

## **A Regulatory Framework for Adult Safeguarding Law Reform Commission Issues Paper Submission by the Citizens Information Board – May 2020**

### **Introduction**

The Citizens Information Board (CIB) welcomes the opportunity to respond to this consultation by the Law Reform Commission on its Issues Paper, *A Regulatory Framework for Adult Safeguarding*. This Paper is a very significant and necessary contribution to the ongoing debate on adult safeguarding.

CIB is the statutory agency responsible for supporting the provision of information, advice and advocacy on public and social services and has a statutory obligation to provide advocacy which the Board believes is a vital and necessary component of adult safeguarding. Currently, CIB is the only body with a legislative remit to provide advocacy.

The Comhairle Act 2000 as amended by the Citizens Information Act 2007 puts advocacy at the very centre of the engagement with citizens. The Citizens Information Act 2007 includes a requirement for the Board “*...to support the provision of or, where the Board considers it appropriate, to provide directly, advocacy services to individuals, in particular those with a disability, that would assist them in identifying and understanding their needs and options and in securing their entitlements to social services*”. The 2007 Act sets out how the Board should decide the terms and conditions under which information, advice and advocacy services are provided. It also made provision for the establishment of a Personal Advocacy Service (PAS) which was deferred by Government due to the economic constraints at the time. CIB does not support the implementation of the PAS as set out in the 2007 Act in light of subsequent developments, such as the establishment of the National Advocacy Service for People with Disabilities (NAS) but also because the provisions of the Act are now considered too restrictive and too prescriptive (see Issue 9 below).

CIB provides general advocacy services through the network of Citizens Information Services (CISs) from 100 centres and a number of outreaches across the country and works to ensure that all citizens can exercise rights and access the benefits and services to which they are entitled. Advocacy in CISs is integrated into the existing information and advice services, which allows for a seamless progression from an information enquiry to assignment of an advocate.

CIB has a particular remit in the provision of advocacy to people with disabilities and a related focus on enabling people to assert their legal and human rights. In that context, CIB funds and supports NAS<sup>1</sup> which provides an independent, confidential and free, representative advocacy service that works exclusively for the person and thus provides an important safeguarding role for very vulnerable people. NAS operates on the principle that people with disabilities:

- Make decisions about their lives
- Are listened to and consulted by their families and those who provide their services
- Access the supports they need to enable them to live their life and enjoy meaningful participation in family, work and leisure
- Enjoy the benefits of participation in and contribution to their local communities

Money Advice and Budgeting Services (MABS), also funded by CIB, provide advice and advocacy to people experiencing financial difficulties and over indebtedness, including those experiencing financial abuse. MABS has a special focus on people who are dependent on a low income and/or are vulnerable or disadvantaged. Those who have to borrow to survive and those on low income trying to repay loan instalments both face significant challenges.

The Submission is structured as follows:

- 1) The LRC's questions listed under each Issue are addressed generally or specifically as far as possible.
- 2) There is a specific focus on Issue 9, *Independent Advocacy*.
- 3) Finally, some general observations relating to adult safeguarding in Ireland are made drawing on the experience of CIB delivery services (NAS, Citizens Information Services and MABS). The potential role of CIB in developing an integrated approach to advocacy in the Irish context is outlined.

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<sup>1</sup> NAS is making a separate submission in response to this consultation.

## Issue 1: Values and Principles underpinning Adult Safeguarding

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

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

### Q 1.1

The LRC's suggested principles are:

- *Respecting human rights, including the rights to dignity, bodily integrity, privacy and respect for culture and beliefs;*
- *Empowerment: presumption of decision-making capacity, informed consent and the right to participation and independent advocacy;*
- *Protection: provision of support and care to ensure safety and dignity, and to promote individual physical, mental and emotional well-being;*
- *Prevention: taking proactive steps to ensure that safeguarding measures are in place to prevent abuse from occurring;*
- *Proportionality: ensuring that any interventions are necessary with regard to the circumstances of the individual; that any interventions are the least intrusive and restrictive of a person's freedom as possible; and that any interventions are proportionate to the level of risk presented;*
- *Integration and cooperation: multiagency approaches to ensuring effective safeguarding for all at risk adults on a local level;*
- *Accountability: accountability and transparency in adult safeguarding.*

CIB considers that the above principles provide a useful value base for any legislation relating to adult safeguarding. They reflect the core components of international human rights provisions. Because of the level of financial abuse in Ireland as reported in various research studies<sup>2</sup>, there would be merit in including "the protection of vulnerable persons from financial abuse" as a separate principle.

### Q 1.2

It is suggested that the following additional principles should be included:

- *A person-centred approach*
- *Supporting people to have control over personal finances and property*
- *Balancing safeguarding concerns with people's right to engage in positive risk-taking*

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<sup>2</sup> See, for example [Study 20% of adults have experienced financial abuse - study 25 Nov 2019](#)

Fealy, G., Donnelly, N., Bergin, A., Treacy, M.P., Phelan, A. (2012) Financial Abuse of Older People: A Review, NCPOP, University College Dublin

[Financial Abuse of Older People: A review. National Centre for the Protection of Older People](#)  
[The National Safeguarding Office Report 2017. HSE Report. 75 pages](#)

## Issue 2: Defining Key Terms for Adult Safeguarding

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

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

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

*(a) "safeguarding"*

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

*(c) "neglect"*

*(d) "capacity"*

### Q 2.1

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

From a CIB perspective, in addition to NAS, other CIB delivery services (CISs and MABS) work with a broad spectrum of the Irish population, some of whom would come within the category of people requiring safeguarding. These services would clearly wish to apply best safeguarding practice in supporting their clients even if not legally mandated to do so.

### Q 2.2

CIB agrees with the proposed shift from using the term "vulnerable person" or "vulnerable adult". Policy and public discourse has tended to use the term 'vulnerable' very widely and generally and, perhaps, without a clear or agreed understanding of what the term means. This has happened extensively in the current narrative around Covid-19. It is also the case that the use of the term 'vulnerable person' may inadvertently result in a tendency to locate the problem in the individual person and not take into account the fact that vulnerability is relative and fluctuates and that it may be as much to do with people's living circumstances/environment as with their personal disposition, decision-making capacity or functional ability. Also, while the HSE definition of abuse focuses on acts of abuse by individuals, it is acknowledged that abuse can also arise from inappropriate or inadequacy of care or programmes of care.

One issue that is not fully explored in the LRC paper is that of institutional or organisational abuse (including neglect) arising from, for example, overcrowding in prisons or hospitals. Categories of adults who are more at risk of abuse based on their situations include, in particular, prisoners, Direct Provision residents and undocumented migrants. Again, the circumstances of people in such congregated settings have come to the fore in the current pandemic crisis.

CIB considers that many of the definitions outlined in the Issues Paper have merit but also may not capture all people who may need safeguarding. CIB fully agrees with the LRC view that a person may be capable of living independently without care and support but may still be at risk of abuse or harm. For example, there may be people who have suffered various kinds of trauma, e.g., sexual abuse, domestic violence, who may not have the ability to safeguard themselves or their property and may be subject to exploitation.

The definition of 'adult at risk' included in the Safeguarding Bill 2017 has much merit and is the one that CIB would favour:

*An adult at risk means a person, who has attained the age of 18 years who is unable to take care of himself or herself, or is unable to protect him or herself from abuse or harm.*

This is also the definition that has been used by the Department of Health in its Draft Discussion Paper, *Primary Definitions National Policy on Adult Safeguarding for the Health Sector*.<sup>3</sup> The Department also adds the following important point to the definition: *A distinction is made between an adult unable to safeguard themselves or their own interests at a particular point in time, and one who is deemed to have the skill, means, capacity and/or opportunity to safeguard themselves in a similar situation, but chooses not to.*

### Q.2.3

The LRC Paper has provided a number of definitions of safeguarding, abuse and harm used in various policies and in different jurisdictions but has not opted or proposed any specific definition of these terms. The HIQA/MHC National Standards for Adult Safeguarding refers to the promotion of well-being in defining "safeguarding" in relation to adults. The aims of safeguarding adults set out in the UK Care Act 2014<sup>4</sup> are clear and provide a useful insight into what safeguarding means:

- To prevent harm and reduce the risk of abuse or neglect to adults with care and support needs
- To safeguard individuals in a way that supports them in making choices and having control in how they choose to live their lives
- To promote an outcomes approach in safeguarding that works for people resulting in the best experience possible
- To raise public awareness so that professionals, other staff and communities as a whole play their part in preventing, identifying and responding to abuse and neglect
- To ensure that the roles and responsibilities of individuals and organisations are clearly laid out
- To create a strong multi-agency framework for safeguarding
- To enable access to mainstream community safety measures
- To clarify the interface between safeguarding and quality of service provision

This approach recognises the importance of the person's views and their wishes and preferences. It also references the need for linkages between safeguarding and access to quality services and the need to have a multi-agency response.

CIB is in broad agreement with the definition of 'abuse' outlined in the HSE's 2014 National Policy and Procedures, and in HIQA's and the MHC's National Standards for Adult Safeguarding definition as:

*"A single, or repeated act, or omission, which violates a person's human rights or causes harm or distress to a person"*

In relation to the term 'harm', the *Scottish Adult Support and Protection (Scotland) Act 2007* definition referenced in the LRC Paper at 2.34 would seem appropriate:

*"harm" includes all harmful conduct and, in particular, includes:*

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<sup>3</sup> [Discussion Paper: Primary Definitions National Policy on Adult Safeguarding for the Health Sector. Department of Health. 31 pages](#)

<sup>4</sup> [Adult Pocket Guide: Safeguarding Adults. NHS England. 40 pages](#)

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

On 'neglect' CIB would support the definition in the Department of Health draft Discussion Paper, *Primary Definitions National Policy on Adult Safeguarding for the Health Sector* which is:

*Withholding or failure, by a responsible party, to provide appropriate and adequate care and/or support which is required to another person which is likely to result in an impairment of the person's health or wellbeing. 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.*

CIB fully endorses the view that in order to achieve clarity and certainty, it is important that there is consistency in the definition of 'capacity' set out in the safeguarding legislation with that provided for in the *Assisted Decision-Making (Capacity) Act 2015*. It is also of the utmost importance that the concept of legal capacity is fully enshrined in safeguarding legislation, viz. a person's capacity to be both a holder of rights and an actor under the law and to have entitlement to full protection of their rights by the legal system.<sup>5</sup>

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

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

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

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

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

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

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

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

#### **Q 3.1 and Q.3.2**

Adult safeguarding legislation should provide for a general statutory duty of care on service providers

<sup>5</sup> Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014), *Equal recognition before the law* [United Nations Human Rights: Convention on the Rights of Persons with Disabilities. 13 pages](#)

(including financial institutions) to safeguard people's well-being and to protect them from abuse or neglect. Clearly, good practice requires that any adult in receipt of care services should have a care plan in place.

CIB believes that safeguarding legislation should oblige Safeguarding Teams to put in place a Safeguarding Plan for anyone who comes to the attention of a Safeguarding Service and is identified as needing protection. Provision should be made for such plans to be reviewed after a set period of time (e.g., 1 year) and at regular intervals thereafter.

Legislation should impose a duty on adult safeguarding service providers to provide safeguarding services. This is necessary in order to ensure consistency across the country and adequate prioritisation. CIB believes that, in exploring how best to do this, there would be merit in looking at Section 145 of the *Assisted Decision-Making (Capacity) Act 2015* which provides for an offence where people involved in supported decision-making ill-treat or wilfully neglect a relevant person.

### **Q 3.3**

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

### **Q 3.4 and Q 3.5**

How best to deal with the failure by a safeguarding service provider to prepare a safeguarding plan for each individual in receipt of safeguarding services is a complex matter and one on which CIB does not feel that we can make a definitive statement about whether this should be a civil or criminal liability or either. What is crucially important is that safeguarding services would develop an ethos of compliance with safeguarding legislation and protecting vulnerable adults and develop and implement standards and protocols accordingly. A potential role for HIQA in this regard should be explored.

### **Q 3.6**

Normal requirements relating to professional accountability should apply to all staff of an adult safeguarding provider. Complaints of poor practice regarding adult safeguarding should be dealt with by the safeguarding provider and by relevant professional body, the latter in accordance with their codes of practice and professional conduct. As stated above, the development of standards and protocols should be an integral part of the safeguarding service.

### **Q 3.7**

The LRC Paper refers to a gap in the *Domestic Violence Act 2018* in that the offence of coercive control does not extend to family relationships. It would seem appropriate that the applicability of the offence of coercive control be extended to family relationships but not confined to those who live together in that there are likely to be situations where inappropriate control is exercised over a vulnerable adult by another family member not living in the same household.

## Issue 4: Financial Abuse

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

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

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

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

### **Q 4.1**

At an overall policy level, financial vulnerability needs to be given greater prominence and, generally, there is a need for greater emphasis in regulation on addressing financial abuse. The LRC Paper notes that financial abuse would appear to be prevalent in Ireland, particularly in respect of older people<sup>6</sup>. The abuse may be perpetrated by family members, neighbours, strangers or financial institutions. While there would seem to have been significant efforts to address financial abuse in a number of sectors over the last number of years, more needs to be done.

CIB believes that much more needs to be done in respect of supporting people who are financially vulnerable and at risk because of over-indebtedness or insufficient household income to meet the costs of daily living. There are also people who, for various reasons, can be susceptible to mis-selling of financial and other products.

MABS has identified financially vulnerable people as including:

- Those with a range of contractual financial commitments (defined broadly to include mortgages, household bills and consumer credit) that they are unable to meet
- People without security of housing tenure either in the rental or mortgaged sector
- People who experience energy poverty
- People whose health and wellbeing, morale and coping skills have suffered as a consequence of one or all of these factors.

The MABS experience is that financial services, products and customer interfaces sometimes fail to deal appropriately with people in distressing financial circumstances which can compound their stress and difficulty.<sup>7</sup> Protecting financially vulnerable people from exploitation is a key component of overall safeguarding and CIB would greatly welcome more of a focus on financial vulnerability as a safeguarding matter.

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<sup>6</sup> Research for the Banking and Payments Federation of Ireland reflects this experience. [20% of adults have experienced Financial Abuse - rte business report](#)

<sup>7</sup> [Submissions and Policy Recommendation. CIB Website](#)



CIB and MABS have made various submissions to reviews of the Consumer Protection Code aimed at protecting vulnerable consumers<sup>8</sup> and have argued for wider definitions of ‘vulnerable consumers’ in consumer protection codes that would take account of low income and poverty and the very specific risks faced by consumers of high-cost credit. CIB has also highlighted the specific risks facing such consumers in a digitalised economy.<sup>9</sup>

CIB believes that it would be important to ensure that a new regulatory framework takes into consideration existing legislation and regulation for financial services. For example, the Central Bank of Ireland is currently undertaking a review of the Consumer Protection Code. The current version of the Code states that “where a regulated entity has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity”.<sup>10</sup>

CIB believes that the Consumer Protection Code should have a stronger focus on financial safeguarding matters in relation to vulnerable adults, including ways of preventing abuse and ways of dealing with it when it does occur. While the Banking and Payments Federation Ireland and individual banks have systems and processes in place to deal with financial abuse, these are very dependent on banking staff. The LRC Paper (4.9) has identified a number of factors that undermine the financial sector’s ability to effectively address financial abuse, including how financial abuse of at risk adults is defined. The Paper notes the importance of adequate training for staff of financial institutions. CIB would strongly concur with this.

The Banking and Payments Federation of Ireland *Guide to Safeguarding your Money Now and in the Future*<sup>11</sup> provides valuable guidance on, *inter alia*, managing everyday banking, getting another person involved in money management, setting up a joint bank account, setting up a third-party authority and setting up a power of attorney. Its provisions provide a useful basis for developing a statutory Code of Practice for Financial Institutions.

Frontline staff in health services and those involved in the provision of goods and services to financially vulnerable people should be required to take financial vulnerability into account, particularly, the impact on people’s mental health and well-being of not being able to afford key essentials for living (accommodation, light and heat, access to money for unanticipated costs).

It should be noted that financial abuse is broader than abuse relating to personal finances and can include the illegal or improper use of property, the misuse of an adult’s home, theft of possessions, inappropriate use of resources such as utilities, food and transfer of resources such as property and assets and coercion, intimidation and fraud to gain access to assets including gift giving and creating a will. The HIQA National Standards for Residential Services include the protection of both personal property and finances (3.6.1).

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<sup>8</sup> See, for example, [Central Bank of Ireland's Second Consultation on the review of the Consumer Protection Code CP54 July 2011. 7 pages](#) [Evaluation of Community Banking and Local Provision of Banking and Financial Services. A CIB Submission. 9 pages](#)

<sup>9</sup> [CIB submission to Digital Strategy Consultation on November 2018.](#)

<sup>10</sup> A vulnerable consumer is defined in the Code as a natural person who:

a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or  
b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).

<sup>11</sup> [Guide to Safeguarding your Money Now and in the Future. Banking and Payments Federation Ireland. 24 pages](#)

As a general point, it needs to be stated that there should be an absolute requirement that the money belonging to people in residential care facilities must at all times be kept separate from the funds of the organisation. This requirement is clearly set out in the HSE *Guidelines on Patients Private Property Accounts*<sup>12</sup>

There remains inadequate protection from financial abuse for vulnerable adults living in the community (e.g., people with an intellectual disability or those with reduced capacity as a result of dementia). For example, a recent Red C public opinion survey<sup>13</sup> indicated that a majority were of the view that they could make decisions for another person who may be frail but have decision-making capacity and that the consent of the person is not required.

DEASP requirements in respect of Social Welfare Payments Agents provides some protection for people who need to avail of an agency arrangement to manage their social welfare payments. However, it is necessary to ensure that there is a stronger regulatory approach to the appointment of and review and oversight of social welfare agents. It is noted that the DEASP is in the process<sup>14</sup> of reviewing and revising the general use of Agents for receiving the State payments of adults who may be vulnerable to financial abuse and to this end has established a Working Group to examine and make recommendations on the adequacy of the current procedures and processes for:

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

The Working Group is also assessing the implications for processes and procedures for agent arrangements in the context of the Assisted Decision-Making (Capacity) Act 2015 and related Codes of Practice and will make recommendations for changes necessary in order for the Department to comply with that legislation. It is understood that the Group has submitted its Report and Recommendations to the Management Board.

It is likely that the need for a 'Type 2' Agent<sup>15</sup> will no longer be necessary following the commencement of the *Assisted Decision-Making (Capacity) Act 2015*.<sup>16</sup> The Act provides for reporting obligations to and oversight by the Director of the Decision Support Service of persons whose decision-making capacity is in question or who lack capacity and need support and assistance in relation to payments they are entitled to receive from the State.

#### **Q 4.2**

As suggested in the Issues Paper, a statutory financial abuse Code of Practice for Financial Institutions

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<sup>12</sup> HSE Patients Private Property Guidelines, [Patients' Private Property Guidelines. HSE. 46 pages](#)

<sup>13</sup> [Safeguarding Ireland Place of Care. 11 pages](#)

<sup>14</sup> Source: [Safeguarding Vulnerable Adults. Gov.ie](#)

<sup>15</sup> Type 2 agents are appointed where a person is deemed unable to manage his/her own financial affairs and an agent is appointed to collect the payment and act on behalf of the claimant. In all cases a medical practitioner must certify that the person is unable for the time being to manage his/her own financial affairs. It is likely that a significant number of Type 2 agents are service providers.

<sup>16</sup> It is envisaged that Agent payments will, post the commencement of the ADM Act, come within the remit of the Act and be governed by its provisions for supported decision-making.

should be introduced to combat financial abuse. Additionally, as suggested in the LRC Paper (5.37), the option of providing additional powers to the DEASP to investigate cases of suspected social welfare abuse of at risk adults should be considered further with a view to determining whether there is a need for extension of powers and to ensure that there are reasonable protections for those involved. These Codes of Practice could usefully include the provision for protected disclosure to include both financial institutions and statutory agencies where financial abuse is suspected.

Of particular concern in relation to financial institutions is the issue of a person having a joint account with another person which has been highlighted by the LRC. Some vulnerable account holders may want support or assistance with paying bills or withdrawing funds for daily living and may see that the option of placing their bank or credit union account into the joint names of themselves and another person who is prepared to support them as a way of achieving this.

The matter of joint accounts is not straightforward in that there is inherent potential for financial abuse if not set up in a clear and unambiguous manner. The intention of persons opening joint accounts is critical as to the ownership of such accounts, viz. whether there is an intention to make a gift at the time of the opening of the account or at a later stage, whether the joint account holders benefit by survivorship. There is also a need to highlight the issue of undue influence and withholding of information relevant to a vulnerable adult making a decision about opening a joint account.

The Law Society has guidance on the matter of joint accounts<sup>17</sup> which sets out the legal implications of such accounts. However, additionally, there should be statutory clarification with regard to such accounts, especially the need to clearly state the intention of the parties when opening a joint account, for example, in relation to who inherits the funds in the account following the death of the actual owner of the money in the account.

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

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

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

*In your view:*

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

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

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

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

<sup>17</sup> <https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Joint-Bank-Accounts---Guidelines-for-Solicitors/#.XIJcdGj7Q2w>

*Q. 5. 3 Do you consider that there is a need for a statutory regional adult safeguarding structure, which would have a broad remit in respect of all safeguarding services for adults? If so, how would such a regional structure be best integrated into existing structures?*

#### **Q 5.1**

The organisational models outlined in the LRC Paper need to be looked at in the context of existing organisational arrangements and responsibilities. To date, the HSE has been the body with the main responsibility for the provision of adult safeguarding services while both HIQA and the Mental Health Commission provide important elements of safeguarding in designated centres and settings. There are clear advantages and disadvantages to each model outlined.

Amalgamating the proposed regulatory body with an existing agency may not be a viable option for a number of reasons. The agencies suggested are the Mental Health Commission, the Health Information and Quality Authority and TUSLA. Each of these has very specific and defined functions. Apart from the obvious concerns relating to expansion of the roles, legislative requirements and capacity concerns, an amalgamation of the authority with any of these agencies would dilute their current well identified functions.

While the HSE currently plays a central role in adult safeguarding, safeguarding is clearly a cross-cutting matter involving agencies in the statutory, NGO and financial sectors. Many of the issues which arise in relation to safeguarding require a multi-agency response. The HSE is currently restricted in that it does not have statutory powers to investigate concerns of abuse, neglect or exploitation outside of HSE settings, including concerns that might arise in private or voluntary nursing homes. Also, clearly, the HSE has a very wide range of competing demands, as a primary deliverer of services.

While the option of establishing the authority as an executive office of the Department of Health is likely to present some difficulties, CIB believes that this option should be explored further. It could also be argued that the safeguarding role is complementary to HIQA's current regulatory role and that the Safeguarding Authority could come within its remit – again this option should be explored further. Tusla is now well established and recognized for its role with children and families and placing an adult safeguarding authority within its remit would have some clear advantages.

While there is no obvious option, on balance, CIB would favour further exploration of locating the regulatory authority within Tusla or as an Executive Office of the Department of Health or within a multi-agency framework with Tusla as the lead agency. We believe that each of these options should be explored to determine whether or not the establishment of a stand-alone regulatory body is required.

#### **Q 5.2**

The six core regulatory powers outlined in the LRC Paper (5.38) would appear to be both valid and necessary:

1. Power to issue a range of warning directions or notices, including to obtain information by written request, and "cease and desist" notices;
2. Power to enter and search premises and take documents and other material;
3. Power to require persons to attend in person before the regulator, or an authorised officer, to give evidence or produce documents (including provision for determining issues of privilege);
4. Power to impose administrative financial sanctions (subject to court oversight, to ensure compliance with constitutional requirements);

5. Power to enter into wide-ranging regulatory compliance agreements or settlements, including consumer redress schemes;
6. Power to bring summary criminal prosecutions

CIB believes that these regulatory powers are sufficient.

### Q 5.3

The need for a regional adult safeguarding structure evidently depends on the extent of the issue. Research suggests that abuse of vulnerable adults is pervasive in Irish society. Alleged financial abuse increases with age, with the highest level of reporting in those over 80 years.<sup>18</sup> In a Red C Poll<sup>19</sup>, one in six people reported experiencing or witnessing financial abuse.

While there is a wide preponderance of abuse (reported and unreported) across Ireland, the establishment of regional safeguarding offices across the country may not be the best use of resources and, as stated in the LRC Issues Paper, a regional multi-agency structure, established by the HSE, already exists in the nine HSE administrative areas.<sup>20</sup> As an interim measure, the roles and functions of these committees could be strengthened with a view to developing a more effective model for a new statutory safeguarding service and exploring a multi-agency approach.

## Issue 6: Powers of Entry and Inspection

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

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

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

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

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

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

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

<sup>18</sup> [National Safeguarding Office. Annual Report 2018. HSE. 35 pages](#)

<sup>19</sup> [Vulnerable Adults in Irish Society. Nationwide Public Opinion Survey. Red C. 17 Slides](#)

<sup>20</sup> It is understood that there are plans in train to reduce this number of HSE administrative areas to six.

### **Q 6.1**

The LRC Paper (6.31) refers to the apparent lack of research or published evidence in the Irish context regarding the need for a statutory power of entry to private dwellings for the purposes of adult safeguarding. CIB does not feel that we can take a specific position on the matter but would be of the view that the majority of safeguarding cases can be dealt with without the need to resort to a power of entry. The general approach should be that normally social workers or other professionals should have the skills to gain entry where required without having to have recourse to legal powers of entry and that this approach should be strongly articulated and reinforced throughout all safeguarding services.

### **Q 6.2, Q.6.2 and Q.6.3**

As in answer to 6.1

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

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

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

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

### **Q 7.1**

Adult safeguarding legislation should include a statutory duty on a safeguarding authority to make enquiries, interview and/or make assessments in cases of concern reported to it. Safety orders, barring orders and protections orders should be available to the safeguarding authority on application to the Courts.

In order to further strengthen the safeguarding response, CIB believes that the Domestic Violence Act 2018 should be amended to empower a safeguarding authority to apply to the courts for an order under the 2018 Act. It is reasonable to assume that an independent safeguarding authority would have the expertise to decide when an application to the courts for such orders would be necessary.

### **Q 7.2**

CIB believes that there would be merit in amending the *Domestic Violence Act 2018* to empower bodies other than the Child and Family Agency to apply to court for an order under the 2018 Act. Amended legislation should include separate provisions for situations outside of the circumstances set out in the Domestic Violence Act 2018, e.g., in respect of financial abuse by an adult child or grandchild, niece or nephew.

### **Q 7.3**

This is a hugely important question which requires careful consideration. While CIB does not feel that we are in a position to provide a fully informed meaningful answer, we are of the view that safeguarding legislation should include an offence of coercive control irrespective of family relationships. However, while domestic violence legislation is an integral part of family law, adult safeguarding legislation must be capable of addressing other broader issues relating to abuse of adults, including financial abuse.

## **Issue 8: Reporting**

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

- (i) permissive reporting;*
- (ii) universal mandatory reporting;*
- (iii) mandatory reporting by specific persons;*
- (iv) a hybrid or “reportable incidents” model.*

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

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

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

### **Q 8.1**

CIB believes that the matter of universal mandatory reporting as outlined in the LRC Paper should be looked at with caution. For example, there is a danger that mandatory reporting could result in a situation where a regulatory body would not be able to carry out its primary functions because of having to deal with a very high number of reports of alleged abuse.

While there are plausible arguments for universal mandatory reporting, on balance, CIB would favour a model of mandatory reporting by specified persons – social and health care professionals and volunteers working with organisations registered under charities regulation legislation. There should also be a strong emphasis in the legislation and any related regulatory provisions on developing an ethos for the prevention of abuse and internal systems within organisations for monitoring compliance with such systems, e.g., in financial institutions and in the social welfare payment agency system.

It is likely that in many cases issues of abuse or neglect of vulnerable adults can be resolved by the social worker or professional or service provider involved establishing relationships and engendering trust in the relationship with both the person experiencing abuse and their family members. Mandatory reporting could adversely change the dynamic of relationships within families, and between families and professionals.

### **Q 8.2**

CIB believes that permissive reporting should be encouraged but that this should not be a legislative

requirement and that statutory protection should be available to those who report concerns in good faith. However, caution is required to minimise the number of unsubstantiated or vexatious allegations.

### Q 8.3

The reference in the LRC Paper (8.12) to an Australian Law Reform Commission proposal for a reportable incidents type model or “serious incident response scheme” is worth further consideration. This would require approved providers to notify to an independent oversight body: (a) an allegation or a suspicion on reasonable grounds of a serious incident; and (b) the outcome of an investigation into a serious incident, including findings and action taken is useful. The list of reportable incidents included was physical, sexual or financial abuse; seriously inappropriate, improper, inhumane or cruel treatment; unexplained serious injury; and neglect.

CIB is of the view that this ‘reportable incidents’ type model has merit but may be difficult to implement in practice, in particular, identifying which type of incidents would be reportable. We are of the view that more consideration needs to be given to this complex area of mandatory reporting versus permissive reporting and that a further analysis of international experience is warranted before finalising a system for the Irish context.<sup>21</sup>

## Issue 9: Independent Advocacy

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

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

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

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

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

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

### Q 9.1

CIB operates on the basis that independent advocacy has a fundamental role in enabling citizens generally to assert their rights and to access their statutory entitlements. As stated above under *Issue 1*, CIB delivery services (CISs, MABS and NAS) include advocacy as a key component of the services offered to the public. The principles of the UN Convention on the Rights of Persons with Disabilities and the provisions of the Assisted Decision-making (Capacity) Act are applied by CIB delivery services. Also, as stated above, NAS has a key role in ensuring that people with disabilities are safeguarded and that they are enabled to assert their rights and to have their voice heard. The role of NAS is particularly important in residential care facilities where there are many adults who are especially in need of safeguarding.

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<sup>21</sup> See, for example, [Mandatory and permissive reporting laws. Wiley Online Library](#)



The Áras Attracta Swinford Review Group (McCoy Review)<sup>22</sup> included NAS as an instrumental part of the review and recommended that the Department of Social Protection (now DEASP) should develop, in consultation with stakeholders, a strategy for developing advocacy and a code of practice for advocates, clearly setting out how the legal provisions would be enacted.

In recent years, CIB and NAS has sought legislation to give NAS statutory powers of access to people, services, documents, meetings and decision makers. The need for statutory powers arises from resistance by some service providers to the practice of independent advocacy. There is no current effective mechanism to compel service providers to support people with disabilities to exercise their autonomy and to access an independent advocate which is a requirement under HIQA standards. Statutory powers are regarded as crucial to ensuring that NAS advocates can effectively and efficiently provide a service to people who would benefit from advocacy.<sup>23</sup>

In 2018, NAS worked collaboratively with the Citizens Information Board to progress the case for statutory powers for NAS and the Minister for Employment Affairs and Social Protection has expressed support for the legislative change to grant NAS advocates statutory powers of access.<sup>24</sup>

NAS has also been contracted by the Department of Health to deliver the Patient Advocacy Service which had been recommended by both HIQA and the Office of the Ombudsman. This service (operational since 2019) provides people with an opportunity to talk to someone independent of the health service, provides information about how to make a complaint and provides the supports that may be needed throughout the complaints process.

CIB believes that there is a clear need for the State to respond directly to the advocacy needs of citizens and to provide the necessary legislative underpinning. This approach is based on the notion of state responsibility for advocacy services, derived from international human rights norms. There are a number of domestic and international factors that suggest that the time is ripe for a refocusing on legislative provision for advocacy in Ireland. These include the enactment of the Assisted Decision-making (Capacity) Act 2015 and the ratification of the UN Convention on the Rights of Persons with Disabilities which have created a renewed focus on the role of independent advocacy in protecting and defending the rights of vulnerable adults in our society.

As far back as 1996, the Report of the Commission on the Status of People with Disabilities, *A Strategy for Equality*, recommended that advocacy should be provided in institutional settings and that authority for this type of advocacy should be set out in legislation. The report also suggested that access to an advocate should be a legislative entitlement, where necessary to ensure access to justice or access to essential social services. However, in subsequent reports, this broad interpretation of advocacy was confined to the need for legal advocacy in the mental health care setting. This was recognised in the Mental Health Act 2001, which provides for a person to be appointed independent legal representation in the review process of

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<sup>22</sup> What Matters Most. Report of the Aras Attracta Swinford Review Group. 234 pages

<sup>23</sup> [NAS Advocacy Service Annual Report 2017. 64 pages](#)

<sup>24</sup> [NAS Launch their 2018 Annual Report. CIB Website](#)  
[NAS Annual Report 2018](#)

involuntary detention.<sup>25</sup>

It is now opportune and necessary to make appropriate legal provision for access to independent advocacy. CIB notes that the Adult Safeguarding Bill 2017 makes provisions for adults at risk accessing an independent advocate<sup>26</sup>. Under this (now lapsed) Private Members Bill, the proposed Safeguarding Authority can arrange for a person who is independent (an 'independent advocate') to be available to represent and support an individual.

The condition for appointment of an independent advocate is that the Authority considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following:

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

It is also noted that The Assisted Decision-making (Capacity) Act 2015 makes provision for the Director of the Decision Support Service to prepare and publish a code of practice (or approve of a code of practice prepared by another body) for the guidance of persons acting as advocates on behalf of relevant persons. CIB understands that work is progressing on compiling this Code.

#### **Q 9.2**

While the introduction of the Personal Advocacy Service provided for under the Citizens Information Act 2007 was widely welcomed at the time by people with disabilities and their representative organisations, this piece of the legislation was never activated due to the recession. Because of changes in thinking in the intervening period and, particularly, the emergence of strong policy emphasis on enabling people to assert their rights, CIB is of the view that the Personal Advocacy Service (PAS) as provided for in the 2007 legislation no longer meets the needs of people who require independent advocacy as the provisions are too prescriptive and restrictive. For example, there is no provision in the 2007 legislation for pro-active outreach to vulnerable groups, e.g., those in residential care services or those experiencing financial abuse. The focus is primarily on accessing services based on an identified need for those services rather than any concern of abuse or even focus on wellbeing.

A legally based advocacy service is required in order to adhere to the principle of State responsibility for advocacy provision and to overcome current blockages related to the absence of a legal remit for independent advocacy. As already stated, the granting of statutory powers to NAS has been sought by NAS and CIB and a commitment to do so has been given by the Minister for Employment Affairs and Social Protection.

Access to independent advocacy is necessary in order to ensure that provision is made for the full exploration of choices and options by or on behalf of each individual, e.g., people who require support in

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<sup>25</sup> Section 16(2)(b), Mental Health Act 2001. This narrow construction of advocacy was criticised at the time by the Forum of People with Disabilities who argued for a broader approach to advocacy and suggested that advocacy should be a legislative entitlement for all vulnerable individuals in society, not just people with disabilities.

<sup>26</sup> Adult Safeguarding Bill 2017, Section 12

exercising their will and preferences in accordance with the provisions of the Assisted Decision-making (Capacity) Act 2015. There should be legislative provision for access to independent advocacy by all people in residential care facilities. An independent advocacy service with statutory rights and provision for more proactive investigative mechanisms is clearly necessary, particularly to ensure that people with reduced decision-making capacity residing in institutions are informed of their legal rights and assisted in accessing them.

It is the CIB view, therefore, that the legislation needs to be updated and refocused both in the context of safeguarding and protecting people's rights generally. Statutory provision for advocacy is now imperative and we are of the view that statutory powers for advocacy should be vested in CIB, a statutory agency that already has a legislative remit to provide advocacy and is an independent agency with no involvement in the delivery of health or social care services. This would evidently require significant additional resourcing.

### **Q 9.3**

CIB is fully aware that the independent advocacy landscape has changed significantly in recent years and will continue to do so as the ADMC Act 2015 is implemented and, also, if proposed safeguarding and deprivation of liberty legislation is put in place. Given the increasing range of bodies involved in supporting and funding independent advocacy (DEASP, HSE, Department of Health, Decision Support Service), there is a clear need for a Government-led and more integrated and streamlined approach to the matter. While acknowledging the need for a national framework within which the practice, skills and profession of independent advocacy can be developed in an integrated manner, CIB does not believe that a National Advocacy Body as outlined in the LRC Paper is the best way forward. We do, however, believe that this is a matter which should be looked at in detail whether or not the proposed Safeguarding Authority is established.

There is a clear need to develop an overarching framework for advocacy and CIB believes that, as the State agency with legislative responsibility for advocacy, we are well placed to take on such a role if we are resourced to do so. Also, centrally relevant will be how independent advocacy is provided for in any new legislation that emerges. Developing an overarching framework within which current arrangements, funding and reporting responsibilities could be better integrated will be required and CIB would be very happy to work with the Law Reform Commission in a further exploration of this matter.

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

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

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

### **Q.10.1**

While there are in place some protocols for cross-referral between agencies in respect of people experiencing or reporting abuse, there may not always be clarity about information sharing between individuals and agencies in a safeguarding context. It is likely that existing arrangements for access to sensitive data sharing are insufficient. CIB believes that this is an area where there is need for much more attention in data protection legislation in order to cater for situations where there are adults who lack capacity and who may be experiencing abuse and where there is a reasonable belief that there is a safeguarding issue. Any proposed changes to the data protection legislation should be formulated in

consultation with HSE Safeguarding Teams, NAS and other groups working with vulnerable people and take into account the provisions of the Assisted Decision Making Capacity Act 2015.

## Issue 11: Multi Agency Collaboration

*Q. 11.1 Do you consider that:*

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

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

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

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

### **Q 11.1**

CIB has long promoted the need for multi-agency collaboration especially in the context of delivering support and services to people with disabilities, marginalised groups and people experiencing financial exclusion and over-indebtedness. It is noted that the Minister for Health has acknowledged that the issues in the Adult Safeguarding Bill 2017 extend far beyond the scope of the health sector alone or of any one Department. The Minister stated that: “strong collaboration and joined-up thinking will be required from a number of Departments and State agencies to ensure we provide the best legislative solution to safeguarding vulnerable adults across all services provided by the State.”<sup>27</sup> The Joint Oireachtas Committee on Health in its Report on Adult Safeguarding also recommended that any legislation should take into consideration the need for inter-agency collaboration.<sup>28</sup> The Commission on the Future of Policing in Ireland<sup>29</sup> outlined a vision for policing founded on a new definition of policing which includes the prevention of harm (which would include harm to at risk adults) as a policing objective and a New District Policing Model focused on problem oriented policing. Improved cooperation between relevant State agencies was highlighted as being critical for these approaches while engagement between police and community stakeholders and agencies was identified as necessary for building better multiagency approaches to community safety problems.

CIB believes that there should be a statutory duty on agencies (health and social care services, financial institutions) to collaborate in cases where there is serious actual or alleged abuse. However, such a statutory duty would not be a substitute for detailed Codes of Practice on safeguarding and protocols within agencies.

### **Q 11.2**

As already noted, adult safeguarding concerns are relevant to a number of agencies. Effective collaboration

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<sup>27</sup> Minister Simon Harris, Adult Safeguarding Bill: Second Stage, Seanad Éireann debate - 5 Apr 2017 [Seanad Éireann Debate on Misuse of Drugs. 5 April 2017](#)

<sup>28</sup> Joint Oireachtas Committee on Health, Report on Adult Safeguarding (Houses of the Oireachtas 2017)

<sup>29</sup> Commission on Policing Report

[http://policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland\(web\).pdf](http://policereform.ie/en/POLREF/The%20Future%20of%20Policing%20in%20Ireland(web).pdf/Files/The%20Future%20of%20Policing%20in%20Ireland(web).pdf)

facilitates early risk identification, improved information sharing, joint decision making and coordinated action. Current collaborative arrangements in relation to safeguarding for the most part tend to be informal and *ad hoc*. Therefore, a statutory duty on agencies to collaborate in safeguarding situations should be provided for in the legislation. Such a duty should be imposed irrespective of whether or not a single Safeguarding Authority is established either as a stand-alone authority or within an existing agency.

The Safeguarding Vulnerable Adults Bill 2017 (Schedule 1) contains a very detailed list of persons specified as mandated persons for the purposes of the Act. This list would be a useful starting point for drawing up a list where there would be a statutory requirement to collaborate in cases of actual or alleged abuse. CIB identifies the following as an indicative list of bodies and personnel to which a statutory duty to co-operate could apply.

- The HSE and agencies that it funds through Section 38 and 39 agreements
- Health and social care personnel
- Private and voluntary nursing homes
- Private providers of Home Care
- HIQA
- Mental Health Commission
- Department of Employment Affairs and Social Protection
- Decision Support Service
- NAS
- Independent advocacy providers
- Central Bank of Ireland
- Banks, Credit Unions and Post Offices
- Citizens Information Services
- MABS
- Gardai
- GPs and pharmacists
- Tusla
- Local Authorities

### Q 11.3

CIB is not well placed to express a definitive view on this matter. However, we would feel that there is a need for some statutory transitional care arrangements between child care services and adult safeguarding services where there are safeguarding concerns. This is particularly important in the context of Section 11.10 in the LRC Paper which highlighted, *inter alia*, that in the case cited:

- Coordination of service delivery and referral pathways between the HSE Disability Services and the voluntary organisation and Tusla was ineffective (p. 50).
- A clear and formal written referral from Tusla to the HSE in 2014 could have contributed to progressing the case and bringing clarity to the roles of both organisations (p. 50).
- The lack of clarity around role and function of post holders had a negative impact on the overall management of the case.

While there are information sharing protocols in place between the HSE and TUSLA, it may be the case that

there is a lack of a consistent approach across the country. In addition, there may be more than those two agencies involved in safeguarding plans (e.g., a disability service provider) and it is important that statutory arrangements apply to all such agencies. This issue is very much linked to the information and data sharing (Issue 10)).

### **Overarching Considerations**

As the statutory body responsible for supporting the provision of information, advice and advocacy on social services in Ireland, CIB has a specific legal remit to provide advocacy supports. As stated above, CIB and NAS are committed to continuing to work towards getting statutory powers for NAS advocates. In parallel with this we would also see merit in developing an overarching national framework which would provide an integrated approach to getting recognition for the practice of independent advocacy in its own right and which would develop a strong cross-departmental and inter-agency approach accordingly.

The LRC Paper refers to the Private Members' Bill introduced by Senator Colette Kelleher which proposes the establishment of a national adult safeguarding authority and which stipulates that the authority would be independent in the exercise of its functions and powers. An IPA Discussion Paper<sup>30</sup> on the matter notes that the establishment of a National Safeguarding Authority will be a political decision and, as the situation currently stands, no such decision has been made. While acknowledging that the State has a major role to play in ensuring that its legislation, policies and structures are adequate to ensure the full safeguarding of adults from all forms of abuse, care is required to ensure that the legal structures and processes that are put in place do not become so cumbersome and bureaucratic that they detract from the quality of support provided to those who require safeguarding and protection. This is an important consideration in the way any proposed Safeguarding Authority is established.

CIB is of the view that the establishment of a new and separate agency may not necessarily be the best way forward and we are not convinced that the case for a stand-alone Safeguarding Authority, as envisaged in the Safeguarding Vulnerable Adults Bill 2017, has been fully proven.

The independent advocacy landscape has undergone major changes in recent years but legislation has not kept pace with these changes. This landscape will change further with the implementation of the ADM Act 2015 and as a result of the growing emphasis in political, policy and public discourse on the safeguarding of vulnerable adults and deprivation of liberty issues. NAS provides essential empowerment supports to some of our most vulnerable citizens, especially those in long-term care residential facilities. CISs and MABS already engage in significant advocacy work and make a vital contribution to empowering citizens to assert their rights. Many of the users of these CIB services are vulnerable for reasons of marginalisation and inability to access necessary health and social care users or appropriate housing (CISs) and because of over-indebtedness (MABS). On the latter point, it is widely accepted that many people who are indebted experience high levels of stress and, for a minority, related serious mental health difficulties. This, CIB believes, is a significant safeguarding issue which needs to be addressed. Financially vulnerable people require particular consideration in order to make sure that they do not become further marginalised as a consequence of their existing financial vulnerability. CIB would, therefore, welcome a much stronger focus on financial vulnerability in a safeguarding context. The MABS experience is that financial services, products and customer interfaces sometimes fail to deal appropriately with people in distressing financial circumstances which can compound their stress and difficulty.

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<sup>30</sup> [Discussion Paper: The establishment of Cosaint, the National Adult Safeguarding Authority. IPA. 17 pages](#)

CIB will continue to strategically develop each of our delivery services so as to optimise outcomes for clients in terms of rights and safeguarding. Under our current Strategy<sup>31</sup>, we are committed to both supporting the development of enhanced advocacy services in CIs and in NAS and to review our capacity to take on a central or co-ordinating role for the provision of advocacy services. We are also committed to pursuing the matter of legal recognition and statutory rights for advocates.

It is the CIB view that advocacy legislation needs to be updated and refocused in the context of not only safeguarding and protecting people's rights but also to support people in asserting their legal and human rights generally and in accessing supports and services to which they are entitled. We consider that a National Advocacy Framework should provide for general advocacy and not be confined to safeguarding issues. Clearly, advocacy in a safeguarding context would be a significant element of any such framework. While people who require safeguarding should have access to an advocacy service, so should people where there are no safeguarding concerns but where there are difficulties in asserting legal and human rights generally.

CIB would welcome an opportunity to provide the national leadership on advocacy, not necessarily by providing further different services, although we would welcome the opportunity to do so, but in order to encourage the development of different independent advocacy models with appropriate quality standards and ensuring wide coverage without duplication.

The LRC Issues Paper raises many important and complex questions, many of which will require ongoing consideration and debate. In this regard, we would be available to work with the Law Reform Commission and other key stakeholders in developing and implementing a more streamlined approach to the development of independent advocacy services and to getting adequate legal underpinning.

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<sup>31</sup> [CIB Strategic Plan 2019 - 2021](#)