Health Information and Quality Authority
An tÚdarás Um Fhaisnéis agus Cáilíocht Sláinte

Safeguarding – everyone's responsibility

Speech by Phelim Quinn, HIQA CEO

17 November 2016

Introduction

I am delighted to have been asked by the Federation of Voluntary Bodies in Ireland to address this conference today, which is focused on the theme of responsibility for safeguarding vulnerable people.

Over the last 9 years, HIQA has established monitoring programmes in a range of Ireland's health services, as well as programmes of regulation in children's social services and residential services for older people and people with a disability. In that time, HIQA has identified a substantial number of services that provide excellent person-centred, rights-based care.

However, we have also had cause to highlight issues of abuse and exploitation within services, and in doing so, uncovered deficits as regards the policy and practice response to such circumstances.

Recently, as part of our annual business-planning process, we considered how we, as the State's health and social care regulator, could ensure that services are safer and better for all. That conversation led us to reflect on some of the most vulnerable groups in receipt of services. Some of these services are already operating within a regulatory framework, but others are not!

While preparing for today's presentation, I was reflecting on the recent US presidential election and was struck by a quotation by former US vice president Hubert H. Humphrey. He asserted that, "The moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; those who are in the shadows of life; the sick, the needy and the handicapped.”

This quotation has been adopted over time by others to appraise a society by the way it treats the weakest or most vulnerable.

It is in this vein that I wish to talk about the concept of responsibility; a key tenant for HIQA. I will talk about the responsibility borne by the State, by the procurer of services and by the provider of services. I will also talk about HIQA’s regulatory role and what we do to promote improvements.

Responsibility on behalf of the State

One of the key political motivations to set up HIQA in the first instance emerged from the horrendous circumstances identified in the Leas Cross Nursing Home, where the wholesale neglect and abuse of vulnerable people was identified.

It is important at this stage to acknowledge the Irish Government’s approach to services for people who may be at risk of abuse. We have seen the introduction and maturation of legislation and regulations for services in the older persons’ and disability residential sectors. The creation and enactment of the progressive, forward-looking Children First Act is an example of how the State places significant importance on the safeguarding of children. In addition, the development of the Assisted Decision-Making (Capacity) Act 2015 is a further demonstration of the

State’s commitment to the protection of vulnerable people’s rights. The General Scheme of the Equality/Disability (Miscellaneous Provisions) Bill, which will ratify the UN Convention on the Rights of Persons with Disabilities, is another positive step as regards the protection of people’s rights.

The introduction of regulation to the disability sector three years ago was a major step towards ensuring the provision of safe, effective care. However, it was evident at the time that many residential centres were simply not ready for this change. Delays in implementing the policy of decongregation meant that a large number of services had systems in place that worked against the principles of safe, person-centred, integrated care.

Ireland still faces the challenge of outdated care facilities for older and dependent persons. Indeed, the date for full environmental compliance in a number of HSE services was pushed out to 2021. HIQA is still regulating within a residential sector where a very significant number of adults and children with a disability are being accommodated in large congregated settings, which we all have to acknowledge will never reach full compliance with the national standards. Accommodating people in poor-quality environments and in cultures that are not compliant with modern standards could in itself be viewed as abusive.

The slow pace of progress in the development of models of true community-based, integrated care is a continuation of the idea that people with a disability in the care of the State, or of an organisation stemming from charitable or philanthropic backgrounds, are being looked after “well enough”. In fact, I believe that this approach perpetuates a situation whereby vulnerable groups are hidden away from society without true regard for their rights as citizens. This view is borne out by the outcomes of a number of our published inspection reports of disability services. As previously stated, in some instances, the culture and practices within a small number of these services could be interpreted as abusive.

The previous government, in its Future Health strategy, pledged the introduction of statutory regulation of the homecare sector; however, this does not appear to be a priority for the current government. From HIQA’s knowledge of the sector, and from evidence gathered in other jurisdictions, we firmly believe that people in receipt of care services in their own homes are markedly vulnerable and require the protection of a system of regulation in the sector sooner rather than later.

The introduction of homecare regulation is supported by service providers who are keen to demonstrate compliance with regulations, standards and best practice, and prove that they have systems in place to safeguard vulnerable residents. It is my conviction that homecare regulation should include care provided in emerging service models, such as supported or assisted living services, whereby personal care is provided on an individual or group basis. In the main, these services are delivered to people with an intellectual or physical disability, older people or people with mental illness; all potentially vulnerable.

In HIQA, we have identified other areas of vulnerability in the provision of services by the State. We cannot ignore the fact that there are many people in our society, such as the homeless, prisoners, migrants or asylum seekers in Direct Provision who have an entitlement to safe care and to be protected from abuse. HIQA does not yet have a legal mandate to engage in these services, yet we firmly believe that all vulnerable people in our society have a right to access high-quality and safe health and social care services. The continued absence of assurance in respect of the rights and needs of these vulnerable groups has the potential to create new hidden populations in our country.

In recognition of the vulnerabilities of people in these circumstances and those accommodated in residential settings, the State should now consider the establishment of 'national preventive mechanisms' (NPM), following in the footsteps of those countries that have ratified the Optional Protocol to the Convention Against Torture (OPCAT). These mechanisms aim to prevent the ill treatment of particularly vulnerable people.

HIQA recently submitted a proposal to the Oireachtas Committee on the Future of Healthcare, which included our proposal to develop new adult safeguarding legislation. HIQA undoubtedly has an impact on the quality and safety of services, but it must be bolstered by the introduction of strong and effective safeguarding legislation.

In developing such a legal framework, I propose that the Government should include a definition of who is, or may be, vulnerable in our society and include clear definitions of abuse and related offences. This legislation should also assign a statutory safeguarding role to social services acting on behalf of the State and clearly define the safeguarding roles for all other State agencies, such as an Garda Síochána and Ireland's systems regulators.

Such legislation would mean that statutory social services, currently provided by the HSE, would:

- **lead a multi-agency, local, adult safeguarding system** that would seek to prevent abuse and neglect and stop it quickly if it happened. It would also ensure that others in the same setting are afforded protection
- **make enquiries, or request others to make enquiries,** if there was a suspicion that an adult with care and support needs was at risk of abuse or neglect and the appropriate action needed to be determined
- **establish safeguarding adults boards**, to include social services, an Garda Síochána, relevant healthcare professionals and regulators. These boards would develop, share and implement a joint safeguarding strategy
- **carry out safeguarding adults reviews** when someone with care and support needs dies as a result of neglect or abuse and there is a concern that the social services or providers funded by them could have done more to protect them
- **arrange for an independent advocate** to represent and support a person who is the subject of a safeguarding enquiry or review, if required.

Safeguarding legislation should be developed in line with the key principles and objectives of the Assisted Decision-Making (Capacity) Act 2015.

I was honoured to be invited by Patricia Rickard Clarke to sit as a member of the National Intersectoral Safeguarding Committee. I believe that the members of this Committee can collectively influence the Government in the development of progressive, human-rights-based legislation and policies aimed at protecting people who may be at risk of abuse or exploitation.

Responsibility in the procurement of services

Over the last year we have become increasingly involved in conversations with the HSE and voluntary and private providers on the arrangements in place to commission and oversee services that are in receipt of substantial State funding. These conversations bring into sharp focus the requirement for a system that is attuned to the needs of individuals and local populations.

For years the State has been providing grant aid to residential services as Section 38 and 39 services, in some instances in the absence of adequate performance and oversight arrangements. In recent times HIQA has identified services that have demonstrated significant non-compliance with basic standards of care; however, these service providers have not had to fear the threat of conditions being placed on their contractual arrangement with the funder, i.e. the State.

In a significant number of instances, care is being purchased as a block contract without regard for the specific needs of the people accessing this care. It is our view that the continuation of such funding arrangements has the potential to create a situation whereby the changing care and support needs of individuals are ignored, or abusive or neglectful care is inadvertently supported.

In our submission to the Oireachtas Committee on the Future of Healthcare we also proposed the introduction of commissioning arrangements for health and social care services in Ireland. In the first instance, we believe that such arrangements would provide for transparent accountability arrangements, not only for providers, but also for the commissioners of care. Such a model would have a strong positive effective on the safety and quality of services, governance and financial efficiency.

Commissioning arrangements explicitly define and separate the roles of purchaser and provider of services; currently both of these functions are usually performed by the Health Service Executive (HSE). An effective commissioning body is responsible for purchasing health and social care services from providers. Procurement is always based on an agreed strategy, assessed need, best available evidence, service efficacy, value for money, and the capacity and capability to deliver a safe and effective service. While cost and cost efficiencies are, of course, important, quality and the delivery of safe services are the primary goals.

Commissioning frameworks can provide for national, regional and local procurement arrangements that are person-centred and address local needs.

Local commissioning involves community and primary care professionals, and, most importantly, people who use services. This empowers them to become a partner in their own care and exercise choice and control over their lives. Any review of arrangements for the commissioning of services should, in the first instance, be introduced at the level of the individual.

The funders of services need to have assessment and review mechanisms in place for all individuals. It would be ideal if all people in receipt of care and support were assigned a support worker who was equipped to assess and maintain a review of the care being provided. Such a system would enable clarity on the scope of care being purchased and allow for ongoing contact with vulnerable people and their families on the quality and safety of that care.

Local and national commissioning models would contribute to effective medium to long-term planning by gathering evidence of current and future service needs. It would also optimise service configuration based on sound strategic planning. The introduction of a standardised framework to commission services would help, by way of example, with the development and implementation of national strategies, such as the strategy on decongregation or a new national policy on safeguarding.

Responsibility of the service provider

In some ways we can say that the rule book for service providers on safeguarding vulnerable adults already exists to a large extent. The 2007 Health Act and its associated regulations and standards clearly outline the responsibilities of providers. From HIQA's perspective, however, despite the fact that regulations and standards have been existence in the residential sector for older people for seven years, in the disability sector for three years and for a number of years in the case of foster care standards, it remains a concern that providers continue to perceive the regulations and standards only as a framework against which HIQA, as the regulator, assesses services. They are not!

Standards and regulations are essentially a legally-mandated governance framework for providers of service with the primary aim of protecting vulnerable people. Even in the event of safeguarding legislation, the role and responsibility of the provider remains crucial, and it is essential that they put in place robust systems and structures aimed at providing a safe, person-centred service.

Three years into the regulation of residential services for people with a disability we are still finding examples of how abuse and safeguarding issues are institutionalised, are not being addressed, and, in some instances, are engrained in the model of provision. They include the continued existence of some outdated and outmoded services; cultures that have not moved on from the days of wholesale institutional care.

Fundamentally, in some instances, those delivering care and those assuring the safe delivery of care do not appear to understand the principles of safeguarding and fail to recognise what poor care looks like. Our inspectors repeatedly come across providers who are ignorant of key safeguarding issues, who fail to ensure the protection of vulnerable people from financial abuse or even employ workers who have not undergone Garda Vetting or other security checks.

All of these issues are safeguarding issues – issues that need to be dealt with in the first instance by service providers. Where they are not, HIQA will continue to deal with such breaches unequivocally using the powers devolved to the Chief Inspector.

We also see, on a regular basis, significant improvement and progress in a range of services. We encounter excellent examples of how services have improved residents' quality of life by facilitating their resettlement into community-based services, ensuring that independence and autonomy are promoted and that people using services have more opportunities to integrate with, and participate in, their local communities.

One critical element of these successful services is that the people in charge understand their role in assuring the quality and safety of the services they have responsibility for. They involve people using services in planning and decision-making and ensure that the former culture of institutions is not transferred to the new community based supports. I commend those providers and would encourage others to look to some of these positive examples and replicate their models.

HIQA’s role in regulation and activities promoting improvement

While the majority of centres in Ireland provide a good standard of care and support to residents, our inspectors repeatedly come across centres that are failing to do so. In such circumstances the provider must submit an action plan outlining how they will bring the centre into compliance. However, in some instances, providers fail to address the areas of concern. It’s at that stage that HIQA considers its enforcement options.

HIQA takes enforcement action where there are reasonable grounds to believe that there is a risk to the life, health or welfare of residents, or if there is a substantial and significant breach of the regulations as a result of a provider failing in its duty to safeguard residents. It’s our primary safeguarding duty!

In addition to our responsibilities as the regulator of services, we also aim to educate service providers and people using services on rights and safeguarding issues. We recently published guidance on service-user autonomy and are in the process of developing guidelines for providers on the use of restraint and service-user advocacy.

HIQA welcomes today’s launch of the Online Safeguarding Module for staff and volunteers developed by the National Federation of Voluntary Bodies, St. Michael’s House and the Open Training College. It will no doubt become a very valuable resource for staff, educating them on their role and responsibilities in relation to safeguarding and instructing them on the actions to be taken in the event of a safeguarding issue.

In 2017, HIQA will work closely with the Mental Health Commission to develop safeguarding standards for vulnerable adults. These standards, which will be mandated at ministerial level, will provide direction for those responsible for service design and provision and provide information to people using the services on the standards they should expect. Furthermore, these standards will allow HIQA and the Mental Health Commission to include specific evidence-based safeguarding inspections in their regulatory practice.

HIQA's presence alone as a regulator in the sector, however, cannot provide the assurances or safeguards necessary for vulnerable people or their families. Critically, and as outlined earlier, the primary responsibility for the provision of a safe, high-quality service rests with the provider of that service. In addition, the body purchasing or procuring the service must also be confident its quality and safety.

There are gaps within the State's model of regulation of care and support services for people who may be vulnerable. In the last year we have highlighted the need for a review of the Health Act 2007 to take account of emerging service models and to ensure that regulation keeps pace with the growing nature and diversity of services provided to vulnerable people. This includes consideration of how HIQA might regulate larger private providers, homecare services and other community-based social care services. If we are to future-proof regulation I believe that we need to begin thinking about the regulation of services, as opposed to the regulation of designated centres.

Conclusion

Today I addressed the issue of responsibility within the health and social care system for the prevention of abuse and safeguarding of vulnerable people in Irish society.

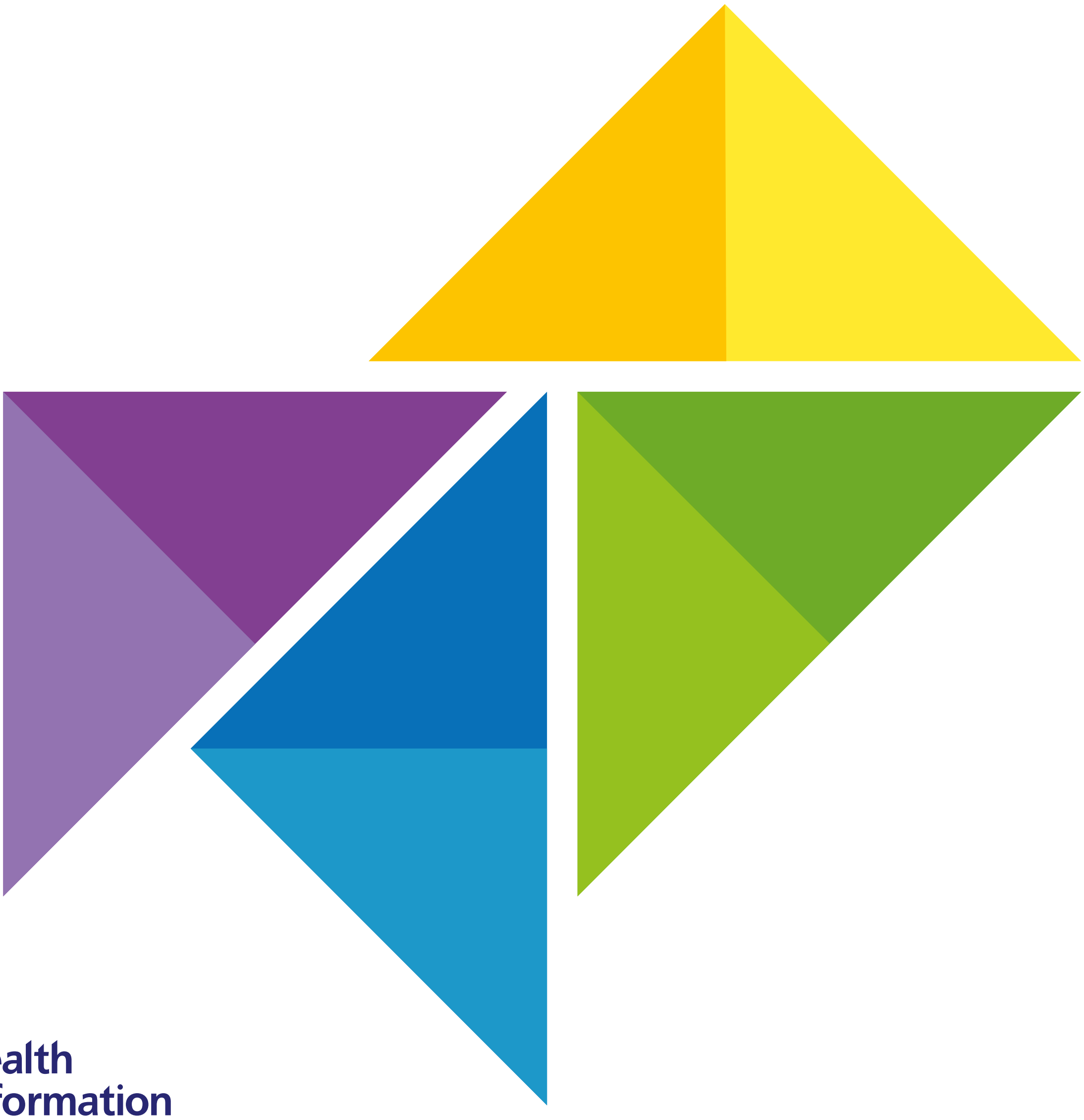
I believe that one thing is clear - no one State agency can achieve the required safeguards on its own. Momentum is gathering amongst interested parties that will enable us all to make a collective contribution to the concept of zero tolerance. However, others still need convincing.

As mentioned earlier, HIQA welcomes the opportunity to work in partnership with a range of agencies and groups as part of the National Safeguarding Committee. The proposed work of the group is to tackle issues such as public awareness, service provision and national policy. I believe that today’s conference highlights the level of interest in this agenda, and indicates a commitment to progress it.

At the outset I quoted a former American vice president. In envisioning what we can collectively do to promote human rights and prevent abuse, perhaps we need to look a little closer to home and seek the advice of one of our own leaders.

In the words of former president Mary Robinson, “The aim of human rights, if I may borrow a term from engineering, is to move beyond the design and drawing-board phase, to move beyond thinking and talking about the foundations stones - to laying those foundation stones, inch by inch, together”.

Thank you.



Health
Information
and Quality
Authority

An tÚdarás Um Fhaisnéis
agus Cáilíocht Sláinte