



**RCNI Submission on
A Regulatory Framework for Adult Safeguarding
to
The Law Reform Commission
May 2020**

Introduction – Rape Crisis Network Ireland

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

Introduction – This Submission

RCNI welcomes very much this opportunity to contribute its views on how adults should be safeguarded. Among our own clients, about 60% are adult survivors of historic child sexual violence, and on average, just under one in five are aged 50 and over year on year. While we would see all survivors of sexual violence as intrinsically vulnerable for reasons often related to early sexual abuse, a smaller number are even more so because they are now living with intimate partner abuse (sexual and non-sexual) or with abuse from a family member. Among these survivors, some also have one or more physical and/or mental disabilities, or may be more at risk than others for a variety of reasons or a combination of them (insecure immigration status, membership of a minority community, language difficulties, physical isolation to give some of the more obvious and visible examples). These vulnerable survivors are at risk of falling through the cracks of State supports and services. RCNI's view is that more needs to be done to ensure that sexual abuse of adults is recognized and addressed sensitively and effectively.

Structure of this Submission

This submission will follow the format in the Issues Paper: A Regulatory Framework for Adult Safeguarding and answer in order as many questions at the end of each Issue Chapter as are relevant to RCNI's concerns with regard to vulnerable adult survivors of sexual violence. The main focus will be Issue 7 (Safeguarding Powers in Ireland) in which RCNI will advocate for expanded legislative powers, and Issue 8 (Reporting), in which RCNI will draw on its own experience of retrospective reporting of historic child sexual abuse under the mandatory reporting regime in the Children First Act 2015¹ as it examines how a reporting system in relation to the abuse of vulnerable adults, might work best to ensure that they are not further damaged by any reporting process but are safeguarded and supported effectively.

¹ See this web-link for access to text of statute:

<http://revisedacts.lawreform.ie/eli/2015/act/36/front/revised/en/html>

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?

RCNI Response: RCNI's view is that the proposed guiding principles are all necessary and important as a basis for any new adult safeguarding legislation.

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

RCNI Response: RCNI's view is that the following principles are also necessary and important:

- (1) Any risk of re-traumatisation of a vulnerable adult through any adult safeguarding intervention should be avoided as far as possible; and
- (2) All interventions should be developed, monitored and evaluated continuously in line with best international practice; and
- (3) Any person engaged in carrying out any safeguarding intervention with vulnerable adults should be obliged to complete training in these principles as well as in their specific role, before carrying out this role.

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?

RCNI Response: Yes, but it should do so both comprehensively and as unambiguously as possible.

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?

RCNI Response: We would suggest a departure from the various disparate definitions of "vulnerable person" in our own legislation, none of which is comprehensive and some of which are illogical, and instead, introducing a modified version of the definition in the Scottish legislation, set out below with our amendments in **green** for ease of reference:

"Adults at risk are adults (aged 18 and above) who:

- (a) Are unable to safeguard their own well-being, **bodily integrity and autonomy**, property, rights or other interests (b) Are at risk of harm, and (c) Because they are affected by disability, mental disorder, illness or physical or mental infirmity,

whether on a temporary or a permanent basis, are more vulnerable to being harmed than adults who are not so affected.”

(xyz) In coming to a decision as to whether any individual adult is at risk in accordance with the definition at (a) above, the decision maker shall have regard to the personal characteristics of the individual adult and to all the circumstances of the case”.

In our view, such a broad definition is essential to allow for some less obvious causes of vulnerability in individual situations to be taken into account. This definition also allows for the possibility that someone might be at risk temporarily only but nevertheless should come within the scope of the legislation, ie it focuses on **function and situation** as well as on more permanent causes of vulnerability.

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

(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);

RCNI Response: The Commission has set out clearly the various definitions of abuse and harm which appear in our own policy documents and legislation, and in legislation from other jurisdictions. Our own view is that whatever definitions are used, the distinction between the various forms of abuse, including sexual and psychological abuse, and the harms caused by the abuse, should be very clear. The definition of abuse, the cause of any harm, should be open and should include explicit reference to sexual abuse and exploitation, and the harm caused by the various forms of abuse should be identified as the effect(s) of that abuse. Again, an open list of the various forms of harm caused by abuse should include the psychological, financial and physical damage caused by sexual abuse and exploitation.

(d) “Capacity”

RCNI Response: In our view, any definition of capacity should be **functional** and should be aligned with that in the Assisted Decision-Making Capacity Act 2015². It should contain a presumption of capacity.

Issue 3: Physical, Sexual, Discriminatory And Psychological Abuse, Neglect And Deprivation Of Liberty

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?

² Available online via this web-link: <http://www.irishstatutebook.ie/eli/2015/act/64/enacted/en/html>

RCNI Response: Our view is that adult safeguarding service providers in the community especially should be trained to recognise signs of sexual abuse and exploitation in their clients and to offer support discreetly and sensitively where these are recognized, at a minimum. We do not have a firm view on the nature and extent of any statutory duty imposed, but we do think that any such duty on adult safeguarding service providers should be framed clearly and precisely so that they understand readily what their responsibilities are. Under Issue 8 below, we have recommended that consideration be given to a statutory general duty of care. However, we would not recommend a mandatory reporting regime devoid of qualification or exception regardless of individual circumstances, as part of that duty. (See further under Issue 8).

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?

RCNI Response: We have no firm view on whether or not there should always be a care plan. However, we think that any measure to protect adults should address the prevention of sexual abuse and exploitation as a priority.

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?

RCNI Response: There must be some meaningful sanctions, legal or administrative, for breach of any statutory duty to protect adults who are at risk, otherwise it will be difficult if not impossible to hold any individual or organisation to account. However, RCNI's view is that training, ongoing support and continuing professional development, effective management including through monitoring and evaluation of practice as it evolves, are even more important tools to protect adults at risk. We do not have a firm view on the precise sanctions which should be available.

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?

RCNI Response: Answer as to Q3.4 with this addition: We note that Criminal Law (Sexual Offences) Act 2017 Sections 21 and 22 together criminalise many forms of sexual abuse against adults at risk perpetrated by individuals.

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?

RCNI Response: Answer as to Q3.4

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?

RCNI Response:

Our daily experience with our clients is that sexual abuse and exploitation are often accompanied by other forms of abuse, including psychological and abuse, and especially so in intimate partner relationships and in close family relationships. While our primary focus is on assisting survivors of sexual violence, we do not always see this form of abuse in isolation. Accordingly our responses to Q.3.7 are made in the light of that experience.

There are three distinct additional legal measures which could be introduced to address sexual and/or psychological and physical abuse of adults. They are not all strictly preventative only. (Neither do they involve education, awareness raising, and/or professional training, but all these things are also necessary and none requires legislative change). Our observations on possible new legal measures are:

(1) We agree with the observation that the existing Criminal Justice (Victims of Crime) Act 2017³ contains many important rights and protections for victims of crime. However, the ambit of this Act is confined to criminal proceedings, so that rights to information about specialist support services and about protective measures generally, the right to an individual assessment of specific protection needs, and the right to special measures to assist in the processes of reporting, investigation and prosecution, do not apply in other settings. That said, this Act could be a very useful model for other statutory provision(s) to assist victims of crime outside the criminal justice system. We recommend that a version of it is adapted and adopted to empower victims and to ensure that their protection needs and rights are met by those responsible for providing any services to adults at risk;

(2) The Domestic Violence Act 2018⁴ should be amended so that:

(a) Protection and Safety Orders may be granted to adults at risk of abuse from other adults who have some personal and/or family connection with them but are not living with them; and

(b) Interim Barring Orders and Barring Orders may be granted to adults at risk of harm from other adults who have some personal and/or family connection with

³ Available online via this web-link: <http://revisedacts.lawreform.ie/eli/2017/act/28/front/revised/en/html>.

⁴ Available online via this web-link: <http://www.irishstatutebook.ie/eli/2018/act/6/enacted/en/html>

them and are living with them and fulfil the property qualification for these Orders;

(c) Emergency Barring Orders may be granted to adults at risk of harm from other adults who have some personal and/or family connection with them and are living with them, are not parents of a non-dependent adult child, and do not fulfil the property qualification for these Orders;

(d) Either the HSE or any new Adult Safeguarding Authority should be empowered to apply for any appropriate Order on behalf of an adult at risk, on the same basis as the Child and Family Agency may now so apply on behalf of eligible persons under Section 11 DVA 2018;

(e) Section 39 (offence of coercive control) may also be invoked in respect of an alleged perpetrator who is not the victim's intimate partner but is an adult non-dependent child of the victim or other person who has or had a personal and/or family connection with that victim.

(3) Finally in this regard, RCNI's view is that the law on criminal harassment (Section 10 Non-Fatal Offences against the Person Act 1997⁵ as amended) – needs to be amended to capture as many of the myriad forms of online abuse, including many serious forms of online sexual abuse, as a priority. Part 2 of the Criminal Law (Sexual Offences) Act 2017⁶ as amended includes a range of offences which can be used to capture criminal sexual behaviour against children, including online offences. Our criminal law now needs to reflect the unpleasant reality that adults also are at risk of harm, including significant harm, from online sexual (and other) abuse in all its forms. Section 10 can only capture harassment behaviours which are persistent and which comprise direct communication with the victim (harassment by indirect communication is not covered).

Issue 4: Financial Abuse in Ireland

RCNI Response: We do not feel that we have the expert knowledge or experience to comment on this issue.

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:

⁵ This is a web-link to Section 10 NFOAPA 1997:

<http://www.irishstatutebook.ie/eli/1997/act/26/section/10/enacted/en/html#sec10>

⁶ See this web-link to the text: <http://www.irishstatutebook.ie/eli/2017/act/2/enacted/en/html>

- ☐ 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?

RCNI Response: We consider that establishing a regulatory body as an independent agency is the best option from the point of view of adults at risk and those providing them with services or otherwise supporting them. An independent agency would be free from the potential conflicts of interest which might arise if it were to be within another body such as a Government Department or Agency which had other responsibilities such as service provision. Also, if the agency is not itself involved in service provision, it is free to devote time and resources to setting and implementing standards, to policy development, to advocacy with various agencies within Government on behalf of adults of risk, to provide expert advice, information and support both to service providers and service users, to monitor the effective implementation of standards and statutory provisions relating to adult safeguarding by all responsible agencies, and to impose sanctions where standards were not adhered to.

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

RCNI Response: No, but none has the cluster of advantages that would be enjoyed by an entirely independent body.

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?

RCNI Response: This reads like a comprehensive set of investigatory and regulatory powers. However, we think they should also include powers to receive and consider individual complaints about services provided to adults at risk. We also think that enforcement is less important as a means of ensuring greater safety for adults at risk than good training,

supervision, support and monitoring of people who are providing services to adults at risk, and good collaboration with other agencies as and when necessary and appropriate.

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?

RCNI Response: It is hard to see how any national adult safeguarding structure could work well on its own without regional engagement. Those making decisions affecting the whole country have to know what the “live” issues are for adults at risk in each region. On the other hand, each region cannot be allowed to operate as a stand-alone entity independent of the others and/or any national structure. Regional learning should inform the national decision making on policy, standards, aims and operations but it should also be clear that the national body’s decisions must be implemented once the regions have been consulted. This needs a clear and transparent structure with a well-defined set of goals in line with key principles and resultant practice standards.

Issue 6 Powers Of Entry And Inspection

RCNI Response: RCNI’s view is that a detailed analysis of powers of entry and inspection is outside its area of expertise and experience, so will not comment on these questions.

Issue 7 Safeguarding Investigative Powers in Ireland

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.

RCNI Response: RCNI’s view is that it is not necessary or possibly even appropriate, for any relevant statutory body to be **under a statutory duty** 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. However, any such body should be subject to a general statutory duty of care towards adults at risk and should have the power to apply for such an order where in their view, it is warranted. If any such statutory duty is created, those upon whom it falls will make inquiries about possible court orders even where this is not wise or in the best interests of the adult(s) at risk. It would be much better to leave the decision as to whether to consider applying for an order to professional judgement based on good training, supervision, support and eventually, experience.

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?

RCNI Response: Yes, RCNI's view is that this would be a good idea. The lack of such a power in the Domestic Violence Act 2018 has been identified as a serious gap in protection by Safeguarding Ireland among others. (see our response to Issue 3 above also on this point).

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?

RCNI Response: If it is decided to include separate provisions for barring orders, protection and safety orders which would apply in circumstances outside those in Domestic Violence Act 2018 and/or Section 10 of the Non-Fatal Offences against the Person Act 1997 in any adult safeguarding legislation, they should come accompanied by new provisions mirroring those already in DVA 2018, so that there is no difference between the orders granted in domestic and non-domestic situations in terms of the way the decision is made, special measures for use in court, special sittings, duty to give reasons for decisions, powers to order Garda to serve orders on respondents, breach of an order, and so on. (see our response to Issue 3 above also on this point).

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.

RCNI Response: In our view, there is no strong case to be made to support a strong recommendation in favour of a statute-based system of mandatory reporting, at least in the light of the available evidence to date both in Ireland and in other countries. Therefore, we would favour the introduction of (i) above, a system of **permissive** reporting.

Among the arguments put forward against the introduction of mandatory reporting in the Issue Paper, the one which resonates most strongly with our own experience of mandatory retrospective reporting of historic child sexual abuse under Children First Act 2015⁷, is: (f) **Lack of evidence of improved outcomes for at risk adults**⁸. We have not seen any evidence that the outcomes of mandatory reporting with regard to adults who were victims of historic child sexual abuse are generally positive from their perspective. The aim is that mandatory reporting is positive in terms of prevention of current and future abuse to children, but we have little evidence to date that this is the case. In addition, given that there does not seem to have been any very great rise in the number of reports made under the mandatory regime as opposed to the previous permissive regime, we remain to be convinced that putting reporting obligations on a statutory footing is a net positive.

We also agree that there may be a negative effect of mandatory reporting on adults at risk because their autonomy is undermined by it, they would certainly be less inclined to seek professional advice, (as is already happening with survivors seeking to use rape crisis services under Children First Act 2015 mandatory reporting conditions), if they knew that confidentiality would be breached by mandatory reporting obligations, and there is a risk that making reports about adults at risk mandatory as opposed to permissive would reinforce the stereotype that older people are incapable of making well-educated and rational decisions.

However, RCNI's view is that any mandated reporting regime affecting adults at risk has the potential to cause **serious harm** to them, which goes beyond these possible negative effects. Any reporting regime which involves only adults at risk, ie does not have any relevance to other vulnerable individuals, should be founded on clear human rights principles. A person's right to determine their own future and to choose between various options as to how best to protect themselves must be preserved in any situation in which they have the capacity to do either. Any reporting or investigative process must be voluntary and must protect them from further harm. It takes specialist training and experience to recognize what is, or might be, harmful in any reporting or investigative procedure, and there should be no question of any individual or organisation receiving a report of abuse and acting upon it without such training and experience.

To give one (sadly, common) example of serious harm, we would point to the acute distress felt by many adult survivors of historic sexual abuse once they learn that their identity, and the fact that they have had a report made on their behalf (whether they wanted one made or not) is likely to be shared not only with An Garda Síochána but also with the perpetrator of the abuse, even in circumstances where the adult survivor in question is not going to give

⁷ See this web-link for access to text of statute:
<http://revisedacts.lawreform.ie/eli/2015/act/36/front/revised/en/html>

⁸ See page 141 of printed version and 159 of online version respectively

a full interview to the Child and Family Agency about that abuse as part of their substantiation process. This distress, which is based usually on well-founded fears of what the abuser might do in order to retaliate or intimidate, has escalated into suicidal ideation in a few cases. In many cases, it has resulted in a complete withdrawal from the counselling and therapy processes. Even where counselling and other interventions do continue, the therapeutic process may be compromised by the adult survivor's fear that anything she says will result in another mandated report and in her personal information being shared against her will with her abuser.

Another reasonably common example of **serious harm** caused by the current statutory mandated retrospective reporting regime is even more immediate and acute: the abuser immediately upon learning that he is the object of a report to the Child and Family Agency, takes swift action to intimidate the victim or punish her in the form of physical abuse and/or online abuse. For many survivors, it is even worse when this intimidatory or punitive behaviour takes the form of physical or psychological abuse of their loved ones rather than themselves.

We think that there should be no question of this statutory mandated reporting regime, or a version of it, being extended to adults at risk unless and until a system is devised that respects the rights of the adult survivor fully at every stage, beginning with and underpinned by their overarching right to decide what they want to do themselves to protect themselves and their interests, and to be supported in any lawful choice they make. Further, we do not think that making reporting an obligation mandated by statute does anything extra by itself to protect adults (or indeed children) at risk. It may in fact impede the protection systems by deterring victims from making reports as they become aware of the negative consequences for themselves and their families.

It should also be remembered that breach of codes of conduct and/or ethics, whether imposed by professional bodies or by individual employers, are themselves punishable by a range of sanctions. In our view, statutory reporting obligations are no substitute for appropriate training, support, advice and ongoing professional development in this area. Nor does it take the place of appropriate procedures and policies to ensure that any adult at risk who discloses abuse to a professional is provided with every possible support to ensure that s/he can become informed about the available options and can be supported to take appropriate action to prevent future abuse and/or make the abuser accountable for his past actions. If s/he is unable, for example, to apply for an order under the Domestic Violence Act 2018 (DVA), s/he should be able to get assistance from the appropriate authority so that they undertake to apply for one on their behalf.

Sexual violence and abuse are crimes, therefore, any victim must decide for themselves whether they wish to make a report to An Garda Síochána, independently of any third party reporting process. If the reporting professional knows or believes that they have information which might be of material assistance in the investigation, prosecution or

conviction of an abuser, they should report that information to An Garda Síochána. However, the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012⁹ contains several specific defences which would allow for information to be withheld legitimately by certain professionals, among them psychologists and counsellors, if in their professional view that were necessary “for the purpose of protecting the health and well-being of the [...] vulnerable person”, as well as a general defence of reasonable excuse. In addition, the Act says explicitly that no victim is to be regarded as guilty of withholding information about what happened to themselves, from An Garda Síochána. It will be seen that the Act safeguards the autonomy of “vulnerable persons” as far as possible, and the processes of any appropriate authority such as the HSE, An Garda Síochána and/or any new safeguarding authority, should also safeguard that autonomy as far as possible and provide every possible support to ensure that any adult at risk with the capacity to make a decision about reporting to An Garda Síochána is facilitated to do so and to follow that decision through.

However, the 2012 Act does not include any duty not to withhold information which amount to suspicion only rather than knowledge or belief. We suggest that it should not be expanded to include suspicion, but that suspicion should instead become the springboard for other actions which respect the autonomy of the adult at risk and which do not involve any risk of him or her being put at risk of even more harm through the process of reporting itself. These actions should be the subject of appropriate training and protocols which empower the adult at risk by providing her with information about options for protection and support. If the professional concerned, having made an informed assessment, feels that the intervention of another authority is called for, e.g. to apply for a DVA order, s/he should involve that person in the process and should not disregard their wishes and their standpoint.

When it comes to protecting adults at risk, as well as children, from sexual abuse and exploitation, what matters even more than the reporting process is what happens once the report or information comes to the attention of the responsible agency. We do not suggest that every single report which comes into that agency is referred on to An Garda Síochána for them alone to investigate (though as long as the survivor agrees, every report should be shared with AGS). However, we do suggest that the agency receiving reports does work with the reporting professional to ensure that the adult at risk is provided with adequate information and referrals to enable her or him to decide themselves what steps they wish to take, or have taken on their behalf, on every occasion where that adult has the capacity to do so. Where s/he does not have capacity to decide on whether a particular intervention is necessary or desirable, it will be for the responsible agency to decide what to do in their place (that is, outside the criminal justice system).

⁹ Available online via this web-link: <http://revisedacts.lawreform.ie/eli/2012/act/24/front/revised/en/html>

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?

RCNI Response: We are inclined to think that there is merit in putting a general duty for professionals to care for adults at risk on a statutory basis, to include a duty to consider making a report to the appropriate authority on behalf of an adult at risk, which is qualified by a duty to take the wishes, capacity, needs and circumstances of that person into account. Consideration might be given also to including a duty to abide by professional codes of conduct and ethics determined by the relevant professional bodies, and a duty to abide by any employer-specific protocol or code of conduct. In the case of child abuse, including sexual abuse, there are specific protections already – see the Protections For Persons Reporting Child Abuse Act 1998¹⁰. We suggest that the equivalent protections should be enacted in respect of persons reporting abuse against adults at risk and that they should also include anonymity for the reporter. We are all too aware that the safety of mandated persons has been put at risk through unwarranted sharing of their personal identifying information with abusers.

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?

RCNI Response: We do not recommend a hybrid model.

Issue 9 Statutory Independent Advocacy Service

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

RCNI Response: In our view, what matters more than whether there should be statutory provision for independent advocacy in the context of adult safeguarding is whether there is adequate provision to ensure that independent advocacy services are well resourced and that every independent advocate has a measure of financial security and the best possible training, support, supervision and opportunities for continuing professional development. It is also important to ensure that existing independent advocacy services are not duplicated, but supported and complemented as necessary.

Rape Crisis Centres have decades of experience as advocates for adult survivors of sexual violence. They are specialists with regard to the dynamics and impacts of sexual violence, both recent and historic. However, they are not experts in every form of disability (physical or intellectual) which may be an issue for a particular client, and where necessary and

¹⁰ Available to view online via this web-link:

<http://revisedacts.lawreform.ie/eli/1998/act/49/front/revised/en/html>

appropriate, they work with other agencies and individuals, including independent advocates, to ensure that the needs of their client are met. RCNI is well aware of the expertise and breadth of experience of the National Advocacy Service and of Inclusion Ireland, among others, as independent advocates and as sources of information and referral points. Their expertise should not be lost, but harnessed, in any new structure.

RCNI's view is that on balance, there should be statutory provisions for independent advocacy, and to say that these provisions must not come at the expense of independence – if they do, they will not be effective – and that the role of any statutory agency charged with the provision and support of a corps of independent advocates, does not need to duplicate or replace that of existing specialist advocates. It should complement them, by drawing on their range of expertise and experience, and by ensuring that independent advocates, whether or not they are directly engaged by a stand-alone agency, should all have the benefit of rights to represent any adult client who chooses to use their services.

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?

RCNI Response: (a): In our view, the relevant provisions under Section 5 of the Citizens Information Act 2007¹¹, as yet uncommenced, would not be sufficient to empower an independent advocate in the wide range of circumstances in which their services might be needed. Accordingly our answer to this part is No.

(b): In our view, additional statutory provisions would therefore be desirable. See our response to Q.9.1 above.

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?

RCNI Response: Yes, a national advocacy body which would take care not to duplicate or replace existing services but to support and complement them, should be created, ideally. It should be allowed to operate as an independent agency ideally but if it has to be located within an existing agency, it should be allowed to have independence in the exercise of its

¹¹ See this link to the relevant Section 5 Citizens Information Act 2007:
<http://www.irishstatutebook.ie/eli/2007/act/2/section/5/enacted/en/html#sec5>

advocacy functions, and either model should be resourced well enough to fulfil those functions.

Issue 10 Access To Sensitive Data And Information Sharing

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?

RCNI Response: Broadly speaking, RCNI's view is that existing arrangements for access to sensitive data and information sharing between relevant regulatory bodies are not necessarily sufficient to underpin adult safeguarding legislation. It helps if it is clear that under statute, there are powers to share information with certain named bodies, provided that these powers themselves are compatible with the rights to data protection enjoyed by adults at risk as by others, under the Data Protection Act 2018¹² and the General Data Protection Regulation¹³. Care must be taken not to erode the autonomy, the data protection rights and other rights of the adult at risk when drafting any such provisions.

In addition, data sharing by any relevant regulatory bodies to others cannot be such that criminal investigations in relation to the same abuse(s) are undermined as a result of such sharing. This would be a terrible outcome for any adult at risk who had hoped that s/he would be able to pursue a criminal complaint against the perpetrator of the abuse through the courts.

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.

RCNI Response: They should, because no statutory powers can ever replicate the level of specific detail which must be included in any interagency protocol. The statutory powers should be more general and overarching in nature, and should take account of data protection and other rights of adults at risk who are the subjects of these powers regardless of the identity of the agencies involved in any information sharing, while protocols should deal with the details of the material to be shared and the exact mechanisms through which it should be shared as between two or more agencies – and also reflect the principles and the range of rights in the relevant statutory provisions.

Issue 11 Multi-agency Collaboration

¹² Available to view online via this web-link:

<http://revisedacts.lawreform.ie/eli/2018/act/7/front/revised/en/html>

¹³ Available to view online via this web-link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>

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?

RCNI Response: (a) It depends on the kind of agency, and on the nature of the relationship between that agency and any other. Many agencies are themselves creatures of statute, ie they fulfil their prescribed functions under statute in line with their prescribed powers also under statute, broadly. If these functions on all sides include multi-agency cooperation or at least do not preclude it and are not in conflict with each other's functions and powers as they work together, there is no difficulty. However, in our experience this is not always the case. The situation is different for bodies who are not creatures of statute, such as NGOs – they are bound not by statute but by their own internal rules (which may themselves be constrained by statutes of general application, such as the Companies Act). These organisations are generally more flexible.

(b): Yes, a general duty to co-operate with other agencies (to include NGOs where appropriate) would be helpful.

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?

RCNI Response: Any adult safeguarding body created, the HSE, An Garda Síochána at least.

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

RCNI Response: Yes, we do consider that there should be, as we see many vulnerable teenage survivors who can become even more vulnerable once they leave child care services behind. We think this would be helpful to this cohort of survivors.

Ref: RCNI/LPD/

Date: 3 June 2020

Rape Crisis Network Ireland clg

Carmichael Centre

North Brunswick Street

Dublin D07 RAH8