Mandatory reporting and Adult Safeguarding-an exploration of international practice

Safeguarding Adults at Risk of Harm Webinar: New research and perspectives, University of Bath, Thursday 15th April 2021
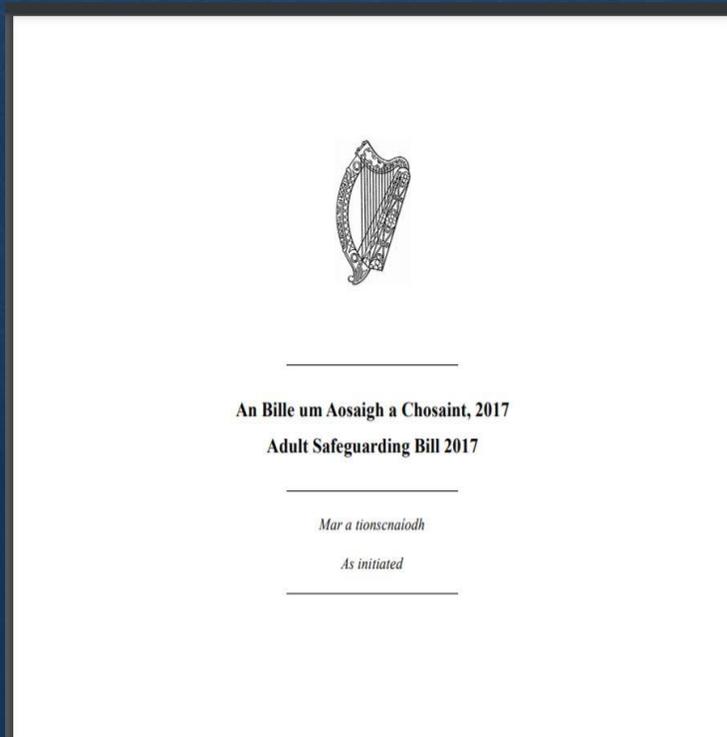
Dr Sarah Donnelly, Assistant Professor of Social Work, School of Social Policy, Social Work and Social Justice, UCD

Email: sarah.donnelly@ucd.ie

Twitter @sarahmdonnelly1

Methodology and Brief

◈ To undertake a realist evaluation of the different approaches to reporting pertaining to safeguarding and drawing on additional literature in this field as necessary.

◈ This desk-based evaluation set out to address the question 'what works, for whom and in what circumstances?' (Pawson, 2006)

◈ The review sought to explore reporting models, legislation and the wider adult safeguarding literature in jurisdictions selected for their potential relevance to Ireland

◈ To develop a typology of different reporting systems

◈ To identify and critically appraise options arising from the *Review* that may inform the implementation of the legal framework proposed in the *Adult Safeguarding Bill 2017*.

An Bille um Aosaigh a Chosaint, 2017
Adult Safeguarding Bill 2017

Mar a tionscnaíodh

As initiated

Adult Safeguarding Policy and Legislation

- Policy and practice is characterised by competing debates about how regulators define core concepts and reporting systems.

- Such laws usually set out the overarching principles and scope of adult safeguarding, and either establish, or clarify, response pathways (Duffy et al., 2015).

- They may also fill significant legal protection 'gaps' when adults lack capacity, experience or are at risk of abuse (Carter Anand et al., 2014; Kaspiew et al.,2016).

- Unintended outcomes can occur, including potentially intrusive professional involvement in adults' lives with or without their consent, undermining the rights and autonomy of individuals (Harbison et al.,2012; Keeling, 2017).

- Protection and autonomy are not essentially conflicting; it can be the case that protective action may promote a person's autonomy in the long-term (Preston-Shoot and Cornish, 2014; Stevens, 2013).

Typologies of Reporting Options

The Review identified four possible reporting models:

- **Option 1: Universal Mandatory Reporting**

- **Option 2: Mandatory Reporting by designated categories of people**

- **Option 3: Permissive/Discretionary/Voluntary Reporting applies to individuals who are not mandated to report elder or dependent adult abuse by law**

- **Option 4: Combination of Mandated and Permissive Reporting**

Contexts (C)

- Reporting systems reflect the context, ideologies and intent that underpin the development of adult safeguarding in different countries and states.

- Legislation and policy evolved as responses to the publication of reports, often drawing attention to abuse of older people and/or people with a disability (Donnelly and O'Brien, 2018).

- In some instances, international conventions such as the UNCRPD often precipitated changes in legislation and policies. National drivers were also evident.

- The concept of proportionality was a constant across jurisdictions.

- Any intervention must provide benefit to the adult, but also that this could not have been reasonably achieved without intervention. Any intervention must ensure the least restriction of the person's rights and freedoms.

Mechanisms (M) and Outcomes (O)

◈ A number of reporting mechanisms emerged from the analysis of the literature:

Two Case Examples

◈ *Australia - Age Care Amendment (Security and Protection) Act 2007* requires mandatory reporting by staff of allegations or suspicions of physical or sexual assaults by staff in care home residents

◈ **The Scottish** *Adult Support and Protection (Scotland) Act 2007* is the mechanism which requires mandatory reporting by specified persons. Underpinned by an explicit set of fundamental principles and includes the principle of proportionality as set out under ECHR.

- Central to any reporting process is the need for clear definitions and thresholds that set out the parameters of the problem, as captured in the legislation.

- A contrast can be made between countries where the intention is to protect all adults experiencing, or at risk of, abuse and/or harm, and those where a different approach is taken.

- The intent is to safeguard the well-being of all adults by building supports to enable them to prevent, at least at some level, abuse and/or harm (Stewart, 2016)

- The debate has increasingly focused on organisational and institutional settings, rather than more broadly across the quality of services and consciousness of society (Donnelly and O'Brien, 2018).

- One of the difficulties in assessing the merits of the reporting systems is in establishing causality in the midst of legal, organisational and professional decision-making processes.

- As Campbell (2016, p.101) puts it: 'Do those at risk of harm feel safer because of this activity?'

Reflections

Table 1: Summary Table of Reporting Models by Jurisdiction

Jurisdiction	Legislation	Reporting Model
Australia-General	Aged Care Act 1997, and Aged Care Amendment (Security and Protection) 2007 sets quality standards for care recipients in residential care and in their homes	• **Mandatory reporting** by staff of allegations or suspicions of **physical** or **sexual assaults** in residential care facilities.
New South Wales	New South Wales Ombudsman Act 1974. Relates to people with disabilities in supported group accommodation	• **Mandatory reporting of specified conduct and incidents:** a) Employee to client incidents, b) Client to client incidents, c) A contravention of an apprehended violence order made for the protection of a person with disability, or d) An unexplained serious injury to a person with disability
Canada-General		• **Permissive reporting** of **financial abuse** by **banks and financial institutions**.
Nova Scotia	-Adult Protection Act 1989, amended, 2014. -Orders for protection, entry, assessment, protective and removal can be applied for through the courts. -Protection for Persons in Care Act 2004	• **Universal Mandatory Reporting** every person with information indicating that an adult is in need of Protection must report that information to the Minister, if they fail to do so the person is guilty of an offence. • Includes **Mandatory response** and a **duty to refer for assistance**. • **Permissive reporting** system applies to **general public**. **Mandatory Reporting** for **Service providers**.
British Columbia	Adult Guardianship Act 1996	•**Permissive Reporting by any person** with information about abuse or neglect can make reports to a designated agency. •**Duty to respond.**
England	Care Act 2014	• **Permissive Reporting** framed with a **duty to protect** and **duty to respond** including needs assessment and provision of support. Duty on professionals to cooperate and share information and follow statutory guidance
Northern Ireland	No Legislation has been enacted but policy in place. Adult Safeguarding: Prevention and Protection in Partnership Policy (2015)	• **Permissive reporting** system, with operational policies and procedures directing how safeguarding concerns should be addressed.
Scotland	Adult Support and Protection (Scotland) Act 2007 -Duty on Ministers to prepare a Code of Practice -Includes powers of entry, power to interview and protection orders.	• **Mandatory reporting:** A duty to report on public bodies or office holders who know or believe a person is an adult at risk of harm and that action needs to be taken to protect them. • **Required to make enquiries and duty to cooperate.**

Critical Considerations

◈ A guiding principle of the human rights framework and legislation is proportionality - the objective of a proposed provision must be of sufficient importance to warrant over-riding a constitutionally protected right and must relate to concerns that are both pressing and substantial.

◈ Statutory guidance on roles and responsibilities within a Code of Practice can help support a 'dignity of risk' approach, ensuring freedom of choice, and control on what is important *to the individual*, not what is important *for them.*

◈ If reporting is to provide benefit to the adult that would not otherwise have been achieved, a mandatory response and a duty for other agencies to co-operate in responding to cases of concern are critical.

◈ Legislation not sufficient in itself - culture change to one of rights-consciousness.

◈ Making safeguarding 'everybody's business' -awareness raising and education about human rights to empower people to challenge organisational norms and take action to safeguard themselves or someone else they know.

Option 1: Mandatory Reporting- Advantages

◈ Intention of providing a comprehensive system of reporting by designated persons such as health and social care professionals.

◈ Notion of 'certainty' to this approach – assumption hat there will no longer be situations where individuals or institutions can 'turn a blind eye' to abuse and that there would be no ambiguity as to what designated persons may have to do or what action needs to be taken.

◈ Implies early interventions which may help prevent or reduce further harm or abuse.

◈ Can act as a deterrent to abusers, given the intention of the legislation.

Option 1: Mandatory Reporting Disadvantages

◈ Can create a culture of reporting rather than acting, dissuading adults at risk from disclosing incidents for fear of being forced into residential care or hostile legal proceedings (Age Action,2011).

◈ Can also overwhelm already overstretched adult safeguarding systems and raising the barriers/threshold to investigate, redirecting vital preventative and service provision resources in order to respond to reports.

◈ Create ethical dilemma between a mandated duty to report and the requirement to respect and ensure client confidentiality, impinging on relationships between professionals and an adult at risk.

◈ Mandatory Reporting has the potential to directly conflict with principles of UNCRPD and Capacity Legislation.

Option 2: Permissive Reporting Model Advantages

◈ Can be helpful where the focus is on establishing a relationship with the person in the hope that over time, and through building trust, changes could be negotiated which could potentially reduce the level of risk (Mackay,2017).

◈ Tends to be explicit in recognising the protection of each citizen's human rights and autonomy as prescribed by Article 16 of the UNCRPD.

◈ Implies protection for the privacy and self-determination of adults at risk and avoids potential ethical dilemmas encountered by designated persons who, in the mandated model often have to breach confidentiality, with the potential loss of trust and therapeutic relationship with citizens.

Option 2: Permissive Reporting Model Disadvantages

- The decision to report can be subjective, and dependent on professional ideology, and ambiguities are created because there is no statutory reporting requirement.

- Inclusion of an obligation on the Authority to develop a code of practice or the development of statutory guidelines for reporting and responding offers clarity and direction, and consistency in professional decision making.

- Practices such as 'Making Safeguarding Personal' are a fundamental part of the safeguarding process, to enable practitioners to work with an individual's stated outcomes rather than imposing outcomes (Lawson et al.2014).

Option 3: Reportable Incidents within a Permissive Reporting Framework Advantages

◈ Hybrid model option - overall permissive reporting approach, with mandated reporting relating to certain types of conduct that cause harm where an individual is relying on formal support to meet daily needs.

◈ Reportable incidents may also be specified to those individuals who lack capacity.

◈ Allows for proportionality and risk responsiveness.

◈ Enables the targeting of early intervention measures e.g. flagging of high numbers of reportable incidents or where multiple referrals regarding client to client incidents relate to an individual client (Australian Law Reform,2017).

◈ Mandatory reporting of 'reportable incidents' acknowledges that circumstances or situations combined with other factors can place a person in a more vulnerable situation, putting them more at risk of harm than others.

Option 3: Reportable Incidents Within A Permissive Reporting Framework

◈ Restricting protection to those in receipt of services (in the community or in residential care) can be perceived as problematic. However, the focus of NDIS Quality and Safeguard Framework/ legislation is people, regardless of their disability, have a right to good quality and safe services and should be supported to make complaints and speak out if rights impinged.

◈ Often interventions are targeted at those viewed to lack capacity; such approaches can be considered discriminatory and exclusionary when supported decision-making processes are absent.

◈ It may be undesirable to implement a reporting system which creates different reporting mechanisms (and therefore different levels of protection for adults at risk).

◈ This reporting model offers an arguably more balanced approach between ensuring protection and a dedicated response to what is often the most severe types of abuse or those who are particularly vulnerable for example, individuals in residential care settings, whilst also striving to maximise autonomy.

◈ Limiting the scope of abuse with a mandatory reporting requirement may help to reduce over reporting.

Falling Through the Cracks Study (Donnelly and O'Brien, 2019)

Online Survey N=116 respondents (social work practitioners)

Legislative Provision	Survey Respondent Ratings
Duty to secure adult involvement in decision-making	94% of respondents felt this would be helpful or very helpful
Duty to Report	91% of respondents felt this would be helpful or very helpful
Mandatory Reporting	61% of respondents felt this would be helpful or very helpful
Duty to Cooperate	92% of respondents felt this would be helpful or very helpful
Duty to consider importance of providing advocacy and other services	91% reported this would be helpful or very helpful of respondents felt this would be helpful or very helpful
Duty to Provide Assistance	90% of respondents felt this would be helpful or very helpful
Power to obtain information	88% of respondents felt this would be helpful or very helpful
Banning Orders	89% of respondents felt this would be helpful or very helpful
Assessment Orders	79% of respondents felt this would be helpful or very helpful
Removal Orders	75% of respondents felt this would be helpful or very helpful

Additional protections required to ensure that adults at risk are fully safeguarded
(Donnelly and O'Brien,2019)

"My experience in relation to safeguarding, people are certainly willing to refer but there's a risk that nobody wants to do the safeguarding. Safeguarding as everybody's business is another great cliché…But again I make the point, one person or one team on their own is not going to save anybody, it's not going to reduce the risk. It is a multiagency and multidisciplinary effort so I think anything that would formalise that approach more. I would certainly welcome that. Because my experience has been to date that…you know some individuals and professionals see safeguarding as merely reporting and that's it."

Implications for Policy and Practice

Key concepts: **Protection** and **Empowerment.**

◈ Adult Safeguarding legislation - ensure interventionist and compulsory measures to protect do not excessively restrict the rights of the individual including their autonomy, private and family life. The principle of proportionality is therefore particularly pertinent.

◈ In acting to reduce harm, this principle must be weighed against the likelihood of harm occurring, its severity, and the impact this will have on choice and control. Where a proportionate approach is not taken, agencies may do more harm than good and cause unjustifiable harm to citizens.

◈ Reporting model chosen needs to align with principles of UNCRPD and capacity legislation which sets out to empower and affirm the rights of all citizens to be in charge of their own lives.

◈ Legislation can offer a very public appearance of doing something about a problem, but its effectiveness, as observed by Harbison et al (2012), will depend on the provision of adequate funding for proper support services and programmes in the community.

◈ Ultimately, the success of any legal approach will rest with professional judgment, knowledge and skills of practitioners in balancing autonomy with protection (Preston- Shoot and Corish, 2015) and the putting in place of mechanisms to listen and act on the views of adults at risk.

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