Health Information and Quality Authority

An tÚdarás Um Fhaisnéis agus Cáilíocht Sláinte

Law Reform Commission Issues Paper 'A Regulatory Framework for Adult Safeguarding'

Response by the Health Information and Quality Authority (HIQA)

29 May 2020

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About the Health Information and Quality Authority (HIQA)

The Health Information and Quality Authority (HIQA) is an independent statutory authority established to promote safety and quality in the provision of health and social care services for the benefit of the health and welfare of the public.

HIQA's mandate to date extends across a wide range of public, private and voluntary sector services. Reporting to the Minister for Health and engaging with the Minister for Children and Youth Affairs, HIQA has responsibility for the following:

- **Setting standards for health and social care services** — Developing person-centred standards and guidance, based on evidence and international best practice, for health and social care services in Ireland.

- **Regulating social care services** — The Chief Inspector within HIQA is responsible for registering and inspecting residential services for older people and people with a disability, and children's special care units.

- **Regulating health services —** Regulating medical exposure to ionising radiation.

- **Monitoring services** — Monitoring the safety and quality of health services and children's social services, and investigating as necessary serious concerns about the health and welfare of people who use these services.

- **Health technology assessment** — Evaluating the clinical and cost-effectiveness of health programmes, policies, medicines, medical equipment, diagnostic and surgical techniques, health promotion and protection activities, and providing advice to enable the best use of resources and the best outcomes for people who use our health service.

- **Health information** — Advising on the efficient and secure collection and sharing of health information, setting standards, evaluating information resources and publishing information on the delivery and performance of Ireland's health and social care services.

- **National Care Experience Programme** — Carrying out national service-user experience surveys across a range of health services, in conjunction with the Department of Health and the HSE.

Introduction

HIQA welcomes the publication on 29 January 2020 of the Law Reform Commission's (the Commission) *Issues Paper on A Regulatory Framework for Adult Safeguarding* (the Issues paper).

HIQA has been calling for adult safeguarding legislation for a number of years. In its submission to the Oireachtas Select Committee on the Future of Healthcare in 2017, HIQA recommended that it was now time to introduce safeguarding legislation to protect at risk adults from abuse and exploitation. HIQA has emphasised the legislative shortcomings around the protection of adults and welcomed the publication of the Adult Safeguarding Bill 2017.

We all have a right to be safe and to live free from harm. At certain times in our lives we might need help and support to do this. Over the past 10 years, HIQA has highlighted issues of abuse and exploitation within health and social services and in doing so has uncovered deficiencies in the policy and practice response to abuse. Whilst HIQA has undoubtedly had a positive impact on the quality and safety of the services it regulates and monitors, HIQA believes that the protective measures which have been put in place by the State must be bolstered by the introduction of strong and effective adult safeguarding legislation.

Placing adult safeguarding on a statutory footing acknowledges the State's commitment to adults at risk and the duty of civil society to adopt a zero tolerance approach to adult abuse. HIQA welcomes the analysis by the Commission of statutory frameworks for adult safeguarding in other jurisdictions and believes that this is imperative to inform future legislative reform.

In this submission, HIQA makes observations on the adequacy of the existing approach to adult safeguarding in Ireland and suggests a number of improvements that can be made.

Issue 1: Values and Principles Underpinning Adult Safeguarding

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

HIQA agrees with the view of the Commission that it is important to underpin adult safeguarding legislation with relevant values and principles. We welcome that the guiding principles of human rights, empowerment, prevention, proportionality, accountability, integration and cooperation are proposed by the Commission to underpin adult safeguarding legislation. It is important that adult safeguarding legislation identifies that the guiding principles should not be viewed in isolation; each principle should be considered to ensure health and social care services place people at the centre of what they do.

The National Standards for Adult Safeguarding[1], which are referred to in the Commission's Issues Paper, were jointly developed by HIQA and the Mental Health Commission (MHC) with the aim of improving the experiences of all people accessing health, mental health and social care services, reducing their risk of harm, and promoting their rights, health and wellbeing. Following a review of national and international literature and extensive stakeholder engagement to inform the development of the National Standards for Adult Safeguarding, six positive principles emerged and these are largely reflected in the guiding principles identified by the Commission in paragraph 1.14 of its Issues paper.

These positive principles are:

- Empowerment — people are empowered to protect themselves from the risk of harm and to direct how they live their lives on a day-to-day basis according to their will and preferences. This requires people having access to the right information in a way they can understand, making decisions about their lives and being supported to engage in shared decision-making about the care and support they receive. HIQA agrees with the proposal of the Commission that this principle should be underpinned by a presumption of decision-making capacity and this aligns with the guiding principles of the Assisted Decision Making (Capacity) Act 2015.

[1] https://www.hiqa.ie/reports-and-publications/standard/national-standards-adult-safeguarding

- A rights-based approach — people's rights should be promoted and protected by health and social care services. These include the right to autonomy, to be treated with dignity and respect, to be treated in an equal and non-discriminatory manner, to make informed choices, and the right to privacy and to safety. A rights-based approach is grounded in human rights and equality law. HIQA welcomes the Commission's proposal that adult safeguarding legislation is underpinned by the principle of human rights and believe that this aligns with a rights- based approach to care as identified in the National Standards for Adult Safeguarding.

  To support health and social care services in understanding and implementing a rights-based approach, HIQA, in conjunction with Safeguarding Ireland, has developed a Guidance on a Human Rights-Based Approach in Health and Social Care Services[2] (the Guidance on a Human Rights-Based Approach). This Guidance outlines a way of working for health and social care staff to assist them in upholding human rights in their work.

- Proportionality — staff working in health and social care services should take proportionate action that is the least intrusive response appropriate to the risk presented and takes account of the person's will and preferences. HIQA supports the definition of proportionality as proposed by the Commission in its Issues Paper and believes that it aligns with the definition in the National Standards for Adult Safeguarding.

- Prevention — it is the responsibility of health and social care services to take action before harm occurs. Preventative action includes care, support and interventions designed to promote the safety, wellbeing and rights of adults. HIQA agrees with the Commission that the principle of prevention requires that a proactive approach is taken to prevent abuse and reduce the risk of harm.

- Partnership — effective safeguarding involves working in partnership, that is, health and social care services and the person using the service, their nominated person and professionals and agencies working together to recognise the potential for, and to prevent, harm. The Commission frames this principle as "integration and cooperation". The principle of partnership in the National Standards for Adult Safeguarding and the

[2] https://www.hiqa.ie/reports-and-publications/guide/guidance-human-rights-based-approach-health-and-social-care-services

definition proposed by the Commission under this guiding principle are similar; however, HIQA believes that the principle of integration and cooperation extends beyond local level and requires a cooperative and coordinated response at the national level to ensure effective safeguarding for all adults at risk.

- Accountability — health and social care services are accountable for the care and support they deliver, and for safeguarding people using their services. This requires transparency as regards the ways in which safeguarding concerns are responded to and managed. HIQA believes that adult safeguarding legislation must ensure that services are transparent and accountable in relation to their approach to adult safeguarding and welcomes the proposal of the Commission for this to be included as a guiding principle in adult safeguarding legislation.

The Commission proposes that the principle of protection should also be included as a guiding principle in adult safeguarding legislation. HIQA recognises that any adult may need help to protect themselves at any point in their lives. There may be times when a person is more vulnerable to abuse, neglect and exploitation, and this may mean that they are unable to adequately protect themselves from potential harm. HIQA also recognises that there may be times when a health or social care service will need to respond to a safeguarding concern in a manner that is not in accordance with the person's wishes. In these circumstances, each person must be supported to weigh-up the risks associated with the choices they make and has the right to make a decision, even if others think it an unwise one.

HIQA believes that the principle of protection has the potential to diminish people's freedom to take risks and may undermine their will and preferences if others perceive the risk differently. HIQA does not agree that the principle of protection should underpin adult safeguarding legislation. There are benefits as well as potential harms when people using services take risks in day-to-day life and thus the principle of 'protection' as set out by the Commission has the potential to narrow the focus of those responsible for safeguarding adults at risk, which may lead to the use of restrictive practices. HIQA believes that it is essential that there is an appropriate balance between empowerment and protection. Where protective measures are taken in response to harm, it is essential that these measures are proportionate and tailored to the person's circumstances in order for them to live a safe and fulfilling life. HIQA considers that the protection and promotion of people's rights should be included under the guiding principle of human rights and a rights-based approach to care.

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

HIQA does not consider that any additional guiding principles are required to underpin adult safeguarding legislation, rather that consideration is given to the points made in HIQA's response to Q1.1 and that the principle of protection be removed. Instead, this term should form part of the definition of the principles of prevention and proportionality.

Issue 2: Defining Key Terms for Adult Safeguarding

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

HIQA does not agree that adult safeguarding legislation should define categories of adults who come within its scope.

The National Standards for Adult Safeguarding recognise that any adult may be at risk of harm as a result of circumstances and or a condition and may need help to protect themselves at any point in their lives. There may be times when a person is more vulnerable to abuse, neglect and exploitation, and this may mean that they are unable to adequately protect themselves from potential harm. Any adult can go through a period of risk and need care and support. Based on the extensive evidence gathered to inform the development of the National Standards for Adult Safeguarding, it is HIQA's opinion that adult safeguarding legislation should not define categories of adults which the legislation would apply to. In doing so there is the potential risk that they may be perceived as being inherently vulnerable and therefore more likely to be at risk.

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?

N/A

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".

HIQA and the MHC undertook a review of national and international literature on the issue of adult safeguarding, and engaged extensively with

stakeholders from across a wide range of settings to inform the development of the National Standards for Adult Safeguarding and the use of key definitions therein. The definitions for the terms as expressed in the National Standards for Adult Safeguarding are detailed below and each of these definitions are discussed in the context of the proposals put forward by the Commission for these definitions:

2.3(a) **Safeguarding**: measures that are put in place to reduce the risk of harm, promote and protect people's human rights and their health and wellbeing, and empower people to protect themselves.

The Commission in its Issues Paper proposes that safeguarding could be defined as "ensuring safety from harm". HIQA recognises that it may not always be possible for services to "ensure" an adult at risk is safe from harm. By putting measures in place to prevent harm from occurring, health and social care services can reduce the risk of harm.

HIQA supports the sentiments expressed by the Department of Health — referenced at paragraph 2.15 of the Issues Paper — that there is learning to be gained from the Children First Act 2015. Service providers are required, under the Children First Act 2015, to "ensure as far as practicable that each child availing of a service from the provider is safe from harm while availing of that service". HIQA believes that further consideration is required by the Commission in relation to this definition. If the Commission considers that safeguarding services should ensure an adult at risk is free from harm, then the definition should acknowledge that it may not always be practicable to do so. Where it is not possible for a service provider to ensure safety from harm, it is important that the definition acknowledges that appropriate measures should be taken to reduce the risk of harm. Such measures may be similar to those evident in the Children First Act 2015 and may include an assessment of risk of harm and the preparation of a statement setting out the services to be put in place to reduce the risk of harm.

2.3(b) Based on the evidence gathered to develop the National Standards for Adult Safeguarding, HIQA's view is that the terms "abuse" and "harm" should be defined separately. The term "harm" provides a broader understanding of the impact that certain behaviours, including those defined as "abuse", have on the person, rather than focusing on the abuse itself. HIQA agrees with the views of the Commission that these terms should be defined separately in adult safeguarding legislation.

Abuse: a single or repeated act, or omission, which violates a person's human rights or causes harm or distress to a person. The main areas of abuse which cause people harm are physical abuse, emotional abuse, sexual abuse, neglect of the person and financial abuse. It is important to note that this is not an exhaustive list.

HIQA believes that the definition of abuse in adult safeguarding legislation should not be confined to particular types of abuse but rather to an act or series of acts which violate a person's human rights. HIQA welcomes the Commission's analysis of the definition of abuse in other jurisdictions and agrees with the Commission's view that the definition of abuse should not be dependent on or connected to the relationships between the adult at risk and the person providing care or support.

Harm: the impact of abuse, exploitation or neglect on the person. Harm arises from any action, whether deliberate or by omission, which may cause impairment of physical, intellectual, emotional or mental health and wellbeing.

HIQA agrees with the Commission's analysis of the Adult Safeguarding Bill 2017 and the Adult Support and Protection (Scotland) Act 2007 regarding the use of the terms "abuse" and "harm" interchangeably. HIQA believes that harm should be defined separately to abuse in adult safeguarding legislation and should be underpinned by the negative impacts of abuse to avoid this confusion and to ensure clarity.

2.3(c) HIQA welcomes the analysis in paragraph 2.46 of the Issues Paper with regard to whether "neglect" should be considered as a separate concept in adult safeguarding legislation. HIQA believes that the term "neglect" should be defined separately to the term "abuse". The definition of neglect in the National Standards for Adult Safeguarding is as follows:

Neglect: whenever a person withholds, or fails to provide, appropriate and adequate care and support which is required by another person. It may be through a lack of knowledge or awareness, or through a failure to take reasonable action given the information and facts available to them at the time.

HIQA does not believe that the definition of neglect should be underpinned by the deprivation of prescribed requirements or services to a person, as evidenced for instance in the Adult Safeguarding Bill 2017, as this could

potentially exclude certain types of neglect and emerging forms of neglect. HIQA favours the definitions proposed in the National Standards for Adult Safeguarding and the final draft version of the HSE's 2019 Adult Safeguarding Policy, which focus on the withholding of appropriate or adequate care or support.

2.3(d) **Capacity**: HIQA agrees with the view of the Commission that there should be consistency in the definition of "capacity" between adult safeguarding legislation and Section 2(1) and Section 3 of the Assisted Decision-Making (Capacity) Act 2015. HIQA believes that the definition of capacity in this Act should be reflected in adult safeguarding legislation.

In addition to the terms set out for consideration by the, HIQA believes that the term "adult at risk" should also be considered by the Commission and that it should be defined in adult safeguarding legislation. HIQA and the MHC set out the definition of adults at risk in the National Standards for Adult Safeguarding as follows:

Adult at risk: a person who is aged 18 years or older who needs help to protect themselves from harm at a particular time. A distinction should be made between an adult who is unable to safeguard him or herself, and one who is deemed to have the skill, means or opportunity to keep him or herself safe, but chooses not to do so.

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

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?

Effective care planning provides essential safeguards which reduce the risk of harm from abuse and neglect for adults at risk and promote health and wellbeing. HIQA believes that a statutory responsibility for care planning should be embedded in adult safeguarding legislation. The potential consequences for an adult at risk of abuse can be significant and, in some cases, catastrophic. In addition, it is recognised as good practice that any adult in receipt of care services should have a care plan in place. HIQA believes it is vital that a care plan considers safeguarding issues for any adult who has come to the attention of a safeguarding service. In considering the introduction of a statutory duty of care into these regulations, HIQA is of the belief that this duty should similarly be reflected as a responsibility of the provider in the Health Act 2007, the Mental Health Act 2001 and any prospective legislation such as the Patient Safety (Licensing) Bill.

The culture of service provision within Ireland's long-term residential social care sector, which HIQA regulates, has been one of paternalism in which service delivery has been diagnosis- and task-focused, shaped around the service and not necessarily based on individualised needs and the rights of service users.

The National Standards for Adult Safeguarding, developed by HIQA and the MHC, discuss how health and social services have a responsibility to consistently work towards the best achievable outcomes for people using services, recognising that systems to do this vary depending on the size and complexity of the service. The National Standards for Adult Safeguarding set out how care planning should be undertaken under individual themes of effective and safe care and support. In an effective service, care and support are planned and delivered productively and in a timely way. The National Standards for Adult Safeguarding recommend assessment of individual care and support needs on initial access to the service by the person, and that this assessment is regularly reviewed and updated.

As part of this process, the service identifies and clearly documents any potential risks and how they will be managed. The person is supported to make informed decisions to support them to live the most fulfilling life possible. Under this theme, services are recommended to work in an

integrated way by building meaningful networks, communications and relationships, and for these relationships to be used quickly if there are adult safeguarding concerns. In a safe service that works to minimise the risk of harm to service users, the National Standards for Adult Safeguarding recommend that safeguarding is part of the service culture and embedded in its practices — rather than being viewed or undertaken as a separate activity.

Whilst HIQA has seen improvements with the adoption of models that are reflective of person centredness, the findings from inspections indicate that services can remain challenged in transforming from a paternalistic culture to one that recognises rights-based principles. Our inspections also identify that multiple services are providing care and support to adults at risk but are failing to work in an integrated way. HIQA believes that a statutory requirement to prepare a care plan that takes account of an individual's safeguarding needs should require service providers to ensure that care planning is appropriate and effective, maximises integrated care and support and is aimed at empowering service users to make informed decisions about their lives.

A statutory duty to prepare a care plan should be underpinned by principles discussed under Issue 1 of HIQA's response to the Issues Paper and that adult safeguarding legislation should set out what is required to be documented in a safeguarding care plan. This will ensure appropriate cooperation and coordination of services, accountability of service provision and transparency for adults at risk in relation to the nature of the services provided and who they are provided by. HIQA believes that a statutory duty to have a safeguarding care plan in place will contribute to improved outcomes for adults at risk.

In a number of submissions to policy makers, HIQA has canvassed for the introduction of a Care Management Model which would ensure the early identification and planning of comprehensive packages of care for people with complex health and social care needs. These care plans are based on multi-disciplinary assessments which should include an assessment of and planning for any safeguarding need. In this model, a care manager should be appointed to oversee the person's assessment and to commission and monitor the package of care required, including a safeguarding plan if relevant.

HIQA recognises that effective implementation of safeguarding plans requires training and awareness of adult safeguarding issues. In this regard, HIQA believes that service providers should ensure their staff are appropriately

trained to identify, support, report and escalate concerns around adult safeguarding.

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

Yes. Provision of care and support in multiple settings must be underpinned by a duty to safeguard, to prevent or to reduce the risk of harm and promote an individual's wellbeing. From HIQA's perspective, the regulation of a defined range of social care services, that is, residential services for older people and for children and adults with disabilities, provides a degree of protection for people in receipt of such services. Regulations hold service providers to account for the quality and safety of care they provide. HIQA assesses compliance by service providers on the basis of regulations and standards and has a range of enforcement powers at its disposal in the event of non-compliance. However, HIQA's remit and powers do not extend to the investigation or assessment of complaints about the care provided by homecare services, day services and care services to people in group or sheltered living arrangements. Whilst HIQA has no role in the regulation of direct provision, substance misuse or homelessness services, HIQA believes that safeguarding legislation should also impose a duty to safeguard on providers of these services as well.

HIQA strongly supports the introduction of a statutory duty on service providers to safeguard adults at risk. Service providers should have a statutory duty to have in place arrangements, policies and procedures for the prevention, detection, reporting and management of adult safeguarding issues.

HIQA considers that there is learning to be gained from the approach to safeguarding adopted in the Children First Act 2015. HIQA recommends that the Commission considers inclusion of a provision similar to that in Section 10 of this Act, whereby providers of adult safeguarding services in the private and public sector should have a statutory duty to ensure that adults at risk availing of the service are safe from harm. HIQA recommends that Section 11 of the Act also merits consideration by the Commission, and that service providers should be required to undertake an assessment of risk to an adult availing of the service and prepare a written statement specifying the service to be provided and the principles and procedures to be observed. The procedures that appear under Section 11(2) of the Act provide a helpful road map of what might be considered by the Commission for inclusion in an adult safeguarding statement. As outlined above, in considering the introduction of

a statutory duty of care into these regulations, HIQA is of the belief that this duty should be similarly reflected as the responsibility of the provider in the Health Act 2007, the Mental Health Act 2001 and any prospective legislation such as the Patient Safety (Licensing) Bill.

HIQA considers that procedures for the following should also be included:

- assessment and management of risks, with systems in place for recording, escalating and reporting safeguarding concerns
- clear systems and procedures for multi-agency cooperation
- procedures for the management of records, complaints and sharing of information
- codes of conduct, disciplinary policies and clear protocols for the making and investigation of protected disclosures
- systems for maintaining and demonstrating compliance with primary legislation, regulations and standards
- procedures for access to and records regarding independent advocacy.

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?

HIQA believes that adult safeguarding care plans should recognise and address all potential forms of abuse and neglect, including but not limited to physical, sexual, psychological abuse or neglect to prevent harm and reduce risks those who are vulnerable in our society. In our response to Issue 2 of the Commission's Issues Paper, HIQA notes that it is important that abuse is not confined to an exhaustive list of categories of abuse. Whilst reference to certain types of abuse may be useful, the creation of an exhaustive list is too prescriptive and will need constant revision as new forms of abuse arise. HIQA notes that discriminatory abuse and the protection of a wider group of people under the Prohibition of Incitement to Hatred Act 1989 is currently under review and is outside the scope of the Commission's consideration of Issue 3 of the Issues Paper.

It is important that all forms of potential abuse and neglect are considered in safeguarding care plans and that safeguarding measures to reduce risks, prevent harm and promote wellbeing are documented with clear assignment of roles, responsibilities and timelines for response and review.

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?

HIQA considers that civil sanctions might be an appropriate and effective tool in certain instances of breach of duty to safeguard adults at risk or to have a safeguarding care plan in place. HIQA agrees with the views of the Commission that the introduction of a statutory duty to have a care plan in place will help to safeguard adults at risk. HIQA considers that this would also have a positive impact on and promote the wellbeing of people using these services.

HIQA considers that further analysis and consideration is required before legislative reform is introduced in relation to the types of civil sanction that may be introduced for breach of duty in this context. It is suggested that this may involve consideration and review of the regulatory enforcement powers and sanctions currently available to the State's regulators of health, social care and financial services and appropriate alignment with the role, functions and powers of the national safeguarding authority to ensure a coherent and effective approach to non-compliance. Tools for potential civil enforcement may include consideration of, for example, the issue of non-compliance notices to adult safeguarding providers by the national safeguarding authority for failure to have a safeguarding statement/care plan in place, or the power to make binding recommendations or achieve resolutions following investigations of complaints regarding breach of duty. HIQA believes that the use of civil sanctions must be proportionate and there should be appropriate procedural safeguards and standards of fairness in place when in use.

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?

HIQA considers that failure to comply with a statutory duty to safeguard adults at risk or put a written care plan in place which effectively addresses safeguarding issues should give rise to criminal liability. HIQA believes that this is necessary, particularly when failure to safeguard can have such a detrimental impact on the health and wellbeing of those at risk in our society.

HIQA considers that further analysis is required by the Commission in relation the imposition of criminal liability and other potential offences which hold the service provider to account before legislative reform is introduced.

The Adult Safeguarding Bill 2017 prohibits certain conduct in relation to inspections carried out by authorised persons of a national safeguarding authority when carrying out their functions under the adult safeguarding legislation. The Health Act 2007, which established HIQA's remit of inspection and investigation, criminalises such conduct. HIQA believes that a similar approach should be adopted in adult safeguarding legislation and that the national safeguarding authority should have the power to issue criminal prosecutions for breach of the legislation in these instances also.

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?

HIQA considers that a complaint to a professional regulatory body to which a person responsible for the provision of a safeguarding service is affiliated is necessary to safeguard adults at risk. In circumstances where a registered professional has acted, failed to act or has not been supported to act as a result of poor governance by the safeguarding service provider, a referral should be made to the relevant professional regulator for the purpose of investigation and action in accordance with the relevant legislation.

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

We know from research in this area that abuse to adults at risk is underreported globally. Irish society needs to be able to recognise harm and abuse to adults at risk, be aware of the signs of harm and know what to do and who to report their concerns to when these signs of harm and abuse arise. HIQA believes that a national safeguarding authority should have responsibility for raising national awareness on adult safeguarding issues throughout the community and amongst safeguarding services. Relevant state agencies, including An Garda Síochána, the Department of Justice and Equality, the Department of Employment Affairs and Social Protection as well

as regulators of health, social care and financial services should have a responsibility to promote and deliver awareness campaigns on adult safeguarding issues. A shared commitment to and responsibility for safeguarding adults should be adopted across all businesses and organisations.

HIQA believes that the national safeguarding authority should have a role in the development of adult safeguarding training, codes of conduct and practice guidance aimed at supporting and educating service providers and their staff on appropriate safeguarding principles and practices. Service providers should be legally required to ensure that any person employed or permitted to carry out safeguarding work for or on their behalf receives mandatory adult safeguarding training at appropriately identified intervals during their work. This training should be part of a continuing professional development programme.

Whilst adult safeguarding legislation is key to preventing abuse and promoting the wellbeing of adults at risk in our society, HIQA believes that a holistic approach to adult safeguarding should be adopted. HIQA acknowledges the approach of the Irish Government in recent years and the significant steps which have been taken in this area. HIQA looks forward to the commencement of significant parts of the Assisted Decision Making (Capacity) Act 2015 and the full operation of the Decision Support Service, which are central to Ireland's obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The publication of the Disability (Miscellaneous Provisions) Bill 2016 and the development of draft codes of practice by the National Disability Authority, which include the development of draft codes of conduct for independent advocates, will support the full implementation of the Assisted Decision Making (Capacity) Act 2015.

HIQA also strongly supports the introduction of deprivation of liberty safeguards and has contributed submissions to the Department of Health to inform the draft heads of bill. HIQA also welcomes the steps being taken in respect of the State's adoption of the Optional Protocol to the Convention Against Torture. All of the foregoing legislative reforms will play an important part in adult safeguarding and result in an increased emphasis on a preventative and person-centred approach to care and support.

It is also timely to consider the Health Act 2007. HIQA believes that this legislation should be amended to ensure appropriate alignment with the guiding principles under the Assisted Decision Making (Capacity) Act and any future safeguarding legislation. As mentioned above, HIQA's powers do not extend to significant categories of services to adults who may be vulnerable.

HIQA strongly supports the implementation of a statutory regime for the regulation of homecare services and believes that such legislation is an important component of the approach to adult safeguarding as it will enhance and improve the care and support delivered to adults at risk in their own homes. HIQA believes that the statutory duty to safeguard should equally apply to providers of homecare services. HIQA also considers that the future development of legislation should be cognisant of both capacity and safeguarding legislation.

Issue 4: Financial Abuse

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 powers to address financial abuse in the context of adult safeguarding?

HIQA welcomes the Commission's consideration of the legal issues relating to financial abuse of at risk adults and agrees with its analysis and with its general approach to this issue.

HIQA believes that regulators such as the Central Bank of Ireland and the Competition and Consumer Protection Commission (CCPC), as well as the Department of Employment Affairs and Social Protection, could have more robust powers to address financial abuse. When looking at the need for legislative reform in this area, it is important to first examine each of these bodies powers in the context of financial abuse against adults at risk:
(a) What investigative powers do they have that can be used to deal with financial abuse against adults at risk and are their powers used regularly for this purpose. If not, why not?
(b) What enforcement measures do they have to deal with financial abuse against adults at risk and are these measures used regularly for this purpose. If not, why not?
(c) When these bodies receive concerns from the public about financial abuse against adults at risk, what steps do these bodies take/can they take to ensure the abuse is investigated and stopped?
(d) What type of inter-agency collaboration is already in place between these bodies by way of a mutual cooperation agreement or memorandum of understanding and has it been effective?

HIQA believes that these questions should be considered before legislative reform is recommended in this context.

HIQA notes the Consumer Protection Act, 2007 ("CPA 2007") prohibits traders from engaging in aggressive practices such as harassment, coercion or exercising undue influence. Examples of harassment are pressurising, intimidating and taking advantage of vulnerable consumers. This may, for example, cover instances of financial abuse in the context of nursing home contracts of care between service providers and residents. Such contracts ensure that residents and their families are informed of the services provided and provide clarity and transparency on the charges they are required to pay. However, there remain some concerns in relation to vulnerable residents' contracts, that include:

- providers seeking to change terms in the contract of care without proper consultation or agreement with the resident and their representative(s)
- residents being charged for services that they did not, or could not, avail of, such as particular social activities
- charges for accessing the services of a general practitioner (GP) when the resident has free access to a GP through a medical care or GP visit card
- visiting charges for chiropody services which is in addition to the charge for the actual treatment covered by their medical care
- charges for religious services.

The above issues can give rise to potential financial abuse against an adult at risk in some instances. In this regard, important guidelines have been issued by the CCPC for contracts of care in nursing homes to deal with these matters. HIQA supports the CCPC Guidelines and participated in the process of informing their development. They set out clearly the obligations and responsibilities of service providers. The questions now are whether service providers are adhering to the CCPC Guidelines (and the CPA 2007), what action is being taken where a provider is found to not be compliant, and how effective are these steps in stopping the potential financial abuse.

HIQA believes a detailed examination of the CCPC's powers to detect financial abuse and take enforcement action in the context of consumer protection for adults at risk is required in order to assess the need for the introduction of new or additional powers for this, and indeed other, regulators. For example, the CPA 2007 does not cover controlling or coercive behavior by an adult child in respect of their parent and therefore many cases that involve financial abuse would not fall within the scope of this provision. It may require that the definition of a 'trader' under the CPA 2007 is amended to cover any person in a position of trust (fiduciary relationship) with the vulnerable consumer. There are also a number of provisions in the CPA 2007 that would cover other forms of financial abuse under 'misleading commercial practices', such as situations of financial misselling, lottery and homeowner scams. The extent to which such powers are used and enforced in the context of adults at risk requires further consideration and engagement with the CCPC.

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.

HIQA agrees with the Commission's view that banks can be effective first responders to tackling financial abuse of at risk adults and believes there is merit in putting in place a statutory financial code of practice or protocol in the financial sector. This code of practice or protocol could also apply to those working outside of the financial sector but who still deal with financial matters that concern adults at risk. The code of practice or protocol could either be a standalone document or be incorporated into an overall national protocol or guidance document on adult safeguarding generally. HIQA believes the scope and application of the code of practice or protocol and its legal status should be considered in the introduction of adult safeguarding legislation.

HIQA notes that the Central Bank of Ireland has commenced the revision of its Consumer Protection Code 2012. It is suggested that the revised Code should include a duty of care towards adults who are at risk of financial abuse. However, the Code is only binding on regulated entities and therefore there are limitations in terms of its scope and application.

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

HIQA is of the view that the questions raised in its response to 4.1 should be considered in more detail before additional regulatory powers are recommended in the context of financial abuse. HIQA also believes there are other ways to effectively deal with financial abuse of adults at risk and sets out some examples and proposals below.

We know that the identification of cues in financial abuse of at risk adults has been noted in literature on professionals such as social workers, healthcare staff, legal professionals, and banking staff. Equally, research has shown that some forms of financial abuse can be unwittingly facilitated by persons working in certain sectors by virtue of their lack of awareness. While some sectors have guidance and practice notes on how to deal with adults at risk in the context of financial matters, HIQA believes that more is required to

ensure financial abuse is detected more frequently, and that certain steps are taken if it does happen to prevent the abuse from continuing and support the adult at risk appropriately where necessary.

Gilhooly et al. (2013) identify a 'Professional bystander intervention model'. The model has five stages:
a) cues must be noticed
b) cues be interpreted as representing financial abuse
c) the observer must assume personal responsibility for acting
d) the observer must feel able to act
e) and the observer must then must do something.

HIQA considers this model could be integrated into any kind of statutory code of practice or protocol introduced either in the financial sector alone or across a number of sectors in the context of adult safeguarding.

The code of practice or protocol should include proper guidelines mandating cross-sector and agency tracking, monitoring and reporting. Routine audits and "red flagging" should also be required by institutions and professionals across all sectors.

A statutory form of protected disclosure for financial institutions that engage in responses to suspected financial abuse in good faith would be beneficial. Again, HIQA believes this should not necessarily be limited to financial institutions. Rather it should apply to post offices, credit unions, designated centres (as defined under Section 2 of the Health Act, 2007 (as amended), healthcare professionals and allied health professionals, including general practitioners, social care workers, home care workers, solicitors and registered tradespersons.

Either within the existing reporting framework or in the event of some new type of reporting obligation, HIQA believes it is imperative that appropriate supports are in place for the adult at risk so that any risk of retaliation can be assessed and appropriate measures be put in place to ensure the person is not at further risk as a result of the reporting. It is also important that the principles and values underpinning any new statutory framework are considered if such a reporting obligation is introduced. The adult at risk's views must be considered fully in terms of understanding their wishes, assessing the seriousness of the alleged abuse and informing the next steps. These issues are dealt with further in Issue 8.

HIQA also believes there should be a requirement to notify a national advocacy service in advance of a protected disclosure or concern being raised and the adult at risk should be given an opportunity to engage with an advocate early on in the process. Fear is one of the reasons why an adult at risk does not raise their concerns and this fear could be well-founded and based on a real threat.

HIQA is concerned about the level of financial abuse in relation to State benefits to which many at risk adults are entitled. One relevant finding in our inspection work in older persons' services has been the continued evidence of some service providers who collect pensions and other social welfare payments on behalf of residents. This is a key area of concern for HIQA in the management of residents' finances. The practice of paying residents' social welfare payments into a central bank account (held by the service provider) rather than into an individual account in the person's own name puts this money beyond the independent reach of residents on a day-to-day basis.

HIQA agrees with the recommendation of the Commission that a separate account should be set up for this purpose and that the service provider, who has been appointed as agent, should be obliged to carefully maintain records and receipts of all discharges and transactions made on behalf of the pension/benefit recipient. However, there are practical as well as legal issues that will need to be considered if this requirement is introduced and the Department of Employment Affairs and Social Protection and the Banking and Payments Federation of Ireland should be consulted in this regard to ensure it can work effectively in practice.

While HIQA recognises that the Department of Employment Affairs and Social Protection may cancel an agent arrangement at any time where it has reason to believe that the arrangement is not working satisfactorily or that the payment is not being used for the benefit of the recipient, more oversight of the agents is necessary. For example, the suitability of the person to be appointed needs to be assessed and in particular the 'will and preference' of the beneficiary of the payment should be obtained in so far as possible. This is important to ensure that the person who is appointed is trusted by thet beneficiary and that there is no issue of fraud, coercion or undue influence by the proposed agent. An independent advocacy service for adults at risk would be beneficial in this context to assist and support the beneficiary of the payment. The role of the advocate may also help to detect any financial abuse at an early stage and more frequently than at present.

HIQA also believes reform is necessary in the context of the carers allowance. There is currently no periodic review to assess whether care is in fact being provided to the 'cared for' person. There are also no safeguards in place to ensure the carer is a suitable person to carry out the care needs to the cared-for person. HIQA is of the view that more oversight is required and this should be addressed in any new regulatory framework for adult safeguarding.

HIQA is aware of the risk of financial abuse in the context of joint bank accounts and third party accounts. The legal position relating to such accounts is complex and it is important that financial institutions and their staff are fully aware of the importance of establishing the intention of persons at the time when the bank account is opened. HIQA believes that staff training is essential in order to ensure the correct steps are taken by bank officials at the appropriate time. Cooperation between the Central Bank of Ireland, the Legal Services Regulatory Authority and the Law Society of Ireland might be beneficial here.

Related to the above, HIQA believes legal professionals have an important role to play in the prevention and detection of financial abuse given the frequency with which property and assets are transferred to the family members of a client who is an adult at risk. HIQA is of the view that there is a responsibility on the Legal Services Regulatory Authority and the Law Society of Ireland to ensure members of the profession are educated and trained to have the skills to readily recognise fraud, coercion and undue influence and to take the appropriate steps when it is detected.

The Adult Safeguarding Bill 2017 includes financial abuse in the definition of "harm" in relation to an at risk adult and it constitutes a criminal offence. While HIQA believes this is appropriate, research has shown that a large proportion of those who commit financial abuse are family members and related to the victim. Research has also shown that fear is a common reason for not reporting the abuse — fear of what might happen to the family member if they do report. Some victims may not want the perpetrator to be convicted of a criminal offence. They may also rely on them as their only source of support and help and not want this support to discontinue. For these reasons, HIQA believes alternatives to a criminal prosecution should also be considered in adult safeguarding legislation.

Mediation as a form of dispute resolution may be appropriate in certain situations, particularly where the perpetrator is a family member and the adult at risk does not want to provide a statement to assist a criminal

prosecution. The provision of a mediation service could form part of the national adult safeguarding authority's remit.

A civil sanction may also be an option. Under Section 10 of the Non-Fatal Offence Against the Person Act, 1997 (an offence of harassment), a court can make an order to restrain a person from communicating by any means with the other person, including coming within a certain distance of the person. This type of 'restraining order' may only be appropriate in some situations.

It is imperative that the concept of adult safeguarding (and the different types of financial abuse) is promoted widely and that there is a focus placed not just on investigation but on prevention. Fraudulent scams have been identified as the largest growth area in financial abuse of older people in recent years. In this regard, HIQA believes further consideration is required around the role of Neighbourhood Watch and Community Alert in:

(i) increasing awareness of the activity for both staff and communities
(ii) increased policing when they are on notice of activity in the area
(iii) advice on preventative measures for persons in the community and what to do if it does happen to them.

The CCPC also has a role in the prevention of this type of activity and may be well placed to develop awareness-raising initiatives and other preventative measures with community policing, such as Neighbourhood Watch and Community Alert. Educational programmes in schools and colleges encompassing 'good citizenship' principles and social responsibilities may also help begin the shift towards a society which takes a zero-tolerance approach to adult harm and abuse.

Issue 5: What Body or Bodies should have responsibility for the Regulation of Adult Safeguarding?

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).

5.1(a) At the present time, the HSE plays a leading role in adult safeguarding. However, it has long recognised its inability to act in isolation of other agencies in the statutory, voluntary and business sectors. Many of the safeguarding issues that arise require a multi-agency response. In addition, the HSE is restricted as it has limited powers in investigating concerns of abuse, neglect or exploitation outside of HSE settings. These include concerns that might arise in a community, private or voluntary nursing home settings. When there are safeguarding concerns of abuse within HSE facilities, these may obviously present conflicts of interest.

Indeed, this was one of the reasons that led to the establishment HIQA as an independent inspectorate of private and HSE nursing homes. The generally held view was that the HSE could not be truly objective in assessing the standards of care when they were also the provider of services, either indirectly through funding services or through direct provision. The HSE has many competing demands (budget constraints, scarce resources and an ever-increasing demand, as well as increasing public expectations) and it may add a further layer of difficulty to reconcile these demands if a safeguarding authority was vested in the HSE. Even if a new authority with statutory powers was vested in the HSE, potential conflicts of interest may still arise.

HIQA also considers that the option of establishing the authority as an executive office of the Department of Health presents similar difficulties to that of establishing it within the HSE.

Amalgamating the authority with an existing agency is problematic too. The agencies suggested are the Mental Health Commission, HIQA and the Child and Family Agency (Tusla). Each of these agencies have very specific and defined functions, particularly in the case of the Mental Health Commission and HIQA as they are currently constituted. Aside from concerns relating to the expansion of the roles, legislative requirements and capacity concerns, an amalgamation of the authority with any of these agencies has the potential to dilute their current well established identities and somewhat dilute their functions. In both instances there is also the potential to create internal conflict based on their functions as service inspectorates.

Similarly, Tusla is well established and recognised for its role with children; amalgamating an adult safeguarding authority within its body will likely lead to confusion, at least among the general public, with regard to its roles and responsibilities. HIQA believes that the skill set required for child and adult safeguarding are substantially distinct from one another and a separate focused approach is required for each area.

HIQA considers that establishing the authority as an independent agency is the preferred and vastly superior model to the others proposed. HIQA notes the concerns in relation to the costs of a stand-alone agency. If the costs of establishing an independent agency are seen as prohibitive, HIQA believes that an amalgamation of the functions into an amended version of the Mental Health Commission could constitute a viable option for the following reasons:

- guidelines in respect of the merger of public bodies emphasise the importance of synergies from a customer or service delivery perspective. It is suggested that where there are similar or complementary services or functions, or indeed overlap, a merger can be desirable. HIQA believes that the MHC, since the establishment of the Decision Support Service, has a similar or complementary function to what is envisaged in a proposed national adult safeguarding authority. Under the Assisted Decision Making (Capacity) Act 2015, the Decision Support Service extended the remit of the MHC beyond mental health services to include all relevant persons in Ireland who may require support to make decisions about their welfare, property and finances. The Decision Support Service aims to support decision-making by and for adults with capacity difficulties and regulate individuals who are providing a range of

supports to people with capacity difficulties. This is similar to and would complement the remit of the national adult safeguarding authority

- legislative reform in this area is likely to require consistency in the use of terms and interrelated provisions in adult safeguarding legislation and the 2015 Act, particularly relating to capacity. This further illustrates the parallel work of the Decision Support Service and that envisaged by the national adult safeguarding authority

- it is also clear that the values and principles underpinning the work of the Decision Support Service are similar to those envisaged in the statutory framework for adult safeguarding— for example, human rights, empowerment, protection, prevention and proportionality. This would give rise to a natural synergy between the work of the Decision Support Service and the work of a national adult safeguarding authority

- HIQA does not believe that the expansion of the MHC's functions in recent years should deter or be a reason for not further extending its remit to include the functions envisaged for a proposed national adult safeguarding authority.

Separate, but related to the above, HIQA recognises that extending the MHC's remit to include adult safeguarding may give rise to a tension or conflict with the work of the Office of the Inspector of Mental Health Services. In this regard, HIQA supports the Government's report on the agency rationalisation process and believes consideration should be given to streamlining or rationalising the regulation and inspection of certain services for vulnerable groups in Ireland. This would involve establishing the functions of the Office of the Inspector of Mental Health Services within HIQA. HIQA acknowledges this merger would be an ambitious exercise; it would require legislative reform and give rise to several operational and governance considerations, amongst others. However, an effective inspection framework is already in place within HIQA which includes the Chief Inspector of Social Services and this would ameliorate the challenges that would be faced by HIQA and the MHC.

If this option were to be chosen, merging or restructuring these two regulators would have a clear and demonstrable benefit in terms of delivering greater democratic control over the regulation and inspection of certain types of services for vulnerable groups in Ireland and in HIQA's view, lead to improved service delivery.

5.1(b) As highlighted above, HIQA believes that establishing a regulatory body within the HSE or as an executive office of the Department of Health would not be appropriate and the reasons for this are as follows:

- Article 16.3 of the UN Convention on the Rights of Persons with Disabilities, which was ratified by the Irish State in 2018, requires that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities

- should a regulatory body within the HSE or as an executive office of the Department of Health be established, there is a risk that the Irish State would not be complying with its obligations under this international human rights treaty. The HSE would be required to act as the provider of services as well as the regulator of that particular service (amongst other functions)

- while establishing the regulatory body as an executive office of the Department of Health would provide a degree of autonomy, similar issues arise. The degree of independence and autonomy would not be sufficient given that the Department of Health would be the employer and have a significant degree of control over the expenditure of the office. The Department of Health as the parent department would also hold legal responsibility for the actions of the office. In terms of every day operations, this would mean that the Department of Health would inevitably become involved in the running of the office

- HIQA also believes that these models would be inappropriate due to the need for the regulatory body to be able to independently hire people with specialist expertise, knowledge and experience in the area of adult safeguarding, something which may not be possible if the office is staffed by civil servants who are employed directly by a Government department.

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?

HIQA believes that all six core regulatory powers identified in paragraph 5.38 of the Issues Paper should be considered and explored in more detail. In principle, all of the six core regulatory powers could be given to the adult safeguarding regulatory authority. However, particular issues arise in respect of some of the powers — for example, in respect of the power to enter and search premises, HIQA believes the parameters of this power need to be considered so that it can only be used in certain circumstances and the rights of all persons are respected.

It is important that the regulatory response of the national safeguarding authority is proportionate in the circumstances and therefore particular safeguards will be required. Also, in respect of the power to impose administrative financial sanctions, HIQA believes there is merit in exploring this power in the context of, for example, non-serious incidents of financial abuse. The sanction itself should not be for significant amounts. Guidelines should be set down in legislation to assist the decision-maker who has the option to impose the sanction. The perpetrator or offender should have a right of appeal to the courts.

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

No. HIQA believes that a statutory regional adult safeguarding structure is not necessary. HIQA also believes that the proposed authority will need to work closely with the HSE, Government departments, financial organisations, An Garda Síochána and private health and social care providers in the discharge of their responsibilities under safeguarding legislation. It is important, however, that the proposed authority would maintain its independence as a regulator for all adult safeguarding matters in Ireland.

Issue 6: Powers of Entry and Inspection

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 healthcare 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 whether 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.

HIQA considers 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 that an adult may be at risk of abuse or neglect. This power will allow a person to gather more information to be able to assess the level of risk of abuse or neglect and to inform what actions, if any, need to be taken to assist the adult at risk and stop the abuse or neglect from continuing. It may otherwise be difficult to gather all relevant information in order to make this assessment.

6.2 If the answer to Q6.1 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?

No. HIQA does not believe evidence of reasonable belief that a person may be at risk of abuse or neglect constitutes a sufficient safeguard to ensure that such a power would be used effectively and proportionately. HIQA proposes that the legislation allowing powers of entry be such that it is allowed only in very limited circumstances. These circumstances should include:

- a reasonable concern on the part of a member of the safeguarding service of abuse, coercive control, exploitation or neglect;
- some objective evidence that supports such a belief;
- that any attempt by safeguarding staff to enter without such a warrant would defeat the object of the visit **or** all other reasonable avenues of entry have been explored and failed;
- a requirement, generally, that a search warrant has been granted by the courts.

6.3 If the answer to Q6.1 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).

HIQA believes that any new statutory power of entry should be conferred directly on a safeguarding professional, HSE healthcare professional or a member of An Garda Síochána only. However, where entry and inspection is to a private dwelling, a safeguarding professional, HSE healthcare professional or a member of An Garda Síochána should be required to make an application to court for a search warrant.

In addition to the safeguards mentioned in 6.2 above, the safeguarding professional, HSE healthcare professional or member of An Garda Síochána or the court (in instances involving a private dwelling) should be required to demonstrate it has considered the following factors before a decision is made to invoke this power/grant or refuse an application:

- the reasons for invoking this power and whether other options have been exhausted to deal with the concern before making the application (for example, whether social work skills have been used to overcome barriers to gaining access);
- whether there has been proper engagement with the adult at risk and a national advocacy service and other agencies or professional representative for the adult at risk;
- whether the adult at risk has capacity and the reason why he/she has withheld their consent for someone to enter their private dwelling; and
- whether an inter-agency approach has been taken to ensure full and accurate information is to hand to inform a risk assessment of the situation.

HIQA believes that those who live in a private dwelling have statutory and constitutional property rights which must be respected and these rights must

be balanced against the risk to a person's life and wellbeing. HIQA believes that such is the seriousness and complexity of these legal issues, that it warrants consideration by the courts.

HIQA also believes that a power of entry and inspection of a private dwelling should only be used in very limited circumstances. Other powers may be useful here, for example, where concerns are raised, a statutory right to require the (alleged) perpetrator to provide information and documentation and to cooperate with any investigation may be effective. A right to demand undertakings (commitments) from the (alleged) perpetrator to ensure that he/she agrees to refrain from certain behavior may also be effective. In the event of a breach of an undertaking, a sanction may be appropriate.

In respect of the Chief Inspector's powers under the Health Act 2007 (as amended), HIQA believes they should be amended to allow an additional right of entry to an unregistered designated centre where the Chief Inspector has a reasonable belief that an adult may be at risk of abuse or neglect.

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?

HIQA believes An Garda Síochána should only be allowed to use reasonable force where there is a risk to the life or serious risk to health or welfare of the adult at risk. Reasonable force should only be used in very exceptional circumstances.

HIQA believes that the level of protections afforded by the HSE safeguarding teams is significantly limited. It believes there should be an immediate extension of their powers to ensure that they can cooperate to the fullest degree possible with those entities and settings that come within the scope of the HSE Safeguarding Vulnerable Persons at Risk of Abuse: National Policy and Procedure (2014) (the "HSE Safeguarding Policy"), while also respecting the individual rights of the persons involved. The scope as to who or what services should be covered in the HSE Safeguarding Policy should cover all adults in Ireland who receive health and or social care services from HSE/publicly-funded services. This includes those receiving mental health services, substance misuse services, homecare services, day-care services and in-group or sheltered-living arrangements. This is recommended due to the ongoing risk of adults being subject to some form of abuse or neglect in these settings. However, HIQA also believes that adult safeguarding legislation and homecare legislation must be made a priority for the

Government and that those services which fall outside of the remit of HSE- or State-funded health and social care services are included within any new regulatory framework for adult safeguarding.

Issue 7: Safeguarding Investigative Powers

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? Please give reasons for your answer.

HIQA believes that a national adult safeguarding authority is the appropriate body, and that An Garda Síochána should 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*. Removal of a person from their home/nursing home would occur in very serious situations where the court is satisfied that the person requires immediate protection.

Where a person can remain in their own accommodation, the national adult safeguarding authority in conjunction with the HSE should provide appropriate immediate supports, for example homecare. This should be considered a priority whether or not civil remedies are being sought.

HIQA believes that cohabitation should not be a requirement for any form of protective relief to be granted in the context of adults at risk who are subjected to some form of abuse.

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?

HIQA believes that the appropriate body to make an application for a form of protective relief should be the national adult safeguarding authority, the HSE (safeguarding and protection teams) and An Garda Síochána.

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?

Yes. In order to avail of any form of protective relief available under the Domestic Violence Act 2018, the applicant must live with the alleged perpetrator. This automatically excludes many adults at risk from being able to avail of relief under the 2018 Act. Equally, the different forms of protective relief may not effectively deal with the nature of the abuse in question, for example financial abuse. For these reasons, HIQA believes that adult safeguarding legislation should include very clear provisions for barring orders, protection orders and safety orders that would apply in situations outside of the circumstances set out in the 2018 Act or the Non-Fatal Offences Against the Person Act 1997, and the national safeguarding authority, the HSE and An Garda Síochána should have the power to apply for such orders.

Research on different types of abuse indicate that psychological abuse or coercive control permeates all other types of abuse and increased levels of such abuse are particularly prevalent among older adults. HIQA is of the view that adult safeguarding legislation should include the offence of coercive control irrespective of family relationships.

HIQA also believes that the imposition of specific civil sanctions merits some consideration in the context of adults at risk of some form of abuse. More victims may be willing to report their concerns if they know that the matter will not be automatically catapulted into the criminal justice system. The standard of proof is lower in civil cases whereas the standard in criminal cases is beyond reasonable doubt.

Given the vulnerable nature of the victim in adult at risk cases, there may be evidential barriers for prosecuting someone who is suspected of committing the abuse. Also, the deterrent effect of a civil sanction may be sufficient to stop the abusive behaviour from reoccuring. The merits of a civil sanction being imposed on someone will of course depend on the particular circumstances of each case and will not be suitable in all cases, particularly more serious forms of abuse.

Some of the civil sanctions available under the CPA 2007 (such as compliance notices) may be worthy of consideration.

HIQA also believes that alternative dispute resolution such as a mediation should be explored in this context. It may not be a suitable option where an adult is being subject to abuse or neglect, but where there are welfare concerns, mediation may merit some consideration, particularly in the context of family or intimate relationships. Even if a concern is reported to An Garda Síochána, the formal criminal justice system may not be the best option in certain situations. Alternative ways to deal with wrongful behavior such as the restorative justice model in the juvenile justice setting might merit some consideration. Family support plans could be used to incorporate family members and widen the support network for the adult at risk. This would also help ensure the abuse or neglect stops and allow for better detection if it continues.

Issue 8: Reporting

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.

HIQA considers a hybrid or "reportable incidents" model is appropriate in this context and favors the recommendations put forward by the Australian Law Reform Commission (ALRC) in 2017. This model would require certain persons to notify the national adult safeguarding authority of:

(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.

The scope of what persons (or services) would be required to report to the national adult safeguarding authority needs to be carefully considered, as does the scope of what might constitute "a serious incident".

HIQA believes that it is imperative that any statutory duty to report must be introduced within a human-rights framework. If this is done, a balance can be achieved between self-determination and protection from abuse through minimum intervention (reflecting the principles of proportionality) and the provision of supportive services. The Adult Safeguarding Bill 2017 is somewhat lacking in this respect.

The Adult Support and Protection (Scotland) Act 2007 is relevant in this context. It establishes mandatory reporting but does so alongside the provision of care and support services made available during assessment and intervention. It also outlines explicit principles to guide the application of powers and duties in practice, which includes the duty to report that:

- interventions have to benefit the person andbe the least restrictive alternative,
- the person's views are sought along with those of relevant others,

- the person's participation in the process is maximized and their individuality respected, and
- the person is not to be treated less favourably than any adult not so affected by disability.

HIQA welcomes this approach and believes that learnings from Scottish legislation on how it operates in practice could be explored further in the context of this review.

Many public and private service providers within the community are well placed to identify early indications that an adult may be at risk in their interactions with banks, and legal and property services. Providers of services who are in a position of trust, in particular general practitioners (GPs) and providers of primary care services, have access to information regarding adults which may suggest that they are at risk of harm. Service providers should be aware of the signs of harm to adults within their respective sectors, and should have a legal duty to ensure organisational procedures are in place to guide staff when concerns are identified.

HIQA also believes that having such organisational procedures and internal measures in place are imperative alongside any statutory obligation to report. All those working to provide services to the community generally should also have a legal responsibility to report concerns to a national adult safeguarding authority, and to cooperate and share information where necessary with any adult safeguarding investigations.

It is important to target the intervention (and duty to report) at those most at risk as every concern or report raised will require investigation. A narrower definition of "serious incident" may prevent over reporting and false positives, and resources can be targeted at more severe forms of abuse. Notwithstanding this, a "serious incident" should not be limited to a one-off incident but should also include a pattern or series of acts that collectively amount to serious abuse or neglect of an adult at risk.

Reporting allegations of abuse or neglect *outside* certain professions and or settings would be permissible and individuals would use their personal or professional judgment and duty of care to determine whether or not to make a report about suspected abuse or neglect.

HIQA believes that statutory protections should be in place for those persons that report concerns in good faith, similar to the protections set out in the Protected Disclosures Act 2014 and the Protection for Persons Reporting Child Abuse Act 1998.

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?

Yes, it should be placed on a statutory footing and statutory protections similar to those set out in the Protected Disclosures Act 2014 should apply where the concerns are reported in good faith.

In addition to legislation, the code of practice or protocol referred to in Issue 4 could include guidelines to give persons and services some guidance on the parameters and principles underpinning this duty to notify the national adult safeguarding authority. The code of practice or protocol should be developed within a human-rights framework.

8.3 If a hybrid or "reportable incidents" model were to be enacted, to what incidents of abuse or neglect should mandatory reporting apply?

HIQA believes that the incidents of abuse or neglect should include all forms of serious abuse or neglect, including financial abuse against adults at risk. Mandatory reporting should only apply to those persons who have regular contact with adults at risk, such as bank officials, solicitors, medical professionals, social workers, care workers and inspectors of social services.

The appropriate threshold that must be met before a person, body or organisation is required to report a concern would depend on who the recipient body is, for example, it may be that it is only where a person has a reasonable belief that there is a serious risk to the life and wellbeing of an adult at risk that they must report their concerns to An Garda Síochána.

The threshold may be lower for reporting concerns to a national adult safeguarding authority, but would still require certain persons to notify to the national adult safeguarding authority:

(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.

The scope of what constitutes a 'serious incident' should include an allegation of any form of serious abuse and neglect against an adult at risk, including a series of acts or pattern of incidents that collectively amount to serious abuse or neglect of the person.

Issue 9: Independent Advocacy

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

Independent advocacy has an important part to play in adult safeguarding and HIQA believes that it is essential for independent advocacy to be underpinned by legislation. Whilst HIQA has seen improvements in how residential social care services for older persons and children and adults with disabilities promote resident autonomy, our findings from inspections are that services remain challenged in transforming from a paternalistic culture to one that recognises resident autonomy, person-centred care and the right to self-determination. Placing independent advocacy on a statutory footing is imperative in achieving this transformation.

The current advocacy landscape in Ireland for health and social care service users is comprised of multiple organisations with differing mandates and funding streams which provide varying levels and types of advocacy to service users. The absence of a statutory framework means that service providers are not legally required to engage with advocates. This can present barriers to access and challenges for service providers and their staff when a potential conflict arises between a residents' right to an independent advocate and their role, particulary where the service provider funds the advocacy service. There is a lack of national codes of conduct for advocates as well as insufficient training and awareness on what advocacy means and how it can be accessed.

HIQA believes that the discourse in Ireland on independent advocacy has changed in recent years. The implementation of the Assisted Decision Making (Capacity) Act 2015 and the ratification of the UN Convention on the Rights of Persons with Disabilities have shifted the focus from assisting people to obtain services, as evidenced in the Citizen Information Act 2007 (the 2007 Act), to enabling people to assert their will and preferences and be at the centre of their decision-making. HIQA believes that urgent legislative reform for independent advocacy services is required and that such reform must reflect a rights-based approach.

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

(a) it would be sufficient to commence the relevant provision of the Citizens Information Act 2007 providing for personal advocacy service; or

(b) If the answer to Q 9.1 is yes, do you consider that additional statutory provisions should be enacted providing that advocacy services could be provided in addition to those under the 2007 Act?

9.2(a) HIQA does not believe that the relevant provisions for personal advocacy services as envisaged in the 2007 Act are sufficient to provide independent advocacy to all adults at risk. Whilst HIQA considers that the 2007 Act provides an independent, transparent and accountable process for access to independent advocacy services, the current provisions are limited in scope and present certain barriers to access.

The scope of provision of personal advocacy services under the 2007 Act are limited and the provisions of the 2007 Act, if commenced in their current form, would potentially exclude persons who do not satisfy the definition of disability in this legislation. The mandate to provide advocacy services under the 2007 Act is to support individuals "in particular those with a disability, that would assist them in identifying and understanding their needs and options and securing their entitlements to social services". Qualification is dependent on satisfying criteria which require that by reason of a disability, a person is unable to obtain access to social services without the assistance of an advocate and there is a risk of harm to the health or welfare of the person if not provided with the social services they are seeking to obtain.

HIQA considers that the threshold for qualification envisaged by the 2007 Act is too high and is limited in scope, such that many of those who may require an independent advocate may not be entitled to one. For instance, service users who are already in receipt of social services may need an advocate to represent their views about service delivery or help them make decisions about their lives. HIQA also recognises that persons, other than those with a disability, as defined within the 2007 Act, may require access to independent advocacy services at different times in their lives. The additional requirement in the 2007 Act to demonstrate that there may be a of risk of harm to the health or welfare of an individual if access to the social service required is not obtained should be removed as this presents a barrier to access and does not promote personal autonomy and the right to self determination.

9.2(b) If the answer to Q 9.1 is yes, do you consider that additional statutory provisions should be enacted providing that advocacy services could be provided in addition to those under the 2007 Act?

HIQA believes that significant amendments of the 2007 Act as well as additional statutory provisions would be required to ensure that all adults at risk have access to an independent advocate when they need one. Such amendments would need to consider the scope of provision of services and the threshold for qualification to ensure that all adults at risk have access to independent advocacy services at appropriate times in their lives. For these reasons, HIQA believes that additional statutory provisions to those already contained in the 2007 would not be sufficient.

HIQA's view is that further consideration of statutory provisions for the implementation of independent advocacy services is required by the Commission and recommends as part of this review an analysis of the following:

- that the definition of "personal advocate" in the 2007 Act requires consideration. It is vital that the definition encompasses the independence of the advocate and sets out the role and functions of the advocate when interacting with adults at risk. HIQA favours the term "independent advocate" as it clearly represents the independence of the role to service providers, service users and their families

- that service providers should be required to raise awareness, promote access to independent advocacy and provide information to service users on independent advocacy so that service users are informed about their rights and are supported in accessing an advocate

- that where an independent advocate is appointed, they should be facilitated by service providers to support adults at risk to make decisions about their care

- that proactive investigative mechanisms or statutory administrative tools which promote and ensure access should be considered for inclusion

- that nationally-developed uniform guidelines, codes of practice and or regulations should be considered to set out appropriate competencies, qualifications, experience and training for independent advocates.

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?

HIQA believes that because independent advocacy is an essential component of adult safeguarding, the function of providing advocacy services should be vested in the national safeguarding authority. This would also be appropriate as the guiding principles of human rights and empowerment considered and proposed by the Commission in its Issues Paper are centrally relevant to independent advocacy. HIQA believes that the provision of independent advocacy services must be transparent, consistent and subject to guiding principles on accountability.

HIQA believes that it is also important that independent advocacy services are integrated in the context of their funding streams, reporting structures and professional standards. HIQA notes the observations of the Commission in relation to the proposals for an independent national advocacy body, and believes if advocacy is vested in a separate body to a national safeguarding authority this will add a further unnecessary layer to adult safeguarding and could lead to a fragmented approach.

Issue 10: Access to Sensitive Data and Information Sharing

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?

HIQA agrees with the Commission's view that the question of information sharing raises complex issues having regard to privacy rights and the general principles of the General Data Protection Regulation (GDPR) and the Law Enforcement Directive. HIQA is also of the view that an appropriate balance needs to be struck between the principles that underpin privacy rights and the need to promote the wellbeing of adults at risk and keep them free from harm.

HIQA does not believe that existing arrangements in place are sufficient to underpin adult safeguarding legislation. As the Commission's Issues Paper outlines, the sharing of information, including personal data, between public bodies is currently governed by a set of bi-lateral sharing agreements and ad-hoc legislation. This approach, coupled with the complex obligations of the GDPR, makes it difficult for public bodies to know when they should disclose information for the purposes of safeguarding, that is, responding to risks of physical, psychological or financial abuse posed to at risk adults. The decision to not disclose information could lead to continued abuse of an adult at risk.

The difficulty in making the decision to disclose information increases when one considers the potential cost of non-compliance with GDPR; public bodies risk enforcement actions by the Data Protection Commission (DPC) with potential penalties including fines of up to €1 million, and civil actions, where they are found in non-compliance.

The data protection risks are most pronounced where a regulatory body becomes aware of potential safeguarding risks which are outside its statutory remit, and which it cannot respond to directly as part of its regulatory activity. In these instances, there is no clear pathway under GDPR to enable the lawful disclosure of this information to another body for the purposes of protecting adults at risk. For example, a regulatory body may receive an allegation of abuse against an adult at risk using a particular service, but the service concerned is not regulated by the regulatory body and the allegation falls below the threshold for disclosure to An Garda Síochána under the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012, that is, it is an allegation involving verbal or emotional abuse of an adult at risk.

Disclosing the content of this allegation, which contains the personal data of the adult at risk, the alleged perpetrator and the identity of the person raising the concern, to another public body may not be in compliance with the GDPR principle that all data is processed lawfully, fairly, and in a transparent manner. This is particularly so as the disclosure is likely to give rise to negative, and potentially very serious, consequences for the alleged perpetrator. At the same time, failure to disclose the allegation may lead to continued abuse of the adult at risk and does not promote a preventative approach to reduce the risk of harm.

While consent can be relied on as a lawful basis for sharing of personal information, the situation is complex in the context of an adult at risk who may not have capacity to provide their consent. Even where the person has capacity, the consent needs to be specific and informed — the person needs to be told what will happen to the information when it is being processed. This is important in order for the consent to be valid.

These issues are particularly complex and give rise to a tension between the adult at risk's privacy rights and the potential risk to their health and wellbeing. HIQA would welcome clarity and guidance from the DPC on the issue of consent as a lawful basis for sharing of information in the context of adult safeguarding and the applicability of other lawful bases for the processing of information in this context.

It is important to note the limitations of current laws when it comes to safeguarding. While the Data Sharing and Governance Act 2019 (the 2019 Act) may assist public bodies in terms of sharing personal data generally, it is of limited application in terms of the disclosure of safeguarding concerns and risks in a health and social care setting. This is because the provisions of the Act[3] which assist in the sharing of personal data pursuant to a data sharing agreement do not apply to special category datas which include healthcare information. Accordingly, the 2019 Act does not assist in the sharing of information which relates to the health of a person or healthcare issues, for example, mismanagement of medical care, neglect of personal care needs, mental health issues and concerns in respect of psychological wellbeing. HIQA believes that changes to the 2019 Act should be explored as part of a holistic response in the context of legislative reform in this area.

In addition, whilst Section 19 of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016 requires prescribed public bodies to disclose specified information to the National Vetting Bureau, this requirement

[3] Section 5 and Section 13 the Data Sharing and Governance Act 2019 (the 2019 Act)

only applies when a genuine concern of harm or potential harm has been formed following an investigation, inquiry or regulatory process within the public body's statutory remit. This means that only a narrow category of safeguarding concerns can be disclosed under this legislation and the disclosure can only be made to the National Vetting Bureau.

The above difficulties in responding to concerns in respect of adult safeguarding can be contrasted with the approach which now exists under the Children First Act 2015 (Children First). Under the Children First framework there is clarity as to what information should be referred — the information is disclosed to the body with a statutory remit for investigation and responding to concerns, namely the Child and Family Agency. The legal obligation placed on public bodies to report all concerns that meet the threshold for reporting means that public bodies can refer information in the confidence that they are acting in accordance with GDPR requirements and also protecting children. This provides public bodies with a clear lawful basis under Article 6(1) (c) of GDPR for processing the data.

Many regulatory bodies, including HIQA, have a statutory duty not to disclose confidential information save where required by law. Section 84 of the Health Act 2007 prohibits the unauthorised disclosure of confidential information which may include allegations of abuse made to a HIQA employee, unless the disclosure has been authorised by HIQA or the disclosure is required by law.

Where the disclosure of confidential information is not required by law, as is currently the case with allegations of abuse that fall outside the requirements of Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012, the requirement to obtain authorisation from HIQA for the disclosure may impede the prompt and efficient disclosure of information to other bodies. It could, in effect, lead to continued abuse of an adult at risk. While HIQA does not believe that Section 84 should be removed or changed, it does highlight the need to have robust and comprehensive legislation in place so that the disclosure of confidential information in the context of adult safeguarding is permitted by law.

HIQA believes that the current approach to sharing information for the purpose of adult safeguarding requires radical review and it is recommended that consideration should be given to placing it on a statutory footing similar to that under Children First. Not doing so leaves public bodies in a difficult position and does not appropriately promote the wellbeing of adults at risk and keep them free from harm. HIQA also believes that when the sharing of information does occur it should be recorded, stored and managed in a confidential manner to protect the privacy rights and confidentiality of the

adult(s) at risk and other persons involved. Any reform in this context should also include adequate protections and safeguards for alleged perpetrators.

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.

HIQA considers that a statutory obligation to share information relating to safeguarding issues, similar to Children's First, is required. Without the legal obligation to disclose information, regulatory bodies and their staff will struggle to know what information they can report and to whom without risking non-compliance with GDPR. In addition, without specific guidance on what can be shared, staff may be forced to make judgement calls on each individual case, resulting in increased levels of uncertainty for them and their organisations and giving rise to lack of consistency as regards the sharing of information for the purpose of adult safeguarding.

While memoranda of understanding and data sharing protocols assist in the transfer of information and improve transparency, they do not in themselves provide public bodies with a legal basis for disclosing any data under Article 6 of GDPR. A statutory requirement, similar to Children's First, is necessary in order for the data sharing to be performed on the basis of legal obligation.

It should be noted that GDPR and the Data Protection Act 2018 recognise that data protection rights are not absolute and can be restricted where necessary for important objectives of public interest. Section 60(6) of the Data Protection Act 2018 allows for ministerial regulations to be introduced to restrict data subject rights where necessary for additional objectives of general public interest. To support public bodies in disclosing information in compliance with this legal obligation and to promote appropriate and proportionate sharing of information to prevent harm, it is recommended that ministerial regulations be introduced under Section 60(6) to restrict the rights of data subjects in a proportionate manner and as necessary to achieve the public interest objectives associated with safeguarding.

In order to provide for a robust framework for safeguarding adults at risk, a legal obligation to disclose information, similar to that under the Children First Act 2015, should be considered. This is the best way of ensuring that safeguarding risks can be responded to in a manner that is fair, efficient, proportionate and compliant with GDPR.

Health information plays a vital role in improving patient safety. Better information means better decisions and better, safer care. It is important that information is governed correctly and that personal information is protected. Unlike other European countries, Ireland does not have a legal framework around electronic health records or a national information governance framework for the sharing of information across the public and private sector. HIQA believes that further legislation is required to enable sharing of electronic health records and advance the eHealth agenda in Ireland, as set out in the eHealth Strategy. This will ensure transparency in relation how the electronic records are held by health and social care services, who has access to these records and how such information may be shared for the benefit of service users.

This approach will also ensure that public bodies have confidence that when they are disclosing information to prevent harm to adults at risk, they are doing so in full compliance with the law. It will also help ensure that any potential abuse of adults at risk is detected and investigated in a timely manner and help stop the abuse.

Issue 11: Multi-Agency Collaboration

11.1 Do you consider that:

(a) Non statutory inter agency protocols are sufficient to ensure multi agency cooperation in adult safeguarding,

HIQA recognises that responsibility for adult safeguarding spans across a diverse range of privately- and publicly-funded community and residential services and involves a number of sectors in Irish society, including the health, social protection, justice and financial sectors. In some cases, multiple organisations may be responsible for providing a health or social care service to an adult at risk and currently there is be limited joined-up thinking or coordinated multi-agency approaches. HIQA believes that a multi-agency cooperative and collaborative approach is required to ensure that responses to adult safeguarding issues are consistent and effective and that safeguarding responses are preventative, person centred, and adequately resourced, and have clear lines of management and oversight.

The current landscape of interagency cooperation for safeguarding adults at risk is underpinned by non-statutory policies, joint working protocols and memoranda of understanding which aim to enable organisations to escalate safeguarding concerns, share information and work together. Adherence to these policies is unenforceable and the level of protection can be limited in in some instances.

As addressed under Issue 10 of this response, there are limitations to the scope within which information can be shared and public bodies do not have a clear and transparent framework that facilitates such sharing and enhances cooperation. Compliance with informal arrangements can also be compounded by inadequate resource allocation, insufficient training and awareness of adult safeguarding issues and poor or ineffective leadership, accountability and oversight. Cooperation can sometimes be dependent on the development of good working relationships at a local level. These issues have resulted in the adoption of inconsistent practices from region to regin and have led to a lack of clarity on who has responsibility for the development, implementation and oversight of appropriate safeguarding plans.

HIQA believes that current non-statutory interagency protocols do not ensure a transparent and accountable multi-agency cooperation to adult safeguarding and fail to effectively promote a preventative approach to adult safeguarding.

11.1 Do you consider that:

(b) A statutory duty to co operate should be enacted?

HIQA strongly supports the introduction of a statutory duty to cooperate under adult safeguarding legislation. This would improve the efficiency, effectiveness and consistency of working arrangements between organisations and bodies who engage with adults at risk. Organisations and bodies will be better able to facilitate cooperation if there is a clear statutory framework in place facilitating the sharing of information, whether on the basis of a request made from another body or on a proactive basis, where one body provides information relevant to the function or mandate of another body. It is important that any legal provision to share information must comply with all relevant laws and achieve an appropriate balance between privacy rights under data protection law and the need to reduce harm to adults at risk.

Strong collaboration between services will minimise safeguarding occurrences and provide an effective response to ensure that adults at risk are supported and are at the centre of safeguarding decisions. It is essential that the principles of partnership and accountability underpin this legislation, especially when multiple services are providing varying levels and categories of service to one adult at risk. HIQA's established framework for the development of national standards uses a number of themes under which standards are developed. These themes recognise the need to build meaningful communication networks and relationships between services and the importance of effective leadership, governance and management to effectively safeguard adults at risk from harm.

HIQA believes that for collaboration between health and social care services to be meaningful and effective, a lead approach on adult safeguarding should be considered by the Commission, where, for example, the service provider providing the largest component of service delivery to the adult at risk is responsible for the coordination of assessment and intervention, reviewing progress and monitoring and communicating outcomes of safeguarding responses. This approach should reduce duplication and lead to greater efficiency and consistency of service delivery, ensure appropriate oversight and accountability of safeguarding responses and support joint decision-making in relation to service delivery. A clear statutory framework which sets out detailed provisions regarding how bodies would cooperate and integrate with each other in this manner and who would provide leadership in relation to safeguarding responses would provide certainty and ensure consistency with regard to the health and social care service responses to adults at risk.

HIQA also believes that the Commission should consider, in addition to a statutory duty to cooperate, that relevant state agencies as well as a national safeguarding authority should have a duty to promote and deliver public awareness campaigns on adult safeguarding issues. These campaigns would help the public recognise adult harm and abuse, encourage reporting of concerns, and help to prevent and respond to harm if it does occur.

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

HIQA believes that adult safeguarding legislation should place a statutory duty on State agencies to identify adults at risk, for example service regulators and professional regulators in the health and social care sector, financial and legal service regulators, the national safeguarding authority with responsibility for provision of independent advocacy services, and An Garda Síochána. Whilst HIQA recognises that the primary responsibility for the legislation should lie with the Department of Health, the legislation should be developed on a cross-governmental basis and consideration should be given to including the Department of Employment Affairs and Social Protection and the Department of Justice within the remit of the legislation. Listed below are some of the relevant state agencies which HIQA believes should have a statutory duty to cooperate:

- The HSE
- the Child and Family Agency (Tusla)
- Health Information and Quality Authority (HIQA)
- the Mental Health Commission, including the Decision Support Service
- the Medical Council
- the Nursing and Midwifery Board of Ireland
- the Dental Council
- the Health and Social Care Professionals Council
- the Pharmaceutical Society of Ireland
- the Pre-Hospital Emergency Care Council
- the Law Society of Ireland
- the Legal Services Regulatory Authority
- An Garda Síochána
- the Competition and Consumer Protection Commission
- the Central Bank
- the Banking Federation of Ireland
- the Department of Employment Affairs and Social Protection
- the Department of Justice.

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

HIQA agrees that there should be statutory provision for transitional care arrangements between child care services and adult safeguarding services. Children with a disability aging out of statutory or voluntary care are very vulnerable and can often fall between gaps in services. Among the findings in the 'Case Review Mary' report, are that coordination of service delivery was ineffective — there was ineffective interagency cooperation between the Child and Family Agency and the HSE, and there was a lack of shared understanding between services involved with Mary with regard to referral pathways.

Whilst the findings in the report also acknowledge that decision-making became efficient following the formalisation of interagency cooperation in 2016, HIQA believes that this protocol is still in a testing phase and that cooperation must be underpinned by legislation which promotes the principles of empowerment, as well as a rights-based approach, proportionality, partnership and accountability. Planning for transitional care should be undertaken in a timely manner and should be commenced for children at 16 years of age. Statutory provision would provide a consistent, coordinated and effective approach to transitional care arrangements and would ensure that the person in receipt of care is central to the process, thus ensuring their rights are fundamental to any decisions about their lives.

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