

Summary

1. Abuse or harm of an older person can take many different forms.
2. Referral rates of alleged abuse against older people in Northern Ireland are increasing.
3. There is no agreed definition of what constitutes abuse against an older person in Northern Ireland.
4. There is no single piece of legislation to protect older people from abuse in Northern Ireland.
5. England, Scotland and Wales each have specific legislation on adult safeguarding.
6. There needs to be clearly defined legislation which reflects equality and human rights principles in order to adequately protect older people from abuse.

What is abuse?

Abuse against an older person can take many forms; it can be physical, emotional, financial and sexual, as well as through neglect. Older people in Northern Ireland deserve to have confidence that if they experience abuse, or are at risk of abuse, that the law can adequately protect them. At present, there is no single piece of legislation in place in Northern Ireland which protects older people from different types of abuse; instead, protections are derived from a range of different laws. There is also a lack of clarity around definitions used in relation to abuse of older people, including the definition of a person "at risk of harm for abuse," and what "harm or abuse" is. Unlike in other parts of the UK, there is no statutory duty of care on those working with older people; instead, there is an expectation of "good will" and professional judgment in the practice of their duty of care. This means that older people who experience or are at risk of abuse are not afforded adequate levels of protection in Northern Ireland.

The Commissioner believes that this can be addressed through the introduction of an Adult Safeguarding Bill which will ensure that older people across Northern Ireland are adequately protected from abuse.



Background

The Northern Ireland Adult Safeguarding Partnership (NIASP) reported an increase in the number of incidences of alleged abuse against older people, rising from 1715 in 2011-2012 to 3023 in 2013-2014. Safeguarding older people from abuse is a growing concern, and a review of the adequacy and effectiveness of the law around abuse of older people was identified by the Commissioner for Older People as a key priority in her Corporate Plan. Through her engagement with older people and older people's organisations, the Commissioner found considerable ambiguity regarding the current laws in Northern Ireland in relation to abuse of older people. She also met with professionals across the health and legal professions, many of whom shared her concerns. The Commissioner then worked alongside a team of academics to identify the key gaps in current legislation with a view to making recommendations on how these could be addressed. This is part of her statutory function as detailed in the Commissioner for Older People Act (Northern Ireland) 2011, which outlines a range of duties and powers, including keeping under review the adequacy and effectiveness of law and practice relating to the interests of older people. It is for this reason that the Commissioner has conducted this research, and is advising Government on the need to introduce a single Adult Safeguarding Bill.

Current situation

In Northern Ireland, older people are not afforded 'adequate' legislative protection from potential abuse and consequently may not obtain justice if they are the victim of abuse. Research conducted for the Commissioner by a consortium of academics and practitioners from Queen's University Belfast (QUB) and the University of Ulster (UU) found that there is a disparity of protection within existing legislation for older people who have 'mental capacity' and those who are assessed as having a 'lack of mental capacity.'

For older people with mental illnesses, including dementia, there is a higher level of protection afforded through the Mental Health (NI) Order. In addition, the emerging draft Mental Capacity Bill for Northern Ireland will provide increased protection for older people who lack mental capacity. However, older people who have the mental capacity to make decisions but are under coercion from people with whom they have a relationship of trust or dependence can be particularly at risk of abuse.

Currently there is no specific legal protection available for older people falling into this category and the recommendations made in this report focus particularly on addressing this gap and improving legislative protection to all older people 'at risk' of harm or abuse.

Recommendations

The Commissioner is calling for a single Adult Safeguarding Bill to address gaps in existing legislation to include the following key areas:

- Definitions
- Duties
- Oversight Board
- Powers

The following sections will address each of these gaps and make recommendations as to how a single Adult Safeguarding Bill could ensure better protections for older people.

Legislation in England, Scotland and Wales

England, Scotland and Wales have legislation in place to protect older people from abuse, however each of the three have adopted a different approach. The Adult Support and Protection Act has been in place in Scotland since 2007. The Care Bill 2014 received Royal Assent on 14th May 2014 and is now an Act of Parliament in England and the Social Services and Wellbeing Act 2014 has recently been enacted in Wales.

Definitions

The definitions used currently in adult safeguarding in Northern Ireland are unclear. A clear definition is required in terms of:

1) A "person who is at risk;"

Creating a single, clear and easy to understand definition of a person 'at risk of harm or abuse' in statute is a critical first step. A clear definition will help practitioners in their role by assisting them in the exercise of their professional judgment in complex circumstances. Robust and detailed guidance alongside a clear definition will also be required and should be underpinned by statute.

2) The "abuse or harm" – i.e; what they are at risk of;

A clear definition of 'harm or abuse' as well as supporting guidance is essential.

3) What constitutes "financial abuse;"

A clear and unambiguous definition of 'financial abuse' is required. Reports of alleged financial abuse are rising in relation to older people. A specific legislative reference to financial abuse in new legislation will help support better recognition and identification of instances when financial abuse is occurring.

The World Health Organisation (WHO) (2002) defines elder abuse as: "A single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person or violates their human and civil rights."

Creating a single, clear and easy to understand

definition of a person 'at risk of harm or abuse' in statute is a critical first step for ensuring protection, and would help practitioners identify individuals that need protection.

Duties

Placing specific statutory duties on people who work with older people who are at risk of harm or abuse is required. These duties should apply to all 'relevant organisations' working with older people, including police, health and social care practitioners and care workers across all statutory, community, voluntary, independent and private sectors.

1) **A duty to report** any suspected cases of abuse or harm should be placed on all identified 'relevant organisations.'

2) **A duty for the 'most appropriate organisation to make enquiries or conduct investigations when a referral is received.'** The most appropriate organisation to make the enquiry or conduct the investigation should be determined on a case by case basis. There should also be a requirement to fulfill this designated duty and to complete specific stages of enquiry or investigation in a timely fashion, which should be outlined by accompanying guidance.

3) All relevant **organisations working with older people at risk of harm or abuse should also be bound by a duty to provide appropriate services.** 'Appropriate services' here would include services such as advocacy.

4) Throughout the safeguarding process, **all relevant organisations should be bound by a legislative duty to cooperate with each other** in order to best protect an older person at risk of harm or abuse.

Oversight Body

An adult safeguarding board empowered by statute should be established to act as an oversight body to protect older people at risk of harm or abuse. It would be a matter for this board to hold the relevant membership organisations to account. It is expected that 'relevant organisations' would include all statutory, community, voluntary, independent and private organisations working with older people.

Powers

Specific powers within new legislation to protect older people at risk are required. The Commissioner recognises that these would be used only with appropriate safeguards in place.

The **power of access to a person's home or residence for the purposes of conducting a private interview** where access is not available should be implemented. 'Reasonable cause' here could be tested through an application to a District Judge, only if exercising the power would not result in the older person being at greater risk of harm or abuse. This power would allow for an independent assessment of a person's situation. Further to this, safeguarding needs to take place in the absence of the suspected 'abuser.'

Protection

The Commissioner recommends that there is **protection from civil liability for those people making a report of suspected abuse.** There should be additional support and encouragement for professionals who whistle blow so that they feel adequately protected when reporting allegations of suspected abuse.

Other Considerations

The Commissioner's report identified some other areas for consideration which are outlined below. The Commissioner feels that each of these recommendations should be subject to further consideration and public consultation before any final decision is taken on whether or not they should be included within a proposed Adult Safeguarding Bill.

- A power to remove an individual at risk.
- A power to ban a suspected 'abuser' from contacting the specified individual or attending a particular location.
- A power to access financial records.
- A specific criminal charge of 'elder abuse.'
- A specific criminal charge of 'corporate neglect.'

SUMMARY OF RECOMMENDATIONS

In summary, the Commissioner for Older People for Northern Ireland is calling for a **single Adult Safeguarding Bill** which is clear and which includes the following:

Definitions:

1. A clear and easy to understand definition of an 'adult at risk.'
2. An enhanced definition of 'abuse or harm.'
3. A clear definition of financial abuse.

Duties:

4. A duty on identified relevant organisations to report suspected abuse or harm to the appropriate body.
5. A duty on the most appropriate organisation to make enquiries or conduct investigations once a report or referral is made.
6. A duty to provide appropriate services to an 'adult at risk.'
7. A duty on all relevant organisations to co-operate with each other in safeguarding cases.

Oversight:

8. An Adult Safeguarding Board with a legal basis/foundation.

Powers:

9. A power of access to an individual believed to be at risk of harm or abuse for the purpose of conducting a private interview.

Protection:

10. Protection from civil liability for those making a report.

The Commissioner recommends that further consideration should also be given to the introduction of the following:* (detailed findings contained within full report)

11. The power to remove an individual at risk.
12. The power to ban a suspected abuser from contacting a specified person or attending a particular location.
13. The power to access financial records.
14. A specific criminal charge of 'elder abuse.'
15. A specific criminal charge of 'corporate neglect.'

Final word...

The Commissioner recommends that an Adult Safeguarding Bill is enacted in Northern Ireland. Legislation will help to provide adequate protection for older people at risk of abuse or harm in Northern Ireland. Overall legislation must strike a balance between protection, prevention, human rights and the law to safeguard older people at risk of abuse or harm.



The Commissioner for Older People is Claire Keatinge, and she was appointed to the role in 2011. She is the first Commissioner for Older People for Northern Ireland and is an independent champion appointed to promote and safeguard the interests of older people.

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