



**Hourglass NI Response to the NI Department of Health Consultation on
Legislative options to inform the development of
an Adult Protection Bill for Northern Ireland**

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1. Do you agree with the title 'Adult Protection Bill'?

Yes

2. What are your views on a definition of 'adult at risk and in need of protection'?

(a) The presence of abuse, neglect, or exploitation:

Hourglass agrees that 'harm through abuse, neglect or exploitation' is a more appropriate definition than 'harm' more generally. However, guidance on this definition should be specific and backed up through regular training, informed by third sector groups working closely with adults at risk to ensure application of the definition does not vary by geographical location.

Hourglass' 2017 paper, 'AEA: A Patchwork of Practice' identified how the Care Act (2014) definition allows for too broad a scope in application of the definition. In England 2016-17, a total of 364,605 concerns were raised about possible abuse with local authorities, these led to 109,145 Section 42 enquiries - meaning the details of the concern met the threshold for the duty to investigate an adult at risk. 63% of these related to people ages 65 or over (69,265 individuals). However, we found variation among councils when it came to the number of older people meeting the threshold for investigation. For example, in Warwickshire (lowest) 464 people per 100,000 aged 65+ were the subject of a Section 42 enquiry; in Calderdale (highest) 17,435 per 100,000 aged 65+ were subject to an enquiry under the same definition. This suggests wildly divergent local practice in applying the definition of an adult at risk. [Hourglass encloses the full paper with this consultation, for the interest of the Department].

The definition and any corresponding guidance must make clear what circumstances qualify for intervention. Similarly, this must be backed up by regular and monitored training and centralised reporting. Hourglass recognises that definitions of abuse through accompanying statutory guidance might give the flexibility to keep definitions up to date with changing manifestations of abuse. However, the Department should also recognise that definitions codified in law might better hold local application of the definition to account.

(b) A threshold of serious harm from abuse, neglect, or exploitation

In principle Hourglass agrees that 'serious harm' should be the threshold for adult protection, however we have several reservations.

Firstly, we know from examining the conversion from adult safeguarding referrals to Section 42 Enquiries under the Care Act (2014) in England (see above) that local application of the threshold can vary hugely. This concern is likely to be of even more importance if the threshold is high, as variation in local practice might result in serious harm being missed through divergent local practice.

Related to this, is the concern about how assumptions relating to personal characteristics might impact the perception of 'serious harm'. Of particular interest to us would be the infiltration of ageist attitudes and perceptions into the application of this threshold. For example, it is well documented that ageism impacts older

people's experiences of health and social care settings and of crime and justice.

We are concerned that raising the threshold in fact responds to problems in the implementation of existing adult safeguarding mechanisms. We believe these are as likely related to insufficient training for HSC professionals and limits on funding and capacity, as 'practice of reporting everything'. It will be difficult to discern if changing the threshold will impact outcomes if these compounding factors are not accounted for.

Finally, the consultation offers little detail on the other practices on the safeguarding continuum that might justify this higher threshold. Without assurances about the development of alternative prevention and early intervention practices, Hourglass is cautious to recommend that the exercise of skilled assessment by HSC professionals is given a higher threshold.

(c) Health and social care needs

Hourglass sees the benefits of including 'needs for care and support (whether or not the authority is meeting any of those needs)' in the definition of an adult at risk. 'Personal characteristics' and 'life circumstances' are useful terms, with scope to encompass a broad range of characteristics and circumstances that might make an individual's situation higher risk. We particularly think these terms have capacity to understand the intersections of different characteristics and circumstances and how these impact individuals.

However, both terms look at the individual in question. We think the highlighting of 'needs' situates adults at risk in the relationships that make up their networks. For example, the definition used in England and Wales definition looks at where an adult 'has needs for care and support (whether or not the authority is meeting any of those needs)'. Sadly, Hourglass knows it is within relationships, particularly relationships of trust, dependence, and interdependence where personal characteristics and individual circumstances are exposed to abuse, neglect, or exploitation. Personal characteristics and individual circumstances compound power, and it is the interplay of power in interpersonal relationships that can turn into a source of harm.

3. Do you agree with the list of principles proposed? If no, what would you suggest as an alternative approach?

Hourglass broadly agrees with the list of principles proposed. However, there are some elements the existing five principles omit.

For example, Hourglass would like to see elements of the suggestion put forward by the Independent Review drawn out. In particular, there is strength to the suggested principle 'supporting people who have care and support needs to nurture their welfare and well-being and reduce risks of harm'. This suggestion highlights the need for an approach that recognises where individuals and communities might need additional support to maintain good wellbeing and live free from harm. A rights-based approach, though important risks foregrounding individualist language that sees all members of society as the same, eliding difference which needs to be understood for fully functioning adult safeguarding procedures.

Secondly, the principles set out at present could do more to emphasise the twin principles of prevention (it is better to act before harm occurs) and protection (support and representation for those in greatest need).

Hourglass also believes it is appropriate to have direct reference to older people in the principles as well as to the principle of 'dignity' shared by all adults. A majority of adult safeguarding concerns across the UK pertain

to an older person. Wales have highlighted this directly in their duty to consider with due regard the UN principles for Older Persons (Independence, Participation, Care, Self-fulfilment, and Dignity). We similarly commend reference to protected characteristics under Scottish principles.

4. What are your views on principles being set out on the face of legislation or in Statutory Guidance?

Hourglass recognises that the nature of harm can evolve with new or emerging conditions. For example, we have seen the acute impact on older people under the coronavirus pandemic. Laying out the principles in guidance might provide scope for flexible change to the principles.

5. Do you agree with mandatory reporting? Should there be a new duty to report to the HSC Trust where there is a reasonable cause to suspect that an ‘adult is at risk and in need of protection’?

Rather than carrying on with the permissive nature of the reporting system under the Adult Safeguarding in Northern Ireland, Regional and Local Partnership Arrangements (2010) and the Adult Safeguarding Prevention and Protection in Partnership Policy. Hourglass agrees with the recommendations made by the Commissioner for Older People in “Home Truths” that “there should be a duty to report...when there is reasonable cause to suspect that there is an adult in need of protection.” Mandatory reporting is a more effective means to increase awareness of the importance of reporting, sends a strong message that abuse will not be tolerated, and leads to more cases of abuse being identified.

However, proportionality is key, as any intervention must prove beneficial to the adult, but not adversely undermine the rights and autonomy of the individual. Hourglass is aware of the concerns that mandatory reporting has the potential to breach human rights of the individual to privacy and self-determination, and the fear that mandatory reporting will lead to a culture of reporting rather than one of acting. Yet, Hourglass feels that mandatory reporting provides increased powers and scope to reduce and prevent the abuse of adults, as long as it is supported by well-funded social services and effective community based projects.

6. Should a new duty be placed on HSC Trusts to make follow up enquiries?

Hourglass concurs that a following the recommendations within the independent review, and made by the Older Persons Commissioner, that a new duty should be placed on HSC Trusts to make follow up enquiries.

7. What are your views on a new power of entry to allow an HSC professional access to interview an adult in private? Do you think any additional powers should be available on entry?

Hourglass agrees with the introduction of a power of entry for HSC professionals to interview an adult in private. Firstly, this would bring Northern Ireland in line with Scotland and Wales, the power of entry was introduced in Scotland in 2008, and similar powers came into force in Wales in 2016. Secondly, we know these measures are endorsed by practitioners. In 2017, King’s College London’s Social Care Workforce Research Unit undertook research that showed over half of practitioners interviewed were in favour. Practitioners identifying the benefits of powers of entry. For example: that it could prevent cases progressing to a point that life or limb powers were needed; and might generally speed up the process of safeguarding enquiries; and that awareness that social workers have this power might persuade some of the family members or other individuals obstructing

access to allow a social worker to talk to the adult at risk without having to get a court order at all.

In England, Hourglass has campaigned for the introduction of powers of entry for trained social workers - both under The Care Act (2014), and presently under scrutiny of the Domestic Abuse Bill. This power did not make it on to the face of the Care Act, as a result there is a gap in powers that can leave a victim open to on-going harm. There are insufficient powers of access held by the Local Authority where they are refused entry to the premises and the suspected victim has mental capacity. A useful depiction of the operation of the Local Authority duties as they stand is found in [LB Redbridge v G, C and F \[2014\] EWCOP 485](#). The case concerned a 94-year-old woman, the Local Authority were acting on a duty to investigate suspected abuse following reports of harmful behaviour from third party sources. The social worker faced consistent obstruction in carrying out their duties. Despite several third-party referrals for an adult safeguarding assessment, the social worker was unable to gain access to the victim without the suspected perpetrator present. The case notes read: “The local authority had no alternative but to visit on numerous occasions and to attempt to see G on her own. Anything else would have been a dereliction of their duty to her as a vulnerable person about whom they had received complaints about possible financial predation. Local authority staff must be permitted to carry out their duty to investigate reports relating to safeguarding unhindered”. The existing powers in England, which lie with the police and have a ‘life and limb’ threshold were not sufficient in this instance and the victim in question experienced ongoing harm at the hands of her abuser. Northern Ireland currently has the same powers as England, the Adult Protection Bill is an opportunity to close these gaps in powers. We think this example compliments the case study taken from the report, ‘A Call for Adult Safeguarding Legislation’ by the former Commissioner for Older People’ in demonstrating where the existing powers leave a gap where a person’s ability to make a choice is thought to be restricted by the behaviour of another person.

In terms of additional powers available on entry, Hourglass recognises the need to balance the risk of increased harm to the subject in question, and the benefits of access for a private interview. We recommend this topic consults closely with practitioners and following the completion of Scotland’s review of the Adult Support and Protection Act (2007) examines cases where this power has been used. It is our feeling that the risks of increased harm could be tempered through training that ensures HSC professionals can take this into account in judgements on using the power of entry.

8. How many times in the last 12 months, have you been aware of a situation where, had a power of entry existed, it would have been appropriate to use it? What were the circumstances?

N/A

9. What are your views on statutory provision for independent advocacy in the context of adult protection?

Hourglass concurs that everyone should have accessible access to advice and information on care and support, be kept involved within their care and support plan, and informed with their assessment. Independent advocacy keeps the adult at risk at the centre of the process and provides a key means for people who have difficulties in understanding the intricacies of the process, voicing their own concerns or wishes as to their care and support, or lack capacity to do so.

Statutory provision for independent advocacy within adult protection in the upcoming bill would also bring Northern Ireland in line with the other three nations of the UK, who have already laid down advocacy support in an adult protection context within legislation. While Hourglass takes into account that the requirement to be laid down in the Mental Capacity Act (NI) 2016 for an independent mental capacity advisor to be appointed for those that lack mental capacity when serious interventions are required in that person's life, may cover some occasions where independent advocacy would otherwise be used in the proposed "adult protection bill." Hourglass notes that placing statutory provision for independent advocacy in the broader context of adult protection would allow for a wider use, including covering those who may have mental capacity, but still experience difficulties in understanding or retaining information, or communicating their wishes.

10. Do you agree that an Independent Adult Protection Board should be established and placed on a statutory footing?

Hourglass agrees that an independent Adult Protection Board should be established as part of the proposed bill and placed on a statutory footing. Like counterparts in the other nations, Safeguarding Adult Boards, the National Independent Safeguarding Board, and Adult Protection Committees: an independent Adult Protection Board in NI would help ensure the quality of local care and support services. The requirement to produce an annual report and outlining yearly future strategies in a strategic plan, helps provide accountability and transparency on objectives, how member and partner agencies will cooperate, detail the findings of serious case reviews, and illustrate the effectiveness of their adult protection work in a timely basis.

Hourglass would also like to voice our interest in joining the Adult Protection Board.

11. Do you agree with the introduction of Serious Case Reviews?

Hourglass agrees that the introduction of Serious Case Reviews within the proposed bill would enable transparency and provide scrutiny on adult protection fault lines within organisations and among professionals, when an adult suffers from harm or death within their care. Serious case reviews allow for the analysis of the quality of direct practice with the individual, providing a lens on the challenges within risk assessment, engagement, best interests decision making, and personalised care. They also enable investigation into interprofessional and interagency practice, organisational factors that relate to the work of practitioners/professionals, and the governance of adult protection boards.

Including the introduction of serious case reviews within the proposed bill would also bring NI in line with the other three nations on this issue. Taking a lead from Sidebotham et al's (Sidebotham et al 2011) recommendations on serious case reviews involving children,

Hourglass advocates for a unified and detailed electronic anonymised database of all adult protection SCR for Northern Ireland. Certain ASBs and SCIE have created a repository of SARs in England, and this replicated in NI would ideally enhance the potential of learning from individual reviews by providing a more widespread audience.

12. Do you agree with the proposal to introduce a duty to cooperate? Are there any aspects of the duty that you would change?

Yes.
Failure to cooperate, or to share information, is a regular concern arising from Serious Case Reviews and we would therefore argue that it is insufficient to leave this matter to guidance, goodwill, or common sense. It is often critical for the protection of an adult being abused that agencies work together, and we believe that this should be a legal requirement.

13. Do you think there should be a new power to access an adult's financial records as part of an adult protection enquiry? If yes, which organisation(s) should be given this power?

Yes.
There will always be issues associated with the role of the state to intervene and protect, and the right of the individual to privacy and control over their lives. These are concerns about how a law is applied, rather than whether a law is needed.
In our view such a power would be effective in addressing issues of financial abuse where a Third Party is being uncooperative and there are reasonable grounds for believing that activities or transactions are either suspicious or require explanation.

14. Do you agree that new offences of ill treatment and wilful neglect should be introduced?

Yes. Hourglass recognises that these offences exist in respect of individuals that lack capacity, however this leaves a gap in the law in relation to people who are being cared for with capacity. We are in favour of increasing the safeguards for the most vulnerable.

15. Are there any other new offences that should be considered?

N/A

16. Finally, are there any other provisions that you would like to see included in the Adult Protection Bill?

N/A



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