## National **Safeguarding** Committee



Promoting the rights of adults who may be vulnerable

### IASW National Social Work Conference 2018 Keeping Adults Safe: Right, Risks and Vulnerability

Patricia T Rickard-Clarke Chair National Safeguarding Committee 11 May 2018

The right of each person to be safe and free from abuse

"It's all about Human Rights" Baroness Hale [2014]

National Safeguarding Committee

## **Overview**



- National Safeguarding Committee (NSC)
- Data
- Actions by NSC
- Legislation and Policies: in place and expected
  - Assistant Decision-Making (Capacity) Act 2015
  - Adult Safeguarding Bill 2017
  - HSE Policy
  - Department of Health
- Opportunities to influence and advocate to promote rights



## **National Safeguarding Committee**

# Establishment of National Intersectoral Safeguarding Committee



- December 2014 HSE published its Safeguarding Vulnerable Persons at Risk of Abuse – National Policy and Procedures
  - Structures to be developed in order to support the safeguarding agenda
- December 2015 establishment of the National Safeguarding Intersectoral Committee (NSC)
- January 2016 first meeting and agreed terms of reference
  - Overarching remit is to support the development of a societal and organisational culture which promotes the rights of adults who may be vulnerable and safeguard them against abuse

## **National Safeguarding Committee**



- Multi-agency and inter-sectoral body
- Established by HSE but independent of the HSE in recognition of the fact that safeguarding vulnerable persons from abuse is a matter that cannot be addressed by any one agency working in isolation but rather a number of agencies and individuals working collaboratively with a common goal
- Membership key players in public services, legal and financial services, health and social care professions, regulatory authorities and NGOs representing older people and people with disabilities (30 organisations)

## NSC – Terms of Reference (include)



- Zero tolerance for abuse of adults who are vulnerable
- Provide strategic guidance to ... in relation to the promotion of rights and independence of all vulnerable adults
- Promote the rights ...through public awareness + activities of NSC
- Develop a national plan for promoting the welfare and safeguarding from abuse of adults (to include abuse by persons and institutions)
- Provide oversight, guidance and influence on legislation, policies and procedures when required
- Ensure that information gathering + analysis systems operate to inform effective management + learning in organisations
- Commission research, public awareness campaigns and training aimed at promoting the rights of adults who may be vulnerable



## Abuse

 Abuse is a violation of an individual's human and civil rights by any other person or persons (DH England)



## Data

## UCD-NCPOP Prevalence Study (Nov.2010) (National Centre for the Protection of Older People)



- Risk Factors
  - Both perceived and measured poor or below average health
    - Below average physical health increased risk three fold
    - While below average mental health resulted in a six-fold increase in risk
    - Decision-Making Capacity not included in the study (higher risk)
  - Social class and education are interrelated variable
    - Lower income and lower levels of education saw an increase in levels of mistreatment (Study – only income state pension)
  - Living arrangements most significant risk was in complex household where an older person lived with an adult child with or without other family
  - Social support and networks. Poor levels of community support or poor to moderate levels of family support were 3 – 4 times more likely to report abuse. People who identified poor family support were more likely to report financial abuse
  - Age older (over 80s)

## HSE Figures 2007 – 2014 (Older persons)



- Between 2007 and 2014 (8years), HSE received 12,152 referrals
- Substantiated abuse
  - Psychological 45%
  - Financial 20%
  - Physical 18%
  - Neglect 15%
  - Sexual 1%
  - Discriminatory 0.4%

## **Abuse Figures**

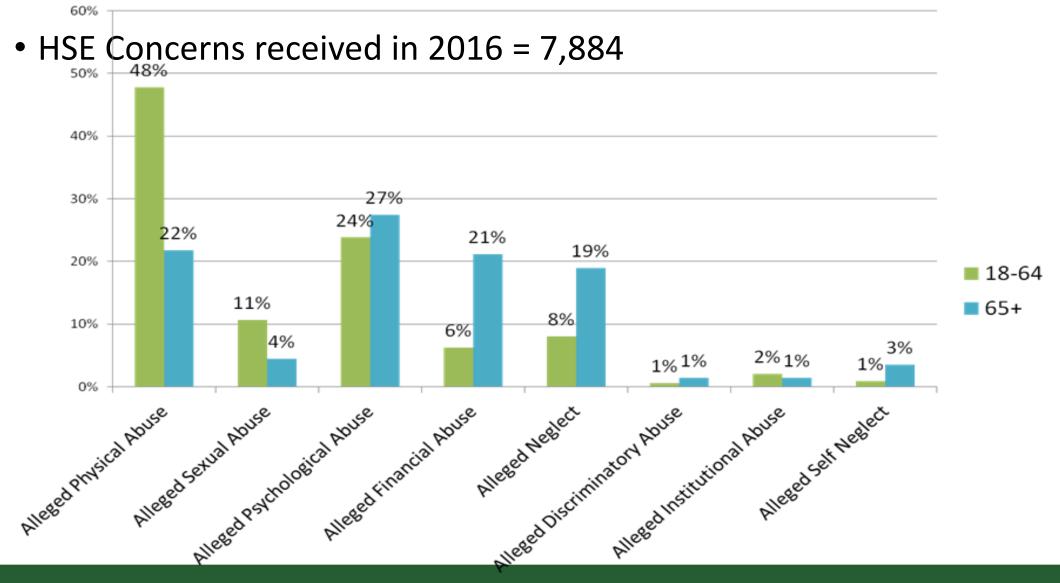
- HSE Open Your Eyes Reports 2009 2014 Number 2014 = 2000
  - Older People
  - Psychological and Financial abuse
- HSE Safeguarding Office 2014/2015
  - Disability and Older People and others
- HSE Safeguarding Office 2016
  - Disability and Older People and others
- Perpetrators mainly family/community
- Reporting low (confined to HSE Social Care)
- HSE Safeguarding Office 2017 Number 2017 est 10,000
  - Numbers ??????? + 25% impact of public awareness campaign of NSC

## Number 2014/2015 = 7500

### Number 2016 almost 8000

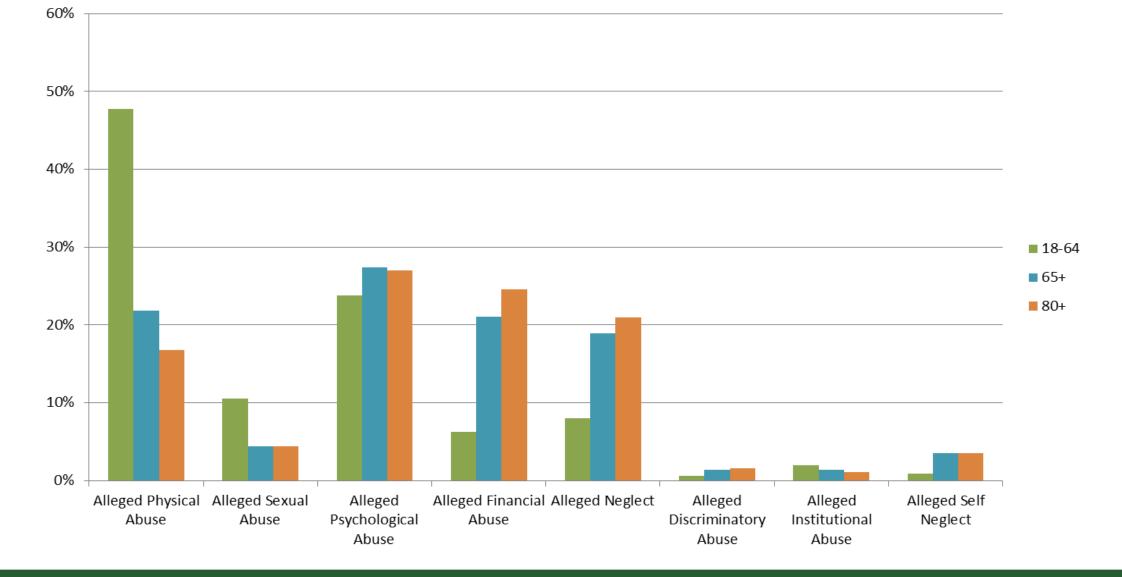


## HSE Figures 2016 – Older persons + Disability



## Alleged Abuse Categories by Age - 2016





## **International Prevalence**



- International abuse figure = 5% (under reported)
- In 2016 637,567 over the age of 65 years = 32,000 experienced mistreatment in the previous year
- In relation to older people, NCPOP report showed financial abuse most common type of abuse reported in relation to older people

## **Financial Abuse**



- Is there an understanding of the risk factors?
  - HSE figures 2016 Financial abuse
    - 18 64 years = 06%
    - Over 65 years = 21%
    - Over 80 years = almost 30%
- Is there an understanding of the level of financial abuse?
  - Recent UCD Report of 'Experience of Bank Staff of the Financial Abuse of Vulnerable Adults' (March 2018) – 66.5% had previously experienced a customer to be experiencing some form of financial abuse.
- Is there an understanding of organisational responsibility
  - ADMC Act 2015 provides legislative framework for individual circumstances (where capacity is an issue) be respected and safeguarded not simply an organisational approach
- Are there systems in place to ensure there are safeguards?



# **Actions by National Safeguarding Committee**

## Strategic Plan 2017 - 2021

- Launched in December 2016
- 4 Main Objectives over 5 years
  - Raising public awareness and understanding
  - Supporting and promoting the protection of people's rights
  - Informing and influencing Government policy
  - Building the Committee's capacity and capability
- How the NSC will do it
  - Communicating and engaging
  - Researching
  - Collaborating
  - Influencing

## NSC – Groups/Work

- Strategy and Resources
  - Strategy to include Adult Safeguarding legislation
  - Resources for the NSC
  - Budgeting and Accountability
- Public Awareness
  - Commissioned RedC Poll
  - Public Awareness Campaign
- State Payments/Finance
  - DEASP vulnerable customers group
  - Collaborated with UCD/BPFI research
- Wards of Court
  - Research Report voice of the ward of court



## Vulnerable Adults in Irish Society Nationwide Public Opinion Survey – RedC (Dec 2016)



- Base Line Survey
- 1 in 2 Irish adults claim experience of vulnerable adult abuse to either themselves (as a vulnerable adult) or somebody close to them.
- Physical abuse of vulnerable adults has been witnessed/suspected by 1 in 3 adults in the population; this is highest within peoples' private dwellings.
- Emotional abuse is the most common of all the abuse types with over 1 in 3 having experienced this type of abuse.

## Nationwide Public Opinion Survey – RedC



- Although the majority of Irish adults (61%) feel that vulnerable adults are well protected in Irish society, however just under 2 in 5 (38%) think that they are badly treated
- This coupled with the 1 in 3 who believe vulnerable adult abuse to be widespread, suggests the public believe there is a problem around safeguarding those who are limited in their ability to protect themselves
- Uncertainty around what constitutes psychological and financial abuse was identified as an issue which needs to be addressed
- Lack of clarity regarding the point of contact for reporting vulnerable adult maltreatment is recognised by 1 in 3, with those under 35 years significantly less likely to feel they know the appropriate avenue

## **Public Awareness Campaign**



- June 2017 Different issues of abuse raised (including chemical restraint)
- October 2017 Concentration on financial abuse
- Collaboration by members of the NSC strap lines, websites
- Newspapers
- TV and Radio (local radio)

2018:

- Development of a topline information plan
- Development of strategic NSC key media messages
- Development of materials to deliver key messages

# Informing and influencing Government Policy/Legislation



- Appearance before Oireachtas Joint Health Committee on December 2016 on publication of Strategic Plan
- Adult Safeguarding Bill 2017 introduced February 2017
  - Oireachtas Joint Health Committee 4 October 2017
  - Oireachtas Committee Report (December 2017)
  - Department of Health Policy Document (December 2017)

## Influencing Policy/Legislation



- Suggested amendment to Social Welfare Consolidation Act 2005
- Suggested amendment to Nursing Home Support Scheme Act 2009
- HSE Model of Care Eating Disorder (Submission)
- Submission on Heads of Bill on Deprivation of Liberty (Mar 2018)
- Collaborating with Department of Health on Independent Advocacy

# **Collaborating and Building Capacity of NSC**



- Instrumental in the setting up of a vulnerable customer programme in the Department of Employment Affairs and Social Protection with dedicated lead
- Contribute to the development of guidelines by financial institutions to safeguard against abuse
- Research rights based approach to service provision
- HIQA + MHC collaboration on National Standards on Safeguarding

# Supporting and promoting the protection of rights

- Review of current practice in the use of wardship in Ireland (Dec 2017)
  - Voice of the ward not heard
  - Functional construction of capacity not used
    - HSE Consent Policy + Ethical Guide of Medical Council not followed
  - No system for providing legal or non legal advocacy
  - Court procedures do not take account of vulnerability
  - Ward does not receive copy of reports or court order
  - No general system of review of Wards
- Review of the capacity of all Wards of Court under ADM(Capacity) Act 2015
- Important work to be done to support Wards in the review process
- Repeal of Lunacy (Regulations) Ireland Act 1871 (no more wardship) www.safeguardingcommittee.ie



## Council of Europe Principles concerning the Legal Protection of Incapable Adults (Rec.(99)4)

In relation to the protection of incapable adults the fundamental principle, underlying all the other principles, **is respect for the dignity of each person as a human being**.

The laws, procedures and practices relating to the protection of incapable adults shall be based on **respect for their human rights and fundamental freedoms**, taking into account any qualifications on those rights contained in the relevant international legal instruments.



## Legislation as part of the Safeguarding Agenda: Assisted Decision-Making (Capacity) Act 2015 Adult Safeguarding Bill 2017

## **Assisted Decision-Making (Capacity) Act 2015**



- Enacted in December 2015 2 Commencement orders made
  - UN Convention on Rights of People with Disabilities (ratified April 2018)
  - Hague Convention on International Protection of Adults

- What is it all about
  - Respecting each person as an individual with rights
  - It is person centred not organisation centred

# **Human Rights Obligations**



- Constitution of Ireland
- The European Convention on Human Rights
  - European Convention on Human Rights Act 2003
- UN Convention on the Rights of Persons with Disabilities 2006 (signed by Ireland in 2007, ratified 2018)
- Council of Europe *Recommendation on Principles concerning Powers of Attorney and Advance Directives for Incapacity* September (2009)
- Council of Europe Recommendation on the Promotion of Human Rights of Older Persons (2014)

## UN Convention on the Rights of Persons with Disabilities 2006 (Signed by Ireland 2007, ratified by Ireland 2018)



- State parties undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability (Art 4)
- State parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law (Art 12.1)
- State parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life (Art 12.2)
- State Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law (Art 12.4)



## Assisted Decision-Making (Capacity) Act 2015

- Assisted Decision-Making (Capacity) Act 2015
  - Is primary legislation and takes precedence over regulations (secondary legislation)
  - Existing professional regulations will require amendment and updating
  - Has very wide application
  - Applies to all people, organisations, businesses
  - State has particular obligations
  - Directly or indirectly affects all of us in our personal and professional lives
- Oversight by UN Committee: IHREC and NDA



## Who is the ADM(C)legislation for?

## **Relevant person**

- A person whose **decision-making capacity** is in question or may shortly be in question in respect of one or more than one matter
- A person who lacks capacity in respect of one or more than one matter
- A person whose capacity is in question or may shortly be in question in respect of one or more than one matter and who lacks capacity in respect of one or more than one matter at the same time but in respect of different matters

## **Capacity Models**



- Status Approach
  - Determines capacity based on a particular diagnosis/disability
  - Across the board assessment based on disability
  - Existing Wards of Court system
- Outcome Approach
  - Determines capacity on decision made (unwise decision)
  - Superimposes subjectivity
  - Demands uniformity at the expense of autonomy
- Functional Approach
  - Issue specific, context specific and time specific
  - Assessments may be different for different decisions
  - Fitzpatrick v K (No 2) 2008 IEHC

## **Presumption of Capacity**



- Common law principle now enshrined in legislation to state:
  - It shall be presumed that a person has capacity in respect of the matter concerned unless the contrary is shown in accordance with the provisions of the Act
- Onus/Burden of proof of lack of decision-making capacity lies with person who is alleging lack of capacity
- Applies to all regardless of physical or mental health/disability/age

## **Definition of Capacity/Functional Capacity**



Act provides:

- A person's decision-making capacity is to be construed functionally
- Capacity ability to understand at a time a decision has to be made, the nature and consequences of the decision to be made by a person in the context of available choices at that time

(Onus on assessor to set out options/choices. Risks and benefits, consequences of making or failing to make decision)

### Lack of Capacity



- A person lacks of capacity to make a decision if he or she is unable to
  - Understand the information relevant to decision
  - Retain that information long enough to make a voluntary choice
  - Use or weigh that information as part of the process of making the decision or

(Not necessary for a person to demonstrate a capacity to understand and weigh up every detail of the respective options, but merely the salient factors KK case 2012)

 Communicate decision by any means (including sign language/assistive technology) or if the implementation of the decision requires the act of a third party

If a person cannot undertake <u>any one</u> of these four aspects of the decisionmaking process, then he or she is unable to make a decision.

## Support must be given to maximise decision-makin

- Capacity Person is not to be regarded as unable to understand information relevant to a decision if they are able to understand an explanation of it given in a manner appropriate to his/her circumstances (clear language, visual aids or any other means)
- The fact that a person is able to retain information relevant to a decision for a short period only does not prevent him/her from being regarded as having capacity to make the decision

(Prompts may be necessary to assist)

Obligation to support a relevant person

### **Assessing Capacity**



 The fact that a person lacks capacity in respect of a decision on a particular matter at a particular time does not prevent him/her from being regarded as having capacity to make decisions on the same matter at another time

(Make sure correct environmental factors are suitable for the person – onus on assessor) (**Time specific**)

 The fact that a person lacks capacity of a decision on a particular matter does not prevent him/her from being regarded as having capacity to make decisions on other matters (Issue specific)

(When there are doubts about capacity, assessment should be done at highest level of functioning and only if it is necessary)

### When is capacity assessed? Who assesses it?



- When: In line with functional assessment time specific, issue specific and only when it is necessary to assess after all supports have been given
- Who:
  - Will depend on particular decision to be made
  - Generally it will be the person who needs the decision to be made
    - Financial transaction *financial service provider*
    - Legal transaction Transferring Property, EPA, Will solicitor
    - Tax returns Accountant
    - Consent to medical treatment *healthcare professional*
    - Day to day *carer*
- Document: Justify findings based on legislative criteria



Legal Test: Decision-making capacity = Not mental capacity

• It is the ability to make a decision

Medical Test: Medical assessment of mental state is a diagnostic test

• Used to determine appropriate treatment/care

(Direct communication with and support for the relevant person is necessary in order to fully comply with the legislation)



## **Guiding Principles (There are 10)**

- Have due regard to the need to respect the right of the relevant person to dignity, bodily integrity, privacy, autonomy and control over his/her financial affairs and property
- Will and preference of relevant person is dominant feature of the legislation not 'best interests'

### **Decision-Making Mechanisms**



- Planning in Advance (person with capacity)
  - Advance Healthcare Directive (AHD)
  - Enduring Power of Attorney (EPA) (to include some healthcare decisions)
- When capacity is in question or may shortly be in question
  - Decision-Making Assistance Agreement (DMAA) (person makes decision)
  - Co-Decision-Making Agreement (CDMA) (decision made jointly)
- When person lacks capacity to make a decision (court application)
  - **Decision-Making Representation Order** (court or another person makes decision)



### Safeguarding Issues Interacting with persons with legal authority

#### What authority has been given?

- Is it general or specific authority?
- Is it joint and/several authority?
- Is it limited as to circumstances?
- Are there restrictions imposed?
- How do you find out?
- What processes are in place to capture?

### **Deprivation of Liberty**



- Draft heads of Bill published in Dec 2017
- DoL safeguards to become Part 13 of ADMC Act 2015
- Must comply with ECHR and UNCRPD
- Consent required before admission
- Person has a right to leave
- Review

Detailed legislative provisions to be published 2018

#### **Adult Safeguarding Bill 2017**



- Introduced in Seanad in April 2017 by Senator Colette Kelleher
- Received all party support (including Government)
- Passed to Committee Stage
- Joint Health Oireachtas Committee Report December 2017
- Department of Health set up Adult Safeguarding Policy Unit Dec 2017
- NSC collaborating but very much demanding an 'all of Government approach'

## Adult Safeguarding Bill 2017 Main Provisions



- Definitions 'adult at risk' unable to protect him or herself from abuse or harm
- Establishment of National Safeguarding Authority
  - To promote the safeguarding of adults at risk and to reduce the abuse and harm of adults at risk
- Investigations by Authority
- Right of entry and inspection by authorised person
  - To protect person
  - To obtain personal records
- Mandated person
  - To report
  - May be required to assist
- Authorised Person (staff of the Authority)
- Independent Advocate

## Why we need adult safeguarding legislation



- State, state agencies and organisations must have clear obligation to prevent abuse and to protect adults who are at risk
- Prevalence of adult abuse and exploitation highlights the urgent requirement for adult safeguarding to be placed on a statutory footing. HSE Policy is limited in its scope and has no statutory force
- UNCRPD requires that effective legislation and policies are put in place to ensure instances of exploitation, violence and abuse are identified, investigated and, where appropriate, prosecuted
- If safeguarding is everyone's responsibility, the legislation must be developed on a cross governmental, interagency and societal basis

### **Some suggested Guiding Principles**



- Each person has the right to be safe and live life free from harm
- Any intervention in respect of safeguarding must respect the rights of the person and promote the person's health and wellbeing
- Each adult at risk is entitled to access to an Independent Advocate to assist, support and empower them
- Safeguarding adults at risk is everyone's responsibility
  - State has an obligation to enact legislation to impose a duty on service providers to ensure organisational procedures are in place



## Policies

#### **Policies and Standards**



- HSE Review of 2014 Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures - due for completion in 2018
  - McCoy Report (Aras Attracta) need for legislative underpinning
- Department of Health
  - Will undertake an extensive exercise of research and policy development to assist in framing an appropriate policy and legislation for the health sector
  - Public consultation and engagement process in 2018
- HIQA and MHC National Standards for safeguarding adults
  - To promote best practice in providing person-centred, safe and effective care and support in health including mental health and social care services across Ireland
  - Consultation Process

## **Opportunities to influence**



- Issues that need to be addressed
  - State's obligation to have an all of government approach
  - Statutory duty to promote an individual's wellbeing and to protect them from abuse and neglect
  - There must be a statutory requirement to identify need, to identify risk, to identify the route to services to meet those needs, the mechanism for intervening and review and not simply to wait until an urgent safeguarding issue arises
  - Emphasis must be on support and prevention in addition to protection
  - Practice must be underpinned by National Standards
  - Sharing of data between organisations
- A clear statutory framework with a clear objective in relation to adult safeguarding is required supported by clear principles to guide its application



# Thank You