

DÁIL ÉIREANN

AN COMHCHOISTE UM SHLÁINTE

JOINT COMMITTEE ON HEALTH

Dé Máirt, 16 Feabhra 2021

Tuesday, 16 February 2021

Tháinig an Comhchoiste le chéile ag 4 p.m.

The Joint Committee met at 4 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Colm Burke,	Frances Black,
David Cullinane,	Martin Conway,
Bernard J. Durkan,	Seán Kyne.
Neasa Hourigan,	
Gino Kenny,	
John Lahart,	
Róisín Shortall.	

Teachta / Deputy Seán Crowe sa Chathaoir / in the Chair.

A Regulatory Framework for Adult Safeguarding: Law Reform Commission

Chairman: Good afternoon. We have one piece of housekeeping before I bring in witnesses, namely, the draft minutes for the meetings of 9 February 2021. Can I take it that the draft minutes of our last public joint meeting and the decisions taken at our private meeting last Tuesday, 9 February, regarding today's meeting are agreed? Agreed.

I want to correct the public record arising from information given by the HSE to the committee at its meeting of 2 February on the organisations that attend the Age Action Alliance monthly meetings. The HSE has now confirmed that Care Champions, Sage Advocacy and the Irish Association of Social Workers are not among the groups invited to attend the monthly meeting. The initial response from the HSE was that these groups were part of the alliance and clearly this is not the case.

I welcome our witnesses on the issue of A Regulatory Framework for Adult Safeguarding. The safety and protection of vulnerable people should be central to a well-functioning society and we welcome the work of the Law Reform Commission, LRC, which is examining what is needed to have a comprehensive framework in place. We got a copy of their document this morning and I welcome it. It helps to clarify the situation. I welcome from the LRC, Ms Justice Mary Laffoy, president; Mr. Raymond Byrne, commissioner; Dr. Andrea Mulligan, commissioner; Ms Rebecca Coen, director of research; and Ms Leanne Caulfield, principal researcher.

Before the opening statements, I point out to the witnesses that there is uncertainty if parliamentary privilege will apply to evidence from a location outside the parliamentary precincts of Leinster House. Therefore, if witnesses are directed by me to cease giving evidence in relation to a particular matter, they must respect that direction.

Ms Justice Mary Laffoy: On behalf of the LRC, I thank the Chairman and members of the committee for inviting us here today to discuss our project, A Regulatory Framework for Adult Safeguarding. I am joined virtually by two of my colleagues on the commission, Dr. Andrea Mulligan, who is the co-ordinating commissioner, and Mr. Raymond Byrne, our full-time commissioner. I am also joined by Rebecca Coen, director of research, and Leanne Caulfield, the principal researcher on this project. My colleagues will take questions from the committee when I have completed the opening statement.

The LRC is a statutory research and advisory body. Our purpose is to review law independently and objectively and to make proposals for reform. While our title includes "law reform", we cannot actually do law reform as that is, of course, a matter for the committee members as legislators. However, we undertake research, consult widely and make recommendations that aim to make law modern, accessible and fit for purpose. We are delighted that the committee has taken an interest in this project in the context of the committee's discussion on A Regulatory Framework for Adult Safeguarding and the relevant recommendation of the Special Committee on Covid-19 Response.

The commission's project is aimed at making recommendations for a human rights-based, cross-sectoral regulatory framework for adult safeguarding that achieves an appropriate balance between empowerment and protection. I emphasise that the commission is very much aware of the parallel work concerning the national policy on adult safeguarding in the health and social care sector, which is currently being developed by the Department of Health, and to which the Department intends to give legislative underpinning through the health (adult

safeguarding) Bill. The commission and the Department have been in regular contact since the beginning of our project to ensure consistency in approaches to and terminology in proposed policy and legislation, given the importance of an effective cross-cutting, whole-of-government approach to adult safeguarding.

It might be useful if I mention the genesis of this project. As the committee is aware, the Adult Safeguarding Bill 2017 passed Second Stage in the Seanad in April 2017. It was discussed in further detail by the Joint Oireachtas Committee on Health during debates on adult safeguarding in October 2017. That committee agreed that the issues in the 2017 Bill required further research, and the committee and the Minister for Health suggested that the LRC should consider undertaking that research as part of its fifth programme of law reform. The commission was, at the time, engaged in public consultation on the development of its fifth programme. The commission had also received detailed written submissions from the Department of Health and other bodies, including several State agencies and non-governmental bodies, suggesting the inclusion of this project in the fifth programme of law reform. Having applied the relevant selection criteria, the commission concluded that the project was suitable for inclusion in the fifth programme. The Oireachtas Joint Committee on Justice, to which the draft programme was referred, was satisfied with the content of the programme, and it was approved by the Government in March 2019, in accordance with the Law Reform Commission Act 1975. The commission has given priority to this important project, and our consultative issues paper, *A Regulatory Framework for Adult Safeguarding*, the book the Chairman has just picked up, was published in January 2020 and we have been consulting on it since.

I will say a few words on previous work undertaken by the LRC on adults at risk. The commission previously completed work in this general area, including its 2006 report on vulnerable adults and the law, which recommended the replacement of the adult wardship system with legislation on adult capacity based on a functional test of capacity. These recommendations are largely reflected in the Assisted Decision-Making (Capacity) Act 2015. It is a matter of some concern that the key elements of the 2015 Act have yet to be fully commenced. The commission is taking a keen interest in progress on the development of the decision support service and the commencement of the 2015 Act. The commission was pleased to hear that the decision support service, established under the 2015 Act, received the funding required in budget 2021, and that the Minister, Deputy O’Gorman, expects the legislation to be fully commenced and services to be operational by mid-2022.

We have been told members have received the issues papers but it is a fairly big document, with 182 pages in all, so I will give a brief overview of it. We are conscious that the committee has previously taken a great interest in the area of adult safeguarding and we have benefited from the reports of committee discussions on the Adult Safeguarding Bill 2017 and the committee’s report on adult safeguarding published in 2017. Given the time constraints today, I will not go into detail on all of the issues raised in the issues paper. Instead, I will give a brief overview. Through a human rights lens, the commission is seeking to identify who may need additional regulatory arrangements in the form of supports and, where relevant, protections under adult safeguarding legislation, and in what circumstances those regulatory arrangements may be needed.

The task that the commission has been set is substantial, and involves numerous intersecting aspects and areas of law. Our work includes identifying regulatory gaps and recommending that additional regulatory powers may need to be conferred on an existing body or bodies, or that a new body may need to be established, as well as possible recommendations regarding

regulatory oversight functions, such as whether a body should have the power to deal with individual complaints as opposed to regulating systems. The commission is also considering possible recommendations on criminal offences where gaps in the law are identified, as well as specific measures relating to financial abuse, safeguarding powers and duties, and reporting models where suspected, and indeed actual, abuse or neglect are encountered. We are also looking at independent advocacy, inter-agency collaboration and information sharing, because we want to ensure that our assessment of the law in this area is comprehensive and that the recommendations we make are solutions-focused, practical and workable, and provide adults at risk of abuse and neglect with the best possible legal protections within a comprehensive regulatory framework.

The commission hopes to publish the report on a regulatory framework for adult safeguarding early next year. We recognise that it will be up to the Government and the Oireachtas, including the committee, to decide whether the commission's recommendations ought to be implemented. On behalf of the commission, I welcome the committee's interest in this area. My colleagues and I will be very happy to take any question that members might have.

Chairman: I thank Ms Justice Laffoy. As members are attending virtually from their offices and, therefore, cannot see the clock to monitor their speaking time I will advise them when they have one minute remaining, if I can. I ask them to stick to their time allocation to facilitate all members participating in the meeting. I thank the witnesses for attending the meeting. While we wait for our first speaker, Senator Conway, I am conscious that there were 10,000 notifications to the HSE about this area in 2017.

Senator Martin Conway: I apologise for the delay. I was trying new headphones but clearly they did not work. I thank Ms Justice Laffoy and her colleagues on the LRC for attending the meeting. I must commend them on the body of work they have done. The report, of which I received a copy yesterday, is very comprehensive and certainly is a very good starting point for what is a critical issue. Looking through the report, it is very worrying to see that 10,000 vulnerable adults are badly treated every year. It is a striking figure. I take comfort from the words of Ms Justice Laffoy that the commission is solutions-focused and wants practical and workable measures, which I think is what we all want.

I have several questions for Ms Justice Laffoy or her colleagues, whoever wishes to reply. Do they think that really and truly it should be an overall collaborative Bill embodying various Departments? We know there are challenges with financial services, and certainly older people can be blackguarded, often by relatives, when it comes to the use of their money. Should we have one comprehensive Bill that addresses all areas of adult safeguarding? Do the witnesses think there should be one agency to deal with all aspects of adult safety, similar to how Tusla provides a comprehensive service in terms of child safety? Do the witnesses envisage that the end result, and the practical and workable solution, would be an overarching agency to cover all aspects?

Where did they see international best practice? When they were preparing this body of work they looked at what was happening internationally. Is there an area or country to which we should look, and to which the committee should look, as best practice?

Chairman: I apologise that there are IT problems with the cameras. I want to let members know there are difficulties and that we cannot see Senator Conway on the screen. I invite Ms Justice Laffoy or one of her colleagues to come in.

Ms Justice Mary Laffoy: We will split it up. Mr. Byrne will answer the first question and Ms Caulfield is probably best to answer the second question. I hope she is with us.

Mr. Raymond Byrne: I thank the Chairman and Senator Conway. As these are my first few words I want to check that committee members can hear me.

Chairman: I can, loud and clear.

Mr. Raymond Byrne: There is no doubt that this committee has a very important role because it covers the question of health and social care that is incredibly important in terms of policy development and legislation. However, as Senator Conway said, there are other issues that fall outside of that area. The commission is working through the questions that were raised by ourselves in the issues paper and we have got a lot of help from people who have made written submissions to us. I cannot say that we have come up yet with a final conclusion as to whether there should be a single regulatory body or a collaborative arrangement between existing bodies but in the final report we will certainly make as far as we can a conclusive and practical recommendation on that. We are conscious that health and social care are vital component parts of the overall picture but there are other issues, such as financial abuse. We are also conscious that there are new forms of abuse arising continuously. Covid-19 has indicated the kind of online scams as opposed to maybe traditional offline analogue scams. We are conscious that this is an evolving area as well and we need to have practical solutions that reflect that.

Senator Martin Conway: Drilling into the 10,000 cases that the commission has come across, what is it basing that dramatic figure on? Within that 10,000, there is probably significant abuse and very serious abuse, and then abuse at a lower level. Of course, abuse is abuse. I would like some additional information on how that figure was arrived at.

Ms Justice Mary Laffoy: Would Ms Caulfield like to answer that?

Ms Leanne Caulfield: It would be appropriate for me to take that.

First, I will answer the Senator's immediately previous question regarding the figure of 10,000. That figure of 10,000 comes to us from the HSE national safeguarding office. Each year, the office publishes the number of reports that were made to it in the previous year. Those concerns can come from a variety of settings, including community and residential settings, and, indeed, hospital settings as well. We are reliant on the HSE for those figures. The HSE acknowledges that there could be under-reporting and under-representation, and, indeed, there are indications that there are instances of under-reporting, particularly in private nursing homes and where people perhaps are in family settings where they are reluctant to report a family member. There is not a comprehensive data set but that figure is based on the number of reports to the HSE in a given year. The commission is looking at the issue of data collection in its report in terms of how we can improve data collection and its accuracy.

Senator Martin Conway: On the question I asked about international best practice, was there anywhere in particular that struck the commission?

Ms Leanne Caulfield: The commission has undertaken a considerable amount of comparative research in looking at other jurisdictions, particularly looking at our neighbours across the water in Scotland who have, I suppose, the longest standing adult safeguarding legislation. It would be fair to say they have had legislation in place, in the form of the Adult Support and Protection (Scotland) Act, since 2007. We are keen to look at them because they have the longest experience of having legislation in place. Our Scottish colleagues are undertaking a review of

that legislation at present in consultation with a wide range of stakeholders to ascertain if there is any way that the implementation or effectiveness of that legislation could be improved. We are keen to learn from that ongoing review.

The commission is part of a five-nation adult support and protection conference series, which involves colleagues from Northern Ireland, Scotland, Wales and England and is providing the commission with an invaluable opportunity to learn from the experiences of our colleagues in those jurisdictions and to learn from the challenges that they faced and how they have addressed those challenges.

In terms of one country of best practice, it would be fair to say that there are areas of best practice across a number of countries. The commission is keen to identify those different areas of best practice and how they could apply within the Irish context, and within the Irish health, social care and different sectoral models. Bearing in mind we have a great deal of regulatory history with some of the jurisdictions, we would be keen to look to them because theirs might be more appropriate to apply in this jurisdiction where we have similar health and social care models. We are also looking further afield, to Canada and Australia, in terms of successful provisions that they have and how they might work in Ireland. We are conscious of not only looking at our nearest neighbours but also looking further afield and gathering elements of best practice from all of those jurisdictions.

Deputy David Cullinane: I welcome Ms Justice Laffoy and her team. I hope she is well.

I wish them well in their important work. It is an issue in which we on the joint committee have taken a keen interest. As I am sure they will be aware, there were a number of examinations into nursing homes and residential care facilities in recent times, obviously, because of Covid, and there were a number of reports. There was the expert panel report commissioned by the Minister, a HIQA report and a report from the Special Committee on Covid-19 Response. Are all of those reports being examined by the commission in the work that it is currently doing?

Ms Justice Mary Laffoy: We are very aware of all of the reports, but Ms Caulfield will answer that.

Ms Leanne Caulfield: In answer to the question regarding the reports of the special committee and the nursing homes expert panel, and, indeed, the report of HIQA, on nursing homes from the past year, the commission is very much aware of all of those publications. The commission is keen to learn from the recommendations of those reports. We are mindful that we have been living with the Covid-19 pandemic for almost a year and the reality is we must learn from the pandemic in how recommendations and learnings could be applied to crisis or emergency situations in the future. The pandemic has highlighted the regulatory gaps in place that we were already mindful and aware of prior to the pandemic, but I suppose we really see in the midst of a pandemic how great an impact those regulatory gaps can have when we are faced with a crisis situation. We very much want to learn from this and all of the recommendations in terms of improvement going forward. Should there be a crisis or an emergency situation the future, the onus is on us to learn from this experience and how we could be best placed to address a further situation in the future.

Deputy David Cullinane: I will look back a little before I ask some questions about the solutions that Ms Justice Laffoy spoke about. I would support her statement that their assessment of the law on this area needs to be comprehensive and that the recommendations need to

be solutions-focused, practical and workable, and provide adults at risk of abuse and neglect with the best possible legal protections. Obviously, all of this has to be done in a timely fashion as well.

In her opening statement Ms Justice Laffoy referenced the Adult Safeguarding Bill 2017, but she also went back further and referenced A Report on Vulnerable Adults and the Law in 2006. In reality, this has been a long-standing issue. It is worth noting the journey that many people have travelled. Many people have looked at this long before I was a member of the Joint Committee on Health and long before I was looking at these issues. In 2007, the HSE established a social work elder abuse service.

It was set up to manage allegations of abuse and neglect in respect of over-65s. In 2014, there was an “RTÉ Investigates” programme on Áras Attracta. My understanding is that the report into that investigation has still not been published. We should seek answers about it from the HSE. It led to the establishment of the HSE’s national safeguarding office and the safeguarding and protection social work service. Despite all of the investigations and commitments dating back to 2006 and 2007, we still do not have adult safeguarding legislation.

Has the commission engaged with the Irish Association of Social Workers, IASW? It made a very lengthy, comprehensive and helpful submission to our committee on this matter. I will read part of a paragraph from the submission that sums up how the IASW views this issue and the snail’s pace of progress:

The IASW contends that the lack of progress both locally, in terms of a full, transparent and timely Áras Attracta investigation, and nationally in terms of the development of a comprehensive policy and legislative framework is reflective of a consistent lack of organisational and political will to safeguard adults in Ireland.

Does Ms Justice Laffoy agree with this statement?

Ms Justice Mary Laffoy: These matters have been ongoing for a long time. We have received a written submission from the association. Perhaps Ms Caulfield will develop that point.

Ms Leanne Caulfield: Regarding the Deputy’s first question, and as Ms Justice Laffoy stated, we have received a written submission from the IASW that was detailed and helpful to the commission in the latter’s considerations. We also received a number of submissions from individual social workers and social work teams and services within the HSE and voluntary bodies. Some of them may be members of the IASW. Currently, the commission is conducting individual meetings with various stakeholders and it is likely that we will have further engagement with the IASW at some point before the conclusion of the project. We are mindful of the need to learn from practitioners on the ground as well as service users, given that they are likely to be affected by the adult safeguarding legislation. We are grateful for practitioners’ input. We understand that they represent the views of people on the ground and that they are the ones who will have to apply this legislation. We are conscious of consulting practitioners and end users.

Deputy David Cullinane: The IASW has raised with us a number of genuine concerns that go to the heart of the need for adult safeguarding legislation and a statutory basis for the framework. Currently, there is no legal right of entry for any independent inspector or social work team into a private nursing home. This is one of the issues that arose in many of the investigations. The IASW wrote in its submission: “The HSE has further proposed that in future, safeguarding social work teams will have a ‘quality assurance’ oversight function only, and will no longer work directly with adults who have experienced neglect or abuse.” What is the

commission's view on this statement? Is it helpful and does it raise a matter that we should be considering? The IASW does not agree with the HSE's proposal. Its submission also reads:

The IASW suggests that Safeguarding and Protection teams have been given an impossible task, carrying responsibility to protect and expose institutional abuse within their own organisation, the HSE, as well as services funded by the HSE. Yet they have no legal authority to even enter private homes or nursing homes within our current legislative framework.

Is this the type of issue that the commission will consider when making recommendations?

Ms Justice Mary Laffoy: It most definitely will be. Mr. Byrne will be able to develop that point a little.

Mr. Raymond Byrne: We are getting to the heart of what a regulatory framework must look like. In previous work done by the commission in the financial services area, we recognised that effective regulators needed an effective set of regulatory tools. That is to put it bluntly, but the powers of entry and inspection and the power to impose sanctions are the kinds of core power that any regulatory body must have in order to be effective. That is something that we highlighted in the consultative issues paper. We are conscious that the consultees who have responded to us have raised the kinds of issue mentioned by the Deputy. In the issues paper, we posed a question about what kinds of core regulatory power ought to be in place in a single regulator or if existing bodies that did not currently have effective regulatory powers should be given them. In addressing the point about practical solutions that Ms Justice Laffoy mentioned, we are conscious that those powers must be effective. The core powers that are now being given to many regulators, be it the financial regulators or the Government's more recent proposals in respect of an online safety commissioner, are the kinds of important core power that all regulators need. That will be a key part of the commission's final recommendations.

Deputy David Cullinane: I will finish, since my time is probably up. I am sorry - did Ms Justice Laffoy wish to speak?

Ms Justice Mary Laffoy: I was going to invite Ms Coen to speak on this point, but I know we are tight on time.

Deputy David Cullinane: I will make a final point and perhaps Ms Coen can contribute then. I wish everyone on the commission well in what it is doing. These are long-standing issues and, as Mr. Byrne stated, there are social workers and others working on the ground who have direct experience of many of them. The majority of care settings, include nursing homes and other residential care services, provide wonderful services, but there are instances of abuse and neglect. We need to get the difficult cases right. Our committee needs to follow through on the issue of adult safeguarding until we get the statutory systems and framework in place. This issue has been ongoing for too long. The commission has its job to do, but so do the Government, the Department of Health and the HSE in terms of legislation, including the adult safeguarding legislation that was promised in the programme for Government and the review of existing policy. I look forward to the commission's report, which I believe the witnesses said would be published at some stage next year.

Ms Rebecca Coen: I wish to make two points on the issue, in particular on social workers. The commission adopts an approach that is end-user focused. This means considering the legal issues that arise from all angles - from the perspective of those who will be affected by any proposed legislation and the perspective of those who will be using it daily. The point of view of social workers is something that we are considering closely. We are not just thinking about

these issues from an abstract and purely legalistic standpoint. We are trying to identify the regulatory and enforcement gaps in adult safeguarding. We are doing that in a practical way, which is about looking for workable solutions, as Ms Justice Laffoy stated. We are not considering the end user through just a narrow focus. Rather, we are considering the issue across the board - social care professionals, the Garda and regulators such as HIQA - so that the recommendations we will make will be relevant and practical.

We are also considering the regulatory framework in an holistic way because this project is not just about health. It is also about financial abuse, physical abuse, neglect and deprivation of liberty. We must think about it from a number of different standpoints. Committee members will appreciate the complexity of this issue is such that, when it cuts across all of these agencies, it also cuts across various areas of law. We are looking at the area of regulatory enforcement, data protection, information sharing and gaps in criminal, tort, banking and family law. We are looking at those powers in a way that, hopefully, will make workable recommendations. We very much value the input of people on the ground who can tell us about the barriers to them conducting the work of safeguarding, the barriers to effective inter-agency co-operation and information sharing and so forth.

Chairman: I call Deputy Lahart.

Deputy John Lahart: How much time do I have?

Chairman: Ten minutes.

Deputy John Lahart: I received that document today and I had an opportunity to read parts of it. It is very interesting, but I put my hand up and admit that this is my first time to go into this topic in a serious, meaningful way in terms of the research. However, I like how accessible the issues paper is.

I have two questions. I note one of the issues in the paper is the values and principles underpinning adult safeguarding and what the practices in Ireland are currently. Then it looks at Wales, Scotland and England in the UK for comparison. I have not had a chance to read through that. Perhaps the witness could give a small potpourri of the differences there are, positive or negative.

My second point is about what has happened in the past year. Obviously, with the Covid-19 pandemic the State and citizens would have seen themselves as making an enormous effort to protect the most vulnerable in society, probably from the point of view of being medically challenged and medically vulnerable. How do the witnesses think those adults, who would have had other vulnerabilities which would have been awfully exposed in the last year and continue to be exposed, would have coped or dealt with that, or what lessons, given such a unique context, have been witnessed or learned from that?

They are my two questions.

Ms Justice Mary Laffoy: Perhaps Dr. Mulligan would like to respond on the first question.

Dr. Andrea Mulligan: I can speak to the overall principles, but perhaps Ms Caulfield will speak on the differences first.

Chairman: Ms Caulfield, you have the floor, but your microphone appears to be on mute. Is it on mute?

Deputy John Lahart: Perhaps we can return to Dr. Mulligan and she can answer the second question.

Deputy David Cullinane: Dr. Mulligan can start. I am not sure Ms Caulfield can hear us.

Dr. Andrea Mulligan: I think Ms Caulfield is having connection difficulties.

Chairman: Yes, so perhaps Dr. Mulligan can continue.

Dr. Andrea Mulligan: On the principles, we are trying to achieve a certain unity in terms of the principles. In the issues paper the members might have seen that we set out some of the key principles that should guide the area. These are for discussion, but they are well-established principles arising from the human rights norms in the field. I will flag some of those, and the members will find that these are quite common across jurisdictions. Within that, it is very important to have a focus on empowerment. Indeed, a great deal of safeguarding comes down to trying to protect the individuals while empowering them at the same time. There are sometimes tensions between those, but regulatory systems need to try to achieve both ends and to draw a balance between them. Empowerment is a principle, as are protection and prevention.

An important way to achieve a balance between those is to have the principle of proportionality, whereby if one is going to make an intervention to protect a person, it must be one that is necessary, proportionate to the risk to that person and that person must have the right to be involved in any decisions relating to him or her. The person must be participating in those decisions. This area involves the use of State power to protect somebody, and that can be an intrusive measure. It is therefore very important that the legislation is protecting the person's individual liberties and also makes provision for those involved in their care at the same time. Those are the types of principles we see as being central to this field. They are the ones we have built on in our colleague jurisdictions. Ms Caulfield mentioned the Scottish jurisdiction, which is one of the leaders in this area. It was very strong on the balancing of those principles, and we would have taken the lead from it.

In terms of differences, and Ms Caulfield can speak on this in more detail, I am aware there are differences in terms of the extent to which the State can intervene and the types of powers the State has, for example, powers for entry, inspection and investigation. There are decisions to be made as to how robust the State can be in intervening to protect a person.

Deputy John Lahart: I see that Ms Caulfield is still on mute. I note what Dr. Mulligan said about Scotland and I look forward to reading that. I notice that Scotland leads in a number of these areas, such as with regard to women and legislation relating to the empowerment of women and the economic role of women in society. I am not so interested in what Scotland does, but I am very interested in what prompted Scotland to be leaders in this area.

Dr. Andrea Mulligan: I am not entirely sure. Scotland has a very strong welfare state, so it has a strong communitarian value system. It sees the idea of the big protective state as beneficial and important. My sense is that strong social care protections are very much within Scotland being what it is.

Deputy John Lahart: I thank Dr. Mulligan. I will give way and if Ms Caulfield comes back in, she can couple the answers to my questions with the answers to those to other colleagues.

Chairman: Ms Caulfield, can you come in?

Dr. Andrea Mulligan: She sent me a message to say she is having difficulty rejoining the meeting.

Deputy John Lahart: I will give way, Chairman.

Chairman: Deputy Shortall is next. I apologise for the IT system. We are having difficulty and we cannot see the Deputy on the screen. It is probably something we will try to examine again next week.

Deputy Róisín Shortall: My camera is on and I can see myself in the bottom corner, but can you hear me?

Chairman: Yes, loud and clear.

Deputy Róisín Shortall: I welcome Ms Justice Laffoy and her colleagues. I will try to contain my frustration when I am speaking. It beggars belief that almost 20 years later we are still talking about how we are going to safeguard older people. There are very basic things that need to be done. It is not reinventing the wheel. There are clear principles that are accepted by the western world and by most other countries in Europe regarding what needs to be observed in terms of putting in place proper safeguarding arrangements in legislation. There are models and the witnesses have referenced some of them. For the life of me, I cannot understand why this is taking so long. I wonder why, from the commission's point of view, this is going on for so long. Perhaps it has a lot of other work on hand or it cannot afford to devote the necessary time to do it in an expeditious way. Is it the case that it suits the powers-that-be that this is a long, drawn-out process, that we do not have product and it is taking an inordinately long time to come up with product on this? The only conclusion I can come to is that it suits successive Governments and, indeed, it suits the system and the establishment.

I was struck by comments made by the Irish Association of Social Workers. It talked about that type of culture and mindset in the HSE, for example, and in other agencies, which is more concerned with self-protection or the organisation than with protecting the clients they serve. I am just posing the question of why it is taking so long and why, at a political level, successive Governments do not seem to have any appetite to legislate in the area. I would welcome the views of the witnesses on this.

Ms Justice Mary Laffoy: It is not really a question we can answer. We are an independent statutory body with a particular job and we do that. Frequently recommendations we make do not get implemented but that is the way it is. It is not our fault and we do not know why it happens. Mr. Byrne has been with us the longest and he has most understanding of the work done by the commission and what has happened to it. Perhaps he might comment on it.

Mr. Raymond Byrne: I will certainly try. Again, from our perspective there has been a long-standing commitment to engage in the area going back, as Deputy Cullinane mentioned, to work we did on law and the elderly in 2003. The commission has certainly made a number of recommendations and in this area there has been a high success rate if one waits around long enough I suppose. The report on vulnerable adults and capacity eventually made it on to the Statute Book in 2015, again after much examination by various Oireachtas committees.

Deputy Róisín Shortall: I thank Mr. Byrne. We know this has not been enacted. That is a further indication that there is no real appetite to address the matter. That is the problem. I also propose that a different way of working be adopted so that the commission would not have to look at every aspect of safeguarding an older person but, rather, it could deal with this in

sections. Those of us on this committee, and people throughout the country, are acutely aware that older people continue to be seriously exposed in different care settings because of the absence of any proper regulation. We just saw the tragic impact of that over the past year with the unregulated market-based approach to nursing home care, with 80% of nursing home care put out to the market with virtually no regulation whatever. The other side of that is that home care remains completely unregulated.

I put it to the witnesses that there is a severe urgency in the need to regulate those particular areas because we know the price older people and families throughout the country have paid for the lack of regulation in nursing home care. There is no statutory regulation for it at all and there are no ratios for staffing, for example. We saw the tragic consequences of that over the past year. Has the commission considered dealing with the two pressing health areas relating to nursing home care and home care? Could it deal with those two areas separately instead of attempting to take on very wide-ranging work taking in every aspect of an older person's life, which further delays action in the area?

Ms Justice Mary Laffoy: I will ask Mr. Byrne to speak to that but we have a certain remit and we must comply with it. Our job in this project is to make recommendations on a regulatory framework for adult safeguarding.

Deputy Róisín Shortall: What is the view of the witness, given the inordinate length of time this entire process is taking and the lack of any sense of urgency on the part of agencies or successive Governments? Has the commission considered a more effective approach that would break this into sections, starting with the assumption that there is a real urgency about the health and social care element and that it could recommend to the Government that it legislate in that area first? It could deal with financial, family and other matters after that but the urgency is now in the health and social care area.

The witnesses are talking about producing a report but when will legislation be published or passed by the Oireachtas? When would its provisions take effect? Going by the history of this process over the past 20 years, we are realistically saying that the best we can hope for is a case of it taking years for the legislation. As a legislator, I am simply not prepared to stand by that kind of approach.

Mr. Raymond Byrne: The commission previously completed a report on professional home care. That work has been done by the commission and we set out our recommendations for regulating professional home care. I absolutely appreciate that this was incorporated into the Sláintecare report and the commission is very grateful that this was taken up by the Sláintecare committee as well. We have completed work in that area and it would be a bit pointless for us to go back on that.

We were asked to examine the matter of the regulatory framework, and as Ms Justice Laffoy has stated, it is a priority project for this commission. This is one of the projects on which we have spent considerable time, right from the beginning of this fifth programme once it was approved by the Government. We pushed very hard to ensure we got out a good paper and we are again pushing very hard to ensure this project is completed in the shortest possible time, bearing in mind the very wide breadth of matters covered. We regard today as an incredibly important part of that process of ensuring we get the right answers for that regulatory framework.

Deputy Róisín Shortall: I thank the witnesses. I am just restating the point that given the breadth of the process, in the meantime and in real time people are being failed by the lack of

regulation. Older people are dying and have died in substantial numbers over the past year because of the lack of regulation. I am asking the commission to consider making a recommendation to the Government for health settings. It should recommend to the Government that it deal with the area as a matter of urgency and the commission can deal with wider matters at a later stage.

Deputy Neasa Hourigan: I thank everybody for their time today. The briefing documents were very helpful and I thank the witnesses for them. The Chairman might give me some latitude in speaking about a particular cohort as it might follow some of Deputy Shortall's questions. As I try to get to grips with what we are proposing, it is useful for me to think of this in terms of particular cohorts.

One cohort comprises people in accommodation for the homeless. I am trying to get my bearings on how private providers interact in this process. We have spoken a little about private nursing homes and the difficulty with this kind of legislation in getting into people's homes. What is the understanding of access for safeguarding and protection that social work teams would have where there are privatised services? Never mind staff trained for social work, as some of these staff may not even have Garda vetting.

Dr. Andrea Mulligan: The Deputy is asking about inspection of private services as opposed to those provided by the State.

Deputy Neasa Hourigan: Sorry, I could not hear Dr. Mulligan.

Dr. Andrea Mulligan: Is the question about inspection powers in the context of private entities rather than State institutions?

Deputy Neasa Hourigan: In real terms, we are spending €200 million on the private aspects of emergency accommodation when it comes to homeless services, so they are funded by the State. Technically, I believe they come under the aegis of the Dublin Regional Homeless Executive. How does that work in other jurisdictions? Dr. Mulligan has done work in this area. Where there is increasing privatisation in the delivery of services, how does she think that safeguarding mechanism is triggered? The teams do not necessarily have access to those spaces and the relevant staff do not exist in those spaces and are not correctly trained or vetted.

Dr. Andrea Mulligan: I understand. Looking at private providers is very much within the scope of the project. Safeguarding necessarily takes in private entities but that may also include private homes. The powers one needs will necessarily include powers of entry and account has to be taken of people who are living in private homes with their relatives and private providers. That is very much on our radar. The model we are looking at is one that can effectively protect people regardless of what setting they are in. The whole idea is that those protective powers could be triggered regardless of whether someone is residing in a private or public context.

Deputy Neasa Hourigan: Is a differentiation made when the State is funding a body where that body is private but the State is the main funder? I would presume we have a liability or a duty of care.

Dr. Andrea Mulligan: There is probably a slightly overlapping issue which is the idea of regulation of those entities as entities. That is slightly different from the question of protective powers and adult safeguarding, which is what we are looking at. Ms Caulfield or Ms Coen might speak more to this. There may be a separate regulatory system that needs to regulate those entities. It is not necessarily what we are looking at. We are looking at the protective

powers that would be able to protect people in those institutions. That would regulate alongside a regulatory system.

Deputy Neasa Hourigan: I agree with Dr. Mulligan on the regulatory system. I think we all agree that anything which is providing care in the State needs to be subject to appropriate regulatory oversight. However, in some of the briefing material, the commission outlines that a vulnerable person should have access to independent advocacy for themselves, for example. How would this legislation envisage that this be triggered in a private setting? Could Dr. Mulligan outline the position in that regard?

Dr. Andrea Mulligan: Ms Caulfield might speak to that in more detail. I understand the vision is that independent advocacy would be important in supporting everyone who is potentially subject to protective measures. That is a very important part of the empowerment prong. The way to ensure that people are involved in decisions about their own care and the State measures are not too intrusive is that they have independent advocacy. I understand that part of the vision is looking at whether that might be regulated as part of adult safeguarding and would be offered to people in a private setting as well as in a public setting.

Ms Leanne Caulfield: Deputy Hourigan is correct in that the HSE only has powers over the facilities it funds. This means that the safeguarding and protection teams and their social workers only have powers as regards HSE-run facilities. As a result, they cannot access people within private nursing homes or other private facilities. That is one of the core issues that this project is examining. It is a regulatory framework that will apply cross-sectorally and also across all settings. We are really conscious that we cannot only have protective powers for publicly funded or publicly run facilities, they must apply to all facilities in which there are people who are potentially at risk of harm. That is a very important focus of this project.

Deputy Neasa Hourigan: That does illuminate the position a little. Before I run out of time, has the commission considered a differentiation between a nursing home setting where people are in some sense in a congregated setting that is permanent and the more transient experience of homeless emergency accommodation where there might be people moving in and out of a system which in some cases is privatised and in others is publicly funded? Has it considered how a safeguarding system would track vulnerable people in this context? The word “track” is probably the wrong word to use. Perhaps I should say to support such people.

Ms Leanne Caulfield: That really comes down to the individual and the definition of an at-risk adult. The commission is very conscious of looking at the Assisted Decision-Making (Capacity) Act and ensuring that all recommendations are in line with that. Where there is accommodation that is quite transient in nature, with people moving in and out, those service providers have a duty of care to people while they are in those services. When they leave those services, however, the extent to which those providers can engage with those people might be limited. If those individuals have capacity, they are entitled to make a decision regarding their lives; they are entitled to make unwise decisions, as we all are. If there were potential capacity issues or concerns around mental health, that could come under other legislation such as the Mental Health Act. While those people are living within those services, there is a duty of care there and the regulated service would have a duty of care in terms of the regulatory powers that are available to it. Once the person would leave those services, it would depend on that person’s needs in terms of how much the service could engage.

Ms Rebecca Coen: The commission is hoping to achieve a balance between empowerment and protection. We are looking at it from a holistic standpoint. There is value in that, because

we are listening to the issues that are identified by professionals working across the board and people who themselves have experience.

On Deputy Hourigan's question about people moving between different bodies, information sharing is a big issue that we are seeking to address. We are keen to look at inter-agency co-operation and how that is working. Sometimes there might be an agency which, at a local level, has excellent working relationships but they might not be replicated at a national level and maybe they would benefit from a more formalised and structured approach to inter-agency collaboration. Information sharing is key there. We are planning to meet with the Data Protection Commissioner to tease out issues relating to compliance with the general data protection regulation which arise in the area.

Deputy Neasa Hourigan: I thank Ms Coen. My next question was going to be on data protection but she has already answered it.

Deputy Gino Kenny: I thank everyone from the Law Reform Commission for attending. This is a subject that I am trying to understand and come to terms with. My first question is for Ms Justice Laffoy and it relates to the two items of legislation we are discussing, one of which has not been implemented and the other of which has not been enacted. The Assisted Decision-Making (Capacity) Act was passed in 2015, six years ago, and the vast majority of it has not been implemented. The position with the Adult Safeguarding Bill is similar. Were the Act to be implemented and the Bill enacted, what would be the position for people in residential care settings?

Ms Justice Mary Laffoy: The Assisted Decision-Making (Capacity) Act 2015 was actually enacted in December 2015. It was signed by the President at that point. The issue is that it has not been commenced. Various agencies are working on developing a system for ensuring that it is properly commenced. For instance, the decision support service has already been set up, but it is not yet operational. It looks as though it will not be operational until perhaps the middle of next year. However, I am strongly of the view that it would definitely be most important and helpful if the 2015 Act were commenced as far as possible. Perhaps some of my colleagues want to express a view on that issue.

Deputy Gino Kenny: Why, in Ms Justice Laffoy's legal opinion, has that taken so long? Work in here can be slow but that is extremely slow. It has been six years. I am not asking for the witness's political opinion. Why, in her legal opinion, does she think the Act has not been implemented?

Ms Justice Mary Laffoy: There is no legal answer to that question. There is a practical answer, which is that many structures must be put in place and systems set up, such as the decision support service, which is currently being led by Ms Áine Flynn. As I said in my opening statement, we derive a good bit of comfort from the fact that the 2021 budget is helping the decision support service in particular. However, it is a practical rather than a legal issue.

Deputy Gino Kenny: My second question concerns the 180-page report. I missed an earlier part of the discussion due to technical issues. It was mentioned that there were 10,000 correspondents in relation to possible cases of neglect, or situations where care was unsatisfactory. Could one of the witnesses provide more detail on the scale of this correspondence? Were the correspondents victims of physical or mental abuse? In what setting did the abuse occur? I am particularly concerned about adults and children in special needs provision. That is a different situation. For example, if an adult has learning difficulties, where does the division lie in that

situation, when somebody wants to complain?

Ms Justice Mary Laffoy: There are a lot of data available. We could be here until Tibb's Eve going through it. Perhaps Ms Caulfield can summarise it usefully for the committee.

Ms Leanne Caulfield: With regards to data, we get our figures from the national safeguarding office of the HSE, which reports annually on the figures, and the concerns of abuse or suspected neglect that were reported to the HSE in the previous year. That includes concerns that were reported to the safeguarding and protection teams within the various community and healthcare organisations.

We are restricted to the breakdown of the data provided by the HSE. It generally breaks down the data by age group and abuse type, and by the type of care from which the report was made, rather than the setting. For example, it might specify that it is from healthcare or social care but it generally will not disclose the type of residential setting from which the report came. Therefore, we are restricted in the number of complaints coming from disability settings, in which the Deputy is particularly interested. The lack of a comprehensive data set is an issue. It comes down to the referral pathways, and a lack of knowledge about who people should report to when they have a concern. That is something about which the commission is most concerned and is why the commission is looking at the issue of data collection and referral pathways within the scope of the report. It is most important to have clear reporting pathways and referral pathways, and clearer data collection measures that are limited not just to one body. Inter-agency collaboration, whereby one body refers on to another, knows which body it should refer to and can identify the central data collector, is important. That would ensure that we have a comprehensive data set. In its absence, we are reliant on the annual data from the HSE national safeguarding office, which is helpful but is not comprehensive. We are also reliant on *ad hoc* pieces of research that are commissioned and funded by various bodies, including Safeguarding Ireland or the Banking and Payments Federation, all of which are useful but which do not provide us with a comprehensive picture, which could be the case if we had a clear system for data collection in place and clear referral pathways.

Deputy Gino Kenny: I have a final question. Could the complaints of the correspondents be criminally investigated by other authorities like the Garda? Is there a breakdown of something that could be of a criminal nature?

Ms Leanne Caulfield: Certainly, some of those concerns could be criminal in nature. There is a statutory obligation to report a concern in the case of a vulnerable person or a person in an at-risk group. In its 2019 report, the HSE outlined that it is improving its inter-agency collaboration in respect of reporting on to agencies like An Garda Síochána, where there is a concern of a criminal nature. Often, concerns are reported both to the HSE and to An Garda Síochána where there are concerns that a matter may be criminal in nature. There is a statutory obligation there in respect of groups that fall under the definition of "vulnerable person" within the relevant Act.

Deputy Bernard J. Durkan: There are so many issues here that one would like to address, but the witnesses will be glad to hear that I do not intend to take the tourist route. However, a number of issues come to mind. First is the abuse of vulnerable people in public and private institutions. Are we satisfied with the system in each? What are the weaknesses in the reporting system and the follow-up?

On the issue of bullying, we have seen countless tragic cases of bullying over the past num-

ber of years. Sometimes they have been reported effectively, and sometimes not but have ended tragically. How do the witnesses see improvements being made there in order that immediate action and corrective measures are taken and provisions are put in place to protect the victims?

My third question concerns abuse outside of the family. For example, not so long ago, I dealt with a case of a teenage girl being enticed away from her home by a middle-aged man. I followed it up in all manner of ways - through the education system, An Garda Síochána, the HSE, everywhere. I attended meetings with various stakeholders and so on. It was impossible to intervene because although the girl was a minor, she had not made a complaint. The complaint had been made by her parents. The parents had to go to court to win their case, which they did. Why should that be? What do the witnesses think we should do, as legislators, to address that issue?

Finally, I believe that over the years, we have addressed a number of issues that needed addressing. For example, we decongregated mental institutions and rightly so; they were terrible places. However, we put nothing in place to replace them and to protect the people who were there. Maybe they were wrongly institutionalised but they were there and we did not provide alternative support for them. We addressed one issue but did not provide subsequent support for those who needed it. What should we be doing there? I have my own views on the subject but I will leave it to the witnesses.

I would also like to congratulate the witnesses on the good work they have done. I thank Ms Justice Laffoy and her team for engaging on this particular issue and on many other issues as well.

Ms Justice Mary Laffoy: There were quite a few questions there. The first question covers a lot of material that Ms Caulfield has already covered. Would she agree or would she like to add something?

Ms Leanne Caulfield: Yes, that is correct in terms of the public-private divide. That was covered earlier. If there is any particular additional detail required, I am happy to provide it.

Ms Justice Mary Laffoy: Perhaps Ms Caulfield could comment on reporting models and mandatory reporting.

Ms Leanne Caulfield: In terms of the reporting models, the commission is examining a variety of models. One is a mandatory reporting model, whereby people would be compelled in certain instances to report concerns of actual or suspected abuse. That could relate to specific harm or serious harm and could apply to certain professionals, for example, medical professionals, social work professionals, etc. It would be similar to the system of mandatory reporting in place for children under the Children First Act 2015, which was commenced in December 2017.

We are also examining retaining the current system of permissive reporting, which relies on professional judgment. That allows a professional to decide whether, in his or her professional opinion, it is necessary to make a report. One option could be to put that system of permissive reporting on a statutory footing. That would mean it would be provided for in legislation. As we know, we could also introduce a form of protected disclosure, which would mean that if we retained a permissive system of reporting there would be protections for those who make reports in good faith. The rationale for that would be that it may encourage greater levels of reporting because there may not be a fear of repercussions if a person made a report.

We are also considering a hybrid system, in which we would largely retain a permissive

system of reporting, but for abuse that may happen in certain settings such as, for example, residential settings, or very serious types of abuse, it would be mandatory to report in those circumstances. We are looking very carefully at all of the various models and evidence from other jurisdictions. We also wish to speak with our colleagues in the Department of Children, Disability, Equality, Integration and Youth regarding the effectiveness of the system of mandatory reporting as it has applied to children since it was implemented in December 2017 to hear what was learned, as well as hearing the opinion of the Department and Child and Family Agency on how the system has worked in the three-year period in which it has been in place. It is important to take what was learned from the system of mandatory reporting as it applies to children and determine if there is anything in it which we could use if we were to implement a system of mandatory reporting for adults.

The commission has given detailed consideration to all of the various models.

Ms Justice Mary Laffoy: Perhaps Ms Coen would have some observations on the second and third questions.

Ms Rebecca Coen: On Deputy Durkan's question on bullying, it is a form of emotional abuse and is not new to any of us. Recent additions to the Statute Book include the criminalisation of coercive control and so on. The concept of legislating for emotional abuse is not new. As I said, we are examining this in a holistic way and that includes consideration of where there may be gaps in criminal law. The Harassment, Harmful Communications and Related Offences Act 2020 was influenced in large part by the work of the Law Reform Commission. It deals with a form of modern bullying and is reflective of the kind of appropriate criminalisation of abuse that is intangible. In our examination of the law we are very conscious that we are ensuring we recognise that actions can be taken that are not necessarily violent but might nonetheless seriously interfere with another person's peace and privacy or cause alarm, distress or harm to that person.

We are identifying the omissions in family law settings, such as whether there are adequate protection in the Domestic Violence Act and who can apply for safety and protection and barring orders. There are often situations of familial abuse-----

Chairman: The system seems to have collapsed. I ask the committee to bear with us. As we have been unable to re-establish contact, I will adjourn the meeting. The committee will meet in public session next Tuesday, 23 February 2021 at 10 a.m., when we will hear of the emerging evidence that vitamin D may reduce the severity of Covid-19 infection. We will have representatives from Trinity College Dublin, the Royal College of Surgeons in Ireland and the Technical University of Dublin presenting to the committee. I again apologise to our witnesses.

The joint committee adjourned at 5.30 p.m. until 10 a.m. on Tuesday, 23 February 2021.