse or suspected abuse to the Gardaí where it believes someone has committed a crime against an at-risk adult.

2. **Notify other bodies**

The Safeguarding Body should be able to notify other bodies, such as the National Vetting Bureau of the Gardaí, if it is concerned about an at-risk adult's health, safety or well-being. The Safeguarding Body should also be able to notify bodies that regulate professionals, if a professional (for example, a social worker) is believed to be a risk to the health, safety or well-being of an at-risk adult.

3. **Create or be involved in creating safeguarding plans**

The Safeguarding Body should be able to create safeguarding plans to keep at-risk adults safe if it is the most appropriate body to do so. The Safeguarding Body should also be able to work with other public bodies, agencies, service providers and professionals to create safeguarding plans and take steps to carry out these plans.

4. **Collaborate to help at-risk adults to get services they need**

The Safeguarding Body should be able to work with the HSE, other public bodies, agencies and services to help at-risk adults. They should cooperate to help at-risk adults to get legal assistance, medical care, social care, a place to live, and other services.

5. **Refer issues about the capacity of the at-risk adult**

The Safeguarding Body should be able to:

- refer issues about an at-risk adult's capacity to the Director of the Decision Support Service; or

- make an application to the Circuit Court under Part 5 of the Assisted Decision-Making (Capacity) Act 2015, if needed.

Capacity here means a person's ability to understand the nature and consequences of making a decision at the time they make the decision.

6. Take action if specific criteria apply

The Safeguarding Body should be able to take the following actions in a particular situation if specific criteria (conditions) are met:

- enter relevant premises (certain places that are not private homes) to check the health, safety and well-being of an at-risk adult (we talk about this in chapter 10);
- ask a court for a warrant to check on an at-risk adult in their home, someone else's home, or similar places to make sure they are safe (we talk about this in chapter 11);
- ask for a court order to move an at-risk adult to a safe place, if needed, so that their health, safety and well-being can be assessed (we talk about this in chapter 12);
- ask for a court order to stop a particular person contacting an at-risk adult, to keep the at-risk adult safe (we talk about this in chapter 13); and
- help the Gardaí enter a home to check the health, safety and well-being of an at-risk adult (we talk about this in chapter 11).

Other responsibilities of the Safeguarding Body

The Safeguarding Body should provide some service providers with:

- training;
- information; and
- guidance.

Examples of these services include providers of health and social care services and accommodation centres for people experiencing homelessness.

The Safeguarding Body should also collect and publish information about adult safeguarding and carry out research on adult safeguarding.

Chapter 6: Organisational and regulatory structures: A Safeguarding Body and powers of various regulatory bodies

What is this chapter about?

In chapter 6, we talk about:

- the organisations that should have the main responsibility for leading adult safeguarding in Ireland;
- the powers that certain organisations who are regulators should have to make sure that providers of services, such as residential care services and day services, are doing their duties to keep adults, including at-risk adults, safe from harm; and
- the powers that certain organisations who are regulators should have to make sure that the Safeguarding Body carries out its role and uses its powers properly to keep at-risk adults safe from harm.

Safeguarding Body

In the previous chapter, chapter 5, we talk about:

- the need for a Safeguarding Body who would be an organisation with legal responsibility for adult safeguarding in Ireland; and
- the work that the Safeguarding Body should do to keep at-risk adults safe from harm.

In chapter 6, we talk about who the Safeguarding Body should be. We also talk about whether the Safeguarding Body should be:

- a new organisation with a new name; or
- set up inside an organisation that has already been set up by the government (this could be the HSE or another organisation).

We think that it would be best for the government to decide what organisation should be the Safeguarding Body. We think the government should make the decision because it is not just a decision about the law or how the law could be improved. It is also a decision about how public bodies should be set up and how public money should be spent.

What should happen while the government decides what organisation should be the Safeguarding Body?

We think that if the government thinks that it cannot, or should not, decide about how to set up the Safeguarding Body soon, the law should be changed. This change should set up the Safeguarding Body in the HSE **until** the government decides what organisation should be the Safeguarding Body. The government can then decide if the Safeguarding Body should:

- be set up under law in the HSE permanently;
- be moved to another organisation that has already been set up by the government; or
- be set up as a new organisation.

How the Safeguarding Body is set up should not change the responsibilities or powers of the Safeguarding Body

The Safeguarding Body should have all the responsibilities and the powers that we talk about in chapter 5 to keep at-risk adults safe from harm. The Safeguarding Body should have these powers no matter how it is set up.

Regulators should have more powers to keep at-risk adults safe from harm

We also talk about whether a new organisation is needed to make sure that providers of relevant services, such as residential care services or day services, do their duties to keep at-risk adults safe from harm.

We think that organisations who are regulators that already exist should be given more powers to check whether providers of relevant services are doing their duties to keep at-risk adults safe from harm. HIQA (the Health Information and Quality Authority) and the Mental Health Commission are examples of organisations who are regulators that have already been set up by the government.

In chapter 6, we talk about providers of relevant services having **new duties** to do the following.

1. **Manage and provide services in a way that prevents harm**

We believe providers of relevant services should have a duty to manage and provide services in a way that prevents harm to adults receiving the services, who are or may be at-risk adults.

2. **Assess risks and prepare an adult safeguarding statement**

We believe that providers of relevant services should have a duty to assess the risk of harm to adults receiving services and to keep a written record of the risks that they found. They should also have a duty to prepare an adult safeguarding statement. This statement should set out how a provider of relevant services intends to prevent harm to adults receiving the services, who are or may be at-risk adults.

We say that we think that certain organisations who are regulators that have already been set up should be able to check whether providers of relevant services are managing and providing services in a way that prevents harm, and to prepare a safeguarding statement. We do not think that a new regulatory body is needed unless the government decides to set one up.

Powers that organisations called regulators should have to make sure that the Safeguarding Body uses its powers properly

We think that an organisation called a regulator should have responsibility for making sure that the Safeguarding Body does its work and uses its powers properly to keep at-risk adults safe from harm. We think this could be done by changing the law to:

- give more responsibilities to HIQA – an organisation that already inspects residential settings for older people and for people with disabilities; **or**
- give more responsibilities to a group of organisations already set up by the government such as HIQA and the Mental Health Commission who could work together to make sure that the Safeguarding Body does its work and uses its powers properly.

Chapter 7: Imposing safeguarding duties on certain service providers

What is this chapter about?

In chapter 7, we talk about duties that providers of certain services (relevant services) should have to prevent harm to at-risk adults. Adult safeguarding is everyone's business and many different public bodies, agencies, services and service providers play a role in safeguarding adults.

Chapter 7 of our Report includes a list of relevant services that play a role in safeguarding adults. Here is the full list:

Relevant services that play a role in safeguarding adults
Residential centres for older people and adults with disabilities.
Services that provide care to adults in their homes.
Services that provide day services to adults with disabilities.
Services that provide day services to older adults.
Services that provide personal assistance to adults with disabilities.
Hospitals, hospices, and other centres that provide physical health services to adults.
Mental health services including residential centres.
International protection accommodation centres.
Domestic, sexual or gender-based violence centres.
Centres that treat drug and alcohol addiction.
Homeless accommodation.
Services providing therapy and counselling.

Drivers and supervisors who bring adults to day services.
Adult safeguarding work carried out by the Gardaí.

Are all relevant services regulated?

Currently, some services are regulated, but others are not. It is easier to place duties (requirements or responsibilities that must be followed) on regulated services. This is so as the regulator can check that regulated service providers are doing what they are supposed to do.

For this reason, we suggest that the government should carefully consider regulating services that are currently not regulated. For example, these include services that provide homeless accommodation, or day services for older adults.

What about unregulated services?

If the government does decide to regulate services that are currently unregulated, it could take a long time. Some unregulated services have existing standards (not in law) that they are asked to follow. Agencies and government department's that financially support these services often produce standards they should follow. Sometimes contracts for services will include safeguarding duties. Standards and contracts for service could be updated to include the safeguarding duties in this chapter.

Are there currently duties to prevent harm to at-risk adults?

Currently, there are some duties to prevent harm to at-risk adults. Providers of some relevant services already have duties to prevent harm to at-risk adults, for example residential centres where people with disabilities or older people live. These duties are set out in laws, policies, standards or in contracts for services. But there are no laws to prevent harm to at-risk adults that apply to all services for adults who may be at-risk adults.

Should there be new duties for service providers?

Yes, we think that there should be a new law that places duties on providers of relevant services. These duties should include:

- managing and providing services in a way that prevents harm to any adult receiving the services, who are or may be an at-risk adult;
- assessing the risk of harm to adults receiving services and keeping a record of those risk assessments; and
- preparing a safeguarding statement which sets out the measures the relevant service has in place to prevent harm.

Adult Safeguarding statement

We think relevant services need to have an adult safeguarding statement which sets out how they will prevent harm to all adults and at-risk adults to whom they provide services. The adult safeguarding statement should have three main features.

1. It should be in writing

The adult safeguarding statement should be a written document that outlines what the provider of the relevant service is doing to address the risks identified after a service assesses the risk of harm to adults receiving its services.

2. It should include certain procedures

The adult safeguarding statement should include the procedures the service provider has put in place to prevent harm to adults and at-risk adults receiving its services.

We think the relevant service's adult safeguarding statement should include its procedures for:

- reviewing and updating care plans and personal plans to make sure there are safeguarding plans in them, where needed;

- preparing and updating safeguarding plans, if there are concerns that a person using the service is at risk of harm.

3. It should be publicly available

The adult safeguarding statement should be publicly available to adults using the service and all members of staff.

It should also be available to regulators and anyone who request it.

What if a relevant service does not assess the risk of harm or prepare an adult safeguarding statement?

Where relevant services are **regulated**, the regulator of the service should make sure the service carries out its duties. If a relevant service does not carry out its duty to assess the risk of harm to adults using the service or prepare an adult safeguarding statement, the regulator should record the service's name on a register (list) for services who don't carry out their duties.

The regulator will know that a relevant service has not carried out its duty if it does not give written documents about its risk assessment or a copy of its adult safeguarding statement to the regulator within a certain amount of time after the regulator asks for them.

Safeguarding plans, and other plans

Chapter 7 also talks about laws and policies that require certain relevant services to have safeguarding plans, care plans or personal plans in place for each service user. It explains the difference between these types of plans.

A safeguarding plan outlines the actions the service will take to address the needs of a **particular** adult or at-risk adult who is using a service. This plan helps to reduce the risk of harm to them.

Safeguarding plans for relevant services that are regulated

Throughout our Report, we talk about certain "Regulations" which set out how organisations and people that run residential centres, which are regulated by the Health Information and Quality Authority (HIQA) and the Mental Health Commission, care for:

- adults with disabilities;
- older adults; and
- adults with mental disorders.

"Regulations" are laws created by ministers or other public bodies under powers given to them by Acts of the Oireachtas.

We know that some people find terms like "mental disorder" offensive. These terms are used in the Mental Health Act 2001 and the Regulations made under that Act. This is why we use them here. Sometimes "medical language" needs to be used in laws.

We think these Regulations should be changed to include the following requirements

1. The Regulations should require updates to a care plan or personal plan to include a safeguarding plan if an adult is at risk of harm.

2. The Regulations should also be changed to say that providers of these residential centres must carry out a review of the safeguarding plan to assess progress on reducing the risk of harm to the at-risk adult.

This review should take place within six months – no later – after a service provider and the person using the service create a care plan or personal plan for the first time, and 12 months after every update of these plans.

3. We believe that these residential centres should provide adult safeguarding training to staff.

The Regulations about residential centres for older adults and for adults with disabilities say that the residential centres must provide adult safeguarding training to staff, including training on how to:

- notice;
- prevent; and
- respond to abuse.

We believe the Regulations about care of adults with mental illness in residential centres should also require these centres to provide adult safeguarding training to staff, including training on how to notice, prevent and respond to abuse.

People with licences to drive taxis and other small public vehicles should receive adult safeguarding training

Taxi drivers often come into contact with at-risk adults, as they may drive them to appointments or to particular services, for example, day services. However, for the most part, they receive no adult safeguarding training.

We believe that the 2015 Taxi Regulations should be changed to require people who have licences to drive "small public vehicles" to take part in adult safeguarding training, including training on how to notice, prevent and respond to abuse. This should be provided by the National Transport Authority and the Gardaí with help from the Safeguarding Body.

Collecting information about adult safeguarding allegations and events

Many people and organisations think that there are gaps in the information about adult safeguarding in Ireland. This means that there could be more abuse or neglect happening than any of us know about. Having complete information is important to make sure that the government knows where help such as training is needed to prevent abuse or neglect.

To make sure that there is complete information, services used by adults who are or might be at-risk adults would have to tell the Safeguarding Body about all allegations and events of abuse in their services.

We think the law should be changed to require providers of relevant services to at-risk adults to keep track of the total number and abuse types of adult safeguarding allegations (claims) and events in their services each year. This information should be shared with the Safeguarding Body, who should then publish the total numbers of allegations and events in Ireland, and any information about the types of abuse that happened or were alleged to have happened.

This information should be published on the Safeguarding Body's website and in its annual report. This will help the Safeguarding Body understand the types of adult safeguarding allegations and events, and how often they happen.

Chapter 8: Independent advocacy

What is this chapter about?

In chapter 8, we look at and explain how to help adults, including adults who are, or are believed to be at-risk adults ("adults") get better access to independent advocacy services. Independent advocacy is a service where a person supports an adult to:

- understand difficult situations or information;
- express their wishes and views;
- make decisions about their lives; and
- deal with public bodies, agencies, services or service providers.

Advocacy is independent where the person who is helping an adult is not someone in the adult's family or someone who is providing an adult with a service. This means that the person who is helping an adult is neutral, not biased, and they can focus on what an adult wants.

An independent advocate's main goal is to empower and help adults who may find it hard to exercise their rights. An independent advocate tries to make sure that adults can share their views and be part of decisions that affect their lives.

How does independent advocacy work in Ireland?

Currently in Ireland, only certain people are legally entitled to access services from independent advocates. These include:

- people with disabilities and older people in residential centres regulated by Health Information and Quality Authority (HIQA); and
- people with mental disorders in residential centres regulated by the Mental Health Commission. (See chapter 7 for note on terminology in the law that can be offensive to some people.)

However, the extent of the support is inconsistent, and adults, including adults who are or are believed to be at-risk adults outside of these settings don't have a legal right to this support.

There are many different organisations offering independent advocacy services in Ireland. Some organisations provide independent advocacy services for particular at-risk adults. Independent advocacy is an important part of safeguarding at-risk adults, because it is important that they can express their views and wishes on all decisions, actions and interventions made to keep them safe.

An independent advocate can:

- help at-risk adults take part in conversations about safeguarding measures taken to prevent harm to them;
- support at-risk adults through any adult safeguarding processes; and
- help them to understand the reasons behind any action or intervention.

What recommendations do we make?

We make the following recommendations.

Independent advocacy should be available in care settings

We believe that the government should make sure independent advocacy is available in all care settings.

Some Regulations need to be changed

In this chapter, we suggest changes to the Regulations which set out how residential centres that are regulated by HIQA and the Mental Health Commission care for:

- adults with disabilities;
- older adults; and
- adults with mental disorders.

Regulations are laws created by ministers or other public bodies under powers given to them by Acts of the Oireachtas. We think these Regulations should be changed to require the service providers to allow and support adults in these residential centres to access independent advocacy services.

The Safeguarding Body should support access to independent advocacy

We suggest that the Safeguarding Body should have powers to prevent harm to an at-risk adult, and that they should be able to take certain actions. These actions can be upsetting or confusing for an at-risk adult, especially if they do not understand what is going on. Having an independent advocate can help the person understand what's happening and help them to express their views.

We believe that the Safeguarding Body should have a duty to allow and support access to independent advocacy services, so far as possible, where it interacts with an adult who is, or is believed to be, an at-risk adult to use a power or take any action under adult safeguarding laws.

This duty should only apply where the at-risk adult would find it difficult to do one **or** more of the following:

- understand information;
- remember information;
- assess information so they can interact with the Safeguarding Body; or
- express their views, wishes or feelings.

We think this duty should only apply where the Safeguarding Body believes that there is no other suitable person who could help the at-risk adult interact with the Safeguarding Body about decisions that affect their lives.

Consider regulating independent advocates

Some people think that independent advocacy services should be regulated in Ireland so that all independent advocates or independent advocacy organisations are

required to follow the same laws. This is a big question that we do not cover in this report. But we think the government should think about regulating independent advocates or independent advocacy organisations.

We also think it would be good to have a code of practice for all the independent advocates working in adult safeguarding so they can understand their role. (A code sets standards that should be followed.)

Chapter 9: Reporting models

What is this chapter about?

In chapter 9, we talk about and explain how Ireland and other countries handle reporting when at-risk adults are abused or neglected. We believe it is important to report these things because reporting can catch issues early and stop more abuse or neglect from happening. An important term to know here is "mandated person". This means that certain people must (are mandated) to report abuse if they suspect or know about abuse or neglect of an at-risk adult.

What are the different types of reporting?

Some other countries have different types of reporting in place. We have thought about a few different types of reporting:

1. **Universal mandatory reporting**

This type of reporting means that the law in a certain country requires everyone to report any abuse or neglect they suspect or know about an at-risk adult.

2. **Permissive reporting**

This type of reporting allows people to report if they suspect or know about abuse or neglect of an at-risk adult. Currently, we have permissive reporting in Ireland. However, it isn't written in the law and is just something people are allowed to do.

3. **General reporting for "mandated persons"**

This type of reporting means that only certain people must report abuse or neglect they suspect or know about an at-risk adult. (We list who we think should be mandated persons in law later in this chapter.)

4. Mandatory reporting of specific incidents

This type of reporting means only certain incidents of known or suspected abuse or neglect must be reported, for example incidents of physical or sexual abuse.

5. Mandatory reporting in specific places

This type of reporting means known or suspected abuse or neglect must be reported if it happens in particular places, like nursing homes or centres for people with disabilities. This type of reporting may require reporting by all people working, volunteering or visiting particular places, or may only require reporting by certain people working in particular places.

How do we think reporting should change in Ireland?

We don't think Ireland should have universal mandatory reporting where everyone must report any abuse or neglect that they suspect or know about an at-risk adult. We also don't think permissive reporting should be written into Irish law. However, we do think the government should consider changing its laws about reporting to better protect at-risk adults.

What do we recommend?

1. Add certain crimes to the list of crimes that must be reported to the Gardaí

It is a crime not to report certain things to the Gardaí if you know or believe them to be true. One way we suggest reporting could be changed to better protect at-risk adults from harm is by adding certain crimes to the list of crimes that must be reported to the Gardaí. Examples of crimes we think should be added to the list include:

- coercion (forcing someone to do something); and
- endangerment (putting someone in danger).

2. Update laws on reporting

There are also laws that say certain things have to be reported in **care settings**. We think those laws should be updated to include:

- financial coercion;
- neglect; and
- psychological or emotional abuse.

There are also laws that say certain things have to be reported in **mental health services**. We think those laws should be updated to require the making of a report when:

- a resident dies suddenly;
- a resident is seriously injured;
- a resident is absent without explanation; and
- a staff member is being reviewed by their professional body for not working according to the standards set by the professional body. (For example, they may have abused or neglected a service user.)

Laws in **mental health services** should also be updated to require the making of a report where there are allegations that an owner or staff member of a mental health service has:

- physically or sexually abused a resident;
- financially abused a resident (for example, they have control over a resident's private bank account and take money out of the account without the resident's consent);
- neglected a resident; and
- psychologically or emotionally abused a resident.

Create a new law

We recommend that the government should introduce a law requiring "mandated persons" to make reports to the Safeguarding Body when they know, believe or suspect that an at-risk adult:

- has been harmed;
- is being harmed; or
- is at risk of being harmed.

This law would require reporting key types of harm

We think the type of harm that has to be reported when it is known, believed or suspected should be:

- serious assault;
- sexual abuse; or
- serious damage to property, for example stealing an at-risk adult's money or property, or taking money out of their bank account without their consent.

In general, we **don't think** mandated persons should have to report all cases of self-neglect. However, we **think** mandated persons should have to report self-neglect when they:

- determine that an adult who is reasonably believed to be an at-risk adult lacks capacity (defined in chapter 2); or
- have a reasonable belief that the adult lacks capacity to make personal care or welfare decisions at a time when they know, believe or suspect that the adult is self-neglecting.

Exception to reporting: Sometimes, an at-risk adult may be able to decide of their own free will that they do not want a report to be made to the Safeguarding Body. In these circumstances, a mandated person should not be required to make a report.

Prevent duplicate reporting

If one mandated person has already reported abuse, we don't think the law should require another mandated person to report the same abuse. The aim of this law is to prevent duplicate reporting.

3. Legal protections for those who report in good faith

We think that a new legal protection should be introduced to protect people who report known or suspected abuse or neglect of an at-risk adult in good faith. This would protect people who report from getting in trouble with their employer or having to pay damages to someone who was affected by the report. In good faith means that the person honestly believes that their report is true.

Who should have to report abuse?

We think that a list of mandated persons should be written in the law. This is a list of people who, because of their work or activities, should have a duty to report abuse or neglect. We recommend that these people should include:

- medical professionals;
- social workers;
- the Gardaí;
- safeguarding officers;
- probation officers; and
- managers of certain services used by at-risk adults.

What happens if a mandated person fails to report?

If a mandated person fails to report abuse or neglect that they know about, believe or suspect, we don't think this should lead to criminal charges. However, their failure should be dealt with seriously under professional codes of conduct or by taking other measures.

We think that if a profession has particular rules for its members, those rules should mention the professionals' duty to report. We think these reporting rules should be the same across all professions that have codes of conduct. If a profession doesn't have a code of conduct, failing to report should be dealt with inside the organisation if possible.

Sometimes it won't be enough to deal with a failure to report inside an organisation. If a mandated person fails to make a report, it might be more appropriate for their organisation, or someone who knows they failed to make the report, to notify HIQA, the HSE or the National Vetting Bureau of the Gardaí.

Will there be protection for people who report abuse?

We recommend that the law should protect people who make reports about the abuse of at-risk adults. This protection should be for anyone who reports with good intentions, not just mandated persons.

Are mandated persons required to assist the Safeguarding Body?

Yes, they are required to assist if requested by the Safeguarding Body. Mandated persons often work closely with at-risk adults and know lots of information about their situation. This information can be very helpful to the Safeguarding Body after a report is made. For this reason, we think the new reporting laws should allow the Safeguarding Body to make a request to any mandated person who it believes could assist it after a report is made. A mandated person may be requested to provide information or reports to the Safeguarding Body, or to attend meetings.

How will people prepare for the changes to reporting?

To make sure the reporting system works well when it starts, we suggest that the government should prepare for these new reporting rules. This would involve:

- making guides;
- running training programmes; and

- raising awareness.

Once the new reporting system starts, we **think mandated persons should** do regular training on their role.

Chapter 10: Powers of entry to, and inspection of, relevant premises

What is this chapter about?

In chapter 10, we talk about the Safeguarding Body's power to access "relevant premises" so that they can protect at-risk adults from harm. "Relevant premises" are places like:

- residential centres for older people and adults with disabilities, that are regulated by the Health Information and Quality Authority (HIQA);
- hospitals, hospices, and other centres that provide physical health services to adults;
- residential centres for people with mental disorders, that are regulated by the Mental Health Commission; (see chapter 7 for note on terminology in the law that can be offensive to some people.)
- international protection accommodation centres;
- domestic, sexual or gender-based violence centres; and
- places where day services are provided to older adults or adults with disabilities.

Because adults may be at risk of harm in many different places, we think that "authorised officers" should be able to go into these places to check what's happening in them. "Authorised officers" are staff members of the Safeguarding Body who are allowed to exercise the powers of the Safeguarding Body.

Currently the Irish bodies responsible for the health, safety and well-being of at-risk adults (the HSE Safeguarding and Protection Teams) can't get into many public or private places, including nursing homes. This isn't good enough, especially when we see that other countries like Scotland, Wales, Canada and Australia let their equivalent bodies do more. Many people we talked to agreed that we need to give these bodies more powers to help at-risk adults.

What rights did we consider in Chapter 10?

We've thought a lot about how a power to access relevant premises could affect people's rights. We want to keep at-risk adults safe from harm, but we don't want to interfere too much with at-risk adult's rights, or with anyone else's rights. Letting authorised officers from the new Safeguarding Body we are proposing go into relevant premises would help to protect the at-risk adult's rights to:

- life;
- freedom;
- control over their body; and
- dignity.

However, letting authorised officers go into relevant premises might also interfere with the at-risk adult's rights or other people's rights to:

- freedom;
- privacy; or
- security in their home.

So, we're careful to suggest requirements and protections to be written into the new law.

What do we recommend?

In chapter 10, we suggest making new laws. These would allow certain actions in certain circumstances.

Authorised officers to enter relevant premises where needed

These new laws would let authorised officers go into relevant premises.

If the authorised officers think there is a risk to the health, safety or well-being of an at-risk adult in the relevant premises, they should be able to enter these premises **without the court's permission**. However, if they are having problems getting

inside a relevant premises, they might need the court to write an order to help them gain access. This would be allowed under the new law.

The new law would also allow authorised officers to bring a Garda, a health or social care professional, or another person such as a friend or family member of the at-risk adult with them when they are going into a relevant premises, if the requirements set out in the law are met.

When authorised officers are inside a relevant premises, along with anyone else who is allowed to come inside, they could:

- talk privately with the at-risk adult;
- assess the at-risk adult's health;
- interview staff in the relevant premises; and
- look at documents to understand what's happening in the relevant premises.

The authorised officers would only be allowed to talk privately with the at-risk adult, or assess the at-risk adult's health, if the at-risk adult agrees.

What places will authorised officers be able to enter?

Authorised officers will be able to go into "relevant premises", a term which is explained in the law. It includes places like:

- residential centres for older people and adults with disabilities – these are places regulated by HIQA where older people or adults with disabilities live;
- hospitals, hospices, and other centres that provide physical health services to adults;
- residential centres for adults with mental disorders – these are places regulated by the Mental Health Commission where people with mental disorders are cared for (See chapter 7 for note on terminology in the law that can be offensive to some people);
- international protection accommodation centres;

- domestic, sexual or gender-based violence centres; and
- places where day services are provided to older adults or adults with disabilities.

The government will be able to add more places to the list of relevant premises if it thinks this is necessary.

A relevant premises should not include a private home

The Constitution gives special protection to a person's home. We do not think that a resident's room in a relevant premises should be considered a home. We respect that residents may strongly believe that their rooms are their homes, but their rooms are not entirely private and many people can enter them. For this reason, we do not think a court's permission should be required to enter a resident's room in a relevant premises.

We do think that service providers' homes and rooms where staff members live should be considered homes, so authorised officers can't enter them using this new law.

Reasonable force allowed if needed

Under the new law, it will be possible to use reasonable force to enter a relevant premises if it is not possible to enter in another way, and the requirements in the law are met. We talk more about reasonable force in the next chapter.

It should also be a crime for people working in the relevant premises to stop authorised officers, or people they bring with them, from entering a relevant premises.

Important: It would not be a crime for the at-risk adult to stop authorised officers, or people they bring with them.

Chapter 11: Powers of access to at-risk adults in places including private dwellings

What is this chapter about?

In chapter 11, we talk about letting authorised officers from the Safeguarding Body and the Gardaí access at-risk adults in places like people's homes (private dwellings). We decided that this should be allowed in Ireland. We decided this after:

- hearing people's opinions;
- looking at what other countries do; and
- thinking about the rights of at-risk adults.

This new law would allow authorised officers and the Gardaí to access at-risk adults, including in private homes, but **only** when access to an at-risk adult is needed to protect their rights.

What is the law in Ireland?

There are only a few powers to enter people's homes in Irish law. These powers are usually used when:

- the Gardaí are investigating a crime; or
- when children need to be protected.

In very serious cases, it may be possible to get an order from the High Court to enter someone's home to check on them and remove them from the home (if needed). **However, there is no power written down in Irish law that lets people enter a home to check on an at-risk adult.**

In other countries such as Scotland, Wales, and in some parts of Australia and Canada, there are laws that provide powers of access to the homes of at-risk adults,

and other places, to check on at-risk adults. This can only be done if the requirements written in the law are met. The governments in England and Northern Ireland are thinking about making these powers of access available.

What do we recommend?

We think that adult safeguarding laws should allow the Gardaí and authorised officers to access at-risk adults in places such as people's private homes. In addition, we think the law should contain protections to make sure that the power of access is only used when it is needed to protect an at-risk adult from harm.

Set standard for getting a warrant

Homes are protected under the Irish Constitution. This means that a warrant (written authorisation) from the court should be needed to access at-risk adults in places like people's private homes.

We also recommend that the Gardaí or authorised officers must meet a certain standard to get a warrant. There must be reasons for thinking that:

- there is a risk to the health, safety or well-being of an at-risk adult in a certain place;
- a warrant is needed to check the at-risk adult's health, safety or well-being; and
- access cannot be gained by any other way.

The person applying for the warrant should give evidence in court about these things.

Authorised officers of the Safeguarding Body or the Gardaí can be joined by other people, such as health or social care workers or anyone else that might be able to help. For example, a friend or family member who the at-risk adult trusts could help to explain the situation.

Must give at-risk adults clear information

We recommend that the law should require that an at-risk adult should be given information in plain English about the warrant, why one is being used and what this means.

An interview and a health assessment done if at-risk adult agrees

The authorised officers and health or social care workers should be able to talk privately with the at-risk adult, and assess the at-risk adult's health. However, they can only do this if the at-risk adult agrees. The at-risk adult should be told that they can say "no" to this.

Should the Gardaí have special powers to enter without asking a court?

In some cases, we think that Gardaí should be able to enter a place, including a private home, without a court's permission. To do so, the Gardaí would need to believe that there is a risk to the at-risk adult's "life and limb". This is a specific legal term which requires a very high level of risk. Examples of this risk might include:

- Seeing an at-risk adult through a window lying on the floor seemingly unconscious.
- If the at-risk adult had rung an emergency number and complained about a violent adult child but were still in their home and not answering the door.

If the Gardaí use this power, they must write down their reasons for using it and they must tell the Safeguarding Body about it as soon as possible.

Reasonable force allowed if needed

When they are using the new powers, Gardaí and authorised officers of the Safeguarding Body should first try to enter the place with the consent of whoever is inside. They should explain the warrant or power that they are using and ask for cooperation. However, under the new law, it will be possible to use reasonable force

to enter a place, including a private home, if it is not possible to enter in another way. For example, "reasonable force" might mean breaking a lock to enter a place.

It should be a crime for someone (other than the at-risk adult) to stop the Gardaí or authorised officers, or people they bring with them, from accessing the at-risk adult.

Important: If an at-risk adult stops authorised officers or the Gardaí, or people they bring with them, this would not be a crime.

Chapter 12: Powers of removal and transfer

What is this chapter about?

Chapter 12 talks about whether there should be a power to allow the Gardaí to:

- remove an at-risk adult from where they are; and
- transfer the at-risk adult to a place where health or social care services are provided, or to another place that has been approved by a court.

What is the purpose of a power of removal and transfer?

This power would allow the Gardaí, authorised officers and health or social care professionals (such as doctors and nurses) to assess the health, safety and well-being of an at-risk adult in an appropriate and safe place. It would also allow them to check whether an at-risk adult needs any supports to protect themselves from harm. The power could be used where the person doing the assessment cannot assess these things in the place where the at-risk adult is at the time.

This power would interfere with an at-risk adult's rights, but we believe it is needed to protect an at-risk adult's rights. It is important that the law is written so that it causes the least amount of interference with the rights of at-risk adults and other people. For this reason, we think there should be a power to remove and transfer an at-risk adult **only with the court's permission.**

Why is this power needed?

There are some powers like this in Ireland for criminal, public health and mental health situations. Although the High Court can do similar things, we think that writing down this power in law would be much **clearer and more certain**. Letting Gardaí, accompanied by authorised officers and health or social care professionals where possible, remove and transfer at-risk adults in really serious situations would allow them to:

- try to check the at-risk adult; and
- decide whether they need to be supported.

The place where the at-risk adult is might be too unsafe or unclean to check these things, or to assess the at-risk adult's health. There could also be a person in the place who is a serious risk to the at-risk adult and is not allowing other people to access the at-risk adult. In that situation, this power of removal and transfer should only be used where a no-contact order would not work. (A no-contact order is an order that stops a person who might be harming the at-risk adult from contacting an at-risk adult. We explain these orders in chapter 13.)

What do we recommend?

New adult safeguarding laws should include "removal and transfer orders", which are available in serious situations

We recommend that adult safeguarding laws should be changed to allow a court to make a "removal and transfer order" in serious situations. This order would allow the Gardaí, along with authorised officers of the Safeguarding Body or any other person who might be needed (including a health or social care professional or a friend or family member of the at-risk adult) to:

- enter the place where the at-risk adult is;
- take the at-risk adult away from this place; and
- move the at-risk adult to:
    - a place where health or social care services are provided; or
    - another place that has been approved by the court.

Gardaí may only remove and transfer at-risk adult in serious circumstances

The Gardaí or authorised officer must meet a certain standard to get a removal and transfer order.

There must be reasons for thinking that:

- there is a serious and immediate risk to the health, safety and well-being of an at-risk adult;
- actions might be needed to prevent harm to the health, safety and well-being of the at-risk adult; and
- the at-risk adult cannot be assessed at their current location. They must need to be assessed at a new location where health or social care services are provided or another place that has been approved by the court.

The person applying for the order needs to:

- Try to see what the at-risk adult wants before applying for an order;
- Consider what the at-risk adult wants when deciding whether to apply for an order.

When it is considering an application for an order, the court must check if these have been done.

If an at-risk adult does not want to be moved, the court can **only** make the order when it believes the at-risk adult is either:

- being forced to say that they do not want to be moved, or
- the court is not sure that the at-risk adult has capacity to decide for themselves whether or not they want to be moved. (Capacity as used here is defined in chapter 2.)

Sometimes, a Garda or authorised officer may apply to the court for a removal and transfer order before they have had access to someone. They may do this when they believe there is a particularly urgent risk. Before the court will grant a removal and transfer order in such a case, it must believe that an access order would not be enough to protect the rights of the at-risk adult and prevent harm to them.

We recognise that a hospital or another medical place will not always be the best place to take an at-risk adult. In the future, more suitable places might be available. The government should have the power to add those places to the list of suitable places to assess at-risk adults in the legislation.

When an at-risk adult is not being brought to a place where health or social care services are provided, the court needs to be satisfied that this place is suitable for assessing the at-risk adult.

Reasonable force used if needed

The Gardaí and authorised officers should be able to use reasonable force, if needed, to use the removal and transfer order. The Gardaí should also be allowed to take any other action required to carry out the removal and transfer order. This could include:

- detaining an at-risk adult for the time it takes to remove and transfer them (detaining means keeping the at-risk adult somewhere without their consent); or
- restraining an at-risk adult so that they can be removed and transferred (restraining means physically holding the at-risk adult back or stopping them from moving).

However, Gardaí should detain or restrain only when they have no other way to carry out the order.

Must give at-risk adult clear information

We recommend that protections should be introduced like explaining the removal and transfer order in plain English.

At-risk adult must get clear explanation

We also recommend that the person removing and transferring the at-risk adult should explain what is happening to the at-risk adult. They must tell them:

- why the order is needed
- the powers that can be used.

They must also explain to the at-risk adult that when they get to the place where health or social care services are provided or the place approved by the court, they can decide to leave. The person removing and transferring the at-risk adult must explain that they will be helped to leave if that is what they decide to do.

Can the at-risk adult leave the place they have been brought to?

We do not think that a removal and transfer order should allow an at-risk adult to be detained at the place they have been brought to. Instead, if an at-risk adult decides to leave the place that they have been brought to, the Safeguarding Body, Gardaí or health and social care professionals should help them to:

- leave and go back to where they were before; or
- go to another place of their choosing, where that is possible.

The Safeguarding Body should still continue to help at-risk adults and give them information they might need. The Safeguarding Body, Gardaí or health and social care professionals may be worried about whether the at-risk adult can decide for themselves. If they are, they should help the at-risk adult and consider supports that are available to the at-risk adult under the Assisted Decision-Making (Capacity) Act 2015.

Why did we decide that an at-risk adult should be able to leave the place they have been brought to?

We first thought that for a removal and transfer order to be effective at keeping an at-risk adult safe from harm, it should be possible to keep an at-risk adult in the

place that they have been brought to for a period of time. Keeping someone in a place without their consent is called "detention". However, the government is currently working on separate laws on temporary detention. These separate laws would overlap with the new adult safeguarding laws. We think that it is better to deal with the issue of temporary detention in a special law that may be relevant for at-risk adults and for other people. So, we think the government should continue its separate work on this important issue.

What else do we recommend?

The at-risk adult may decide to stay in the place where health or social care services are provided or the place approved by the court. If so, the authorised officer and other health or social care workers should be able to talk privately with the at-risk adult and assess their health. They must first get consent to do this from the at-risk adult.

It should be a crime for someone (other than the at-risk adult) to stop the Gardaí or authorised officers, or people they bring with them, from accessing, removing or transferring the at-risk adult.

Important: It would not be a crime for the at-risk adult to stop the Gardaí or authorised officers, or people they bring with them.

Chapter 13: No-contact orders

What is this chapter about?

Chapter 13 talks about orders that stop another person from contacting an at-risk adult. We suggest that the law about domestic abuse should be changed to better protect at-risk adults. We also suggest that there should be new "adult safeguarding no-contact orders" to prevent harm, exploitation or ill treatment of at-risk adults which is not domestic abuse.

What is the law in Ireland at the moment?

Orders that stop someone from contacting another person are available in Ireland, but they are not especially for adult safeguarding. For example, orders can be used in cases of harassing and stalking.

There are also orders available in the Domestic Violence Act 2018. However, the orders in this 2018 Act can only be used for certain relationships, for example some close family relationships or romantic relationships.

How should the Domestic Violence Act 2018 be changed?

We believe that the Domestic Violence Act 2018 should be changed so that it can be applied to more relationships where there is an at-risk adult involved. We recommend that this law is changed so that:

- "barring orders" will apply to people who live with an at-risk adult not as part of a contract, and people who live with an at-risk adult as part of a contract to provide care for the at-risk adult; and
- "safety orders" will apply to people who live with an at-risk adult as part of a contract to provide care for the at-risk adult.

Orders under Domestic Violence Act 2018 can be applied for and made without the person who is going to be protected by the order agreeing to it.

We recommend that the Child and Family Agency (Tusla) and the Safeguarding Body should be allowed to apply for an order under the Domestic Violence Act 2018 when it is for an at-risk adult.

What new orders should be in adult safeguarding laws?

We recommend that three new orders should be included in the new adult safeguarding laws:

- a full adult safeguarding no-contact order;
- an interim (temporary) adult safeguarding no-contact order; and
- an emergency adult safeguarding no-contact order.

These orders would stop another person who is not in a relationship with the at-risk adult or living with the at-risk adult from engaging in certain behaviours. These include:

- following the at-risk adult;
- watching the at-risk adult;
- annoying or talking to or about the at-risk adult; or
- coming near the at-risk adult or the place where the at-risk adult lives.

The at-risk adult themselves, or the Safeguarding Body, should be able to ask the court for these orders.

We explain each of the three proposed orders for an at-risk adult in the following paragraphs.

How would a full adult safeguarding no-contact order work?

The at-risk adult themselves could apply for a full no-contact order. An authorised officer of the Safeguarding Body could apply for a full adult safeguarding no-contact order if they believe that the health, safety or well-being of the at-risk adult means the order is needed.

The authorised officers of the Safeguarding Body must first try to see what the at-risk adult wants. This must be considered when deciding whether to apply for an order. The court must check whether this has been done. If an at-risk adult does not want a full no-contact order, then it cannot be granted by the court.

We recommend that the order should last for **up to two years**. The judge should decide the exact length of time. However, the at-risk adult should be able to apply to end the order before this time.

It should be a crime for the person who the order is about to not follow the order. Important: It should not be a crime for an at-risk adult to contact the person who the order is about.

How would an interim adult safeguarding no-contact order work?

We recommend that an "interim adult safeguarding no-contact order" should be available when the at-risk adult or the Safeguarding Body has already applied for a full adult safeguarding no-contact order. The **interim (temporary)** adult safeguarding no-contact order would be in place while everyone waits for the court to decide the case about the full adult safeguarding no-contact order.

The at-risk adult themselves could apply for an interim no-contact order. An authorised officer could apply for an interim order if they believe that there is an urgent risk to health, safety or well-being of the at-risk adult, and so the interim order is needed. The court must be satisfied that this standard is met.

If the court makes a decision when the person who is being ordered not to contact the at-risk adult is there, the interim order will last until the court decides about the full adult safeguarding no-contact order. If the decision is made **without** the other person there, the interim no-contact order can only last for up to eight working days.

How would an emergency adult safeguarding no-contact order work?

If there is a very urgent risk to an at-risk adult, and at at-risk adult or the Safeguarding Body waited to apply for a full no-contact order, the risk might get even worse. There also might be cases where an at-risk adult says they do not want a no-contact order, but it is not clear if this is their own choice.

We recommend that the law should make an emergency adult safeguarding no-contact order available for a small number of cases. The at-risk adult or Safeguarding Body would not need to apply for a full adult safeguarding no-contact order to get the emergency order. To apply for the emergency order, an authorised officer of the Safeguarding Body must believe that there is a risk to the health, safety or well-being of the at-risk adult and the no-contact order is needed to:

- lower the risk to the at-risk adult, or
- check if the at-risk adult does not want the order by their own choice (and, if needed, check if the at-risk adult has capacity to make decisions for themselves).

The at-risk adult themselves could also apply for an emergency no-contact order. The court must be satisfied this standard has been reached to grant this order. An emergency no-contact order should last for up to eight working days.

Can you get an emergency adult safeguarding no-contact order if the at-risk adult doesn't want it?

We recommend that a court cannot give full and interim adult safeguarding no-contact orders when an at-risk adult doesn't want an order.

However, we think that emergency adult safeguarding no-contact orders should be possible even if the at-risk adult doesn't want it. In these cases, we recommend extra standards to protect the at-risk adult's rights. In order to apply for an emergency no-contact order in such a case, an authorised officer of the Safeguarding Body must have a reasonable belief that:

- the at-risk adult is saying no because they are being forced to say no by someone else; or
- the at-risk adult does not have capacity to make a decision about the order themselves.

The court must be satisfied this standard has been reached in order to grant the order. If, before the eight days is over, it is clear that the at-risk adult is not being forced and has capacity to choose for themselves, the Safeguarding Body should apply to end the order straight away.

What else do we recommend?

We also make general recommendations about the three kinds of no-contact orders. For example, before making any no-contact order, the court must consider the rights of the at-risk adult, and the other person, in relation to the property where the at-risk adult lives.

An adult safeguarding no-contact order cannot affect the property rights that already exist

For example, an at-risk adult might live in a house that their adult child owns, while their adult child lives somewhere else. Even if the adult child was subject to a no-contact order, their existing property rights in the house would be unaffected. This means they would be able to take back ownership of the house, if they wanted to.

What happens if an adult safeguarding no-contact order is appealed?

It should be possible for the person who the no-contact order is about to appeal it. If a full no-contact order is appealed, it should be possible for the order to be paused if the court thinks that would be appropriate. However, if an interim no-contact order or emergency no-contact order is appealed, it should not be possible to pause the order. This means the order would still be in place while everyone waits for the appeal.

Chapter 14: Financial abuse

What is this chapter about?

In chapter 14, we look at financial abuse of at-risk adults. We suggest ways to deal with financial abuse and what changes should be made to prevent financial abuse of at-risk adults. For example, financial abuse can include:

- stealing someone's property;
- lying to someone to make a profit or to cause someone to make a loss;
- taking advantage of someone or treating them unfairly to get a financial benefit.

What protections are there to prevent financial abuse of at-risk adults?

The criminal law protects everyone (including at-risk adults) from theft, fraud, coercion (force) and undue influence (unfair pressure). An example of undue influence is when a person unfairly pressures an at-risk adult (who could be their parent) to financially support their bank loan. However, there are some gaps in the law that need to be filled to prevent financial abuse of at-risk adults. To fill these gaps, we recommend in chapter 19 that a new crime of coercive exploitation should be introduced in law.

We also looked at the Central Bank of Ireland's Consumer Protection Code (code) and the bank's recent recommendations to update and review the code. This code is part of the law in Ireland and sets out the rules that regulated financial service providers (like banks) should follow.

What do we recommend?

Consumer protection code and regulations

We think the Central Bank should update its consumer protection code. The Central Bank published two draft regulations in March 2024. We think the updated code should be contained in these two regulations. However, we think some changes need to be made to these regulations before they come into force.

The regulations contain a definition of a "consumer in vulnerable circumstances". The word "harm" is used in this definition. But "harm" is not defined in the regulations.

Also, because this definition doesn't include any words to do with time, it's not clear what point in time someone could be called a "consumer in vulnerable circumstances". It's also not clear what the words "especially susceptible to harm" mean in this definition.

The Central Bank published draft guidance on "consumers in vulnerable circumstances" in March 2024. We think the guidance should be changed to include more detail before it becomes final. Including more detail will help everyone understand the regulations and what is meant by the words "consumer in vulnerable circumstances".

We also think the regulations should be consistent with assisted decision-making laws and codes of practice published by the Director of the Decision Support Service, for example the Code of Practice for Financial Service Providers.

Law

We believe the law should be changed in Ireland to require banks and bank staff to do certain things to prevent or address the financial abuse of at-risk adults. The law should be changed to allow banks and bank staff to freeze transactions (like payments into and out of bank accounts) in certain circumstances. This includes when they know, believe or suspect that at-risk adults:

- have been financially abused;
- are being financially abused; or
- might be victims of financial abuse in the future.

We also think that a law should be created to make it clear that banks and bank staff can't be sued if they do certain things to prevent or address the financial abuse of at-risk adults.

We also believe social welfare laws should be changed to be consistent with assisted decision-making laws, the United Nations' Convention on the Rights of Persons with Disabilities, and the Council of Europe's Recommendation on the promotion of human rights of older persons.

Home support services are provided in Ireland to adults, including at-risk adults. We think the law should be changed to explain how and when fees should be paid to providers of home support services and how these fees should be calculated.

This change would make sure that everyone who uses or plans to use home support services knows what to expect.

Training and standards

We think banks, credit unions and post offices should provide staff with regular training. Staff should be trained on how to spot possible signs that a customer has been financially abused, is being financially abused or may be a victim of financial abuse in the future.

We also believe there should be a national standard on preventing the financial abuse of at-risk adults. Providers of home care services and providers of home support services should be required to act in line with this standard. We think preventing the financial abuse of at-risk adults could be included as a standard in HIQA's national standards for homecare and home support services.

Chapter 15: Cooperation

What is this chapter about?

In chapter 15, we look at the importance of the Safeguarding Body, public bodies and providers of certain services to at-risk adults working together to prevent and address issues that affect at-risk adults. It is important for them all to work together:

- when a person turns 18 and needs to move from children's services to adult services; and
- to keep at-risk adults safe from harm.

These following ways of working together can be described as cooperation or teamwork. Cooperation includes the Safeguarding Body, public bodies and providers of certain services to at-risk adults:

- sharing information, expertise and best practices;
- making decisions together; and
- combining resources.

How do public bodies and providers of certain services to at-risk adults work together now?

Currently in Ireland, public bodies and providers of certain services to at-risk adults often work together informally. Their work is based on policies, not laws. This can make it difficult to make them work together, or to work together in a particular way.

Public bodies and providers of certain services to at-risk adults sometimes do not have enough resources to work with other public bodies and service providers. Also, how they work together can differ and depend on whether they have strong relationships with each other.

What do we recommend?

New laws to promote better working together

We think that new laws are needed. These should say that groups must work together to promote or safeguard the health, safety and well-being of at-risk adults. These groups include:

- the Safeguarding Body;
- certain public bodies; and
- providers of certain services to at-risk adults.

The new law should also say that these stakeholders should work together to **take actions under adult safeguarding laws to protect at-risk adults from harm**.

We include a full list of those that should be under a duty to work together when taking action under adult safeguarding laws in chapter 15 of our full Report. We believe that the relevant government minister should be able to make Regulations to add other public bodies or providers of certain services to at-risk adults to this list.

An inter-departmental group should make sure that the Safeguarding Body, certain public bodies and certain service providers work well together

We believe that different government departments should form an inter-departmental group to make sure the Safeguarding Body, certain public bodies and certain service providers work together when taking the above actions.

Considering new laws to protect young people when they move from children's services to adult services

We also believe that the government should think about whether there should be new laws about how certain public bodies and providers of certain services to at-risk adults should work together when a person turns 18 and needs to move from children's services to adult services. These laws would help to make sure that young people who will or may become at-risk adults are kept safe from harm. The new laws

could say that specific public bodies and providers of certain services to at-risk adults must have responsibility for managing these transitions or changes from children's services to adult services.

If the government considers making these new laws, it should also consider the following:

- appointing a lead organisation to work with relevant public bodies and providers of certain services to at-risk adults to manage arrangements for these young people;
- introducing a duty on the lead organisation to check whether a young person who is considered to be at risk or has complex needs is likely to be an at-risk adult when they transition from children's services to adult services; and
- making sure there is careful planning for the young person's transition from children's services to adult services.

Chapter 16: Information sharing

What is this chapter about?

In chapter 16, we talk about how important it is for certain bodies to be able to share the personal data and special categories of personal data of at-risk adults to protect them from harm. Special categories of personal data include information about a person's health, sexual orientation and religious beliefs.

Community centres, care homes, day services and health services looking after at-risk adults may need to share the personal data and special categories of personal data of at-risk adults to protect them from harm. Banks, post offices and credit unions may also need to share this data for the same reason.

What do the people we have consulted with think about information sharing?

People working or in contact with at-risk adults often want to share the personal data and special categories of personal data of at-risk adults to protect them from harm. They are, however, unsure and worried about protecting at-risks adults from harm while also following data protection laws. The people working or in contact with at-risk adults want guidance on:

- when it is legally possible to share the personal data and special categories of personal data of at-risk adults to protect them from harm; and
- how to share this data in line with data protection laws.

Many people we have consulted with have told us that not knowing when and how to share information legally are big problems that make it difficult for them to protect at-risk adults from harm.

What are the current laws in Ireland around data sharing?

There's no law in Ireland that specifically allows or requires relevant bodies to share the personal data and special categories of personal data of at-risk adults when it's needed to keep at-risk adults safe from harm.

There's also no clear guidance in Ireland on how data protection laws can or should be used to protect at-risk adults from harm. This uncertainty has led to bodies dealing with the sharing of the personal data and special categories of personal data of at-risk adults in different ways. This is mostly because they are unsure about the laws for sharing information when it comes to protecting at-risk adults from harm.

What do we recommend?

New laws be made to clarify when it is legally possible or required to share at-risk adults' information

New laws should be made in Ireland that allow information sharing between relevant bodies when it is necessary and in the public interest to protect at-risk adults from harm. These laws should clearly state that in some situations it's possible and in other situations it's required to share the personal data and special categories of personal data of at-risk adults to protect them from harm. These situations should be contained in the laws and are set out in chapter 16.

Regulations be made on information sharing as a temporary measure before other laws are made

Until new laws are made and contained in Acts of the Oireachtas, Regulations should be made that allow relevant bodies to share the special categories of personal data of at-risk adults to protect at-risk adults. This should only be done for the (substantial) public interest reason of safeguarding the health, safety or well-being of at-risk adults in Ireland. The Regulations should clearly say that the reason that relevant bodies can share the special categories of personal data of at-risk adults is

because it is substantially in the public interest to protect at-risk adults from harm in Ireland.

Regulations are laws created by ministers or other public bodies under powers given to them by Acts of the Oireachtas.

Guidance and codes of conduct be published to clarify information sharing in the adult safeguarding context

There should also be guidance or codes of conduct published on when and how bodies can share the personal data and special categories of personal data of at-risk adults where at-risk adults need to be protected from harm. The guidance or codes of conduct should include examples to explain when and how bodies can share data to protect at-risk adults from harm. Having published guidance or codes of conduct would help bodies to understand information sharing in the adult safeguarding context. It would also help them to feel comfortable or confident that they are sharing at-risk adults' information in line with data protection laws.

Chapter 17: Adult safeguarding reviews

What is this chapter about?

In chapter 17, we recommend that adult safeguarding reviews should be introduced in Ireland. These are reviews of very serious incidents that involve at-risk adults. These reviews are about learning from an incident that happened to an at-risk adult and making sure it doesn't happen again. We think adult safeguarding reviews should take place in all care settings where an at-risk adult may be present, even those outside of health and social care settings. These reviews should only be required to take place for very serious incidents that meet the conditions we identify for when a review must be carried out. We do not have adult safeguarding reviews in Ireland, but there are many other types of reviews that do take place when a serious incident occurs.

How do serious incident reviews work in Ireland?

Currently, there are many different types of reviews that can occur when a serious incident happens to an at-risk adult. Often, similar incidents are dealt with in different ways, and nobody knows exactly why. This could mean that serious incidents which are not in the media or publicly known are not being reviewed properly, or at all.

What do other countries do?

In other countries like England, Scotland and Wales, adult safeguarding reviews must be done when a serious incident happens to an at-risk adult that meets certain conditions. These reviews usually take place where:

- the person dies; or
- it is known or suspected that they are being abused or neglected; and

- it is believed that organisations responsible for adult safeguarding could have done more to help them.

These reviews are completed by Safeguarding Adults Boards or Adult Protect Committees. These boards and committees are made up of organisations responsible for adult safeguarding. They work together to prevent harm to at-risk adults and to figure out how adult safeguarding processes can be improved.

Safeguarding Adults Boards or Adult Protection Committees can also decide to complete a review of a serious incident that does not meet the conditions above. They can do this if they believe that it would be useful to learn from this incident.

What do we recommend?

Make new laws to require adult safeguarding reviews

We believe that adult safeguarding reviews should be introduced in Ireland and we think this should be done by making new laws.

These adult safeguarding reviews we suggest will be in addition to (and not replace) all the current reviews in Ireland, such as reviews by regulators or general incident reviews by the HSE. Those reviews are mostly focused on assessing whether action needs to be taken immediately to prevent further harm to at-risk adults.

The adult safeguarding reviews that we suggest will focus on learning how adult safeguarding systems and services can be improved. We believe that adult safeguarding reviews should only be required to take place where a very serious incident occurs in relation to an at-risk adult that meets specific conditions. We list suggested conditions below.

The reviewing body can also decide to carry out an adult safeguarding review where the specific conditions are not met. It may do this if it believes that it would be useful to learn from the incident.

Who should do these reviews?

We have not indicated who should do adult safeguarding reviews, because there are a lot of things to consider, like policies and resources. These are not part of our project. Instead, we believe it should be left to the government to decide who should be the reviewing body. In Chapter 6, we talk about why the reviewing body should not be the Safeguarding Body. We also talk about things to consider if the government decides that regulators should be the reviewing body. The government can consider these views when deciding who the reviewing body should be.

What principles should apply to adult safeguarding reviews?

We believe that the following principles should apply to adult safeguarding reviews:

- Reviews should focus on learning and not to blame people, agencies or organisations.
- Reviews should be done the same way every time and findings should be shared publicly if possible.
- All very serious incidents involving at-risk adults that meet the conditions below should be dealt with in the same way, regardless of what setting they occur in. (See below "What are the conditions for doing an adult safeguarding review?")
- Reviews should be finished and shared as soon as possible – they should not continue for many years.
- Reviews should involve everyone, including at-risk adults, their families, independent advocates, staff and service providers.
- The reviewing body should also assess the outcome of reviews and check progress to make sure the reviews are making improvements to adult safeguarding systems and services.
- Where the reviewing body decides that a public body, agency, service or service provider needs to make improvements, they should let the reviewing body know about the steps they will take to make improvements.

What are the conditions for doing an adult safeguarding review?

The reviewing body **must** undertake an adult safeguarding review if:

1. an at-risk adult dies and the reviewing body knows or suspects that this was because someone abused or neglected them when they were responsible for the at-risk adult's care;

   or

2. an at-risk adult does not die, but the reviewing body knows or suspects that someone is or was seriously abusing or neglecting the at-risk adult;

   and

3. an incident (or incidents) happened that shows that one or more public bodies, agencies, services or service providers responsible for caring for at-risk adults significantly failed to prevent harm to at-risk adults.

We also believe that the reviewing body should be able to decide to do a review at other times. These would be times when the reviewing body thinks there is a chance of learning something about preventing harm or how to get better at keeping at-risk adults safe.

When can the reviewing body decide not to review, or to stop or pause a review?

We believe that the reviewing body should be able to decide not to do an adult safeguarding review, or stop or pause a review if:

- someone else is reviewing or investigating the incident;
- a long time has passed from when the incident took place and for that reason the reviewing body thinks it is not necessary to do a review;
- the problems related to the incident have been addressed;
- there are criminal proceedings ongoing regarding the incident; or
- the incident is being investigated by the Gardaí.

Powers to get information

To do these adult safeguarding reviews, the reviewing body needs to be able to get information about what happened. We suggest that the reviewing body should have legal powers to get this information and talk to the people involved in the serious incident. They should also be able to ask a court for help if people refuse to give them relevant information or talk to them.

Chapter 18: Regulation of professionals and occupational groups

What is this chapter about?

In chapter 18, we talk about the people who work in caring and support jobs that are not regulated by the law. For some professions, like doctors and nurses, there are clear laws about how people should do their jobs and about what happens if they don't do their jobs properly. For professions that aren't regulated, the situation is not as clear.

Chapter 18 assesses how good the checks are before someone gets a job to make sure they're safe to work with at-risk adults. It also looks at what other countries do to manage and monitor jobs or types of work that are not regulated, and talks about "barred lists" in the UK. These lists have information about people who aren't allowed to work with children or adults because of their past behaviour or previous criminal convictions.

How does Irish law deal with professions that are not regulated?

Currently in Ireland, the law does not deal as well as it should with a situation where someone in a profession that is not regulated is linked to abuse or neglect of an at-risk adult. The issues are:

- There are not enough measures to stop them from getting another job in the same field and possibly causing harm to at-risk adults.
- There are no set training standards for healthcare assistants or healthcare support assistants, and there's no system to check on people after they get the job.
- For some jobs, the law says that people must be Garda vetted (checked to see if they have a criminal record or any history that might pose a threat to a

"vulnerable person"). However, people don't have to be re-vetted every few years after they've gotten a job and been vetted for the first time.

What do we recommend?

We suggest that health care assistants and healthcare support assistants should be regulated in Ireland. We agree with what the HSE said about the role and function of health care assistants and healthcare support assistants in its 2018 review.

The government wrote a law called the National Vetting Bureau (Children and Vulnerable Persons) Act 2012. It wrote it to introduce a process where people have to be re-vetted by the Gardaí. However, this law hasn't come into force yet. We recommend that it should come into force soon.

We don't think it's a good idea to make barred lists of people, because these lists don't sit well with the Constitution of Ireland and might affect peoples' rights under the Constitution. Instead, we think the government should create new laws that allow the courts to make "prohibition orders" to stop someone from working in certain jobs for a specific period of time if they are convicted of certain crimes.

These crimes should include any crime where the victim was a "relevant person". We explain this term in the next chapter, chapter 19. We use it when making new crimes because it's important for the criminal law to be precise about who is protected. The order could last as long as the longest amount of time that someone could be sent to prison for the particular crime.

A person would be breaking the law if they:

- try to get a job the order says they're not allowed to do;
- try to make someone else hire them for a job the order says they're not allowed to do; or
- do work the order says they're not allowed to do while the order is in place.

Chapter 19: Adult safeguarding and the criminal law

What is this chapter about?

In chapter 19, we talk about how we can change Irish criminal law to better safeguard at-risk adults. We recommend creating new crimes to keep at-risk adults safe from harm and to punish those who commit crimes against at-risk adults. We think these new crimes, along with the other changes to the law that we recommend in our Report, would help prevent harm to at-risk adults.

What laws exist now?

In Ireland right now, there aren't many laws that make it a crime to abuse or neglect at-risk adults. The criminal law protects everyone including at-risk adults. But it's often hard to prove someone abused or neglected an at-risk adult, especially if the at-risk adult is unable to tell the Gardaí, the court or the jury about what happened. For example, an at-risk adult may not remember what happened, or may not remember everything that happened. They may not understand what has happened to them either.

While there are specific crimes to keep children safe from harm, there are no specific crimes to keep at-risk adults safe from harm. We think that the criminal law should be changed in Ireland to create specific crimes against certain at-risk adults.

Who is a relevant person?

Throughout our report, we've used the words "at-risk adult" to talk about adults who might be at risk of harm. In this chapter, and in the proposed crime, we use "relevant person" to describe particular at-risk adults because it's important for the criminal law to be precise about who is protected by the law. This means the offender will be aware that they are committing a crime if they take or fail to take certain actions which concern a "relevant person".

We define a "relevant person" as an adult whose ability to keep themselves safe from harm is seriously affected because they have:

- a physical disability, are frail, sick or injured;
- an intellectual disability;
- a mental disorder such as a mental illness or dementia; or
- autism (called "autism spectrum disorder" in the law).

We know that some people find terms like "mental disorder" or "autism spectrum disorder" offensive. The Commission thought hard about what terms should be used. We need to use precise terms for the criminal law. These terms are used in laws and court cases. The National Disability Authority also said in a recent document that sometimes "medical language" needs to be used in laws.

What do we recommend?

We recommend the following new crimes are put in the criminal law:

- Abusing, neglecting or ill-treating a relevant person
- Exposing a relevant person to a risk of serious harm or sexual abuse
- Coercive control of a relevant person
- Coercive exploitation of a relevant person.

We talk about each of these new crimes that we recommend below.

Abusing, neglecting or ill-treating a relevant person should be a crime

We think there should be a law, similar to a law we already have for children, that makes it a crime to:

- abuse or neglect a relevant person, or
- ill-treat a relevant person.

In order to commit this crime, we do not think that it is necessary to prove that the relevant person was actually harmed. This means, for example, that if the crime is

committed against a person with dementia, they would not need to tell the jury or the court what happened to them for a person to be convicted of the crime. This should make it easier for people to be convicted of this crime.

This crime would apply to anyone who takes care of a relevant person or who lives with them and purposely or carelessly abuses them, neglects them, or ill-treats them, which could damage their health or seriously affect their well-being.

Exposing a relevant person to the risk of serious harm or sexual abuse should be a crime

In Ireland, it's already a crime to put a child in a situation where they could be seriously harmed or sexually abused.

We want to introduce a similar crime in relation to relevant persons where a person exposes them to a risk of serious harm or sexual abuse. This crime would apply where:

- a person is a "person in authority" (a person in charge) of the relevant person, or the abuser (for example, the owner or manager of a nursing home); or
- they control the care of the relevant person or the abuser; or
- they control how the abuser provides care to the relevant person.

The crime would apply if a person or body failed to take reasonable steps to protect a relevant person even though they knew there was a risk that they would be seriously harmed or sexually abused.

We think serious harm should include both physical harm **and** psychological harm that significantly affects a relevant person.

Coercive control against a relevant person should be a crime

We are also aware of the limitations of the current law that makes coercive control a crime in the context of keeping at-risk adults safe from harm. In this scenario,

coercive control means controlling someone in a way that makes them feel trapped or afraid.

The current law only applies to partners or ex-partners and married couples. We do not suggest changing this law to include more types of relationships. Instead, we suggest a new crime of coercive control against a relevant person. This would exist in the criminal adult safeguarding laws that we suggest should be introduced in Ireland.

The crime of coercive control against a relevant person would apply to:

- anyone who has a family or caring relationship with a relevant person, or
- any person who lives with a relevant person.

This new law would be based on the existing law against coercive control, but it would be in criminal adult safeguarding law.

Coercive exploitation should be a crime

We also recommend a new crime of coercive exploitation against a relevant person be created. This crime does not exist in Ireland, although there are crimes to protect against stealing, fraud and deception. This new crime would deal with serious issues like:

- 'cuckooing' and
- 'mate crimes'.

We look at each of these two issues in turn followed by where coercive exploitation should apply.

Cuckooing – this is a term to describe situations where at-risk adults are taken advantage of by others in their community, usually by someone taking control of the at-risk adult's home. At-risk adults may be targeted because they are older and live alone, or because they have a disability and may have difficulties protecting themselves from harm.

Sometimes the at-risk adult does not know that they are being taken advantage of because they think the person is their friend and they want to help them out or spend time with them. If this happens, the situation can quickly get out of their control. These situations often involve another person or group of people using the at-risk adult's home or resources for illegal activities, anti-social behaviour or for their own benefit (for example, to live rent free). This can harm the at-risk adult's health, safety, well-being and financial resources.

Mate crime – this is a term to describe a situation where a person becomes friends with an at-risk adult in order to take advantage of them. This may involve someone asking an at-risk adult for lots of money on a regular basis and never paying them back. It could also involve someone asking the at-risk adult to do things, for example, sell drugs or store weapons.

Mate crimes can mean that the at-risk adult does not have the money to look after their own needs, or it could mean they are being asked to commit crimes themselves. Usually, these things happen because the at-risk adult trusts the other person, and wants to make them happy.

We believe that a specific crime is needed to address this kind of exploitation. This type of exploitation does not always involve violence or deception but can still be very harmful to at-risk adults.

We believe the crime of coercive exploitation occurs when someone uses controlling or coercive behaviour to access or control the property or financial resources of a relevant person:

- for their own advantage; or
- the advantage of someone else.

Chapter 20: A regulatory framework for adult safeguarding – implementation and a whole of government approach

What is this chapter about?

Chapter 20 talks about the roles of different bodies and government departments in our regulatory framework for adult safeguarding. This chapter explains how bodies and government departments should work together to make sure that at-risk adults are kept safe from harm.

Why is this important?

At the moment, different bodies and government departments do different things to keep at-risk adults safe from harm. However, to be truly effective, it is important that everyone works together and cooperates. This is also important because at-risk adults may deal with many different bodies and government departments.

These bodies and departments should aim to work together to keep at-risk adults safe from harm. It should not be the job of just one body or government department to keep at-risk adults safe from harm. Adult safeguarding should be important to everyone.

How do we think the government departments should work together?

We think the government departments need to work together in different ways.

One main department to lead

Firstly, we think the government should decide which department should be the main one responsible for keeping at-risk adults safe from harm. It will have responsibility for coordinating the government's adult safeguarding policy, and coordinate with other departments.

Group across different government departments

Secondly, the different government departments should then set up a group that focuses on keeping at-risk adults safe from harm, and discusses whether any changes are required to the law, or to policy, to improve adult safeguarding. All the government departments that are members of the group will be involved in keeping at-risk adults safe from harm. This means that all relevant departments take responsibility for adult safeguarding, and not everything is left to the lead department.

Individual departments' plans

Finally, along with the work in this group, each individual department should make a plan for the work they have to do themselves to keep at-risk adults safe from harm. This should apply only to departments selected by government.

Who should receive guidance on these new laws?

We think that our new civil and criminal laws would make a big difference to keep at-risk adults in Ireland safe from harm. However, these laws can only do so much, we also need "statutory guidance" that explains how adult safeguarding laws should be applied in practice by certain people or organisations. There must be statutory guidance for:

- the Safeguarding Body;
- public bodies;
- service providers; and
- individuals.

They need statutory guidance to make sure they understand what they must do under the new laws to protect at-risk adults from harm.

Part 2: Our plain English Report on a regulatory framework for adult safeguarding in Ireland

Background chapter

What is this report about?

In this report, we propose a new system of laws for keeping adults safe from harm. We call this "a regulatory framework for adult safeguarding". The report is part of our fifth programme of law reform. The government approved the fifth programme on 20 March 2019.

Currently, we don't have any specific laws in Ireland on adult safeguarding. Lots of people think we need these laws. In this report, we make recommendations which give suggestions to the government on how it could create a system of laws for keeping adults safe from harm in Ireland.

In this report, we build on current laws and policies and the work that other people have done examining peoples' rights. We then propose a system of laws for adult safeguarding. In these laws, we've tried to get the balance right between protecting at-risk adults from harm, and empowering them. The report also contains two draft bills. One bill contains draft civil laws and the other bill contains draft criminal laws. Both bills contain model laws that the government could use as a starting point if it decides to accept our recommendations and make laws in the future.

"Adult at risk of harm" is a phrase that comes up a lot in this report. An "adult at risk of harm" is someone over 18 who, because of their physical or mental health, personal traits or life situation, needs help to keep themselves safe from harm at a particular time. In this report, we also use the shorter phrase "at-risk adult". "Adult at risk of harm" and "at-risk adult" mean the same thing in the report.

In this report, we focus on the most important things for a system of laws to safeguard at-risk adults. We think it is important that adult safeguarding laws:

- are based on peoples' rights;
- stop abuse happening now and in the future; and
- encourage and make sure there are high standards for adult safeguarding.

What existing laws and draft laws did we look at?

There were a number of laws and draft laws that were important for us to look at when writing this report.

The Adult Safeguarding Bill 2017

The government tried to introduce adult safeguarding laws in 2017 in a piece of law called the Adult Safeguarding Bill 2017. However, the government found that the Adult Safeguarding Bill 2017 needed to be developed and researched more. The government suggested that we, the Law Reform Commission, look at adult safeguarding as part of our fifth programme of law reform.

The United Nations Convention on the Rights of Persons with Disabilities

Some at-risk adults are people with disabilities. For this reason, it was important for us to look at the United Nations Convention on the Rights of Persons with Disabilities. This is an international convention about people with disabilities. It was made by the United Nations. Lots of countries have signed up to it and have made it part of their laws. Its aim is to make sure that people with disabilities have their human rights and freedoms respected. It also aims to promote respect for their dignity.

Ireland signed up to the United Nations Convention on the Rights of Persons with Disabilities in 2007, and it came into force in Ireland on 19 April 2018. One part of the United Nations Convention on the Rights of Persons with Disabilities says that countries signed up to it must have laws and policies that make sure any

exploitation, violence or abuse against people with disabilities is spotted, investigated and the people responsible are punished.

The government made the National Disability Inclusion Strategy 2017-2021 to make sure that Ireland follows its commitments under the United Nations Convention on the Rights of Persons with Disabilities. The Strategy aimed to:

- improve the lives of people with disabilities in Ireland; and
- provide disability awareness training to public servants (people who work for the government or public bodies).

A group monitored how the Strategy was working in Ireland.

On 10 November 2021, the Minister of State with Special Responsibility for Disabilities published Ireland's first report to the United Nations Committee on the Rights of Persons with Disabilities. The report described what Ireland had been doing to:

- protect the rights of people with disabilities, and
- make these rights stronger.

This included the work done by the National Disability Inclusion Strategy. The Strategy finished in 2022.

At the moment, the Department of Children, Equality, Disability, Integration and Youth is working on a new strategy to provide guidance on how Ireland can respect all of the United Nations Convention on the Rights of Persons with Disabilities and make sure it's all part of Irish law.

The Assisted Decision-Making (Capacity) Act 2015

The Law Reform Commission has done research relating to adult safeguarding before. In 2006, we published a Report on Vulnerable Adults and the Law. In that report, we recommended changes in the law to help adults who may need support to make decisions affecting their lives.

The government took lots of our recommendations on board. Some of our recommendations ultimately ended up in the Assisted Decision-Making (Capacity) Act 2015. Since April 2023, most of the laws in the 2015 Act are in force. The 2015 Act abolished an old system called "wardship". Under this system, people could be made a "ward of court". When someone was made a ward of court, the court would make certain decisions for them to protect them and their property. The aim of the new laws in the 2015 Act is to replace wardship with a more progressive system. The new system is based on people's rights and gives them support to make decisions about their lives. At the moment, the old wardship system is being gradually phased out in Ireland.

The 2015 Act is based on people's rights under the Constitution and other international laws. It follows principles like:

- presuming that people can make their own decisions. This is the starting point and any help they need builds on this;
- only intervening when it's necessary; and
- if intervening is necessary, people's rights should be interfered with as little as possible.

The 2015 Act set up a new body called the Decision Support Service. One of the Decision Support Service's jobs is to write codes of practice about helping people to make decisions. Codes of practice are extra rules that people working in this area should follow. Right now, the Decision Support Service has published 13 codes of practice. It is really important that any new adult safeguarding laws are in line with the 2015 Act and any codes of practice published by the Decision Support Service. This is something we kept in mind when we were writing this report.

The 2015 Act is helpful for lots of adults. However, there are still gaps in the law, and specific adult safeguarding laws are needed to address them.

What existing bodies do work related to adult safeguarding?

Lots of bodies already do work related to adult safeguarding. These bodies include:

- the Department of Health;
- the Department of Children, Equality, Disability, Integration and Youth;
- the Health Information and Quality Authority (HIQA);
- the HSE;
- the Mental Health Commission;
- the Director of the Decision Support Service;
- the Central Bank of Ireland;
- the Department of Social Protection;
- the Department of Justice;
- the Gardaí; and
- the National Vetting Bureau (who are responsible for garda vetting).

When have adults not been safeguarded well in the past?

For a long time, the government didn't see adult safeguarding as a major issue that they needed to make laws for. However, in 1998, a research study was published about the abuse, neglect and mistreatment of older people. This led to the government creating the Working Group on Elder Abuse in 1999. Another big step was the publication of the first Irish policy research document about elder abuse. This was published by the Working Group on Elder Abuse in 2002. The policy research document recommended that the HSE should create a special service to respond to suspected cases of:

- physical abuse;
- psychological abuse;
- sexual abuse;

- financial abuse; and
- neglect of older people.

However, over the past 20 years, a number of bad incidents have happened in Ireland involving failures to spot and address adult safeguarding concerns. Some of these incidents are discussed below.

Leas Cross

Leas Cross nursing home was a large nursing home in Dublin. Most of the residents in Leas Cross needed a lot of support. On 30 May 2005, RTÉ showed an episode of 'Prime Time Investigates' called 'Home Truths'. The TV show used hidden cameras which showed the bad conditions inside Leas Cross. The cameras also showed staff treating residents badly.

The public had a strong reaction to the TV show. After the show played on TV, the HSE hired a doctor called Professor O'Neill to look into the deaths of residents in Leas Cross between 2002 and 2005. In April 2007, the government announced an investigation into how Leas Cross was managed, owned and operated.

At one stage, Leas Cross grew from a 38-bed to a 111-bed nursing home. This caused a number of issues at Leas Cross. The investigation found that the new beds were added without properly considering how it would affect the residents' well-being and living conditions.

There were also issues with the staff at Leas Cross. The investigation showed that:

- there weren't enough staff with specialist knowledge;
- there weren't enough nurses; and
- the resources weren't good enough.

For example, some staff members didn't have the qualifications or work experience needed to work in a nursing home. The investigation found that at the same time as care standards were getting worse at Leas Cross, more and more people with high

support needs were moving in. The fact that there weren't enough well-trained staff to provide care was the main reason why the care standards got worse in Leas Cross.

At the time, Leas Cross didn't have a clear way for people to complain if they had a problem. When people did complain to the HSE, the person in charge at Leas Cross didn't deal with these complaints properly.

The job of checking on nursing homes moved from local health boards to the HSE because of a law passed in 2004. These health boards kept working until January 2005, when another law got rid of them. According to this same set of laws, if you worked for a health board when it was closed, you became a HSE employee.

When the HSE checked on Leas Cross, their usual method was to note any issues and look into them during their next visit. Some inspectors chose not to do follow-up visits. The investigation found that some of the inspectors made this decision themselves. Some said that they would only make follow-up inspections if they were told to do so. The investigation praised some inspectors but said it would have been better if there was a set rule to visit more consistently to follow up. It suggested that there should be special teams with enough staff to spot patterns of bad care. The investigation recommended that these teams get support from the HSE. Later on, a law passed in 2007 gave the job of inspecting nursing homes to the Health Information and Quality Authority (HIQA).

Áras Attracta

Áras Attracta is a large home in Mayo for people with intellectual disabilities and is run by the HSE. In December 2014, RTÉ showed an episode of 'Prime Time Investigates' about how residents at Áras Attracta were being treated. Like with Leas Cross, the public had a strong reaction to the programme. After this, the HSE took steps to make life better and safer for the residents.

In 2015, the Health Information and Quality Authority inspected Áras Attracta five times. Áras Attracta knew about some of these inspections and others were surprise

inspections. One inspection led to a warning that Áras Attracta might have to close unless it made urgent improvements. These improvements were made, so the warning was taken back.

The Áras Attracta Review Group was then set up. The Review Group made three main recommendations for Áras Attracta:

- to start providing care in a way that focuses on residents' rights;
- to give the residents an opportunity to be heard and to listen to and promote their voices; and
- to improve the leadership and management of Áras Attracta.

The Review Group also suggested some actions for the HSE to take. One of these actions was to update a document called the HSE National Policy and Procedures to include adult safeguarding guidance. This document is currently being reviewed and updated because it's out of date. Efforts have been made to update it. But challenges like:

- lack of funding,
- the covid-19 pandemic, and
- confusion over who is responsible for different things

have delayed the new policy coming into effect. So at the moment, the 2014 policy is still used in Ireland.

The response to what happened at Áras Attracta led to the setting up of the HSE's National Safeguarding Office in 2015. There's been talk about making the HSE's National Policy and Procedures stronger by backing it up with law to make sure it's consistently followed and respected.

In 2023, after a case known as the 'Emily' case, an expert called Jackie McIlroy was asked to review the HSE's safeguarding policies and suggest improvements. She was asked:

- to look into the reports of the Emily case; and
- if needed, to do a broad review of the HSE's safeguarding policies and procedures and think about how to improve safeguarding in Ireland.

In the first part of her review, she recommended that more work should be done on looking into the records of the offender in the Emily case to determine his work history.

The second part of her review hasn't come out yet but it's expected soon. This might lead to updates to the HSE's National Policy and Procedures. The government has asked for people's views on new safeguarding ideas and they're going to make a report on what people have said. She will also make recommendations on how policies can be improved. The government might make new laws based on these policies and ideas.

The 'Grace' case

The 'Grace' case was about serious complaints of physical and sexual abuse involving a woman with intellectual disabilities in a foster home in the southeast of Ireland. There were a number of investigations into what happened to Grace, including:

- the Devine Report; and
- the Farrelly Commission.

On 5 March 2024, the government agreed to give the Farrelly Commission until 12 September 2024 to finish its report.

Grace was looked after by the state from when she was a baby. She lived in different places until she was 11 years old. In 1989, she went to live with a foster family, referred to as Family X, and she stayed with them until she was nearly 31. During her time with this family, people noticed several worrying signs. Workers at her day centre saw bruises on her, she missed a lot of school and day services, and there were allegations that her male foster carer sexually abused her.

The Devine Report found several big problems with Grace's care:

- There wasn't enough checking or supervision of how Grace was being looked after.
- The people responsible for putting Grace in a foster home didn't communicate with each other.
- There wasn't enough done to move Grace out of the foster home even after people raised serious concerns.
- Putting children and adults with disabilities into foster homes needs extra rules and procedures. These weren't present in Grace's case.
- There were problems with how her case and records were managed.

The 'Brandon' case

In the 'Brandon' case, an adult with intellectual disabilities committed over 100 sexual assaults on other residents in a care centre between 2003 and 2016. This happened even though staff and management at the HSE knew about some of the things that Brandon had done. The abuse Brandon committed included:

- exposing himself naked;
- masturbating while other people were around;
- touching other residents without their consent;
- going into other residents' rooms at night; and
- being verbally and physically aggressive to residents and staff.

Several things caused these events, including:

- the centre where Brandon lived being more like a hospital than a home;
- there wasn't enough oversight and management from the HSE; and
- staff didn't get the training they needed to know how to properly follow the rules and policies.

In November 2021, a summary of an investigation into Brandon and the events that occurred, called the "Brandon Report," was shared by the National Independent Review Panel. However, the full report hasn't been shared publicly. This is because the Attorney General has said that sharing it could break promises made to the families who took part in the review and might badly affect future disciplinary actions. It has been reported that the HSE did an internal follow-up report, but this report hasn't been made public.

In 2022, a report by the Health Information and Quality Authority found gaps in safeguarding in HSE care homes in Donegal. This included:

- the HSE not keeping an eye on the centres; and
- the HSE's auditing and oversight being very general and ineffective.

The 'Emily' case

In August 2020, a very serious incident happened in a community nursing home run by the HSE. 'Emily', who lived in the nursing home, reported that a male care assistant came into her room and raped her. This was reported to the Gardaí, and the person she accused was arrested and found guilty in the courts.

The HSE asked the National Independent Review Panel to look into what happened. The Panel found the major problem was that the nursing home staff couldn't believe that sexual abuse could happen in their workplace, even though the Panel found evidence that a number of residents might have been sexually abused. As part of their review, the Panel found a document written by a staff member. The document said that a convicted care assistant had sexually abused six female residents.

The Panel recommended the following things to stop cases like the 'Emily' case from happening again:

- The HSE should create a working group to look at and improve the type of care older people receive and how nursing homes are managed. This should be done by looking at what has worked well in other countries.
- The HSE should start a staff awareness campaign to make sure claims of abuse are taken seriously.
- All staff in HSE care settings need training to spot the signs of abuse of older people.
- The HSE should make a "crisis response plan" so the managers of nursing homes know what to do if a serious incident happens.
- The HSE and the Gardaí should work together to make a written agreement of what their responsibilities are when sexual abuse in nursing homes is being investigated.

How did covid-19 affect adult safeguarding in Ireland?

In March 2020, the World Health Organisation called covid-19 a global pandemic. This meant the disease had spread all over the world and had affected lots of people. The National Public Health Emergency Team, also called "NPHET", was in charge of dealing with the covid-19 pandemic in Ireland.

The covid-19 pandemic showed that we need adult safeguarding laws in Ireland. In May 2020, the government put together a special group called the "expert panel" to see how covid-19 was being managed in Irish nursing homes. The expert panel was told to:

- check whether the government's covid-19 restrictions to keep nursing home residents safe were good enough;
- write a summary of how other countries were dealing with covid-19;
- make reports to the Minister for Health with what they learned; and
- make recommendations for what needed to be done to improve the situation.

The expert panel made many recommendations in its report about things like:

- how nursing homes should be run;
- communication between different parts of the Irish health system; and
- the need to change how people are cared for in nursing homes.

Another group called the Special Committee on Covid-19 Response looked more generally at how the government was handling the covid-19 pandemic. They looked at deaths in nursing homes from covid-19. When they published their report, they said the government relied too much on places like nursing homes to look after "vulnerable people" during the covid-19 pandemic.

Abuse was not reported enough during covid-19

The major adult safeguarding problem during the covid-19 pandemic was that abuse wasn't reported enough. The pandemic meant that lots of people had very little contact with other people. This meant that when abuse happened, it was less likely that someone would spot it and report it. It also meant that when abuse happened, it was less likely that the victim would be able to report it themselves. There were very few reports of abuse in 2020 when there were lots of Covid-19 restrictions in Ireland. Reports increased when the government lifted covid-19 restrictions after 2020.

How has the law, policy and research about adult safeguarding developed in recent years?

Introducing a system of laws specifically for adult safeguarding would have lots of benefits like:

- making clearer what the law is;
- better protecting at-risk adults;
- putting the focus on stopping abuse before it happens rather than trying to fix it afterwards; and

- making things clearer for friends, family and people who look after at-risk adults by outlining what safeguarding means, what responsibilities people have, and what supports are available.

There have been incidents reported in the news in the past few years where adults in Ireland weren't safeguarded properly. We don't have adult safeguarding laws yet in Ireland but following these incidents, some progress has been made to safeguard adults in Ireland. We talk about this progress in this section.

The United Nations Convention on the Rights of Persons with Disabilities and the Assisted Decision-Making (Capacity) Act 2015

Ireland signing up to the United Nations Convention on the Rights of Persons with Disabilities and the government making the Assisted Decision-Making (Capacity) Act 2015 law were big developments for adult safeguarding in Ireland. We talked about these provisions earlier in the background section and we talk about them again later in the Report.

National Nursing Home Experience Survey 2022

In 2022, the HSE, the Health Information and Quality Authority and the Department of Health worked together to do a survey of people living in nursing homes and their friends and family. The survey found that people living in nursing homes:

- put a lot of trust in nursing home staff;
- didn't really know they could get help from independent advocates. (Independent advocates are people who are separate from nursing home staff who help nursing home residents communicate their views and express themselves to others); and
- weren't always involved in decisions that affected them.

Friends and family members were positive about nursing homes. However, they said residents should be told more about independent advocates. They also said nursing

homes should encourage residents to be more independent and take part in activities.

Guidance on taking a human rights approach in health and social care services

Safeguarding Ireland and the Health Information and Quality Authority published guidance in November 2019 on how to take a human rights based approach when delivering health and social care services in Ireland. The aim was to make sure that users of health and social care services have their rights protected.

National Standards for Adult Safeguarding

In December 2019, the Health Information and Quality Authority and the Mental Health Commission published National Standards for Adult Safeguarding. These standards were published to:

- encourage people to make improvements in the quality and safety of care and support; and
- outline how service users, service providers, professionals and the public expect adult safeguarding to work.

Developments in the Irish health sector

(i) Sláintecare

Sláintecare is a 10-year programme to completely change health and social care services in Ireland. Its aim is to make sure everyone has the right care in the right place at the right time. Sláintecare started in 2021. In general, the government has agreed to:

- put Sláintecare into action quickly;
- write laws about homecare;
- make sure healthcare workers are always improving at their jobs and learning new skills; and

- give the Health Information and Quality Authority a bigger role in keeping patients safe.

For older people, the government has agreed to work with the Nursing Home Expert Panel. Together, they will look at improving patient advocacy services. Advocacy services give nursing home residents access to someone who is separate from their nursing home. The advocate helps the resident to communicate their opinions or views.

For people with disabilities, the government has agreed to:

- make extra places available in homes for people with disabilities; and
- create more adult day services and supports across Ireland for adults with different disabilities.

(ii) Plans to create an adult safeguarding policy

The HSE's 2014 National Policy and Procedures is an important document that sets out rules and guidelines about how the HSE is run. At the moment, this document also talks about adult safeguarding. In June 2020, the government agreed that the Minister for Health should write a special policy about adult safeguarding in the Irish health sector. The government also agreed to write laws to back up this policy, if needed.

(iii) Commission on Care for Older People

In February 2024, the government created the Commission on Care for Older People. The Commission will examine health and social care services and supports for older people. It will then make recommendations for how these services and supports can be developed. The Commission's work will happen in three stages.

- In the first stage, they will look at the services we have now and see what they can learn for the future.
- In the second stage, they will look at options for the future and write a report.

- In the third stage, a special group will be created within the Commission. This group will decide whether the report's recommendations should be used. They will then make a plan for how to put the recommendations into action and calculate what it will cost.

New laws to tackle incitement to hatred (hate speech)

Hate speech laws in Ireland protect certain characteristics which are called "protected characteristics". These characteristics are:

- race;
- colour;
- nationality;
- religion;
- ethnic or national origins;
- membership of the travelling community; and
- sexual orientation.

If you have one of these characteristics, it is protected. At the moment, 'age' and 'disability' aren't on the list of protected characteristics. Some people think they should be. The government is currently working on a law to add 'disability' to the list.

New laws to protect people's freedom

The government is currently working on a new law about temporary detention and protecting people's freedom. This new law will make it clearer for the HSE and medical professionals to figure out when a person should be kept in hospital or be allowed to leave. This will help with:

- safeguarding at-risk adults in situations where they don't have the mental ability to make a decision to leave a hospital themselves; and
- protecting the freedom of people who do have the mental ability to leave a hospital at a particular time.

The progress of this new law slowed down for a while. At the moment, it isn't clear when it will be written or when it will come into force. (We talk about this law more in chapter 12.)

Updating the Consumer Protection Code

The Consumer Protection Code is a set of principles and rules that regulated financial service providers must follow when they:

- sell financial products or services to people;
- give financial information or advice; and
- advertise financial products or services.

Many consultees said they would like the Consumer Protection Code to be updated. The Central Bank of Ireland is currently reviewing the Consumer Protection Code. The important changes for adult safeguarding are:

- people will no longer be called "vulnerable" or "vulnerable customers" in the Code;
- people will be called consumers in "vulnerable circumstances";
- making sure the Code is in line with new laws about people who can't make decisions for themselves or who need help making decisions; and
- including a definition of "financial abuse" in the Code so everyone knows and understands this type of abuse and how to spot it and stop it.

Changing patient safety laws

For a long time, if a bad incident happened while a patient was receiving healthcare services, the service provider didn't have to tell certain bodies or the patient. A law called the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 will change this. This law has been written and signed by the President but it isn't in force yet in Ireland. When this law comes into force, health service providers must notify the Health Information and Quality Authority, the Chief Inspector of Social Services

or the Mental Health Commission if a "notifiable incident" happens. The health service provider must also notify the patient unless it would not be appropriate or possible to tell the patient about the notifiable incident. If a health service provider fails to notify these bodies or the patient about a notifiable incident, they could be convicted of a crime and might have to pay a fine of up to €5,000.

The Gardaí's job under the Policing, Security and Community Safety Act 2024

The Policing, Security and Community Safety Act 2024 is a new law about the Gardaí. The Act has been written and signed by the President but hasn't come into force yet in Ireland. This law says that the Gardaí's job is to provide policing and security services in Ireland. The aim of these services is to stop harm happening to people. The law says that the objective of the Gardaí is to stop harm happening to people, particularly people who are "vulnerable or at risk".

Although the word "vulnerable" is seen in lots of Irish laws and most people generally know what it means to be "vulnerable", this word can be offensive and inappropriate. This is because people might see "vulnerable" as meaning that a person's characteristics or weaknesses were the reasons why they were abused or harmed when this might not be the case. People making laws and policies in Ireland and in other countries have begun to stop using the word "vulnerable".

Creating the Policing and Community Safety Authority

The Policing, Security and Community Safety Act 2024 will create a new body called the Policing, Security and Community Safety Authority. As we mentioned, the Policing, Security and Community Safety Act 2024 isn't in force yet in Ireland, so the Policing, Security and Community Safety Authority hasn't been created yet.

When it is up and running, the aim of the Policing, Security and Community Safety Authority will be to watch over the Gardaí's policing services so that they are working well and always improving to keep the public safe. We talk about the functions of the Policing, Security and Community Safety Authority later on in chapter 5. One

important function is the Gardaí's job to promote different bodies working together to improve community safety. We talk about different bodies working together for adult safeguarding later on in chapter 15.

Creating the Domestic Sexual and Gender-Based Violence Agency

The Domestic Sexual and Gender-Based Violence Agency was created in January 2024. This agency is written in the law. Its aim is to tackle and reduce domestic, sexual and gender-based violence in Ireland. We talk about the Agency's functions later in the Report. The Agency brings together people from different bodies and government departments to work together to provide supports and services to victims of domestic, sexual and gender-based violence in Ireland. The Domestic Sexual and Gender-Based Violence Agency's budget for 2024 is about €59 million. €47 million of this will be spent providing supports and services. About €6 million will be spent on public campaigns to prevent domestic, sexual and gender-based violence and raise awareness.

The Health (Adult Safeguarding) Bill

The Health (Adult Safeguarding) Bill is a draft law. It proposes to be the basis for a national health policy on safeguarding at-risk adults when they interact with the health sector in Ireland. The Bill was included in the government's Legislation Programme in 2018 and has stayed on the Programme ever since. According to the Legislation Programme for Spring 2024, the Bill is currently being developed by the government.

General Scheme of the Health (Amendment) Bill

The government published a General Scheme of the Health (Amendment) Bill in October 2022. A General Scheme sets out how a bill should look and what things it should focus on when it is being developed. Since it's only a General Scheme at the moment, the General Scheme of the Health (Amendment) Bill it not specific and has not yet become law in Ireland. The Bill intends to improve the legal framework for

designated centres under the Health Act 2007. The Bill also intends to strengthen the enforcement powers of the Chief Inspector of Social Services to allow them to serve notices on designated centres and make orders relating to designated centres. The Bill also intends to give the Chief Inspector a new legal function to establish and maintain a database of information about designated centres.

Draft Regulations for Providers of Home Support Services

The government has published draft regulations for providers of home support services in Ireland. "Home support" includes assistance that some people might need with their personal hygiene, mobility, social engagement, and help with essential household tasks that support and assist a person to live in their own home.

These draft regulations will be turned into laws in the future. The government also did a public consultation on the draft regulations to hear what people have to say about them. The draft regulations plan to regulate those who provide home support services to people in Ireland. The draft regulations plan to set out minimum requirements that public, private and not-for-profit providers of home support services must have in place before they can get a licence to operate as a home support provider in Ireland.

When the laws come into force in the future, the Health Information and Quality Authority will have the ability to give, change or take away a licence if a provider of home support services doesn't meet the minimum requirements contained in the laws.

How have international laws and policies about adult safeguarding developed?

Plans to sign up to the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities

We talked earlier about the United Nations Convention on the Rights of Persons with Disabilities which entered into force in Ireland in April 2018. This Convention also has an Optional Protocol. It isn't necessary for countries to sign up to the Optional Protocol. The Optional Protocol is an added set of responsibilities that countries can choose to sign up to if they want to. Signing up to the Optional Protocol gives countries further responsibilities to protect the rights of people with disabilities even more. The government hasn't signed up to the Optional Protocol yet but plans to do so. On 6 April 2024, three days before becoming Taoiseach, Simon Harris TD said in a speech that Ireland will sign up to the Optional Protocol in 2024.

Developments in the EU about adult safeguarding

The Hague Convention 2000 on the International Protection of Adults is a treaty that protects adults who aren't able to protect themselves in international situations. Lots of members of the EU have signed up to this treaty. In May 2023, the European Commission wrote a proposal for a new regulation. The plan for this new regulation was to add to the Hague Convention by improving how authorities in the EU member states cooperate to protect adults.

However, people from the United Nations wrote a submission criticising the proposed regulation for not being in line with international human rights treaties, especially the United Nations Convention on the Rights of Persons with Disabilities. A group called the European Disability Forum are concerned about the new regulation. Right now, the regulation is being discussed and debated by the Council of the European Union and other bodies.

Chapter 1: The need for a regulatory framework for adult safeguarding

What is this chapter about?

In this chapter we talk about and explain:

- what adult safeguarding is;
- what laws and policies there are in Ireland about adult safeguarding;
- what laws there are in other countries about adult safeguarding;
- why we need new laws for adult safeguarding in Ireland;
- why social care is important for adult safeguarding; and
- what is covered in the rest of this report.

How did we work on this project?

In 2017, the government suggested that we should do a project about adult safeguarding in Ireland.

In 2020, we published an Issues Paper about adult safeguarding. In our Issues Paper we asked people what they thought we should recommend.

A lot of time has passed since we published our Issues Paper. During that time, we:

- read what people wrote to us about adult safeguarding;
- spoke to lots of different people and organisations about what new adult safeguarding laws should include;
- considered changes that happened, for example new laws that came into force.

When we made our recommendations, we thought carefully about what people said when they wrote to us, or we spoke to them. This helped us decide what new adult safeguarding laws should include. We are very grateful to everyone who told us what they thought about adult safeguarding in Ireland.

What is adult safeguarding?

Adult safeguarding is about:

- reducing the risk of harm to at-risk adults;
- promoting and protecting their health, safety, and well-being; and
- supporting them to protect themselves from harm at a particular time.

An "at-risk adult" is someone over 18 who, because of their physical or mental health, personal traits or life situation, needs help to keep themselves safe from harm at a particular time.

When we are talking about adult safeguarding, we are talking about a lot of different things. This includes supporting people to protect themselves, and steps that **prevent** harm from happening in the first place. It also includes things that interfere more directly with people's lives – for example, where professionals step in to **protect** an at-risk adult from harm. When we talk about adult safeguarding, it is important that we talk about all of the different actions that people can take in different areas to safeguard at-risk adults.

This report is about **new laws for adult safeguarding in Ireland**. We describe these new laws as a "regulatory framework". The regulatory framework will make sure that:

- at-risk adults can be supported to protect themselves from harm;
- lots of different people and organisations know about, and are responsible for, adult safeguarding; and
- people and organisations have the powers and responsibilities they need to safeguard at-risk adults.

What laws are there in Ireland about adult safeguarding?

Right now, there are not a lot of laws about adult safeguarding in Ireland. The laws that are most relevant to adult safeguarding are:

- Assisted Decision-Making (Capacity) Act 2015;
- Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012;
- National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016;
- Health Act 2007; and
- Mental Health Acts 2001 to 2018.

Assisted Decision-Making (Capacity) Act 2015

This law is about supports for people who do not have capacity to make a particular decision by themselves. It is focused on rights, and on supporting people to make decisions for themselves as much as possible. This law is important to adult safeguarding because some at-risk adults might need to use supports that are available under this law when they do not have capacity to make decisions for themselves. However, lots of at-risk adults will have capacity, and so they will not need to use these supports.

Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012

This law makes it a crime for a person to not tell the Gardaí when they know or believe that a "vulnerable person" is the victim of a crime. In chapter 9, we make recommendations that will change this law so that it includes stronger protections for at-risk adults.

National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016

These laws say that people who work in certain jobs have to be "Garda vetted". This means checking to see if they have a criminal record or any history that might pose a threat to a child or a "vulnerable person". This law is relevant to adult safeguarding because it helps to stop people who might harm at-risk adults from working with at-risk adults. However, we think there are gaps in this law. For example, people do not have to be re-vetted every few years after they've gotten a job and been vetted for

the first time. In chapter 18 we talk about this and make recommendations for change.

Health Act 2007

This law created the Health Information and Quality Authority (HIQA). HIQA is a regulator that is responsible for promoting safety and quality in health and social care services. In HIQA there is an Office called the Office of the Chief Inspector of Social Services. This Office is responsible for making sure that certain places are following legal rules. The Office can inspect and write reports about "designated centres", which includes residential settings for older people and for people with disabilities. The Office of the Chief Inspector of Social Services cannot inspect many places that are not "designated centres", and it is not mainly focused on adult safeguarding.

Mental Health Acts 2001 to 2018

This law created the Mental Health Commission (MHC). The MHC is a regulator that is responsible for promoting high standards in mental health services. This law also says that where a person has a "mental disorder" and cannot keep themselves safe, they can be brought to an "approved centre" and not allowed to leave. This is to make sure that they:

- are not hurt; and
- can get the treatment they need.

The MHC can inspect "approved centres". Some at-risk adults will have a mental disorder, and might be kept in an approved centre. This law is important for them. However, many at-risk adults will not have a mental disorder.

What policies are there in Ireland about adult safeguarding?

The laws that we explained above are important, but there are still gaps because none of these laws are focused on adult safeguarding specifically. There are some

policies about adult safeguarding in Ireland that help to fill some of the gaps. These include:

- the HSE's Policy and Procedures about safeguarding "vulnerable" people;
- the HSE National Safeguarding Office; and
- the HSE's Safeguarding and Protection Teams.

These only apply to some services and places. Also, the HSE National Safeguarding Office and the Safeguarding and Protection Teams do not have legal roles and powers. This makes it difficult for them to do their jobs to keep at-risk adults safe from harm.

What powers does the High Court have that are relevant to adult safeguarding?

There are no laws in Ireland that provide powers to safeguard at-risk adults. Because of this gap, people who work with at-risk adults sometimes have to ask the High Court to make orders using its "**inherent jurisdiction**".

The "inherent jurisdiction" is a special power of the High Court that it can use where there are no laws that apply to a situation. The inherent jurisdiction is only used in certain cases, where it is really needed. The High Court has used its inherent jurisdiction to protect the constitutional rights of children and certain adults. (We talk about constitutional rights more in chapter 4.)

The High Court has used its inherent jurisdiction to fill gaps in the law. For example: In the past, if a person was not able to make certain decisions, they might have been made a "Ward of Court" to protect them and their property. Under the law, it was possible to detain a Ward of Court. This means keeping them somewhere without their consent. Recently, the law about Wards of Court was removed. Because of this, the High Court has used its inherent jurisdiction more to detain individuals who need it. Some of these individuals will be at-risk adults.

It is useful that the High Court can use its inherent jurisdiction to make orders when there are no laws that apply to a situation. However, we think it is better that there are clear and precise laws that apply. This is particularly important because the cases involve limiting people's rights. If there were laws about powers to safeguard at-risk adults, it would be clearer to everyone what professionals and the courts can do, and what protections there are for people's rights.

Do other countries have laws about adult safeguarding?

When we were thinking about what new adult safeguarding laws should include, we looked at adult safeguarding laws in other countries. We looked at lots of countries, including:

- Scotland;
- England; and
- Wales.

Scotland

There is a law in Scotland called the Adult Support and Protection (Scotland) Act 2007. This law says that adult safeguarding is the responsibility of local councils and some other groups. For example, this law says that councils must check on people who might be at-risk adults and see if they need help and support.

England

There is a law in England called the Care Act 2014. This law is about adult safeguarding and social care. (We talk about and explain "social care" below.) For example, this law says that adult safeguarding is the responsibility of local authorities and others. It also says that local authorities must:

- check if people need care and support; and
- make sure that people get the care and support they need.

Wales

There is a law in Wales called the Social Services and Well-being (Wales) Act 2014. This law is about adult safeguarding and social care. (We talk about and explain "social care" below.) For example, this law says that local authorities must check on people who they think might be at-risk adults and decide if they need to take any actions.

Do we need new laws for adult safeguarding in Ireland?

We think that new laws for adult safeguarding are urgently needed in Ireland. There are a lot of reasons to introduce new laws for adult safeguarding, including that it would:

- fill the current gaps in the law;
- make the existing laws that are relevant to adult safeguarding stronger;
- protect the rights of at-risk adults under the Constitution, the European Convention on Human Rights, and the United Nations Convention on the Rights of Persons with Disabilities; and
- bring Ireland into line with other countries that have laws for adult safeguarding.

What are the benefits of making new, comprehensive adult safeguarding laws?

The laws that we recommend in this report would be comprehensive. This means that the new laws would cover lots of different actions that people and organisations can take to safeguard at-risk adults, in different areas of life.

Making new, comprehensive adult safeguarding laws would have a lot of benefits. These benefits include:

- making sure that adult safeguarding is "everyone's business", and is not limited to one area (for example, the healthcare sector);

- allowing different bodies, agencies, government departments and services to work together and share information to safeguard at-risk adults;
- making clear to everyone (including at-risk adults) what adult safeguarding means and what supports are available;
- empowering at-risk adults to protect themselves, and to exercise their own rights;
- encouraging everyone to prevent harm to at-risk adults, instead of only reacting after harm or abuse has already happened; and
- making adult safeguarding powers and responsibilities stronger and clearer.

For all of these reasons, we recommend that new laws for adult safeguarding should be introduced in Ireland.

What else needs to be done to safeguard at-risk adults?

We think that new laws for adult safeguarding are important. However, laws are not enough by themselves. Other things are needed to ensure that there is effective change. In particular, any new adult safeguarding laws will need to be supported by:

- an increase in resources for adult safeguarding (such as services, staff and facilities);
- an increase in awareness of adult safeguarding, and training for different individuals; and
- a change in the culture (attitude) towards adult safeguarding in different services, organisations and settings.

What role does social care have to play in adult safeguarding?

Social care involves providing services and supports to individuals who need them. When we talk about social care we are talking about things like:

- "Meals on Wheels";
- home care or home help;

- nursing care; and
- residential services.

Social care plays an important role in people's lives. It can help them to do things that they might not be able to do by themselves.

Social care is relevant to adult safeguarding because it:

- empowers people to support themselves and keep themselves safe from harm; and
- can help to stop people from becoming at-risk adults.

If social care is not provided to a person, they may not be able to support themselves or keep themselves safe from harm. This means that more serious actions might be needed. For example, the person may have to move to a nursing home.

Although social care is not the same as adult safeguarding, it is closely linked to it. Because of this close link, we think that it is important to consider social care when we are thinking about new laws for adult safeguarding.

What are the laws for social care in Ireland?

There are not a lot of laws for social care in Ireland. The laws that do exist include:

- the Health and Social Care Professionals Act 2005. This sets out the rules for people who work in certain health and social care jobs. (We talk about this more in chapter 18.)
- the Health Act 2007. This established the Health Information and Quality Authority (HIQA), which is the regulator of certain health and social care services.
- the Mental Health Act 2001. This established the Mental Health Commission, which is the regulator of approved centres. These are places where care and support are provided to people with mental disorders.

- the Nursing Homes Support Scheme Act 2009. This sets out the "Fair Deal" scheme for people in long-term nursing home care. This scheme is used to figure out how much people have to pay for their care.

Do we need new laws for social care in Ireland?

Although these laws exist, there are no laws that say:

- who should get social care; and
- what type of social care should be given to people.

In other countries like England and Wales, there are laws about these things.

The area of social care is not covered in this report. However, because social care is so important to adult safeguarding, we think that the government should think about making new laws for social care in Ireland.

What is covered in our report?

In our report we make recommendations about new laws for adult safeguarding. These recommendations are comprehensive and "cross-sectoral". This means that they apply to many different areas, instead of being limited to one (such as health and social care). For example, our recommendations apply to:

- adults who are receiving health or social care services (such as home support, or residential services);
- adults who are receiving other kinds of services, including financial services; and
- adults who are not receiving any services, and are living in the community.

However, there are some areas that our recommendations do not cover. We explain this in the next section.

Adults in prisons and Garda custody are not covered in this report

Our report does not make recommendations about adult safeguarding for people who are:

- in prison; or
- in Garda custody (this means being kept somewhere by the Gardaí, for example in a Garda station).

This is because there are already laws, rules and bodies that are relevant to these areas. There are also changes happening in these areas. These include:

- the Prison Rules, which say how people in prison have to treated and how they can make complaints;
- the Office of the Inspector of Prisons, which inspects prisons in Ireland and writes reports about them;
- the Custody Regulations, which say how people in Garda custody have to be treated;
- a new law that the government is currently working on, which will introduce new powers to inspect all places of custody, including Garda stations and vehicles;
- a report by the Garda Síochána Inspectorate in 2021, which made lots of recommendations to improve the protections for "vulnerable" adults in Garda custody. Lots of these are relevant to adult safeguarding; and
- changes that will happen when the Policing, Security and Community Safety Act 2024 comes into force.

Because of all of these existing rules and bodies, and the changes that will happen soon, we think that the bodies that already exist should still be responsible for adult safeguarding in prisons and in Garda custody. So, we don't make recommendations about changing the laws in these areas.

Does this report make recommendations about government policy?

This report is about making recommendations to change the law for adult safeguarding. As the Law Reform Commission, we can only made recommendations about changing laws. We do not make recommendations about government policy.

This is where the government makes complicated decisions, such as how to spend public money.

It is not easy to draw a clear line between law and policy, particularly for a project like this. When we wrote our report, we focused on making recommendations about new laws. You will see that sometimes in our report, we:

- suggest that the government should think about something; or
- do not make a recommendation about something.

We do this where we think something is about government policy, rather than law. In some of these cases, we explain some options for the government to think about. We hope that this will help the government when it reads our report and is deciding what to do about adult safeguarding in Ireland.

Recommendations: How we think the law should change

R. 1.1 We recommend that new laws for adult safeguarding should be introduced in Ireland.

R. 1.2 We recommend that the government should think about introducing new laws for social care in Ireland.

Chapter 2: Defining key statutory terms for adult safeguarding legislation

What is this chapter about?

This chapter:

- looks at certain words that should be contained in adult safeguarding legislation that might be created in Ireland in the future;
- explains what these words mean when we are talking about safeguarding adults; and
- explains how these words should be used in adult safeguarding legislation.

Why are we looking at certain words that should be contained in adult safeguarding legislation?

Many words that we use in our planned framework for adult safeguarding in Ireland are familiar to most people. Most people understand the general meaning of these words. However:

- some words have a particular meaning when we are talking about safeguarding adults; and
- when bodies speak about safeguarding adults, some of the words they use do not have a single meaning. Different bodies might use the same word to mean different things.

Words used in adult safeguarding legislation need to have a clear meaning because these words will be part of Irish law. Laws needs to be clear and certain.

Is there a common approach taken by Irish bodies when defining certain words in adult safeguarding legislation and policy?

There is no common approach taken by Irish bodies when defining certain words used in adult safeguarding legislation and policy. This is because:

- different bodies have different responsibilities;
- different bodies use different words to describe the same things;
- adult safeguarding has developed at different speeds in different countries; and
- different countries use different words when speaking about adult safeguarding.

In America and Canada, the words "elder abuse" have been used to describe the abuse of older people. But in Ireland, England and Northern Ireland the words "older person" are used instead of calling someone an "elderly person". The words "elder abuse" are not used in Ireland, England and Northern Ireland because these words can discriminate or label older people as being weaker or less able than younger people.

Why is it important to clearly define the words used in adult safeguarding legislation?

The words used in adult safeguarding legislation must be carefully selected because they must:

- respect the rights of the people who will be protected by the legislation; and
- be clear and easily understood by everyone, especially health and social care professionals and people who want to use the legislation to keep adults safe from harm.

Who is an "adult at risk of harm"?

Adult safeguarding legislation needs to safeguard adults who are not protected by the Assisted Decision-Making (Capacity) Act 2015 and the Mental Health Act 2001

and who need support to protect themselves from harm at particular times. The words "adult at risk of harm" must include adults who have the capacity to make their own decisions but who need support to protect themselves from harm at particular times. When deciding how to define an "adult at risk of harm", we thought about the adults in Ireland who need the most protection from harm.

The term "vulnerable person" should no longer be used in adult safeguarding legislation and policy

The term "vulnerable person" is used in Irish legislation and policy. The term "vulnerable person" is used in the following laws from 2012:

- the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012; and
- the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

After 2012, bodies in Ireland, England, Scotland and Northern Ireland started to think about ways to describe adults who need support to protect themselves from harm at particular times which don't label them as being "vulnerable".

In 2014, the Health Service Executive ("**HSE**") published a national policy and procedure on safeguarding which originally referred to "vulnerable persons". The HSE's policy is currently under review. It has been recommended that the words "adults at risk of abuse" should be used in the updated version of the policy. The term "adults at risk of abuse" has been recommended because:

- it does not assume that people are "vulnerable"; and
- it does not stigmatise particular groups of people, for example older people or people with disabilities.

In 2019, the Health Information and Quality Authority ("**HIQA**") and the Mental Health Commission ("**MHC**") published national standards for adult safeguarding. The national standards use the words "adult at risk".

The Department of Health published a discussion document in 2019 on draft definitions for an adult safeguarding policy for the health and social care sector in Ireland. The Department recommended using the words "adult at risk" to describe adults protected by the policy who may need support to protect themselves from harm at particular times.

Before the Care Act 2014 became the law in England, the words "vulnerable adult" were used in English law. The Care Act 2014 uses the words "adults at risk of abuse or neglect". The Crown Prosecution Service in England and Wales tells prosecutors to avoid using the word "vulnerable" because it might mistakenly suggest that certain people are weak or dependent.

Safeguarding policy in Northern Ireland has stopped using the word "vulnerable". Northern Ireland now uses the words "adult at risk of harm" to describe an adult who may need support to protect themself from harm at a particular time.

What words should be used in adult safeguarding legislation and policy instead of the words "vulnerable person"?

We think that the words "adult at risk of harm" should be used to describe adults who will be affected by adult safeguarding legislation in Ireland. We believe that the words "vulnerable person" are not appropriate to use in modern Ireland because these words might discriminate against people and stigmatise people.

How should an "adult at risk of harm" be defined in adult safeguarding legislation and policy?

An "adult at risk of harm" could be defined in three ways.

1. The first way focuses on whether an adult needs support to protect themself from harm at a particular time. This is called the functional approach.

2. The second way focuses on the personal characteristics of an adult to determine whether these characteristics put the adult at risk of harm. This is called the personal characteristic approach.

3. The third way is a mixture of the first and second ways of defining an "adult at risk of harm". This is called the mixed approach.

What are the benefits to using the functional approach to define an "adult at risk of harm"?

The benefits to using the functional approach to define an "adult at risk of harm" are that:

- any adult who is at risk of harm at any point in their life can fall within the definition of "adult at risk of harm";
- an adult's personal characteristics do not have to be considered when determining whether an adult is an "adult at risk of harm";
- an adult can be an "adult at risk of harm" without being discriminated against or stigmatised based on their health, disability, age or other personal characteristic; and
- an adult can be an "adult at risk of harm" without being classified or unfairly labelled based on their personal characteristics.

What is the disadvantage to using the functional approach to define an "adult at risk of harm"?

A disadvantage to using the functional approach to define an "adult at risk of harm" is that it does not consider the personal characteristics of an adult when determining whether they are an "adult at risk of harm". Because an adult's personal characteristics are not considered, there is a risk that the definition of an "adult at risk of harm" is too wide. This could lead to situations where:

- an adult comes within the definition of "adult at risk of harm" when they shouldn't; and
- people and bodies interfere with adults' lives when they shouldn't. This interference could affect adults' rights.

What are the benefits to using the personal characteristic approach to define an "adult at risk of harm"?

The benefits to using the personal characteristic approach to define an "adult at risk of harm" are that:

- personal characteristics (such as age or disability) are clear and certain which makes it easier to know whether an adult comes within the definition of "adult at risk of harm"; and
- the definition of "adult at risk of harm" is not too wide because only adults who have specific personal characteristics will come within the definition of "adult at risk of harm".

What is the disadvantage to using the personal characteristics approach to define an "adult at risk of harm"?

A disadvantage to using the personal characteristic approach to define an "adult at risk of harm" is that an adult could be discriminated against or stigmatised. Considering whether an adult is an "adult at risk of harm" by looking at certain personal characteristics (such as age, disability or illness) could discriminate against certain people or stigmatise them. This could make people mistakenly believe that an adult who has certain personal characteristics is an "adult at risk of harm" at a particular time when they might not be at risk of harm at that time.

What is the benefit to using the mixed approach to define an "adult at risk of harm"?

The benefit to using the mixed approach to define an "adult at risk of harm" is that it mixes the functional approach and the personal characteristic approach. When considering whether an adult is an "adult at risk of harm", the mixed approach looks at whether an adult has been harmed or is at risk of being harmed at a particular time. The mixed approach also looks at the adult's personal characteristics. The fact that an adult has been harmed or is at risk of harm or has certain personal characteristics might mean that an adult needs support to protect themself from harm at a particular time.

What approach do we recommend to define an "adult at risk of harm" in adult safeguarding legislation?

We recommend using the mixed approach to define an "adult at risk of harm" in adult safeguarding legislation in Ireland. We think the mixed approach provides the best of both worlds because it mixes the functional approach and the personal characteristics approach. The mixed approach recognises that it is important to focus on whether an adult:

- has been harmed,
- is at risk of harm, or
- has certain personal characteristics

because these things might show that a person is an "adult at risk of harm" who needs support to protect themselves from harm at a particular time.

How should "adult at risk of harm" be defined in adult safeguarding legislation?

We recommend that an "adult at risk of harm" should be defined in adult safeguarding legislation as an adult who, because of their physical or mental

condition or other particular personal characteristic or family or life circumstance (whether permanent or otherwise) needs support to protect themself from harm at a particular time.

How is "safeguarding" defined in Ireland?

HIQA and the MHC define "safeguarding" as measures that are put in place to:

- reduce the risk of harm to a person;
- promote and protect a person's human rights, health and well-being; and
- empower people to protect themselves.

The Department of Health's draft definition of "safeguarding" which will be included in the national policy on safeguarding for the health sector is similar to HIQA and the MHC's definition of "safeguarding".

The HSE's adult safeguarding policy is currently being updated. It plans to define "safeguarding" as putting measures in place to:

- promote peoples' human rights and their health and well-being; and
- empower them to protect themselves.

How do we think "safeguarding" should be defined in adult safeguarding legislation?

We believe that the definition of "safeguarding" should focus on:

- preventing harm to a person; and
- respecting a person's ability to protect themselves from harm.

We recommend that the definition of "safeguarding" in adult safeguarding legislation should mention:

- the safety and well-being of people in need of safeguarding;
- preventing harm to people; and

- supporting or empowering people who need to be safeguarded to protect themselves from harm at a particular time.

We recommend that "safeguarding" should be defined in adult safeguarding legislation as measures that are, or may be, put in place to promote the health, safety and well-being of at-risk adults, including to:

(a) minimise the risk of harm to at-risk adults; and

(b) support at-risk adults to protect themselves from harm at a particular time.

What is a "safeguarding plan"?

A safeguarding plan explains the actions that need to be taken to minimise risks to people. The HSE says that a safeguarding plan should contain actions to:

- safeguard a person from abuse or neglect; and
- prevent people from abusing or neglecting other people.

How should a "safeguarding plan" be defined in adult safeguarding legislation?

We believe that the definition of "safeguarding plan" should mention how important it is to:

- identify risks to individuals; and
- have measures to address those risks.

We recommend that "safeguarding plan" should be defined in adult safeguarding legislation as a documentary record of the planned actions that have been identified to promote the health, safety and well-being of an at-risk adult, including to:

(a) minimise the risk of harm to an at-risk adult; and

(b) support an at-risk adult to protect themself from harm at a particular time.

What is "capacity"?

"Capacity" is defined in the Assisted Decision-Making (Capacity) Act 2015 as the ability to:

(a) understand information to make a decision;

(b) remember the information to make a choice;

(c) use or consider the information when deciding what to do; and

(d) communicate a decision.

How should "capacity" be defined in adult safeguarding legislation?

We believe that any future adult safeguarding legislation should work well with existing legislation. For this reason, we think that "capacity" should have the same meaning as it has in the Assisted Decision-Making (Capacity) Act 2015.

Should "harm" be defined in the same way in civil law and criminal law?

Some recommendations in our report are suggestions on how to change the civil law. Other recommendations in our report are suggestions on how to change the criminal law.

Our focus has been different depending on whether the suggested change in the law is to civil law or criminal law. When recommending changes to civil law, we focused on preventing abuse or neglect and intervening when necessary to prevent or stop abuse or neglect. When recommending changes to criminal law, we focused on deterring and penalising people or bodies who abuse or neglect at-risk adults.

Because the focus is different depending on whether the change in the law is to civil law or criminal law, we believe it is appropriate to define "harm" differently in civil law and criminal law.

How should "harm" be defined in civil law?

We believe that "harm" should be defined in civil adult safeguarding legislation as:

(a) assault, ill-treatment or neglect in a manner that affects, or is likely to affect, health, safety or well-being;

(b) sexual abuse; or

(c) loss of, or damage to, property by theft, fraud, deception or coercive exploitation,

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.

What is "reportable harm"?

"Reportable harm" is a type of harm that must be reported to the relevant authorities.

We believe that there should be a higher threshold of "harm" in situations where certain kinds of harm must be reported to the relevant authorities. This is known as mandatory reporting.

Having a higher threshold of "harm" called "reportable harm" would mean that only harm meeting a higher threshold would need to be reported. If the threshold of "harm" is too low, there might be too much reporting of situations which should not actually be reported.

When it comes to mandatory reporting, we think that the term "reportable harm" should be used instead of "harm". We also think that "reportable harm" should be

defined differently to "harm" in adult safeguarding legislation to make it clear that whatever comes within the definition of "reportable harm" must be reported.

How should "reportable harm" be defined in civil law?

We recommend that "reportable harm" should be defined in civil adult safeguarding legislation as:

(a) assault, ill-treatment or neglect in a manner that seriously affects, or is likely to seriously affect, health, safety or well-being;

(b) sexual abuse; or

(c) serious loss of, or damage to, property by theft, fraud, deception or coercive exploitation,

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.

How should "harm" be defined in criminal law?

The criminal law has the potential to seriously affect peoples' rights and lives. For this reason, the meaning of words used in criminal law need to be clear and certain.

We believe that "harm" should be defined in criminal law based on the bad effects that can occur as a result of someone's behaviour, actions or failure to act to safeguard adults.

We recommend that "harm" should be defined in criminal adult safeguarding legislation as:

(a) harm to body or mind and includes pain and unconsciousness;

(b) any injury or impairment of physical, mental, intellectual, emotional health or well-being; or

(c) any form of property or financial loss.

What is “serious harm”?

In chapter 19, we talk about the criminal law and we recommend the introduction of new crimes when someone causes “serious harm” to an at-risk adult. The criminal law needs to be clear and certain, so it is important to define “serious harm”. We recommend that “serious harm” should be defined in criminal adult safeguarding legislation as injury which:

(a) creates a substantial risk of death;

(b) is psychological and has a significant impact; or

(c) causes serious loss of function or changes to the body.

What is “neglect”?

Neglect is a type of abuse that happens when there is a failure to do something that should have been done to look after your own needs or someone else’s needs. There are different types of neglect, for example:

- self-neglect,
- physical neglect,
- medical neglect, and
- emotional neglect.

Self-neglect is when a person does not take proper care of their own basic needs, and this seriously affects their well-being. Medical neglect might happen when you fail to care for your health. Emotional neglect might happen when you fail to consider your emotions or feelings.

How is "neglect" defined by bodies in Ireland?

HIQA and the MHC define "neglect" as:

> "whenever a person withholds, or fails to provide, appropriate and adequate care and support which is required by another person. It may be through a lack of knowledge or awareness, or through a failure to take reasonable action given the information and facts available to them at the time."

Section 246(5) of the Children First Act 2015 defines "neglect" of a child as a failure or inability to provide adequate food, clothing, heating, medical aid or accommodation for a child.

How should "neglect" be defined in adult safeguarding legislation?

We recommend that "neglect" should be defined in civil adult safeguarding legislation as:

> "Neglect", in a manner likely to cause suffering or injury to health, or to seriously affect well-being, means:
>
> (a) a failure to adequately protect an adult under a person's care from preventable and foreseeable harm;
>
> (b) a failure to provide adequate food, clothing, heating or medical aid for an adult under a person's care; or
>
> (c) in the case of a person being unable to provide such:
>
> (i) protection from harm; or
>
> (ii) food, clothing, heating or medical aid,
>
> to an adult under their care, a failure to take steps to have each provided under the laws relating to health, social welfare or housing.

We also recommend that "neglect" should be defined in criminal adult safeguarding legislation in the same way as it is defined in civil adult safeguarding legislation. However, there should be one difference. Instead of mentioning "a person", the criminal law definition should mention a "relevant person". This is because the criminal law needs to be clear and certain. We explain this more in chapter 19.

How should a "relevant person" be defined in criminal adult safeguarding legislation?

We recommend that a "relevant person" should be defined in criminal adult safeguarding legislation as an adult whose ability to guard themself against violence, exploitation, abuse or neglect by another person is significantly impaired through:

(a) a physical disability, a physical frailty, an illness or an injury;

(b) a mental disorder, such as mental illness or dementia;

(c) an intellectual disability; or

(d) autism spectrum disorder.

What is "self-neglect"?

Self-neglect occurs when someone neglects their own needs. For example, someone might decide not to feed or clean themselves, or might decide not to go to the doctor to get help when they need to.

Should "self-neglect" be defined in adult safeguarding legislation?

We recommend that "self-neglect" should be defined in adult safeguarding legislation because at-risk adults who self-neglect may need safeguarding, because they might be at risk of harm at particular times.

How should "self-neglect" be defined in adult safeguarding legislation?

We recommend that "self-neglect" should be defined in adult safeguarding legislation as the inability, unwillingness or failure of an adult to meet their basic physical, emotional, social or psychological needs, which is likely to seriously affect their well-being.

Should "self-neglect" be "reportable harm"?

Earlier in this chapter, we discussed "reportable harm". Some cases of reportable harm might involve an at-risk adult who is self-neglecting. However, we don't think that every situation involving self-neglect should be reportable harm that must be reported. This is because we need to respect the rights of everyone to make their own decisions, which might include a decision to do something or not to do something.

We recommend that in general, "reportable harm" should **not** be interpreted in adult safeguarding legislation as including "self-neglect". However, we recommend that there should be an exception to this general rule. We recommend that "reportable harm" should be interpreted as including "self-neglect" where a person who has to report reportable harm has:

(a) assessed an adult who is reasonably believed to be an at-risk adult as lacking capacity; or

(b) a belief, based on reasonable grounds, that the adult who is reasonably believed to be an at-risk adult lacks capacity,

to make personal care or welfare decisions at the particular point in time when the person knows, believes or has reasonable grounds to suspect that the adult is self-neglecting. We explain reporting more in chapter 9.

Should guidance be provided on the topic of "self-neglect"?

We recommend that guidance should be provided on:

- how to deal with at-risk adults who are self-neglecting, and
- how to engage with, and offer optional social care supports to, adults who choose to self-neglect.

Recommendations: How we think the law should change

R. 2.1 The term "adult at risk of harm" should be used in adult safeguarding legislation.

R. 2.2 "Adult at risk of harm" should be defined in adult safeguarding legislation as an adult who, because of their physical or mental condition or other particular personal characteristic or family or life circumstance (whether permanent or otherwise) needs support to protect themself from harm at a particular time.

R. 2.3 "Safeguarding" should be defined in adult safeguarding legislation as measures that are, or may be, put in place to promote the health, safety and well-being of at-risk adults, including to:

(a) minimise the risk of harm to at-risk adults; and

(b) support at-risk adults to protect themselves from harm at a particular time.

R. 2.4 "Safeguarding plan" should be defined in adult safeguarding legislation as a documentary record of the planned actions that have been identified to promote the health, safety and well-being of an at-risk adult, including to:

(a) minimise the risk of harm to an at-risk adult; and

(b) support an at-risk adult to protect themself from harm at a particular time.

R. 2.5 "Capacity" should be defined in adult safeguarding legislation as:

'Capacity' has the same meaning as it has in the Assisted Decision-Making (Capacity) Act 2015.

R. 2.6 "Harm" should be defined in civil adult safeguarding legislation as:

(a) assault, ill-treatment or neglect in a manner that affects, or is likely to affect, health, safety or well-being;

(b) sexual abuse; or

(c) loss of, or damage to, property by theft, fraud, deception or coercive exploitation,

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or otherwise.

R. 2.7 "Reportable harm" should be defined in adult safeguarding legislation as:

(a) assault, ill-treatment or neglect in a manner that seriously affects, or is likely to seriously affect, health, safety or well-being;

(b) sexual abuse; or

(c) serious loss of, or damage to, property by theft, fraud, deception or coercive exploitation,

whether caused by a single act, omission or circumstance or a series or combination of acts, omissions or circumstances, or

otherwise.

R. 2.8 "Reportable harm" should be understood in adult safeguarding legislation as excluding "self-neglect", other than where a mandated person has:

(a) assessed an adult who is reasonably believed to be an adult at risk of harm as lacking capacity; or

(b) a belief, based on reasonable grounds, that the adult who is reasonably believed to be an at-risk adult lacks capacity,

to make personal care or welfare decisions at the particular point in time when the mandated person knows, believes or has reasonable grounds to suspect that the adult is self-neglecting.

R. 2.9 "Harm" should be defined in the criminal adult safeguarding legislation as:

(a) harm to body or mind and includes pain and unconsciousness;

(b) any injury or impairment of physical, mental, intellectual, emotional health or well-being; or

(c) any form of property or financial loss.

R. 2.10 "Serious harm" should be defined in criminal adult safeguarding legislation as injury which:

(a) creates a substantial risk of death;

(b) is psychological and has a significant impact; or

(c) causes serious loss of function or changes to the body.

R. 2.11 "Neglect" should be defined in criminal adult safeguarding legislation as neglect in a manner likely to cause suffering or injury to health, or to seriously affect well-being, which means:

(a) a failure to adequately protect a relevant person under a person's care from preventable and foreseeable harm;

(b) a failure to provide adequate food, clothing, heating or medical aid for a relevant person under a person's care; or

(c) in the case of a person being unable to provide such:

(i) protection from harm; or

(ii) food, clothing, heating or medical aid,

to a relevant person under their care, a failure to take steps to have each provided under the laws relating to health, social welfare or housing.

R. 2.12 "Relevant person" should be defined in criminal adult safeguarding legislation as an adult whose ability to guard themself against violence, exploitation, abuse or neglect by another person is significantly impaired through:

(a) a physical disability, a physical frailty, an illness or an injury;

(b) a mental disorder, such as mental illness or dementia;

(c) an intellectual disability; or

(d) autism spectrum disorder.

R. 2.13 "Neglect" should be defined in civil adult safeguarding legislation as neglect in a manner likely to cause suffering or injury to health, or to seriously affect well-being, which means:

(a) a failure to adequately protect an adult under a person's care from preventable and foreseeable harm;

(b) a failure to provide adequate food, clothing, heating or medical aid for an adult under a person's care; or

(c) in the case of a person being unable to provide such:

(i) protection from harm; or

(ii) food, clothing, heating or medical aid,

to an adult under their care, a failure to take steps to have each provided under the laws relating to health, social welfare or housing.

R. 2.14 The term "self-neglect" should be defined in adult safeguarding legislation as the inability, unwillingness or failure of a person to meet their basic physical, emotional, social or psychological needs, which is likely to seriously affect their well-being.

R. 2.15 Statutory guidance should be provided in relation to the definition of "self-neglect" in adult safeguarding legislation, which should include guidance on:

(a) safeguarding at-risk adults who are self-neglecting;

and

(b) engaging with, and offering optional supports to, adults who are self-neglecting and who have capacity to choose to self-neglect.

Chapter 3: Guiding principles underpinning adult safeguarding legislation

What is this chapter about?

In this chapter we look at and explain:

- the values and principles of adult safeguarding in Ireland;
- the principles of adult safeguarding in other countries; and
- human rights principles of adult safeguarding that we think should underpin Ireland's adult safeguarding laws.

It is important to include principles in law because principles set out the values behind the law, which help people to understand and apply the law. Policy relating to adult safeguarding and laws in other jurisdictions are based on values and principles.

What are the values and principles that Irish adult safeguarding practice is based on?

We considered many relevant principles before we decided which principles adult safeguarding laws should be based on. We considered the following principles that current Irish law and policy are based on:

- the principles set out in section 8 of the Assisted Decision-Making (Capacity) Act 2015;
- the principles discussed in the HSE's Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures (2014);
- the principles discussed in the National Standards for Adult Safeguarding used by the Health Information and Quality Authority and the Mental Health Commission;
- the principles considered when making a decision under the Mental Health Act 2001;
- the principles contained in the Adult Safeguarding Bill 2017;

- the principles suggested by a representative of the HSE during an Oireachtas debate on the Adult Safeguarding Bill 2017; and
- the principles in the adult safeguarding policy for the health and social care sector that the government is currently working on.

What principles are adult safeguarding laws in other countries based on?

In our Issues Paper on a Regulatory Framework for Adult Safeguarding, we talked about the principles that social care laws and adult safeguarding laws in England, Scotland and Wales are based on.

Before we made our recommendations, we considered the principles of adult safeguarding laws in other countries. We thought about:

- the principles that the Care Act 2014 is based on (this applies in England);
- the principles set out in the Adult Support and Protection (Scotland) Act 2007; and
- the principles set out in the Social Services and Well-being (Wales) Act 2014.

Many of these principles are the same as the principles that Irish organisations and public bodies already use for safeguarding policy and standards.

What principles should Irish adult safeguarding laws be based on?

We published an Issues Paper on a Regulatory Framework for Adult Safeguarding in 2019. We asked for your thoughts on the principles that should assist Irish lawmakers when creating adult safeguarding laws. Most people who responded to our Issues Paper agreed with the principles contained in the Issues Paper. Many people said that the principles are appropriate principles for Irish adult safeguarding laws to be based on. Consultees said that it is very important for the principles or 'spirit' of Irish adult safeguarding laws to be clearly set out. After we listened to all consultees, we

decided on 7 principles that adult safeguarding laws should be based on. The 7 principles are:

1. A rights-based approach;
2. Empowerment;
3. Protection;
4. Prevention;
5. Proportionality;
6. Integration and cooperation; and
7. Accountability.

It is important to talk about each of the 7 guiding principles that we think Irish adult safeguarding laws should be based on.

(a) A Rights-Based Approach

A rights-based approach to adult safeguarding laws means ensuring that the rights of a person are respected. These rights include:

- the right to autonomy (to make your own decisions);
- the right to respect;
- the right to dignity;
- the right to bodily integrity;
- the right to privacy;
- the right to control your financial affairs and property;
- the right of non-discrimination;
- the right to equal treatment when accessing basic goods and services; and
- the right to respect of your beliefs and values.

(b) Empowerment

The principle of empowerment means:

- presuming that a person has the capacity to make their own decisions;
- facilitating supported decision-making;
- ensuring that a person has given informed consent;
- respecting a person's right to autonomy and their right to full and effective participation in society;
- providing a right to independent advocacy so that a person can speak for themself;
- respecting a person's will and preferences;
- respecting a person's right to have risks and options explained to them in plain English; and
- respecting a person's right to be consulted at every step of an intervention under the law.

We included a right to autonomy because autonomy is one of the values in the United Nations Convention on the Rights of Persons with Disabilities.

We included respect for the will and preferences of a person because this is included in the Assisted Decision-Making (Capacity) Act 2015.

Some people who responded to our Issues Paper thought the right to independent advocacy should be dealt with separately from the principle of empowerment. That is the way it is dealt with in the HSE's Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures (2014). We think independent advocacy should be a core aspect of the principle of empowerment rather than being dealt with separately from the principle of empowerment. Independent advocacy means advocacy support that is provided by an organisation that is free from conflicts of interest and is independent of family and service providers. We explain this more in chapter 8.

(c) Protection

The principle of protection means:

- responding to abuse or safeguarding concerns involving at-risk adults;
- taking actions to safeguard at-risk adults, and protect them from harm; and
- providing support to protect at-risk adults.

(d) Prevention

The principle of prevention means:

- taking proactive steps to make sure that safeguarding measures are in place to prevent abuse;
- providing support and care to make sure that a person is safe; and
- promoting an individual's physical, mental and emotional well-being.

Our laws should ensure that relevant staff, practitioners, advocates and others get training on the law and on how to use adult safeguarding powers of intervention. Anyone who might have to carry out a safeguarding intervention under the law must complete training on these principles and on their specific role before intervening. Staff should be mentored and supervised.

(e) Proportionality

After listening to consultees, we decided to add extra aspects to the meaning of the principle of proportionality. The principle of proportionality means making sure that any intervention taken:

- is necessary for the particular situation;
- limits the at-risk adult's freedom as little as possible;
- matches the level of risk;
- lasts only as long as needed;
- recognises the negative effect that trauma may have on an at-risk adult; and

- is checked and reviewed regularly, in line with best practices worldwide.

(f) Integration and cooperation

The principle of integration and cooperation means that organisations and agencies must work together when responding to adult safeguarding concerns. Services should be linked and responses to adult safeguarding concerns should be coordinated across organisations and agencies. Policies should be consistent with adult safeguarding laws to make sure there is consistency in:

- practice,
- policy and
- the application of the law.

(g) Accountability

The principle of accountability ensures that there is transparency in adult safeguarding. This means that any health and social care services or bodies that take actions or make interventions under adult safeguarding laws should be responsible for their actions. It means that health and social care services must be clear about how they respond to safeguarding concerns. Proper procedures must be in place for managing risks, recording information and making reports.

Conclusions and Recommendations

When developing the 7 guiding principles for adult safeguarding legislation in Ireland, we considered the following:

- the principles that Irish safeguarding policy and standards are based on;
- the principles that other countries have based their laws on;
- consultees' views;
- the principles set out in the Assisted Decision-Making (Capacity) Act 2015;
- the United Nations Convention on the Rights of Persons with Disabilities; and

- the government's draft principles for the health sector safeguarding policy.

We believe it would be appropriate to include guiding principles in adult safeguarding legislation in Ireland. Any values and principles that we base our laws on must be decided in advance so that they can be considered when the government are drafting adult safeguarding laws. This will make sure that the laws are based on these principles. Consultees strongly believe that these principles should not be viewed by themselves. Instead, the principles should be the basis for Ireland's safeguarding laws. This will make sure that all services, organisations and relevant individuals put at-risk adults at the centre of adult safeguarding.

We recommend that adult safeguarding laws should be based on the 7 guiding principles we have mentioned in this chapter.

Recommendations: How we think the law should change

We recommend that the following 7 principles should be adopted as the guiding principles of adult safeguarding legislation in Ireland:

R. 3.1 **A rights-based approach**: this means ensuring that the rights of at-risk adults are respected, including the rights to autonomy, respect, dignity, bodily integrity, privacy, control over financial affairs and property, non-discrimination, equal treatment when accessing basic goods and services, and respect for their beliefs and values.

R. 3.2 **Empowerment:** this means:

(a) presuming that an at-risk adult has capacity to make their own decisions;

(b) facilitating supported decision-making;

(c) ensuring an at-risk adult's consent is informed;

(d) respecting an at-risk adult's right to autonomy and their right to full and effective participation in society;

(e) promoting and realising an at-risk adult's right to advocate on their own behalf;

(f) ensuring an at-risk adult's will and preferences are respected;

(g) ensuring an at-risk adult's right to have risks and options explained to them is respected; and

(h) respecting an at-risk adult's right to be consulted at every step

of an intervention.

R. 3.3 **Protection:** this means:

(a) taking protective steps to make sure that safeguarding actions or interventions are taken to protect at-risk adults from harm; and

(b) making sure support is provided to protect the safety and dignity of at-risk adults and to protect their physical, mental and emotional well-being.

R. 3.4 **Prevention**: this means:

(a) taking proactive steps to ensure that safeguarding measures are in place to prevent abuse from occurring;

(b) providing support and care to ensure the safety and dignity of at-risk adults; and

(c) promoting at-risk adults' physical, mental and emotional well-being.

R. 3.5 **Proportionality:** this means ensuring that any intervention taken:

(a) is necessary for the particular situation;

(b) limits the at-risk adult's freedom as little as possible;

(c) matches the level of risk;

(d) lasts only as long as needed;

(e) recognises the negative effect that trauma may have on an at-risk adult; and

(f) is checked and reviewed regularly, in line with best practices worldwide.

R. 3.6 **Integration and cooperation:** this means that:

(a) multi-agency approaches should be taken in line with adult safeguarding legislation to recognise the potential for harm to occur and to prevent harm to at-risk adults; and

(b) health and social care services should be integrated and coordinated multidisciplinary responses should be taken to prevent and address adult safeguarding concerns.

R. 3.7 **Accountability:** this means ensuring that bodies, organisations and providers of health and social care services to at-risk adults accept responsibility and account for their actions.

Chapter 4: A rights-based adult safeguarding framework

What is this chapter about?

In this chapter we talk about and explain:

- how rights are relevant to adult safeguarding;
- the rights that at-risk adults and other people have under the Constitution;
- the rights that at-risk adults and other people have under the European Convention on Human Rights;
- when it is possible for the government or public bodies to interfere with these rights;
- how we think new adult safeguarding laws should protect rights.

How are rights relevant to adult safeguarding?

Adult safeguarding means taking actions to:

- reduce the risk of harm to at-risk adults;
- promote and protect their health, safety and well-being; and
- support them to protect themselves from harm at a particular time.

We think it is important to take a rights-based approach to adult safeguarding. So, when creating new adult safeguarding laws, we have to think about the rights that at-risk adults and other people have. It is particularly important to think about rights when we are creating **adult safeguarding interventions**.

How are rights relevant to adult safeguarding interventions?

Adult safeguarding interventions are serious actions that may be taken by the Safeguarding Body or in some cases the Gardaí, usually with the court's permission, to improve a situation and protect an at-risk adult's rights. We think these

interventions should be included in new adult safeguarding laws. Examples of the interventions we're talking about are:

- entering and inspecting "relevant premises". These are places like:
    - hospitals;
    - residential centres for older people and adults with disabilities; and
    - places where day services are provided to older adults or adults with disabilities.
- accessing at-risk adults in places like private homes.
- removing an at-risk adult from where they are and transferring them to a place where health or social care services are provided, or another place that a court has approved.
- applying for orders under the Domestic Violence Act 2018 for certain situations involving at-risk adults.
- applying for new adult safeguarding no-contact orders for certain situations involving at-risk adults.

These interventions are designed to protect the rights of at-risk adults, but they could also interfere with the rights of at-risk adults and the rights of other people. When creating new adult safeguarding interventions, we tried to achieve a balance between preventing harm to at-risk adults and respecting everyone's rights.

What rights do at-risk adults and other people have under the Constitution?

The Constitution is the main way that rights are protected in Ireland. The European Convention on Human Rights also protects rights, but the Constitution is stronger.

The Constitution requires the government to take steps to protect people's rights. The Constitution also requires the government to avoid interfering with people's rights any more than is needed in a particular case. We carefully considered these requirements when we were thinking about what new adult safeguarding laws should say. Our goal is to protect the rights of at-risk adults while making sure that we do not interfere too much with their rights, or the rights of other people.

(a) The right to life

Article 40.3.2 of the Constitution says that the government must protect the right to life. This is a very important right. We carefully considered this right when we were thinking about what adult safeguarding laws should include.

(b) The right to personal freedom

Article 40.4.1 of the Constitution protects the right to personal freedom. It says that no one can have their freedom taken away unless a law says so, and the law includes a good reason for taking away the person's freedom. For example, a person's freedom can be taken away if they commit a crime and are sent to prison.

When we were thinking about what adult safeguarding laws should include, we tried to balance preventing harm to at-risk adults with protecting their personal freedom. For example, in chapter 12 we talk about things that the Gardaí and the staff of the Safeguarding Body must do when they are removing an at-risk adult from where they are, that will protect the at-risk adult's right to personal freedom.

(c) The right to privacy

The right to privacy is not explicitly written in the Constitution. However, judges have said that the right to privacy is still protected by the Constitution. This means that people have the right to be left alone and to have their own personal space.

Although the right to privacy is very important, it has limits. It can be interfered with in certain situations, for example to protect the safety or well-being of other people. When we were thinking about what adult safeguarding laws should include, we thought about how the staff of the Safeguarding Body, or the Gardaí could interfere with an at-risk adult's right to privacy if this was needed to protect the at-risk adult from harm.

(d) The right to bodily integrity

The right to bodily integrity is not explicitly written in the Constitution. However, judges have said that the right to bodily integrity is protected by the Constitution. This right means that everyone has control over their own body and what happens to it.

This right is linked to the new adult safeguarding interventions in two ways:

- The interventions could help to protect an at-risk adult's right to bodily integrity by preventing harm or abuse.
- The interventions could interfere with the right to bodily integrity, for example where the Gardaí or the staff of the Safeguarding Body remove an at-risk adult from their home.

We thought carefully about how the interventions would affect the right to bodily integrity. For example, we recommend that the interventions should only be used when there is evidence of a risk to the health, safety, or well-being of an at-risk adult. We also think that the interventions should only last for a short period of time. This will help to balance preventing harm to at-risk adults with respecting everyone's right to control their own body.

(e) The right to make your own decisions

The right to make your own decisions is not explicitly written in the Constitution. However, judges have said that this right is protected by the Constitution. This right means that everyone has the freedom to make their own decisions about their lives.

This right is linked to the new adult safeguarding interventions in two ways:

- The interventions could help protect this right by allowing at-risk adults to make their own decisions, instead of being forced by other people to do things they do not want to do.
- The interventions could interfere with an at-risk adult's right to make their own decisions, for example if the staff of the Safeguarding Body or Gardaí use an intervention without the at-risk adult's consent.

We thought carefully about how the interventions would affect the right to make your own decisions. In this report, we recommend that some interventions can be used without the at-risk adult's consent in certain cases, such as when another person is pressuring the at-risk adult. This will help to balance preventing harm to at-risk adults with respecting their right to make their own decisions.

(f) The right to dignity

The right to dignity is not explicitly written in the Constitution, but judges have said that the right is still protected by the Constitution. This right means that everyone must be treated with respect in all aspects of their lives.

This right is linked to adult safeguarding interventions in two ways:

- The interventions could protect the right to dignity by preventing people from abusing and neglecting at-risk adults.
- The interventions could interfere with the right to dignity, for example if the staff of the Safeguarding Body or the Gardaí use the interventions without the at-risk adult's consent.

We thought carefully about how the interventions would affect the right to dignity. In this report, we recommend requirements that will ensure that the interventions protect the at-risk adult's right to dignity.

(g) The right to be protected as a person

Article 40.3.2 of the Constitution includes the right to be protected as a person. This means protecting a person's physical, mental, and emotional well-being. It is linked to other rights such as the right to:

- privacy;
- bodily integrity;
- make your own decisions; and
- dignity.

We thought carefully about how the interventions would affect the right to be protected as a person, in a similar way to the other rights we have talked about above. The interventions could protect this right, but could also interfere with this right. For example, if a health or social care professional interviews an at-risk adult, this might interfere with the at-risk adult's privacy but also help to keep them safe and prevent harm to them, and so protect this right.

(h) The right to security of the home

Article 40.5 of the Constitution protects the security of people's homes. This means that a person's home is their safe space, whether they own the home themselves or not. The Gardaí and other public bodies cannot usually enter a person's home without the person's permission or a power to enter that is provided by a law. There are some exceptions to this rule, for example where the Gardaí must enter quickly to prevent very serious harm to someone.

In chapter 11, we recommend that adult safeguarding laws should allow the Gardaí and the staff of the Safeguarding Body to enter places including private homes

where there are reasons for thinking that there is a risk to the health, safety or well-being of an at-risk adult in the place. When we were making these recommendations, we thought carefully about how the intervention would affect the rights of at-risk adults and other people.

To protect an at-risk adult's right to security of their home we think that the Gardaí and the staff of the Safeguarding Body must usually get permission from a judge before entering the home of an at-risk adult. This is like the existing requirement for Gardaí to get permission from a judge before going into a person's house to investigate a crime.

(i) The right to be treated equally by the law

It is written in the Constitution that all people must be treated equally by the law. This does not mean that every person must be treated exactly the same. What it means is that the law cannot treat people differently from each other for no good reason. The government can treat people differently if there is a good reason to do so, for example if an adult needs support to keep themselves safe from harm.

When we were thinking about what adult safeguarding laws should include, we recognised that at-risk adults might need supports that other people would not need, in order to keep themselves safe from harm. We think that safeguarding at-risk adults and protecting their rights is a good reason for treating at-risk adults differently to other adults, in some cases. This protects the right to be treated equally by the law, as the different treatment is based on the valid goals of:

- reducing the risk of harm to at-risk adults;
- promoting and protecting their health, safety and well-being; and
- supporting them to protect themselves from harm at a particular time.

(j) The rights of the family

Article 41 of the Constitution protects the family as a special group in society. This right means that the government cannot usually interfere with the family and their private decisions. Article 41 only applies to families which involve a married couple. However, other kinds of families are protected by other parts of the Constitution.

Family rights are very important, but they have limits. The government can intervene in family matters in certain circumstances, especially when this is needed to protect the rights of individual family members.

This right is linked to the new adult safeguarding interventions in two ways:

- The interventions could protect family rights. For example, if someone is preventing an at-risk adult from contacting their family, the at-risk adult or staff of the Safeguarding Body could ask a court for a no-contact order to stop this behaviour. This could allow the at-risk adult to see their family again.
- The interventions could also interfere with family rights. For example, an at-risk adult might be living with their family but there seems to be a serious and immediate risk to the at-risk adult's health, safety and well-being. The Gardaí could ask a court for a removal and transfer order, which would allow them to remove the at-risk adult from their home and transfer them to a place where health or social care services are provided or another place that has been approved by the court. This would interfere with the at-risk adult's ability to see their family, for a short period of time.

We thought carefully about how the interventions would affect family rights and tried to balance these rights with the need to prevent harm to at-risk adults.

(k) The right to associate

Article 40.6.1 of the Constitution protects the right for people to "associate" or join groups with each other. People have used this right to join trade unions, political parties, and clubs. However, we think this right is also relevant in situations where the

government tries to stop people from spending time with each other. For example, in chapter 13, we say that adult safeguarding laws should include new adult safeguarding no-contact orders. These orders would prevent a person from contacting an at-risk adult in certain circumstances. This would impact a person's right to associate with an at-risk adult.

However, the right to associate has limits. The government can interfere with this right if it is in the public interest. We carefully considered this when we were thinking about what new adult safeguarding laws should say.

(l) The right to private property

Article 40.3.2 and Article 43 of the Constitution protect the right to property. This means that the government cannot unfairly take away a person's property. However, this right has limits. There may be situations where the government can interfere with a person's property rights.

In chapter 14, we recommend ways to deal with financial abuse and explain what changes should be made to prevent financial abuse of at-risk adults. We recommend that the law should allow financial service providers like banks or credit unions to delay transactions if they know or honestly believe that an at-risk adult is being financially abused. This means that an at-risk adult might be unable to access their money for a short period. However, we think this measure is necessary in some cases to protect the property rights of at-risk adults, by preventing financial abuse. When we were thinking about what adult safeguarding laws should say, we tried to balance protecting at-risk adults from financial abuse and respecting their property rights. By allowing transactions to be delayed when there are suspicious circumstances, we aim to provide a safety net for at-risk adults without interfering too much with their rights.

(m) The right to work and the right to earn a living

The right to work and the right to earn a living are not explicitly written in the Constitution. However, judges have said that these rights are protected by the Constitution. These rights mean that people have the freedom to look for work and make money. However, there are limits to this right. For example, people cannot insist on working in a particular job or for a particular employer.

The government can also interfere with these rights in certain cases.

In chapter 18, we recommend that the government should add "prohibition orders" to the laws that stop a person from working in certain jobs if they are convicted of certain crimes. Although this will interfere with the person's right to work, we think this is necessary in some cases to prevent harm to at-risk adults.

(n) The right to a good name

Article 40.3.2 of the Constitution protects the right to a good name. This means that everyone has the right to protect their reputation and to be free from false and damaging statements about themselves.

The right to a good name is important because, if it is interfered with, it can have a significant impact on a person's life. For example, if someone accuses a person of abusing or harming an at-risk adult, it could damage that person's reputation and make it difficult for them to find work.

However, the right to a good name has limits. For example, people are generally not allowed to be anonymous if they are involved in a court case.

We carefully considered the right to a good name when we were thinking about what adult safeguarding laws should say about how to report a concern that an at-risk adult:

- has been harmed;
- is being harmed; or

- is at risk of being harmed in the future.

Our recommendations aim to find a balance between preventing harm to at-risk adults and respecting the right of individuals to their good name.

(o) The right to fair procedures

Article 40.3 of the Constitution protects everyone's right to fair procedures. This means that when a decision is made that affects you, it should be made fairly and neutrally.

In most cases, before the decision is made you should be:

- told that the decision is going to be made; and
- given an opportunity to present your views about the decision.

However, there are some situations where the right to fair procedures can be interfered with. For example, if there is an urgent need to protect someone from harm it may be necessary to make a decision without giving everyone a chance to be heard. We carefully considered this right when we were thinking about adult safeguarding interventions.

When is it acceptable to interfere with rights under the Constitution?

The Constitution protects all of the rights we have explained above. These rights are very important, but they have limits. The Constitution allows the government to interfere with these rights if there is a strong reason to. For example, the government may need to interfere with a person's right in order to:

- benefit everyone in society; or
- protect another person's rights.

What tests do the courts use to check if the government's interference with rights is valid?

If the government wants to do something that will interfere with rights that are protected by the Constitution, it must make sure that the interference is valid. To be valid, it must not go too far in interfering with people's rights.

There are three different tests that the courts use to check if the government's interference with rights that are protected by the Constitution is valid. These are:

- **The proportionality test** – This is when courts test an interference with a right to see if it is necessary to achieve a valid goal, or if the interference has gone too far.
- **Tests from the text of the Constitution** – Sometimes the Constitution provides specific guidelines on interfering with a right. For example, the Constitution says that the right to personal freedom can be interfered with "in accordance with law". Where there is a test like this for a particular right, the courts will use it to test whether an interference with that right is valid.
- **The rationality test** – This is a test that the courts use sometimes, to check whether a law has balanced two different rights in a reasonable way. This is an easier test for the government to pass than the proportionality test.

We think that the proportionality test is the right test to use to check that our adult safeguarding interventions do not interfere too much with rights that are protected by the Constitution. This is because:

- the interventions we recommend will have a significant impact on:
    - at-risk adults;
    - their families;
    - other people; and
- the interventions involve balancing lots of different rights and interests, including the public interest.

The proportionality test

The proportionality test is the most common test that the courts use to check if the government's interference with a right is valid. This test helps courts to decide whether the interference is necessary to achieve a valid goal, or if the interference has gone too far. The proportionality test has four main parts:

1. The reason for the interference must be very important and must justify the government interfering with rights that are protected by the Constitution.
2. The interference must be related to the important reason and must not be unfair or unreasonable.
3. It must interfere with people's rights as little as possible. If there is a way to achieve the important reason that causes less interference with people's rights, the government should do that instead.
4. The level of interference with people's rights must match the benefits of the important reason.

How did we use the proportionality test to develop new adult safeguarding interventions?

We used the proportionality test to develop our recommendations for new adult safeguarding interventions. We believe that the interventions are necessary to achieve the important aim of preventing harm to at-risk adults, and protecting their rights. We thought carefully about ways to make sure that the interventions:

- interfere with the rights of at-risk adults and other people as little as possible; and
- are only used when they are absolutely necessary in a particular situation.

We explain these recommendations in more detail in chapters 10, 11, 12 and 13.

We also used the proportionality test to develop our recommendation in this chapter, which we explain below.

What rights do at-risk adults and other people have under the European Convention on Human Rights?

Lots of the rights that are protected by the Constitution are also protected by the European Convention on Human Rights.

Like the Constitution, the European Convention on Human Rights says that some interferences with rights are allowed. The courts (including the European Court of Human Rights) use tests to check if interferences with rights which are protected by the European Convention on Human Rights are valid.

We explain some of the rights that at-risk adults and other people have under the European Convention on Human Rights below.

(a) The right to life

Article 2(1) of the European Convention on Human Rights protects the right to life. The government must take steps to protect the right to life. This includes taking reasonable steps to:

- protect someone where there is a risk to their life; and
- investigate deaths where someone has died.

(b) The right to a private and family life

Article 8(1) of the European Convention on Human Rights protects the right to:

- a private and family life;
- the home; and
- communication.

This right protects many different aspects of people's lives. For example, it protects the right to have relationships with other people, and for people to make choices about their own lives. The right to a "private life" also means that people should not be harmed physically or emotionally.

The government must:

- take steps to protect the right to a private and family life. For example, the government should take steps to prevent physical or emotional harm to people.
- not interfere with the right to a private and family life.

However, this right has limits, and can be interfered with for a good reason, for example to protect other people's rights. The European Court of Human Rights uses a test to check whether any interference by the government with this right is valid. It will check whether the interference is:

- done under a law;
- aimed at a valid goal; and
- necessary to achieve that goal.

(c) The right to private property

Article 1 of the First Protocol of the European Convention on Human Rights protects the right to private property. This means that people have the right to own things without interference by the government.

However, this right has limits. The government can interfere with this right where it is in the public interest. It can also control people using their property, for example if this is necessary to collect taxes.

(d) The right to freedom and security

Article 5 of the European Convention of Human Rights protects the right to freedom and security. This means that a person cannot usually be kept somewhere without their agreement. This is called "detention" or "being detained".

However, Article 5(1) says that a person may be detained if this is done under a law and for one of the reasons that are listed in Article 5(1). One of the valid reasons for

detaining someone is if they have a mental illness. Having a mental illness may mean that someone is unable to make decisions for themselves about particular things.

The European Court of Human Rights uses a test to check whether any detention is valid. It will check whether:

- the detention is done under a law;
- the law is understandable, clear and certain;
- the detention is for one of the reasons listed in Article 5(1); and
- there are clear processes, including regular checks of whether the detention is still needed.

The person who is detained must be able to challenge their detention in a court to see if their detention is allowed under the law.

If someone is detained because they have a mental illness, there are special requirements that the court will check. For example,

- A medical expert must confirm that the person has a mental illness.
- The person's mental illness must be so serious that detention is necessary. Detention must be a last resort. Before a person can be detained, the authorities must try to use less serious measures, and find that these are not good enough to prevent harm to the individual or protect the public.
- The person's mental illness must continue throughout the time of detention.

In emergency situations, the court might say that not all of the special requirements are needed.

(e) The right to not experience torture or cruel treatment

Article 3 of the European Convention on Human Rights protects the right to not experience torture or cruel treatment. Only serious actions that harm someone will interfere with this right. The court will check this by looking at all of the circumstances, including:

- how the treatment happened;
- the effect of the treatment on the person; and
- in some cases, the gender, age, and health of the person.

The government must:

- take steps to prevent torture and cruel treatment between individuals, especially for people who cannot always protect themselves, such as children and at-risk adults.
- not interfere with this right, so the government cannot ill-treat people.

Unlike the other rights we have explained, the right to not experience torture or cruel treatment is absolute (not limited). This means that it cannot be interfered with, even for a good reason.

How are rights which are protected by the European Convention on Human Rights relevant to new adult safeguarding laws?

We carefully considered the rights which are protected by the European Convention on Human Rights when we were thinking about what new adult safeguarding laws should say. We believe that our recommendations are necessary to:

- vindicate the rights of at-risk adults;
- reduce the risk of harm to at-risk adults;
- promote and protect their health, safety and well-being; and
- support them to protect themselves from harm at a particular time.

We think that that our recommendations do not interfere too much with the rights of at-risk adults and other people under the European Convention on Human Rights. Throughout this report, we explain in more detail how rights are relevant to our recommendations.

What rights do people have under the United Nations Convention on the Rights of Persons with Disabilities?

In 2007, Ireland signed up to the United Nations Convention on the Rights of Persons with Disabilities. This convention came into force in Ireland in 2018. It is an international convention, signed by lots of different countries, about the rights of people with disabilities. It protects a lot of the same rights that are protected by the Constitution and the European Convention on Human Rights.

These rights include the right:

- to be treated equally;
- to life;
- to freedom; and
- to not experience violence or abuse.

The United Nations Convention on the Rights of Persons with Disabilities protects the rights of people with disabilities. Not all at-risk adults have disabilities, but we think that the rights protected by this treaty are relevant to adult safeguarding laws. When we were thinking about our recommendations we considered the United Nations Convention on the Rights of Persons with Disabilities.

How are all of these rights relevant to new adult safeguarding laws?

The new laws that we recommend aim to prevent harm to at-risk adults, and are based on the rights that we discuss in this chapter. We know that the safeguarding interventions that we recommend in chapters 10, 11, 12 and 13 might affect the rights of at-risk adults and other people. For each of the interventions, we have included requirements and recommendations to make sure that any interference with rights:

- is necessary; and

- passes the proportionality test.

Because these rights are so important, we also make a general recommendation which is written below.

Recommendations: How we think the law should change

R. 4.1 We recommend that when a court is deciding whether to let the Safeguarding Body or the Gardaí use a safeguarding intervention, it must make sure that it interferes with people's rights as little as possible.

Chapter 5: A Safeguarding Body: functions, responsibilities and powers

What is this chapter about?

In chapter 5, we talk about and explain the "Safeguarding Body".

We think the new adult safeguarding laws should create a Safeguarding Body. This body will be responsible for reports about harm to at-risk adults, even where there may not be crimes involved.

Lots of organisations, like the HSE and the Gardaí, have responsibilities to safeguard at-risk adults. However, there is no special body with responsibilities under the law to safeguard at-risk adults. This is because there are no specific adult safeguarding laws in Ireland.

Why are we talking about this?

Because there are no adult safeguarding laws, adult safeguarding is dealt with using policies. Like laws, policies set out rules that should be followed. However, if someone doesn't follow a policy, they aren't breaking any laws, so it's not as serious. The HSE's National Policy and Procedures is a policy that we discuss a lot in this chapter. This policy only deals with adult safeguarding in certain settings. There is no policy that deals with adult safeguarding across all settings.

In comparison, in some countries, there are adult safeguarding and social care laws that put responsibilities on particular bodies. In some other countries, there is a lead body responsible for adult safeguarding. This body has all the functions, powers and responsibilities they need to do their job.

After talking to lots of people and doing lots of research, we think a lot of the adult safeguarding work that the HSE does needs to be given to a Safeguarding Body that is set up by law. This new body, and its functions, powers and responsibilities should

be written in the law. The Safeguarding Body could be a new body, or it could be set up inside a body that already exists, like the HSE. (We explain this in chapter 6.)

We think that the Safeguarding Body should have safeguarding functions similar to those the HSE already performs. However, we think the Safeguarding Body should have a safeguarding role across a wider range of sectors, not just health and social care. We also think the Safeguarding Body's functions and powers should be written in the law, instead of policies.

What functions, responsibilities and powers do we talk about in this chapter?

In this chapter, we talk about the Safeguarding Body's:

- main function to promote the health, safety and well-being of at-risk adults;
- function to receive reports and information about harm to at-risk adults;
- responsibility to safeguard at-risk adults;
- power to make a safeguarding plan or work with other bodies to make a safeguarding plan;
- training and information functions; and
- research and data functions.

We don't think the Safeguarding Body should have regulatory functions. Regulating means monitoring how services or professionals operate. We think the Safeguarding Body should have functions to:

- receive, assess and respond to reports of harm to at-risk adults;
- do research;
- collect data;
- provide training; and

- provide information sharing and public awareness campaigns about adult safeguarding.

We talk a lot about functions, powers and responsibilities in this chapter, and it is important to know the difference between them.

- **Functions** are the jobs the Safeguarding Body sets out to do.
- **Powers** are actions that the Safeguarding Body is allowed to take to carry out these functions.
- **Responsibilities** are things the Safeguarding Body must do under the law.

There are a few things about the Safeguarding Body that we don't talk about in this chapter. This is because we cover them later in chapter 6. These things include:

- creating the Safeguarding Body;
- how it should be structured; and
- how it will work with existing organisations.

What will the Safeguarding Body's role be under the new adult safeguarding laws?

When we spoke to people about our report, a lot of people said that they would like there to be a body in the law with responsibilities to prevent harm to at-risk adults and make enquiries into reports of abuse. For now, we have called this body the Safeguarding Body. In chapter 6, we talk about whether the Safeguarding Body will be a brand-new body, or part of a body that already exists (like the HSE). In this chapter, we only talk about the Safeguarding Body's responsibilities, powers and functions.

What jobs do bodies already have in the law to safeguard at-risk adults?

The law already provides for lots of safeguarding jobs which different bodies have. Lots of these jobs involve safeguarding at-risk adults. It is important to think about these existing jobs when creating new adult safeguarding laws.

(a) the HSE

The HSE's main job is to manage and provide health and personal social care services. Within this role, the HSE must make sure that health and social services work alongside each other. In order to do its job, the HSE must also facilitate education and training.

(b) the Health Information and Quality Authority (HIQA)

HIQA's main job, as set out in the law, is to make sure that health and social care services are safe and of good quality, for the public's health and well-being.

As well as this main goal, HIQA is responsible for creating safety and quality standards for the services it oversees, such as residential centres for older people and adults with disabilities. HIQA also checks if these standards are met and carries out investigations. HIQA also:

- reviews services;
- makes recommendations; and
- runs programs to recognise services that meet the standards it has set or approved.

HIQA has recently been given responsibility for checking if certain international protection accommodation services are meeting standards set by the government. HIQA's role is to tell the Minister for Children, Equality, Disability, Integration about whether the services are meeting the standards.

(c) the Mental Health Commission

The Mental Health Commission's main jobs are to:

- encourage and keep up high standards and good practices in mental health services; and
- protect the rights of people in approved centres. (Approved centres are residential centres for people with mental disorders, where they stay and receive care, support and treatment.)

(d) the Decision Support Service

The Director of the Decision Support Service was a new job created by a law called the Assisted Decision-Making (Capacity) Act 2015. The first person to have this job set up the Decision Support Service. The Director has important roles under the Assisted Decision-Making (Capacity) Act 2015. These include:

- promoting understanding about making decisions for those who need help now or will soon need help to make decisions;
- providing people with information about their choices under the law for making decisions;
- providing guidance to the people appointed to help with decision-making;
- overseeing the people appointed to help with decision-making in their responsibilities and making sure they follow the law; and
- giving advice and information to Irish groups and organisations on how they should interact with people who can't make their own decisions and those appointed to help them.

(e) the Gardaí

The Gardaí's jobs include:

- protecting life and property;
- protecting everyone's human rights; and
- preventing crime.

The government has written a new law called the Policing, Security and Community Safety Act 2024, but it hasn't come into force yet. When it does, the Gardaí will also have a particular responsibility to prevent harm to people who are "vulnerable" or at risk.

(f) the Domestic, Sexual and Gender-based Violence Agency

The Domestic, Sexual and Gender-based Violence Agency's jobs include:

- developing accommodation for victims of domestic, sexual or gender-based violence who need somewhere to stay;
- supporting service providers, including giving them money to provide:
    - services for people in refuge accommodation and centres for victims and persons at risk of domestic, sexual or gender-based violence, and
    - programmes for preventing, and reducing this type of violence;
- setting standards for these kinds of services, which the Minister will approve;
- checking if service providers are complying with the standards;
- gathering and publishing information about the availability of accommodation for people who need somewhere to stay; and
- developing public campaigns about domestic, sexual and gender-based violence or helping other people to develop public campaigns. This is done to:

    (a) increase awareness of domestic, sexual and gender-based violence and the risks associated with it, and

    (b) reduce domestic, sexual and gender-based violence.

(g) the Policing and Community Safety Authority

As we mentioned before, the government has written a new law called the Policing, Security and Community Safety Act 2024, but it hasn't come into force yet. When it does, a new body called the Policing and Community Safety Authority will be set up.

The aim of the Policing and Community Safety Authority will be to oversee the Gardaí's policing services. The jobs of the Policing and Community Safety Authority include:

- reviewing the Gardaí's policing services;
- doing inspections;
- preparing reports of the inspections and making recommendations to the Garda Commissioner or the Minister;
- checking that the Gardaí take on board the recommendations from the Authority's inspections, or recommendations they've gotten from other bodies;
- promoting policing standards and improving policing standards in line with best international practice;
- doing or getting other people to do research about policing.

When the Policing, Security and Community Safety Act 2024 comes into force, it will also give responsibilities to public service bodies. These responsibilities will be to improve safety in communities by preventing crime and harm to individuals, particularly people at risk. The public service bodies will also have to cooperate with each other, doing things like sharing documents and information, if needed to perform their responsibilities and if the law allows it.

What safeguarding jobs does the HSE do that aren't written in the law?

Bodies within the HSE also have safeguarding responsibilities, that aren't written in the law. They are instead written in a HSE policy called the HSE National Policy and Procedures. This policy applies to HSE disability services and older people's services. It also applies when there is a concern in the community about an older person or a person with a disability.

To follow the National Policy and Procedures, the HSE set up two types of body: The HSE National Safeguarding Office and the HSE Safeguarding and Protection Teams. There are 9 Safeguarding and Protection Teams across the country.

(a) the HSE National Safeguarding Office

The HSE National Safeguarding Office's job includes:

- implementing the HSE's objectives for adult safeguarding;
- gathering and keeping an eye on data about the reports made to Safeguarding and Protection Teams about the abuse of at-risk adults;
- publishing an annual report which includes data and patterns in the data about safeguarding concerns;
- contributing to public awareness campaigns related to adult safeguarding;
- hiring people to do research to find out the best ways to promote the well-being and protection of "vulnerable people" from abuse;
- giving information about adult safeguarding to other people in the HSE; and
- helping to provide education and practical help to make the services better.

(b) the HSE Safeguarding and Protection Teams

The HSE Safeguarding and Protection Teams are made up of social workers. The leader of each team is called the Principal Social Worker. Each Team is responsible for a certain area in Ireland. The HSE Safeguarding and Protection Teams' jobs include:

- receiving, assessing and managing the reports that are made to them about safeguarding in their area;
- making sure that HSE services for older people and people with disabilities are working properly;
- giving advice to HSE services for older people and people with disabilities;
- looking at and managing difficult cases; and
- gathering and putting together data.

In particular, the Safeguarding and Protection Teams' job to advise HSE services is very important. When there are concerns about a particular person, the Safeguarding

and Protection Teams will make sure that the concern is caught early, and that the service provider completes a safeguarding plan.

The Safeguarding and Protection Teams are not responsible for at-risk adults. The service providers are. To get their funding from the HSE, the service providers must show that they comply with the HSE's safeguarding policy.

Why do we need a body in the law that focuses on adult safeguarding?

Currently, there is no body under the law that has:

- the specific job to stop harm happening to at-risk adults;
- the ability to receive reports of abuse to at-risk adults; and
- the ability to scan through these reports and make enquiries about them with a view to taking action.

The Gardaí can only investigate crimes. We talked about the new law that will give them a role to stop harm to at-risk or "vulnerable" people. However, the Gardaí only have this safeguarding role when it is to do with policing or security.

The HSE National Safeguarding Office is responsible for safeguarding, but this isn't written in the law which is a problem. Also, it can only do safeguarding in some settings.

We think that the Safeguarding Body needs to have its main function to safeguard at-risk adults written in the law. For this reason, we think that the new adult safeguarding laws should create a Safeguarding Body with the main function of promoting the health, safety and well-being of at-risk adults.

We also think the Safeguarding Body should have extra functions in the law. These functions will allow it to achieve its main function. We also think that the Safeguarding Body should have certain powers and responsibilities under the law, to help it do its job.

The Safeguarding Body's responsibility to receive reports and information about harm to at-risk adults

At the moment, one of the HSE Safeguarding and Protection Teams' functions is to receive reports of harm to at-risk adults. In line with the HSE National Policy and Procedures, they only have this function:

- in HSE disability services;
- in HSE services for older people; and
- in relation to adults with disabilities or people over 65 living in the community.

Unlike the HSE Safeguarding and Protection Teams, the new Safeguarding Body will be able to receive reports from all services and sectors. (The only exception will be reports about things that happened in prisons or Garda custody. We explained this in chapter 1.)

Where will the reports come from?

In chapter 9, we recommend that particular people should have to report harm to at-risk adults to the Safeguarding Body. We call them "mandated people". Because of this, it makes sense that the adult safeguarding laws should put a responsibility on the Safeguarding Body to receive the reports from mandated people. Non-mandated people will also be able to make reports to the Safeguarding Body, but they won't be required by the law to make the reports.

The Safeguarding Body can also get information about harm to at-risk adults through:

- any signs of abuse or neglect that the Safeguarding Body staff see;
- an at-risk adult telling them;
- anonymous reports; and
- information they get through a complaints process.

The Safeguarding Body's responsibility to take actions to safeguard at-risk adults

Currently, there is no special body with responsibilities under the law to safeguard at-risk adults. Earlier, we talked about the HSE Safeguarding and Protection Teams. These teams are made up of social workers. They have functions to:

- do screenings (screenings are where someone takes a quick look at all the reports that come in and decides which ones need to be investigated fully); and
- assess, investigate and respond to reports of harm.

However, the HSE Safeguarding and Protection Teams can only respond to reports in some circumstances. We talk more about this later. We also talk about the gaps left, because certain places in which abuse or neglect can happen are not covered by the work of the HSE Safeguarding and Protection Teams.

What did consultees say about responding to reports?

We thought carefully about how the Safeguarding Body should respond to reports of harm to at-risk adults. We talked to consultees about responding to reports and looked at research that has been done in this area. This is what they said:

- Lots of people said that proper responses to reports of harm are needed.
- Some people said that responding should be mandatory.
- A 2019 Irish study done with social workers and dementia workers also said that there should be mandatory responses written in the law.
- A 2018 Irish study said that responses need to be mandatory for reports to be effective.
- One person was worried about "reporting but not acting" happening. That person was also concerned about lots of resources being used on reporting instead of stopping abuse before it happens.

- Some researchers said that investigating and trying to stop abuse to at-risk adults has become a big part of social work in Ireland.
- Lots of people said that there needs to be an organisation with powers in the law to make enquiries and investigate reports of harm to at-risk adults in all settings.
- An organisation called Safeguarding Ireland has called for an independent safeguarding body to be created. They said this body should receive and investigate safeguarding complaints about individual people, oversee the investigation if the person lives in the community and isn't getting any care services, and oversee investigations into different types of abuse. This might include financial abuse, social welfare income abuse and human trafficking.
- In 2017, the Joint Oireachtas Committee on Health said that adult safeguarding laws needed to be made urgently. They recommended that reports of abuse should be investigated quickly.

What does the HSE's National Policy and Procedures say about responding to reports?

The HSE's National Policy and Procedures is the document which outlines:

- how the HSE Safeguarding and Protection Teams work, and
- how they respond to reports.

This document is important to look at when recommending laws about how the Safeguarding Body should respond to reports.

The HSE's National Policy and Procedures explains how to respond to reports of abuse in the community and in HSE services for older people or people with disabilities. It doesn't say anything about private services like nursing homes or HSE services that aren't for older people or people with disabilities.

The HSE's National Policy and Procedures outline the following ways to respond to reports:

- early screenings;
- addressing immediate safety issues;
- safeguarding plans;
- informal processes in the locality, like training;
- assessments or inquiries. These happen as part of a safeguarding plan and only when necessary;
- the local Safeguarding and Protection Team managing the case and assessing it;
- assessments by professionals like doctors.

The National Policy and Procedures outline who is responsible for responding to reports of abuse:

- If there is a concern about abuse in a HSE service, it is the service manager's responsibility to carry out a screening.
- If a HSE service finds out that a person in the community is being abused, the line manager of the service has two things they can do. They can either screen the report themselves or they can get help from a HSE Safeguarding and Protection Team.
- Sometimes, the HSE Head of Social Care in the area of the country in which a report is made might decide that the problem should be dealt with by the Safeguarding and Protection Team. This only happens in rare cases, like if the service manager has a conflict of interest.
- When a concern is reported straight to a HSE Safeguarding and Protection Team, the team will look into it.

The National Policy and Procedures also say what types of actions can be taken to investigate abuse, such as:

- informal processes in the locality;
- an inquiry done in the service or independently;

- the Safeguarding and Protection Teams assessing and managing the case.

We think that service providers should continue their work making enquiries into abuse to at-risk adults. This will make sure:

- there isn't too much work on the Safeguarding Body;
- resources are used in the best way possible; and
- abuse can be stopped quicker at a local level.

The new Safeguarding Body will have an important role in carrying out enquiries into abuse towards at-risk adults. At the moment, there is a gap where the HSE can't make enquiries into abuse that happens in private settings. Going forward, any cross-sectoral adult safeguarding policies that include making enquiries should cover all services that might be used by at-risk adults, even private services. The Safeguarding Body might need to get involved or give advice in services that have not been covered by the HSE's National Policy and Procedures. For this reason, it would be good if consistent screening could start to be done across public and private services, as it would help to get the Safeguarding Body involved quickly when needed.

The Safeguarding and Protection Teams' functions to do early screenings and assess and manage reports of abuse to at-risk adults are not written in the law. Lots of consultees think these types of powers need to be written in the law.

How do safeguarding bodies in other countries respond to reports?

We also looked at how different bodies respond to reports of abuse in other countries like:

- Scotland;
- Wales;
- England;
- Northern Ireland;

- Australia; and
- Canada

In these countries, the responses included:

- making enquiries;
- carrying out investigations;
- deciding whether an at-risk adult needs help to protect themselves from harm;
- passing cases on to other organisations or services; and
- helping state bodies, other people, and organisations to work together to respond to reports.

The Safeguarding Body's responsibility to take action to safeguard at-risk adults

We have looked carefully at:

- what current policies say about responding to reports of abuse to at-risk adults;
- the views of the people and organisations we talked to; and
- what the laws in other countries say about responding to reports of abuse to at-risk adults.

We think the new adult safeguarding laws should require the Safeguarding Body to take whatever actions it needs to when it has a good reason to believe that an adult is at risk. This means the Safeguarding Body would have to respond to reports, but they would have flexibility in how they do it. The adult safeguarding laws would:

- allow the Safeguarding Body to decide what actions are needed; and
- set out a list of actions the Safeguarding Body could take to respond to reports. This list wouldn't be a complete list. It would be a list of examples and the Safeguarding Body could take other sensible actions if needed.

This would leave room for the Safeguarding Body to use their expertise to assess each the situation and deal with it in a balanced way. The actions the Safeguarding Body can take to respond to reports might include:

- taking an at-risk adult out of a dangerous situation or stopping someone from contacting the at-risk adult;
- reporting a professional to their regulatory body;
- reporting to the Decision Support Service;
- applying to the court for orders about helping the at-risk adult to make decisions;
- preparing a safeguarding plan for a particular at-risk adult in certain circumstances;
- working with other agencies to make a safeguarding plan; or
- sharing information with another body.

In chapter 15, we talk about how the adult safeguarding laws will require the Safeguarding Body to work with other people and bodies. Therefore, working with other people and bodies could be part of the Safeguarding Body's response to a report.

The Safeguarding Body's power to carry out enquiries

Part of the Gardaí's job is protecting human rights and preventing, spotting and investigating crime. However, outside of crime, there is no body in Ireland which is created by law and dedicated to preventing harm and responding to abuse and neglect of at-risk adults.

At the moment, the HSE gives guidelines to its staff about how they should do their own investigations while the Gardaí are doing theirs. Unlike the HSE Safeguarding and Protection Teams, the Safeguarding Body would be able to make enquiries into abuse of at-risk adults in all settings. This might include international protection accommodation centres, or accommodation centres for adults who are homeless. In

this report, we thought about whether the Safeguarding Body should have powers to carry out enquiries and screenings.

Screenings are where someone takes a quick look at all the reports that come in and decides which ones need to be investigated fully. At the moment, screening is the HSE's first step when dealing with reports. They screen all reports to see which ones need to be investigated further. Screenings are important to make sure that resources are used in the best way possible.

(a) Screenings

We do not think that the adult safeguarding laws should specifically mention screenings. We think the Safeguarding Body can make its own policy for screenings. However, we do think that screenings fall under the Safeguarding Body's responsibility to take actions to safeguard at-risk adults.

(b) Enquiries

Making enquiries also falls under the Safeguarding Body's responsibility to take actions to safeguard at-risk adults. However, to make it clear in the law that the Safeguarding Body can carry out enquiries, we make another recommendation. We recommend that the Safeguarding Body should have all the powers it needs to carry out its functions, including making enquiries.

(c) Other powers

We also recommend that the Safeguarding Body should be able to take actions like:

- going into "relevant premises" like nursing homes and residential centres for people with disabilities, in certain circumstances;
- applying to the court to get an order so they can enter people's homes in certain circumstances;
- applying to the court for an order to take an at-risk adult out of a relevant premises, someone's home or another place in certain circumstances;

- applying to the court for orders to stop domestic violence against at-risk adults; and
- applying to the court for an order to stop someone from contacting an at-risk adult.

We talk about these powers more in chapters 10, 11, 12 and 13. They will only be used in very specific circumstances. Sometimes, the Safeguarding Body will use these powers together with the Gardaí. In chapter 15, we recommend that the Safeguarding Body should have a responsibility to cooperate with other organisations. In chapter 16, we recommend that the Safeguarding Body should have a responsibility to share information with other organisations in certain circumstances.

It is important to think about the Safeguarding Body's power to make enquiries because this power might lead to the Safeguarding Body using another power we recommend in the report, like working with other bodies.

The Safeguarding Body's enquiries also might lead to the Safeguarding Body taking action and intervening in a situation. An example of this is where the Safeguarding Body makes enquiries and then uses what they find out to apply to the court for an order stopping someone from contacting an at-risk adult. Other actions the Safeguarding Body might take after doing enquiries might be:

- safeguarding an at-risk adult from a staff member or another service user when no crime has been committed;
- safeguarding an at-risk adult from a staff member or another service user when the criminal investigation isn't finished yet;
- notifying the Garda National Vetting Bureau about a concern that arose during screening; or
- telling an employer or a professional regulatory body that a particular person might be a danger to at-risk adults.

In chapter 19, we recommend some new crimes to do with adult safeguarding. Hopefully, this will give the Gardaí a bigger role in investigating adult safeguarding issues. We talk a lot about organisations like the Safeguarding Body and the Gardaí working together in Chapter 15. Still, we want to make the Safeguarding Body's function to carry out enquiries clear. For this reason, we think the new adult safeguarding laws should give the Safeguarding Body the power to make enquiries in relation to all its other functions, including its primary function to promote the health, safety and well-being of at-risk adults. This would make it clear what the Safeguarding Body can do to promote the health, safety and well-being of at-risk adults.

So, we recommend that adult safeguarding legislation should give the Safeguarding Body all the powers it needs to do its job. This might include making enquiries if the Safeguarding Body thinks that enquiries are needed. Having this power in the law will allow the Safeguarding Body to make enquiries to fulfil its primary function, which is to promote the health, safety and well-being of at-risk adults. If it becomes clear that a case:

- reported to the Safeguarding Body,
- being screened by the Safeguarding Body, or
- being enquired into by the Safeguarding Body involves a crime,

the case should be reported to the Gardaí.

The Safeguarding Body's job to make a safeguarding plan

What is a safeguarding plan?

A safeguarding plan is made when there is good reason to think there are safeguarding concerns about a particular adult. These concerns might include:

- signs that an adult needs help to protect themselves from harm;

- abuse or attempted abuse to an adult, making them an at-risk adult; or
- neglect or attempted neglect to an adult, making them an at-risk adult.

The safeguarding plan maps out the actions that are planned to protect the at-risk adult. The safeguarding plan includes:

- actions to stop the at-risk adult being harmed more;
- actions to help the at-risk adult recover from harm;
- actions to stop the person who caused the harm doing it again in the future; and
- an outline of triggers that could put the at-risk adult at higher risk of harm and a plan to address these triggers.

The safeguarding plan can form part of the Safeguarding Body's response to a report of harm or abuse of at-risk adults.

How are safeguarding plans different to safeguarding statements, personal plans and care plans?

(a) Safeguarding statements

Safeguarding statements are about safeguarding at-risk adults generally. They are about the services at-risk adults use, not at-risk adults themselves.

They are different to safeguarding plans (which we explained above). Unlike a safeguarding statement, an at-risk adult can have a safeguarding plan even if they're not using services. This includes people living independently in the community who might need help to protect themselves from harm.

(b) Personal plans

Personal plans are also different to safeguarding plans. A law called the Health Act 2007 says that people in residential centres for people with disabilities can have personal plans made for them. A health care professional looks at the resident's health, personal and social care needs and writes them in the personal plan. They will

also include the supports needed for the resident to best progress in the way they want to.

(c) Care plans

Safeguarding plans are also different to care plans. A care plan can be written for any adult who is getting health or social care services. It is a written document about the care and supports a person is getting. It is given to the person, and they are involved in making it, in line with their ability to make decisions for themselves. Care plans set out goals and a date for the plan to be reviewed.

The difference between safeguarding plans and care plans is important to remember if safeguarding laws are going to put a responsibility on the Safeguarding Body to make safeguarding plans. If a person already has a care plan, it might only need to be updated with safeguarding actions. In other cases, care plans or personal plans can be looked at to help make the safeguarding plan.

How does the HSE make safeguarding plans?

The HSE's National Policy and Procedures sets out how safeguarding plans should be made and who should make them.

(a) Safeguarding and Protection Teams

The law does not require the HSE Safeguarding and Protection Teams to make a safeguarding plan when their enquiries give them good reason to think an adult is at risk of harm. However, they do have a responsibility to make a safeguarding plan for:

- adults over 65 or adults with disabilities who are living in the community and not using any HSE services; and
- adults over 65 or adults with disabilities who are using any HSE services, but only in rare cases. For example, if the service manager has a conflict of interest.

As we talked about earlier, when harm happens in a HSE service, it is the service provider's responsibility to make a safeguarding plan, not the Safeguarding and

Protection Team's. The Safeguarding and Protection Team might help out by making a safeguarding plan.

If a concern about a person living in the community is reported directly to the Safeguarding and Protection Team, the Team will do a screening and if necessary, make a safeguarding plan. In some cases, a HSE staff member in a community service, like a Primary Care nurse, might have the concern. In that situation, the Line Manager of the Primary Care service might make sure that a screening is done and that necessary actions are taken. The HSE's National Policy and Procedures says that the Safeguarding and Protection Team must review the results of any enquiries that come from a report screening. However, when a person is getting HSE services in the community, the Line Manager of the Service can make sure the safeguarding plan is made, instead of the Safeguarding and Protection Team.

(b) The service provider

In some cases, a report is done, and it gives good reason to think an adult is at risk. If the concerns are in a HSE service, it is the service provider's responsibility to make sure that a safeguarding plan is made.

If the concerns are in a centre that is managed or given money by the HSE, the Designated Officer of the centre will do a screening and report what they find to the service manager. They must report the result of the screening to the HSE Safeguarding and Protection Team, and the service and the HSE decide the next steps together. If the result of the screening is that there is good reason for concern, a safeguarding plan must be made. The service manager is responsible for the safeguarding plan and must appoint a safeguarding plan co-ordinator. In rare cases, the HSE Head of Social Care in the particular area might decide that it should be the Safeguarding and Protection Team's responsibility. For example, if the service manager has a conflict of interest.

If the safeguarding plan is made by a service provider, and an enquiry was thought to be needed after a screening, the HSE Safeguarding and Protection Team needs to approve the plan.

How will the Safeguarding Body make safeguarding plans?

In lots of cases where an at-risk adult is living in a residential service, it makes sense for the service provider to make their safeguarding plan. However, it makes sense for the Safeguarding Body to make safeguarding plans for:

- at-risk adults living in the community; and
- in rare cases, at-risk adults in residential or day services. This would make sense where the service manager has a conflict of interest, or where the risk to the adult has nothing to do with the day care service.

For this reason, we think that the law should give the Safeguarding Body power to:

- make safeguarding plans; and
- work with other organisations or services to make safeguarding plans when it makes sense to do so.

Writing down planned safeguarding actions in a safeguarding plan is an important step in responding to abuse or neglect of at-risk adults and stopping it from happening again. For this reason, we think the new adult safeguarding laws should give the Safeguarding Body a power to make, or work with others to make, a safeguarding plan. The Safeguarding Body will have this power when:

- they believe making the plan is necessary; and
- they don't think it would make more sense for a service provider to make the plan independently.

Does the Safeguarding Body have to make a safeguarding plan?

We thought about there being a responsibility on the Safeguarding Body to make a safeguarding plan. This means the law would require them to make safeguarding

plans in certain circumstances. However, we thought it was better to give the Safeguarding Body the power to make a safeguarding plan. This means they would have the option of making a safeguarding plan, but they wouldn't have to. We think this is a better option because it would give the Safeguarding Body more flexibility. If, for example, the at-risk adult doesn't want the Safeguarding Body to make a safeguarding plan, the law wouldn't say that one has to be made.

There should be some direction given to the Safeguarding Body about when to make a safeguarding plan. Instead of it being written in the law, we think the main government department responsible for adult safeguarding should set out the circumstances where the Safeguarding Body should use their power to make a safeguarding plan. (In chapter 20, we say that the main government department responsible for adult safeguarding should be chosen by the government)

How will the safeguarding plan be put into action?

(a) Public service bodies and service providers

Safeguarding plans can be pointless if there isn't a responsibility on certain people to put them into action. Putting the plan into action involves actions by service providers, the Safeguarding Body, and other bodies. In chapter 15, we recommend that the new adult safeguarding laws should put a responsibility on public service bodies and service providers to help the Safeguarding Body do their job to promote the health, safety and well-being of at-risk adults. Part of this job is to make safeguarding plans, so public service bodies and service providers would also be required to help with that.

(b) The Safeguarding Body

Things the Safeguarding Body could do to put the safeguarding plan into action include:

- helping people to get in touch with an independent advocate;

- helping people to access the services they need;
- passing on particular cases to HSE social care services or other service providers;
- making applications to the court to stop someone contacting an at-risk adult or helping the at-risk adult to make the application themselves;
- making other applications to the courts when they're needed.

There are some things that it's more difficult for the Safeguarding Body to do. For example, some safeguarding plans say that the at-risk adult needs social care services like home support. The Safeguarding Body doesn't have the power to give people home support. Also, adult safeguarding laws aren't the right place for new laws about assessing and meeting support needs and who qualifies for care and support services. Those laws about care and support belong in social care laws. (We talk about social care laws in chapter 1.)

This all means that the Safeguarding Body will be able to put some safeguarding plans into action, but not all of them. For this reason, it wouldn't be right for the Safeguarding Body to have responsibility for putting all safeguarding plans into action.

We still think that it's a good idea for the Safeguarding Body to have a power to make safeguarding plans, even if it doesn't have to put them into action. This is because in lots of cases, the Safeguarding Body **will** be able to take steps to put many of the plans into action.

Lastly, it is important to remember that the Safeguarding Body's job is to promote the health, safety and well-being of at-risk adults. Like with the enquiries we talked about earlier, making safeguarding plans falls under this heading. This means that the Safeguarding Body does have a little bit of a responsibility to make safeguarding plans when the plan sets out actions within their control.

The Safeguarding Body's job to provide training and information

Lots of consultees said that there should be requirements for staff members in certain services to have adult safeguarding training. Multiple consultees also said that the Safeguarding Body should have a role in the training, particularly in developing things like:

- safeguarding training;
- codes of conduct; and
- guidance to support and educate health and social workers about safeguarding principles and practices.

Hopefully, the Safeguarding Body providing training and information would:

- make people in different sectors and services more aware of adult safeguarding;
- make people better at spotting adult safeguarding issues and risks;
- result in more reports if at-risk adults are at risk of harm or being harmed; and
- stop more harm happening in the future.

How does the HSE currently provide education and training?

At the moment, the HSE National Safeguarding Office provides education and training about adult safeguarding. This job is not written in the law.

The HSE National Safeguarding Office provides two main adult safeguarding training programmes:

1. an eLearning programme for all HSE staff working in health or social care services; and
2. a follow-up programme for people with responsibility in HSE services.

Along with these two programmes, the HSE National Safeguarding Office:

- gives HSE services a toolkit to promote learning about safeguarding;

- organises seminars, webinars and other events; and
- works with other bodies to promote learning about safeguarding.

How will the Safeguarding Body provide training and information?

We think the Safeguarding Body should have a function to provide training, information and guidance about adult safeguarding. We think this function should be written in the law. They should provide the training, information and guidance to:

- public and private service providers;
- the staff of these service providers; and
- any other people the Safeguarding Body or the Minister thinks needs it.

The Safeguarding Body might work with other organisations like the Gardaí to make or deliver the training or guidance.

We also think one of the Safeguarding Body's jobs should be to tell the public about how it is promoting the health, safety and well-being of at-risk adults or anything else the Minister wants them to tell the public about.

These new laws about training and information would help the Safeguarding Body do its job to promote the health, safety and well-being of at-risk adults.

The Safeguarding Body's job to do research and collect data about adult safeguarding

What types of data would the Safeguarding Body collect?

(a) Data about reports of harm

We think one of the Safeguarding Body's jobs should be to collect data about reports of harm to at-risk adults. This is an important job because it:

- makes the public more aware of adult safeguarding; and

- tells health workers, social workers, service providers, the Gardaí and many others about the number of safeguarding concerns in their area, issues that are just starting, and difficulties that are always there.

Lots of consultees were worried that there:

- isn't enough data about abuse or neglect to at-risk adults, and
- can be data missing from certain places in which abuse or neglect can happen.

At the moment, one of the HSE National Safeguarding Office's jobs is to collect and put together the data it gets from the HSE Safeguarding and Protection Teams about abuse and neglect. The National Safeguarding Office publishes this data in its Annual Report. As we talked about earlier, only HSE services report adult safeguarding issues to the HSE. This means that when the National Safeguarding Office puts together its data, it is missing data from services outside the HSE, like private nursing homes.

Changes are happening in the HSE and in the Department of Health at the moment so that the HSE's policies apply to more services, not just HSE ones. If all public and private services had to report data to the Safeguarding Body, the Safeguarding Body would be able to make and publish a complete data set. This would allow people to analyse reports and allegations of harm fully. It would also give people a clearer picture of the harm of at-risk adults in Ireland.

Lots of people who work in safeguarding, like the Irish Association of Social Workers and mental health social workers, have said they have difficulty getting the data they need for their work. Because of this, they use research polls instead, which aren't as good as data.

In chapter 9, we recommend that the law should say that particular people must report harm of at-risk adults to the Safeguarding Body. This law would allow the Safeguarding Body to collect more data. We also recommend that more services should have to report specific things that go wrong. These changes in the law would help the Safeguarding Body to collect data.

Lastly, we think it should be written in the law that the Safeguarding Body can:

- collect data, see how useful it is, and publish it;
- do research on their own or with others; and
- hire other people to do research about adult safeguarding.

This would make sure that the Safeguarding Body is able to work with others to collect and look at data. It will also make sure that the gaps in data about harm to at-risk adults are addressed.

(b) Data about how adult safeguarding laws are being followed

We also think the Safeguarding Body should collect data about how the new adult safeguarding laws are being put into action. This will make it easier to see if the new laws work well.

Why is it important for the Safeguarding Body to collect data?

Collecting and keeping correct data and doing research will allow the Safeguarding Body to:

- spot patterns in safeguarding issues or see what types of safeguarding issues might happen in future; and
- spot differences in adult safeguarding in different parts of the country.

This helps the Safeguarding Body to decide where resources (like money, staff, and equipment) should go. The Safeguarding Body can also use data for campaigns raising awareness about adult safeguarding.

Lots of public bodies have a job written in law to do research in their area and work with others to do research. For example:

- the HSE; and
- the Child and Family Agency ("Tusla").

Given this, the jobs that the HSE National Safeguarding Office already does, and the benefits of collecting data and doing research about adult safeguarding, we think the Safeguarding Body should have data and research functions. These functions will be to:

- collect data and see how useful it is;
- do research on their own or with others; and
- hire other people to do research.

The Safeguarding Body should do this with its main function in mind: promoting the health, safety and well-being of at-risk adults.

Recommendations: How we think the law should change

R. 5.1 We recommend that adult safeguarding laws should create a Safeguarding Body. The main job of the Safeguarding Body should be to promote the health, safety and well-being of at-risk adults.

R. 5.2 We recommend that the new adult safeguarding laws should put a responsibility on the Safeguarding Body to receive reports from people who know, believe, or suspect that an at-risk adult:

(a) has been harmed,

(b) is being harmed, or

(c) is at risk of being harmed.

R. 5.3 We recommend that the new adult safeguarding laws should put a responsibility on the Safeguarding Body to take whatever actions it needs to do, to safeguard an adult who they have good reason to believe is at risk. These actions might include:

(a) taking an adult out of a dangerous situation or stopping someone from contacting the at-risk adult;

(b) reporting a professional to their regulatory body;

(c) reporting something to the Decision Support Service;

(d) applying to the court for orders about helping the at-risk adult to make decisions;

(e) preparing a safeguarding plan for a particular at-risk adult;

(f) cooperating with other agencies to make a safeguarding plan or taking any other actions the Safeguarding Body thinks are wise; or

(g) sharing information with another body under the new adult safeguarding laws.

R. 5.4 We recommend that adult safeguarding laws should give the Safeguarding Body all the powers it needs to do its job. This might include making enquiries if the Safeguarding Body thinks this is necessary. Having this power in the law would allow the Safeguarding Body to make enquiries to fulfil its primary function – to promote the health, safety and well-being of at-risk adults.

R. 5.5 We recommend that the new adult safeguarding laws should give the Safeguarding Body the power to make a safeguarding plan or work with other organisations, services or professionals to make a safeguarding plan. This should be done where the Safeguarding Body:

(a) believes a safeguarding plan is necessary; and

(b) decides that it wouldn't be better for a particular service provider to make the safeguarding plan by themselves.

R. 5.6 We recommend that, under the new adult safeguarding laws, the Safeguarding Body should provide training, information and guidance to:

(a) public and private service providers and their staff;

(b) mandated people; and

(c) any other people the Safeguarding Body or the Minister think need training.

R. 5.7 We recommend that the Safeguarding Body should have a function in the law to provide information to the public about its main function to promote the health, safety and well-being of at-risk adults.

R. 5.8 We recommend that the law should give the Safeguarding Body functions to:

(a) collect data, see how useful it is, and publish it; and

(b) undertake research, hire other people to do research, or work with other people to do research related to the Safeguarding Body's main function of promoting the health, safety and well-being of at-risk adults.

Chapter 6: Organisational and regulatory structures: A Safeguarding Body and powers of various regulatory bodies

What is this chapter about?

This chapter is about the responsibilities and powers of the organisations that deal with adult safeguarding in Ireland.

The aim of this chapter is to talk about what model we could use for adult safeguarding. We look at this in two parts. These are:

- a social work-led adult safeguarding organisation under the law – this is what we call the "Safeguarding Body"; and
- an adult safeguarding regulatory organisation.

Why do we need a Safeguarding Body?

At the moment, there is no overall organisation that is legally responsible for adult safeguarding in Ireland. However, some social work-led adult safeguarding responsibilities are carried out by the HSE's National Safeguarding Office and its local Safeguarding and Protection Teams. Those responsibilities are set out in policies rather than laws. We think that a Safeguarding Body is needed, with its responsibilities clearly set out in laws.

We think that it would be best for the government to decide what organisation should be the Safeguarding Body. We think the government should make this decision because it is not just a decision about the law or how the law could be improved. It is also a decision about how public bodies should be set up and how public money should be spent. In this chapter, we explain important things for the government to think about when it is making that decision.

What model should we use for the Safeguarding Body?

When we were looking at what the model of the Safeguarding Body should be, we looked at:

- the views of consultees;
- what other countries do;
- regulatory principles; and
- government policy.

What did consultees think?

We asked consultees and stakeholders what they thought would be a good model for a Safeguarding Body. They thought that:

- adult safeguarding responsibilities should be written down clearly in laws; and
- there should be more regulatory responsibilities for adult safeguarding – either for a new body or for existing regulators.

Some consultees thought that it would be a good idea to create a new agency with lots of powers, including to:

- receive and respond to reports of known or suspected abuse or neglect of at-risk adults;
- check on the performance of the HSE's Safeguarding and Protection Teams;
- review serious incidents involving at-risk adults; and
- set standards for adult safeguarding and carry out inspections to make sure that people are following the standards.

This would mean that the Safeguarding Body would both deal with reports of known or suspected abuse and regulate how these reports have been dealt with. These responsibilities would conflict with each other.

We believe that the responsibility to receive and respond to reports of known or suspected abuse or neglect of at-risk adults should be carried out as part of social work-led adult safeguarding services. These are services that prioritise building relationships and providing support over time, rather than just investigating.

Therefore, we believe that a Safeguarding Body should be responsible for dealing with reports of known or suspected abuse or neglect in all sectors. In order to avoid conflicting responsibilities, we think the Safeguarding Body should not have regulatory responsibilities (such as setting standards). Instead, we think more responsibilities should be given to regulatory bodies that already exist.

A Safeguarding Body as a social work-led adult safeguarding agency

At the moment, the HSE and its Safeguarding and Protection Teams provide social work-led adult safeguarding services. However, there are issues with this because the Safeguarding and Protection Teams do not have:

- responsibility under the law for preventing harm to at-risk adults, or
- powers under the law to do things to safeguard at-risk adults.

Instead, their responsibilities are written in a policy document. They have to rely on other organisations and services cooperating with them because they have no legal powers (for example, to enter a nursing home to check on people there). The HSE National Safeguarding Office has talked about why we need new laws to help the HSE to deal with safeguarding issues.

We think that it would be best for new laws to set up a social work-led adult safeguarding agency as the "Safeguarding Body". This would allow the Safeguarding Body to effectively carry out its responsibilities and powers in all sectors.

What responsibilities and powers should the Safeguarding Body have?

In chapters 5, 9, 10, 11, 12, 13, 15 and 16, we recommend and explain lots of responsibilities and powers for the new Safeguarding Body. These should all apply regardless of who the government decides should be the Safeguarding Body.

For example, the Safeguarding Body would be responsible for:

- dealing with reports of suspected abuse or neglect of at-risk adults in all settings and sectors; and
- other things like research, collecting information, education and training, and informing the public about adult safeguarding.

What sectors should the Safeguarding Body cover?

We think reports or concerns of known or suspected abuse of at-risk adults might come up in three situations:

- in health or social care services (like disability services, mental health services and care settings such as hospitals);
- in residential accommodation services (like homelessness accommodation and international protection accommodation); and
- in private homes, where financial services are being used, or in sports or other community organisations (like religious groups).

We know that safeguarding reports or concerns might come up outside of these situations. For example, they might happen where an adult is:

- in prison, or
- being held in a Garda station.

We think that these two situations should be dealt with under the separate laws that already exist for these areas. (We explained this in chapter 1.)

So, we believe that the Safeguarding Body should be responsible for dealing with reports or claims of known or suspected abuse in all settings, except for prisons and Garda custody. This is what we mean when we say that the Safeguarding Body should have "cross-sectoral" responsibility for adult safeguarding.

Who should be the Safeguarding Body?

Before we decided that the government should choose who the Safeguarding Body should be, we looked at two options:

- setting up the Safeguarding Body inside an organisation that already exists (this could be the HSE or another organisation); or
- setting up a new, independent organisation.

A Safeguarding Body within the HSE

The HSE has a lot of experience with providing social work-led adult safeguarding services. Making the Safeguarding Body part of the HSE would mean that the Safeguarding and Protection Teams would have:

- more powers, and
- a stronger basis for the work they do already.

The Safeguarding and Protection Teams would need more training and resources, but there would not be any big changes needed, because a new body would not be made.

Consultees talked about different reasons for and against the Safeguarding Body being set up within the HSE. In the table on the next page, we have set out some of those reasons.

Reasons to make the Safeguarding Body part of the HSE	Reasons to not make the Safeguarding Body part of the HSE
• much shorter lead-in time, • using the adult safeguarding experience that HSE staff have, • adult safeguarding services would be in a body that can also provide other social care services such as home support, • not much disruption to structures that already exist, • avoiding any issues with a new body having to cooperate and share information with the HSE, and • lower costs as a new body wouldn't need to be set up.	• possible or real conflicts of interest, (A **conflict of interest** is where someone is too involved in a situation to make a fair decision about it. In this case, some people are worried that the HSE could not decide in a fair or unbiased way about whether actions need to be taken to respond to reports of harm of an at-risk adult. This is because the HSE manages and funds services where at-risk adults might be harmed.) • consultees are worried that the culture of the HSE does not support adult safeguarding, • this might not provide as much awareness of the Safeguarding Body and what it does, and • this might not allow for adult safeguarding across different sectors, outside of health and social care.

We think that the government should decide who the Safeguarding Body should be, which includes deciding whether it would be appropriate for the Safeguarding Body to be set up within the HSE on a long term basis.

If the government decides that it cannot or should not make the decision about which organisation should be the Safeguarding Body soon, we think that setting up the Safeguarding Body as part of the HSE (under the law) would be a suitable short term approach.

This would mean that an organisation would have legal responsibility for adult safeguarding, with legal powers to keep at-risk adults safe from harm, while the government is deciding what organisation should be the Safeguarding Body in the long term. We think that this is important, because adult safeguarding in Ireland needs to be improved as soon as possible.

A Safeguarding Body within another organisation (that is not the HSE)

Another option that we thought about is moving social work-led adult safeguarding services from the HSE to a new Safeguarding Body that is within another organisation. This Safeguarding Body would be created within another organisation that exists already, but is not the HSE. In the table below, we set out the organisations that we thought about, what people told us about these options, and what we decided.

Organisation	Consultee and stakeholder views	Our decision
HIQA	Consultees did not support HIQA being the Safeguarding Body. This was because HIQA regulates services. It does not have experience in: • investigating reports about individual people, or	We do not think that the Safeguarding Body should be set up as part of HIQA. Instead, we think HIQA should: • continue its work as a regulator, and

	• providing safeguarding supports to people that have been abused or neglected.	• have a role in regulating adult safeguarding services. We talk about this more below.
Child and Family Agency ("Tusla")	Some consultees thought that the Safeguarding Body could be set up within Tusla. However, lots of people disagreed. One public body said that Tusla: • does not have experience with safeguarding at-risk adults, and • should keep focusing on preventing harm to children.	We do not recommend setting up the Safeguarding Body within Tusla. However, if the government decides to make new laws about child **and** adult social care in the future, the government should think about moving social work-led adult safeguarding services to a new body. This body could be responsible for social work or social care throughout people's whole lives.
Mental Health Commission	Some consultees thought it might be possible to expand the role of the Mental Health Commission, and set up the Safeguarding Body inside it. Others were worried that this would disrupt mental health services, which are different to health services and social care services.	If the Safeguarding Body is set up as part of a new and renamed Mental Health Commission, there are lots of policy issues to think about. We think that it would be best for the government to:

		• think about these issues, and • decide whether this option could work.

Overall, we think that the Safeguarding Body could be created as an independent body or as part of another body that exists already. However, we think that this decision is for the government to make. We talk about the Safeguarding Body as an independent body in the next section.

A new independent Safeguarding Body

Another option is to set up the Safeguarding Body as a new, independent organisation.

To do this, the members of the HSE's Safeguarding and Protection Teams would have to move to the new organisation. This would be needed:

- to make sure that the new organisation has enough experience and knowledge of adult safeguarding, and
- to avoid two different bodies (the HSE's Safeguarding and Protection Teams and the new Safeguarding Body) doing very similar things.

Consultees talked about different reasons for and against setting up the Safeguarding Body as a new, independent organisation. In the table on the next page, we have set out some of those reasons.

Reasons for creating a new Safeguarding Body	Reasons for not creating a new independent Safeguarding Body
• this would make it clear to everyone who is responsible for adult safeguarding in Ireland and who people can contact if they have concerns, • this would mean that a positive attitude to adult safeguarding could develop in the organisation, • this new body could work across all sectors (not just health and social care), • this would prevent worries about possible or real conflicts of interest from making the Safeguarding Body part of the HSE (we explained conflicts of interest above).	• this would take time to set up and organise, • there would be disruption as the HSE's Safeguarding and Protection Teams move to the new organisation, • it may be harder for a new, independent organisation to cooperate with the HSE and make sure that people get the right services from other organisations, • this would cost more than the other options.

We think that setting up a new, independent organisation could be an appropriate way to create a Safeguarding Body in Ireland. However, we think that this decision should be made by the government.

A multi-agency structure or multi-agency partnership model

Another option for adult safeguarding in Ireland is that different organisations that already exist could work together to respond to reports of actual or suspected harm of at-risk adults. We call this a "multi-agency model" because it involves lots of different organisations or agencies working together.

A multi-agency model could involve different organisations such as:

- the Gardaí,
- the HSE,
- HIQA,
- the Mental Health Commission, and
- the Department of Social Protection.

This kind of model is used in other countries. For example, in Scotland, different organisations work together in partnerships called "adult support and protection partnerships". The main organisations involved are the local county council, the police and the local Health Board. The adult support and protection partnerships in Scotland share information, skills and powers to:

- decide if reports of actual or suspected harm need to be investigated;
- decide if any actions are needed; and
- take any actions needed.

In the table on the next page, we talk about the reasons for and against having a multi-agency structure or multi-agency partnership model.

Reasons for having a multi-agency structure or multi-agency partnership model	Reasons for not having a multi-agency structure or multi-agency partnership model
• The staff from the various agencies or organisations would have different knowledge and skills that they could combine. • It could help to improve cooperation between agencies, which is important for adult safeguarding. • It could be created as part of an organisation that exists already or staff from different agencies could just agree to work together in the same place.	• It might be difficult to set up because different government departments have responsibility for the different agencies and organisations. • It could take time to set up because different organisations would have to agree on how it would work.

There are some good reasons to create a multi-agency structure or multi-agency partnership model, but we believe this is for the government to decide. Even though we are not making a recommendation about creating a multi-agency structure or multi-agency partnership model, we know how important multi-agency cooperation is. We talk about cooperation more in chapter 15.

Should we create a new regulatory body for adult safeguarding?

Some consultees told us that they thought an adult safeguarding regulatory body should be created. This body would monitor the services provided by the HSE's Safeguarding and Protection Teams or the Safeguarding Body.

We do not think that Ireland needs one specific adult safeguarding regulatory body. Instead, we think that more responsibilities could be given to the regulatory bodies that already exist.

(As we have explained above, we do not think that the Safeguarding Body should have regulatory responsibilities.)

We talk about different regulatory responsibilities below.

Setting standards for adult safeguarding

Regulatory bodies set standards for the services that they regulate. HIQA and the Mental Health Commission are two examples of regulators:

- **HIQA** sets standards about safety and quality for health and social services. They make sure that residential centres for older people and residential centres for adults with disabilities follow certain rules and standards. Some of these rules and standards are related to adult safeguarding.
- **The Mental Health Commission** sets standards for mental health services. They make sure that residential centres for people with mental health issues follow certain rules and standards. Some of these rules and standards are related to adult safeguarding.

The regulators that exist already in the health and social care sector have experience with adult safeguarding issues in the services that they regulate. We think they have enough experience to be able to set adult safeguarding standards for these services.

We also think other regulators can do this. Some examples of other regulators are:

- the Central Bank,
- the Domestic, Sexual and Gender-Based Violence Agency ("Cuan"), and
- the Policing and Community Safety Authority (this agency has not been created yet).

We do not think it would be a good idea to create a new regulator that would be responsible for setting adult safeguarding standards for all sectors. This would mean that:

- regulatory responsibilities would overlap, and
- regulators could come into conflict with each other.

In chapter 7, we recommend that the regulators that exist already should be given more regulatory responsibilities so they can check whether providers of relevant services are following their adult safeguarding responsibilities.

Regulation of social work-led adult safeguarding services

Currently, the HSE's Safeguarding and Protection Teams provide social work-led adult safeguarding services in some settings. These services are not regulated. This means that the only standards that are set for these services are internal standards that the HSE sets itself.

There is no independent monitoring of these services to check:

- the safety and quality of the services, and
- whether the services are complying with any relevant standards.

To compare, HIQA sets standards about the safety and quality of child social care services that are provided by Tusla. HIQA can also:

- investigate the safety, quality and standards of the services provided by Tusla, and
- check whether these services are complying with rules and standards.

In other countries such as Scotland, England and Wales, local county councils provide social care services to adults. Independent bodies regulate these services.

We think that social work-led adult safeguarding services in Ireland should be regulated. We talk about who the regulator should be below.

Should a regulator carry out adult safeguarding reviews?

In chapter 17, we recommend that adult safeguarding reviews should be introduced under the law for very serious adult safeguarding incidents. The purpose of these adult safeguarding reviews is to:

- learn from past mistakes, and
- improve systems and practices to stop mistakes from happening again.

We believe that these adult safeguarding reviews can exist alongside the other kinds of reviews and inquiries that service providers and regulators currently do. This is because those reviews and inquiries focus on what actions can be done soon to:

- prevent harm to an individual at-risk adult or a group of at-risk adults, or
- make a service provider follow the rules.

Adult safeguarding reviews are different because the purpose is to learn from past serious incidents to improve services in the future.

We thought about whether HIQA, the Mental Health Commission, or their inspectors should be responsible for doing adult safeguarding reviews. However, the responsibilities of these regulators focus on issues across a service, rather than serious incidents involving individual service users. So, getting one of these regulators to do adult safeguarding reviews would be a big change.

We also thought about whether each regulator could just carry out adult safeguarding reviews for its own sector. However, there are two issues with this option:

- There are many services that at-risk adults use that are not regulated. This means there is no suitable regulator that could carry out adult safeguarding reviews for these services.

- Having more than one reviewing body would increase the chance that adult safeguarding reviews are not done in the same way. This could mean learnings might not be helpful as they cannot be applied to all sectors.

We also thought about whether the Safeguarding Body could be responsible for doing adult safeguarding reviews. There are two issues with this option:

- We think that carrying out adult safeguarding reviews is a regulatory responsibility. We do not believe that the Safeguarding Body should have regulatory responsibilities.
- As we explained above, the Safeguarding Body will provide adult safeguarding services. The Safeguarding Body would not be independent enough to do adult safeguarding reviews, as its work (or the work of its staff) might be examined as part of these reviews.

It might be best for a new independent body to be set up to carry out adult safeguarding reviews. However, this would take time and would cost money.

In chapter 17, we say that we are not going to decide who should be in charge of carrying out adult safeguarding reviews, as this decision involves lots of policy issues. We think the government should decide who should carry out adult safeguarding reviews.

Should there be a new regulatory body, or should we give more responsibilities to regulatory bodies that exist already?

Some consultees suggested that there should be a new, independent adult safeguarding regulatory body. This new body could be responsible for things like:

- setting standards for adult safeguarding;
- carrying out adult safeguarding reviews;
- monitoring social work-led adult safeguarding services;
- coordinating regulatory bodies that already exist; and

- ordering authorities like the HSE and regulators to take action.

Others thought that the regulatory bodies that already exist should:

- be given more responsibilities for adult safeguarding, and
- work together to carry out these responsibilities.

As we mentioned above, creating a new regulator could mean that:

- regulatory responsibilities could overlap, and
- regulators could come into conflict with each other.

In chapter 20, we talk about involving all of the government departments in adult safeguarding. We recommend that government departments should work together in a steering group. These departments will be responsible for the existing regulatory bodies and could help them to work together – so a new regulatory body would not be needed to do this coordination. We also talk more about cooperation between organisations in chapter 15.

Because of all this, we do not believe that Ireland needs a new independent adult safeguarding regulator.

Regional adult safeguarding structures

Regional structures are structures that involve bodies or services working at a local level, instead of a national level. Regional adult safeguarding structures can include:

- regional social work-led adult safeguarding services – at the moment, these are the HSE's Safeguarding and Protection Teams; and
- regional multi-agency structures – these encourage agencies to work together. These exist under the law in other countries such as Scotland, England and Wales.

The Department of Health has said that it may be better for any new safeguarding body that is created to be given flexibility in how it works internally, instead of being

specific in laws about what the Safeguarding Body's structure should be. We agree with this.

We suggest that new adult safeguarding laws should just say that the Safeguarding Body should be responsible for keeping and developing services, including regional services, in order to promote the health, safety and well-being of at-risk adults.

What do we recommend?

A Safeguarding Body

We recommend that a social work-led adult safeguarding agency (the "Safeguarding Body") should be created. The Safeguarding Body should have the functions, responsibilities and powers we talk about in chapter 5 (and elsewhere in this report).

We believe that the Safeguarding Body:

- should be responsible for social work-led adult safeguarding services, and
- should not have regulatory responsibilities.

The Safeguarding Body should be responsible for adult safeguarding across many different sectors (not just health and social care).

Regulatory responsibilities

In this chapter, we talk about giving more responsibilities to the regulatory bodies that already exist. In chapter 7, we make some recommendations about this.

Because of this, we do not think that a new, independent adult safeguarding regulatory body is needed.

In chapter 17, we recommend that adult safeguarding reviews should be carried out by a reviewing body. We do not suggest an organisation to be this reviewing body. We think that it is for the government to decide this. As we talked about earlier in this chapter:

- we do not think the reviewing body should be the Safeguarding Body, and
- we do not think that the Safeguarding Body should have any regulatory responsibilities.

Who should be the Safeguarding Body?

We believe the two most suitable options for creating a Safeguarding Body are:

- as an independent social work-led adult safeguarding agency, under the law; or
- within an agency or organisation that exists already, under the law.

Because creating a Safeguarding Body means making decisions about how public bodies should be set up and how public money should be spent, we think the government should decide who the Safeguarding Body should be.

No matter what the government decides, we recommend that:

- the functions, responsibilities and powers of the Safeguarding Body that we recommend in chapter 5 should apply, and
- any other recommendations in this report that apply to the Safeguarding Body should also apply.

What should happen while the government decides what organisation should be the Safeguarding Body?

We think that, if the government decides that it cannot or should not decide how to set up the Safeguarding Body soon, then a short term fix is needed. This is needed because adult safeguarding in Ireland must improve as soon as possible.

If the government decides that it cannot or should not decide how to set up the Safeguarding Body soon, we think an appropriate short term option would be to create the Safeguarding Body as an office within the HSE. If this happens, we believe that the Safeguarding Body within the HSE should:

- be responsible for providing social work-led adult safeguarding services through the Safeguarding and Protection Teams;
- have the responsibilities of the Safeguarding Body that we explain in chapter 5; and
- work independently from the HSE Social Care Division.

As we believe that this decision is for the government, we have included the following two options in our new suggested adult safeguarding laws (that are available at the back of our full report):

- setting up the Safeguarding Body as a new, independent organisation with a new name; and
- setting up the Safeguarding Body in the HSE.

How should social work-led adult safeguarding services be regulated?

As we talked about earlier in this chapter, the HSE's Safeguarding and Protection Teams currently provide social work-led adult safeguarding services (under a policy, instead of a law). These services are not regulated. We believe that:

- the social work-led adult safeguarding services that will be provided by the Safeguarding Body should follow standards, and
- an independent regulator or a group of regulators should monitor and inspect the social work-led adult safeguarding services that will be provided by the Safeguarding Body.

So, we recommend that a regulator that exists already or a group of regulators should be responsible for regulating the social work-led adult safeguarding services that are provided by the Safeguarding Body. We believe this could be done by:

- giving HIQA more responsibilities for social work-led adult safeguarding services. This would include setting standards for the services, and inspecting whether the services are following these standards; or

- giving responsibilities to a group of regulators that are chosen or created by the government. This group could be led by one regulator, such as HIQA.

Recommendations: How we think the law should change

R. 6.1 We recommend that a social work-led adult safeguarding agency (the "Safeguarding Body") should be created. The Safeguarding Body should have the functions, responsibilities and powers that we talk about in chapter 5.

R. 6.2 We recommend that the functions, responsibilities and powers of the Safeguarding Body that we recommend in chapter 5 should apply no matter what organisation the government decides should be the Safeguarding Body. Any other recommendations in this report that apply to the Safeguarding Body should also apply no matter what organisation the government decides should be the Safeguarding Body.

R. 6.3 We recommend that, if the government decides that it cannot or should not decide how to set up the Safeguarding Body soon, then a short term fix is needed. We believe that an appropriate short term option would be to create the Safeguarding Body as an office within the HSE.

R. 6.4 We recommend that, if the Safeguarding Body is created as an office in the HSE, it should work independently from the HSE Social Care Division.

R. 6.5 We recommend that a regulator that exists already or a group of regulators should be responsible for regulating the social work-led adult safeguarding services that are provided by the Safeguarding Body. We believe this could be done by:

(a) broadening the responsibilities that HIQA has already to include social work-led adult safeguarding services. This would

include setting standards for these services, and inspecting whether the services are following these standards; or

(b) giving responsibilities to a group of regulators that are chosen or created by the government. This group could be led by one regulator, such as HIQA.

Chapter 7: Imposing safeguarding responsibilities on certain service providers

What is this chapter about?

In this chapter, we talk about relevant services. A relevant service is any person or organisation that works with or provides services to adults, including adults who are or may be at-risk adults.

An at-risk adult may use many services. However, at the moment the laws to keep them safe from harm may be different depending on which service they are using. We think the same laws should apply to all relevant services.

This includes laws about:

- preventing harm to at-risk adults;
- carrying out a risk assessment;
- prepare a safeguarding statement for a service;
- making a safeguarding plan about an at-risk adult;
- providing adult safeguarding training and information; and
- collecting and sharing data about adult safeguarding with the Safeguarding Body.

We talk more about these in this chapter.

What types of services should follow the new adult safeguarding laws?

We think that all relevant services should follow the new adult safeguarding laws.

We recommend that there should be a list of relevant services in the new adult safeguarding law. We recommend that this list should include:

- residential centres for older people and adults with disabilities;
- services that provide care to adults in their homes;
- services that provide day services to adults with disabilities;
- services that provide day services to older adults;
- services that provide personal assistance to adults with disabilities;
- hospitals, hospices, and other centres that provide physical health services to adults;
- mental health services including residential centres;
- international protection accommodation centres;
- domestic, sexual or gender-based violence centres;
- centres that treat drug and alcohol addiction;
- homelessness accommodation;
- services providing therapy and counselling;
- drivers and supervisors who bring adults to day services or day-care services; and
- adult safeguarding work carried out by the Gardaí.

We also recommend that the government can add to this list in the future.

Do relevant services have a legal responsibility to prevent harm?

Some relevant services already have legal responsibilities to prevent harm. These responsibilities are requirements that must be followed under the law. We talk about some of these below. The job of a regulatory body is to make sure that organisations and relevant services are following all the rules and laws that apply to them.

We think that there are gaps in the laws that give these responsibilities to relevant services. One of these gaps is that not all of these relevant services are regulated. We talk about these gaps more in this chapter.

Regulations under the Health Act 2007

"Regulations" are laws created by ministers or other public bodies under powers given to them by Acts of the Oireachtas. There are Regulations under the Health Act 2007. These say that residential centres for older people must take steps to protect residents from abuse. This includes:

- training staff to recognise and prevent abuse;
- investigating abuse;
- having a risk management policy in place; and
- having a plan to respond to major incidents. An example of a major incident would be an incident that is likely to cause death.

This law also applies to residential centres for adults with disabilities. In these centres, residents must be supported in developing the skills they need to protect themselves.

Regulations made under the Mental Health Act 2001

These say that owners of approved centres are required to have a risk management policy in place. An approved centre is a place where someone getting mental health treatment stays.

This policy should:

- set out what is being done to control risks;
- set out the procedure for identifying and recording incidents; and
- say how the approved centre will identify and assess risks generally.

National Standards for Adult Safeguarding (health and social care sectors)

HIQA and the Mental Health Commission wrote and published these standards. The relevant services that must apply these standards are:

- residential centres for older people;
- residential centres for adults with disabilities;
- publicly funded health and social care services; and
- all mental health services.

However, there are many other services which do not have to apply these standards. An example of this is homeless services.

The national standards place a responsibility on the relevant service providers to:

- deliver care;
- reduce the risk of harm;
- promote service users' safety and well-being;
- have an adult safeguarding policy in place; and
- have risk management arrangements in place.

Home support services

Currently, there are no laws that govern professional home care services. This means that there are no legal responsibilities on these service providers for adult safeguarding.

Some home care services are funded by the HSE. Home care services that are funded by the HSE must follow rules made by the HSE in funding agreements. Many people choose private home care services, so these HSE rules will not apply.

Interim Standards for day services for adults with disabilities

These standards apply to services and supports that are funded by the HSE (although the services may be run by public, private or voluntary organisations). They say that service providers must have risk assessment and management policies in place.

These standards do not apply to:

- mental health services;
- residential services for adults and children with disabilities;
- personal assistant services;
- home care and home support packages;
- home help services; or
- mainstream and community services that the HSE pays for service users to attend.

National Standards for accommodation offered to people in the international protection process

People who come to Ireland seeking international protection are offered accommodation. International protection is a type of asylum. This means that a person flees to a country, like Ireland, because their own home country is unsafe.

Service providers of this accommodation do not have legal responsibilities regarding adult safeguarding. However, the Minister must consider an at-risk person's reception needs.

The national standards only apply to permanent accommodation. They do not apply to emergency or temporary accommodation, for example, in hotels or hostels.

National Quality Standards Framework for Homeless Services

These standards set out the responsibilities of providers of homeless accommodation who get government funding.

These standards say that people who use homeless accommodation should be safeguarded and protected from abuse.

The national quality standards say that providers of homeless accommodation should have rules for managing the risk of harm to people who use the service.

Service providers that provide refuge accommodation services for victims of domestic, sexual or gender-based violence

In the past, the Child and Family Agency was responsible for the care and protection of victims of domestic, sexual and gender-based violence. A law from 2023 gave these functions to a new agency called Cuan. Cuan is the national Domestic, Sexual and Gender-Based Violence Agency. Cuan now provides accommodation for victims of domestic, sexual or gender-based violence. Cuan is allowed by the law to set standards for services that provide refuge accommodation. This means that in the future, Cuan could set standards for keeping people safe in refuge accommodation services which the services would have to follow.

Relevant services who are charities

The Charities Act 2009 says that if a charity works with at-risk adults, they must have certain things in place, including:

- risk assessment procedures;
- safety checks; and
- safeguards.

The Charities Regulator published safeguarding guidance in 2020. This safeguarding guidance is for charities who work with at-risk adults. It says that safeguarding

policies and procedures need to be in place. This includes having a risk assessment in place. The safeguarding guidance says that the aim of a risk assessment is to:

- prevent abuse;
- reduce the chance that abuse will occur; and
- have a policy to respond to abuse.

Safeguarding and HSE funding agreements

Under the Health Act 2004, the HSE may have arrangements with a service provider. A service provider is an organisation who agrees to provide a health or personal social care service on behalf of the HSE. These agreements are known as service agreements.

The service agreements say that service providers must have risk management policies and procedures in place.

These currently only apply to service providers that work with older people and people with disabilities.

Should relevant services have a legal responsibility to prevent harm?

It is important that relevant services are provided in a safe way. Any risk of harm should be managed and reduced.

What would this legal responsibility to prevent harm look like?

There should be policies and procedures in place to prevent harm. This includes:

- being able to make a complaint;
- being able to report abuse;
- having a risk management policy in place;
- making sure that policies and procedures are reviewed regularly;

- making sure that complaints are dealt with on time;
- having well trained staff; and
- fostering a "safeguarding culture".

What will relevant services have to do under the new law?

We think relevant services should have to:

- do a general risk assessment for the service. This should identify risks of harm to at-risk adults; and
- prepare a general adult safeguarding statement for the service.

Both of these should be written down.

What should an adult safeguarding statement look like?

An adult safeguarding statement should say what policies, procedures and measures are in place to reduce risks and prevent harm to adults using the service.

We think this statement should talk about:

- managing risks;
- what to do when a staff member is being investigated for causing harm to a service user;
- Garda vetting (Garda vetting is a type of background check where the Gardaí find out if a person has any criminal history. Garda vetting is required when someone wants to work with at-risk adults.);
- training staff so that they can identify harm;
- updating care plans or personal plans of at-risk adults to include a safeguarding plan;
- how to make a report to the Safeguarding Body;
- keeping a list of mandated people. A mandated person must report any abuse or harm that takes place at the relevant service; and

- appointing an adult safeguarding officer.

Where should the adult safeguarding statement be available to view?

We think that the adult safeguarding statement should be available to view by:

- service users;
- staff; and
- anyone else who requests it.

This means that everyone is aware of:

- the risks posed to service users; and
- how the service provider deals with these risks, to prevent harm.

Organisations like HIQA or the Mental Health Commission should be able to request these documents. We also think that any person should be able to ask to look at these documents.

We also recommend that a copy of the adult safeguarding statement should be placed in a clearly visible place within the relevant service.

How would we make sure that relevant services are following the new adult safeguarding laws?

There need to be checks in place to make sure that these new laws are followed.

We recommend that these regulatory bodies should check that the new laws are being followed:

HIQA

We recommend that HIQA should check that the following relevant services have a general risk assessment and adult safeguarding statement:

- residential centres for older people and adults with disabilities;

- permanent accommodation services for people in the international protection process; and
- home support providers.

The Mental Health Commission

We recommend that the Mental Health Commission should check that any services inspected under the Mental Health Act 2001 have a general risk assessment and an adult safeguarding statement.

The Policing and Community Safety Authority

The Policing and Community Safety Authority is not yet active. There is a new law about policing that has not yet come into operation. When this new law is brought into operation, the Policing and Community Safety Authority will begin its work. Their job will be to oversee the work of the Gardaí.

We recommend that the new authority should check that services provided by the Gardaí have both a general risk assessment and an adult safeguarding statement.

Cuan – The Domestic, Sexual and Gender-Based Violence Agency

We recommend that Cuan should check that refuge accommodation services for victims of domestic, sexual or gender-based violence have both a general risk assessment and an adult safeguarding statement.

What should be done if relevant services are not following the new adult safeguarding laws?

We believe there should be consequences for relevant services if they do not follow the new adult safeguarding laws.

In this section, we will talk about what should happen if a relevant service does not:

- carry out a general risk assessment; or
- have a general adult safeguarding statement.

Regulatory bodies will be responsible for making sure that these laws are being followed.

If a relevant service does not show these documents, a regulatory body can take action in response.

Sending a warning notice to the relevant service

A warning notice should be sent in writing. It should:

- tell the relevant service how they are not following the law;
- give the relevant service a deadline before it must show these documents; and
- let the relevant service know what the consequences are for not responding to the notice.

The relevant service should have 14 days to respond to the warning notice.

Sending a non-compliance notice to the relevant service

- A non-compliance notice should be sent if there is no response from the relevant service to the warning notice.
- This notice should come into effect 21 days after it is served.
- The relevant service can appeal the notice to the District Court.
- The relevant regulatory body should keep a list of relevant services that have been served with non-compliance notices.
- A relevant service may be taken off this list once they show that they are now following the law.

Do service providers have a legal responsibility to make safeguarding plans?

Currently, relevant services are required by law to make care plans or personal plans for residents in:

- residential centres for people with disabilities;
- residential centres for older people; or
- approved centres that come under the definition of relevant services.

Some providers of relevant services have to make care plans too. These requirements come from standards and other policy documents, not from the law.

This section is about the responsibilities that relevant services should have to make a safeguarding plan.

What is an individual care plan?

A care plan is a set of goals. Residents in centres should have a care plan just for them, called an individual care plan. They must have this plan if the residential centre is an approved centre under the **Mental Health Act 2001**. A care plan is made, reviewed and updated by people who work in the centre. The resident takes part in making the plan. An individual care plan:

- says what treatment and care the resident needs;
- says what is needed for the resident to achieve their goals; and
- should be in writing.

Individual care plans are also part of the Regulations made under the **Health Act 2007**. These Regulations apply to the care and support of residents in residential centres for older people. An individual care plan for residents in centres for older people should be made no later than 48 hours after the resident comes to the centre. The plan should be reviewed. The plan should be updated after talking to the resident and their family. It should be reviewed every four months, at least.

What is a personal plan?

Personal care plans are part of the Regulations made under the Health Act 2007. These plans are specific to one person. A personal care plan is about a resident's health, personal and social care needs. These needs are assessed by a health care professional. The plan says what support the resident needs for their personal development. The plan should be made within 28 days of the resident coming to the centre. The plan must be reviewed at least once a year. It must be reviewed more often if the resident's needs change. If their needs change, the plan must be changed.

What is a safeguarding plan?

A safeguarding plan sets out what actions will be taken to address needs and minimise risks to people or groups of people.

The HSE's National Policy and Procedures say that a safeguarding plan can be made if there are reasons for safeguarding concerns. These reasons include:

- signs that an adult may need support to protect themselves from harm;
- attempted abuse of an at-risk adult;
- abuse of an at-risk adult; and
- neglect of an at-risk adult.

A safeguarding plan should say:

- what actions need to be taken to prevent abuse or neglect of the at-risk adult;
- what actions need to be taken to help the at-risk adult recover from abuse or neglect; and
- what actions need to be taken to stop the abuser from harming the at-risk adult again in the future.

It is important to know the difference between care plans, personal plans and safeguarding plans when deciding if providers of relevant services should have a

responsibility to make safeguarding plans as part of new adult safeguarding laws. Instead of having to make a whole new plan, a care plan or personal plan that already exists could be updated to include safeguarding plans.

Are there requirements to prepare a care plan or personal plan currently?

Yes, there are requirements in some laws to have plans. Other requirements are not in the law but in standards and policies. Requirements that come from the law are much stronger.

Mental Health Act 2001, Health Act 2007 and Regulations

These laws and Regulations say that care plans must be made for residents of residential centres for older people, residential centres for people with disabilities and some other centres.

National Standards for Adult Safeguarding (Health and social care sector)

These standards apply to the health and social care sector. They were made by HIQA and the Mental Health Commission. The standards say that relevant services should:

- give care and support that reduces the risk of harm; and
- promote each person's rights, health and well-being.

To meet these standards, the relevant services should assess the care and support needs of each service user. The service user should take part in the assessment. This assessment should be done when the person starts to use the service. The assessment should be reviewed and updated often. As part of the assessment, the relevant services should find and record any potential risks and how they will be managed.

Home support services

These support services are not regulated. There is no requirement in law for home support service providers to make a care plan, personal plan or safeguarding plan for service users.

Interim Standards for Day Services for Persons with Disabilities

These standards say that services and supports should be specific to every person using the services. They say that every person should have a personal plan that says what services and supports they need to have a good quality of life and achieve their goals.

The standards say that relevant services should be creative and flexible in supporting the goals in personal plans. There should be a team responsible for supporting every person.

The standards say that plans should be reviewed at least once a year. Plans should be reviewed more often if there is a change in needs. The review should focus on the person's progress and whether the plan is working. The review should be recorded. The person who is using the services should be part of the review. The person should be given the choice to make a personal plan or not.

Safeguarding plans should be used if there are concerns for a service user's safety.

National Standards for accommodation offered to people in the international protection process

These standards say that relevant services must make care plans or personal plans for all residents. They say that if a resident has special reception needs, the relevant services should make sure their needs are included when providing accommodation and services for the resident.

National Quality Standards Framework for Homeless Services

These standards focus on:

- making sure that the service user is involved in the services;
- protecting the rights and autonomy of service users;
- making sure that service users are included in making decisions that affect them.

The standards also say that:

- people should be told where their plan is stored and what the goals in the plan are; and
- relevant services must provide safe services and a safe living environment.

The relevant service must make sure that service users are safeguarded and protected from abuse. They must also promote the safety and well-being of service users.

Service providers that provide refuge accommodation services for victims of domestic, sexual or gender-based violence

An agency called Cuan was recently established under a new law. This agency may make standards for services that are provided to victims of domestic, sexual or gender-based violence. The Minister for Justice must approve the standards. If these standards come into operation in the future, they could require service providers to make care plans, personal plans, support plans or safeguarding plans for service users who may be at risk of harm.

Safeguarding and HSE service-level agreements

The HSE can make service agreements with organisations that provide services. Service providers for groups like older people and people with disabilities must follow the HSE's National Policy and Procedures. This policy is currently being revised. When the new policy is brought into operation, it will apply to all service providers that are run by the HSE.

Why should there be a requirement in law to make a safeguarding plan?

Most services relevant to adult safeguarding must work with the people who use the services to make care plans, personal plans or other similar plans. The responsibility to do this is stronger if it comes from law rather than standards or policies.

We think safeguarding plans should be made if:

- a relevant service thinks there is a risk of harm to a person or group of service users;
- a service user is a risk to other service users; or
- action must be taken to prevent at-risk adults and staff from harm.

A safeguarding plan should outline the steps that should be taken to keep specific service users safe.

We think that relevant services should have to make a safeguarding plan if there are reasons to be concerned that an adult is at risk and they are a resident of:

- a centre for older people or a centre for people with disabilities under the Health Act 2007; or
- an approved centre under the Mental Health Act 2001.

Safeguarding plans can be added to care plans or personal plans that already exist. This would remove the need for multiple plans. Safeguarding plans should only be used with the consent of the at-risk adult. If the at-risk adult does not have the capacity to make decisions about their care or welfare, part of the safeguarding plan could be making a decision-making arrangement under the Assisted Decision-Making (Capacity) Act 2015 to give the at-risk adult support with decisions.

We think the Regulations made under the Health Act 2007 and the Mental Health Act 2001 should be changed. We recommend that there should be a requirement to update a care plan or personal plan to include a safeguarding plan if an adult is at

risk of harm. We also think the Regulations should be changed to require relevant services to review safeguarding plans included in care or personal plans. This review should check whether progress has been made in safeguarding the at-risk adult. HIQA or the Mental Health Commission could check how well these plans are being used by a service as part of their inspections.

If other services (like home support services) become regulated by HIQA in the future, safeguarding plans could be required for these relevant services too. We welcome the government's proposals to change the law to regulate home support. The 2022 draft Regulations for providers of home support services say that relevant services must make a personal support plan with every service user. We recommend that personal support plans for home support service users should include a safeguarding plan for at-risk adults.

Under the current law, relevant services do not have to make care or personal plans. However, lots of the relevant services talked about in this chapter are covered by national standards and policies. Lots of these national standards and policies say relevant services must make safeguarding plans with service users if an at-risk adult is involved.

Do the standards in place right now say that relevant services have to make safeguarding plans?

Other than the services regulated by HIQA and the Mental Health Commission, lots of relevant services do not have to make safeguarding plans under the law. HIQA has been given a new responsibility to check whether certain accommodation services for people applying for international protection are meeting standards set by the government. Cuan has the power under law to make new standards for providers of domestic, sexual and gender-based violence services. Cuan can check if services are following the standards. We think that when new standards are being made in the

future, the responsibilities we propose in this chapter should be taken into account, including the responsibility to make a safeguarding plan.

Other relevant services have standards too, like day services for adults with disabilities and providers of homeless accommodation. There is no independent organisation checking that these standards are being followed. Many of these standards require care plans or personal plans. Not many standards require relevant services to make safeguarding plans with the service user if an adult is at risk of harm.

We think that the government should consider whether relevant services that are unregulated should be regulated under the law. If this happens, the new standards or Regulations will probably include responsibilities to make care plans or personal plans. Regulations could include a responsibility to make a safeguarding plan if there are safeguarding concerns.

Why is it important that staff of health and social care services are trained?

When we consulted the public about new adult safeguarding laws, many people said that staff of health and social care services should be required to get training about adult safeguarding.

People also said that the Safeguarding Body should support and teach relevant services about safeguarding by developing:

- adult safeguarding training;
- codes of conduct; and
- practice guidance.

Should relevant services have to train their staff?

To be a registered health and social care worker, people must do training as well as have the necessary education. This section is about whether relevant services should have a responsibility to make sure that staff get adult safeguarding training.

Health Act 2007 and Regulations

Under these laws, residential centres for older people and adults with disabilities must make sure that staff get training about abuse. Owners of these centres must make sure that staff:

- can get appropriate training;
- are supervised; and
- are informed about the Health Act and any Regulations and standards made under it.

Staff must be able to access copies of:

- the Health Act 2007 and Regulations made under it;
- HIQA standards; and
- guidance issued by organisations.

Mental Health Act 2001 and Regulations

Under these laws, staff must have access to education and training so they can provide the best care and treatment. Staff must be made aware of the Mental Health Act 2001 and all the Regulations made under that law to help them do their jobs. Owners of these centres must make sure that copies of the Mental Health Act 2001 and all the Regulations and rules are available for staff. Unlike the Regulations made under the Health Act 2007, there is no requirement for staff to be trained in how to detect, prevent and respond to abuse. The National Standards for Adult Safeguarding do require this training, and these standards apply to the same services that are regulated under the Mental Health Act 2001.

National Standards for Adult Safeguarding

These standards apply to:

- residential services for older people;
- residential services for people with disabilities;
- mental health services; and
- publicly funded health and social care services.

The standards say that staff should be trained in safeguarding. The standards explain that giving education and training to staff gives them the knowledge and skills to reduce the risk of harm. Training also helps staff protect rights, health and well-being. Training should happen continuously so staff can build on their skills and knowledge. Staff should be trained to assess risks and put measures in place to minimise risks. Training should include learning how to respond to safeguarding concerns.

Home support services

The draft Regulations for providers of home support services say that relevant services should give safeguarding training to home support workers when they start their jobs.

Interim Standards for day services for adults with disabilities

These standards say that staff should get training about how to protect at-risk adults to make sure the staff have the knowledge and skills to recognise the signs of abuse and neglect. Staff should be trained when they start their jobs in how to make sure the people who use day services are safe. The standards require continuous training to prevent, detect and report abuse.

These standards say there should be a written code of conduct for all staff. The code should be made by the provider of day services with people who use the services.

National Standards for accommodation offered to people in the international protection process

These standards say that training staff is very important. Services should train staff in:

- preventing, detecting and reporting abuse;
- domestic, sexual and gender-based violence; and
- mental health awareness.

Staff should be trained to respond to the needs of residents. Staff should understand their roles and responsibilities. They should know which policies and procedures they need to follow.

National Quality Standards Framework for Homeless Services

This framework sets out how relevant services can make sure they have a responsive workforce. Staff should be able to respond to the needs of service users. Staff should do continuous training. Staff should know how to report concerns. There should be a written code of conduct for staff, volunteers and service users.

Relevant services that are charities

The Charities Regulator published safeguarding guidance for charities that work with at-risk adults. The guidance says that charities must have a safeguarding policy and procedures document that says what safeguarding training staff should do.

The guidance says that charities working with at-risk adults should know about safeguarding requirements and have procedures in place.

Safeguarding and HSE Funding Agreements

Relevant services funded by the HSE must follow the HSE's National Policy and Procedures. They must make sure that staff get adult safeguarding awareness training. They should know the signs of abuse and neglect and how to report them.

Do people have to be trained in adult safeguarding?

In 2022, the Irish Association of Social Workers said that even though there have been scandals in this area, adult safeguarding training is not mandatory for most HSE staff. Adult safeguarding knowledge is not needed to get a job, even for senior managers who work with at-risk adults.

The HSE's National Safeguarding Office has made efforts to improve adult safeguarding training. It launched an eLearning programme on the HSE's national online learning programme in 2020.

By law, staff working in residential centres for older people and adults with disabilities must have training on how to detect and report abuse. We recommend that staff in approved centres under the Mental Health Act 2001 should also have this training.

We know that the government wants to regulate professional home support services in the future. The draft Regulations for providers of home support services include a requirement for home support workers to be given safeguarding training. We support including this requirement in the Regulations.

Many unregulated relevant services have training requirements. These requirements come from standards rather than the law. We think there should be training on how to detect, prevent and respond to abuse. We recommend that the government should carefully think about bringing in new laws to say that unregulated relevant services should be regulated. This would involve giving a regulator responsibility for checking that those services are doing their work properly and meeting certain standards in their work. This would make it easier to impose safeguarding responsibilities on relevant services and would provide a way of checking that the law is being followed.

Should taxi drivers be required to do safeguarding training?

Taxi drivers often come into contact with at-risk adults, as they may drive them to appointments or to particular services, for example, day services. However, for the most part, taxi drivers receive no adult safeguarding training.

We believe that the 2015 Taxi Regulations should be changed to require people who have licences to drive "small public vehicles" to take part in adult safeguarding training, including training on how to notice, prevent and respond to abuse. This should be provided by the National Transport Authority and the Gardaí, with help from the Safeguarding Body.

This training would make sure that taxi drivers:

- provide a safe service to at-risk adults, and
- understand how to respond to any safeguarding concerns they have.

What data collection and sharing responsibilities do providers of relevant services have?

Should data be collected from adult safeguarding reports?

In chapter 5, we recommend that the Safeguarding Body:

- should have to collect, study and publish data about adult safeguarding; and
- should do research to promote the health, safety and well-being of at-risk adults.

Service providers would have to collect data from reports of abuse of at-risk adults for this research. The staff of service providers spend a lot of time with at-risk adults. They are in the best position to identify signs of abuse and take action. Service providers and their staff should have to report any abuse continuously for the data collected by the Safeguarding Body to be accurate.

In chapter 9, we recommend bringing in a responsibility on certain people called "mandated people" to report certain types of harm to the Safeguarding Body.

Reportable harm is when harm is so serious that it must be reported. If this responsibility is part of adult safeguarding law, it will help the Safeguarding Body to collect data on these reports across all sectors.

Staff must know how and when to report harm. Staff must also not be afraid to report serious incidents to regulators.

Regulatory bodies could work with each other and with the Safeguarding Body to produce accurate data.

Should data be collected on the application of the proposed safeguarding law?

If our proposed adult safeguarding laws are brought into operation, data will have to be collected about how the new laws working. We think that the Safeguarding Body should collect, keep and publish data about any new laws. This would make sure that data is collected about whether the new laws are working well.

Recommendations: How we think the law should change

R. 7.1 We recommend that the adult safeguarding responsibilities proposed in this chapter should apply to relevant services. Relevant services should be defined as any work or activity that involves working with adults, including at-risk adults.

R. 7.2 We recommend that the list of relevant services should include:

(a) residential centres for older people and adults with disabilities;

(b) services that provide care to adults in their homes;

(c) services that provide day services to adults with disabilities;

(d) services that provide day services to older adults;

(e) services that provide personal assistance to adults with disabilities;

(f) hospitals, hospices, and other centres that provide physical health services to adults;

(g) mental health services including residential centres;

(h) international protection accommodation centres;

(i) domestic, sexual or gender-based violence centres;

(j) centres that treat drug and alcohol addiction;

(k) homeless accommodation;

(l) services providing therapy and counselling;

(m) drivers and supervisors who bring adults to day services or day-care services; and

(n) adult safeguarding work carried out by the Gardaí.

R. 7.3 We recommend that the list of relevant services should be included in the new adult safeguarding laws. We recommend that the government should be able to add to this list in the future.

R. 7.4 We recommend that the new adult safeguarding laws should put a legal responsibility on service providers to prevent harm to at-risk adults. This would include preventing harm to adults who may become at-risk adults.

R. 7.5 We recommend that there should be a legal responsibility on providers of relevant services to:

(a) carry out a general risk assessment; and

(b) write a general adult safeguarding statement.

R. 7.6 We recommend that an adult safeguarding statement should talk about:

(a) managing risks;

(b) what to do when a staff member is being investigated for causing harm to a service user;

(c) Garda vetting;

(d) training staff so they can identify harm;

(e) updating care plans or personal plans of at-risk adults to include a safeguarding plan;

(f) how to make a report to the Safeguarding Body;

(g) keeping a list of mandated people who must report any abuse or harm that takes place at the relevant service; and

(h) appointing an adult safeguarding officer.

R. 7.7 We recommend that a relevant service must have copies of its risk assessment and adult safeguarding statement available for anyone who wants to see them. The relevant service should put them somewhere that members of the public can see them.

R. 7.8 We recommend that regulatory bodies should check that the relevant services they inspect have a general risk assessment and an adult safeguarding statement.

R. 7.9 We recommend that there should be a new 2-step process for dealing with relevant services that do not have the necessary documents. A warning notice would be sent first. If the service does not answer the notice, a non-compliance notice should then be sent.

R. 7.10 We recommend that the Regulations made under the Health Act 2007 and the Mental Health Act 2001 should be changed. We recommend that safeguarding plans should be added to care plans or personal plans if an adult is identified as an at-risk adult.

R. 7.11 We recommend that personal support plans for home support service users should include a safeguarding plan for at-risk adults.

R. 7.12 We recommend that a rule made under the Mental Health Act 2001 should be amended to require staff of approved centres to be given adult safeguarding training. This should include training about how to detect, prevent and respond to abuse.

R. 7.13 We recommend that home support staff should be given adult safeguarding training. This should include training about how to detect, prevent and respond to abuse.

R. 7.14 We recommend that the taxi laws that already exist, called the Taxi Regulation (Small Public Service Vehicle) Regulations 2015, should be changed to say that taxi drivers must do adult safeguarding training. This should include training on how to detect, prevent and respond to abuse.

Chapter 8: Independent advocacy

What is this chapter about?

In chapter 8, we look at and explain how to help adults, including adults who are or are believed to be at-risk adults, get better access to independent advocacy services. Independent advocacy is a service where a person supports an adult to:

- understand difficult situations or information,
- express their wishes and views;
- make decisions about their lives; and
- deal with public bodies, agencies, services or service providers.

How does independent advocacy work?

Advocacy is where a person supports and argues on behalf of another person. Advocacy is independent where the person who is helping an adult is not someone in the adult's family or someone who is providing an adult with a service. This means that the person who is helping an adult is neutral, not biased, and they can focus on what an adult wants.

It can be hard for some adults to be involved in making decisions and having their voice heard by professionals or family members. For example, an adult might communicate in a different way to the professional who is trying to engage with them. A lot of adults who need support might get help from a family member, but not everyone has someone to help them in the way they need it. Having an independent advocate means that adults who are or are believed to be at-risk adults do not have to rely on family members to communicate their views and express their opinions.

What does an independent advocate do?

An independent advocate's main goal is to empower and help adults who may find it hard to exercise their rights. An independent advocate tries to make sure that adults can share their views and be part of decisions that affect their lives. An independent advocate should not make decisions for the adult they advocate for. Instead, they should help an adult make their **own** decisions and make sure other people know what the adult's preferences are.

Why is independent advocacy an important part of adult safeguarding?

In this report, we recommend that certain functions and powers should be given to the Safeguarding Body for it to do its job. These functions are needed to prevent harm to at-risk adults. To use its functions and powers, the Safeguarding Body might need to engage with an adult who is or is believed to be an at-risk adult. However, this might make an adult upset, scared or stressed. To help the adult feel more comfortable, we think it is important for the adult to have access to independent advocacy.

We also talk about whether existing laws for certain adults should be updated to allow them to access independent advocacy where they are living in residential centres. These laws talk about care and support for adults living in residential centres. If they have access to independent advocacy early on, they can communicate their views, and this could prevent them being harmed in the future.

What do we talk about in this chapter?

Later on in this chapter, we talk about:

- existing laws on independent advocacy;
- what organisations provide independent advocacy services;
- how other countries deal with independent advocacy;

- how independent advocacy can be improved here in Ireland; and
- our recommendations on how access to independent advocacy can be improved in Ireland.

Who has a legal right to access independent advocacy?

In Ireland, the only adults who have a legal right to access independent advocacy services or information about independent advocacy services are:

- older people and adults with disabilities who live in residential centres regulated by HIQA; and
- adults with mental disorders who live in approved centres regulated by the Mental Health Commission. (We know that some people find terms like "mental disorder" offensive. These terms are used in the Mental Health Act 2001 and the Regulations made under that Act. This is why we use them in this report. Sometimes "medical language" needs to be used in laws.)

However, the extent of the support is inconsistent, and adults (including adults who are, or are believed to be, at-risk adults) that are outside of these settings don't have a legal right to this support.

What laws exist about independent advocacy?

The laws discussed below are important for independent advocacy.

Regulations under the Health Act 2007

Regulations (secondary laws) made under the Health Act 2007 have requirements about independent advocacy. These Regulations apply to residential centres where older people or adults with disabilities live.

Residential centres for adults with disabilities must make sure that their residents have:

- access to advocacy services;

- access to information about their rights; and
- access to advocacy services to make complaints.

The Regulation that applies to residential centres where older people live changed in 2022. It used to say that these residential centres needed to make sure that its residents had access to independent advocacy services, so far as possible. Because of the changes, the Regulations now say that these residential centres must make sure that each resident:

- has access to independent advocacy services;
- has access to in-person awareness campaigns about independent advocacy services;
- can use independent advocacy services in private;
- gets a guide that includes access to information on independent advocacy services; and
- gets practical help to help them to make a complaint and understand the complaint process (this can include helping the person access independent advocacy services, if they want).

There is no mention of "so far as possible" anymore. The Regulations are very detailed on what the residential centre must do to help a resident access independent advocacy services. This makes the residents' rights to independent advocacy stronger. Where a resident wants an independent advocate to make a complaint on their behalf, the residential centre must engage with the independent advocate.

The changes to the Regulations on residential centres for older people happened after a review into nursing home complaints policies, after covid-19. The same changes were not made to the Regulations on residential centres for adults with disabilities, even though HIQA oversees both types of residential centres. This means that adults in residential centres for older people have stronger rights to access

independent advocacy services than adults in residential centres for adults with disabilities.

Regulations under the Mental Health Act 2001

Regulations (secondary laws) made under the Mental Health Act 2001 also have requirements about independent advocacy. Residential centres where adults with mental disorders live must make sure that each resident is given information on advocacy and voluntary agencies that can support them. The Regulations say that the resident must be given information that they can understand.

The government plans to update the Mental Health Act 2001 and the Regulations made under that law. The government published draft laws recently. These draft laws provide stronger rights for adults with mental disorders or mental illnesses to access independent advocacy services.

Assisted Decision-Making (Capacity) Act 2015

The law on assisted decision-making (capacity) does not include legal entitlements to independent advocacy. However, the law allows the Decision Support Service to develop a Code of Practice for independent advocates who provide advocacy services to people covered by this law who need support making decisions. The Decision Support Service developed and published this Code of Practice. However, this Code of Practice only applies to the assisted decision-making context.

The Comhairle Act 2000

The Comhairle Act 2000 created what we now call the Citizens Information Board. The Citizens Information Board is supposed to be a "one stop shop" for information and advice on social services and entitlements of people within the State. The job of the Citizen's Information Board is to:

- support and provide independent information and advice so people can access accurate and clear information about social services; and

- support people, especially people with a disability, to help them to identify and understand their needs and options to secure their entitlements to social services.

The law does not say that the Citizens Information Board must provide advocacy services. The Citizens Information Board only needs to do this if it considers it appropriate.

The government drafted a law that would change the Comhairle Act 2000. This law has not yet come into force, which means that the changes have not happened. If the law did come into force, the changes would mean that the Citizens Information Board could provide a Personal Advocacy Service to people with a disability who need help or support getting social services. There would have to be reasonable grounds for believing the person's health, well-being or safety are at risk of harm if they are not given this service.

In our Issues Paper, we asked consultees if they thought those changes should be made to the Comhairle Act 2000. A lot of people who responded thought that the changes were old fashioned and should not be made into law. They said that thinking on independent advocacy is different now. Some of the people who responded thought that the changes to the law would not go far enough to offer independent advocacy to all at-risk adults because:

- the Personal Advocacy Service would not include people who do not meet the definition of "disability" in the law;
- the Personal Advocacy Service would only provide support to access services and would not cover other important aspects of adult safeguarding;
- the Citizens Information Board could decide not to provide the Personal Advocacy Service due to its financial resources;
- the Personal Advocacy Service would be limited. It would only be available to people with a disability who can't access social services without help and where

there is a risk of harm to that person's health, well-being or safety if they are not given the services; and

- the changes would not deal with proactive outreach to at-risk adults, that would increase awareness of advocacy services.

We agree with the consultees who responded to the Issues Paper. We think that the changes to the Citizen Information Act 2007 are not suitable for adult safeguarding. Here are some reasons why:

- Many at-risk adults would not come under the definition of "disability", so they could not make use of the Personal Advocacy Service.
- The Personal Advocacy Service should not depend on the financial resources of the Citizens Information Board.

It has been a long time since these changes were written into law, but the government still has not brought them into force. It is unlikely that they will be brought into force in the future. Despite this, the Citizens Information Board plays a very important role in providing advocacy services in Ireland. We talk about this below, where we explain the **National Advocacy Service for People with Disabilities** and the **Patient Advocacy Service**.

What advocacy services does Ireland have right now?

There are a lot of advocacy services in Ireland that offer support to different people. Advocacy services are not regulated and there is no supervision of their work. They are all funded differently.

Here are some advocacy services that are important to adult safeguarding:

- **National Advocacy Service ("NAS")** provides services to people with disabilities. It is funded and supported by the Citizens Information Board. In particular, it works with adults with disabilities who live in residential centres, attend day services, live in unsuitable accommodation or have communication differences. It

also works with adults with disabilities who have limited supports and are isolated.

- **Patient Advocacy Service ("PAS")** provides advocacy services to people who want to make a complaint about their experience of care in a public hospital or nursing home (including private nursing homes). PAS is funded by the Department of Health. It is provided by NAS.
- **Sage Advocacy** is the national advocacy service for older people. It also supports "vulnerable adults" and healthcare patients in some situations when there is no other service available.
- **Inclusion Ireland** is the national association for people with an intellectual disability. They work with self-advocacy groups and support people with intellectual disabilities to advocate for themselves.
- **Peer Advocacy in Mental Health** provide support to people who have mental health challenges. It also helps people to learn how to advocate for themselves.
- **The Office of the National Confidential Recipient** is an independent voice and advocate for "vulnerable adults" with disabilities and older people who get different services. These services include residential services, day services, community services, mental health services and older people services. It helps people make complaints or report any concerns they have.

There are other advocacy services that support at-risk adults in certain circumstances:

- **Dignity4Patients** provides information and advocacy support to people who have experienced sexual abuse in a healthcare setting.
- **EPIC – Empowering Young People in Care** provide advocacy support for children and young people under 26 who get aftercare support.
- **Money Advice and Budgeting Service (MABS)** help at-risk adults who are being financially abused or who find it hard to deal with their finances.

How could independent advocacy be better in Ireland?

Currently, only certain adults have a legal right to access independent advocacy services, or information about independent advocacy services. These are:

- older people who live in residential centres;
- adults with disabilities who live in residential centres; and
- adults with a mental disorder who live in residential centres (approved centres).

This means that many other adults who may be at risk of harm do not have a legal right to access or get information about independent advocacy services. For example, there is no responsibility to provide information about independent advocacy services to people who get professional home support services. This means that some people have a legal right to access independent advocacy services and others can't access independent advocacy services. We think that:

- there needs to be a consistent approach to independent advocacy, and
- the laws need to be stronger to ensure rights to access independent advocacy services and to get information about independent advocacy services.

What did consultees say?

Most of the responses to our Issues Paper said that adult safeguarding laws should include a law about independent advocacy services.

HIQA said that because there are not enough laws about independent advocacy, service providers do not have to work with independent advocates and sometimes they refuse to engage with them. This means that independent advocates cannot help an adult, for example, to make a complaint. The National Advocacy Service said the same thing.

We think that having laws on independent advocacy would set a standard across all care settings. This would make the independent advocacy service more reliable, consistent and fair. It would also mean that independent advocates know they can

access people who want their help or who want to learn more about independent advocacy services.

How do other countries deal with independent advocacy?

England, Scotland and Wales all have laws that provide for access to independent advocacy services during adult safeguarding processes, including adult safeguarding reviews or enquiries to find out if an adult is at risk of harm. In England, the local authority (county council) must organise an independent advocate for an adult where it believes that the adult would find it hard to:

- understand important information;
- remember that information;
- weigh the information as part of the process; and
- communicate their views.

The local authority only needs to do this if there is nobody else who can support the adult.

What do we recommend?

We talk about how we think access to independent advocacy can be improved in Ireland below. This includes changes to existing secondary laws (Regulations) and new adult safeguarding laws.

A consistent approach to independent advocacy

We think the government should take a consistent approach when it comes to independent advocacy across all care settings. At the moment, adults in some care settings have legal rights to access independent advocacy, whereas others do not. Where an adult does not have legal rights to access independent advocacy services, there may be standards that set an expectation on services that the adult should be able to access such services.

For example, adults living in residential centres for adults with disabilities have legal rights to access independent advocacy services, but adults with disabilities that go to day services do not. There are standards for day services that talk about advocacy, but they do not give adults with disabilities that attend day services legal rights to independent advocacy.

Stronger laws that require independent advocacy

In 2022, the Regulations on independent advocates changed so that residential centres for older people were required to make sure each resident:

- has access to independent advocacy services;
- has access to in-person awareness campaigns about independent advocacy services;
- can use independent advocacy services in private;
- gets a guide that includes access to information on independent advocacy services; and
- gets practical help to help them to make a complaint and understand the complaint process (this can include helping the person access independent advocacy services, if they want).

These changes only apply to residential centres for older people. They do not apply to residential centres for people with disabilities, or residential centres for adults with mental disorders under the Mental Health Act 2001. This means that different service providers have different responsibilities depending on the person who is receiving care. Some service providers only have to provide information about independent advocates, while others have to organise and facilitate access to independent advocates. We think that these service providers should all have the same responsibilities to provide access to independent advocacy.

We think the most important thing is that residential centres for adults with disabilities and residential centres for adults with mental disorders should have to

facilitate access to independent advocacy services for their residents. To do this, we recommend that the Regulations should be changed to make residential centres for adults with disabilities and residential centres for adults with mental disorders facilitate access to independent advocacy services for their residents.

Consultees said that more needs to be done to make sure that residential service providers are required to engage with independent advocates. Some service providers might not want independent advocates involved in the complaints process because it could highlight concerns about the way the centre operates. We recommend that the law should be changed to make sure that residential centres for adults with disabilities and residential centres for adults with mental disorders must work with independent advocates when a resident wants their help to make a complaint.

What about service providers that are not regulated by law?

We thought about whether we should recommend a responsibility to facilitate independent advocacy on **all** service providers, regardless of whether the service is regulated or not regulated. At the moment, not all services are regulated. This means it can be difficult to make sure those services follow requirements, including requirements about independent advocacy.

In chapter 7, we recommend that the government should think carefully about whether to regulate unregulated services. If these services are regulated in the future, we think it is important that the same requirements for independent advocacy apply to every service. In the meantime:

- the government could think about requiring service providers that have agreements with the HSE to facilitate access to independent advocacy, and
- public bodies or government departments could think about telling service providers to facilitate access to independent advocacy in existing and future standards.

A responsibility on the Safeguarding Body to facilitate access to independent advocacy services when engaging directly with adults who are, or are believed to be, at-risk adults

In this report, we suggest that the Safeguarding Body should:

- be given powers to prevent harm to adults who are, may be, or may become at-risk adults, and
- be able to take certain actions.

These actions can be upsetting or confusing for adults, especially if they do not understand what is going on. Having an independent advocate can help the adult understand what is happening and help them express their views. We think it is important that an adult's voice is heard and that they are empowered to make decisions for themselves if they have the capacity in these situations.

We think that the Safeguarding Body should have a responsibility to allow and support access to independent advocacy services, so far as possible, where it interacts with an adult who is, or is believed to be, an at-risk adult in order to use a power or take any action under adult safeguarding laws.

When should this responsibility apply?

This responsibility should only apply where the adult, who is or is believed to be an at-risk adult, would find it difficult to do one or more of the following:

- understand information;
- remember information;
- assess information so that they can interact with the Safeguarding Body; or
- express their views, wishes or feelings.

Also, we think this responsibility should only apply where the Safeguarding Body believes that there is no other suitable person who could help the adult interact with the Safeguarding Body about decisions that affect their lives.

Independent advocacy when providing social care

Lots of consultees thought that it would be a good idea to introduce laws about independent advocacy for decisions about care and financial affairs.

Advantages to independent advocacy in respect of care and support are that:

- Adults would be empowered and supported to protect themselves from harm from the start;
- It could prevent safeguarding issues from happening;
- It could help adults to understanding the benefits of social care or financial supports that might be available to them.

Disadvantages to independent advocacy in respect of care and support are that:

- Social care is complicated because it is mainly provided for by policy, not by law. This means that it is difficult to know how the HSE could fulfil a responsibility to arrange access to independent advocacy services in respect of care and support.
- Much more people would want to access the services and there might not be enough resources.

We think that a responsibility to ensure access to independent advocacy services in respect of care and support should be dealt with in social care law.

A framework for providing independent advocacy

In the Issues Paper, we asked if Ireland needs a national advocacy council for independent advocacy. We asked if it should be independent or located within an agency that already exists. People had different views.

Some people thought that we need a national advocacy body because there are a lot of different bodies operating in this area. Many people thought the agency should be independent.

Other people said that Ireland did not need a new independent advocacy service because these services already exist and provide services to lots of different people. We talk about this in the "what advocacy services does Ireland have right now?" section above. The government could establish a service within the Citizens Information Board or on a contract basis, without changing the law. We think that the most important thing is that advocacy services are provided by an organisation that is independent of:

- the HSE,
- the Safeguarding Body, and
- service providers, such as nursing homes.

Many people who responded said that independent advocates need to be qualified and that there needs to be standards to provide the service. We understand that certain independent advocacy services have policies, guidelines and procedures for their staff. The only wider guidance is the code of practice published by the Decision Support Service, but that only applies to adults that come under the Assisted Decision-Making (Capacity) Act 2015.

The regulation of independent advocacy services or independent advocates is a big question that we do not cover in this report. But we recommend that the government should think about regulating independent advocates or independent advocacy organisations.

We also recommend that the Safeguarding Body should produce a code of practice for all the independent advocates working in adult safeguarding so they can understand their role. (A code sets standards that should be followed.)

Recommendations: How we think the law should change

R. 8.1 We recommend that the government should make sure that independent advocacy is available in all care settings and there should be a consistent approach.

R. 8.2 We recommend that the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 should be changed to require residential centres for people with disabilities to allow and support adults in these residential centres to access independent advocacy services.

R. 8.3 We recommend that the Mental Health Act 2001 (Approved Centres) Regulations 2006 should be changed to require residential centres for adults with mental disorders to allow and support adults in these residential centres to access independent advocacy services.

R. 8.4 We recommend that these Regulations should be changed so that if a resident wants an independent advocate to help them make a complaint, the service provider must engage with the independent advocate.

R. 8.5 We recommend that the Safeguarding Body should have a responsibility to allow and support access to independent advocacy services, so far as possible, where it interacts with an adult who is, or is believed to be, an at-risk adult in order to use a power or take any action under adult safeguarding laws.

R. 8.6 We recommend that this responsibility should only apply where the adult who is, or is believed to be, an at-risk adult would find it difficult to do one or more of the following:

(a) understand information;

(b) remember information;

(c) assess information so they can interact with the Safeguarding Body; or

(d) express their views, wishes or feelings.

R. 8.7 We recommend that this responsibility should only apply where the Safeguarding Body believes that there is no suitable person to help and support the adult to interact with the Safeguarding Body.

R. 8.8 We recommend that if the government thinks about introducing social care laws (we recommend this in chapter 1), it should also think about making the HSE responsible for allowing and supporting access to independent advocacy services when it provides social care services.

R. 8.9 We recommend that the government should think about regulating independent advocates or independent advocacy services.

R. 8.10 We recommend that adult safeguarding laws should allow the Safeguarding Body to prepare and publish a code of practice for independent advocates who provide support to adults who are, or are believed to be, at-risk adults.

Chapter 9: Reporting models

What is this chapter about?

In chapter 9 we look at and explain:

- how people report abuse of at-risk adults;
- how the law can protect people who report abuse of at-risk adults.

Why are we talking about this?

If someone knows or suspects that an at-risk adult is being abused, they can report it. Reporting the abuse makes the authorities aware that an at-risk adult needs support at a particular time. The authorities can then organise for the at-risk adult to be assessed to decide if supports are necessary. This allows the at-risk adult to get support to protect themselves from harm and to get any health or social care supports they need.

Reporting the abuse can also:

- stop the at-risk adult from being abused again;
- stop other at-risk adults from being abused by the same person or in the same place;
- help authorities discover and stop widespread abuse in care settings, for example nursing homes, where many at-risk adults might be abused.

Where can abuse happen?

Abuse can happen in many different types of settings, including:

- community settings (for example, at home where a person has a carer);
- residential care settings (for example, nursing homes);

- day care settings (for example, HSE centres where older adults take part in activities and socialise);
- healthcare settings (for example, hospitals);
- financial services (for example, banks, post offices or credit unions where financial abuse could happen); and
- community services settings (for example, a church or a club).

Who can report abuse?

The following people can report abuse of an at-risk adult:

- the at-risk adult themself;
- health professionals, for example doctors and nurses;
- social workers;
- family members or friends of the at-risk adult;
- members of the community.

An at-risk adult might report abuse that they are experiencing. Someone other than the at-risk adult might report abuse if:

- they see an at-risk adult being abused;
- they notice signs of abuse, for example, a bruise on an at-risk adult's body or medicine not being given to at-risk adults who need it, or medicine not being topped up when it has run out;
- they get information that suggests that an at-risk adult is being abused.

Why is it important to have clear reporting procedures?

Clear reporting procedures have many benefits:

- They make it easy for everyone to understand how to report incidents quickly and correctly. Quick reporting means authorities can respond faster.

- They help people recognise signs of abuse and know the steps to report it.
- Training can be organised for professionals working with at-risk adults to spread awareness about the reporting procedures, so that everyone knows how to report abuse and incidents properly.
- Ireland can gather information and statistics on the number of incidents, as the same approach to reporting is used across the country.

What are the different types of reporting?

The law about reporting is different in different countries. In some countries, the law only encourages reporting, while in others the law says it **must** be done. These are the different types of reporting:

1. Permissive reporting

This means that a person can decide if they want to report abuse that they know about or suspect. This type of reporting is used in England and Northern Ireland.

2. Universal mandatory reporting

This means that everyone must report abuse that happens anywhere. A person has no choice. Even those who are not involved in the at-risk adult's care in a professional way are required to report it. This type of reporting is used in Nova Scotia, which is an area in Canada.

3. General reporting for mandated people or bodies

This means that certain professionals or bodies are required to report known or suspected abuse. We talk a lot about "mandated people" in this chapter. It simply means the people who the law says must report abuse. This type of reporting is used in Wales and Scotland.

4. Mandatory reporting of specified incidents

This means that people are required to report certain types of incidents that involve actual abuse or suspected abuse. For example, they can be required to report physical or sexual abuse. This type of reporting is used in Australia.

5. Mandated reporting in specified settings

This means that people are required to report abuse that happens in certain environments. For example, they can be required to report abuse in nursing homes. Sometimes this applies to anyone who is working in, volunteering in, or visiting the setting or environment. Other times it only applies to professionals who work in the setting or environment.

How does reporting work in Ireland?

We have talked about how the laws in different countries set out what type of reporting must be done. However, sometimes, the type of reporting isn't set out in the law at all. Sometimes, reporting is just done a certain way in practice. In Ireland, there is a **permissive** system of reporting, which means that a person can decide whether they want to report abuse. However, the permissive system isn't written into the law. It is just what normally happens in practice in Ireland at the moment.

If someone wants to make a report in Ireland, there are a number of ways to do it. We talk about these below.

The **HSE** has a policy that sets out the process for reporting abuse of at-risk adults. Service providers must report incidents to the HSE Safeguarding and Protection Teams if there are serious concerns that an at-risk adult is being abused. This only applies where an incident happens in a service or organisation that the HSE funds or manages. The policy sets out who else must be notified of the incident. Sometimes members of the community may be concerned about an at-risk adult or may witness an incident that happens and is not related to health or social care services. If this

happens, they can decide to notify HSE Safeguarding and Protection Teams. Other bodies such as the Gardaí, the Health, Information and Quality Authority or the Mental Health Commission may also report complaints or allegations to HSE Safeguarding and Protection Teams.

The **Office of the Confidential Recipient** can help people with disabilities and older people make a complaint about the care they are getting in residential care services, day services or any other community services managed or funded by the HSE.

- It can make a complaint on behalf of people with disabilities or older people.
- If the Office of the Confidential Recipient decides that it can help with the complaint, it will usually send the complaint to the Chief Officer in the HSE area that the at-risk adult lives in.
- If the complaint is very serious, it can send the complaint to the HSE National Director of the HSE area.
- Usually, it deals with complaints about care issues and adult safeguarding concerns.

The **Office of the Ombudsman** can also investigate complaints about the actions of public bodies and voluntary and private bodies that receive public funding. It can investigate complaints about the HSE, and services and organisations funded or managed by the HSE. It can investigate complaints about private nursing homes that receive public funding.

- The Office of the Ombudsman can only consider a complaint as a last resort. The person making the complaint must complain directly to the service provider and the HSE before making a complaint to the Ombudsman.
- It can investigate complaints on a wide range of issues including unfair decisions, failures to follow procedures, and failures to provide a promised service.

- It can tell the body to review its decision or actions and make changes or put the situation right. While the body does not have to listen to the Ombudsman, they usually do.

While the permissive system of reporting in Ireland isn't written in the law, there are some **specific laws about reporting**, for example:

- It is a crime to not share information about certain crimes against "vulnerable people", for example: rape, sexual assault, and assault that causes harm.
- There are other crimes for not sharing information about crimes more generally.
- People in charge of certain services or organisations must tell the Health Information and Quality Authority (HIQA) or the Mental Health Commission where an incident happens in the service or organisation.
- There are other bodies who provide services on behalf of the HSE. These bodies must tell the HSE if an incident happens in the service.

The government is currently writing a new law to introduce mandatory reporting requirements for patient safety incidents. This law has not come into effect yet. The law is only about incidents that are "clinical". This means that the incident happens when a service or organisation is treating or assessing patients. It does not include incidents that happen when a person is getting care and support from a service or organisation.

Outside of the law, professionals who work with at-risks adults, for example nurses or social workers, can be under an obligation in their professional codes of conduct or standards to report known or suspected abuse.

What are the problems with the way reporting works in Ireland?

While there are reporting procedures in place in Ireland, there are some gaps in the current system:

Care in the community

Some incidents involving abuse of at-risk adults that might happen in a community don't meet the criminal standard to be covered by the law. For example, neglect or emotional abuse would not meet this standard. This means that they don't have to be reported under the criminal law.

Private homecare services

There are only reporting obligations where a private homecare service is funded by the HSE, or the incident meets the criminal standard to be covered by the law. This might change in the future, as the government is looking at making a law that will make private homecare service providers have reporting procedures in place.

HIQA's inspection powers

The Health Information and Quality Authority (HIQA) can only inspect the safety, quality and standards of services. It can't investigate individual incidents or complaints.

The health and social care settings that HIQA inspects are called "designated centres". Designated centres must report to HIQA. However, because HIQA's inspection powers are limited, this means that designated centres must report to a body that cannot properly investigate individual reports. This means that there is a gap in the system where abuse of at-risk adults might not be properly addressed.

Service providers' reporting obligations

Under the Health Act 2004, people or organisations can provide health or social care services on behalf of the HSE. These people or organisations are called service providers. A service provider will have a contract with the HSE, which will include a list of certain incidents that the service provider must report to the HSE.

However, there are many gaps in these obligations. Things that don't have to be reported to the HSE include:

- injuries that result in a minor disability,
- non-serious injuries or disabilities resulting from physical attacks that happen in a healthcare facility,
- patients having money stolen from them or being coerced financially,
- psychological or emotional abuse,
- unexplained absences of patients from the facility (unless they result in death or serious disability), and
- neglect, or not being:
    - fed enough or
    - given enough water.

What are the problems with the gaps in the current system?

There are gaps in Ireland's reporting system, which causes problems. For example:

- Although healthcare staff or other people might know that harm is being done, there is no clear path to report it to the right authorities.
- Ireland has some reporting obligations for crimes related to at-risk adults, but there are still gaps. When a certain type of abuse is not a crime, or where withholding information about the abuse is not a crime, it often doesn't have to be reported.
- Under the Health Act 2007, when someone makes a report to HIQA, HIQA can inspect the service generally, but not the particular incident. This can cause issues. For example, it means there is no possibility for early intervention or screening of reports. (Screening is where someone has a quick look at each report when it comes in and decides which ones need to be investigated fully. This helps to make sure that individuals receive safeguarding supports and do not suffer any more harm.)

- Certain settings in which at-risk adults receive care (including private home care services) do not have any reporting requirements. This is a big concern because many of the at-risk adults that get care at home may not be able to report or communicate incidents of harm themselves.

Mandatory reporting: What are the pros and cons?

We talked earlier about mandatory reporting. This is where a person must report abuse. Ireland already has mandatory reporting for child abuse. It works like this:

- The law provides that if certain people (such as doctors, teachers and the Gardaí) suspect that a child is being abused, they have an obligation to report it. These people are called "mandated people".
- If a mandated person believes a child is being abused, they must report it to the Child and Family Agency (Tusla).
- Tusla will first make sure that the child is not in any immediate danger.
- If the child is safe, Tusla then looks at the report and decides whether they need to intervene or if the situation would be better dealt with by others such as the Gardaí or the child's school.
- If Tusla needs to intervene, they assign a social worker to the case.
- The social worker meets with the child, the family and other people involved to assess the situation.
- Tusla might ask the mandated people for help at this stage. Helping Tusla is part of the mandated people's obligation under the law.

When we were thinking about whether to recommend mandatory reporting for abuse of at-risk adults, we thought carefully about the "pros" and "cons" of this. We explain these, starting on the next page.

The pros of mandatory reporting are:

(a) It leads to more reports of abuse

The introduction of mandatory reporting for child abuse resulted in a major increase in reports to Tusla. More reports means that abuse has a better chance of being detected. Some people argue that many of these reports are reports that didn't have to be reported. The time spent checking every report to see if it was a report that had to be made means there's less time and resources to deal with cases which really did have to be reported. However, others say that the positive of detecting abuse outweighs this negative.

(b) Potential abusers are put off because they are more likely to be caught

Mandatory reporting sends a message that the law and society takes a strong stance against abuse. Potential abusers might decide not to carry out abuse if there is a high chance that it will be reported, and they will be caught.

(c) Mandated people will be good at recognising abuse because of their training

Mandated people receive training which teaches them what does and doesn't need to be reported, and the red flags to look out for. This means they can spot abuse when it is happening. It also means that they know when something isn't abusive and unnecessary reports will be reduced.

(d) It allows abuse to be stopped early

Mandated reporting creates a system where it is easy to intervene in abusive situations early on. This can stop further abuse from happening and the interventions can be less intrusive for victims.

The cons of mandatory reporting are:

(a) It can interfere with people's privacy and freedom

The at-risk adult's freedom to make their own decisions is an important principle of adult safeguarding. Some people argue that mandatory reporting doesn't respect that freedom.

(b) Loss of trust in healthcare workers

Mandatory reporting has the potential to stop people asking for help, out of fear that their situation will be reported. At-risk adults might lose trust in the healthcare workers who are caring for them and hold back information that is needed for them to get the best care.

There was recently a case in the Irish courts where a counsellor argued against a rule that made counsellors report when an adult client told them about abuse that happened to them when they were a child. The person who brought the case argued that this rule was stopping people from going to counselling or trusting counsellors. They argued that if there was a rule saying that all abuse had to be reported, even if it was abuse that happened to someone as a child, an adult might be uncomfortable sharing information about things that happened to them as a child. This is because the rule would say that this information had to be reported by the counsellor, even if the adult asked the counsellor to not tell anyone else.

We thought carefully about how this kind of situation could be managed, if mandatory reporting was introduced in new adult safeguarding laws.

(c) Increase in at-risk adults being moved to residential centres

Studies have shown that mandatory reporting causes an increase in adults being moved to residential care centres. There is a risk that at-risk adults will be unnecessarily moved to residential care centres because a report has been made about the person caring for them at home. Also, the mandatory reporting laws might

require people to report self-neglect. This means that an at-risk adult might be moved to a residential centre against their will if someone suspects that they cannot look after themselves at home. In both these situations, adult protection service workers or adult safeguarding social workers might feel pressed to resolve the situation by placing the at-risk adult in a residential setting.

(d) Cost

Mandatory reporting is expensive to run. Mandatory reporting results in more reports. Screening those extra reports costs money, which might be better used on other support services.

(e) Overreporting

As we talked about before, when mandatory reporting was introduced for child abuse, it led to an increase in reports. However, it didn't suddenly cause more unnecessary reports, because the government had been doing work beforehand to train people and prepare them for the new reporting laws.

(f) Obligations on people to make the same report to multiple bodies

When abuse happens, it can involve lots of different bodies. Mandatory reporting means that people must report the abuse to all these bodies, which is a major burden to put on them. For example, if the abuse happens in a mental health facility run by the HSE, the mandated person might have to report it to the HSE, HIQA, the Mental Health Commission, the Health and Safety Authority, and the State Claims Agency.

Should we have mandatory reporting in Ireland?

There are good arguments for and against mandatory reporting. In this section we weigh up the arguments and think about whether we should have mandatory reporting for adult safeguarding in Ireland. The arguments about mandatory reporting that we thought were most important were:

It can interfere with people's privacy and freedom

We think the strongest argument against mandatory reporting is that it interferes with people's privacy and freedom. One way to combat this is to make sure that the mandatory reporting law specifically says the kind of harm it should be used for. Secondly, the law can specify the type of person who must report. We can see how a system where the general public must report certain types of abuse interferes too much with the at-risk adult's privacy and freedom. Members of the public are not properly trained to recognise signs of abuse and may report things that shouldn't be reported, interfering with at-risk adults' privacy and freedom without good reason. We think that the right balance is a system where professionals who have experience working with at-risk adults must report certain types of abuse.

Loss of trust in healthcare workers

It is a serious concern that mandatory reporting might make at-risk adults lose trust in healthcare workers or not ask for help because they are afraid their situation will be reported. However, the Department of Children said that in their experiences with mandatory reporting for child abuse, most people are understanding if a report needs to be made. They also said that mandatory reporting is always explained to children and their families. The same should be done in the context of at-risk adults. If the government makes a law introducing mandatory reporting, it should also put out awareness campaigns to comfort at-risk adults that they can talk openly to the people looking after them, and tell them that they will be kept safe if those people have to report the adult's situation.

Domestic violence is the main situation where people are concerned that mandatory reporting will stop at-risk adults asking for help. This is because reporting domestic violence or abuse sometimes makes matters worse. The abuser might abuse the victim further as revenge for the reporting. It might also damage family relationships and badly impact children in the family.

However, there is a difference between reporting domestic violence involving at-risk adults, and reporting concerns about an at-risk adult in a residential centre such as a nursing home. In residential settings, at-risk adults have less contact with friends and family who they might report abuse to. Also, the fact that they live in a residential facility means that these at-risk adults:

- are often not independent, and
- may not be able to do some things for themselves.

This means they might have extra difficulty reporting abuse. In residential settings, abuse is usually done by a staff member or another resident. In this case, the residential centre should make sure that if abuse reaches a certain level, the person doing it is taken away from the at-risk adult. This would stop the at-risk adult from worrying that reporting might make the abuse that they are experiencing worse.

Overreporting

To avoid overreporting, mandatory reporting laws for adult safeguarding must be very specific about the situations where reporting is required. The law should also make clear that a mandated person doesn't have to report abuse that another mandated person has already reported. Other ways to reduce unnecessary reports are:

- to limit the list of mandated people to people who regularly interact with at-risk adults in their work, and
- to train mandated people to recognise abuse, which will help them to make decisions about whether they need to report.

Obligations on people to make the same report to multiple bodies

One of the other major concerns about mandatory reporting is that it will result in the same work being done multiple times. One way this could be avoided is by having a central agency that receives reports. There is already software available that

allows multiple bodes to access the same documents. Also, the government has in the past stressed the difference between reporting child abuse and the Gardaí investigating child abuse. The government should stress this difference again for mandatory reporting for at-risk adults to remove any confusion.

Raising awareness around the signs of abuse is the first step to protecting people from harm. Properly training the people who are working with at-risk adults in their reporting obligations allows abuse to be stopped quickly and reduces unnecessary reports. However, while mandatory reporting will make sure that abuse is reported quickly, the services used by at-risk adults need more resources to completely stop abuse.

How does the law protect people who report abuse?

People should be encouraged to report abuse. Sometimes people don't report abuse because it can have consequences for them. In particular, health or social care workers sometimes don't report abuse because they are scared that they might be sued by the patient's relatives. One way to encourage reporting is to reassure people that they won't face any consequences for reporting. This kind of protection can be written into law. There is already a law in Ireland that stops employers punishing workers for reporting wrongdoing that happens in the workplace. Employers cannot fire workers or treat them unfairly for reporting wrongdoing. There is also an Irish law that stops people who report child abuse from facing consequences. In other countries, the law protects people who report abuse of at-risk adults.

What rights do at-risk adults and other people who are involved have in relation to mandatory reporting?

As we explained above, there are pros and cons to mandatory reporting. One "con" or disadvantage to mandatory reporting is that it can negatively impact the rights of

the at-risk adult and other people, including the person being reported. This is especially an issue if the allegations turn out to be false.

For the at-risk adult, having their situation reported can protect their rights, but it can also interfere with their rights to:

- privacy;
- freedom; and
- bodily integrity (control over their own body).

For the person being reported, mandatory reporting can interfere with their rights to:

- privacy;
- work;
- earn a living; and
- their good name or reputation.

There can also be consequences for other people. For example, if someone must help with assessing the situation, or is put in harm's way because of the report, their rights can also be affected.

What is important to remember about rights is that they have limits. Although the law protects rights and takes them very seriously, there are cases where rights must be interfered with for the greater good.

However, if a law must interfere with people's rights, it should interfere with people's rights as little as possible. We have considered the rights involved in mandatory reporting very carefully and we want to recommend a reporting system that balances protecting at-risk adults and empowering them. In particular, we are conscious that mandatory reporting that is not designed properly can really limit at-risk adults' freedom.

We also thought carefully about the aim of mandatory reporting, which is to make sure that abuse is addressed, and that more abuse doesn't happen. We want to recommend a system that achieves that aim with the smallest impact on rights. To do this, the way abuse is reported must:

- be very clearly connected to the aim of addressing abuse and stopping more abuse from happening;
- interfere with people's rights as little as possible; and
- only interfere with people's rights in a way that is balanced and fair when compared to the need to stop abuse.

How did we decide what a new reporting system should look like?

We considered a number of things when we were deciding how a new reporting system for adult safeguarding should work:

Resources

As we have discussed, mandatory reporting can result in an increase in reports. This increase will have an impact on the resources used to keep at-risk adults safe. It is important to make sure that a new system of reporting does not mean that resources are taken away from things they could be better spent on.

Submissions and views of consultees

We have received written submissions and spoken to lots of people about how they think reporting should be done. Many people agreed that there should be mandatory reporting, but they had different ideas about how it should be done. Some people strongly disagreed with the idea of mandatory reporting.

Reporting in other countries

We looked at the Irish reporting system to find any gaps, and studied how reporting works in other countries like Scotland, Canada, and Northern Ireland. It seems like

other places are moving towards mandatory reporting in specific situations. While other countries' approaches can be helpful, we think it's important to focus on what would work best for Ireland.

Academic papers

We checked Irish and international academic work about reporting systems, weighing the arguments for and against mandatory reporting. We found that, at the moment, there's not enough clear research on how mandatory reporting affects the abuse of at-risk adults.

Evidence of underreporting

To see if there were gaps in the Irish system, we looked for evidence of underreporting in recent years. We found a lot of evidence of underreporting, especially in residential care settings. Instances of abuse were sometimes not reported, causing harm that could have been prevented. For example, in the "Brandon" case in County Donegal, sexual abuse went on for a long time without being reported until a whistleblower spoke up.

Whether existing laws are sufficient

Even though there are existing laws in Ireland about reporting certain incidents, they're not designed to handle cases of abuse of at-risk adults. We need:

- clear reporting paths,
- clear responsibilities, and
- proper training.

What are the options for a new reporting system for adult safeguarding?

We have considered a number of options for a new reporting system for adult safeguarding:

Keep the current system with no changes

We do not think the current reporting system should be kept in place without any changes. Most of the people we spoke to about this agreed that some change is needed. In particular, people think there needs to be protection in the law for people who report the abuse of at-risk adults. We also think legal change is needed to encourage reporting. We think this is important because of the underreporting that has happened in recent years.

Small changes to the current system

We then considered if small changes to the current system would be sufficient to improve it. This could involve changing existing laws instead of making new ones. We have three suggestions about how this could be done.

First, there is already an Irish law that deals with people not sharing information about certain crimes against children and "vulnerable people". It is called the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012. However, this law does not cover all of the crimes that might be done to an at-risk adult and need to be reported. The extra crimes include:

- coercion;
- endangerment;
- abuse, neglect or ill-treatment of a relevant person (this is a new crime that we recommend in chapter 19);
- exposing a relevant person to a risk of serious harm or sexual abuse (this is a new crime that we recommend in chapter 19);

- coercive control of a relevant person (this is a new crime that we recommend in chapter 19); and
- coercive exploitation of a relevant person (this is a new crime that we recommend in chapter 19).

At the moment, there are no relevant convictions under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012. This may suggest that the law isn't very useful. However, it is also possible that there are not many convictions because people are complying with the law.

We have also heard that health and social care workers might not know about their responsibilities under this law, which would be a problem. However, we think that it is still a good thing that the law exists because it might encourage people to report abuse once they are aware of the law, where otherwise they would not.

We recommend that this law should be changed to include the crimes we list above.

Second, the Health Act 2007 is another law that we think could be improved as a small change to the current reporting system. The Health and Information Quality Authority (HIQA) is a regulatory body that carries out inspections of certain health and social care services. These inspections are really important to keep high standards in these services. Regulations under the Health Act 2007 require designated centres to report certain things to HIQA's Chief Inspector of Social Services. These are:

- the unexpected death of a resident;
- any serious injury to a resident that requires immediate medical treatment;
- any unexplained absence of a resident from a designated centre;
- any allegation of misconduct by the person running the service or a member of staff; and

- any occasion where the person running the service becomes aware that a member of staff is the subject of a review by a professional body.

We think that as a small change to the reporting system, designated centres should also have to report the following:

- financial coercion;
- patterns of neglect; and
- psychological or emotional abuse.

When it receives a report, HIQA could decide to inspect the whole service. (However, as we explained above, HIQA cannot investigate individual incidents.)

Third, the Mental Health Act 2001 is another law that we think could be improved as a small change to the current reporting system. The Mental Health Commission is a regulatory body that carries out inspections of approved centres. These inspections are really important to keep high standards in these centres. Regulations under the Mental Health Act 2001 require approved centres to report certain things to the Mental Health Commission. However, there is not as much detail as there is under the Health Act 2007 (that we explained above).

We think that the Regulations under the Mental Health Act 2001 should be changed so that approved centres also have to report the following:

- the unexpected death of a resident;
- any serious injury to a resident that requires immediate medical treatment;
- any unexplained absence of a resident from an approved centre;
- any allegation of misconduct by the person running the service or a member of staff;
- any occasion where the person running the service becomes aware that a member of staff is the subject of a review by a professional body;
- financial coercion;

- patterns of neglect; and
- psychological or emotional abuse.

Universal mandatory reporting

We do not think that universal mandatory reporting should be introduced in Ireland. Universal mandatory reporting would mean that all people, regardless of their job or setting, would have to report abuse if they knew it was going on or suspected it was going on. Most members of the public don't have proper training to see the signs of abuse or know when they might be biased about a particular person. We think this lack of training would lead to lots of unnecessary reports. These unnecessary reports would waste adult safeguarding resources, which are already limited. We are worried that if universal mandatory reporting is introduced, resources will be taken away from giving adult safeguarding supports and social care services to people who need them.

Are these small changes enough?

These three small changes would be quick to do, and would help to fill some of the gaps in the current system. Even if the government decides to make bigger changes to the reporting system, we think it is still a good idea to change these three laws, and we mention them again in our recommendations.

A bigger change would be to write **permissive reporting** into law. As we mentioned above, Ireland already has a permissive reporting system (reporting is encouraged even though it's not mandatory) but it isn't written in the law. Lots of consultees thought that writing the permissive system into law was a good idea if **mandatory reporting** wasn't possible. However, we are concerned that a law that only reminds people that they can report abuse could cause confusion. This is because there are other laws that already exist telling people that they must report in certain situations. Putting permissive reporting into law could also increase the number of unnecessary reports, which would use up valuable resources.

We also think that introducing protection under the law for people who choose to report is a better way to encourage people to report. We explain this in more detail below at "Should people who report abuse be protected under the law?".

So, we think that some small changes to the current laws would be a good thing. However, we don't think that these would be enough of a change to make a real improvement. Instead, we need mandatory reporting to properly identify abuse to at-risk adults. We explain this in the next section.

Mandatory reporting for specific "mandated people"

(a) Why should there be mandatory reporting?

Cases of abuse of at-risk adults are not being reported as much as they should be, and this is worrying. It is even more worrying because of the gaps in the current reporting system. At the moment, HIQA is the only body that designated centres must report to. However, HIQA does not have the power to properly investigate individual reports. Their job is only to make sure that services as a whole are meeting certain standards.

We think it is a real concern that there isn't:

- one body that can receive reports about an at-risk adult being abused, and investigate them properly, and
- a related obligation on appropriate people to report abuse to that body.

When child abuse happens, it is reported to a body (Tusla) and that same body investigates the report. We think the same should happen when an at-risk adult is abused.

The job that HIQA already does, doing inspections and keeping standards high, is very important. However, it is also very important to properly deal with **individual** reports of abuse. We think that it would be best if certain people were required to report abuse of at-risk adults to a body, who could:

- receive the reports,
- assess the reports, and
- provide safeguarding supports where they are needed.

This body could then intervene in abuse of at-risk adults much sooner, and stop more abuse from happening. We think the Safeguarding Body is the right body to do this.

So, we recommend that "mandated people" should be required by the law to report to the Safeguarding Body when, based on information that they receive during their employment, they know, believe or suspect that an at-risk adult:

- has been harmed,
- is being harmed, or
- is at risk of being harmed.

(We explain who the "mandated people" are below.)

(b) Why do we think this is the right type of mandatory reporting?

We thought about mandated people only having to report when they are working in particular settings, such as nursing homes. However, we decided against this because it could cause problems or gaps with reporting abuse that is happening where homecare services are being provided. We decided that having mandatory reporting for certain people while they are working – no matter where they are working – would work better.

(c) How does a mandated person know when to report?

When writing reporting laws and saying when mandated people should report, it is important to strike a balance:

- People shouldn't report farfetched concerns.
- However, they also shouldn't have had to actually see abuse happen to report it.

The balance is somewhere between the two. This balance has already been struck in child abuse laws and we think the same formula should be followed for adult safeguarding. This is reflected in our threshold for mandatory reporting.

We also think that the definition "reportable harm" should reflect this balance. So, we recommend that "reportable harm" should include:

- assault, ill-treatment or neglect that that has a significant impact on an at-risk adult's health, safety, or well-being,
- sexual abuse of an at-risk adult, and
- serious financial abuse of an at-risk adult.

(d) Do mandated people have to report at-risk adults who are self-neglecting?

Self-neglecting is when someone is not taking proper care of their own basic needs. Adults are entitled to do this. However, in some cases there might a worry that someone does not have capacity to look after themselves.

We think that self-neglect should only be reported if the mandated person thinks that the at-risk adult does not have capacity to decide about their personal care and well-being for themselves. If the at-risk adult has capacity and they are choosing to not look after themselves, that is their decision to make, and mandated people shouldn't interfere with it.

(e) Do mandated people have to report if the at-risk adult doesn't want them to?

In some situations, an at-risk adult has full capacity to decide for themselves about their personal care and well-being, and doesn't want their situation to be reported. We thought about having a rule in this case that the mandated person does not have to make the report. We found that this might be difficult for these reasons:

- It may be difficult for the mandated person to figure out whether the at-risk adult has full capacity to make decisions for themselves.

- It may be difficult for the mandated person to figure out whether the at-risk adult is being pressurised by someone else (such as the abuser) to say that they don't want the report to be made.
- If a report isn't made because the at-risk adult didn't want it to be, the abuser might continue to abuse other people.

However, we think that it is really important to respect the at-risk adult's freedom to make decisions. So, we decided that a mandated person should not have to report to the Safeguarding Body if:

- the mandated person knows or believes that the at-risk adult has capacity to decide about their own care and well-being,
- the at-risk adult has made it clear to the mandated person that they don't want the report to be made, and
- the mandated person knows or believes that the at-risk adult is not being pressurised to say this.

(f) How do we stop lots of mandated people making the same report?

In places like hospitals or nursing homes, lots of mandated people might have contact with the same at-risk adult or might discuss the at-risk adult with their co-workers. It would be unnecessary for all these mandated people to have a responsibility to report the same case. For this reason, we think it should be written into law that a mandated person shouldn't have to report abuse if they know another mandated person has reported it already. Also, if a mandated person finds out about harm in their role assessing harm for the Safeguarding Body, they don't have to report it again.

(g) Who are the mandated people?

We don't think it is enough to give one person in a service or setting the job of reporting. If that is the case, abuse won't be spotted:

- if it isn't brought to the attention of that person,
- where that person is involved in the abuse, or
- where that person doesn't report abuse because they're worried it will damage their reputation.

We think that, in certain professions, **all** professionals working with at-risk adults should have to report abuse that they come across at work. They will be called "mandated people."

After the new child abuse laws were introduced, Tusla carried out a study to see how many reports came from mandated people. They found that 87% of reports of abuse in 2022 came from mandated people. This is because these professionals work closely with people who are at risk and have a better understanding of them. We think that people who work with and come into contact with adults, who may be at-risk adults, should be "mandated people" under the new law.

We think that a list of the professions that are mandated people should be written down in law. These mandated people should have a responsibility to report abuse that appears to them in all of their work, even if it's voluntary. This is the list we recommend:

1. Doctors;
2. Nurses and Midwives;
3. Physiotherapists;
4. Speech and Language Therapists;
5. Occupational Therapists;
6. Dentists;
7. Pharmacists;
8. Social Care Workers;
9. Social Workers;

10. Emergency Medical Technicians, Paramedics, and Advanced Paramedics;
11. Probation Officers;
12. Gardaí;
13. Managers of certain services for at-risk adults (such as day services for adults, professional home care services, shelters for victims of domestic, sexual or gender-based violence, homelessness services, accommodation centres for people in the international protection process, and addiction services);
14. Adult safeguarding officers employed in certain bodies (such as religious, sporting or cultural bodies); and
15. Decision-making supporters who are appointed under the Assisted Decision-Making Act 2015 (for people needing assistance with decision-making).

We considered whether psychologists, psychotherapists and counsellors (including addiction counsellors) should be included in this list. We decided that they should not be. We decided this because making these professionals mandated persons would have an impact on their relationships with their clients. (We explained about people being afraid to talk to professionals above.)

We also considered whether religious leaders, pastoral care workers, or similar figures should be included in this list. These people have a reporting obligation for child abuse. We know these people have historically played a role in caring for older adults in places like nursing homes run by religious groups. However, nowadays, these people are not as involved in providing services to at-risk adults. So, they may not need to have this reporting responsibility. We do think that if the government thinks it is appropriate or necessary, these religious and pastoral care workers should be included as mandated people in the new adult safeguarding laws.

(h) What training will mandated people get?

We recommend that all mandated people should get training on:

- how to spot signs of harm in at-risk adults, and

- when they must report to the Safeguarding Body.

This kind of training has already been done for the Children First Act 2015, where online training is available for people who need to report under this law. We think a similar approach should be taken for adult safeguarding laws, so that:

- training is provided to all mandated people under adult safeguarding laws, and
- mandated people are required to do this training and any updates to the training within times set by the relevant minister.

It is important that mandated people get regular training, so they know about the most up-to-date developments and best practices.

(i) What happens if a mandated person doesn't report?

To make sure that mandated people follow the rules, there needs to be a penalty or consequences for not reporting when someone is supposed to. We think there should be consequences for this, but we don't think it should be a crime.

Previously, a proposed law called the Children First Bill suggested that it would be a crime to not follow the reporting requirements for child abuse, but this idea wasn't included in the final version of the law. The government were advised that this could lead to too many unnecessary reports by people, out of fear of committing a crime. Instead, they chose to use non-criminal ways to deal with people who don't report, like telling the person's employer or a professional regulatory body, who can judge the person's fitness to work. People told us that these non-criminal penalties are working well and there is no desire to start using criminal penalties. We agree with this.

We think the approach should be different, based on whether the person is a regulated professional or not:

- For regulated professionals who must report, the best way to handle failures to report is through their professional regulatory bodies. These bodies have rules

about behaviour and ethics, and not reporting could lead to serious questions about whether a professional can do their job properly. We recommend that all professional regulatory bodies should have clear rules about reporting and following the law.

- A number of the mandated people on the list above (like managers of certain services for at-risk adults) may not be part of a regulated professional group. For these people, things are a bit different. For example, in a private nursing home, a failure to report might be dealt with through human resources or a disciplinary process. However, the nursing home manager might also own the nursing home and oversee these operations, so it wouldn't be appropriate to deal with the manager's failure to report something in this way. In cases like this, we recommend that a failure to report could be handled by authorities like HIQA or the Mental Health Commission, the HSE and the National Vetting Bureau.

We also believe that the Safeguarding Body should be able to tell the National Vetting Bureau about anyone who fails to report. This could affect that mandated person's career and their ability to work with "vulnerable adults" in the future.

If the Safeguarding Body is created as a new, independent organisation (instead of inside an existing organisation), we recommend that the law about vetting should be updated to include the Safeguarding Body in the list of organisations that **must** report these failures to the National Vetting Bureau.

Finally, we think that a mandated person (whether they are a regulated professional or not) should **not** be punished if they can prove that they didn't know, believe, or have reason to suspect that an at-risk adult:

- had been harmed,
- was being harmed, or
- was at risk of being harmed.

The Safeguarding Body could look into this, for example by making an enquiry to check whether there were reasons to think that harm was happening at the time.

In summary, we recommend:

- not using criminal charges for mandated people who fail to report;
- requiring professional codes of conduct to include consequences for failures to report;
- consequences for non-professionals who fail to report – they should first be dealt with by disciplinary processes in the workplace, but if this isn't appropriate, by notifying authorities like HIQA, the Mental Health Commission, the HSE or the National Vetting Bureau; and
- allowing the Safeguarding Body to inform the National Vetting Bureau about failures to report.

What else do we recommend for a new reporting system for adult safeguarding?

Should mandated people be required to help with investigating reports?

We explained above the list of "mandated people." In the new law we are recommending, "mandated people" might be health or social care workers working with at-risk adults. These people are very familiar with the at-risk adult's situation. If an at-risk adult is abused, these workers often have information that can be very helpful to find out what happened and what to do about it.

As part of the new law, we think that when the Safeguarding Body is investigating a report, they should be able to require a mandated person to help, even if it isn't the mandated person who made the report. This already happens for child abuse cases. We think it would be really helpful to the Safeguarding Body for it to have the power to get information from mandated people. Often, there are pieces of the jigsaw that only these mandated people can fill in.

Should people who report abuse be protected under the law?

Almost everyone we talked to about a new system for reporting wanted the law to protect people who have good intentions and report abuse to at-risk adults. It is important to encourage people to report. They are more likely to do this if they aren't worried about facing consequences for reporting. In Australia and Canada, there are laws that protect people who report abuse to at-risk adults. Also, there are protections in Ireland for people who report child abuse.

The people we talked to have reassured us that protection for people reporting makes people less fearful about reporting and encourages them to report. We think the protection should work like this:

- People who report to the Safeguarding Body with reasons and good intentions should be protected under the law from any civil legal actions against them, and any actions by their employer.
- All people should have this protection, not just the "mandated people" who must report. Any person who is thinking about reporting abuse to an at-risk adult and has good intentions should be encouraged to do that, no matter who they are.
- "Mandated people" who are helping the Safeguarding Body with their investigation should also get protection.
- The protection would not apply where someone with bad intentions makes a fake report. However, we don't think that "false reporting" should be a crime. If it was, it might scare people away from making a genuine report. Instead, in these cases, the protection that we recommend should not apply – so the person who knows that they are making a false report may be subjected to a legal action.

Should there be preparation work before introducing mandatory reporting?

A big reason why the reporting system for child abuse is very successful is because a lot of preparation was done before it was introduced. This preparation included:

- publishing national guidance on reporting;
- making an e-learning training module;
- putting a reporting portal on Tusla's website so mandated people can report easily and safely; and
- talking to mandated people and answering their questions.

This all made sure that the mandated people knew what they had to do before the new reporting system was introduced.

When we spoke to the Department of Health, they said it would be a good idea to not introduce the new reporting system until a few years after the other adult safeguarding laws we are recommending. They said this would also give more time to see how mandatory reporting has worked for child abuse.

We think that, in the six years since it was introduced, mandatory reporting for child abuse has been shown to be a success. We therefore don't think it's necessary to delay implementing the new reporting system for at-risk adults.

However, we do think it is important to do preparation work before it is introduced. The government should carefully consider the time needed to do this. Preparation could include:

- drafting guidance and resources;
- developing training and e-learning programmes;
- raising awareness; and
- taking on board and implementing any lessons learned from mandatory reporting for child abuse.

The one thing we think should be introduced immediately is the protection in the law for people who report.

Recommendations: How we think the law should change

R. 9.1 We recommend that universal mandatory reporting shouldn't be introduced in Ireland.

R. 9.2 We recommend that the following crimes should be added to Schedule 2 of the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012:

(a) coercion;

(b) endangerment;

(c) intentional or reckless abuse, neglect or ill-treatment of a relevant person (this is a new crime that we recommend in chapter 19);

(d) exposing a relevant person to a risk of serious harm or sexual abuse (this is a new crime that we recommend in chapter 19);

(e) coercive control of a relevant person (this is a new crime that we recommend in chapter 19); and

(f) coercive exploitation of a relevant person (this is a new crime that we recommend in chapter 19).

R. 9.3 We recommend that financial coercion, patterns of neglect, and psychological or emotional abuse should be added to the list of things that have to be reported under the Health Act 2007.

R. 9.4 We recommend that the following things should be added to the list of things that have to be reported under the Mental Health Act 2001:

(a) the unexpected death of a resident;

(b) any serious injury to a resident that requires immediate medical treatment;

(c) any unexplained absence of a resident from an approved centre;

(d) any allegation of misconduct by the person running the service or a member of staff;

(e) any occasion where the person running the service becomes aware that a member of staff is the subject of a review by a professional body;

(f) financial coercion;

(g) patterns of neglect; and

(h) psychological or emotional abuse.

R. 9.5 We recommend that a system of permissive reporting should not be introduced in law for adult safeguarding in Ireland. (However, we do believe that reporting with good intentions by any person should be encouraged, and we recommend below that people who do this should be protected by the law.)

R. 9.6 We recommend that the law should require certain people, called "mandated people" to report to the Safeguarding Body when, based on information that they receive during their employment, they know, believe or suspect that an at-risk adult:

(a) has been harmed,

(b) is being harmed, or

(c) is at risk of being harmed.

R. 9.7 We recommend that the Safeguarding Body should receive these reports and assess them.

R. 9.8 We recommend that "reportable harm" (the type of harm that a mandated person must report) should include:

(a) assault, ill-treatment or neglect that that has a significant impact on an at-risk adult's health, safety, or well-being;

(b) sexual abuse of an at-risk adult; and

(c) serious financial abuse of an at-risk adult.

R. 9.9 We recommend that self-neglect should not be considered "reportable harm" unless the mandated person thinks that the at-risk adult does not have capacity to make a decision about their own personal care or well-being at the time when the mandated person knows, believes or suspects they're self-neglecting.

R. 9.10 We recommend that a mandated person should not have to report to the Safeguarding Body if:

(a) the mandated person knows or believes that the at-risk adult has capacity to decide about their own care and well-being,

(b) the at-risk adult has made it clear to the mandated person that they don't want the report to be made, and

(c) the mandated person knows or believes that the at-risk adult is not being pressurised to say this.

R. 9.11 We recommend that a mandated person should not have to report if they heard about the harm through another mandated person's report or in their role assessing harm for the Safeguarding Body.

R. 9.12 We recommend that a list of the professions that are mandated people should be written in the new adult safeguarding laws.

R. 9.13 We recommend that the Gardaí should be made mandated people.

R. 9.14 We recommend that managers of the following services should be made mandated people:

(a) day care services for adults;

(b) professional home care services;

(c) accommodation services for victims of domestic, sexual or gender-based violence;

(d) homeless provision or emergency accommodation facilities;

(e) accommodation centres for people in the international protection process (also called "direct provision"); and

(f) addiction services.

R. 9.15 We recommend that probation officers should be made mandated people.

R. 9.16 We recommend that safeguarding officers employed in certain bodies (such as religious, sporting or cultural bodies) should be made mandated people.

R. 9.17 We recommend that regular training should be given to mandated people about the requirement to report.

R. 9.18 We recommend that a mandated person who fails to report should not face a criminal charge.

R. 9.19 We recommend that codes of conduct for regulated professionals should include reporting and compliance obligations that are the same across the board.

R. 9.20 We recommend that where a mandated person who is not a regulated professional fails to report, this should first be dealt with by disciplinary processes in the workplace, but if this isn't appropriate, by notifying authorities like HIQA, the HSE or the National Vetting Bureau.

R. 9.21 We recommend that the Safeguarding Body should be able to ask any mandated person for information to help assess harm to an at-risk adult.

R. 9.22 We recommend that there should be protection in the new reporting laws for anyone with reasons and good intentions who reports harm to an at-risk adult.

R. 9.23 We recommend that the government should do preparation work before mandated reporting is introduced, including:

(a) drafting guidance and resources;

(b) developing training and e-learning programmes; and

(c) raising awareness.

Chapter 10: Powers of entry to, and inspection of, relevant premises

What is this chapter about?

In chapter 10 we look at and explain:

- what we mean by a power to enter and inspect relevant premises to check on at-risk adults; and
- why we think a power to enter and inspect relevant premises to check on at-risk adults is needed in Ireland.

What is a power to enter and inspect relevant premises?

A power to enter and inspect relevant premises would let authorised officers of the Safeguarding Body go into places where at-risk adults are, to check on their health, safety and well-being. "Authorised officers" are staff of the Safeguarding Body who are allowed to exercise the powers of the Safeguarding Body.

"Relevant premises" are places like:

- residential centres for older people and adults with disabilities, that are regulated by the Health Information and Quality Authority (HIQA);
- hospitals, hospices, and other centres that provide physical health services to adults;
- residential centres for people with mental disorders, that are regulated by the Mental Health Commission; (see chapter 8 for note on terminology in the law that can be offensive to some people.)
- international protection accommodation centres;
- domestic, sexual or gender-based violence centres; and
- places where day services are provided to older adults or adults with disabilities.

What powers do professionals currently have to enter relevant premises?

Right now, there are not a lot of powers for professionals to enter and inspect relevant premises to check how people are being treated. Three examples which we think are relevant to at-risk adults are:

a) The Health Information and Quality Authority (HIQA)

The Health Act 2007 gives powers to enter and inspect "designated centres" to:

- HIQA's Chief Inspector of Social Services; and
- other people that are authorised by HIQA.

These people can also look at documents in the designated centre, and interview people there. Designated centres include residential centres for older people and residential centres for adults with disabilities. Adults, who may be at-risk adults, live in these places and may receive care, support or services there.

b) The Mental Health Commission

The Mental Health Act 2001 gives powers to enter and inspect "approved centres" to:

- the Mental Health Commission's Inspector of Mental Health Services; and
- Assistant Inspectors of Mental Health Services that are appointed by the Mental Health Commission.

Approved centres are residential centres for adults with mental disorders, where they receive care and treatment.

c) The HSE's Safeguarding and Protection Teams

The HSE's Safeguarding and Protection Teams are responsible for adult safeguarding in services that are owned or funded by the HSE and are for:

- older people; or
- people with disabilities.

The Safeguarding and Protection Teams can try to enter these services to investigate reports of abuse of at-risk adults. However, there are no laws that give them powers to enter. Instead, they have to rely on the service cooperating with them and agreeing to let them in.

What are the gaps in the law?

We think that there are gaps in the law because:

- HIQA and the Mental Health Commission do not investigate individual reports of abuse or neglect of at-risk adults. Instead, they use their powers as regulators to inspect the whole service.
- The HSE's Safeguarding and Protection Teams have no legal powers to enter places to respond to reports of abuse of at-risk adults.
- Importantly, there are no laws that let professionals enter places where at-risk adults are, to check on them or to respond to reports of abuse or neglect.

We think that new powers are needed to let professionals enter relevant premises to check on the health, safety, or well-being of at-risk adults.

What powers are there in other countries to enter and inspect places for adult safeguarding reasons?

Other countries have laws that let social workers or other professionals enter certain places for adult safeguarding reasons – for example, to check if an at-risk adult needs support. Some examples of countries with these laws are:

- **Scotland**, where local councils are responsible for safeguarding at-risk adults. People who are authorised by the local council can enter a place without a warrant from a court, to check if the council needs to do anything to protect an at-risk adult. They can also interview adults, and health professionals can do medical checks.

- **Wales**, where a local authority worker who has done special training can ask the court for an order which lets them enter a place to interview a person who they think is an at-risk adult, and check if anything needs to be done.
- **Different parts of Canada**, where certain people or bodies can ask a court for an order which lets them enter a place to check on certain kinds of adults. The rules vary in the different parts of Canada, which have different laws.

When we thought about what the law in Ireland should be, we looked at the laws that other countries have.

Why do we need a power to enter and inspect relevant premises in Ireland?

Letting authorised officers of the Safeguarding Body enter and inspect relevant premises would allow them to:

- check on at-risk adults who are in the relevant premises;
- assess the health, safety and well-being of at-risk adults (including doing this with the help of health or social care professionals); and
- find out if there is abuse or neglect of at-risk adults happening in the relevant premises.

We think that this power is needed because of the gaps in the law that currently exist. We explained these above.

Other people agree that this power is needed. For example:

- Social workers have said that it is difficult to safeguard at-risk adults when they do not have legal powers to enter places such as private nursing homes to access at-risk adults.
- Most people who responded to our Issues Paper or spoke to us said that this power is needed in Ireland.

After listening to everyone and looking at other countries, we think that the new adult safeguarding laws should include a power to enter and inspect relevant premises to check on the health, safety, or well-being of at-risk adults.

How is the new power different from the current powers of regulators?

Regulators like HIQA and the Mental Health Commission already have powers to enter and inspect certain places to make sure that they are being run properly, and are following the legal rules. These are "regulatory" powers. The new power that we are recommending is not a regulatory power. Instead, it would be an adult safeguarding power, which is used by authorised officers of the Safeguarding Body to check on the health, safety or well-being of individual at-risk adults.

What rights are affected by a power to enter and inspect relevant premises?

When we were thinking about this new power, we thought about what rights would be affected by it. We explain these below.

Rights protected by the Constitution

We explained the rights which are protected by the Constitution (constitutional rights) in chapter 4. We think that a power to enter and inspect relevant premises is needed to protect the constitutional rights of at-risk adults, including their rights to:

- life;
- freedom;
- control over their body; and
- dignity.

For example, the power could allow authorised officers to find out that an at-risk adult is being harmed or abused. The authorised officers could then take actions to support the at-risk adult and protect their rights.

However, a power to enter and inspect relevant premises could also interfere with the constitutional rights of at-risk adults, or other people. For example, this could interfere with their rights to:

- freedom;
- privacy; or
- security in their home.

Although constitutional rights are very important, they have limits. This means that they can be interfered with in some cases, if the interference is needed and does not go too far. The purpose of a power to enter and inspect relevant premises is to check on an at-risk adult's health, safety and well-being. We think that this is an important enough reason to interfere with constitutional rights. In this chapter, we recommend requirements and protections to be written into the new law, to make sure that the interference is needed and does not go too far.

Rights protected by the European Convention on Human Rights

The European Convention on Human Rights also protects rights. We think that a power to enter and inspect relevant premises is needed to protect these rights. For example, the European Convention on Human Rights protects the rights to:

- life; and
- be free from ill-treatment.

We also recommend requirements and protections to be written into the new law, to make sure that any interference with rights that are protected by the European Convention on Human Rights is needed and does not go too far.

How would a power to enter and inspect relevant premises work?

We think that there should be a power to enter and inspect relevant premises in Ireland. We recommend that the new adult safeguarding laws should give authorised officers of the Safeguarding Body the power to:

- enter relevant premises;
- inspect documents and items in the relevant premises; and
- interview people who are in the relevant premises.

These powers should only be used when there are clear reasons to use them. We explain this below. The purpose of these powers is to prevent harm to at-risk adults and protect their rights.

What is a relevant premises?

We think that the new power should apply to places where adults, who may be at-risk adults, are likely to be living, and receiving care or services. We call these places "relevant premises" because they are relevant to the care and support of at-risk adults who use them.

These places include:

- residential centres for older people and adults with disabilities, that are regulated by the Health Information and Quality Authority (HIQA);
- places where day services are provided to older adults or adults with disabilities;
- hospitals, hospices, and other centres that provide physical health services to adults;
- residential centres for people with mental disorders, that are regulated by the Mental Health Commission; (see chapter 8 for note on terminology in the law that can be offensive to some people.)
- international protection accommodation centres;
- domestic, sexual or gender-based violence centres;

- residential centres that provide addiction support services; and
- residential centres for adults who are homeless.

We think that this list of places is a good start. However, in the future there may be other places that authorised officers need to enter to check on the health, safety and well-being of at-risk adults. That is why we recommend that the government should be able to add to this list in the future.

What do authorised officers of the Safeguarding Body need to do to enter a relevant premises?

We do not think that authorised officers of the Safeguarding Body should need a warrant to enter and inspect relevant premises. A warrant is written permission from the court to do something. Being able to enter a relevant premises without a warrant will make it quicker and cheaper for authorised officers to check on at-risk adults.

Instead, we recommend that to enter a relevant premises, an authorised officer must have reasons for thinking that:

1. there is an at-risk adult in the relevant premises;
2. there is a risk to the health, safety or well-being of the at-risk adult because of abuse, neglect or ill-treatment; and
3. authorised officers need to enter the relevant premises to check on the health, safety and well-being of the at-risk adult.

We think that authorised officers of the Safeguarding Body need to have reasons for thinking that there is a risk to the at-risk adult's health, safety or well-being because of abuse, neglect or ill-treatment. This is because there might be lots of small risks in the premises, but they are not adult safeguarding risks. For example, wires on the floor could mean that there is a risk of tripping or falling over. That is a health and safety issue but not an adult safeguarding issue.

We also do not think that the authorised officers of the Safeguarding Body should have to show that the at-risk adult is a victim of a crime. The Gardaí already have powers of entry where they believe a crime has been committed.

If the authorised officer has reasons for thinking these things, they should be able to enter a relevant premises without a warrant.

Does the power to enter a relevant premises include private homes?

The Constitution gives special protection to the dwelling. A "dwelling" is a person's private home. We do not think that a resident's room in a relevant premises should be considered a dwelling. We respect that residents may strongly believe that their rooms are their homes, but their rooms are not entirely private and many people can enter them. For this reason, we do not think a warrant should be required for authorised officers to enter a resident's room in a relevant premises.

We do think that the separate homes of service providers or staff members should be considered "dwellings", so authorised officers can't enter these places using this new law. (They could enter if the service provider or the staff member let them in.)

When would authorised officers of the Safeguarding Body need a warrant?

There might be times when authorised officers of the Safeguarding Body are trying to check on an at-risk adult but there is something stopping them from getting inside the relevant premises. This might happen even though the law says that authorised officers of the Safeguarding Body have the power to enter these places.

We recommend that authorised officers of the Safeguarding Body should be able to ask a District Court judge for a warrant to enter a relevant premises if:

- they have been stopped, or
- have reasons for thinking they will be stopped,

from entering a relevant premises to check on an at-risk adult.

If the authorised officers of the Safeguarding Body get a warrant from the District Court, a Garda should come with them to the premises to help them get in if needed.

When could authorised officers of the Safeguarding Body apply for a warrant?

Authorised officers of the Safeguarding Body should be able to apply for a warrant if they have reasons for thinking that:

1. there is an at-risk adult in the relevant premises;
2. there is a risk to the health, safety or well-being of the at-risk adult because of abuse, neglect or ill-treatment;
3. authorised officers need to enter the relevant premises to check on the health, safety and well-being of the at-risk adult; and
4. the authorised officer was stopped, or thinks that they will be stopped, from entering the relevant premises.

When could a judge grant a warrant?

We recommend that, to grant a warrant, a District Court judge must be satisfied that there are reasons for thinking that:

1. there is an at-risk adult on the relevant premises;
2. there is a risk to the health, safety or well-being of the at-risk adult because of abuse, neglect or ill-treatment;
3. a warrant to allow authorised officers to enter the relevant premises is needed to check on the health, safety and well-being of the at-risk adult; and
4. an authorised officer of the Safeguarding Body has been stopped, or will be stopped, from entering the relevant premises.

How long would a warrant last?

Warrants are temporary and should not last forever. We recommend that a warrant to enter and inspect a relevant premises should last for one month after the District Court issues the warrant.

We think this is enough time because:

- authorised officers of the Safeguarding Body might need to visit the relevant premises a few times;
- authorised officers of the Safeguarding Body might not always be able to use the warrant immediately after the District Court judge grants it; and
- there might not be a member of the Gardaí or another appropriately qualified person available immediately after the District Court judge grants the warrant.

This temporary time period also helps to make sure that the power to enter and inspect relevant premises does not go too far in interfering with people's rights.

What can authorised officers of the Safeguarding Body do when they enter a relevant premises?

When an authorised officer of the Safeguarding Body enters a relevant premises, we recommend that they should be able to:

- have a private interview with an at-risk adult at the relevant premises; and
- carry out a health assessment of the at-risk adult at the relevant premises.

When an authorised officer does this, they can be accompanied by a health or social care professional (for example, a nurse or a GP).

We recommend that authorised officers and other professionals can only do a private interview or health assessment if the at-risk adult agrees. The authorised officers or other professionals must explain to the at-risk adult that they can say "no". If the at-risk adult does not agree to the interview or health assessment, then the

professionals cannot do them. This is important to make sure that the at-risk adult's rights are not interfered with too much.

When an authorised officer is checking the health, safety or well-being of an at-risk adult in a relevant premises, they might need to look at documents or information. So, we recommend that authorised officers of the Safeguarding Body should be able to:

- inspect documents and items that are in the relevant premises;
- interview people at the relevant premises; and
- require people who are in charge of the relevant premises to give the authorised officers information, documents or items.

Doing these things will help authorised officers of the Safeguarding Body to check whether there is a risk to an at-risk adult, or if an at-risk adult has been harmed.

Who should be allowed to enter and inspect relevant premises?

We recommend that the power to enter and inspect relevant premises should be given to authorised officers of the Safeguarding Body. Authorised officers of the Safeguarding Body will have the skills and experience to check on the health, safety or well-being of an at-risk adult in a relevant premises. They will also have the skills to explain their powers under the laws to at-risk adults.

We recommend that a member of the Gardaí (a Garda) should be allowed to enter the relevant premises with an authorised officer, if the authorised officer has a warrant from the District Court (as explained above). The Garda can help the authorised officer to use the warrant, and use reasonable force if necessary.

We also recommend that the new adult safeguarding laws should allow the following people to enter the relevant premises with an authorised officer:

- health or social care professionals (like doctors and nurses), and

- any other people that the authorised officer thinks are needed or appropriate, such as a trusted friend or family member of the at-risk adult.

Health or social care professionals will be able to help the authorised officer to check the health, safety and well-being of the at-risk adult. A trusted friend or family member of the at-risk adult might help to reassure the at-risk adult.

Can authorised officers or Gardaí use reasonable force to get into the premises?

When authorised officers are using their power to enter and inspect a relevant premises without a warrant, we do not think that they should be allowed to use force.

However, if an authorised officer gets a warrant because they were stopped from entering the relevant premises (or thought that they would be stopped), they might need to use force to get into the premises. This is why we recommend that Gardaí should be allowed to come with the authorised officer when they have a warrant. Gardaí have lots of experience entering places using warrants.

We recommend that an authorised officer or a Garda should be able to use reasonable force to get into the relevant premises, if they have a warrant. For example, "reasonable force" might mean breaking a lock. Reasonable force should only be used if it is needed to get into the premises.

What happens if someone stops an authorised officer of the Safeguarding Body from doing their job?

We think that it should be a crime for staff members or people working at a relevant premises to:

- stop authorised officers of the Safeguarding Body, or other people they bring with them, from entering a relevant premises;

- stop authorised officers of the Safeguarding Body, or other people they bring with them, from doing actions that they are allowed to do under new adult safeguarding laws; or
- give authorised officers of the Safeguarding Body, or other people they bring with them, incorrect information on purpose.

These crimes should only apply to staff members or people working at the relevant premises. So, it would not apply to any friends or family members of the at-risk adult, or people visiting the relevant premises. It also would not apply to the at-risk adult themselves. If an at-risk adult is upset or confused, the authorised officers should try to reassure them, and explain what the purpose of the power is.

Should it be possible to publish information about an at-risk adult?

Applications for warrants are very likely to involve sensitive details about at-risk adults. It is important to protect their right to privacy. So, we recommend that, in relation to any application for a warrant to enter a relevant premises, it should be a crime for a person to publish any information identifying an at-risk adult.

However, it would not be a crime for an at-risk adult to do this about themselves.

Conclusions and recommendations

In this chapter, we explained the reasons for recommending that authorised officers of the Safeguarding Body should have a new power to enter and inspect relevant premises.

We think that this new power should be included in adult safeguarding laws, to protect the rights of at-risk adults in Ireland. We have included protections and requirements to make sure that the new power does not interfere with people's rights too much.

Recommendations: How we think the law should change

R. 10.1 We recommend that new adult safeguarding laws should allow authorised officers of the Safeguarding Body to enter and inspect relevant premises to check the health, safety and well-being of at-risk adults.

R. 10.2 We recommend that a "relevant premises" should include:

(a) residential centres for older people and adults with disabilities – these are places regulated by HIQA where older people or adults with disabilities live;

(b) places where day services are provided to older adults or adults with disabilities;

(c) hospitals, hospices, and other centres that provide physical health services to adults;

(d) residential centres for adults with mental disorders – these are places regulated by the Mental Health Commission where people with mental disorders are cared for;

(e) international protection accommodation centres;

(f) domestic, sexual or gender-based violence centres;

(g) residential centres that provide addiction support services; and

(h) residential centres for adults who are homeless.

R. 10.3 We recommend that the government should be able to add to this list in the future.

R. 10.4 We recommend that authorised officers of the Safeguarding Body should be able to enter and inspect relevant premises without a warrant, except for any part of a relevant premises that is a dwelling (private home).

R. 10.5 We recommend that a "dwelling" should not include an at-risk adult's room in a relevant premises. This means that authorised officers of the Safeguarding Body do not need a warrant to go into these rooms.

R. 10.6 We recommend that a "dwelling" should include the separate, private home of a staff member.

R. 10.7 We recommend that authorised officers of the Safeguarding Body should only be able to enter a part of a relevant premises that is a dwelling if:

(a) the person who lives in the dwelling agrees; or

(b) they have a warrant or other legal power to enter the dwelling.

R. 10.8 We recommend that authorised officers of the Safeguarding Body should be able to ask a District Court judge for a warrant if they have been stopped, or think that they will be stopped, from entering a relevant premises.

R. 10.9 We recommend that authorised officers of the Safeguarding Body should be able to enter a relevant premises if they have reasons for thinking that:

(a) there is an at-risk adult in the relevant premises;

(b) there is a risk to the health, safety or well-being of the at-risk adult because of abuse, neglect or ill-treatment; and

(c) authorised officers need to enter the relevant premises to check on the health, safety and well-being of the at-risk adult.

R. 10.10 We recommend that authorised officers of the Safeguarding Body should be able to apply for a warrant if they have reasons for thinking that:

(a) there is an at-risk adult in the relevant premises;

(b) there is a risk to the health, safety or well-being of the at-risk adult because of abuse, neglect or ill-treatment;

(c) authorised officers need to enter the relevant premises to check on the health, safety and well-being of the at-risk adult; and

(d) the authorised officer was stopped, or thinks that they will be stopped, from entering the relevant premises.

R. 10.11 We recommend that, to grant a warrant, a District Court judge must be satisfied that there are reasons to think that:

(a) there is an at-risk adult on the relevant premises;

(b) there is a risk to the health, safety or well-being of the at-risk adult because of abuse, neglect or ill-treatment;

(c) a warrant to allow authorised officers to enter the relevant

premises is needed to check on the health, safety and well-being of the at-risk adult; and

(d) an authorised officer of the Safeguarding Body has been stopped, or will be stopped, from entering the relevant premises.

R. 10.12 We recommend that authorised officers of the Safeguarding Body and health or social care professionals should be able to do a:

(a) private interview with; and

(b) health assessment of

an at-risk adult at the relevant premises.

R. 10.13 We recommend that authorised officers or other professionals can only do a private interview or health assessment if the at-risk adult agrees. The authorised officers or other professionals must explain to the at-risk adult that they can say "no".

R. 10.14 We recommend that when authorised officers of the Safeguarding Body are checking an at-risk adult's health, safety or well-being, they should be able to:

(a) inspect documents and items that are in the relevant premises;

(b) interview people at the relevant premises; and

(c) require people who are in charge of the relevant premises to give the authorised officers information, documents or items.

R. 10.15 We recommend that the new adult safeguarding laws should allow a Garda to enter the relevant premises with an authorised officer, if the authorised officer has a warrant from the District Court (as explained above).

R. 10.16 We recommend that the new adult safeguarding laws should allow the following people to enter the relevant premises with an authorised officer:

(a) health or social care professionals (like doctors and nurses); and

(b) any other people that the authorised officer thinks are needed or appropriate, such as a trusted friend or family member of the at-risk adult.

R. 10.17 We recommend that when the authorised officer is using their power to enter and inspect relevant premises, they should explain the power to the at-risk adult.

R. 10.18 We recommend that an authorised officer or Garda should be able to use reasonable force to get into the relevant premises, if they have a warrant. For example, "reasonable force" might mean breaking a lock.

R. 10.19 We recommend that warrants to enter a relevant premises should last for one month.

R. 10.20 We recommend that it should be a crime for staff members or people working at a relevant premises to:

(a) stop authorised officers of the Safeguarding Body, or other people they bring with them, from entering a relevant premises;

(b) stop authorised officers of the Safeguarding Body, or other people they bring with them, from doing actions that they are allowed to do under new adult safeguarding laws; or

(c) give authorised officers of the Safeguarding Body, or other people they bring with them, incorrect information on purpose.

R. 10.21 We recommend that, in relation to any application for a warrant to enter a relevant premises, it should be a crime for a person to publish any information identifying an at-risk adult. (However, it would not be a crime for an at-risk adult to do this about themselves.)

Chapter 11: Powers of access to at-risk adults in places including private dwellings

What is this chapter about?

In this chapter we look at and explain:

- what we mean when we say a power to access at-risk adults in places like people's homes (private dwellings); and
- why we think this power is needed in Ireland.

What is a power to access at-risk adults in places like people's homes?

When we talk about this power, we are talking about letting authorised officers of the Safeguarding Body and Gardaí access at-risk adults, including in private homes, to check on their health, safety and well-being. We decided that this power should be available in Ireland, after:

- hearing people's opinions;
- looking at what other countries do; and
- thinking about the rights of at-risk adults.

We recommend that new adult safeguarding laws should include this power.

What laws do we currently have in Ireland about the Gardaí or social workers entering homes?

Currently, there are only a few powers to enter people's homes in Irish law. For example:

- Gardaí and other professionals can enter a person's home if the person gives them permission.

- Gardaí have a power to enter a person's home where there is a serious risk to the "life and limb" of someone inside. The Supreme Court said this in a case called DPP v Delaney.
- Gardaí can enter a person's home when they are investigating certain crimes. For example, they can enter a person's home if they have reasons for thinking that there are illegal drugs there.
- Gardaí can enter a home if they have reasons for thinking that there is an urgent and serious risk to the health or well-being of a child.
- Social workers from the Child and Family Agency (Tusla) can enter a home to check on a child who is being fostered.

Are there any civil powers to access adults?

Under the civil (non-criminal) law, there are two main ways of accessing adults.

1. **The Mental Health Act 2001**

The Mental Health Act 2001 lets the Gardaí access adults in order to take them to an approved centre (a place where mental health services are provided). This is only possible where there are reasons for thinking that the person:

- has a "mental disorder" and
- is likely to cause serious harm to themselves or another person.

These powers could be used to access at-risk adults in some situations. However, lots of at-risk adults will not have a "mental disorder", but may still need support or protection.

2. **The inherent jurisdiction of the High Court**

The "inherent jurisdiction" is a special power of the High Court that it can use where there are no laws that apply to a situation. The inherent jurisdiction is only used in

certain cases, where it is really needed. The High Court has used this power in some serious cases involving at-risk adults.

For example, in one case, social workers were removing children from a house to prevent harm to them. When they were removing the children, they saw a woman who had an intellectual disability who was not being properly cared for. She had not seen her GP in more than 10 years. The High Court judge checked to see if there was any other way to safeguard the woman, but there was none. The High Court judge used the inherent jurisdiction to grant orders which allowed the social workers and Gardaí to remove the woman from her home and take her to hospital, where she could be checked.

It is useful that the High Court can use its inherent jurisdiction to make orders when there are no laws that apply to a situation. However, this is an expensive and complicated process. Also, we think it would be better if there were clear and precise laws about accessing at-risk adults. This is important because these cases involve limiting people's rights. If there were laws about powers to safeguard at-risk adults, it would be clearer to everyone what professionals and the courts can do, and what protections there are for people's rights.

What are the gaps in the law?

We think that the powers to enter people's homes that currently exist in Ireland are not enough to safeguard at-risk adults. These powers have different aims to safeguarding, and can only be used in certain cases.

Although there are two main ways of accessing adults in civil law, these can only be used in limited cases. They also do not solve the problem of getting access to an at-risk adult in the first place to:

- check their health, safety and well-being, and

- decide if any actions are needed.

The main gap in the law is that there is no power written down in Irish law that lets professionals enter a home to check on the health, safety or well-being of an at-risk adult. We recommend that this kind of power should be included in new adult safeguarding laws. This will let professionals contact at-risk adults and check on them, and may lead to other actions to safeguard at-risk adults.

What laws do other countries have about accessing at-risk adults in their homes?

In other countries, there are laws that let police and social workers enter people's homes to access at-risk adults. When we thought about what the law in Ireland should be, we looked at how other countries use these laws.

Some examples of countries with these laws are:

- Scotland,
- Wales,
- Different parts of Canada, and
- Different parts of Australia.

In most places, a warrant from a court is needed before a police officer or social worker can enter a home. These laws also allow professionals to talk to and check on the at-risk adult who they are worried about.

What rights are affected by a power of access to at-risk adults in places like people's homes?

When we were thinking about this new power, we thought about what rights would be affected by it. We explain these below.

Rights protected by the Constitution

We explained the rights which are protected by the Constitution (constitutional rights) in chapter 4. We think that a power to access at-risk adults in places like people's homes is needed to protect the constitutional rights of at-risk adults, including their rights to:

- life;
- freedom;
- control over their body; and
- dignity.

For example, the power could allow authorised officers to find out that an at-risk adult is being harmed or abused. The authorised officers could then take actions to support the at-risk adult and protect their rights.

However, this power could also interfere with the constitutional rights of at-risk adults, or other people. For example, this could interfere with their rights to:

- freedom;
- privacy; or
- security in their home.

Although constitutional rights are very important, they have limits. This means that they can be interfered with in some cases, if the interference is needed and does not go too far. The purpose of the power is to check on an at-risk adult's health, safety and well-being. We think that this is an important enough reason to interfere with constitutional rights. In this chapter, we recommend requirements and protections to be written into the new law, to make sure that the interference is needed and does not go too far.

In particular, Article 40.5 of the Constitution protects the security of people in their home. This means that a person's home is their safe space, whether they own the

home themselves or not. Usually, the Gardaí and other public bodies cannot enter a person's home without the person's permission, or a power to enter that is provided by a law.

We think that a warrant (written permission) from the court should generally be required to access at-risk adults in places like people's homes.

Rights protected by the European Convention on Human Rights

The European Convention on Human Rights also protects rights. We think that a power to access at-risk adults in places like people's homes is needed to protect these rights. For example, the European Convention on Human Rights protects the rights to:

- life; and
- be free from ill-treatment.

We also recommend requirements and protections to be written into the new law, to make sure that any interference with rights that are protected by the European Convention on Human Rights is needed and does not go too far.

Why do we need a power of access to at-risk adults in places like people's homes?

Right now in Ireland, there is a worry that at-risk adults may be suffering from abuse or neglect, but that the Gardaí and social workers cannot get access to them. For example, somebody might be blocking the professionals from coming into the home or talking to the at-risk adult. This means that professionals cannot check on the at-risk adult's health, safety and well-being, and decide whether any actions are needed to safeguard them.

We think that a power of access to at-risk adults in places like people's homes is needed in Ireland. This power would:

- fill the current gap in the law, as we explained above; and
- allow professionals to access at-risk adults in difficult situations – for example, where someone is blocking access to the at-risk adult, or where there has been no response to many attempts to access the at-risk adult.

The power may also:

- stop abusive situations from getting worse; and
- allow at-risk adults to tell professionals what is happening to them, and to receive support.

Most of the people who responded to our Issues Paper agreed that adult safeguarding laws should include a power of access to at-risk adults in places like people's homes. They said that this power would be needed in the most serious cases, where other ways to safeguard the at-risk adult had not worked.

We think it is important to include this power in new adult safeguarding laws, because it will help to:

- prevent harm to at-risk adults, and
- protect at-risk adults who are being harmed.

How would a power of access to at-risk adults in places like people's homes work?

We recommend that a power of access to at-risk adults should be included in new adult safeguarding laws. Specifically, we recommend that the following should be included:

- a power for the District Court to grant a warrant which lets Gardaí and authorised officers access at-risk adults in places including people's homes; and

- a power for Gardaí to access at-risk adults in places including people's homes, without having to get a warrant first. This would only be available in urgent cases.

When would these powers be needed?

These powers may be needed where there is a concern about abuse or neglect of an at-risk adult and:

- a person (such as a family member, friend or carer) is not allowing the Gardaí or authorised officers of the Safeguarding Body to access the at-risk adult; or
- there is no reply whenever the Gardaí or authorised officers of the Safeguarding Body try to contact the at-risk adult.

There might also be a case where there is a concern about abuse or neglect of an at-risk adult and the at-risk adult is the person who is not allowing the authorised officers of the Safeguarding Body or the Gardaí to access them. The powers of access might be needed in this case, for example where there are reasons for thinking that:

- the at-risk adult may lack capacity to decide whether to let the professionals in;
- the at-risk adult may have a mental disorder but is not a risk to themselves or anyone else; or
- somebody else is pressurising or forcing the at-risk adult to block access.

Using the power of access in these cases will allow Gardaí and authorised officers of the Safeguarding Body to enter the place to access the at-risk adult and check on their health, safety and well-being. They can then decide if the at-risk adult needs support to protect themselves from harm, and whether any other actions are needed to safeguard the at-risk adult.

Should the Gardaí and authorised officers of the Safeguarding Body need a warrant to access at-risk adults in places like people's homes?

The Constitution protects the security of people in their home. This means that the Gardaí and other public bodies can usually only enter a person's home if they have:

- the person's permission,
- a warrant, or
- a power to enter that is provided by a law.

Most people who responded to our Issues Paper said that the Gardaí and authorised officers of the Safeguarding Body should have to apply to a court for a warrant before they could get access to an at-risk adult in a home.

We recommend that Gardaí and authorised officers of the Safeguarding Body should generally have to apply to the District Court for a warrant to allow them to access an at-risk adult in places like a person's home. (We explain the separate, urgent power for Gardaí in a separate section below.)

How long would a warrant last?

Warrants are temporary and should not last forever. We recommend that a warrant to access an at-risk adult should only last for three days.

This temporary time period will help to make sure that the power of access does not go too far in interfering with people's rights, in particular their right to security of their home.

Who should be able to apply for a warrant for access?

We recommend that the Gardaí or authorised officers of the Safeguarding Body should be able to apply for a warrant to access an at-risk adult.

When should authorised officers of the Safeguarding Body or the Gardaí be able to apply for a warrant for access?

Here are some examples of things that might make an authorised officer of the Safeguarding Body or a Garda worry about an at-risk adult:

- the at-risk adult has missed lots of GP visits or medical appointments;
- the at-risk adult has not been going to a day centre that they usually go to;
- friends, family or neighbours are worried about the at-risk adult's health, safety or well-being; or
- no one has seen the at-risk adult for a long time.

We think that there should be a clear standard before an authorised officer of the Safeguarding Body or a Garda could apply for a warrant. So, we recommend that authorised officers of the Safeguarding Body or the Gardaí should be able to apply for a warrant if they have reasons for thinking that:

1. there is an at-risk adult in the place;
2. there is a risk to the health, safety or well-being of the at-risk adult;
3. a warrant for access is needed to check on the at-risk adult's health, safety or well-being; and
4. access cannot be gained by any other way.

Who should be able to use the power of access?

We recommend that the power of access should be given to the Gardaí and authorised officers of the Safeguarding Body. It would be best for both a Garda and an authorised officer to be present when the power of access is used. This would:

- combine the skills of both professions; and
- reduce the possibility of someone misusing the power.

Authorised officers will be able to use social work skills to talk to, and check on, the at-risk adult. The Gardaí will:

- have experience of using warrants and other legal powers to enter private homes;
- be able to help if the situation becomes dangerous; and
- be able to gather evidence if the place turns out to be a crime scene.

We also recommend that the new adult safeguarding laws should allow the following people to enter the place with the Garda or authorised officer:

- health or social care professionals (like doctors and nurses), and
- any other people that the Garda or authorised officer thinks are needed or appropriate, such as a trusted friend or family member of the at-risk adult.

Health or social care professionals will be able to help the authorised officer to check on the health, safety and well-being of the at-risk adult. A trusted friend or family member of the at-risk adult might help to reassure the at-risk adult.

When could a District Court judge grant a warrant?

We recommend that, to grant (give) a warrant, a District Court judge must be satisfied that there are reasons for thinking that:

1. there is an at-risk adult in the place;
2. there is a risk to the health, safety or well-being of the at-risk adult;
3. a warrant for access is needed to check on the at-risk adult's health, safety or well-being; and
4. access cannot be gained by any other way.

The authorised officer of the Safeguarding Body or Garda should not have to show the judge that they think the at-risk adult is a victim of a crime. When they enter the place, there might be evidence of a crime, but this power of access is only designed

to check on the health, safety, and well-being of the at-risk adult, not whether any crimes have been committed.

What evidence should be given to the judge when trying to get a warrant?

The authorised officer or Garda who is asking the District Court for a warrant should have to give evidence about their reasons for thinking that:

1. there is an at-risk adult in the place;
2. there is a risk to the health, safety or well-being of the at-risk adult;
3. a warrant for access is needed to check on the at-risk adult's health, safety or well-being; and
4. access cannot be gained by any other way.

They should also have to give evidence that they have tried to access the at-risk adult, but they were not able to do so.

We recommend that this evidence should be required, because a warrant to access an at-risk adult should only be used where it is really needed. These requirements will also help to protect the rights of at-risk adults and other people.

Should the Gardaí be able to access at-risk adults in people's homes without a warrant?

Sometimes, there may be very serious and urgent situations, where waiting to apply for a warrant would mean that the at-risk adult could be seriously hurt or killed. We think that there should be a special power for the Gardaí to immediately access at-risk adults in these kinds of cases.

Including this power in new adult safeguarding laws would:

- make it clearer what adult safeguarding powers are available in Ireland;

- make sure that legal powers do not interfere too much with people's rights; and
- make sure that urgent situations involving at-risk adults can be dealt with in an appropriate and consistent way.

This special power, which would be included in new adult safeguarding laws, is very similar to a power that already exists for Gardaí but is not written down. It comes from a case called DPP v Delaney, where the Supreme Court said that where the Gardaí need to safeguard a person's "life and limb", they can access a person's home without a warrant.

We think that new adult safeguarding laws should include a special power that lets the Gardaí enter a place including a person's home without a warrant in serious cases. This is called a "summary" power of access. We recommend that this power should be available where a Garda has reasons for thinking that:

1. there is an at-risk adult in the place;
2. there is an urgent risk to the at-risk adult's "life and limb"; and
3. the risk is so urgent that there is not enough time to apply to the District Court for a warrant.

A risk to "life and limb" is very high level of risk. Examples of this risk might include:

- Seeing an at-risk adult through a window lying on the floor seemingly unconscious.
- If the at-risk adult had rung an emergency number and complained about a violent adult child but were still in their home and not answering the door.

How would the summary power of access work?

The summary power of access is for Gardaí. However, as we explained above, it would be helpful for other professionals to be there where this is possible. So, we

recommend that the new adult safeguarding laws should allow the following people to enter the place with the Garda who is using the summary power:

- authorised officers of the Safeguarding Body;
- health or social care professionals (like doctors and nurses); and
- any other people that the Garda thinks are needed or appropriate, such as a trusted friend or family member of the at-risk adult.

This will not always be possible, because the situations where the summary power is needed are likely to be very urgent. Because the Gardaí may use this summary power by themselves in some cases, we recommend that, if a Garda uses this power, they must:

- tell the Safeguarding Body about this as soon as possible; and
- write down their reasons for using the power and upload this information to the Garda database (called "PULSE").

These requirements will help to make sure that:

- rights are protected;
- the Gardaí do not misuse the summary power; and
- the Safeguarding Body knows when the summary power is being used, and are aware of at-risk adults who may need help or support.

What happens when authorised officers of the Safeguarding Body or Gardaí use a power to access an at-risk adult?

When the Gardaí or authorised officers of the Safeguarding Body use a power to access an at-risk adult, we think that they should be able to do certain things. These things are the same, whether they are using the:

- warrant for access granted by the District Court; or
- summary power of access that Gardaí can use under new adult safeguarding laws.

1. **They should explain the power to the at-risk adult**

Coming into a person's home will interfere with their rights, and may be confusing for at-risk adults. When authorised officers or the Gardaí use a power of access, it is important that the at-risk adult understands:

- what is happening; and
- why it is happening.

So, we recommend that when an authorised officer or Gardaí is using their power to access an at-risk adult, they should explain the power to the at-risk adult and tell the at-risk adult why the power is being used.

2. **They can use reasonable force to get into the place**

When an authorised officer or Garda is using a warrant for access or the summary power of access, they might need to use force to get into the place. This might be needed where they have tried all other options, or the situation is really urgent.

We recommend that when an authorised officer or Gardaí is using a power to access an at-risk adult, they should be able to use reasonable force to get into the place. For example, "reasonable force" might mean breaking a lock. Reasonable force should only be used if it is needed to get into the premises.

3. **Authorised officers and health and social care professionals can do an interview and health assessment of the at-risk adult**

The purpose of the power of access is to allow authorised officers of the Safeguarding Body and other professionals to check on the health, safety, and well-being of an at-risk adult.

To help them to do this, we recommend that authorised officers of the Safeguarding Body and health or social care professionals should be able to do a:

- private interview with; and
- health assessment of

an at-risk adult in the place.

We recommend that authorised officers or other professionals can only do a private interview or health assessment if the at-risk adult agrees. The authorised officers or other professionals must explain to the at-risk adult that they can say "no". If the at-risk adult does not agree to the interview or health assessment, then the professionals cannot do them. This is important to make sure that the at-risk adult's rights are not interfered with too much.

These powers can only be used by an authorised officer or a health or social care professional, and not by a Garda. (We talk about other powers that a Garda should have below.)

Can the Gardaí ask people questions when they are using a power of access?

When the Gardaí use a power of access, they may have concerns about a person who is in the place. We recommend that, when the Gardaí are using their power to access an at-risk adult, they should:

- be able to ask people at the place to give their name and address, and
- keep a record of these details.

What happens if someone stops an authorised officer of the Safeguarding Body or a Garda from using a power of access?

We recommend that it should be a crime to stop an authorised officer of the Safeguarding Body or a Garda from using their power to access an at-risk adult. The Gardaí should also be able to arrest any person who stops them from using their power to access an at-risk adult.

However, it would not be a crime for an at-risk adult to stop them, and an at-risk adult could not be arrested for this. If an at-risk adult is upset or confused, the

authorised officer or other professional should try to reassure them, and explain what the purpose of the power is.

Should it be possible to publish information about an at-risk adult?

Applications for warrants to access at-risk adults are likely to involve sensitive details about at-risk adults. It is important to protect their right to privacy. So, we recommend that, in relation to any application for a warrant to access an at-risk adult, it should be a crime for a person to publish any information identifying an at-risk adult.

However, it would not be a crime for an at-risk adult to do this about themselves.

Conclusions and recommendations

In this chapter, we explained the reasons for recommending that the Gardaí and authorised officers of the Safeguarding Body should have a new power to access at-risk adults in places including people's homes.

We think that this new power should be included in adult safeguarding laws, to protect the rights of at-risk adults in Ireland. We have included protections and requirements to make sure that the new power does not interfere with people's rights too much.

Recommendations: How we think the law should change

R. 11.1 We recommend that new adult safeguarding laws should allow Gardaí and authorised officers of the Safeguarding Body to access at-risk adults in places including dwellings (private homes), to check on their health, safety and well-being.

R. 11.2 We recommend that this power of access should only be used when there is a warrant from a District Court judge.

R. 11.3 We recommend that this warrant should last for three days.

R. 11.4 We recommend that the Gardaí or authorised officers of the Safeguarding Body should be able to apply for a warrant.

R. 11.5 We recommend that the Gardaí and authorised officers of the Safeguarding Body should only be able to apply for a warrant if they have reasons for thinking that:

(a) there is an at-risk adult in the place;

(b) there is a risk to the health, safety or well-being of the at-risk adult;

(c) a warrant for access is needed to check on the at-risk adult's health, safety or well-being; and

(d) access cannot be gained by any other way.

R. 11.6 We recommend that the power of access should be given to the Gardaí and authorised officers of the Safeguarding Body.

R. 11.7 We recommend that the new adult safeguarding laws should allow the following people to enter the place with the Garda or authorised officer who is using the warrant:

(a) health or social care professionals (like doctors and nurses), and

(b) any other people that the Garda or authorised officer thinks are needed or appropriate, such as a trusted friend or family member of the at-risk adult.

R. 11.8 We recommend that, to grant a warrant, a District Court judge must be satisfied that there are reasons to think that:

(a) there is an at-risk adult in the place;

(b) there is a risk to the health, safety or well-being of the at-risk adult;

(c) a warrant for access is needed to check on the at-risk adult's health, safety or well-being; and

(d) access cannot be gained by any other way.

R. 11.9 We recommend that the Garda or authorised officer of the Safeguarding Body who is asking the District Court for a warrant should have to give evidence about these things. They should also have to give evidence that they have tried to access the at-risk adult, but they were not able to do so.

R. 11.10 We recommend that new adult safeguarding laws should also give the Gardaí a "summary" power of access. This would let them enter a place, including a dwelling (private home), where they have reasons for thinking that:

(a) there is an at-risk adult in the place;

(b) there is an urgent risk to the at-risk adult's "life and limb"; and

(c) the risk is so urgent that there is not enough time to apply to the District Court for a warrant.

R. 11.11 We recommend that the new adult safeguarding laws should allow the following people to enter the place with the Garda who is using the summary power:

(a) authorised officers of the Safeguarding Body;

(b) health or social care professionals (like doctors and nurses); and

(c) any other people that the Garda thinks are needed or appropriate, such as a trusted friend or family member of the at-risk adult.

R. 11.12 We recommend that, if a Garda uses the summary power, they must:

(a) tell the Safeguarding Body about this as soon as possible; and

(b) write down their reasons for using the power and upload this

information to the Garda database (called "PULSE").

R. 11.13 We recommend that when an authorised officer or Gardaí is using their power to access an at-risk adult, they should explain the power to the at-risk adult.

R. 11.14 We recommend that when an authorised officer or Gardaí is using their power to access an at-risk adult, they should be able to use reasonable force to get into the place. For example, "reasonable force" might mean breaking a lock.

R. 11.15 We recommend that authorised officers of the Safeguarding Body and health or social care professionals should be able to do a:

(a) private interview with; and

(b) health assessment of

an at-risk adult in the place.

R. 11.16 We recommend that authorised officers or other professionals can only do a private interview or health assessment if the at-risk adult agrees. The authorised officers or other professionals must explain to the at-risk adult that they can say "no".

R. 11.17 We recommend that, when the Gardaí are using their power to access an at-risk adult, they should:

(a) be able to ask people at the place to give their name and address, and

(b) keep a record of these details.

R. 11.18 We recommend that it should be a crime to stop an authorised officer of the Safeguarding Body or Gardaí from using their power to access an at-risk adult. The Gardaí should also be able to arrest any person who stops them from using their power to access an at-risk adult. However, it would not be a crime for an at-risk adult to stop them, and an at-risk adult could not be arrested for this.

R. 11.19 We recommend that, in relation to any application for a warrant, it should be a crime for a person to publish any information identifying an at-risk adult. (However, it would not be a crime for an at-risk adult to do this about themselves.)

Chapter 12: Powers of removal and transfer

What is this chapter about?

In chapter 12, we look at and explain:

- what we mean when we say a power to:
    - remove an at-risk adult from where they are, and
    - transfer the at-risk adult to a place where health or social care services are provided, or to another place that has been approved by a court; and
- why we think this power is needed in Ireland.

What is a power of removal and transfer?

When we talk about this power, we are talking about letting Gardaí take an at-risk adult from the place where they are, and bring them to somewhere else. This would allow professionals to do the following:

- check on the at-risk adult's health, safety and well-being, and
- decide whether any actions are needed to safeguard the at-risk adult,

where the professionals cannot do these things in the place where the at-risk adult currently is.

We decided that this power should be available in Ireland, after:

- hearing people's opinions;
- looking at what other countries do; and
- thinking about the rights of at-risk adults.

We recommend that new adult safeguarding laws should include this power.

What laws do we currently have in Ireland about removing adults from where they are, and bringing them to another place?

Currently, there are only a few powers to remove people from their homes in Ireland. For example, someone could be arrested and taken from their house to a Garda station.

Under the civil (non-criminal) law, there are two main ways of removing adults from where they are and bringing them to another place.

The Mental Health Act 2001

The Mental Health Act 2001 lets the Gardaí take certain people to an approved centre (a place where mental health services are provided). This is only possible where there are reasons for thinking that the person:

- has a "mental disorder" and
- is likely to cause serious harm to themselves or another person.

These powers could be used to remove at-risk adults from where they are, in some situations. However, lots of at-risk adults will not have a "mental disorder", but may still need support or protection.

In our Issues Paper, we asked people about what they thought about the existing powers to remove individuals. Some people who responded were concerned that the power to remove people to approved centres could be used in an inappropriate way, to remove at-risk adults, if there are not specific powers in adult safeguarding laws.

The inherent jurisdiction of the High Court

The "inherent jurisdiction" is a special power of the High Court that it can use where there are no laws that apply to a situation. The inherent jurisdiction is only used in certain cases, where it is really needed. The High Court has used this power in some serious cases involving at-risk adults.

In particular, it has used this power to grant orders that let professionals:

- enter an adult's home,
- remove them from it, and
- take them to somewhere else (such as a hospital, for medical treatment).

It is useful that the High Court can use its inherent jurisdiction to make orders when there are no laws that apply to a situation. However, this is an expensive and complicated process. Also, we think it would be better if there were clear and precise laws about accessing at-risk adults, rather than using the inherent jurisdiction which is not written down anywhere. This is important because these cases involve limiting people's rights. If there were laws about powers to safeguard at-risk adults, it would be clearer to everyone what professionals and the courts can do, and what protections there are for people's rights.

What are the gaps in the law?

We think that the powers to remove and transfer adults that currently exist in Ireland are not enough to safeguard at-risk adults. These powers have different aims to safeguarding, and can only be used in certain cases.

The main gap in the law is that there is no power written down in Irish law that lets professionals (like Gardaí or social workers) bring at-risk adults to places to:

- check on their health, safety and well-being, and
- decide if any actions are needed.

What laws do other countries have about removing and transferring at-risk adults?

In other countries, there are laws that let police and social workers remove at-risk adults from where they are, and bring them to other places. When we thought about what the law in Ireland should be, we looked at how other countries use these laws.

Some examples of countries with these laws are:

- Scotland,
- Different parts of Canada, and
- Different parts of Australia.

When we were making our recommendations, we looked at the law in Scotland a lot.

Powers to remove and transfer at-risk adults in Scotland

In Scotland, the adult safeguarding law includes two powers to remove and transfer at-risk adults: assessment orders and removal orders.

1. Assessment Orders

In Scotland, local councils are responsible for safeguarding at-risk adults. A local council can apply to a court for an "assessment order". This order allows a person who works for the council (usually a social worker) to temporarily move a person so they can be:

- interviewed in private by a council officer; and
- medically examined by a health professional.

This is done to help the council to decide:

- whether the person is an at-risk adult; and
- if they are an at-risk adult, whether the council needs to do anything to protect them from harm.

The judge will only grant an assessment order if they are satisfied that:

1. the council has reasons for thinking that the person is an at-risk adult who is being, or is likely to be, seriously harmed;
2. the assessment order is needed to decide whether the person is an at-risk adult who is being, or is likely to be, seriously harmed; and

3. the place where the person will be brought to is available and suitable to interview and medically examine the person.

The law in Scotland says that an assessment order can only be used if it is not possible to interview or medically examine the person in the place where they currently are.

The law in Scotland also says that usually the at-risk adult has to consent to being removed. However, there is an exception to this where the judge or the person using the assessment order has reasons for thinking that:

- the at-risk adult has been pressurised by someone else to not consent; and
- the assessment order is the only way to protect the at-risk adult from harm.

2. Removal Orders

Under the law in Scotland, a local council can also apply to a court for a "removal order". This order allows:

- a person who works for the council to move the at-risk adult to a named place; and
- the council to take steps to protect the at-risk adult from harm.

A judge will only grant a removal order if they are satisfied that:

1. the person is an at-risk adult who is likely to be seriously harmed if they stay where they are; and
2. the place where the person will be brought to is available and suitable.

A removal order lasts for a maximum of 7 days.

The purpose of the removal order is to give at-risk adults a safe space to make a decision about their own well-being. The at-risk adult can choose to go home, but the removal order is designed to give them space and time to decide if that is what they want to do.

Like with assessment orders, the law in Scotland says that usually the at-risk adult has to consent to being removed. However, there is an exception to this where the judge or the person using the removal order has reasons for thinking that:

- the at-risk adult has been pressurised by someone else to not consent; and
- the removal order is the only way to protect the at-risk adult from harm.

This exception is designed to give at-risk adults "breathing space", by bringing them to a safe place where they can make a decision. After an at-risk adult is removed from somewhere, they might want to go back to the person who is pressuring them and possibly harming them. If the at-risk adult makes this choice, it is okay. There is no power to keep the at-risk adult somewhere if they do not want to stay – the adult can immediately leave, if they want to.

What rights are affected by a power of removal and transfer?

When we were thinking about this new power, we thought about what rights would be affected by it. Removing an at-risk adult from where they are and bringing them to another place would have a significant impact on their rights.

Rights protected by the Constitution

We explained the rights which are protected by the Constitution (constitutional rights) in chapter 4. We think that a power to remove at-risk adults from where they are and bring them to another place may be needed to protect the constitutional rights of at-risk adults in very serious cases. This includes their rights to:

- life;
- freedom;
- control over their body; and
- dignity.

For example, the power could allow authorised officers to find out that an at-risk adult is being harmed or abused. The authorised officers could then take actions to support the at-risk adult and protect their rights.

However, this power could also interfere with the constitutional rights of at-risk adults, or other people. For example, this power could interfere with their rights to:

- freedom;
- privacy; and
- control over their body.

Although constitutional rights are very important, they have limits. This means that they can be interfered with in some cases, if the interference is needed and does not go too far. The purpose of the power of removal and transfer is to:

- check on an at-risk adult's health, safety and well-being, and
- decide whether any actions are needed to safeguard the at-risk adult,

where the professionals cannot do these things in the place where the at-risk adult currently is.

We think that this is an important enough reason to interfere with constitutional rights. In this chapter, we recommend requirements and protections to be written into the new law, to make sure that the interference is needed and does not go too far. For example, we recommend that the Gardaí or authorised officers must get permission from the District Court in every case, before an at-risk adult can be removed or transferred.

We also thought about Article 40.4.1 of the Constitution, which protects the right to personal freedom. When an at-risk adult is being transferred to another place, they will be not be allowed to leave the car or vehicle. (We explain this more below.) Keeping someone in a place without their consent is called "detention" or "detaining" someone. The right to personal freedom means that no one can be detained unless a

law says so, and the law includes a good reason for detaining the person. We thought carefully about this right when we were thinking about a power to remove and transfer an at-risk adult. In this chapter, we recommend requirements, protections and time limits, that will make sure that the power is only used when it is really needed.

Rights protected by the European Convention on Human Rights

The European Convention on Human Rights also protects rights. We think that a power to remove at-risk adults from where they are and bring them to another place may be needed to protect these rights. For example, the European Convention on Human Rights protects the rights to:

- life; and
- be free from ill-treatment.

We also recommend requirements and protections to be written into the new law, to make sure that any interference with rights that are protected by the European Convention on Human Rights is needed and does not go too far.

For example, Article 5 of the European Convention on Human Rights protects the right to freedom. It says that a person can only be detained if this is done:

- under a law, and
- for one of the reasons that are listed in Article 5(1).

(We explain this more in chapter 4.) We thought carefully about this right when we were thinking about a power to remove and transfer an at-risk adult.

Why do we need a power of removal and transfer?

Sometimes, it may be clear that there is a serious and urgent risk to an at-risk adult, but it is not possible to check on their safety, health and well-being unless they are removed from the place where they are. For example:

- it might be too unsafe or dirty to check the at-risk adult's health or well-being in the place where they are;
- someone might be blocking the at-risk adult from talking to professionals, and there is no time to get a no-contact order against that person (we talk about no-contact orders in chapter 13); or
- the at-risk adult themselves may be blocking the professionals, and there are reasons for thinking that the at-risk adult:
    a. is being pressured to do this by someone else, or
    b. may lack capacity to decide whether to talk to the professionals.

So, we think that there should be a new power to remove an at-risk adult and bring them somewhere to check on their health, safety and well-being. This power would fill the current gap in the law, as we explained above. It would allow professionals to:

- check on the health, safety and well-being of the at-risk adult; and
- decide whether any actions are needed to safeguard an at-risk adult,

when they cannot do these things in the place where the at-risk adult is.

The power would also help because it would give the at-risk adult some "breathing space" and time away from someone who might be pressurising or harming them. The professionals could help the at-risk adult to understand the situation without anybody interfering. The at-risk adult is also more likely to tell authorised officers of the Safeguarding Body if they are being abused or neglected if the person who is harming them is not there.

Why would this be better than using the inherent jurisdiction?

Although professionals can use the High Court's inherent jurisdiction to get orders, there are many reasons why we think that it would be better to have the power to make removal and transfer orders written down in a law. For example, this would:

- make it clearer what adult safeguarding powers are available in Ireland;

- make it clearer what the test is for getting a removal and transfer order;
- make applying for these types of orders cheaper and less complicated because applications will be made in the District Court instead of the High Court;
- make sure that legal powers do not interfere too much with people's rights; and
- make sure that urgent situations involving at-risk adults can be dealt with in an appropriate and consistent way.

A number of people and organisations that we spoke to agreed that adult safeguarding laws should include a power to remove and transfer at-risk adults. They said that this power would be needed in the most urgent and serious cases, where all other ways to safeguard the at-risk adult had not worked.

We think it is important to include this power in new adult safeguarding laws, because it will help to prevent harm to at-risk adults, and will protect at-risk adults who are being harmed.

How would a power of removal and transfer work?

Because this power will interfere a lot with the rights of at-risk adults, we think that there should be permission from the District Court in every case. So, we recommend that new adult safeguarding laws should include **removal and transfer orders**. A removal and transfer order would allow Gardaí to:

- enter the place where the at-risk adult is (including a home or a relevant premises);
- take the at-risk adult away from that place; and
- move the at-risk adult to:
    a. a place where health or social care services are provided, or
    b. another place that has been approved by a court.

This would be done to allow professionals to try to:

- check on the health, safety and well-being of an at-risk adult in an appropriate and safe place; and
- check whether an at-risk adult needs any actions or supports to safeguard them.

We thought about letting the Gardaí and authorised officers remove and transfer an at-risk adult without the court's permission in serious cases, but we thought that this would interfere too much with rights. So, we recommend that adult safeguarding laws should not include a power to remove and transfer an at-risk adult without an order from the District Court.

When would a removal and transfer order be used?

Removal and transfer orders might be used in situations where there are reasons for thinking that:

- there is a serious and urgent risk to the health, safety, or well-being of the at-risk adult, and
- actions might be needed to safeguard the at-risk adult.

We think that removal and transfer orders should only be used when it is not possible to check these things at the place where the at-risk adult is.

Why would the at-risk adult be removed, instead of the person who might be harming, abusing or neglecting the at-risk adult?

Where a person is harming, abusing or neglecting an at-risk adult, that person should be stopped from being around the at-risk adult. This is why we recommend in chapter 13 that the following should be available to at-risk adults:

- orders under the Domestic Violence Act 2018; and
- new adult safeguarding no-contact orders.

However, sometimes the risk to the health, safety, or well-being of the at-risk adult may be so urgent that the at-risk adult must be brought somewhere safe so that a health or social care worker can check on them. There might not be time to apply for

a no-contact order against the person who is harming, abusing or neglecting the at-risk adult. Or, it might not be possible to remove the person if they have more rights in the house than the at-risk adult.

We think that including removal and transfer orders in new adult safeguarding laws will help to prevent harm to at-risk adults in as many situations as possible.

Who should be able to apply for removal and transfer orders?

We recommend that authorised officers of the Safeguarding Body or the Gardaí should be able to apply for removal and transfer orders. ("Authorised officers" are staff of the Safeguarding Body who are allowed to exercise the powers of the Safeguarding Body.)

If the Gardaí apply for a removal and transfer order, we recommend that the Safeguarding Body must be told about this as soon as possible. This will help to make sure that:

- the Gardaí do not misuse the power to remove and transfer at-risk adults; and
- the Safeguarding Body know when the power is being used, and are aware of at-risk adults who may need help or support.

When should the Gardaí or authorised officers of the Safeguarding Body be able to apply for a removal and transfer order?

We recommend that the Gardaí or authorised officers of the Safeguarding Body should be able to apply for a removal and transfer order if they have reasons for thinking that:

1. there is an at-risk adult in the place;
2. there is a serious and urgent risk to the at-risk adult's health, safety or well-being;
3. actions may be needed to safeguard the at-risk adult's health, safety or well-being;

4. taking the at-risk adult to a place where health or social care services are provided, or to another place that has been approved by a court, is needed to assess whether there is a risk, and whether actions are needed; and
5. it is not possible to assess these things any other way.

This is a higher standard than the one we recommend for powers of access in chapter 10 and chapter 11. This is because removing and transferring an at-risk adult is a bigger interference with the at-risk adult's rights than getting access to them. So, we think it should be harder to use the power to remove and transfer an at-risk adult.

We recommend that the Garda or authorised officer of the Safeguarding Body who is asking the District Court for a warrant should have to give evidence about these five things. We also recommend that there should be evidence in favour of the order from a health or social care professional. This professional could be:

- a doctor;
- a nurse;
- a midwife;
- a social worker;
- an occupational therapist;
- a speech and language therapist;
- an emergency medical technician;
- a paramedic or advanced paramedic; or
- a psychologist.

We recommend that the government should be able to add other health or social care professionals to this list. If an authorised officer of the Safeguarding Body is one of these professionals (for example, a social worker), it is enough to just have their own evidence.

Finding out what the at-risk adult thinks

Before Gardaí or authorised officers of the Safeguarding Body apply for a removal and transfer order, they should try to see if the at-risk adult agrees to it. This is important because it respects the right of the at-risk adult to make their own decisions. So, we recommend that an authorised officer of the Safeguarding Body or a Garda must:

- make reasonable efforts to find out the at-risk adult's views before they apply for a removal and transfer order, and
- think about the at-risk adult's views when they are deciding whether to apply for a removal and transfer order.

We also recommend that, when a District Court judge is deciding whether to grant a removal and transfer order, they must:

- ask whether reasonable efforts were made to find out the at-risk adult's views, and
- think about the at-risk adult's views.

We think it should be possible to get a removal and transfer order, even where:

- the at-risk adult does not say what their view is;
- it is not possible to find out the at-risk adult's views; or
- the at-risk adult does not want to be moved.

We think that this is needed because sometimes, an at-risk adult could be pressurised by somebody else to not agree to the removal and transfer order. Removing the at-risk adult will help authorised officers of the Safeguarding Body or the Gardaí figure out if the at-risk adult is not agreeing because they are being pressurised. There could also be cases where there are reasons for thinking that the at-risk adult does not have capacity to decide about the order, and so professionals need to try to check this in a safe place.

Making a removal and transfer order where the at-risk adult does not want it would be a big interference with the at-risk adult's rights. So, we recommend that if an at-risk adult does not agree to a removal and transfer order, the authorised officer of the Safeguarding Body or Garda must also have reasons for thinking that the at-risk adult:

1. is being pressurised by someone; or
2. may not have capacity to decide whether to stay in the place where they are, or be moved.

The judge in the District Court must also be satisfied of these things to grant (give) a removal and transfer order where the at-risk adult does not agree to it.

Who should grant a removal and transfer order?

Because removal and transfer orders interfere with rights so much, we think that the decision about whether they are allowed should be made by a judge. This is because judges have the skills and experience to make decisions that will affect people's rights.

Like with the powers that we talk about in chapter 10, chapter 11, and chapter 13, we think that removal and transfer orders should be made by judges in the District Court. This is because similar orders are already made in the District Court and the judges are familiar with them. It is also a cheaper process to go to the District Court than it is to go to other courts. This means it will be easier for people who need to go to court urgently for a removal and transfer order.

When could a District Court judge grant a removal and transfer order?

We recommend that, to grant a removal and transfer order, a District Court judge must be satisfied that there are reasons to think that:

1. there is an at-risk adult in the place;

2. there is a serious and urgent risk to the at-risk adult's health, safety or well-being;
3. actions may be needed to safeguard the at-risk adult's health, safety or well-being;
4. taking the at-risk adult to a place where health or social care services are provided, or to another place that has been approved by a court, is needed to assess whether there is a risk, and whether actions are needed; and
5. it is not possible to assess these things any other way.

The Gardaí or authorised officers of the Safeguarding Body should generally only apply for a removal and transfer order if they have already accessed the at-risk adult. We recommend that before a District Court judge can make a removal and transfer order where the at-risk adult has **not** been accessed yet, the judge must also be satisfied that granting a warrant to access the at-risk adult would not be enough in the circumstances.

How long should a removal and transfer order last?

Removal and transfer orders should be temporary and should not last forever. We recommend that a removal and transfer order should only last for three days.

This temporary time period helps to make sure that the power does not go too far in interfering with people's rights.

Who should be able to use a removal and transfer order?

We recommend that a Garda should be the person allowed to use a removal and transfer order. We think Gardaí should be the people who remove and transfer at-risk adults because:

- they can help if the situation becomes dangerous;
- they have experience of using warrants to enter houses;

- they have experience of moving people who are suffering from mental disorders, using the powers in the Mental Health Act 2001; and
- the place where the at-risk adult is might be a crime scene and there might be evidence to collect.

The Garda should be joined by an authorised officer of the Safeguarding Body, if possible. The authorised officer could help to explain the situation to the at-risk adult and reassure them.

The Garda can also be joined by health or social care professionals or other people that are needed (such as a trusted friend or family member of the at-risk adult). Health or social care professionals will be able to help the authorised officer to check the health, safety and well-being of the at-risk adult. A trusted friend or family member of the at-risk adult might help to reassure the at-risk adult. We want to make sure that removing and transferring an at-risk adult is as stress-free as possible.

What happens when Gardaí use a removal and transfer order?

When Gardaí use a removal and transfer order, we think they should be able to do certain things.

1. **They should explain the power to the at-risk adult**

Taking an at-risk adult out of their home or another place and moving them somewhere else will interfere with their rights. It may be very confusing for at-risk adults, so it is important that the at-risk adult understands:

- what is happening; and
- why it is happening.

So, we recommend that when a Garda is using a removal and transfer order, they should explain the order and their powers to the at-risk adult, and tell the at-risk adult why the power is being used. An authorised officer should also help to explain things, when they are coming with the Garda.

When the at-risk adult is told about the removal and transfer order it is important that they are told what will happen when they are arrive at the place, and that they will be allowed to leave if they want. We talk about this more below.

2. **They can use reasonable force to get into the place**

When a Garda is using a removal and transfer order, they might need to use force to get into the place. This might be needed where they have tried all other options, or the situation is really urgent.

We recommend that a Garda should be able to use reasonable force to get into the place where the at-risk adult is. An authorised officer should also be able to reasonable force to get into the place, when they are coming with the Garda. For example, "reasonable force" might mean breaking a lock. Reasonable force should only be used if it is needed to get into the premises.

3. **They can restrain and detain the at-risk adult**

We recommend that a Garda should be allowed to take all reasonable measures that are needed to remove and transfer the at-risk adult. This could include:

- detaining an at-risk adult for the time it takes to remove and transfer them (detaining means keeping the at-risk adult somewhere without their consent); or
- restraining an at-risk adult so that they can be removed and transferred (restraining means physically holding the at-risk adult back or stopping them from moving).

This power can only be used by Gardaí, and not by authorised officers. Gardaí should only detain or restrain an at-risk adult when they have no other way to carry out the removal and transfer order.

What happens if someone tries to stop the at-risk adult from being removed?

We recommend that it should be a crime for a person to stop an authorised officer of the Safeguarding Body or a Garda from using a removal and transfer order. The

Gardaí should also be able to arrest any person who stops them from using a removal and transfer order.

However, it would not be a crime for an at-risk adult to stop them, and an at-risk adult could not be arrested for this. If an at-risk adult is upset or confused, the Garda, authorised officer or other professional should try to reassure them, and explain what the purpose of the power is.

Where should an at-risk adult be brought to?

We think that when an at-risk adult is removed, they should be brought to a place where an authorised officer of the Safeguarding Body or a health or social care professional can check on the at-risk adult's health, safety, and well-being.

Right now, this will probably be a hospital, clinic or other place where health or social care services are provided. In the future, there may be places in the community that are more appropriate for adult safeguarding. So, we recommend that the government should be able to add places to the list of places where health or social care services are provided. (These are places that an at-risk adult can be brought to using a removal and transfer order.)

We think that sometimes it might be less stressful for the at-risk adult to be brought somewhere that they are more familiar with. That is why we think it should be possible to transfer an at-risk adult to a place that is not a place where health or social care services are provided. For example, this could be the home of a trusted friend or family member of the at-risk adult. The judge should have to approve this place. So, we recommend that, to grant a removal and transfer order which will let the at-risk adult be brought to a place that is not on the list of places where health or social care services are provided, the District Court judge must be satisfied that the place is suitable to assess:

- the at-risk adult's health, safety or well-being; and

- whether actions are needed to safeguard the at-risk adult's health, safety or well-being.

Does the at-risk adult have to stay at the place they are brought to?

We think that an at-risk adult should **not** be forced to stay at the place they are brought to.

1. **Why did we decide that at-risk adults do not have to stay at the place they are brought to?**

We first thought that for a removal and transfer order to be effective at keeping an at-risk adult safe from harm, it should be possible to keep an at-risk adult in the place that they have been brought to for a period of time. This could give:

- the at-risk adult "breathing space" away from someone who might be harming them, and
- professionals more time to:
    a. check on the at-risk adult's health, safety and well-being, and
    b. provide medical help or other supports to the at-risk adult if these are needed.

Keeping someone in a place without their consent is called "detention".

However, the government is currently working on separate laws on temporary detention. These separate laws would overlap with the new adult safeguarding laws. We think that it is better to deal with the issue of temporary detention in a special law that may be relevant for at-risk adults and for other people. So, we think the government should continue its separate work on this important issue.

We recommend that it should not be possible to keep an at-risk adult in the place that they have been brought to without their consent. In the next section, we talk about what should happen if the at-risk adult wants to leave the place.

2. What happens if the at-risk adult wants to leave the place they are brought to?

We recommend that after an at-risk adult has been brought to a place, they should be allowed to leave if they want. The Safeguarding Body, Gardaí or health or social care professionals should help the at-risk adult to:

- leave and go back to where they were before; or
- go to another place of their choosing, where that is possible.

The Safeguarding Body should still continue to help at-risk adults and give them information they might need. The at-risk adult's view may change over time, and they may want to get supports or services in the future.

Sometimes an at-risk adult might not have capacity to decide for themselves to leave the place. We recommend that if the Safeguarding Body, Gardaí or other professional has reasons for thinking that the at-risk adult does not have capacity to decide to stay in the place, they should help the at-risk adult and consider supports that are available to the at-risk adult under the Assisted Decision-Making (Capacity) Act 2015. The at-risk adult should not be blocked from leaving, or detained, because of a concern about their capacity.

3. What happens if the at-risk adult stays in the place they are brought to?

We recommend that when an at-risk adult is brought to a place and they stay there, authorised officers of the Safeguarding Body and health or social care professionals should be able to do a:

- private interview with; and
- health assessment of

an at-risk adult at the place.

This will allow the authorised officers and health or social care professionals to check on the at-risk adult's health, safety and well-being, and decide whether actions are needed to safeguard them.

We recommend that authorised officers or other professionals can only do a private interview or health assessment if the at-risk adult agrees. The authorised officers or other professionals must explain to the at-risk adult that they can say "no". If the at-risk adult does not agree to the interview or health assessment, then the professionals cannot do them. This is important to make sure that the at-risk adult's rights are not interfered with too much.

These powers can only be used by an authorised officer or a health or social care professional, and not by a Garda.

Should it be possible to publish information about an at-risk adult?

Applications for removal and transfer orders will most likely involve sensitive details about at-risk adults. It is important to protect their right to privacy. So, we recommend that, in relation to any application for a removal and transfer order, it should be a crime for a person to publish any information identifying an at-risk adult.

However, it would not be a crime for an at-risk adult to do this about themselves.

Conclusions and recommendations

In this chapter, we explained the reasons for recommending that new adult safeguarding laws should include a power to remove and transfer at-risk adults. We think that this new power should be included to protect the rights of at-risk adults in Ireland. We have included protections and requirements to make sure that the new power does not interfere with people's rights too much.

We do not recommend powers to detain at-risk adults, but we support the Government's work about detaining people for a temporary period of time to provide care to them. This work will fill the current gap in the law.

Recommendations: How we think the law should change

R. 12.1 We recommend that new adult safeguarding laws should include removal and transfer orders. These orders would allow at-risk adults to be removed to a place where health or social care services are provided, or to another place that has been approved by a court. This would be done to allow professionals to try to:

(a) check on the health, safety and well-being of an at-risk adult in an appropriate and safe place; and

(b) check whether an at-risk adult needs any actions or supports to safeguard them.

R. 12.2 We recommend that a removal and transfer order should allow Gardaí to:

(a) enter the place where the at-risk adult is;

(b) remove the at-risk adult from that place; and

(c) take the at-risk adult to a place where health or social care services are provided, or to another place that has been approved by a court.

The Gardaí should be joined by an authorised officer of the Safeguarding Body if possible, and can be joined by health or social care professionals or other people that are needed.

R. 12.3 We recommend that adult safeguarding laws should not include a power to remove and transfer an at-risk adult without an order from the District Court.

R. 12.4 We recommend that authorised officers of the Safeguarding Body or the Gardaí should be able to apply for removal and transfer orders.

R. 12.5 We recommend that authorised officers of the Safeguarding Body or the Gardaí should be able to apply for a removal and transfer order if they have reasons for thinking that:

(a) there is an at-risk adult in the place;

(b) there is a serious and urgent risk to the health, safety or well-being of the at-risk adult;

(c) actions may be needed to safeguard the health, safety or well-being of the at-risk adult;

(d) taking the at-risk adult to a place where health or social care services are provided, or to another place that has been approved by a court, is needed to assess whether there is a risk, and whether actions are needed;

(e) it is not possible to assess these things any other way.

R. 12.6 We recommend that the Garda or authorised officer of the Safeguarding Body who is asking the District Court for a warrant should have to give evidence about these things.

R. 12.7 We recommend that, when there is an application for a removal and transfer order, one of the following health or social care professionals must give evidence in favour of the order:

(a) a doctor;

(b) a nurse;

(c) a midwife;

(d) a social worker;

(e) an occupational therapist;

(f) a speech and language therapist;

(g) an emergency medical technician;

(h) a paramedic or advanced paramedic; or

(i) a psychologist.

The government should be able to add other health or social care professionals to this list. If an authorised officer of the Safeguarding Body is one of these, it is enough to just have their own evidence.

R. 12.8 We recommend that if a Garda applies for a removal and transfer order, the Safeguarding Body must be told about this as soon as possible.

R. 12.9 We recommend that an authorised officer of the Safeguarding Body or Garda must:

(a) make reasonable efforts to find out the at-risk adult's views before they apply for a removal and transfer order, and

(b) think about the at-risk adult's views when they are deciding whether to apply for a removal and transfer order.

R. 12.10 We recommend that, when a District Court judge is deciding whether to grant a removal and transfer order, they must:

(a) ask whether reasonable efforts were made to find out the at-risk adult's views, and

(b) think about the at-risk adult's views.

R. 12.11 We recommend that a removal and transfer order can be granted even if the at-risk adult does not agree.

R. 12.12 We recommend that if an at-risk adult does not agree to a removal and transfer order, the authorised officer of the Safeguarding Body or Garda must also have reasons for thinking that the at-risk adult:

(a) is being pressurised by someone; or

(b) may not have capacity to decide whether to stay in the place where they are, or be moved.

R. 12.13 We recommend that, to grant a removal and transfer order, a District Court judge must be satisfied that there are reasons to think that:

(a) there is an at-risk adult in the place;

(b) there is a serious and urgent risk to the health, safety or well-being of the at-risk adult;

(c) actions may be needed to safeguard the health, safety or

well-being of the at-risk adult;

(d) taking the at-risk adult to a place where health or social care services are provided, or to another place that has been approved by a court, is needed to assess whether there is a risk, and whether actions are needed;

(e) it is not possible to assess these things any other way.

R. 12.14 We recommend that before a District Court judge can make a removal and transfer order when the at-risk adult does not agree, the judge must also be satisfied that there are reasons for thinking that the at-risk adult:

(a) is being pressurised by someone; or

(b) may not have capacity to decide whether to stay in the place where they are, or be moved.

R. 12.15 We recommend that before a District Court judge can make a removal and transfer order where the at-risk adult has not been accessed yet, the judge must also be satisfied that granting a warrant to access the at-risk adult would not be enough in the circumstances.

R. 12.16 We recommend that the government should be able to add places to the list of places where health or social care services are provided. (These are places that an at-risk adult can be brought to using a removal and transfer order.)

R. 12.17 We recommend that, to grant a removal and transfer order which will let the at-risk adult be brought to a place that is not on the list of places where health or social care services are provided, the District Court judge must be satisfied that the place is suitable to assess:

(a) the at-risk adult's health, safety or well-being; and

(b) whether actions are needed to safeguard the at-risk adult's health, safety or well-being.

R. 12.18 We recommend that a removal and transfer order should last for three days.

R. 12.19 We recommend that a Garda should be the person who is allowed to use a removal and transfer order. The Garda should be joined by an authorised officer of the Safeguarding Body, if possible. The Garda can also be joined by health or social care professionals or other people that are needed (such as a trusted friend or family member of the at-risk adult).

R. 12.20 We recommend that a Garda or an authorised officer should be able to use reasonable force to get into the place where the at-risk adult is. For example, "reasonable force" might mean breaking a lock.

R. 12.21 We recommend that a Garda should be allowed to take all reasonable measures that are needed to remove and transfer the at-risk adult. This could include:

(a) detaining an at-risk adult for the time it takes to remove and transfer them (detaining means keeping the at-risk adult

somewhere without their consent); or

(b) restraining an at-risk adult so that they can be removed and transferred (restraining means physically holding the at-risk adult back or stopping them from moving).

Gardaí should only detain or restrain an at-risk adult when they have no other way to carry out the order.

R. 12.22 We recommend that when an authorised officer or Garda is using a removal and transfer order, they should explain the order and their powers to the at-risk adult.

R. 12.23 We recommend that after an at-risk adult has been brought to a place, they should be allowed to leave if they want. The Safeguarding Body, Gardaí or health or social care professionals should help the at-risk adult to:

(a) leave and go back to where they were before; or

(b) go to another place of their choice, where that is possible.

The Safeguarding Body should still continue to help at-risk adults and give them information they might need.

R. 12.24 We recommend that if the Safeguarding Body, Gardaí or other professional has reasons for thinking that the at-risk adult does not have capacity to decide to stay in the place, they should help the at-risk adult and consider supports that are available to the at-risk adult under the Assisted Decision-Making (Capacity) Act 2015.

R. 12.25 We recommend that when an at-risk adult is brought to a place and they stay there, authorised officers of the Safeguarding Body and health or social care professionals should be able to do a:

(a) private interview with; and

(b) health assessment of

an at-risk adult at the place.

R. 12.26 We recommend that authorised officers or other professionals can only do a private interview or health assessment if the at-risk adult agrees. The authorised officers or other professionals must explain to the at-risk adult that they can say "no".

R. 12.27 We recommend that it should be a crime for a person to stop an authorised officer of the Safeguarding Body or a Garda from using a removal and transfer order. The Gardaí should also be able to arrest any person who stops them from using a removal and transfer order. However, it would not be a crime for an at-risk adult to stop them, and an at-risk adult could not be arrested for this.

R. 12.28 We recommend that, in relation to any application for a removal and transfer order, it should be a crime for a person to publish any information identifying an at-risk adult. (However, it would not be a crime for an at-risk adult to do this about themselves.)

R. 12.29 We recommend that it should **not** be possible to keep an at-risk adult in the place that they have been brought to without their consent. Keeping someone in a place without their consent is called "detention". (However, an at-risk adult can be detained when they are being removed and transferred – for example, in a car.)

Chapter 13: No-contact orders

What is this chapter about?

In chapter 13 we look at and explain:

- what orders there are in Ireland to stop a person from contacting another person;
- why we think the Domestic Violence Act 2018 should be changed, to safeguard at-risk adults; and
- why we think new adult safeguarding no-contact orders should be introduced in Ireland.

What kind of orders are we talking about in this chapter?

In this chapter, we are talking about orders that are granted by a court, that tell somebody to stop contacting or being near to a specific person. These orders can:

- prevent harm to the specific person,
- protect them from somebody who might be harming them, and
- protect the specific person's rights.

In this chapter, we talk about these orders in the context of domestic violence against at-risk adults. We recommend that the domestic violence laws in Ireland should be changed to better protect at-risk adults.

We also talk about these orders in the context of adult safeguarding. We recommend that there should be new "adult safeguarding no-contact orders" to prevent harm, exploitation or ill-treatment of at-risk adults which is not domestic violence. We recommend that three new orders should be included in the new adult safeguarding laws. These are:

- full adult safeguarding no-contact orders;
- interim (temporary) adult safeguarding no-contact orders; and

- emergency adult safeguarding no-contact orders.

What orders are there in Ireland to stop a person from contacting another person?

Orders that stop someone from contacting another person are available in Ireland, but they are not especially for adult safeguarding. We explain what orders are available in this section.

Domestic Violence Act 2018

In Ireland, a court can make an order that stops someone from contacting another person where it appears that there is domestic violence happening. These orders are contained in the Domestic Violence Act 2018, and help to protect people who may be experiencing domestic violence.

These orders can only be made to protect people who are in certain relationships, for example some close family relationships or romantic relationships.

There are three types of orders contained in the Domestic Violence Act 2018:

- barring orders;
- safety orders; and
- protection orders.

It is a crime to not obey a barring order, safety order, or protection order.

1. Who can apply for orders under the Domestic Violence Act 2018?

Any person can apply for an order under the Domestic Violence Act 2018 to protect themselves. So, at-risk adults can apply for these orders.

The Child and Family Agency can also apply for these orders on behalf of someone. The Child and Family Agency can apply for these orders even if the person who the

order is supposed to protect does not agree to the order. At the moment, the Child and Family Agency is the only organisation that can do this.

(**Note**: The Child and Family Agency is commonly called "Tusla".)

2. Who can orders under the Domestic Violence Act 2018 be directed at?

Orders under the Domestic Violence Act 2018 can only stop certain types of people from contacting the protected person. Generally, the two people must be in a close family relationship or a romantic relationship. For example, the order can be directed at the protected person's:

- husband or wife,
- civil partner,
- adult child, or
- romantic partner (or former romantic partner) who the protected person lives with.

Safety orders and protection orders are also available against people who live with the protected person not as part of a contract. (For example, this could be adult siblings living together, but not people who are lodgers or tenants of the protected person.)

This means that orders under the Domestic Violence Act 2018 cannot be directed at lots of people who might abuse at-risk adults, such as:

- siblings, nieces, nephews or grandchildren if they do not live with the at-risk adult;
- neighbours;
- friends; or
- carers (including "live-in carers" who may be living with the at-risk adult as part of a contract).

Civil orders under the Non-Fatal Offences against the Person Act 1997

After a person is found guilty of stalking or harassment, a court can make a civil order under the Non-Fatal Offences against the Person Act 1997. This order means that the guilty person cannot:

- communicate in any way with a specific person; or
- go within a particular distance of the place where the specific person lives, studies or works.

It is a crime to not obey a civil order.

Civil restraining orders under the Criminal Justice (Miscellaneous Provisions) Act 2023

The Criminal Justice (Miscellaneous Provisions) Act 2023 includes a new power for judges to make civil restraining orders. At the time of writing this Report, this law was not yet in operation.

When it does come into operation, this law will let a judge make a civil restraining order against a person where the judge thinks that:

- the person has engaged in behaviour towards another person that is likely to:
    a. make the other person think that violence would be used against them; or
    b. cause the other person serious alarm or distress; and
- the order is needed to protect the safety and well-being of the other person.

The person who the order is made against will **not** have to be found guilty of stalking or harassment for a civil restraining order to be made.

A civil restraining order will tell the person that they cannot:

- use or threaten to use violence against a specific person;
- communicate in any way with the specific person; and/or

- go within a particular distance of the place where the specific person lives, studies or works.

It will be a crime to not obey a civil restraining order.

A person will be able to apply for a civil restraining order to protect themselves against somebody. The Gardaí will also be able apply for civil restraining orders on behalf of a person. The Garda will have to try to find out that person's views, but they can apply even if the person they are trying to protect does not agree with an order being made.

What laws do other countries have about orders that stop a person from contacting another person?

In other countries, there are laws about orders that stop a person from contacting another person. When we thought about what the law in Ireland should be, we looked at how other countries use these laws.

We discovered that some countries have laws with these orders that are specifically for at-risk adults. Other countries have laws with these orders, but they are not specifically for at-risk adults (for example, they are for domestic violence cases).

One of the countries that has laws about orders that are specifically for at-risk adults is **Scotland**. In Scotland:

- The adult safeguarding law lets courts make "banning orders" to protect at-risk adults from people who are harming them.
- Banning orders stop the person causing the abuse or harm from being in a particular place or doing other things that the judge says.
- There does not need to be any special relationship between the at-risk adult and the other person for a banning order to be made.

- A banning order can be made even if the at-risk adult does not want one. This can happen if the judge thinks that the at-risk adult is being pressurised by someone else to say that they do not want one.

What rights are affected by these orders?

When we were thinking about whether there should be new orders that stop a person from contacting an at-risk adult, we thought about what rights would be affected.

Rights protected by the Constitution

We explained the rights which are protected by the Constitution (constitutional rights) in chapter 4. We think that orders that stop a person from contacting an at-risk adult are needed to protect the constitutional rights of at-risk adults, including their rights to:

- life;
- freedom;
- control over their body; and
- make their own decisions.

For example, if a person is harming an at-risk adult, getting an order against the person will protect the at-risk adult's right to control over their body. These orders are focused on getting the person who is harming the at-risk adult to do something, rather than interfering with the at-risk adult (for example, by taking them out of their home).

However, these orders could also interfere with the constitutional rights of at-risk adults, or other people. For example, this could interfere with their rights to:

- privacy;
- make their own decisions; and

- associate.

For example, if a judge gives an order without the at-risk adult's consent, this would interfere with the at-risk adult's right to associate with the other person.

Although constitutional rights are very important, they have limits. This means that they can be interfered with in some cases, if the interference is needed and does not go too far. The purpose of the power is to give at-risk adults protection and distance from people who may be harming them. We think that this is an important enough reason to interfere with constitutional rights. In this chapter, we recommend requirements and protections to be written into the new law, to make sure that the interference is needed and does not go too far.

Rights protected by the European Convention on Human Rights

The European Convention on Human Rights also protects rights. We think that orders that stop a person from contacting an at-risk adult are needed to protect these rights. For example, the European Convention on Human Rights protects the rights to:

- life; and
- be free from ill-treatment.

We also recommend requirements and protections to be written into the new law, to make sure that any interference with rights that are protected by the European Convention on Human Rights is needed and does not go too far.

What changes do we think are needed?

We think that new orders are needed to prevent harm to at-risk adults, and protect their rights. We think that the law in Ireland should be changed in two ways to do this. We recommend that:

1. the Domestic Violence Act 2018 should be changed so that the orders available under it will apply to more types of relationships involving at-risk adults; and
2. a new type of order called an adult safeguarding no-contact order should be created, to prevent harm to at-risk adults which is not domestic violence.

We explain each of these recommendations below.

1. How should the Domestic Violence Act 2018 be changed?

We explained how barring orders, safety orders, and protection orders work above. These orders are contained in the Domestic Violence Act 2018 and can prevent harm to at-risk adults in some situations.

However, we think that there is a gap in the law because these orders can only be used to protect people who are in certain relationships, for example some close family relationships or romantic relationships.

The law currently says that:

- **barring orders** only apply to husbands, wives, civil partners, adult children or romantic partners (or former romantic partners) that live with the person who needs to be protected;
- **safety orders** apply to the same types of people as barring orders, but also include adults who live together not as part of a contract; and
- **protection orders** apply to anyone who barring orders or safety orders would apply to.

We think that there is gap in the law because at-risk adults could be experiencing domestic violence from other people who are not covered by the law, such as "live-in carers".

We recommend that the Domestic Violence Act 2018 should be changed so that it applies to more relationships where there may be domestic violence against at-risk adults. We recommend that this law should be changed so that:

1. **barring orders** will apply to people who live with an at-risk adult not as part of a contract, and people who live with an at-risk adult as part of a contract to provide care for the at-risk adult; and
2. **safety orders** will apply to people who live with an at-risk adult as part of a contract to provide care for the at-risk adult.

This will mean that more types of domestic violence against at-risk adults can be prevented, using orders under the Domestic Violence Act 2018. In particular, at-risk adults will be able to get more kinds of orders against people they live with, including people they live with as part of a paid caring relationship.

We also recommend that the Child and Family Agency (Tusla) and the Safeguarding Body should be allowed to apply for an order under the Domestic Violence Act 2018 when it is for an at-risk adult.

2. What new orders should there be in adult safeguarding laws?

We also think that new adult safeguarding laws should include a specific "adult safeguarding no-contact order" to prevent harm, exploitation or ill-treatment of at-risk adults which is not domestic violence.

Why do we need adult safeguarding no-contact orders?

We explained above that the orders contained in the Domestic Violence Act 2018 can only be used for certain relationships, for example some close family relationships, romantic relationships and relationships between people living together. There are also some civil orders that are available in Ireland, or will soon be available, but these require quite a high level of violence or criminal actions.

We think that there is a gap in the law when it comes to protecting at-risk adults from harm which is not domestic violence. Abuse and harm of at-risk adults can happen in many different types of relationships, including outside of romantic, family or domestic situations. These cases also may not involve any violence or intimidation. For example, they might involve:

- financial abuse, or
- more subtle pressure of the at-risk adult.

It is important to prevent harm to at-risk adults in all situations. A new adult safeguarding no-contact order would fill the gap in the law by:

- allowing at-risk adults to be protected in many different kinds of situations, including situations involving harm or abuse but no violence or intimidation.
- allowing at-risk adults to be protected against harm by people that they do not live with, and are not in a relationship with. For example, an adult safeguarding no-contact order could be used against:
    a. siblings, nieces, nephews or grandchildren who do not live with the at-risk adult;
    b. neighbours;
    c. friends;
    d. taxi drivers; or
    e. strangers.

What is an adult safeguarding no-contact order?

We recommend that new adult safeguarding laws should contain a new type of order called an adult safeguarding no-contact order. We think there should be three types of these orders. These are:

- full adult safeguarding no-contact orders;
- interim (temporary) adult safeguarding no-contact orders; and

- emergency adult safeguarding no-contact orders.

Each of these adult safeguarding no-contact orders would stop a person who is not in a relationship with the at-risk adult or living with the at-risk adult from engaging in certain behaviours. These behaviours include:

1. following the at-risk adult;
2. watching the at-risk adult;
3. annoying or talking to or about the at-risk adult; or
4. coming near the at-risk adult or the place where the at-risk adult lives.

We explain each of the three proposed orders in the following paragraphs.

Who should grant a no-contact order?

Because no-contact orders will interfere with rights, we think that the decision about whether they are allowed should be made by a judge. This is because judges have the skills and experience to make decisions that will affect people's rights.

Like with the powers we talk about in chapter 10, chapter 11, and chapter 12, we think that no-contact orders should be made by judges in the District Court. This is because similar orders are already made in the District Court (for example, orders under the Domestic Violence Act 2018) and the judges are familiar with them. It is also a cheaper process to go to the District Court than it is to go to other courts. This means it will be easier for people who need to go to court urgently for a no-contact order.

How would a full adult safeguarding no-contact order work?

In this section, we explain how full adult safeguarding no-contact orders would work.

Who should be able to apply for a full no-contact order?

We recommend that an at-risk adult could apply for a full no-contact order to protect themselves against someone who they are not in a relationship with, and don't live with.

We also recommend that an authorised officer of the Safeguarding Body could apply for a full no-contact order. "Authorised officers" are staff of the Safeguarding Body who are allowed to exercise the powers of the Safeguarding Body.

When there is an application for a full no-contact order, we recommend that the person that the order is directed against should be aware of the application, so that they can come to court and tell their side of things if they want to. This is called an "inter partes" application. Inter partes means between both people involved in the legal case.

When should authorised officers be able to apply for a full no-contact order?

Because these orders will interfere with rights, we think that there should be a clear standard before an authorised officer of the Safeguarding Body could apply for a full no-contact order.

So, we recommend that an authorised officer should be able to apply for a full no-contact order if they have reasons for thinking that the health, safety or well-being of the at-risk adult means the no-contact order is needed.

Finding out what the at-risk adult thinks

Before authorised officers of the Safeguarding Body apply for a no-contact order, they should try to see if the at-risk adult agrees to it. This is important because it respects the right of the at-risk adult to make their own decisions. So, we recommend that an authorised officer of the Safeguarding Body must:

- make reasonable efforts to find out the at-risk adult's views before they apply for a no-contact order, and

- think about the at-risk adult's views when they are deciding whether to apply for a no-contact order.

We also recommend that, when a District Court judge is deciding whether to grant a no-contact order, they must:

- if the at-risk adult is not the person applying for the order, ask whether reasonable efforts were made to find out the at-risk adult's views, and
- think about the at-risk adult's views.

We recommend that a District Court judge **cannot** grant a full no-contact order if the at-risk adult does not want it.

When could a judge grant a full no-contact order?

We recommend that, to grant a full no-contact order, a District Court judge must be satisfied that there are reasons for thinking that the health, safety or well-being of the at-risk adult means the order is needed.

How long should a full no-contact order last?

Full no-contact orders should be temporary and should not last forever. We recommend that the judge should decide how long a no-contact order should last. However, full no-contact orders should not last longer than two years.

We also recommend that the at-risk adult and the person who is subject to the full no-contact order should be able to apply to end the no-contact order before this time ends. If an authorised officer of the Safeguarding Body was the person who applied for the order, an authorised officer should also be allowed to apply to end the no-contact order.

Can a person who is subject to a full no-contact order appeal the order?

We recommend that a person who is subject to a full no-contact order should be able to appeal the order. If they appeal the order, a judge should be able to pause the order while the appeal is happening. The judge could do this if they thought that

it was appropriate. This means that while the person who is subject to the full no-contact order is appealing it, the order is not in effect.

Would it be a crime to not obey a full no-contact order?

We recommend that it should be a crime to not follow or obey a full no-contact order. However, we recommend that it should **not** be a crime for an at-risk adult to not follow a no-contact order. For example, it would not be a crime if an at-risk adult contacts the person who the order is about. This is because a no-contact order should be about stopping the bad behaviour of the person who is causing harm to the at-risk adult, and not about stopping the at-risk adult doing things they want to do.

What is an interim (temporary) adult safeguarding no-contact order?

We recommend that new adult safeguarding laws should contain a new type of order called an interim no-contact order. This should be available when an authorised officer of the Safeguarding Body or an at-risk adult has already applied for a full adult safeguarding no-contact order.

An interim no-contact order is a temporary no-contact order that could be effective between the time that someone applies for a full no-contact order, and the time when the judge decides whether to make the full no-contact order or not.

The interim no-contact order could be made by a judge very quickly, while someone is waiting to hear if a full no-contact order will be made. An interim no-contact order would be in place while everyone waits for the judge to decide the case about the full adult safeguarding no-contact order.

Why do we need an interim no-contact order?

It can take time for a judge to decide whether to make a full no-contact order. During this time, there might be:

- a risk to the health, safety, and well-being of the at-risk adult, or
- a likelihood that the at-risk adult will be harmed.

Having an interim no-contact order available in Irish law would:

- allow judges to react quickly and effectively in urgent situations;
- "bridge the gap" where someone is waiting for a judge to decide whether to make a full no-contact order; and
- mean that a person who may be harming the at-risk adult can be immediately stopped from contacting (or being near to) the at-risk adult.

How would an interim no-contact order work?

An interim no-contact order could be applied for:

- at the same time as an application for a full no-contact order; or
- after any application for a full no-contact order.

In the paragraphs below, we explain how interim adult safeguarding no-contact orders would work.

Who should be able to apply for an interim no-contact order?

We recommend that an at-risk adult themselves could apply for an interim no-contact order.

We also recommend that authorised officers of the Safeguarding Body should be able to apply for an interim no-contact order.

We recommend that an application for an interim no-contact order could be made "inter partes" or "ex parte".

- If it is made "**inter partes**", this means that the person that the order is about is aware that the application is being made, and can come to court to explain their version of things.

- If it is made "**ex parte**", this means that the person that the order is about is **not** aware that the application is being made. (Ex parte means with only one of the people involved in the legal case.)

So, it would be possible to apply for an interim no-contact order without the person that the order is directed against:

- knowing about the application, or
- being in court for the application.

They will only find out about it if the judge makes the order.

When should authorised officers be able to apply for an interim no-contact order?

Because these orders will interfere with rights, we think that there should be a clear standard before an authorised officer of the Safeguarding Body could apply for an interim no-contact order.

We recommend that an authorised officer should only be able to apply for an interim no-contact order if they have reasons for thinking that:

- there is an urgent risk to health, safety or well-being of the at-risk adult; and
- the interim no-contact order is needed to address or prevent this risk.

Finding out what the at-risk adult thinks

Before authorised officers of the Safeguarding Body apply for an interim no-contact order, they should try to see if the at-risk adult agrees to it. This is important because it respects the right of the at-risk adult to make their own decisions. So, we recommend that an authorised officer of the Safeguarding Body must:

- make reasonable efforts to find out the at-risk adult's views before they apply for an interim no-contact order, and
- think about the at-risk adult's views when they are deciding whether to apply for an interim no-contact order.

We also recommend that, when a District Court judge is deciding whether to grant an interim no-contact order, they must:

- if the at-risk adult is not the person applying for the order, ask whether reasonable efforts were made to find out the at-risk adult's views, and
- think about the at-risk adult's views.

We recommend that a judge **cannot** grant an interim no-contact order if the at-risk adult does not want it.

When could a judge grant an interim no-contact order?

We recommend that, to grant an interim no-contact order, a District Court judge must be satisfied that there are reasons for thinking that:

- there is an urgent risk to the health, safety or well-being of the at-risk adult; and
- the interim no-contact order is needed to address or prevent this risk.

This is a higher standard than the one we recommend for a full no-contact order. This is because:

- an interim no-contact order can be made without the person that the order is about knowing about it; and
- we think that interim no-contact orders should only be used in urgent cases.

How long should interim no-contact orders last?

Interim no-contact orders should be an urgent and temporary measure, and only should last for a very short time.

We think that the length of time of an interim no-contact order should depend on whether the person who is subject to the order was aware of the application for the order or not. This is the difference between "inter partes" and "ex parte" applications, as we explained above.

- If it is made "**inter partes**", so the person that the court orders not to contact the at-risk adult is aware of the application and can attend court, the order should last until the judge can decide about the full no-contact order.
- If it is made "**ex parte**", so the person that the court orders not to contact the at-risk adult is **not** aware of the application and not in court, the order should only last for a maximum of eight working days. This very short period is needed to protect the rights of the person who is subject to the order – as they will not have had any chance to explain their side of things to the judge.

Can a person who is subject to an interim no-contact order appeal the order?

We recommend that a person who is subject to an interim no-contact order should be able to appeal the order. If they appeal the order, we do not think a judge should be able to pause the order while the appeal is happening. This is because the interim no-contact orders are designed for serious and urgent situations. This means that while the person who is subject to the interim no-contact order is appealing it, the order is still in effect.

Would it be a crime to not obey an interim no-contact order?

We recommend that it should be a crime to not follow or obey an interim no-contact order. However, we recommend that it should **not** be a crime for an at-risk adult to not follow an interim no-contact order. For example, it would not be a crime if an at-risk adult contacts the person who the order is about. This is because an interim no-contact order should be about stopping the bad behaviour of the person who is causing harm to the at-risk adult, and not about stopping the at-risk adult doing things they want to do.

What is an emergency adult safeguarding no-contact order?

We recommend that new adult safeguarding laws should contain a new type of order called an emergency no-contact order. This is for cases where there is a very urgent

risk to an at-risk adult, and there is not enough time to apply for a full no-contact order.

An emergency no contact order is an urgent order that a judge could make, even where there is no application for a full no-contact order.

Why do we need an emergency no-contact order?

There may be cases where there is a very urgent risk to an at-risk adult and:

- there is not enough time to apply for a full no-contact order, or
- there is a concern about the at-risk adult's ability to decide about a no-contact order.

In these cases, if the at-risk adult or the authorised officer waited to apply for a full no-contact order, the risk might get much worse.

We think that an emergency no-contact order would be needed in two situations:

1. First, an emergency no-contact order should be available where there is simply no time to apply for a full no-contact order. This would let judges respond quickly and effectively, to prevent harm to the at-risk adult.
2. Second, an emergency no-contact order should be available where the at-risk adult does not agree to a full no-contact order or an interim no-contact order. In this situation, an emergency no-contact order would allow authorised officers of the Safeguarding Body to decide:
    - if the at-risk adult is being pressurised by someone to not agree, and
    - whether the at-risk adult has capacity to decide about the no-contact order.

Who should be able to apply for an emergency no-contact order?

We recommend that an at-risk adult themselves could apply for an emergency no-contact order.

We also recommend that authorised officers of the Safeguarding Body should be able to apply for an emergency no-contact order.

We recommend that an application for an emergency no-contact order should be made "ex parte". This means that the person that the order is about is not aware that the application is being made.

So, it would be possible to apply for an emergency no-contact order without the person that the order is directed against:

- knowing about the application, or
- being in court for the application.

They will only find out about it if the judge makes the order.

When should authorised officers be able to apply for an emergency no-contact order?

Because these orders will interfere with rights, we think that there should be a clear standard before an authorised officer of the Safeguarding Body could apply for an emergency no-contact order.

We recommend that an authorised officer of the Safeguarding Body should be able to apply for an emergency no-contact order if they have reasons for thinking that there is an urgent risk to the health, safety or well-being of an at-risk adult, and the emergency no-contact order is needed to:

1. reduce that risk; or
2. check whether the at-risk adult is being pressurised by someone, and (if needed) to check whether the at-risk adult has capacity to make a decision about the no-contact order.

Finding out what the at-risk adult thinks

Before authorised officers of the Safeguarding Body apply for an emergency no-contact order, they should try to see if the at-risk adult agrees to it. This is important because it respects the right of the at-risk adult to make their own decisions. So, we recommend that an authorised officer of the Safeguarding Body must:

- make reasonable efforts to find out the at-risk adult's views before they apply for an emergency no-contact order, and
- think about the at-risk adult's views when they are deciding whether to apply for an emergency no-contact order.

We also recommend that, when a District Court judge is deciding whether to grant an emergency no-contact order, they must:

- if the at-risk adult is not the person applying for the order, ask whether reasonable efforts were made to find out the at-risk adult's views, and
- think about the at-risk adult's views.

What if the at-risk adult does not want the emergency no-contact order?

We think that an authorised officer should be able to apply for an emergency no-contact order, even if:

- the at-risk adult does not say what their view is;
- it is not possible to find out the at-risk adult's views; or
- the at-risk adult does not want the order.

We think that an emergency no-contact order where the at-risk adult does not agree will be needed for the most serious and urgent cases. This is different to the position for full no-contact orders and interim no-contact orders, as we explained above.

Sometimes, an at-risk adult could be pressurised by somebody else to not agree to the order. Getting an emergency no-contact order will help authorised officers of the

Safeguarding Body to figure out if the at-risk adult is not agreeing because they are being pressurised. There could also be cases where there are reasons for thinking that the at-risk adult does not have capacity to decide about the order, and so professionals need to try to check this.

However, applying for an emergency no-contact order where the at-risk adult does not want one will interfere with the at-risk adult's rights. It is important to respect the right of at-risk adults to make decisions about their lives. So, we recommend that when an at-risk adult does not agree to an emergency no-contact order there should be extra standards to protect the at-risk adult's rights.

We recommend that in order to apply for an emergency no-contact order where the at-risk adult does not agree to it, an authorised officer must have reasons for thinking that the at-risk adult is not agreeing because the at-risk adult:

1. is being pressurised by someone to not agree; or
2. may not have capacity to make a decision about the order themselves.

We also recommend that a judge can grant an emergency no-contact order, even if the at-risk adult does not want it. Again, we think this is needed for the most serious and urgent cases. However, granting an emergency no-contact order where the at-risk adult does not want one will interfere with the at-risk adult's rights. So, we recommend that before a District Court judge can grant an emergency no-contact order when the at-risk adult does not want it, the judge must also be satisfied that there are reasons for thinking that the at-risk adult is not agreeing because the at-risk adult:

1. is being pressurised by someone to not agree; or
2. may not have capacity to make a decision about the order themselves.

When could a judge grant an emergency no-contact order?

As well as checking the at-risk adult's views, the judge must also be satisfied that an emergency no-contact order is needed in the case. So, we recommend that, to grant an emergency no-contact order, a District Court judge must be satisfied that there are reasons to think that there is an urgent risk to the health, safety or well-being of an at-risk adult, and a no-contact order is needed to:

1. reduce that risk; or
2. check whether the at-risk adult is being pressurised by someone, and (if needed) to check whether the at-risk adult has capacity to make a decision about the no-contact order.

This is a different standard than the one we recommend for a full no-contact order or an interim no-contact order. This is because:

- an emergency no-contact order can be made without the agreement of the at-risk adult; and
- we think that emergency no-contact orders should only be used in really urgent cases.

How long should an emergency no-contact order last?

Emergency no-contact orders should be an urgent and temporary measure, and should only last for a very short time.

We recommend that an emergency no-contact order should last for a maximum of eight working days. This would be enough time to give the at-risk adult some breathing space, and to check whether they are being pressurised (and if needed, whether they have capacity to decide about the no-contact order).

Because emergency no-contact orders should only be made in the situations we have explained, it should not be possible to extend this time period.

The length of time could be affected if the at-risk adult does not agree to the order. If, before the eight days is over, the Safeguarding Body finds out that the at-risk adult:

1. does not agree to the emergency no-contact order,
2. is not being pressurised by anyone to not agree, and
3. has capacity to decide about the no-contact order,

we recommend that the Safeguarding Body must apply to end the emergency no-contact order as soon as possible.

What if there are concerns that an at-risk adult does not have capacity to decide about an emergency no-contact order?

We want the new adult safeguarding laws to support at-risk adults, and to work with other laws and supports that are available in Ireland.

We recommend that if an emergency no-contact order is made when the at-risk adult appears to not have capacity to decide about the order, the Safeguarding Body should help the at-risk adult and consider:

- supports that are available to the at-risk adult under the Assisted Decision-Making (Capacity) Act 2015; and
- informing the Director of the Decision Support Service that the Safeguarding Body believes the at-risk adult does not have capacity to decide about the order.

Can a person who is subject to an emergency no-contact order appeal the order?

We recommend that a person who is subject to an emergency no-contact order should be able to appeal the order. If they appeal the order, we do not think a judge should be able to pause the order while the appeal is happening. This is because the emergency no-contact orders are designed for serious and urgent situations. This means that while the person who is subject to the emergency no-contact order is appealing it, the order is still in effect.

Would it be a crime to not obey an emergency no-contact order?

We recommend that it should be a crime to not follow or obey an emergency no-contact order. However, we recommend that it should **not** be a crime for an at-risk adult to not follow an emergency no-contact order. For example, it would not be a crime if an at-risk adult contacts the person who the order is about. This is because an emergency no-contact order should be about stopping the bad behaviour of the person who is causing harm to the at-risk adult, and not about stopping the at-risk adult doing things they want to do.

What else is important to know about adult safeguarding no-contact orders?

Should no-contact orders affect people's property rights?

We recommend that before granting a no-contact order, interim no-contact order, or emergency no-contact order, the judge must think about the rights of the at-risk adult, and the other person, in relation to the property where the at-risk adult lives. This is needed to protect people's property rights.

We also recommend that any no-contact order should not affect a person's property rights.

For example, an at-risk adult might live in a house that their adult child owns, while their adult child lives somewhere else. Even if the adult child was subject to a no-contact order, their existing property rights in the house would not be affected. The adult child would still own the house, and be able take it back or let a different person stay there, if they wanted to.

Is there help to pay for the costs of applying for no-contact orders?

Going to court can be expensive. This can sometimes stop people from being able to use the options that are available to them under the law.

For this reason, there are laws about the government helping to pay for the cost of going to court. This is called civil legal aid. Currently, the law says that people who are going to court for certain things can get civil legal aid from the government. An example of this is when people go to court to get orders under the Domestic Violence Act 2018.

We think that this should also happen when at-risk adults go to court to get adult safeguarding no-contact orders.

So, we recommend that free legal aid should be available to at-risk adults when they are applying for a:

- full no-contact order;
- interim no-contact order; or
- emergency no-contact order.

We recommend that this should be done by changing the Civil Legal Aid Regulations 1996.

Should it be possible to publish information about an at-risk adult?

Applications for no-contact orders will involve a lot of sensitive and private information about at-risk adults. It is important to protect their right to privacy. So, we recommend that, in relation to any application for:

- a full no-contact order,
- an interim no-contact order, or
- an emergency no-contact order,

it should be a crime for a person to publish any information identifying an at-risk adult.

However, it would not be a crime for an at-risk adult to do this about themselves. We do not think it would right to stop the at-risk adult from using their information how they want.

We do think that the public has an interest in knowing who is subject to a no-contact order. This is because people who are suspected of causing harm to the health, safety, and well-being of at-risk adults might do the same thing to other people. However, our priority is the rights of at-risk adults. If making the identity of a person who is subject to a no-contact order public would also make the identity of the at-risk adult public, then the information should not be released.

For these reasons, we recommend that the identity of a person who is subject to a no-contact order, interim no-contact order or emergency no-contact order should be made public, unless doing this would make the identity of the at-risk adult public.

Recommendations: How we think the law should change

R. 13.1 We recommend that the Domestic Violence Act 2018 should be changed so that the orders it contains will apply to more types of relationships where there may be domestic violence against at-risk adults. We recommend that this law should be changed so that:

(a) "barring orders" will apply to people who live with an at-risk adult not as part of a contract, and people who live with an at-risk adult as part of a contract to provide care for the at-risk adult; and

(b) "safety orders" will apply to people who live with an at-risk adult as part of a contract to provide care for the at-risk adult.

R. 13.2 We recommend that the Domestic Violence Act 2018 should be changed so that the Child and Family Agency (Tusla) and the Safeguarding Body are allowed to apply for an order under the Act when it is for an at-risk adult.

R. 13.3 We recommend that new adult safeguarding laws should contain a new type of order called a no-contact order. This order would stop a person who is not in a relationship with the at-risk adult or living with the at-risk adult from engaging in certain behaviours. These behaviours include:

(a) following the at-risk adult;

(b) watching the at-risk adult;

(c) annoying or talking to or about the at-risk adult; or

(d) coming near the at-risk adult or the place where the at-risk

adult lives.

R. 13.4 We recommend that authorised officers of the Safeguarding Body and at-risk adults should be able to apply for no-contact orders.

R. 13.5 We recommend that an authorised officer of the Safeguarding Body must:

(a) make reasonable efforts to find out the at-risk adult's views before they apply for a no-contact order, and

(b) think about the at-risk adult's views when they are deciding whether to apply for a no-contact order.

R. 13.6 We recommend that, when a District Court judge is deciding whether to grant a no-contact order, they must:

(a) if the at-risk adult is not the person applying for the order, ask whether reasonable efforts were made to find out the at-risk adult's views, and

(b) think about the at-risk adult's views.

R. 13.7 We recommend that a court cannot grant a full no-contact order if the at-risk adult does not want it.

R. 13.8 We recommend that an authorised officer should be able to apply for a no-contact order if they have reasons for thinking that the health, safety or well-being of the at-risk adult means the no-contact order is needed.

R. 13.9 We recommend that an application for a no-contact order should be made “inter partes”. This means that the person that the no-contact order is about is aware of it.

R. 13.10 We recommend that, to grant a no-contact order, a District Court judge must be satisfied that there are reasons for thinking that the health, safety or well-being of the at-risk adult means the order is needed.

R. 13.11 We recommend that the judge should decide how long a no-contact order should last. However, full no-contact orders should not last longer than two years.

R. 13.12 We recommend that the at-risk adult and the person who is subject to the full no-contact order should be able to apply to end the no-contact order before this time. If an authorised officer of the Safeguarding Body was the person who applied for the order, an authorised officer should also be able to apply to end the no-contact order.

R. 13.13 We recommend that a person who is subject to a full no-contact order should be able to appeal the order. If they appeal the order, the judge should be able to pause the order while the appeal is happening. This means that while the person who is subject to the full no-contact order is appealing it, the order is not in effect.

R. 13.14 We recommend that it should be a crime for the person who the order is about to not follow a no-contact order.

R. 13.15 We recommend that it should not be a crime for an at-risk adult to not follow a no-contact order.

R. 13.16 We recommend that new adult safeguarding laws should contain a new type of order called an interim no-contact order. This should be available when an authorised officer of the Safeguarding Body or an at-risk adult has already applied for a full adult safeguarding no-contact order. An interim (temporary) no-contact order would be in place while everyone waits for the court to decide the case about the full adult safeguarding no-contact order.

R. 13.17 We recommend that authorised officers of the Safeguarding Body and at-risk adults should be able to apply for interim no-contact orders.

R. 13.18 We recommend that an authorised officer of the Safeguarding Body must:

(a) make reasonable efforts to find out the at-risk adult's views before they apply for an interim no-contact order, and

(b) think about the at-risk adult's views when they are deciding whether to apply for an interim no-contact order.

R. 13.19 We recommend that, when a District Court judge is deciding whether to grant an interim no-contact order, they must:

(a) if the at-risk adult is not the person applying for the order, ask whether reasonable efforts were made to find out the at-risk adult's views, and

(b) think about the at-risk adult's views.

R. 13.20 We recommend that a court cannot grant an interim no-contact order if the at-risk adult does not want it.

R. 13.21 We recommend that an authorised officer should be able to apply for an interim no-contact order if they have reasons for thinking that:

(a) there is an urgent risk to the health, safety or well-being of the at-risk adult; and

(b) the interim no-contact order is needed to address or prevent this risk.

R. 13.22 We recommend that, to grant an interim no-contact order, a District Court judge must be satisfied that there are reasons for thinking that:

(a) there is an urgent risk to the health, safety or well-being of the at-risk adult; and

(b) the interim no-contact order is needed to address or prevent this risk.

R. 13.23 We recommend that an application for an interim no-contact order could be made "inter partes" or "ex parte". If it is made "inter partes", this means that the person that the order is about is aware of it. If it is made "ex parte", this means that the person that the order is about is not aware of it.

R. 13.24 We recommend that an interim no-contact order should be an urgent and temporary order. We think the length of time should be different depending on whether the order is made "inter partes" or "ex parte":

(a) If it is made "inter partes", so the person that the court orders not to contact the at-risk adult is aware of the application, the order should last until the court can decide about the full no-contact order.

(b) If it is made "ex parte", so the person that the court orders not to contact the at-risk adult is not there for the application, the order should only last for a maximum of eight working days.

R. 13.25 We recommend that a person who is subject to an interim no-contact order should be able to appeal the order. If they appeal an interim no-contact order, the order should still be effective while the appeal is happening.

R. 13.26 We recommend that it should be a crime for the person who the order is about to not follow an interim no-contact order.

R. 13.27 We recommend that it should not be a crime for an at-risk adult to not follow an interim no-contact order.

R. 13.28 We recommend that new adult safeguarding laws should contain a new type of order called an emergency no-contact order. This is for cases where there is a very urgent risk to an at-risk adult, and:

(a) there is not enough time to apply for a full no-contact order; or

(b) there is a concern about the at-risk adult's capacity to decide about a no-contact order.

R. 13.29 We recommend that authorised officers of the Safeguarding Body and at-risk adults should be able to apply for emergency no-contact orders.

R. 13.30 We recommend that an authorised officer of the Safeguarding Body must:

(a) make reasonable efforts to find out the at-risk adult's views before they apply for an emergency no-contact order, and

(b) think about the at-risk adult's views when they are deciding whether to apply for an emergency no-contact order.

R. 13.31 We recommend that, when a District Court judge is deciding whether to grant an emergency no-contact order, they must:

(a) if the at-risk adult is not the person applying for the order, ask whether reasonable efforts were made to find out the at-risk adult's views, and

(b) think about the at-risk adult's views.

R. 13.32 We recommend that a court can grant an emergency no-contact order even if the at-risk adult does not want it.

R. 13.33 We recommend that in order to apply for an emergency no-contact order where the at-risk adult does not agree to it, an authorised officer must have reasons for thinking that the at-risk adult is not agreeing because the at-risk adult:

(a) is being pressurised by someone to not agree; or

(b) may not have capacity to make a decision about the order themselves.

R. 13.34 We recommend that an authorised officer of the Safeguarding Body should be able to apply for an emergency no-contact order if they have reasons for thinking that there is an urgent risk to the health, safety or well-being of an at-risk adult, and the emergency no-contact order is needed to:

(a) reduce that risk; or

(b) check whether the at-risk adult is being pressurised by someone, and (if needed) to check whether the at-risk adult has capacity to make a decision about the no-contact order.

R. 13.35 We recommend that, to grant an emergency no-contact order, a District Court judge must be satisfied that there are reasons to think that there is an urgent risk to the health, safety or well-being of an at-risk adult, and a no-contact order is needed to:

(a) reduce that risk; or,

(b) check whether the at-risk adult is being pressurised by

someone, and (if needed) to check whether the at-risk adult has capacity to make a decision about the no-contact order.

R. 13.36 We recommend that before a District Court judge can grant an emergency no-contact order when the at-risk adult does not want it, the judge must also be satisfied that there are reasons for thinking that the at-risk adult is not agreeing because the at-risk adult:

(a) is being pressurised by someone to not agree; or

(b) may not have capacity to make a decision about the order themselves.

R. 13.37 We recommend that an emergency no-contact order should be an immediate and temporary order. It should last for a maximum of eight working days, and cannot be extended.

R. 13.38 We recommend that if, after an emergency no-contact order is made, the Safeguarding Body finds out that the at-risk adult:

(a) does not agree to the emergency no-contact order,

(b) is not being pressurised by anyone to not agree, and

(c) has capacity to decide about the no-contact order,

the Safeguarding Body must apply to end the emergency no-contact order as soon as possible.

R. 13.39 We recommend that if an emergency no-contact order is made when the at-risk adult appears to not have capacity to decide about the order, the Safeguarding Body should help the at-risk adult and consider:

(a) supports that are available to the at-risk adult under the Assisted Decision-Making (Capacity) Act 2015; and

(b) informing the Director of the Decision Support Service that the Safeguarding Body believes the at-risk adult does not have capacity to decide about the order.

R. 13.40 We recommend that a person who is subject to an emergency no-contact order should be able to appeal the order. If they appeal an emergency no-contact order, the order should still be effective while the appeal is happening.

R. 13.41 We recommend that it should be a crime for the person who the order is about to not follow an emergency no-contact order.

R. 13.42 We recommend that it should not be a crime for an at-risk adult to not follow an emergency no-contact order.

R. 13.43 We recommend that before granting a no-contact order, interim no-contact order, or emergency no-contact order, the judge must think about the rights of the at-risk adult and the other person in relation to the property where the at-risk adult lives.

R. 13.44 We recommend that any no-contact order should not affect any person's property rights.

R. 13.45 We recommend that free legal aid should be available to at-risk adults when they are applying for a no-contact order, interim no-contact order or emergency no-contact order. We recommend that this should be done by changing the Civil Legal Aid Regulations 1996.

R. 13.46 We recommend that, in relation to any application for a no-contact order, interim no-contact order or emergency no-contact order, it should be a crime for a person to publish any information identifying an at-risk adult. (However, it would not be a crime for an at-risk adult to do this about themselves.)

R. 13.47 We recommend that the identity of a person who is subject to a no-contact order, interim no-contact order or emergency no-contact order should be made public, unless doing this would make the identity of the at-risk adult public.

Chapter 14: Financial Abuse

Background

We published an Issues Paper on a Regulatory Framework for Adult Safeguarding in 2019. We wanted to know your thoughts on the ways to deal with financial abuse of at-risk adults and how things can be improved. We also asked you if the Central Bank of Ireland and the Department of Social Protection have enough power to prevent the financial abuse of at-risk adults.

What is this chapter about?

In chapter 14 we look at:

- Financial abuse of at-risk adults in Ireland;
- Ways to deal with financial abuse; and
- How we think the law should change to prevent financial abuse.

What is financial abuse?

Financial abuse can be many different things. The following are examples of financial abuse:

- Stealing someone's property;
- Lying to someone to make a profit or to cause someone to make a loss; and
- Taking advantage of someone or treating them unfairly to get a financial benefit.

Financial abuse is a very common type of abuse reported by at-risk adults. People who have poor physical or mental health or an intellectual disability are at a higher risk of financial abuse. Family members might financially abuse other family members. For example, adult children could financially abuse their parents.

Financial abuse can happen in the following ways:

- Stealing or misusing a person's social welfare payment, disability benefit or pension;
- Giving someone incorrect information or tricking someone into giving away their money;
- Internet scams, telephone scams or text message scams;
- Bank staff or other financial services staff might sell customers financial products like investment products or mortgages that are not suited to the customer; and
- Taking over joint bank accounts. This can happen when person A (usually an adult child) convinces person B (usually a parent) to add their name to their bank account and then person A takes money out of person B's bank account without person B's consent.

In response to our Issues Paper, people told us how difficult it can be to detect and stop financial abuse. People told us that:

- It can be difficult to comply with laws on sharing and recording information;
- People working in banks or post offices are worried they might be sued if they take action to safeguard a customer's financial interests;
- There is no dedicated code of practice in Ireland on how to prevent financial abuse of at-risk customers; and
- People who work in legal and financial services need regular training on how to deal with financial abuse.

What protections are there to prevent financial abuse of at-risk adults?

Some of you who responded to our Issues Paper told us that the law does not provide enough powers to deal with financial abuse. In this chapter we explain that there are some protections in the law to deal with financial abuse. But some problems still remain because:

- online financial abuse can come from a different country with different laws;
- victims of financial abuse might not want to report the person who abused them to the Gardaí because the person could be their carer, friend or family member; and
- it can be hard for some at-risk adults to give evidence in court because they might have difficulty remembering what happened.

These problems cannot be fixed by changing the law to add more legal protections. Instead, we think that bodies who work in adult safeguarding need to work better together to protect at-risk adults from financial abuse.

(a) Does the criminal law protect at-risk adults from financial abuse?

Some of the people who responded to our Issues Paper said that future safeguarding laws in Ireland should introduce new criminal offences (crimes). In this chapter we look at new crimes. We also look at how the current criminal law in Ireland already protects everyone from financial abuse, including at-risk adults.

Financial abuse can involve theft or fraud. The law says that theft and fraud are crimes in Ireland. These laws apply to everyone. It is also a crime if someone does not tell the Gardaí when they know something that will help the Gardaí prevent crimes such as theft or fraud. The Assisted Decision-Making (Capacity) Act 2015 made it a crime to use fraud, coercion or undue influence to force someone to make or change a co-decision-making arrangement. It is also a crime to take something from someone by lying to them or forcing someone to do something they do not want to do. Taking money from someone by lying to them is financial abuse and is a crime. Forcing someone to do something they do not want to do is financial abuse and is a crime.

We think that the criminal law already protects everyone (including at-risk adults) from theft, fraud, coercion and undue influence. However, there are some gaps in the

law that need to be filled to protect at-risk adults. To fill one of the gaps, in chapter 19, we recommend that there should be a new crime of coercive exploitation in Irish law.

(b) Are there rules to make sure financial service providers are protecting people from financial abuse?

The Central Bank has created the Consumer Protection Code. The Code sets out the rules that regulated financial service providers (like banks) must follow. The Code is part of Irish law. The Code says that financial service providers must make sure that "vulnerable" people can access their money.

Some people who responded to our Issues Paper said that the Code does not do enough to protect at-risk adults from financial abuse. Right now, the Central Bank is changing the Code. Some people have told the Central Bank that the Code needs to be changed because:

- the Code should not use the word "vulnerable" when talking about people;
- the Code needs to comply with international laws on the rights of persons with disabilities; and
- the Code must work well with the Assisted Decision-Making (Capacity) Act 2015.

The Code says that if a customer is "vulnerable", the financial service provider must plan how the "vulnerable" person can access their money. The Central Bank can:

- investigate if a financial service provider does not plan this, and
- penalise a financial service provider if it has evidence to show that the financial service provider has not followed the Code.

(c) What must the Central Bank think about when considering how to penalise a financial service provider?

The Central Bank will consider all of the circumstances of a case when investigating whether a financial service provider did not follow the Code. The Central Bank may ask itself:

- What type of breach of the Code was it?
- How serious was the breach?
- What impact did the breach have?
- What did the financial service provider do after the breach?
- Has that financial service provider breached the Code before?

When the Central Bank is thinking about the seriousness of the breach, it considers whether the victim is a "vulnerable person". The Central Bank believes that a "vulnerable person" is a person who:

- has capacity to make decisions but because of their circumstances, they might need help to make a decision; or
- has limited capacity to make decisions and needs help to make decisions.

If a financial service provider does not agree with the Central Bank's decision to penalise them, they can appeal the decision to the Financial Services Appeal Tribunal.

In this chapter we recommend that the Code should be changed so that it is clear what happens when someone does not follow the Code.

(d) What about the Financial Services and Pensions Ombudsman?

The Financial Services and Pensions Ombudsman can protect people against financial abuse. You can complain to the Ombudsman if you think:

- there are issues with the way a financial service provider has provided or offered a service to you; or
- the financial service provider has failed to provide a service to you.

(e) Did the Assisted Decision-Making (Capacity) Act 2015 make any changes to protect against financial abuse?

The 2015 Act says that if you need help making financial decisions you can appoint a:

- decision-making assistant;
- co-decision-maker;
- decision-making representative; or
- attorney.

The person appointed to help you with financial decisions must report to the Decision-Making Support Service ("DSS") if they think you have been financially abused. The DSS will investigate complaints. The DSS must give reasons if it decides not to investigate. The DSS's decision can be appealed to the Circuit Court.

(f) Can the Health Information and Quality Authority investigate financial abuse?

The Health Information and Quality Authority ("HIQA") can inspect nursing homes and residential centres for people with disabilities. A HIQA inspector can check to see if:

- a nursing home or residential centre follows national standards; and
- residents are safeguarded from abuse and neglect.

However, HIQA cannot investigate individual reports. HIQA can only investigate reports about services, for example reports about a nursing home service or a residential care service.

(g) What about social welfare inspectors?

Social welfare inspectors investigate claims made by people for social welfare benefits and other related issues. The Department of Social Protection has a Special Investigation Unit that investigates social welfare fraud against the Department.

(h) Are solicitors required to look out for financial abuse?

Solicitors are not allowed to work for both the seller of a property and the buyer of a property. This protects people from financial abuse. In one of our previous publications a few years ago, we recommended that the Law Society and the Medical Council should make guidelines for solicitors and doctors about how to check whether a client has capacity to make a will.

What have we recommended in the past? Has the law changed since we made these recommendations?

We published a report in 2011 called Legal Aspects of Professional Home Care. In this report, we recommended that:

- Professional home care services should be regulated by HIQA;
- HIQA should publish national standards for professional home care; and
- The national standards should set out the fee arrangements for contracts for home care services.

In 2020 the government committed to creating a scheme to regulate home care services. Right now, the Department of Health is drafting laws so the scheme can be introduced in the future.

How do other countries deal with financial abuse?

Some countries require a financial service provider to stop, prevent or address actual or suspected financial abuse. The law in some countries says that a financial service provider cannot be sued if they take action to tackle the actual or suspected financial abuse of a customer.

How should Ireland's laws deal with financial abuse?

(a) Make sure that financial service providers have good guidance on how to deal with financial abuse

People are allowed to make decisions about their money even if other people might think these decisions are unwise. This means it can be hard for people who work in a bank to decide if someone is making a bad financial decision or if someone is being financially abused.

Banks have to safeguard their customers' best interests. Banks must ask questions if they think a customer is vulnerable. Banks have to step in to prevent suspicious transactions. But it is not clear what law this responsibility comes from.

We think that financial service providers should be given more practical and detailed guidance. The guidance should tell banks about the:

- responsibilities banks have to customers;
- standards expected of banks;
- prevention measures that banks should take if they think a person might be at risk of financial abuse; and
- responses that banks should take if there has been financial abuse.

The guidance could be provided by changing the Code or by creating a new code of practice. If a bank breaches that code, they could be punished by the Central Bank or a complaint could be made to the Ombudsman.

(b) Change the Consumer Protection Code to protect at-risk customers from financial abuse

We recommend that any changes made to the Code should be made after studying the Financial Abuse Code in the UK and the Group of 20/Organisation for Economic Co-operation and Development High-Level Principles on Financial Consumer Protection.

We recommend that the Code should be changed to say that a financial service provider must take steps to reduce the risk of financial abuse of at-risk customers. Here are some steps that could be required:

1. Make a report to the Gardaí or the HSE if the bank thinks a customer has been financially abused;
2. Make sure that customers' data is up to date; or
3. Pause or freeze a financial transaction for a short time if a bank thinks an at-risk adult could be financially abused.

Banks might be more confident to take steps if they know financial abuse has happened. But it can be harder to take steps when a bank is not fully sure if financial abuse has happened. We think that if the Central Bank clarified this point by amending the Code, banks might not be as worried about taking steps to prevent financial abuse. It would also help if banks and employees knew they cannot be sued for taking steps to prevent financial abuse.

(c) An updated code of practice to protect against financial abuse of at-risk customers

The Code is being updated at the moment by the Central Bank of Ireland. The Central Bank has said that the updated Code will be contained in regulations. The Central Bank has published two sets of draft regulations.

The Code has practical guidance on what financial service providers should do if they are not sure if a customer has capacity to make financial decisions.

In the Issues Paper, we asked if Ireland should have a code of practice or rules for financial service providers that gives guidance to financial service providers, families and at-risk adults about financial abuse. This would apply to:

- financial service providers covered by the Code;
- financial service providers not covered by the Code; and
- government departments and bodies.

This guidance would be different to the Code because it would focus on discovering and stopping financial abuse. We got a lot of support for this idea from consultees.

We have thought about this, and we do not think we should recommend a voluntary code. Safeguarding Ireland have started a consultation asking if they should create a Safeguarding Charter. This Charter would be a voluntary code for organisations, services and professionals working in health, law and finance. Instead, we think that a there should be a Code which must be complied it. We recommend that the Code should be updated to tell financial service providers what steps they must take to stop financial abuse.

(i) When updating the Code, the Central Bank could think about:

- customers of financial service providers;
- the general public, including at-risk adults and people who care for at-risk adults; and
- the Financial Abuse Code published by UK Finance and the Group of 20/Organisation for Economic Co-operation and Development High-Level Principles on Financial Consumer Protection.

(ii) An updated Code should make clear that:

- financial service providers must take certain steps to reduce the risk of financial abuse against at-risk customers;
- it does not matter if a financial service provider was not sure that there was financial abuse as long as they honestly believed there was financial abuse and tried to prevent it; and
- the Central Bank should look at the reasons why the financial service provider thought there might have been financial abuse when it decided to take action.

An updated Code should work well with codes of practice that already exist. For example, the Assisted Decision-Making (Capacity) Act 2015 has guidance on how to provide support to people who need it. The Director of the Decision Support Service

is allowed by law to publish codes of practice under the 2015 Act. The Director has published the Code of Practice for Financial Service Providers which says that if a financial service provider is unsure about a person's capacity to make decisions, it should help that person make their own decisions.

We think that:

- the Code should be updated to say that financial service providers must take steps to prevent the financial abuse of at-risk adults;
- the Financial Abuse Code published by UK Finance and the Group of 20/Organisation for Economic Co-operation and Development High-Level Principles on Financial Consumer Protection contains good guidance which could be added to the updated Code;
- the updated Code should make clear that:
    - financial service providers must take certain steps to reduce the risk of financial abuse against at-risk customers,
    - it does not matter if a financial service provider was not sure that there was financial abuse as long as they honestly believed there was financial abuse and tried to prevent it; and
    - the Central Bank will look at the reasons why the financial service provider thought there might have been financial abuse when it decided to take action;
- the updated Code should work well with the Assisted Decision-Making (Capacity) Act 2015 and codes of practice made by the Director of the Decision Support Service;
- the definition of a "consumer in vulnerable circumstances" in the Central Bank's draft regulations should be amended to explain more clearly who is a "consumer in vulnerable circumstances"; and

- the Central Bank's draft guidance on protecting consumers in vulnerable circumstances should be amended to provide clearer examples of who is a "consumer in vulnerable circumstances".

(d) Branch managers should be allowed to delay transactions and protect people who report financial abuse in good faith

Sometimes, people working in financial institutions can see the signs of financial abuse before everyone else. Financial institutions have software on their computers. The software can tell them if there has been a large amount of money taken out of a person's account or if a person has sent a large amount of money to someone. Bank employees might be worried they will breach confidentiality with a customer if they do something to stop financial abuse. The terms and conditions of the main banks in Ireland say that banks can block payments in or out of a customer's account if they think there is fraud.

We recommend that financial service providers should be allowed to delay transactions when they think an at-risk adult is being financially abused or might have been financially abused. The length of the delay depends on how long it takes for an at-risk customer to make clear to the financial service provider that they wanted to make the transaction. We think the ability to delay a transaction should be included in an updated version of the Code.

We also recommend that certain people who work in financial service providers should be able to give information to the HSE and the Decision Support Service. Information should be shared when an employee thinks that a customer has been financially abused or is at serious risk of financial abuse. Encouraging employees to share information could be made easier by:

- legally protecting them when they report suspected financial abuse in good faith (with good intentions); and

- giving them legal immunity where they share information to stop financial abuse of at-risk customers.

(e) What about protecting people who get social welfare?

People who get social welfare payments can be at risk of financial abuse, especially if they can't collect their payments by themselves. Someone might not be able to collect their social welfare payment because they are not able to leave their home. Other people might not be able to manage their money by themselves. These people can get a social welfare agent to collect their social welfare payments and help them manage their social welfare payments. Social welfare agents can be really helpful for people who need some extra help. But having an agent can be risky because you might not be sure if they have given you all of the money they collected for you.

There are 2 types of social welfare agent that you can get:

- **Type 1 arrangements**: If you are ill or cannot get out and about, you can get an agent who can collect your social welfare payments and bring the money to you.
- **Type 2 arrangements**: your doctor (GP) can decide if you need help managing your money and your doctor can get you a social welfare agent to collect your money and help you manage your money.

The Department of Social Protection can investigate if a social welfare agent is not following the rules and can cancel a social welfare arrangement. It can be hard for at-risk adults to know if they are being financially abused. For example, an adult child could be financially abusing their parents without their parents knowing.

The Assisted Decision-Making (Capacity) Act 2015 changed the law. But is not clear yet how agent arrangements should be made with a person who needs decision-making supports under the 2015 Act.

We recommend that the Social Welfare Consolidation Act 2005 and the Social Welfare (Consolidated Claims, Payments and Control Provisions) Regulations 2007 should be reviewed to make sure they work with the 2015 Act.

(f) Who should have the power to investigate financial abuse?

It can be really hard to investigate financial abuse because financial abuse can involve many transactions, payments and transfers of money. Different financial service providers may be involved.

In some cases, social workers from the HSE Safeguarding and Protection Teams can help when there are concerns about financial abuse. We have been told that the help that people can receive from HSE Safeguarding and Protection Teams when dealing with financial abuse can be different depending on where they live in Ireland.

The Decision Support Service ("DSS") can investigate reports of financial abuse. But these investigations are only for people who need decision-making support under the Assisted Decision-Making (Capacity) Act 2015.

The Gardaí only investigate financial abuse if there is already lots of evidence to suggest that someone has committed a crime that involves financial abuse.

We think that the Safeguarding Body should have powers to receive reports and do investigations into financial abuse. The Safeguarding Body is discussed in further detail in chapters 5 and 6. We think the Safeguarding Body should have this power, and it should not be limited to situations where someone needs decision-making support under the Assisted Decision-Making (Capacity) Act 2015, or where it looks like a crime has been committed. The Safeguarding Body could refer things to:

- the Gardaí if they think someone has committed a crime that involves financial abuse; or
- the DSS if they can show that a person might need decision-making support under the 2015 Act.

So, we recommend that the Safeguarding Body should be given a power to investigate reports of abuse or neglect, including the financial abuse of at-risk adults.

What other ways can we prevent financial abuse?

(a) We should have national standards for home support services

People who have carers that come to their homes are at risk of financial abuse. In our report on Legal Aspects of Professional Home Care in 2011, we recommended that there should be national standards for home care fees. We recommended that these standards should say that every home care contract should clearly explain how much it costs to receive home support services. HIQA are drafting National Standards for Home Support Services. We recommend that these standards should include a standard that says that providers of home support services to at-risk adults must protect them from financial abuse, and cannot financially abuse them.

(b) We should have new laws on how fees are calculated for home support services

We recommend that the law should say that all contracts for home support should explain how home care service fees are calculated. This would help at-risk adults to understand how much home support services will cost before they buy the services.

Recommendations: How we think the law should change

R. 14.1 We recommend that the Consumer Protection Code should be updated and require financial service providers to take steps to prevent financial abuse of at-risk customers and to stop the financial abuse of at-risk customers.

R. 14.2 We recommend that people who work in banks, credit unions and post offices should be trained regularly on how to protect customers from financial abuse.

R. 14.3 We recommend that any updates to the Consumer Protection Code should be consistent with the Assisted Decision-Making (Capacity) Act 2015 and codes of practice made by the Director of the Decision Support Service, for example the Code of Practice for Financial Service Providers.

R. 14.4 We recommend that certain amendments and clarifications should be made to the definition of a "consumer in vulnerable circumstances" in the Central Bank of Ireland's draft Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Conduct of Business) Regulations and its draft guidance on protecting consumers in vulnerable circumstances.

R. 14.5 We recommend that financial service providers should be provided with a power in legislation to temporarily suspend (pause) the completion of a financial transaction where they know or reasonably believe that an at-risk customer is being, has been or is likely to be subject to financial abuse.

R. 14.6 We recommend that the law should protect certain employees of financial service providers from being sued if they take honest steps to try and stop financial abuse.

R. 14.7 We recommend that the Social Welfare Consolidation Act 2005 and the Social Welfare (Consolidated Claims, Payments and Control Provisions) Regulations 2007 should be updated to make sure they work well with the Assisted Decision-Making (Capacity) Act 2015.

R. 14.8 We recommend that the Safeguarding Body should have a power to investigate reports of financial abuse of at-risk adults.

R. 14.9 We recommend that the law should be changed to make sure that contracts for home support services clearly explain the costs of the services. This will help at-risk adults, their family members and carers know how much it will cost an at-risk adult to get home support services, before they buy the services.

R. 14.10 We recommend that HIQA's National Standards for Home Support Services should include a standard on how providers of home support services to at-risk adults can prevent the financial abuse of at-risk adults.

Chapter 15: Cooperation

What is this chapter about?

This chapter is about cooperation. Cooperation means bodies working together. For adult safeguarding, this includes bodies helping each other to prevent harm to at-risk adults. Information sharing is one of the ways that the Gardaí and certain public bodies can work together to prevent harm to at-risk adults. We talk about the specific law for information sharing in chapter 16.

In this chapter, we talk about:

- how bodies in Ireland work together at the moment;
- planning how a person will move from child social services to adult safeguarding services when they become an adult (these plans are called "transitional care arrangements");
- the government's plans for future laws; and
- our recommendations for new laws.

How do bodies in Ireland work together?

Bodies in Ireland usually work together in ways which are not set out in law. This means that the law in Ireland does not require bodies to work together in a particular way. Instead, bodies might have agreements, documents or policies to explain how they work together. This kind of written document is called a memorandum of understanding or a joint protocol. For example, the HSE and the Gardaí have agreements about removing people to approved centres.

Transitional care arrangements in Ireland

Another example is the HSE and the Child and Family Agency ("Tusla"). They have a joint protocol which explains how they work together to promote the best interests of children and families. They work together to plan how a person will move from

child social services to adult safeguarding services when they become an adult. This plan is called a "transitional care arrangement". These plans are important because they can prevent harm to at-risk adults in the future. If these plans are not made, people who move from child social services to adult safeguarding services could be at risk of harm or neglect in the future. An example of this is when the HSE and Tusla did not work well together for Mary.

Mary's case

Mary had an intellectual disability. So, the HSE and Tusla helped Mary by providing services to her. Someone reported that Mary's father had sexually abused two young girls in his family. Mary continued to live with her father after someone made this report. It turned out that the report was true.

The HSE and Tusla decided that Mary should be removed from her father's home. But because Mary was over 18 at this time, Tusla did not provide services to Mary anymore. Because of this, Tusla could not use their powers to remove Mary from the home.

Mary was eventually removed from the home. But this took two years. This delay was caused by the HSE and Tusla not working well together. There was a review of what happened to Mary. This review said that Mary could have been removed from the home at an earlier time, if Tusla and the HSE had worked together in a better way.

We think these kinds of agreements could be supported by requiring bodies to work with other bodies under the law. The law could also explain how bodies can best work together.

What does the government plan to do about cooperation between bodies?

The government plans to create new laws to require certain bodies to work together. Some of these planned laws are in the Policing, Security and Community Safety Act 2024. This law has not come into force yet.

When it does, this law will require:

- the Gardaí to prevent harm to at-risk adults;
- the Gardaí to work with other public bodies to prevent harm to at-risk adults;
- certain public bodies to work with the Gardaí to improve safety in communities and prevent harm to at-risk adults; and
- other public bodies to work together to prevent harm to at-risk adults.

What do we recommend?

We listened to people's views on:

- how bodies in Ireland currently work together to prevent harm to at-risk adults; and
- how they think bodies could better work together in the future.

We also looked into how bodies work together to prevent harm to at-risk adults in Northern Ireland, England, Scotland and Wales. Our recommendations are based on all of this information.

We believe that Ireland should copy what other countries have done and create a responsibility under the law to cooperate. This would mean that the law would require the Safeguarding Body to work with certain public service bodies and providers of relevant services. The Safeguarding Body is discussed in more detail in chapters 5 and 6. Even though the Policing, Security and Community Safety Act 2024 will introduce a responsibility to cooperate when the law comes into force, we also think that more specific responsibilities are needed.

Responsibility of the Safeguarding Body to work with others

We recommend that adult safeguarding laws should say that the Safeguarding Body is responsible for working with any person or body that is needed for it to do its job. We think this would improve cooperation in adult safeguarding situations in Ireland.

Public service bodies' responsibility to work with the Safeguarding Body

We recommend that adult safeguarding laws should say that certain public service bodies have a responsibility to work with the Safeguarding Body. This responsibility applies when the Safeguarding Body asks for their help and this help is needed for the Safeguarding Body to do its job.

We believe that "public service bodies" should include the following bodies:

- Tusla;
- government departments;
- the Director of the Decision Support Service;
- the Gardaí;
- the Domestic, Sexual and Gender-Based Violence Agency ("Cuan");
- the HSE;
- HIQA;
- the International Protection Accommodation Services ("IPAS");
- the Mental Health Commission;
- the Policing and Community Safety Authority; and
- any body called a "public service body" under the parts of our civil bill (draft law) that talk about cooperation.

Public service bodies' responsibility to work with other public service bodies

We recommend that adult safeguarding laws should say that public service bodies have a responsibility to work with other public service bodies. This responsibility

applies when another public service body asks for their help and this help is needed to promote the health, safety or well-being of an at-risk adult.

Public service bodies' responsibility to work with a provider of a relevant service

We recommend that adult safeguarding laws should say that public service bodies have a duty to work with providers of relevant services. This duty applies when a relevant service provider thinks that there is a risk to the health, safety or well-being of an at-risk adult because of abuse, neglect or ill-treatment.

Providers of relevant services' responsibility to work with the Safeguarding Body

We recommend that adult safeguarding laws should say that providers of relevant services have a duty to work with the Safeguarding Body. This duty applies when the Safeguarding Body asks for their help and this help is needed for the Safeguarding Body to do its job.

Providers of relevant services' responsibility to work with public service bodies

We recommend that adult safeguarding laws should say that providers of relevant services have a duty to work with public service bodies. This duty applies when a public service body asks for their help and this help is needed to promote the health, safety or well-being of an at-risk adult.

Providers of relevant services' responsibility to work with other providers of relevant services

We recommend that adult safeguarding laws should say that providers of relevant services have a responsibility to work with other providers of relevant services. This responsibility applies when another relevant service provider thinks there is a risk to the health, safety or well-being of an at-risk adult because of abuse, neglect or ill-treatment.

Safeguarding plans

We recommend that the Safeguarding Body should be able to take any action it thinks is needed to prevent harm to an at-risk adult. This is in situations where someone makes a report to the Safeguarding Body and authorised officers of the Safeguarding Body believe that there is a risk to the health, safety or well-being of an at-risk adult. One action could be working with other bodies to create a safeguarding plan to prevent harm to the at-risk adult.

Who is in charge of cooperation?

In chapter 20, we talk about why we need a "whole-of-government" approach to adult safeguarding. We also talk about an "inter-departmental implementation group". This is a group that would be made up of multiple government departments. We recommend that an inter-departmental implementation group should be created under adult safeguarding laws. The responsibility of this group should be to make sure that there is a whole-of-government approach to adult safeguarding. This group would be in charge of cooperation (working together) in adult safeguarding situations.

Transitional care arrangements

We recommend that laws about providing transitional care arrangements should be included in any social care laws that the government makes in the future.

If this happens, we recommend that the government should think about:

- choosing a lead organisation (or a group of organisations) to manage transitional care arrangements. This lead organisation could work with certain public service bodies and certain providers of relevant services to at-risk adults; and
- introducing a responsibility on the lead organisation to:
    - decide if a child that is at risk or has complex needs is likely to be an at-risk adult when they move from children's services to adult services; and

- do transitional care planning and safeguarding planning for the child.

Recommendations: How we think the law should change

R. 15.1 We recommend that adult safeguarding laws should say that the Safeguarding Body is responsible for working with any person or body that is needed for it to do its job.

R. 15.2 We recommend that adult safeguarding laws should say that public service bodies have a responsibility to work with the Safeguarding Body. This responsibility applies when the Safeguarding Body asks for their help and this help is needed for the Safeguarding Body to do its job.

R. 15.3 We recommend that adult safeguarding laws should say that public service bodies have a responsibility to work with other public service bodies. This responsibility applies when another public service body asks for their help and this help is needed to safeguard the health, safety or well-being of an at-risk adult.

R. 15.4 We recommend that adult safeguarding laws should say that public service bodies have a responsibility to work with providers of relevant services. This responsibility applies when a relevant service provider asks for their help, and thinks that there is a risk to the health, safety or well-being of an at-risk adult because of abuse, neglect or ill-treatment.

R. 15.5 We recommend that adult safeguarding laws should say that providers of relevant services have a responsibility to work with the Safeguarding Body. This responsibility applies when the Safeguarding Body asks for their help and this help is needed for the Safeguarding Body to do its job.

R. 15.6 We recommend that adult safeguarding laws should say that providers of relevant services have a responsibility to work with public service bodies. This responsibility applies when a public service body asks for their help and this help is needed to safeguard the health, safety or well-being of an at-risk adult.

R. 15.7 We recommend that adult safeguarding laws should say that providers of relevant services have a responsibility to work with other providers of relevant services. This responsibility applies when another relevant service provider asks for their help, and thinks that there is a risk to the health, safety or well-being of an at-risk adult because of abuse, neglect or ill-treatment.

R. 15.8 We recommend that the Safeguarding Body should be able to take any action it thinks is needed to prevent harm to an at-risk adult. This is in situations where someone makes a report to the Safeguarding Body and authorised officers of the Safeguarding Body believe there is a risk to the health, safety or well-being of an at-risk adult. One action could be working with other bodies to create a safeguarding plan to prevent harm to the at-risk adult.

R. 15.9 We recommend that an intergovernmental steering group should be created under law. This group would be in charge of cooperation for adult safeguarding.

R. 15.10 We recommend that laws about providing transitional care arrangements should be included in any social care laws that the government makes in the future.

R. 15.11 If this happens, we recommend that the government should think about:

(a) choosing a lead organisation (or a group of organisations) to manage transitional care arrangements. This lead organisation could work with certain public services bodies and certain providers of relevant services to at-risk adults; and

(b) introducing a responsibility for the lead organisation to:

(i) decide if a child that is at risk or has complex needs is likely to be an at-risk adult when they move from children's services to adult services; and

(ii) do transitional care planning and safeguarding planning for the child.

Chapter 16: Information sharing

What is this chapter about?

This chapter is about:

- Irish law on sharing information to safeguard at-risk adults.
- How UK law allows for information sharing to protect:
    - an individual at risk from neglect or physical, mental or emotional harm; and
    - the physical, mental or emotional well-being of an individual at risk.
- How we believe Irish law should change to better safeguard at-risk adults.

What do we mean when we say sharing information?

We mean accessing data and sharing information about at-risk adults to safeguard them from harm at particular times. Sharing information is one way that people and bodies can safeguard at-risk adults from harm at particular times.

What problems exist with accessing data and sharing information in Ireland?

It can be difficult to know when accessing data or sharing information is a breach of the General Data Protection Regulation (GDPR) or data protection laws. People and bodies are not sure:

- about the reasons they can rely on to share information to safeguard at-risk adults;
- what information they can share to safeguard at-risk adults; and
- how they can share information to safeguard at-risk adults.

Because people are not sure of these things, it is difficult right now to safeguard at-risk adults from harm.

Are there laws in Ireland which deal with information sharing?

Yes. In this chapter, we look at the following laws in Ireland which deal with information sharing:

- the GDPR;
- the Law Enforcement Directive;
- the Data Protection Act 2018; and
- the Data Sharing and Governance Act 2019.

The GDPR

The GDPR says that you have a right to data protection. However, this right must be balanced against other rights. Nearly all information that is relevant to safeguarding at-risk adults from harm is the personal data or special categories of personal data of at-risk adults.

Personal data can only be shared when there is a basis in Article 6 of the GDPR to share that data.

For **special categories of personal data**, the general rule is that this data cannot be shared because it is so sensitive. But there is an exception to this rule: the GDPR allows special categories of personal data to be shared if a condition or exception in Article 9 of the GDPR applies.

We discuss below:

- the various legal ways (legal bases) to share personal data under Article 6 of the GDPR; and
- the rules about special categories of personal data.

Your personal data can be shared when you consent or allow it to be shared

Relying on consent (agreement) as a basis for sharing the personal data of at-risk adults is difficult. This is because an at-risk adult may not be able to give consent. They might have a mental illness or disability that makes it difficult for them to give consent.

Your personal information can be shared if you are in a contract and the sharing of the information is necessary to perform the contract

The only information that can be shared under this basis is information that is necessary to perform the contract. For example, if a care provider has a contract with an at-risk adult or their family member to provide care to the at-risk adult, the only information that can be shared under this basis is information that is necessary to make sure the care provider can perform the contract and provide the service to the at-risk adult.

Your personal information can be shared if EU or Irish law says this information must be shared

If it is an Irish law that says that the information must be shared, it must be an Act of the Oireachtas, a statutory instrument or a common law rule. The purpose of the law must be important to the public. The law must be clear and precise.

Ireland has laws that provide a legal basis for information sharing. But these laws are not very relevant or effective for this report. This is because they do not specifically relate to safeguarding at-risk adults from harm.

Research was carried out in Ireland that showed that some hospital staff did not know that they are required by the law to share information if they think a "vulnerable person" is a victim of certain serious crimes. We think it is important to make sure that more people are aware of the law so they can safeguard at-risk adults from harm.

Personal data can be shared if it is necessary to protect your life or someone else's life

This basis may be relied on for adult safeguarding purposes. It includes life-threatening situations or situations which seriously threaten the life of an at-risk adult, or someone else's life. The GDPR says that this basis for sharing information should only be used when no other basis is appropriate. The Data Protection Commission has said that this basis should only be used in an emergency situation.

Personal data can be shared if is required to do something in the public interest

For example, it might be in the public interest for the Health Information and Quality Authority (HIQA) or the HSE to share information with each other, because sharing this information could help to safeguard at-risk adults.

However, it is not clear right now in Ireland if this basis can definitely be relied on to share information to safeguard at-risk adults from harm at a particular time.

Personal information can be shared if there is a valid interest to share that information

This basis is broad and includes different types of interests. There must be a relationship between the person who owns the information and the person who wants to share the information.

Two examples are:

- the relationship between an at-risk adult and a care provider could mean that the care provider has a valid interest to share the at-risk adult's data with another body involved in safeguarding that at-risk adult;
- the relationship between an at-risk adult and a financial institution (such as a bank) could mean that the financial institution has a valid interest to share the at-risk adult's data with another body involved in safeguarding that at-risk adult from financial abuse.

This basis has 2 limitations:

1. Public authorities that share personal data cannot rely on this basis; and
2. The interest in sharing the personal data must be balanced against the need to respect the rights of the at-risk adult.

Special categories of personal data

Information about a person's health and religious beliefs are special categories of personal data which are strongly protected by the law. Information about health and religion is important to safeguard at-risk adults. It is important to know the health and religious views of at-risk adults before making decisions which affect or involve them.

The GDPR says that special categories of personal data can only be shared in exceptional circumstances, such as when:

- the at-risk adult has consented or allowed the information to be shared;
- the information needs to be shared to protect the at-risk adult or another person; or
- the information needs to be shared because there is a substantial public interest reason to share the information. The substantial public interest reason could be to safeguard at-risk adults in Ireland.

It is unclear right now how these exceptional circumstances work in practice. It is also unclear if they can be relied on to share the special categories of personal data of at-risk adults. Because these things are unclear, it is difficult right now to know how and when special categories of personal data of at-risk adults can be shared in order to safeguard at-risk adults in Ireland.

Sharing information about a person's criminal convictions (whether they have committed a crime)

It might be important to share information about a person's criminal convictions to safeguard an at-risk adult, especially if that person cares for an at-risk adult, is going to care for an at-risk adult, or is in contact with an at-risk adult. Data protection laws in Ireland already allow personal information about a person's criminal convictions to be shared in certain circumstances. The law says that you do not need a person's consent before you share information about their criminal convictions if sharing the information is necessary to prevent injury or damage to a person. But this law can only be relied on in serious situations. People and bodies must make sure that:

- sharing this information will likely prevent injury or damage to a person; and
- they handle this information very carefully because this information is very sensitive.

Law Enforcement Directive

The Law Enforcement Directive became part of Irish data protection law in 2018. The Law Enforcement Directive says that information can be shared when it is needed by a competent authority to do their job to:

- prevent crimes,
- investigate crimes,
- detect crimes, or
- prosecute crimes.

In Ireland, the competent authority to do this job is the Gardaí. However, some bodies like HIQA, the Mental Health Commission and CORU might be able to act as competent authorities in certain situations when they have powers to bring legal proceedings and prosecute people who have committed certain crimes.

Data Sharing and Governance Act 2019

The 2019 Act:

- changed the way public bodies can share information to improve public services in Ireland;
- changed the way data is managed by public bodies; and
- only applies to public bodies.

The 2019 Act does **not** apply where:

- public and private bodies want to share information to safeguard the health, safety or well-being of at-risk adults; and
- private bodies want to share information to safeguard the health, safety or well-being of at-risk adults.

The 2019 Act does not allow public bodies to share the special categories of personal data of at-risk adults, except in limited situations. We think that the 2019 Act could better safeguard at-risk adults if it was changed to allow public bodies to share the special categories of personal data of at-risk adults in more situations.

How does the UK deal with sharing information?

The UK Data Protection Act

Data protection laws in the UK allow information to be shared when it is necessary to:

- protect an "individual at risk" from neglect or physical, mental or emotional harm;
- protect the physical, mental or emotional well-being of an individual at risk.

We compared the UK's data protection laws with Ireland's data protection laws. We found that the UK's laws are more accessible for people and more empowering for at-risk adults than Ireland's data protection laws.

Information relating to individuals at risk can also be shared under UK data protection laws if:

- it is necessary for a reason that is of substantial public interest, and
- the individual at risk consents or allows their information to be shared for that reason.

The substantial public interest reason could be to safeguard at-risk adults in the UK.

Scottish and Welsh laws, codes and guidance

Scottish law supports and protects "adults at risk". There is a code of practice that says:

- Scottish laws do not stop bodies or people who work to safeguard adults at risk from sharing information if they need to share it; and
- in an emergency, it might be more harmful to **not** share information than to share it.

In Wales, there is a code of practice that says that sharing information is vital to providing effective care and support services.

The Information Commissioner's Office is the independent regulator for data protection in the UK. One of the Office's codes of practice recognises that the information of individuals at risk should be shared in emergency situations to safeguard them.

The UK's Department of Health and Social Care has published guidance about reporting or responding to abuse or neglect of someone who receives care. The guidance says that:

- sharing information as soon as possible is very important; and
- if a care professional is worried about an adult's well-being and thinks they are suffering from abuse or neglect, the care professional should share the information with a local authority or the police.

How do we think the law should be changed in Ireland?

We think the law should be changed to improve information sharing to safeguard at-risk adults from harm

At the moment, Irish law is not clear enough about how private and public bodies can or should share information to safeguard at-risk adults from harm. There is no specific law that explains:

- **what** information can or should be shared to safeguard the health, safety or well-being of at-risk adults; and
- **how** information can or should be shared to safeguard the health, safety or well-being of at-risk adults.

There is also no specific guidance in Ireland on how information can or should be shared under the GDPR or the Data Protection Act 2018 to safeguard the health, safety or well-being of at-risk adults.

Because people are not sure of the law in Ireland and there is no clear guidance, the law is applied differently by different people and bodies who safeguard at-risk adults. Some people and bodies have told us that it would be easier to safeguard at-risk adults if:

- the law was clearer;
- there was guidance on what information can or should be shared to safeguard the health, safety or well-being of at-risk adults; and
- there was guidance on how information can or should be shared to safeguard the health, safety or well-being of at-risk adults.

We think there should be a new law that requires and allows relevant bodies to share information with other relevant bodies to safeguard the health, safety or well-being of at-risk adults

We think there should be a new law in Ireland that requires and allows relevant bodies to share information with other relevant bodies if it is necessary to safeguard the health, safety or well-being of "adults at risk of harm".

Who are "adults at risk of harm"?

We have explained this earlier in our report, and in our glossary, but this is a reminder about what "adult at risk of harm" means.

People and bodies who responded to our Issues Paper said that words like "vulnerable" can be hurtful to certain people. We do not want to use the word "vulnerable" in our Report or in any news laws that we recommend should be made in Ireland. Just because a person calls another person "vulnerable" does not actually mean that the other person is "vulnerable". Although a person might think that another person is "vulnerable", that other person might not consider themselves to be "vulnerable" and might not actually be "vulnerable". We think "adults at risk of harm" and its shortened version "at-risk adults" are more appropriate words to use than the word "vulnerable".

When a "relevant body" is asking another relevant body for information about a person under the new law, they must check if the person is an "at-risk adult". To do this, the relevant body must ask itself the following questions:

- Is the person over 18?
- Does the person need support to protect themselves from harm at a particular time? This might be because the person has, or the relevant body reasonably believes the person to have:
    1. a permanent or short-term physical or mental condition that means they need extra support at a particular time; or

2. challenging family circumstances that mean they need extra support at a particular time.

- Would sharing information about this person be necessary to safeguard them from harm at this particular time?

Who are "relevant bodies"?

The law we recommend should be specific and say exactly:

- what bodies can and must share this information; and
- what type of information they can share.

We think the law should say that the following bodies are "relevant bodies" who can and should share information to safeguard the health, safety or well-being of at-risk adults:

- the Child and Family Agency (Tusla);
- government departments;
- the Gardaí;
- the Health and Social Care Professionals Council (CORU);
- the Health Information and Quality Authority (HIQA);
- the HSE;
- a body or office that might be established in the future under adult safeguarding laws to perform certain functions to safeguard the health, safety or well-being of at-risk adults;
- the Mental Health Commission;
- a designated centre under the Health Act 2007;
- an agency that gets funding according to section 38 or 39 of the Health Act 2004;
- an approved centre under the Mental Health Act 2001;
- a local authority under the Local Government Act 2001;

- a local community development committee set up under section 49A of the Local Government Act 2001;
- a local community safety partnership set up under the Policing, Security and Community Safety Act 2024; and
- any other person or public or private body, organisation or group that a government minister might add to this list, by making Regulations in the future. ("Regulations" are laws created by ministers or other public bodies under powers given to them by Acts of the Oireachtas.)

What if a relevant body does not know if a person is an at-risk adult?

A relevant body might not know if a person is an at-risk adult. But the relevant body could still be concerned that this person might be at risk of harm at a particular time. For this reason, we recommend that the new law should say that relevant bodies can and must share information relating to:

- at-risk adults; and
- adults who relevant bodies reasonably believe are at-risk adults.

How have we tried to make sure that the new law complies (agrees) with the GDPR and the Data Protection Act 2018?

It is important that any changes to the law on information sharing comply with the GDPR and the Data Protection Act 2018.

Article 6(1)(e) of the GDPR says that information sharing must be necessary for performing a task carried out in the public interest. We think that as long as:

- the information that is shared is necessary to the aim of safeguarding an at-risk adult's health, safety or well-being, and
- does not go further than is necessary to interfere with the rights of the at-risk adult,

the new law should be compliant with Article 6.

We think Article 9(2)(g) of the GDPR is the most appropriate exception to the general rule that special categories of personal data cannot be shared.

We have also tried to make sure that the new law complies with Article 6(1)(e) and 9(2)(g) of the GDPR and the Data Protection Act 2018. We think that the obligation and the permission to share information must:

- identify the public interest for sharing the information;
- make sure the information sharing:
    - is necessary to the aim of safeguarding the health, safety or well-being of an at-risk adult;
    - does not go further than is necessary to interfere with the rights of the at-risk adult; and
    - provides protections to protect the rights of the at-risk adult.
- We also think that before a relevant body makes a request for information to another relevant body or shares information with another relevant body, it needs to show that:
    - sharing the information is necessary in the public interest to safeguard the health, safety or well-being of an at-risk adult:
    - the relevant body cannot reasonably be expected to get the at-risk adult's consent to share the information;
    - the type and amount of the information requested to be shared is necessary to the aim of safeguarding the health, safety or well-being of the at-risk adult, and does not go further than is necessary to interfere with the rights of the at-risk adult; and
    - suitable and specific measures are or will be provided to safeguard the at-risk adult's fundamental rights and interests. These measures might include the measures listed in section 36(1) of the Data Protection Act 2018.

Should a relevant body be forced to share all the information of an at-risk adult with another relevant body under the new law?

No. We think that a relevant body that shares the information of an at-risk adult with another relevant body under the new law should not be forced to share information that it does not have to share for legal reasons.

Will a relevant body be sued or prosecuted if it shares information according to the new law?

No. We think that a relevant body should not be sued or prosecuted if it shares information according to the new law.

If it is going to take some time before the new laws mentioned above are introduced in Ireland, what can be done in the meantime?

We believe that it might take some time before the new laws mentioned above are made in "primary legislation". An example of primary legislation is an Act of the Oireachtas. We think that there are some things that can be done while we wait for the new laws mentioned above to be made in primary legislation in Ireland.

We believe that while we wait for these new laws, Regulations under sections 51(3) and 73(2) of the Data Protection Act 2018 should be made to allow relevant bodies to share the special categories of personal data of at-risk adults with other relevant bodies.

To make these Regulations, there must be a substantial public interest reason to allow special categories of personal data to be shared. We believe that there is a substantial public reason. The reason is that the sharing of the special categories of personal data of at-risk adults by a relevant body to another relevant body is necessary to safeguard the health, safety or well-being of at-risk adults in Ireland.

Is there any specific guidance or codes to help people and bodies understand information sharing in the context of adult safeguarding?

At the moment, there is no specific guidance to help people understand information sharing in the context of adult safeguarding.

Data protection law is complicated. We think that guidance on information sharing would be helpful before the government creates the new laws mentioned above.

The Data Protection Commission has spoken to people and bodies and has found that "vulnerable" adults have been dealing with difficult situations for a long time. This is because people working with "vulnerable" adults have been confused about:

- how to share information,
- what information they can share, and
- when they can share information, to safeguard "vulnerable" adults.

We think that if the government creates new laws, it should publish guidance on how the laws will work in practice.

We also think that a code of conduct could be helpful to explain how and when the personal data and special categories of personal data of at-risk adults can be shared to safeguard the health, safety or well-being of at-risk adults. A code could be published before or after the new laws come into force.

Recommendations: How we think the law should change

R. 16.1 We recommend that Irish law should provide for information sharing between relevant bodies whose functions relate to safeguarding the health, safety or well-being of at-risk adults.

R. 16.2 We recommend that there should be a new law that says that certain relevant bodies have an obligation to share information with other relevant bodies to safeguard the health, safety or well-being of at-risk adults. We also recommend that there should be a new law that says that certain relevant bodies have permission to share information with relevant bodies to safeguard the health, safety or well-being of at-risk adults.

R. 16.3 We recommend that until the new laws mentioned above are made in primary legislation (for example, in an Act of the Oireachtas), Regulations under sections 51(3) and 73(2) of the Data Protection Act 2018 should be made. These Regulations should allow relevant bodies to share the special categories of personal data of at-risk adults with other relevant bodies for the substantial public interest reason of safeguarding the health, safety or well-being of at-risk adults in Ireland.

R. 16.4 We recommend that guidance and codes of conduct should be published in Ireland to make it easier for people and bodies to understand how and when the personal data and special categories of personal data of at-risk adults can be shared to safeguard the health, safety or well-being of at-risk adults.

Chapter 17: Adult safeguarding reviews

What is this chapter about?

In chapter 17, we explain:

- the difference between serious incident reviews and adult safeguarding reviews;
- how serious incident reviews work in Ireland;
- how adult safeguarding reviews work in other countries;
- why change is needed in Ireland; and
- our recommendations to introduce adult safeguarding reviews in Ireland.

What are serious incident reviews?

If something goes wrong in a health or social care setting, a review will be done to find out:

- what happened;
- how it happened; and
- what can be done differently to stop it happening again.

These reviews are sometimes called "serious incident reviews". Some serious incident reviews are about incidents involving at-risk adults, but they are also used in other areas.

What are adult safeguarding reviews?

Adult safeguarding reviews are used when an at-risk adult is seriously harmed or dies because of abuse or neglect. Adult safeguarding reviews have the same aim as serious incident reviews but can only be used for cases involving at-risk adults. Adult safeguarding reviews also aim to find better ways for agencies to work together to deliver services for at-risk adults.

Why are we talking about this?

In this chapter, we recommend that adult safeguarding reviews should be introduced in Ireland. These will be reviews of very serious incidents that involve at-risk adults. Very serious incidents are incidents that meet a high level of seriousness for a mandatory review. Later on, we talk about the criteria or factors that show that an incident reaches the high level of seriousness for a mandatory review. A mandatory review is a review that **must** be carried out by the reviewing body.

Adult safeguarding reviews are about learning from an incident that happened to an at-risk adult and making sure it doesn't happen again in the future. We think adult safeguarding reviews should take place in all care settings where an at-risk adult may be present, even those outside of health and social care settings.

How do serious incident reviews work in Ireland?

There are different types of serious incident reviews in Ireland. Most serious incident reviews in Ireland are not specific to at-risk adults, and there is no set process for learning from incidents involving at-risk adults. The type of review that is used can change for each incident, and sometimes more than one review is used. This can mean that:

- there is a delay in publishing the lessons that are learned;
- at-risk adults and their family members become distressed;
- similar work is done twice; and
- the work goes on for a long time and is not finished.

The different types of serious incident reviews in Ireland are explained below.

Health Service Executive ("HSE") Internal Reviews

The Health Service Executive ("HSE") have two different kinds of internal reviews. These are:

- Reviews under the HSE Incident Management Framework; and
- HSE Safeguarding and Protection Team Reviews.

While the HSE often use these reviews in cases involving at-risk adults, they also use them for other types of incidents. The HSE has not developed a review specifically for at-risk adults. It is also important to know that neither of these reviews can be used in places that are not run by the HSE, like private nursing homes, private care homes or private hospitals.

(i) Reviews under the HSE Incident Management Framework

- The HSE uses these reviews after an incident to find out what happened, how it happened, why it happened, and what they can learn from it.
- They use these reviews in both health and care-related settings.

The approach is different depending on the seriousness of the incident. Minor incidents are reviewed by the department where the incident happened. Major incidents must be reviewed by a team of people who weren't involved with the incident. In some cases, this means the members of the review team come from a different HSE department.

(ii) HSE Safeguarding and Protection Team Reviews

- The HSE carries out this type of review if there are concerns or allegations of abuse in HSE settings.
- In these cases, the first step is for the HSE to check if the concerns or allegations are worth reviewing. If the HSE is concerned about a "vulnerable person", they must take steps immediately to notify various bodies like the HSE Director of Social Care and the National Incident Management Team.
- The HSE will then report their decision to the local HSE Safeguarding and Protection Team.

- If the HSE decides that the concerns or allegations need to be reviewed, an internal or independent inquiry might be conducted, or the Safeguarding and Protection Team will begin a review.
- A recent example of a HSE Safeguarding and Protection Team Review was in the "Emily" case.

Independent reviews commissioned by the HSE

The HSE also asks experts from outside the HSE to review serious incidents. Examples of independent reviews are:

- The Leas Cross review;
- The Áras Attracta review; and
- The "Emily" review.

In the Leas Cross review, the HSE asked a doctor, Professor Des O'Neill, to carry out an independent review into deaths in the Leas Cross Nursing Home between 2002 to 2005. He inspected documents in the nursing home and compared them with national and international data. He then made recommendations to the HSE and the Department of Health and Children.

The review showed that care settings needed to be under closer inspection. After reading the independent review, the Government changed the law to say that there must be an inspection process for social services. The Government also decided to launch a Commission of Investigation into the Leas Cross incident to review the systems and people involved. We explain what a Commission of Investigation is below.

The Health Act 2007 and the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023

The Health Act 2007 and the Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 are two pieces of law which give powers to certain bodies to review serious incidents.

The Health Act 2007 says that the Health Information and Quality Authority (HIQA) can investigate the safety, quality and standards of services for at-risk adults, if it believes the services pose a serious risk to people's health or welfare.

The Office of the Chief Inspector of Social Services also has powers under the Health Act 2007. They inspect the performance of residential centres for adults with disabilities and older people.

Unlike the HSE reviews, HIQA and the Office of the Chief Inspector of Social Services can only review the overall safety, quality and standards of the services. They cannot investigate or inspect individual incidents.

The Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 is not yet in operation. When it becomes the law, it will allow HIQA to:

- review private hospitals, and
- review specific incidents.

However, this new law is quite specific on the types of situations where HIQA will have the power to carry out reviews. This means there will still be many situations involving at-risk adults that HIQA will not have the power to review.

HIQA has also published guidance that aims to make serious incident reviews in Ireland more uniform and effective:

- In 2010, HIQA published guidance called "Guidance for the Health Service Executive for the Review of Serious Incidents including Deaths of Children in Care".

- In 2017, HIQA and the Mental Health Commission published guidance called "National Standards for the Conduct of Reviews of Patient Safety Incidents".

The Mental Health Act 2001

The Mental Health Act 2001 is a law about mental health services. Under this law, a person called the Inspector can carry out reviews of mental health services and the care and treatment provided to specific patients.

National Independent Review Panel

The HSE established the National Independent Review Panel in 2017 to review serious incidents in community health and social care settings.

- Members of the National Independent Review Panel are independent experts with qualifications and experience in social work.
- Members of the National Independent Review Panel do not work in the HSE.
- The National Independent Review Panel is used when a review needs to be carried out separately from the HSE.

The National Independent Review Panel will review cases where:

- there are major concerns about how a HSE service cared for people; and
- it is suspected that there are serious failings by the HSE that have harmed people or affected people's quality of life.

When they have finished their review, the National Independent Review Panel makes a report. They give this report to the HSE who will accept or reject the recommendations and make an action plan. The National Independent Review Panel's recommendations aim to make wide-ranging, effective change, so they sometimes do another review to make sure that this is happening. The National Independent Review Panel also makes an annual report, looking at all the cases they reviewed and seeing what everyone can learn from them.

The National Independent Review Panel has undertaken reviews of serious incidents involving at-risk adults such as:

- The "Brandon" case, which involved a resident of a HSE residential and day care service for adults with intellectual disabilities regularly sexually assaulting other residents; and
- The "Emily" case, where a resident in a HSE community nursing home was raped by a male care assistant. She reported it to the staff, but they did not believe her. The National Independent Review Panel recommended that the HSE improve nursing homes' responses to sexual abuse of residents through awareness campaigns, safeguarding training, communication and crisis response plans, improved file management, and arrangements between the HSE and the Gardaí.

The National Independent Review Panel can only review incidents that happen in HSE services. They cannot do this in services that are privately run. This gap means there is an incomplete picture of serious incidents involving at-risk adults. This makes it more difficult to learn from experience and make improvements in all settings where there might be at-risk adults.

Commissions of Investigation

When the public are concerned about something, the government will sometimes create a Commission of Investigation to look into it. A new Commission is created each time this happens. Commissions of Investigation have special powers to help them in their investigations, including:

- powers to make people give evidence; and
- powers to search places and inspect, get access to, or take documents.

There are some problems with Commissions of Investigation:

- The idea behind Commissions of Investigation was to investigate matters in a quicker and more cost-effective way than a tribunal of inquiry (discussed in the

next section). However, this hasn't been the result. Commissions sometimes take years to publish a report and the delay results in high costs. This is an issue because matters which are causing significant public concern should be investigated quickly.

- Commissions of Investigation sometimes only have one member, who is often a senior barrister. This means that the Commission lacks the knowledge of social workers and other experts, which is often needed in cases involving at-risk adults.

In the future, it might be better to have a permanent Commission of Investigation. At the moment, each time a Commission is created, the new members have to learn how it works. A permanent Commission would save time and money because the members would have expertise from the last investigation.

Commissions of Investigation have investigated a number of serious incidents involving at-risk adults:

- The O'Donovan Commission investigated the management, operation, and supervision of the Leas Cross Nursing Home; and
- The Farrelly Commission is currently investigating the "Grace" case.

Tribunals of inquiry

A tribunal of inquiry is a committee set up by the government to investigate something urgent that the public are concerned about. They work a bit like a court case, with the tribunal sometimes holding public and private hearings. To date, there have been no tribunals of inquiry related to serious incidents involving at-risk adults. In recent years, the government has preferred to use Commissions of Investigation.

Coroner Inquest

The coroner's job is to investigate deaths that happen in an unusual way. They will investigate when, where and how the unusual death happened.

Not all deaths need to be reported to the coroner. However, when a person dies in a public or private facility where they lived or had treatment, the person who runs the facility must report the death to the coroner. This means that the coroner deals with lots of deaths involving at-risk adults in nursing homes and other treatment centres.

The coroner sometimes makes recommendations to prevent similar deaths in the future. The problem with these recommendations is that the law doesn't require people to implement them. In England and Wales, when the coroner makes recommendations, the people who the coroner recommends should take actions have to write back to the coroner saying how they are going to implement them or why they are not going to implement them. This is not the case in Ireland.

The Office of the Ombudsman

The Ombudsman can investigate serious incidents in lots of situations. The Ombudsman can investigate all HSE bodies, including nursing homes that work for the HSE. The Ombudsman cannot investigate complaints about private healthcare, but they can investigate complaints about private nursing homes that get money from the government.

What is important to know about the Ombudsman is that they are a last resort. This means that before the Ombudsman will investigate a complaint, the person with the issue must first try to solve it in other ways, such as those listed above.

When the Ombudsman is finished investigating, they will make recommendations. The body being investigated doesn't have to do anything about the recommendations, but they usually do.

The Ombudsman's recommendations normally try to fix what happened to the person who made the complaint, rather than learning from mistakes and trying to improve the place where the incident happened.

How do adult safeguarding reviews work in other countries?

Some countries have reviews just for adult safeguarding. These are sometimes known as adult safeguarding reviews. Other countries have reviews for incidents generally, which might include incidents involving at-risk adults. The following countries have laws for adult safeguarding-specific reviews:

- England;
- Wales; and
- Scotland.

Northern Ireland is currently developing adult safeguarding laws. As part of these laws, a board will be set up to review serious incidents involving at-risk adults. This means that because Ireland has no adult safeguarding-specific reviews, Ireland's approach is different to its neighbours.

Why is change needed in Ireland?

We think that change is needed in Ireland for seven reasons:

To take the focus off who is to blame for serious incidents and instead focus on what we can learn from them.

When reviews are focused on blame, those involved can become defensive and not think about why things went wrong or accept change. Also, serious incidents often happen in places where there are serious issues in the organisation, for example, there aren't enough staff. It is important that this bigger picture is the focus of adult safeguarding reviews so the whole system can be improved.

To be consistent in the way we approach serious incidents involving at-risk adults.

Currently, serious incidents involving at-risk adults can be reviewed in lots of different ways. In particular, if an incident gets lots of attention from the media or the public, it is sometimes reviewed by a number of the reviewing bodies that we discussed earlier. There are a number of issues with this:

- It is unclear to the public why two very similar incidents might be dealt with in different ways.
- There have been concerns that incidents that don't get lots of attention from the media or the public and don't have multiple reviews are not being addressed properly.
- Having lots of different reviews creates the impression that there is no set way to deal with serious incidents involving at-risk adults and the government is just handling them in different ways at different times.
- The purpose of these reviews is to learn from past incidents. This would be much easier to do if all the reviews were carried out by the same reviewing body.
- Adult safeguarding-specific reviews would be more cost-effective and would give more certainty to at-risk adults, their families and the health or care services involved about how the review would work.

To make sure that serious incidents involving at-risk adults are always addressed properly.

Currently, reviews are not automatically started when a serious incident involving an at-risk adult happens. If new adult safeguarding reviews are introduced in adult safeguarding laws, there would be criteria set for starting a review. If these criteria are met, a review will be conducted, even if the incident occurred in a place not run by the HSE.

To make sure that the reviewing body can always access the information it needs for its review.

Some of the reviewing bodies discussed above have stronger powers than others to get the documents or conduct the interviews they need for their review. Without these powers, it is difficult to find out what went wrong and what should be done to stop it happening again. The body that conducts the new adult safeguarding reviews should have all the powers it needs.

To make sure serious incidents involving at-risk adults are always addressed quickly.

Lots of the reviews discussed earlier take a long time to complete, don't meet their timelines, or are not finished. For adult safeguarding reviews to achieve their aims of improving services and stopping serious incidents from happening again, it is important that they are completed quickly. This makes sure that the lessons learned from them are still relevant.

To create a better system for publishing reports about serious incidents involving at-risk adults.

People have criticised the current reviewing bodies for not publishing their reports. There are good reasons for not always publishing reports in full, for example, to protect the at-risk adult's identity, or because there might be a criminal investigation into the same incident. However, publishing reports makes it easier to learn lessons from the incident and for the public to see how the review was carried out. If adult safeguarding reviews are written into law, the government and the Oireachtas can make a system for how reports should be published.

To share the lessons from these incidents and to stop similar things happening in the future.

At the moment, the reports from reviews involving at-risk adults are scattered across the various reviewing bodies that conduct reviews. Having an adult safeguarding-specific review would allow the reviewing body to create a collection of all reports from reviews involving at-risk adults. This would make it much easier to study the reports and learn from serious incidents involving at-risk adults.

Sharing lessons from the reviews can also go further than reports and recommendations. One useful way to use the knowledge gained from adult safeguarding reviews involving at-risk adults is to present it to certain groups (like members of the Gardaí or nursing home staff) in a way that is helpful to them. Also, as you can see from the discussion of reviewing bodies, some reviewing bodies are

unable to follow up on their recommendations and make sure they are acted on. The new adult safeguarding review body that we are recommending would have the power to check that its recommendations are acted on.

What are our recommendations for change in Ireland?

Our overall recommendations

We have thought about the way that reviews involving at-risk adults work in Ireland, how they work in other countries, and the need for change in Ireland. We believe that Ireland should introduce adult safeguarding reviews specifically for very serious incidents involving at-risk adults. This would mean that all serious incidents involving at-risk adults would be dealt with in the same way.

The adult safeguarding reviews would only be for very serious incidents involving at-risk adults. Specific things must happen for an incident to be "very serious." Very serious incidents are incidents that meet the high level of seriousness and specific factors or criteria for a mandatory review. A mandatory review is a review that must be carried out. If these specific factors or criteria aren't met, we think the reviewing body should have the option to do an adult safeguarding review, but it wouldn't be mandatory.

We think the new adult safeguarding reviews that we are suggesting should be written into the law. This is necessary because these reviews are important. Writing them into law would make sure that the same steps are always followed, and the reviewing body would have the powers it needs to do its job. It also makes sense because the review process can be grouped together with the other adult safeguarding laws we are recommending.

The adult safeguarding review would focus on the future as well as the past. Adult safeguarding reviews look at incidents that have already happened. However, we

think their aim should be to learn lessons from past incidents, to prevent future incidents from happening.

We think the new adult safeguarding reviews could work alongside the normal incident reviews that already exist. These include reviews or inquiries by service providers or the bodies who check on service providers. We think both could work alongside each other because they would have different aims. The point of the new adult safeguarding review would be to learn lessons from the past. The normal incident reviews aim to figure out things that need to be done straightaway to keep at-risk adults safe or make a service provider do their job properly.

The new adult safeguarding review process could be used to examine an incident in any services setting such as health, care, accommodation or refuge services. This means that very serious incidents involving at-risk adults at home, in community settings, or private nursing homes will also be reviewed. We recommend this so that no at-risk adult will fall through the gaps, which can happen with the way reviews are being done now.

What principles will adult safeguarding reviews be based on?

To help the people writing the new adult safeguarding laws, we have thought about seven principles that we think adult safeguarding reviews should be based on. We think:

1. the reviews should be focused on learning, not on blaming people for the incidents;
2. the reviews should be consistent and follow the same steps every time. It should also be clear to the public how the reviews happen, and the reports should be published where possible;
3. adult safeguarding reviews should apply to all serious incidents involving at-risk adults that meet the criteria set out, no matter where they happened;

4. adult safeguarding reviews should be done quickly so that the lessons from them can be shared as soon as possible;
5. the review process should make sure that the people who are involved (at-risk adults, their families, independent advocates, staff and service providers) believe that their voice is heard;
6. the recommendations made in the review should be followed up by the reviewing body to make sure the reviews are causing improvements; and
7. the organisations who were involved in the incident that is being reviewed should have to respond to the report. The reviewing body should make sure that the public can see the responses.

It is really important that the purpose of adult safeguarding reviews is learning, not blaming. There are already criminal and disciplinary processes to uncover who is responsible for incidents and punish them. That is not the role of these reviews. For this reason, we think the new adult safeguarding law should make it clear that the purpose of the review is not to say who is to blame.

When should an adult safeguarding review be carried out?

We believe that adult safeguarding reviews should happen automatically. The reviewing body shouldn't be able to decide to review some serious incidents and not others that are just as serious. This is important so that the process is as fair and open as possible.

However, there must be criteria so that the reviewing body knows if something is a very serious incident involving an at-risk adult. This is important so the reviewing body isn't overloaded with unnecessary reviews.

To strike the balance, we think there should be two types of review: mandatory reviews and discretionary reviews.

(i) Mandatory reviews

A very serious incident is an incident that meets the criteria or factors for a mandatory review. A mandatory review is a review that must be carried out. We recommend that an adult safeguarding review must be carried out when:

(a) an at-risk adult dies and people know or think that they died because of abuse or neglect; or

(b) an at-risk adult doesn't die, but people know or think that they experienced or are experiencing serious abuse or neglect.

In both cases, a review only needs to be carried out when an incident or multiple incidents suggest that bodies looking after at-risk adults seriously failed in their responsibilities.

(ii) Discretionary reviews

A discretionary review is a review that the reviewing body can choose to carry out but does not have to. A discretionary review can be carried out where the criteria for a mandatory review haven't been met but the reviewing body thinks that doing a review would help to:

(a) protect and promote the health, safety and well-being of at-risk adults; and

(b) decrease the risk of harm to at-risk adults.

We think it should be up to the reviewing body to decide if the criteria for the mandatory review have been met and whether they want to carry out a discretionary review.

Can the reviewing body pause, end or choose not to start an adult safeguarding review?

There may be situations where there are reasons for the reviewing body not to carry out an adult safeguarding review. We recommend that the reviewing body can

pause, end, or choose not to start a mandatory or discretionary adult safeguarding review if:

1. there are criminal proceedings ongoing regarding the incident;
2. the Gardaí are already investigating the incident;
3. another body is already doing, or is about to do, a review or investigation of the incident under the law;
4. the problems related to the incident have been addressed or mostly addressed; or
5. a long time has passed from when the incident took place and for that reason the reviewing body thinks it is not necessary to do a review. (The reviewing body must have reasonable grounds for this belief.)

Powers for the reviewing body to get information

For adult safeguarding reviews to be conducted well, it is really important that the reviewing body has powers to get information and documents about the review, and that it can interview people. These powers should be like the powers of the Commissions of Investigation that we discussed earlier. If these powers are written into law, people are much more likely to cooperate with the reviewing body.

When something goes wrong, the people involved sometimes don't want to give away information because it might show that they were at fault. Also, getting the documents can be a big task and people might not want to spend the time finding the documents unless the law says they have to. For this reason, we think the reviewing body should be able to get an order from the court to make people hand over information or documents or do an interview.

Who will carry out the adult safeguarding reviews?

We thought carefully about whether we should recommend a particular body to be the reviewing body responsible for carrying out adult safeguarding reviews. There were a number of options for what organisation could be the reviewing body, including:

- an existing body with expertise like HIQA, the Chief Inspector of Social Services, the Mental Health Commission or the Inspector of Mental Health Services;
- an independent body like the National Independent Review Panel (provided it is written into the law) or a new independent body; or
- local or regional committees made up of people working in safeguarding. This is what happens in England, Scotland and Wales.

We think that it would be best for the government to decide which of these options would be best, because this decision involves thinking about how public bodies are set up and how public money should be spent. However, we talk about how adult safeguarding reviews are done in other countries and the principles that adult safeguarding reviews should be based on. We have done this because we hope that it will be helpful to the government when they are deciding who the reviewing body should be.

Whoever the government chooses, we think the reviewing body should:

- have the knowledge, skills and experience to do adult safeguarding reviews; and
- be independent and not biased when it is doing its work.

We also do not recommend how adult safeguarding reviews should be carried out. This is because how the reviews are carried out will depend on who the reviewing body is. In chapter 6, we talk about the possibility of regulatory bodies being the reviewing body. Regulatory bodies make sure that organisations and service providers are following rules and laws. We also talk about why the Safeguarding Body wouldn't be a good reviewing body.

Recommendations: How we think the law should change

R. 17.1 We recommend that Ireland should introduce adult safeguarding reviews through new laws. Adult safeguarding reviews should only be required to take place where a very serious incident occurs in relation to an at-risk adult, that meets specific conditions.

R. 17.2 We recommend that adult safeguarding reviews should follow these seven principles:

(1) Reviews should be focused on learning, and not on blaming people, agencies or organisations.

(2) Reviews should be done in the same way every time and findings should be shared publicly if possible.

(3) All very serious incidents involving at-risk adults that meet the conditions below should be dealt with in the same way, regardless of what setting they occur in.

(4) Reviews should be finished and shared as soon as possible – they should not continue for many years.

(5) Reviews should involve everyone, including at-risk adults, their families, independent advocates, staff and service providers.

(6) The reviewing body should also assess the outcome of reviews and check progress to make sure that the reviews are making improvements to adult safeguarding systems and services.

(7) Where the reviewing body decides that a public body, agency, or service provider needs to make improvements, the public body, agency, or service provider should let the reviewing body know about the steps they will take to make improvements.

R. 17.3 We recommend that the new adult safeguarding law should make it clear that the reviews are not about blaming people.

R. 17.4 We recommend that an adult safeguarding review **must** be carried out when:

(a) an at-risk adult dies, and the reviewing body knows or suspects that this was because someone abused or neglected the at-risk adult when they were responsible for the at-risk adult's care; or

(b) an at-risk adult doesn't die, but the reviewing body knows or suspects that someone is or was seriously abusing or neglecting the at-risk adult, and

(c) an incident (or incidents) happened that shows that one or more public bodies, agencies, or service providers who was responsible for caring for at-risk adults significantly failed to prevent harm to at-risk adults.

R. 17.5 We recommend that the reviewing body should be able to decide to do a review at other times, even if the conditions above are not met. These would be times when the reviewing body thinks that doing a review would help to:

(a) protect and promote the health, safety and well-being of at-risk adults; and

(b) decrease the risk of harm to at-risk adults.

R. 17.6 We recommend that the reviewing body should be able to decide not to do an adult safeguarding review, or stop or pause a review, if:

(a) there are criminal proceedings ongoing regarding the incident;

(b) the Gardaí are already investigating the incident;

(c) another body is already doing, or is about to do, a review or investigation of the incident under the law;

(d) the problems related to the incident have been addressed or mostly addressed; or

(e) a long time has passed from when the incident took place and for that reason the reviewing body thinks it is not necessary to do a review. (The reviewing body must have reasonable grounds for this belief.)

R. 17.7 We recommend that the reviewing body must make sure that adult safeguarding reviews do not conflict or cause problems for reviews already being carried out under the law.

R. 17.8 We recommend that the reviewing body should have legal powers to:

(a) get information about what happened;

(b) get documents about what happened; and

(c) talk to people involved in the serious incident in private.

R. 17.9 We recommend that if a person refuses to give the reviewing body information or documents, or refuses to talk to them, the reviewing body should be able to ask the court for a court order telling the person to:

(a) give the reviewing body the information;

(b) give the reviewing body the documents; or

(c) participate in an interview with the reviewing body in private.

Chapter 18: Regulation of professionals and occupational groups

What is this chapter about?

In chapter 18, we look at and explain:

- the differences between regulated and unregulated workers who are involved in caring for and supporting at-risk adults;
- the benefits of workers being regulated;
- the problems with workers not being regulated;
- garda vetting and whether it is a good way to assess people before they work with at-risk adults; and
- how other countries regulate people who are working with at-risk adults.

Why are we talking about this?

Many people who provide care and support to at-risk adults work in professions that are regulated. When we say a profession is regulated, we mean that the people who work in that profession must achieve certain qualifications.

Here are some advantages to regulating a profession:

- there is a register of all the people who can work in that profession;
- there are standards for the profession;
- there is better control of who is allowed to work in that profession; and
- workers can be removed from the register.

Many unregulated workers provide care and support to at-risks adults. For example, health care assistants are unregulated. Here are some of the disadvantages of a job that is unregulated:

- workers do not have to do training;
- there is no oversight of the work by a regulator; and
- there is no supervision of the work.

What professions are regulated in Ireland?

Here are some examples of professions that are regulated in Ireland today:

- Medical practitioners (like your GP) are regulated by the Medical Council.
- Nurses and midwives are regulated by the Nursing and Midwifery Board of Ireland.
- Social workers are regulated by CORU.

CORU regulates other health and social care professions too. These include:

- opticians;
- physiotherapists; and
- speech and language therapists.

The Medical Council, the Nursing and Midwifery Board of Ireland and CORU all set out the rules of each profession about:

- the registration of professionals;
- the minimum education and training that professionals have to do; and
- complaints or concerns about professionals.

What professions are not regulated in Ireland?

Some health and social care professionals are not regulated. Health care assistants, health care support assistants and social care workers are all unregulated professionals who work closely with at-risk adults.

Social care workers

Social care workers are different to social workers. Social workers work with the services that are providing care and they organise review meetings. Social care workers work more directly with the person, giving them practical and emotional support. Recently, social care workers started being regulated by CORU. A transitional period is now happening. This means people who want to use the title, "social care worker" can apply to register with CORU.

Social care workers on the new register must follow a code of professional conduct and ethics. These are the rules for people who work in a profession. The code also outlines what happens if a social care worker doesn't do their job properly.

If someone wants to become a social care worker, there are certain education courses you must do. There is a list of those courses in the Health and Social Care Professionals Act 2005.

Health care assistants

Health care assistants help nurses and midwives to provide care. The health care assistant's work is supervised by nurses. If a nurse asks a health care assistant to do certain work, the nurse is responsible for that work.

There is no register for health care assistants. This means that if a health care assistant gets fired from their job for poor practice, they can get a new job working as a health care assistant somewhere else and continue that poor practice.

Right now, if someone wants to become a health care assistant, they do not have to do any special training. They are recommended to do a Level 5 Quality and Qualifications Ireland (QQI) award that is relevant to health care, but they do not have to. This means that some health care assistants are qualified, and some are not qualified. This can lead to problems with consistency, and the different roles can be confusing.

Health care support assistants

Health care support assistants are also called “home help” or “homecare assistants”. They are different to health care assistants because they work in the person’s home, not in a hospital or centre that provides care. Health care support assistants care for people in their homes by helping with bathing, dressing, making food and cleaning.

The HSE provide homecare services to help people over 65 who want to stay living in their own homes for as long as possible.

There is no register for health care support assistants, and they do not have to get a licence. This means that if a health care support assistant gets fired from their job for poor practice, they can get a new job working as a health care support assistant somewhere else and continue that poor practice.

The HSE say that health care support assistants must complete at least two of these modules:

- care support;
- safety and health at work; and
- care skills.

The health care support assistant must also be willing to complete a Level 5 Quality and Qualifications Ireland (QQI) certificate in healthcare support. Different private homecare providers require their health care support assistants to have different levels of qualification. For example, one private homecare provider requires health care support assistants to have completed some of their Level 5 Quality and Qualifications Ireland award, but the health care support assistant does not have to be finished the course before they start working.

Vetting, disclosure and barring

What is vetting?

If someone wants to get a job working with children or at-risk adults, they might need to get vetted. Vetting is when somebody checks to see if a person has a criminal record or if there is anything else they should be worried about. Vetting is usually done when a person applies to work with children or at-risk adults.

What is disclosure?

Disclosure is the part of the vetting process where the information found is passed on to the potential employer.

What is barring?

Barring means stopping a person from working in the same type of job again because of something they did in the past. A "barred list" is a database that has information about people who are not allowed to work in jobs related to children or at-risk adults because of their past behaviour or previous criminal convictions.

How does vetting, disclosure and barring work in other countries?

When we were thinking about our recommendations, we looked at:

- England;
- Wales;
- Northern Ireland; and
- Scotland.

These countries have different systems to ours for safeguarding people. However, it can still be helpful to look at how they regulate people who work with at-risk adults to see if that would be a good idea for Ireland.

England, Wales, Northern Ireland and Scotland all have systems of barring.

England, Wales and Northern Ireland have a service called the Disclosure and Barring Service. Some of the jobs done by the Disclosure and Barring Service are:

- checking someone's criminal record if they are applying to work somewhere, so that employers know who they are hiring. Employers can check someone's criminal record no matter what job the person is applying for;
- barring people who are a risk to children or at-risk adults. This means that person cannot work in certain jobs; and
- keeping a list of everyone who is not allowed to work with children and at-risk adults.

In **Scotland**, Disclosure Scotland are the group that process applications and manages barred lists. If Disclosure Scotland decide that a person should not work with at-risk adults, that person must be included in a list of people who are barred. It is a crime if someone who is barred tries to work with children or at-risk adults. It is also a crime for an organisation to offer work that relates to children or at-risk adults to someone who is barred.

How does vetting, disclosure and barring work in Ireland?

The National Vetting Bureau of the Garda Síochána are in charge of the vetting system in Ireland. People often call this process "garda vetting".

The National Vetting Bureau have a list of "relevant organisations" who they do vetting for. "Relevant organisations" are organisations who hire people to work around children or "vulnerable people". (This is the term that the law about garda vetting uses.) If the Gardaí gives vetting information to a relevant organisation about a person, the law says that the relevant organisation must consider that information when they are thinking about employing the person.

What are the steps in the vetting process?

There are many steps in the vetting process:

1. The National Vetting Bureau finds out the identity of the person in question and checks if that person has a criminal record or if there is any information about them that the relevant organisation should know. This information is called “specified information”.

2. If there is any specified information, the National Vetting Bureau will try to find out more about it.

3. Earlier, we talked about disclosure as part of the vetting process. If there is any specified information, it is up to the Chief Bureau Officer to decide if the information should be disclosed to the relevant organisation. The Chief Bureau Officer will only disclose the information if they think there is a concern that the person might:

    - harm a child or a “vulnerable person”;
    - put a child or a “vulnerable person” at risk of harm;
    - try to harm any child or “vulnerable person”; and
    - encourage another person to harm any child or “vulnerable person”.

Here is a list of some things the Chief Bureau Officer needs to think about when they are deciding whether to tell an employer about someone’s information:

- Is the information relevant to the type of work the person is applying for?
- Will the person be in contact with children or “vulnerable people”?
- Can the information given to the National Vetting Bureau be relied on?
- Did the person themselves give any information?
- Has the Bureau considered the person’s rights?

4. After the Chief Bureau Officer makes their decision, they will tell the person who applied for vetting and that person will be given a copy of the information.

5. The person who applied has 14 days to appeal the Chief Bureau Officer's decision.

Do people have to be vetted again after a while?

The government made a law that says that people must be vetted again after a certain amount of time, even if they haven't changed jobs. This is called re-vetting. However, this law hasn't come into force yet. In 2021, the Minister for Justice set up a review group to look at garda vetting. The group spoke about starting a system of re-vetting every three years. The review group's report hasn't been published yet.

Do we have barred lists in Ireland?

Ireland does not have a list that bars anyone from working with children or at-risk adults. However, a law called the Sex Offenders (Amendment) Act 2023 allows the court to stop someone who has committed a sexual crime from working with children and at-risk adults. This is called a "prohibition order", which is like barring but is only temporary. It means that after someone is released from prison, they will not be allowed to work with children or at-risk adults for a period of time, while the prohibition order is in force.

How do we think the law should change in Ireland?

While many jobs in health and social care are regulated in Ireland, there are still some important jobs that are not regulated. Social care workers are now regulated. However, Health Care Assistants and Health Care Support Assistants are still unregulated. If there are concerns that an unregulated worker is harming people, garda vetting is the only way to stop them from moving to another job where they could continue harming people.

Currently, there are no requirements that Health Care Assistants or Health Care Support Assistants do special training or any checks on how they are working after they've gotten the job. We think this situation puts at-risk adults in danger. We

understand that it is difficult to regulate a profession that hasn't been regulated before. However, this has been done in other countries, so it isn't impossible.

Regulate Health Care Assistants and Health Care Support Assistants

From the government's point of view, regulating Health Care Assistants and Health Care Support Assistants will stop the government being accused of not safeguarding at-risk adults properly. However, the resources needed to regulate these professions will cost the government money.

The cost of regulating professions is a controversial issue. The members of the profession usually pay for the costs of running the regulation. For this reason, the government would have to carefully weigh up the pros and cons of regulating Health Care Assistants and Health Care Support Assistants.

We looked at some academic articles to find out about the benefits of regulating Health Care Assistants and Health Care Support Assistants. The benefits included:

- protection of the public;
- improvement in the education levels of Health Care Assistants and Health Care Support Assistants;
- all Health Care Assistants and Health Care Support Assistants doing the same type of work and being clearer on what is and isn't part of their job;
- control of entry to these professions;
- recognition for the role of Health Care Assistants and Health Care Support Assistants; and
- making it easier to make plans for the numbers of Health Care Assistants and Health Care Support Assistants needed.

Currently, Health Care Assistants and Health Care Support Assistants provide important care to patients but there are no protections to stop people who should not be working in those jobs.

Health Care Assistants and Health Care Support Assistants do not get continuous education and training. This can put the public at risk because the standards are lower. However, we also don't think the education requirements should be too high because this would mean it would be harder for people to get a job as a Health Care Assistant or Health Care Support Assistant. These are important jobs, and we want to encourage as many people as possible to do them.

If these jobs were regulated, it would mean that the regulator could control who can and can't become a Health Care Assistant or Health Care Support Assistant. It would also mean that, if a worker caused harm in one role, they could be prevented from starting to work in another similar role where they might cause more harm.

Introduce more prohibition orders

We talked earlier about how vetting laws require organisations to give vetting information to the Gardaí. The law says that only certain organisations must do this. This means that if another organisation gives the Gardaí important information about a person (that is not about a crime), the Gardaí won't pass that information on to the potential employer. This is one of the ways that vetting doesn't do enough to protect at-risk adults. To help the vetting system protect at-risk adults better, we think the government should introduce other laws about regulating professionals.

We don't recommend that the government introduce **barred lists** in Ireland. Barring has a big impact on the barred person's constitutional rights. Also, barring would need its own system, separate from the existing vetting system. The new system:

- would need special expertise, and
- might not be the most efficient way to get better protection for at-risk adults.

We think a better way to get protection is to introduce more **post-conviction prohibition orders**, that would add to the existing vetting system. We talked earlier about prohibition orders, which are like barred lists, but are only temporary. A law called the Sex Offenders (Amendment) Act 2023 currently provides for a prohibition

order. It says that the court can prevent a person from working with children or "vulnerable persons". However, this law only recently came into action, so we are not sure about how it works in practice. Also, the court can only give a prohibition order to a person who has been found guilty of a sexual crime.

We think prohibition orders could be applied to anyone who has been convicted of a crime:

- under adult-safeguarding laws;
- under laws about assisted decision-making; or
- where a victim of the crime was an at-risk adult.

To make sure that the new prohibition orders correctly balance people's rights, we think they should only last as long as the maximum sentence you can get for the crime the person was convicted of.

Introduce re-vetting

We also recommend that people who are Garda vetted for work should have to be re-vetted after a certain period of time. We talked earlier about how the government wrote a new law introducing re-vetting, but it hasn't come into action yet. We recommend that the government put it into action.

Recommendations: How we think the law should change

R. 18.1 We recommend that Health Care Assistants and Health Care Support Assistants should be regulated to make sure that:

(a) the public are protected;

(b) there are standards for education and training that must be met for a person to do these jobs;

(c) the jobs of Health Care Assistants and Health Care Support Assistants become clearer and we know exactly what type of work they do; and

(d) there is a more controlled process for deciding who can become a Health Care Assistant or Health Care Support Assistant.

R. 18.2 We recommend that a system of mandatory re-vetting should be introduced in law in Ireland. This would mean people who must be Garda vetted for work will have to be re-vetted even if they don't change jobs.

R. 18.3 We recommend that barred lists should not become part of Irish law.

R. 18.4 We recommend that the government should introduce post-conviction prohibition orders in Irish law to stop criminals from doing work or activities in the future that are related to the crime they committed against an at-risk adult.

Chapter 19: Adult safeguarding and the criminal law

Background

Currently, there are not many laws in Ireland against harming at-risk adults. The general criminal law applies when someone harms an at-risk adult. However, it can be hard to prove these crimes when an at-risk adult cannot be interviewed or give evidence at trial about what happened to them.

Our aim in this project is to join up the systems for preventing harm to at-risk adults. Because of this we have thought about changing the criminal law. We also suggest civil law changes that we have talked about earlier in this report. We want to create a legal system that prevents harm to at-risk adults.

To decide if we needed to suggest changes to the criminal law, we:

- listened to people's opinions;
- looked at what other countries are doing; and
- assessed the current criminal law in Ireland.

We have decided that criminal law changes are required to prevent harm to at-risk adults in Ireland.

We know about the extraordinary work that is done by carers and health workers who take care of at-risk adults. We know that often when there are failures in care settings, this is because of:

- not having enough staff;
- too much work;
- plans that do not work; and
- having nowhere to put at-risk adults if they are a risk to other people.

It is important to remember that not having support services can also create a risk of harm. For example, where a family member is caring for an at-risk adult at home and does not have respite or financial support. Sometimes the carer looking after the at-risk adult might even be an at-risk adult themselves. This can affect how they deliver care.

We do not want the crimes that we suggest to apply to accidents by a carer, care provider or another person helping an at-risk adult. When we were coming up with our recommendations, we were aware of this.

We believe that certain behaviour needs to be a crime to prevent harm to at-risk adults and also to stop people acting this way. At-risk adults might be very dependent on other people to carry out daily tasks and may not be able to prevent harm to themselves. This can increase the chance that they are abused, neglected, ill-treated, taken advantage of, or controlled by someone.

There are gaps in the law to prevent harm to at-risk adults who rely on other people for care and support. For example:

- At the moment, harming an adult and treating an adult badly are not specific crimes in Irish law.
- Neither is not caring for an adult properly, unless it leads to the death of the adult.
- Exposing an at-risk adult to a serious risk of harm or sexual abuse because of not caring for them properly is also not a crime.

There are crimes of child cruelty and endangerment. However, children and at-risk adults are different. Children are completely dependent on the person that cares for them. But this is not always true for at-risk adults.

What is this chapter about?

This chapter examines some questions:

- How does the criminal law in Ireland prevent harm to at-risk adults?
- How does the criminal law in Ireland prevent harm to children?
- How does the criminal law in other countries prevent harm to at-risk adults?
- Why do we need specific crimes to prevent harm to at-risk adults?
- What penalties and orders should be available for these crimes?

In this chapter, we recommend new crimes to be introduced in the law. These crimes are:

- intentional or reckless abuse, neglect or ill-treatment;
- exposing an at-risk adult to a risk of serious harm or sexual abuse;
- making the crime of coercive control (controlling behaviour) broader than it is now so it includes controlling specific categories of at-risk adults; and
- coercive exploitation (when someone uses controlling or coercive behaviour to access or control a relevant person's property or money).

We have put these crimes in our criminal bill (draft law). The bill is attached to our full report. We talk about why we need these crimes in this chapter.

The crimes we recommend apply to people, companies and organisations that care for specific categories of at-risk adults. However, it is important to remember the criminal law is not the only way to bring about accountability. This chapter also talks about regulatory crimes under existing health law and mental health law. Health law and mental health law apply to companies and organisations that care for at-risk adults, for example residential centres for older people. The Health Information and Quality Authority (HIQA) and the Mental Health Commission can take cases to court when these regulatory crimes happen.

How does the criminal law in Ireland prevent harm to at-risk adults?

In this section, we talk about some of the criminal law that can prevent harm to at-risk adults. At the moment, the focus of criminal law is on crimes that happened once, not on crimes that happen repeatedly. For example:

- Touching a person without their agreement or making threats to touch a person without their agreement. This crime is called **assault** in Irish law.
- **Neglect** of adults is not currently a crime, unless it causes the adult's death. Neglect is about omissions (failures to do something) as opposed to actions. Neglect can happen because of small things that build up over time and end up harming a person. Even though neglect is a big portion of the concerns sent to the HSE National Safeguarding Office, neglect that does not lead to the death of the at-risk adult is still not a crime. We talk more about neglect below.
- If neglect leads to death, the crime of **manslaughter** might apply. This means unlawfully killing someone where the accused person is less responsible than murder. However, a lot of the time, this neglect does not cause the at-risk adult to die. This creates a gap in how the law prevents harm to at-risk adults.

The **neglect** of adults is generally not a crime. At the time of writing, there is only one crime in Irish law for not caring for an at-risk adult properly. The Assisted Decision-Making (Capacity) Act 2015:

- provides decision-making support for at-risk adults. An adult who may have difficulty making a specific decision at a particular point of time can be given a decision-making helper.
- makes it a crime for a decision-making helper to not care for an at-risk adult properly or to treat an at-risk adult badly. This crime does not apply in respect of **all** at-risk adults, it only applies to adults covered by the decision-making law, and it only applies to decision-making helpers.

In the next section, we talk about some recent situations that have happened to show the problems with the current criminal law, and why it needs to change to prevent harm to at-risk adults.

Does abuse and neglect of at-risk adults happen in Ireland?

1. The Áras Attracta case

The Áras Attracta case is an example that shows the gaps in the criminal law. A reporter got CCTV footage of how residents with intellectual disabilities were cared for at a care centre. Six staff members were brought to court for physical abuse ("assault"). The report showed residents being forced to eat, slapped, kicked and shouted at.

One staff member was brought to court for sitting on a resident. Three other staff members were also found guilty of the least serious type of assault in Irish law – assault that does not cause harm or serious harm. If a person is found guilty of this crime, the longest sentence they can get is six months in prison. This is the only crime in Irish law where someone can be brought to court without needing to prove that harm was caused or that the person wanted to cause harm. If the Director of Public Prosecutions (DPP) wanted to prosecute the crimes of assault causing harm, or assault causing serious harm –

- it would need to prove that the at-risk adults in Áras Attracta were harmed or seriously harmed, and
- it would need evidence of this.

This can be difficult when the case involves an at-risk adult, as they may find it difficult to remember, understand or explain what happened. The Gardaí might not be able to interview the at-risk adult, or the at-risk adult might not be able to testify in court in front of the jury and the judge.

This is different to the law that prevents harm to children. This law makes abuse and ill-treating a child a crime. There is no need to prove that harm occurred. Instead, the Director of Public Prosecutions needs to prove that the behaviour was in a manner likely to cause suffering or injury to the child's health or well-being. Different types of behaviour are covered under the crime of "cruelty". If a person is found guilty of this crime, they could be sentenced to seven years in prison. The DPP regularly prosecute this crime.

A similar crime that applies specifically to at-risk adults may have been used in the Áras Attracta case, if it was a crime at that time. If this was the case, the Director of Public Prosecutions would not need to prove harm and could have looked for a longer prison sentence.

2. The Joel and Costen case

Another example is the case of Eleanor Joel and Jonathan Costen. This case examined what Eleanor (Evelyn's daughter) and Jonathan (Eleanor's partner) should have done to care for Evelyn (the victim). Evelyn had multiple sclerosis (MS) and lived with Eleanor and Jonathan before she died. Eleanor and Jonathan were accused of killing Evelyn because they neglected her (they did not care for her properly).

However, two things were not clear:

- the cause of Evelyn's death, and
- what duty of care Eleanor and Jonathan owed to Evelyn.

Eleanor and Jonathan were found guilty of manslaughter (unlawfully killing someone where the accused person is less responsible than murder), but they appealed this decision to a higher court. The higher court needed to decide whether the actions and inactions of Eleanor and Jonathan were linked closely enough to Evelyn's death.

The higher court asked questions like:

- Were Eleanor and Jonathan's actions enough that they should have cared for Eleanor? (In law, this means did they owe her a duty of care?) Eleanor said that her mother refused care, and refused to go to hospital. Jonathan had asked Evelyn to move out of the house, and did not want her living with them.
- What was the HSE's job in caring for Evelyn? Eleanor and Jonathan said that because the HSE did not care for Evelyn, they caused her death.

To find a person guilty of manslaughter, the court needs to prove that the person caused the death. Unlike in other countries, Ireland does not make it a crime to neglect an adult if it does not lead to their death. This does not include in decision-making situations (discussed above). In this case, Eleanor and Jonathan's appeal of the decision to a higher court was successful. The court said that the test for manslaughter in neglect cases is whether the actions or omissions of the person accused of the crime is a "substantial cause" of the death.

3. The Brandon report

After the Brandon report there was a focus on abuse of residents by other residents in residential centres. This case is about a man with intellectual disabilities who displayed sexually abusive behaviour. He was called "Brandon" in the report, which is not his real name, so he could not be identified.

Between 2003 to 2011 he showed abusive behaviour. A review found proof that he had picked out certain residents that were particularly "vulnerable". Another review found that he had been sexually abusive 108 times. Even though staff members had reported his behaviour, this situation was not managed properly and Brandon continued to be a risk to other residents.

One report said that many things made the Brandon situation worse. For example:

- the clinical environment in the centre;
- the HSE did not properly manage, oversee or show leadership to address the issue; and

- there was no training for staff on how to follow policies and procedures.

In cases like this, the use of the criminal law to lower the risk of harm from one at-risk adult to another at-risk adult is limited. When a crime of this nature is being investigated or prosecuted:

- the at-risk adult that has been charged with a crime might not be able to understand the crime;
- they might not be able to be interviewed in an investigation;
- if they are brought to court, they may not be able to be prosecuted because they lack capacity to understand what they did; and
- if the person does have the ability to understand and the court decides that they are fit for trial, there are many sexual crimes that they can be charged with.

Again, there is a difference between adults and children. Especially when it comes to crimes where people are exposing other people to sexual abuse. It is a crime to expose a child to the danger of a sexual abuse. This can happen on purpose (intentionally) or if a person is not taking proper care (recklessly). There is no law like this to prevent the same harm to at-risk adults.

How can we better prevent harm to at-risk adults?

We know that comparing at-risk adults to children could be seen as offensive, because while children are always dependent, not all at-risk adults are dependent. However, we think it is important to look at the lessons that have been learned from preventing harm to children in the criminal law. By doing this, we are not comparing at-risk adults to children.

One reason for the difference between the law that prevents harm to children and the law that prevents harm to adults is that children are vulnerable and dependent. Generally adults are not. However, some adults are at a higher risk of abuse, neglect or ill-treatment, especially if they receive care from others. We think that:

- there needs to be more done to prevent harm to at-risk adults who are at risk of abuse, neglect and ill-treatment, and
- lessons can be learned from the approach of the criminal law to prevent harm to children.

What crimes do we think are needed to prevent harm to at-risk adults?

To make our recommendations in this chapter work, there needs to be a separate piece of criminal law that applies to adult safeguarding. So, we set out the new crimes in a criminal bill (draft law) which is attached to our full report.

Having these crimes in a specific piece of law would be useful because it would:

- make sure that the public know about the problems that exist and help stop people from committing these crimes; and
- make the job of the Gardaí clear for investigating these crimes.

What is a "relevant person"?

In this report we use the term "at-risk adult" when we are talking about adults that might be at risk of harm. Our reason for using this broad term is so that we do not focus on specific characteristics of a person (for example, their age, disability, medical illness or personal situation). We talk about this more in chapter 2.

Even though we use "at-risk adult" in our civil bill we think that the criminal law needs to be more specific. People who commit a crime in situations with at-risk adults need to know who these crimes apply to. Then they can know if their behaviour would be seen as a crime. For this reason we decided that we need to use a term that does focus on specific traits of a person.

The term “vulnerable person” is often used in Irish law. Generally a vulnerable person is someone who is not a child and does not have the ability to prevent harm to themselves. This ability can be affected because of:

- a physical disability, illness or injury;
- a mental disorder; or
- an intellectual disability.

However, many people think that using the term “vulnerable” focuses too much on certain traits of the adult that is at risk of harm. Instead, the focus should be on the abusive situation or the actions of the abuser. For these reasons we do not want to use the term “vulnerable” in this report or in the civil or criminal bills.

Instead, we think the term “relevant person” should be used in our criminal bill. The definition needs to be specific so that people understand who the crimes can be committed against. We recommend that the crimes we propose should apply when a person commits a crime against a relevant person.

A ”relevant person” should be defined as an adult (not a child) whose ability to keep themselves safe from harm is seriously affected because they have:

- a physical disability, are frail, sick or injured;
- an intellectual disability;
- a mental disorder such as a mental illness or dementia; or
- autism (called “autism spectrum disorder” in the law).

This definition is similar to the definition of a vulnerable person. However, we do not use the term “vulnerable” for the reasons discussed here and in chapter 2.

We believe that it is important to include autism spectrum disorder so that the term applies to a wide range of people that might be at risk of harm. We know that some people do not like the terms “mental disorder” or “autism spectrum disorder”. However, the National Disability Authority has said that it is okay to use medical

terms where specific definitions are needed. These terms are used in the law and in court judgments. We needed to use clear and well-known terms as the criminal law needs to be certain.

Like other types of people that are included in our definition, people with autism spectrum disorder might never be at risk. However, we would rather include too many people than too little. This is because people with autism spectrum disorder may have difficulties preventing harm to themselves and for that reason, may be at-risk adults.

Who can commit these crimes?

Each of the new crimes that are in our criminal law bill set out criteria about who can commit crimes against a relevant person.

We think that once a person meets the criteria for each crime, these crimes can be committed by people, companies and organisations.

The term "any person" in the criminal bill means:

- carers;
- health and social care workers;
- family members;
- friends;
- other people;
- care providers;
- companies; and
- organisations.

When a crime is committed by a person working for a company or organisation, the people in charge of the company or organisation can also be found guilty of a crime. It has to be proven that the crime was committed with their permission or that they were careless about the situation. For example, when a care provider commits a

crime, the director and managers of the company can be found guilty if the court can prove they were to blame.

Abuse, neglect or ill-treatment

What is the law on child abuse in Ireland?

The vulnerability of children to neglect and physical abuse has been in Irish law since 1908. In the law, the term "cruelty" is used to describe different types of abuse of children. For example, cruelty can mean assaulting, neglecting or abandoning a child.

Similar risk factors can apply to relevant persons (specific category of at-risk adults outlined above). Relevant persons might:

- depend on carers who abuse them, or
- they might not be able to talk about or understand the abuse they are experiencing.

Similar issues occur when children experience abuse. Because of this, the crime of cruelty against children is a good guide for what new crime is needed. We think a crime that is similar to this crime is necessary because there is no need to prove harm. By including ill-treatment this crime is broad enough that it covers different kinds of abusive behaviours.

For the crime of assault, a victim usually needs to give evidence that there was no consent and that they were harmed. These things can be hard to prove if a victim cannot:

- give evidence,
- make a statement, or
- take part in an interview,

because they have memory loss or have trouble communicating.

It is important to remember that only serious abuse, neglect or ill-treatment of children is a crime. For this behaviour to be a crime it needs to be likely to cause suffering or injury to a child's health or seriously affect a child's well-being. A similar standard would be suitable for adult victims. As discussed above, having a similar crime for relevant persons would make it easier to prosecute in cases like Áras Attracta as there would be no requirement to prove harm.

What are we recommending?

We think a new crime of abuse, neglect or ill-treatment of relevant persons should be introduced in Ireland. We think that this crime should be based on a caring responsibility. We know that the criminal law must be clear and so this crime should apply to:

- an adult that cares for a relevant person; and
- an adult that lives in the same house as a relevant person.

"Care" means personal care. This includes help with medical, physical, mental or social needs. A person caring for a relevant person can be any person who is in control of any part of the care of the relevant person. It does not matter for how long this care lasts.

We recommend that abuse, neglect or ill-treatment of a relevant person should be a crime if it is done by a person on purpose or without taking proper care. This crime should be based on the crime of child cruelty that already exists. This would make sure that this type of harm would be punished. By including ill-treatment (bullying or making threats towards someone), we think this crime is flexible enough that it could be applied in situations like the case of Áras Attracta.

For their actions to be a crime, the person that committed the crime needs to act:

- on purpose (intentionally) or
- without taking proper care (recklessly).

This makes sure that accidents and mistakes made by someone caring for a relevant person or a person living in the same house as a relevant person are not made a crime.

Where the Director of Public Prosecution needs to prove the harm, the at-risk adult needs to be able to be interviewed and give evidence. We talk above about the difficulties this can cause if the at-risk adult is unable to understand, remember or explain what happened to them. This could be because they might be non-verbal or have problems with their memory. This can make it difficult to bring prosecutions for existing crimes such as assault causing harm, assault causing serious harm and sexual crimes. We think that the new crime we recommend will make it easier to prosecute where a relevant person is abused, neglected or ill-treated.

An important part of the new crime that we recommend is that it can be proven without making the victim give evidence in court. This has worked well in child neglect cases.

We recommend that a person should still be found guilty of a crime even if the relevant person has not died. We also recommend that a person should still be found guilty of a crime even if the harm did not actually happen because another person intervened in time to stop the harm.

The new crime we recommend would allow for a different decision in cases where a person died (murder or manslaughter). In a case where the person charged with killing the relevant person was caring for the relevant person, the court or jury could find that person guilty of the new crime we recommend instead. This means that the person could be found guilty of this less serious crime if there is not enough evidence to prove murder or manslaughter.

Exposure to risk of serious harm or sexual abuse

Is it a crime to put children in danger of serious harm or sexual abuse?

The law makes it a crime to put children in danger of serious harm or sexual abuse. It says that a person is guilty of this crime if they are in charge of a child or the person that abuses the child, and expose the child to the risk of serious harm or sexual abuse. This can happen where:

- a person leaves a child in a situation that puts them at risk of being a victim of serious harm or sexual abuse; or
- a person did not take steps to prevent harm to a child.

This crime is an interesting example of how not preventing harm can be a crime. Inactions or omissions can be covered by this crime, as well as actions. Also, it is not necessary to prove that there was serious harm or that there was sexual abuse. It is enough that the person in charge knew about the risk and did not prevent this harm to the child.

The possible penalty for this crime is 10 years in prison. The same crime does not exist for adults. If the Brandon case happened in a children's residential centre, then this crime could have been used in a criminal trial. This is because the staff did not take steps to prevent harm to residents. In other countries, it is a crime to fail to take steps to protect a child or a "vulnerable adult" from the risk of serious harm or death. The law in Ireland at the moment makes it a crime to not speak out if you know of a crime that has been committed against a "vulnerable person". However, it is not a crime for a person to not take steps to prevent harm to an at-risk adult.

We recommend that there should be a new crime similar to exposing a child to a risk of serious harm or sexual abuse that would apply to relevant persons. We think that this crime would have been useful in cases like the Brandon case. This new crime would apply to people that are caring for a relevant person or the person that abused the relevant person. People that are caring for a relevant person or the

person that is abusing a relevant person should take steps to intervene if they know that a relevant person is being seriously harmed or sexually abused.

It does not need to be proven that the relevant person actually experienced serious harm or sexual abuse for this crime to be proven. All that needs to be proven is that there was a "substantial risk" of serious harm or sexual abuse.

What is serious harm?

The current law that applies to children defines serious harm as injury that causes a risk of death or a permanent injury. We wondered why psychological harm was not included in this definition. Serious harm does not have to be a physical injury or death that has been caused by physical abuse. For example, taunting, making threats or emotionally abusing a person (whether they are an adult or a child) can have a big effect on them. Especially if this abuse happens over a long time and the person abusing them is someone they see often.

In England, the Whorlton Hall case is a good example of why psychological harm should be recognised. The manager in this hospital knew that staff were taunting and embarrassing patients. However, they still allowed these staff members to work in the hospital and did not discipline them. The manager was putting patients at risk of serious psychological harm. We believe that this should be a crime.

Ireland has made coercive control a crime in recent years. Coercive control is psychological and emotional abuse that makes someone feel trapped or afraid. This suggests that thinking has changed in Ireland and that we know that psychological abuse can lead to serious harm. We also recommend a new crime of coercive control for relevant persons in our criminal bill. We think it is too narrow to see serious harm as only death or serious physical harm. Because of this we recommend that serious harm should include psychological harm that has a significant impact.

How can this crime be committed?

We believe that this new crime of exposing a relevant person to a risk of serious harm or sexual abuse should apply to:

- people in charge of a relevant person or in charge of the care of a relevant person; and
- people in charge of the person abusing the relevant person or in charge of the care of the person abusing the relevant person.

This would include carers that put a relevant person in danger of serious harm or sexual abuse. Here are some examples of situations that would fit this crime:

- if a parent leaves their adult child who is a relevant person with a person who they know has been found guilty of sexual abuse;
- if a manager of a nursing home knows or thinks that a resident has physically or sexually abused other residents but does not investigate or do anything about it; or
- if a nursing home gets a complaint about a staff member physically abusing residents and does not investigate this or do anything to prevent the harm from happening again.

For this crime, it has to be proven that the person in charge exposed the relevant person to a substantial risk of serious harm or sexual abuse:

- on purpose (intentionally) or
- without taking proper care (recklessly).

This is a high threshold. This means that a person in charge will not be found guilty if this is not proven.

Coercive control

What is the law on coercive control in Ireland?

As we explain in chapter 13, the law on domestic violence in Ireland can be used to get civil orders against people. These are for situations where a person is being abused or threatened with violence. The orders available are:

- safety orders;
- barring orders; and
- protection orders.

More and more people are making applications to the court for these orders, to protect themselves in domestic violence situations. It is a crime for a person to not follow these orders. Orders like these could be useful to prevent harm to at-risk adults. For example, if an adult child is abusing or making threats to their parent that is older or has a disability. In chapter 13, we recommend extending these orders to also apply to certain relationships involving at-risk adults.

Domestic violence law also covers coercive control. Coercive control is a fairly new crime in Ireland. It was introduced in the law about domestic violence. It makes psychological and emotional abuse a crime when it happens because of long-term controlling behaviour.

The law says that a person commits this crime when:

- they behave in a way that is controlling;
- this behaviour has a serious effect on a relevant person; and
- a reasonable person would think this behaviour is likely to have a serious effect on a relevant person.

Under this law a person's behaviour has a serious effect if the behaviour:

- makes the relevant person scared that violence might be used against them; or

- leads to serious distress that has a bad effect on the relevant person's daily life.

What is the problem with the law on domestic violence in the adult safeguarding context?

Under the domestic violence law, a relevant person is a partner or ex-partner. This means this law can only be used to prevent harm to adults who are in romantic relationships. We know that psychological abuse does not only happen in romantic relationships. It can also happen in close relationships between neighbours, friends, family and other people known to the victim.

When they responded to our Issues Paper, people that work with at-risk adults thought that this crime should be extended to include all carers, including carers that are not family members. They believed that the crime in the domestic violence law should apply regardless of whether:

- the at-risk adult was dependent on the abuser;
- there was a romantic relationship; or
- the abuser lives with the victim.

What are we recommending?

We think that at-risk adults are also in danger of coercive control, because they may depend on their family members and carers. It is not uncommon to hear of at-risk adults being:

- isolated from their family or friends,
- deprived of their needs,
- made to feel embarrassed, or
- forced to do or not do something.

Changing the current law on coercive control would be outside of our project because it would apply to situations other than preventing harm to at-risk adults. For

this reason, we do not recommend extending the current law. However, we think the government might want to think about this.

Instead, we recommend that there should be a new crime of coercive control of a relevant person and include this in our criminal bill. This would apply to more types of relationships than the current crime of coercive control in domestic violence law.

We recommend that the new crime of coercive control of a relevant person should apply to all controlling behaviour:

- in family relationships;
- in caring relationships; and
- between people that live together.

This last category would apply to live-in carers and people living in the same house as a relevant person that are not related to them.

The law in England and Wales about coercive control applies to romantic and family relationships. The law lists the relationships where a person is seen as being "personally connected" to another person and where this crime can be applied. We recommend basing our crime of coercive control in our criminal bill on this.

We also recommend including:

- people who live together (whether this is because of an arrangement or not); and
- people who care for the relevant person.

We think this new crime of coercive control should be based on the crime that is already in the domestic violence law. This would make sure that there are not too many differences between what behaviour the law sees as a crime, except for the different types of relationships that the crimes apply to.

Coercive exploitation

Do we need a crime for coercive exploitation of relevant people?

We thought about whether we need a special crime of taking advantage of a relevant person. This would be called the crime of coercive exploitation. This crime would cover behaviour that is not covered by:

- the crime of coercive control that we recommend in our criminal bill, and
- other existing crimes like forcing a person to do something (coercion), making a gain or causing someone to lose something by lying (deception), fraud or stealing.

Currently, there is no crime of coercive exploitation of at-risk adults in Ireland. However, this crime exists in some other countries, in particular, many states in America.

At-risk adults might be taken advantage of because of:

- their "vulnerability";
- the fact that they depend on other people for support, care or help; or
- social isolation.

People looking to take advantage of at-risk adults might behave in a way that is not violent, not making threats or deceptive. However, their behaviour is still wrong and scheming and we think this should be a crime. We will give an example of case studies later to show why we think a crime of coercive exploitation is needed.

What is coercive exploitation?

Financial exploitation and behaviour like "cuckooing" or "mate crimes" are often reported in situations with at-risk adults.

Cuckooing – this is a term to describe situations where at-risk adults are taken advantage of by others in their community, usually by someone taking control of the

at-risk adult's home. At-risk adults may be targeted because they are older and live alone, or because they have a disability and may have difficulties protecting themselves from harm. Sometimes the at-risk adult does not know that they are being taken advantage of because they think the person is their friend and they want to help them out or spend time with them. If this happens, the situation can quickly get out of their control. These situations often involve another person or group of people using the at-risk adult's home or resources for illegal activities, anti-social behaviour or for their own benefit (for example, to live rent free). This can harm the at-risk adult's health, safety, well-being and financial resources.

Mate crime – this is a term to describe a situation where a person becomes friends with an at-risk adult in order to take advantage of them. This may involve someone asking an at-risk adult for lots of money on a regular basis and never paying them back. It could also involve someone asking the at-risk adult to do things, for example, sell drugs or store weapons. Mate crimes can mean that the at-risk adult does not have the money to look after their own needs, or it could mean they are being asked to commit crimes themselves. Usually, these things happen because the at-risk adult trusts the other person and wants to make them happy.

It is important to remember that at-risk adults have the right to make friends, even if others might think these friends are not good for the at-risk adult. They also have the right to spend time with whoever they want, whether this is in their home or somewhere else. They can decide to help their friends and make decisions that other people might think are foolish. If people are looking into whether an at-risk adult has been taken advantage of, they will need to keep this in mind.

Social isolation and loneliness are reasons that an at-risk adult might be singled out. Local people might know that the at-risk adult lives alone or that the at-risk adult does not have a support network. They can then try to take advantage of this

situation by becoming friends with the at-risk adult in order to take advantage of them.

What crimes are already in Irish law?

1. The crime of coercion

Coercion is a crime in Irish law. This crime is when someone uses violence, intimidation or other similar actions to force a person to do something. However, this crime does not cover every situation where an at-risk adult might be being taken advantage of. This is because not all situations are violent or intimidating.

2. The crime of deception

Deception is a crime in Irish law. This is when someone makes a gain or causes a loss by lying. This crime does not need proof of violence, intimidation or making threats. However, it does need to be proven that the person was dishonest and used lies to make a gain for themselves. We think that some situations where at-risk adults might have been taken advantage of and this led to a harmful outcome would not be covered by this crime.

3. The crime of theft

Theft is a crime in Irish law. This is when a person takes another person's property without them agreeing. At a trial for theft, a jury needs to think about whether:

- the person acted dishonestly;
- the owner of the property agreed or would have agreed to their property being taken; and
- whether the person who took the property took steps to find out who the owner was.

We think that while these crimes would apply to some cases of exploitation of at-risk adults, there are some situations that they would not cover. In some cases, relevant

persons might be taken advantage of in a way that is not threatening, intimidating or deceptive. These situations might not always be about theft of property either.

Case studies

To show examples of the behaviour we think should be covered by the crime of coercive exploitation, we have set out two case studies below.

1. Joan and Joe case study

> Joan has a mild intellectual disability. She lives in supported housing. Joe is a local taxi driver who brings Joan to her local day service. Joe becomes friends with Joan by calling into her for a cup of tea. One time he brought her flowers.
>
> After a while Joe tells Joan that he is short of money. He starts to call into Joan every week when she gets her disability benefit. She gives him €50. Because of this Joan is struggling with money. But she is afraid of losing her friendship with Joe. Joe has told her he loves her. He has hinted that he would like to start a romantic relationship after his money worries have been fixed.
>
> Joe also often gets money from Nuala and Mary. Nuala has an acquired brain injury and Mary's husband died recently. Joe brings them to the hospital and bingo in his taxi.

This case study shows the "mate crime" situations we think should be a crime. Joe's actions could be seen as sneaky because he only calls to see Joan on the day she gets her disability benefit.

Joe does not use violence, intimidation or deception to get Joan to give him money. Joan thinks they are friends and that Joe might even see her as more than a friend. She does not notice she is being taken advantage of by Joe. She is scared of losing a friend and so she gives him money. Maybe Joe has not deceived Joan into thinking

they are friends. Maybe they actually are friends. However, this does not mean that his actions are not taking advantage of Joan. Especially because of his pattern of becoming friends with at-risk adults and asking them for money.

Of course, people give other people money for many reasons. We do not think that asking a person for money should be a broader crime. At-risk adults have the right to give money to their friends if they want to. This is why the line between friendship and exploitative relationships is hard to identify. However, what makes these actions different are that they were committed against a relevant person. Relevant persons might be more easily taken advantage of by other people because they find it difficult to prevent harm to themselves or stop themselves from being taken advantage of.

We do not think that Joan's situation would be covered by the current law in Ireland. However, we think that Joe's actions should be a crime.

2. Tom and Derek case study

Tom has an intellectual disability. He lives by himself in local authority housing. He works two days a week in a warehouse. He goes to a day service three days a week.

Derek's parents live near Tom. Derek knows that Tom has an intellectual disability. Derek is a drug user and has been found guilty of theft. He calls into Tom every week after Tom gets his disability benefit and is paid for his work.

Derek has told Tom that his is short of money and needs drugs to help with his nerves. Tom gives Derek money. Derek uses this money to buys drugs and alcohol.

At the weekend, Derek and his friends spend time in Tom's flat using drugs and drinking alcohol. Tom is struggling with money. He does not like the mess that Derek and his friends leave in his flat every weekend and is worried about the damage they have done to the flat.

However, he does not have any other friends and is worried about losing Derek as a friend. Derek has told him that they are best friends.

Derek became friends with John in a similar way. John has an acquired brain injury. Derek stopped calling into John when John's sister was put in charge of John's finances. John's sister had found out that his electricity had been cut off because he had not been paying his bills. John could not pay his bills because he was giving Derek money every week.

This case study shows the "cuckooing" behaviour that we think should be a crime. This is a plan used by drug users and drug dealers to take over the homes of at-risk adults. Once they have taken over the property, they can use it for crimes and anti-social behaviour. They do not care how this will affect the at-risk adult.

It also shows financial exploitation and how at-risk adults might be chosen by people looking to make a gain. In this situation, Derek does not use violence, intimidation or deception to convince Tom to give him money or let him and his friends use Tom's house. These actions would not be covered by the law in Ireland at the moment.

Derek is taking advantage of Tom. His actions leave Tom with not enough money to pay his bills and leaves a mess in his house. This makes Tom uncomfortable and worried. There have been many recent examples of this kind of behaviour in Ireland in many newspaper articles.

What do we recommend?

Why is the new crime of coercive control not suitable?

The new crime of coercive control that we suggest would not fully cover every case of coercive exploitation of at-risk adults. This is because these actions must have a serious effect on the person. This means that the victim must be afraid of violence or they must have experienced serious distress that has affected their daily activities.

This is not always the case when an at-risk adult is being taken advantage of. In some cases they might be friends with the person that is exploiting them and they might not notice that they are being taken advantage of.

Also, the new crime of coercive control will only apply to relationships where the person doing the controlling and the relevant person are personally connected.

Why are other crimes in Ireland not suitable?

Like we discussed earlier, cuckooing and mate crime situations are often reported in this country. These situations are happening to many at-risk adults in our communities.

Even though there are already crimes of forcing someone to do something, theft, and making a gain or causing a loss by lying in Ireland, we do not think these crimes cover all cases where an at-risk adult is taken advantage of. This is especially true:

- if the person taking advantage of the at-risk adult did not use violence, intimidation or deception, or
- where the at-risk adult agreed to what the person wanted.

Because of the growing number of cuckooing cases in Ireland and the effect it can have on at-risk adults, we recommend that a new crime of coercive exploitation of a relevant person should be introduced in Ireland. We include it in our criminal bill.

Cuckooing and mate crimes are a serious risk to at-risk adults. Their health, safety and well-being can be at risk by being put in danger by this behaviour. For example:

- If an at-risk adult's neighbours report anti-social or criminal behaviour, the at-risk adult might have problems with the Gardaí or the local authority if they are living in social housing. This could lead to criminal charges being brought against them or they could be evicted from their house.
- If an at-risk adult is being financially exploited, they might not be able to pay their own bills or look after their own needs because they are giving money to others.

There is a risk that without a suitable crime to fix this problem, people who take advantage of at-risk adults will continue to do so without punishment.

What does the new crime of coercive exploitation say?

We recommend that a crime of coercive exploitation of a relevant person is introduced. This would make it a crime for a person to:

- behave in a controlling or coercive way (without a good reason);
- with the purpose of controlling the property or finances of the relevant person; and
- to make a gain for themselves or another person.

This person will be guilty of this crime even if the gain did not actually happen. It will not be a defence to say that the relevant person consented. A gain will include any form of financial benefit, including:

- taking or using money or assets owned by a relevant person;
- taking or using property that the relevant person owns or lives in, or stopping the relevant person using this property; or
- taking or using any benefits that the relevant person gets.

These are not the only gains that can be covered by the crime, it just gives an indication.

By introducing a new crime of coercive exploitation of a relevant person, it will be clear that coercive exploitation is a serious issue for at-risk adults and that it is a crime with serious penalties. Efforts should be made to increase the public's knowledge of this crime so that "cuckooing" situations and other similar situations can be spotted in the community. This would mean that situations are dealt with quickly and it would stop people from trying to take advantage of other victims.

We hope that the actions we suggest in our new laws on adult safeguarding will mean that situations of coercive exploitation of relevant persons will be reported to the Gardaí and Safeguarding Body. We also hope that other organisations tasked with preventing harm to at-risk adults will notice these situations, for example HIQA and the Mental Health Commission. Even though these organisations can help prevent harm to the at-risk adult, they cannot stop the person that took advantage of the at-risk adult from exploiting other at-risk adults. We think that by making

these actions a crime, this lowers the chance that a person will be able to take advantage of many at-risk adults.

Often when an at-risk adult is taken advantage of, the situation gets worse over time. It gets worse because the person taking advantage of the at-risk adult becomes closer to the at-risk adult. However, there might not always be evidence of this pattern of exploitative behaviour. Examples of evidence could be:

- repeated actions where the person took advantage of the same at-risk adult; or
- the person having taken advantage of many at-risk adults.

The Gardaí would be in charge of investigating whether the facts of each case meet the standard for the crime of coercive exploitation. The Director of Public Prosecutions would then decide if the facts of the case meet the standard that is needed to bring a case to court. We think it is not likely that cases will be taken for less serious situations of people taking advantage of their friends.

When deciding whether to recommend a new crime of coercive exploitation, we looked at other countries. We found the crime of financial exploitation that is used in Iowa (a state in America) to be useful. Their law makes it a crime to gain control of the belongings or property of an older person. This crime requires the use of pressure and control that negatively affects the older person.

We recommend that the coercive exploitation crime in our criminal bill should have a list of behaviours that could be seen as controlling or coercive behaviour. This list should leave open the possibility that other actions could be covered by this new crime.

This list should include:

- controlling the relevant person's needs like medication, interactions with other people, access to information or sleep;

- using violence, intimidation or making threats against a relevant person or a family member of a relevant person;
- using undue influence over a relevant person; and
- changing or threatening to change the personal or property rights of a relevant person.

We recommend that, for the crime of coercive exploitation, "undue influence" should be defined as when a person uses their position of power to make a relevant person act, or not act, in a way that is not in their best interests or to make a gain for another person.

Penalties and orders

In this section, we talk about what penalties and orders the court could impose on someone who has been found guilty of one of our suggested crimes.

Penalties

Our criminal bill sets out the penalties that we think should apply when the new crimes we recommend have been committed. We will not go into detail about the penalties in this chapter or elsewhere in the report.

When setting the penalties for crimes, we looked at the penalties of similar crimes against children. We also thought about how the crimes in the bill apply to people and care providers. We thought that low fines would not stop big companies that are providing care in this country, for example large groups of nursing homes. For that reason, we decided that the maximum fine should be €1,000,000. We think that setting the maximum fine this high shows how serious these crimes are and gives judges flexibility to treat individual people, small care providers and big care providers differently.

Publicity orders

There is a specific care provider crime of ill-treatment and intentional neglect in England and Wales. Their law also allows the court to make certain orders when a care provider has been found guilty of a crime. One possible order is a "publicity order". This means that a care provider must make the following information available to the public:

- the fact that the care provider has been found guilty of a crime;
- the specific facts of the crime;
- the fine it must pay; and
- whether a "remedy order" (an order requiring the care provider to take certain actions) has been made.

A publicity order can be made with a fine or instead of a fine.

We think that a publicity order is useful in making sure that the public know when care providers have been found guilty of crimes. Because of this, we recommend that when a care provider is found guilty of certain crimes under our criminal bill, a court should be able to make a publicity order.

We recommend that when a court is deciding whether to make a publicity order, it should think about:

- whether the public should know about these crimes;
- whether the public might find out who the victim is;
- the possible effect of the public finding out who the victim is; and
- what the victim wants, if this is possible.

We recommend that a publicity order should require the person that has been found guilty of a crime to make at least one of the following public:

- the fact the person has been found guilty of a crime;
- the facts of the crime; or

- the fine or time in prison that the court ordered for this crime.

We believe that the court should decide these things. A list of types of publication is included in our criminal bill. If the Mental Health Commission or HIQA are in charge of a care provider, they must be told if a crime has been committed. If the service is a public service, the Minister should be told.

Prohibition orders

Our criminal bill also includes "prohibition orders". These are orders that stop people who commit crimes under our criminal bill from doing certain work or activity with relevant persons again in future. In chapter 18, we talk about:

- the reasons we have included prohibition orders in our criminal bill, and
- our recommendations for prohibition orders.

(Chapter 18 looks at the regulation of professionals and occupational groups.)

Not naming victims

We talk about why we should not name victims in chapters 10, 11, 12 and 13. This is in situations where:

- there is a risk or there might be a risk to the health, safety or well-being of an at-risk adult, and
- there is an application to court for an intervention, that might involve very sensitive details about the at-risk adult.

It is important to protect the at-risk adult's right to privacy. So, in those chapters we recommend that, in relation to any application for an intervention, it should be a crime for a person to publish any information identifying an at-risk adult.

The same reasons apply in criminal situations where a crime has been committed against a relevant person. There are already similar laws that make sure that victims of crime or witnesses are not named. In certain situations, the person who committed the crime is not named to make sure that no one can find out who the victim is.

In certain situations, the court might think that certain information should be published to make sure that justice is delivered. In these situations, the court should be allowed to specify how the information should be published and any conditions it thinks is needed. Not following this order should be a crime, unless it is done by the relevant person who was subjected to the crime.

We recommend that when there are proceedings for a crime committed under our criminal bill, it should be a crime for a person to publish any information that might identify the relevant person. This crime should **not** apply where the relevant person discloses information. It also should not be a crime if the court says there should be this publication.

Regulatory crimes

Even though we think that the crimes we recommend in this chapter can be committed by care providers, it is important to remember that there are also separate regulatory crimes in Ireland. Regulatory crimes are for failures in care by regulated care providers. For example:

- Care providers that run residential centres for people with disabilities and older people (designated centres) can be prosecuted for regulatory crimes by HIQA.
- Care providers that run residential centres for people with mental disorders (approved centres) can be prosecuted for regulatory crimes by the Mental Health Commission.

HIQA and the Mental Health Commission have powers to prosecute crimes under health law and mental health law where care providers do not follow their legal responsibilities. We do not think that changes to these laws are needed. We also know that the government is working on reviewing these laws.

Because we already have regulatory laws, we decided not to recommend introducing crimes that are specific to care providers. We thought about whether certain

responsibilities to provide care should be placed on care providers, and if a care provider did not follow this responsibility, that they would be guilty of a crime. In the end we decided that there would be too much overlap with the regulatory crimes that already exist for regulated care providers. Also, in terms of unregulated care providers, it is less likely that there would be set standards and procedures for providing care. This would make it difficult to assess failures of care.

In chapter 6, we recommend that unregulated care providers should be regulated. Then similar crimes to those under health law and mental health law would apply. Also, if the standard for a crime under our criminal bill is met, then an unregulated care provider could be prosecuted for this crime.

We are happy that both the:

- existing regulatory crimes, and
- ability of care providers to be brought to court for new crimes in our criminal bill

would mean that failures by a care provider would be properly dealt with.

Recommendations: How we think the law should change

R. 19.1 We recommend that the new crimes in our criminal bill should apply if a person commits a crime against a relevant person. A relevant person is an adult (not a child) whose ability to keep themselves safe from harm is seriously affected because they have:

(a) a physical disability, are frail, sick or injured;

(b) an intellectual disability;

(c) a mental disorder such as a mental illness or dementia; or

(d) autism (called "autism spectrum disorder" in the law).

R. 19.2 We recommend that a new crime of intentional or reckless abuse, neglect or ill-treatment should be introduced in the law. This crime should be based on the crime of child cruelty.

R. 19.3 We recommend that a new crime of exposing a relevant person to a risk of serious harm or sexual abuse should be introduced in the law. This crime should be based on the same crime against children. However, the meaning of serious harm should include psychological harm.

R. 19.4 We recommend that a new crime of coercive control of a relevant person should be introduced in the law. This would apply to more types of relationships than the existing crime in domestic violence law.

R. 19.5 We recommend that the new crime of coercive control should apply to all controlling behaviour by all people in:

(a) family relationships;

(b) caring relationships; or

(c) people that live together.

R. 19.6 We recommend that a new crime of coercive exploitation of a relevant person should be introduced in the law.

R. 19.7 We recommend that the law on coercive exploitation should make it a crime for a person to:

(a) behave in a controlling or coercive way (without a good reason) in relation to a relevant person;

(b) with the purpose of controlling the property or finances of the relevant person; or

(c) to make a gain for themselves or another person.

R. 19.8 We recommend that a person will be guilty of the crime of coercive exploitation even if the gain did not actually happen. It will not be a defence if the relevant person agreed.

R. 19.9 We recommend that the law should have a list of behaviours that could be seen as controlling or coercive behaviour. This list should leave open the possibility that other actions could be covered by this new crime. This list should include:

(a) controlling the relevant person's needs like medication, interactions with other people, access to information or sleep;

(b) using violence, intimidation or making threats against a

relevant person or a family member of a relevant person;

(c) using undue influence over a relevant person; and

(d) changing or threatening to change the personal or property rights of a relevant person.

R. 19.10 We recommend that for the crime of coercive exploitation, a "gain" will be any form of financial benefit. This includes:

(a) taking or using money or assets owned by a relevant person;

(b) taking or using property that the relevant person owns or lives in, or stopping a relevant person using this property; or

(c) taking or using any benefits that the relevant person gets.

R. 19.11 We recommend that for the crime of coercive exploitation, "undue influence" is where a person uses their position of power to make a relevant person act, or not act, in a way that is not in their best interests or to make a gain for another person.

R. 19.12 We recommend that where a care provider has been found guilty of a crime in our criminal bill, a court can make a publicity order.

R. 19.13 We recommend that when a court is deciding whether to make a publicity order, it should think about:

(a) whether a publicity order would be in the public interest;

(b) whether a publicity order would lead to people finding out who the victim is;

(c) what would happen if people found out who the victim is; and

(d) what the victim thinks, if this is possible.

R. 19.14 We recommend that a publicity order should require the person that has been found guilty of a crime to make at least one of the following public:

(a) the fact the person has been found guilty of a crime;

(b) the facts of the crime; or

(c) the fine or time in prison that the court ordered for this crime.

R. 19.15 We recommend that a court can decide how this information should be published. A non-exhaustive list of different types of publication should be included, and we do this in our criminal bill. This list should include:

(a) telling a regulator if the care provider is an approved centre regulated by the Mental Health Commission;

(b) telling a regulator if the care provider is a designated centre regulated by HIQA; and

(c) telling the Minister, and organisation or group that funds the body, if the service is publicly funded.

R. 19.16 We recommend that when there are proceedings for a crime committed under our criminal bill, it should be a crime for a person to publish any information that might identify the relevant person. This does not include where the relevant person discloses the information themselves, or if the court directs this publication.

Chapter 20: A regulatory framework for adult safeguarding – implementation and a whole-of-government approach

What is this chapter about?

This chapter is about:

- the need for cross-sectoral adult safeguarding laws;
- the need for a main government department to bring in new laws;
- the need for an inter-departmental group to make sure that the whole government is focused on adult safeguarding;
- the need for guidelines and codes of practice about the new laws; and
- how the adult safeguarding laws we propose will interact with other laws.

We explain what all of these things mean in the chapter, below.

What is needed to improve adult safeguarding in Ireland?

Currently, there is no legal or regulatory framework for adult safeguarding in Ireland. In this report, we make recommendations about many adult safeguarding topics. We hope our report shows that adult safeguarding law in Ireland must be changed to prevent harm to at-risk adults, and support them to protect themselves from harm.

However, changing the law is not enough. There also needs to be:

- changes to policy, structure and governance; and
- enough resources and funding for adult safeguarding.

What should an adult safeguarding framework aim to do?

An adult safeguarding framework must be able to prevent harm and not just respond to it. It should aim to:

- reduce the risk of harm to at-risk adults, and
- stop harm from happening in the first place.

Intervening at an early stage can prevent adult safeguarding concerns from getting worse or happening in the future. If adult safeguarding concerns do happen, everyone must know how to identify and respond to the concerns. They should also help at-risk adults to protect themselves. We think that our proposed adult safeguarding framework would achieve these aims.

In this report, we make recommendations that aim to put measures in place to safeguard at-risk adults in Ireland. We tried to make sure that the framework:

- puts the views of at-risk adults at the centre, and
- respects their right to make their own decisions.

What sectors should an adult safeguarding framework apply to?

Our recommendations and draft laws are meant to be cross-sectoral. This means they apply across multiple sectors. They do not just apply to the health and social care sector. Most at-risk adults use health and social care services. Some at-risk adults use services in other sectors. Some do not use any services at all. All at-risk adults should be supported and safeguarded. Any changes to adult safeguarding law that are prompted by this report should prevent the abuse and harm of **all** at-risk adults.

We have explained in this report that we think that a cross-sectoral Safeguarding Body should be set up. It should be able to deal with reports of abuse and neglect of at-risk adults:

- who are not using any services, and
- who are using services in many sectors. For example, these could be health, social care, accommodation or financial services.

The Safeguarding Body should also deal with adult safeguarding issues across public, private and voluntary services.

Currently, the HSE's National Policy and Procedures on adult safeguarding only apply to:

- health and social care services for older people and people with disabilities that the HSE provides or funds; and
- adults with disabilities or older people who are living in the community and not using any services.

The HSE's National Policy and Procedures do not apply to other services that the HSE runs or funds, including mental health services. They also do not apply to private health or social care services – for example, private nursing homes.

Are the government thinking about adult safeguarding?

Recently, the government published policy proposals on adult safeguarding in the health and social care sector. These policy proposals are meant to apply to the health and social care sector. We talk about these proposals in different parts of our report. The government:

- knows we have been working on this report and our draft laws; and
- has said that when organising safeguarding structures for the health and social care sector, it will think about wider issues that involve the whole government, including the recommendations in our report.

We know that adult safeguarding is a priority for the government. This report is being published at a good time, because:

- the government recently published these policy proposals, and
- the HSE's safeguarding policy, procedures and structures are currently being reviewed.

We think this is a great time to change adult safeguarding laws in Ireland. This change is really needed to reduce harm to at-risk adults and promote their health, safety and well-being. We think the adult safeguarding framework we suggest in this report is clear and comprehensive, and we hope that the government will use it.

Why do we need cross-sectoral adult safeguarding laws?

Our recommendations are cross-sectoral, and do not just apply to the health and social care sector. We think that any new laws that are introduced should be cross-sectoral, to avoid gaps in the adult safeguarding framework.

Cross-sectoral laws would mean that lots of services would be covered by the laws, for example:

- all health and social care services, including public and private services;
- accommodation centres for victims of domestic, sexual or gender-based violence;
- accommodation centres for people in the international protection process;
- accommodation centres for adults who are homeless; and
- financial services.

In chapter 7, we recommend that providers of relevant services should have adult safeguarding responsibilities. The list of relevant services is cross-sectoral. These responsibilities will help to prevent harm to at-risk adults and promote their health, safety and well-being.

In chapter 14, we recommend that the Safeguarding Body should be able to respond to reports of financial abuse of at-risk adults.

We think the Safeguarding Body should promote awareness of:

- adult safeguarding issues, and
- the need for people or organisations who are in contact with at-risk adults to respond effectively to safeguarding concerns.

We think that organisations, service providers and the Safeguarding Body should work together to prevent harm of at-risk adults. This requires cooperation and information sharing.

- We talk about cooperation in chapter 15.
- We talk about information sharing in chapter 16. We think organisations that work with at-risk adults should be able to share information with each other when it is needed to safeguard the health, safety or well-being of at-risk adults.

Currently, there are some adult safeguarding measures in Ireland. However,

- they are mostly in policies – not laws, and
- these policies are different in every sector.

We recommend that there should be new cross-sectoral adult safeguarding laws in Ireland. We think these laws should apply to all sectors, because this is better than laws being made for individual sectors.

Who should the main government department be?

We think that a main government department is needed to bring in the new adult safeguarding laws. However, it is difficult to decide which government department should be the main department responsible for adult safeguarding laws. This is because:

- many government departments have some responsibilities for adult safeguarding, and
- sometimes the functions and responsibilities of government departments change.

Consultees had different opinions on who the main government department should be. For example:

- HIQA said the Department of Health should be the main department.

- A different organisation thought the Department of Justice should be the main department.
- Another organisation thought it should be the Department of Children, Equality, Disability, Integration and Youth.

Many departments do adult safeguarding work. We think the following departments are the most important for adult safeguarding:

- the Department of Health;
- the Department of Children, Equality, Disability, Integration and Youth;
- the Department of Justice;
- the Department of Social Protection; and
- the Department of Housing, Local Government and Heritage.

We think that a main government department and a main government minister must be given main responsibility for adult safeguarding. They should be the leaders in bringing in the new laws, and should work with the other departments when needed.

The government should decide who the main government department should be

We think that the government should decide which department should be the main department, because:

- the functions and the responsibilities of the departments may change before the new adult safeguarding laws are introduced; and
- the structure of the Safeguarding Body is relevant to deciding which department should be the main department. In chapter 6, we say that the government should decide how to set up the Safeguarding Body.

So, we recommend that the government should choose the main department to bring in the new cross-sectoral adult safeguarding laws.

Why do we need an inter-departmental implementation group?

We think that a group should be set up to work with all the government departments to bring in the new adult safeguarding laws. This is called **an inter-departmental implementation group**. We think this is a good idea because:

- We want our recommendations and draft laws to be cross-sectoral. This means that each department that does adult safeguarding work should take some responsibility. An inter-departmental implementation group will help to make sure that all the departments:
    - fulfil their adult safeguarding responsibilities, and
    - work together, and with other organisations like the Safeguarding Body, the Garda Síochána and the HSE.
- An inter-departmental implementation group would promote the idea that adult safeguarding is everyone's business – not just the main department.
- An inter-departmental implementation group has been used before to bring in cross-sectoral laws.

What should the inter-departmental implementation group do?

We think the group should be made up of the government departments that have most responsibilities for adult safeguarding, and members of the Garda Síochána and the Safeguarding Body. It should also have members from the HSE, if the government decides that the Safeguarding Body should not be set up inside the HSE.

We think the inter-departmental implementation group should be responsible for:

- making sure every government department does what it is supposed to do under adult safeguarding laws;
- making sure public service bodies do what they're supposed to do under adult safeguarding laws;
- making sure the departments follow any guidelines from the main minister;

- supporting the departments to make sectoral implementation plans (we explain these in the next section);
- making sure all departments' sectoral implementation plans are consistent;
- reporting to the main minister about how implementation is going; and
- giving information and advice to the main minster.

Should there be sectoral implementation plans?

Sectoral implementation plans set out what actions the minister, the department and the department's public service bodies will do to bring in new laws. These plans make sure that everyone has a plan for how they will implement the laws and fulfil their responsibilities. They have been used before to bring in cross-sectoral laws.

We recommend that the relevant ministers should make sectoral implementation plans under adult safeguarding laws. The plans should outline the actions each minister will take to make sure that the minister's department and public service bodies funded by the department fulfil their responsibilities under the new laws and the minister's guidelines.

Should there be guidelines and codes of practice?

We think the main minister should make guidelines and codes of practice for the new adult safeguarding laws. This is because:

- If our proposed laws are brought in, they will create a framework for adult safeguarding for the first time. It is important that people know what they have to do under the new framework.
- The adult safeguarding laws we propose have lots of details and new responsibilities. Everyone who has responsibilities and powers under the laws must understand what they need to do.

This can be done through guidelines and codes of practice.

In our report, we say that guidelines and codes of practice would be useful. For example:

- In chapter 17, we say the main minister should make guidelines to help the organisation that is doing adult safeguarding reviews.
- In chapter 8, we recommend that the minister should make a code of practice for independent advocates who support at-risk adults.

We think that new adult safeguarding laws should say that the main minister can make guidelines and codes of practice. This would help:

- everyone to understand and apply the laws; and
- people and organisations to fulfil their responsibilities under the laws.

How should adult safeguarding laws work with current and future laws?

Adult safeguarding laws will interact with other laws in Ireland, including:

- laws about capacity and decision-making supports;
- mental health law;
- health law;
- reporting incidents and disclosures law; and
- domestic violence law;

We tried very hard to make sure that our recommendations fit in with the laws that already exist.

We also know that the government plans to make other new laws in the future. There is not enough information about those planned new laws yet for us to check if our suggested laws would fit with them.

We recommend that the government should assess how the proposed adult safeguarding laws would interact with any current and future laws.

Recommendations: How we think the law should change

R. 20.1 We recommend that adult safeguarding laws should be cross-sectoral. This means that we think the laws should apply to all sectors instead of each sector having different laws.

R. 20.2 We recommend that the government should choose one main government department to be the leader in bringing in the new adult safeguarding laws.

R. 20.3 We recommend that an inter-departmental implementation group should be created by the new adult safeguarding laws. The group should be responsible for bringing in the new laws and making sure that the new laws are being followed.

R. 20.4 We recommend that the inter-departmental implementation group should:

(a) make sure government departments fulfil their responsibilities under the new laws;

(b) make sure public service bodies fulfil their responsibilities under the new laws;

(c) make sure departments follow any guidelines made by the main minister;

(d) support the departments to make and publish sectoral implementation plans (these are plans about bringing in the new laws and making sure they are followed);

(e) make sure all departments' sectoral implementation plans are consistent;

(f) report to the main government minister about whether the laws are working and being followed; and

(g) give information and advice to the main government minister.

R. 20.5 We recommend that relevant government ministers should make sectoral implementation plans under adult safeguarding laws. The plans should outline the actions each minister will take, to make sure that the minister's department and public service bodies funded by the department fulfil their responsibilities under the new laws and the minister's guidelines.

R. 20.6 We recommend that new adult safeguarding laws should say that the main government minister can make guidelines or codes of practice. Guidelines and codes of practice would help people and organisations to fulfil their responsibilities under the laws. They would also help people to understand and apply the laws.