

Hourglass Response to Adult Protection Bill Northern Ireland

About Hourglass

The Hourglass mission is simple: to end the harm, abuse and exploitation of older people. Every year, more than a million older people across the UK experience physical, sexual, emotional/psychological, financial/economic abuse and neglect.

This is a truly damning indictment of how our society views and fails to value many older people. Hourglass is the only UK-wide charity dealing with the issue and has been doing so since 1993. Over that time our work has touched the lives of tens of thousands of people, shaped government policy and amplified the issue in national press. That is why Hourglass is so vital.

Hourglass operates Europe's only 24/7 helpline for older victims, their families and care practitioners, and it's a lifeline for them. We collaborate with key stakeholders and other frontline organisations to nurture a safer ageing agenda. We also have created programmes that change lives and ways of thinking.

Our specially trained Community Response Independent Domestic Violence Advisors (IDVAs), Independent Sexual Violence Advisors (ISVAs) and Domestic Abuse (DA) Officers specialise in helping people over 60 affected by abuse, providing tailored and specialist support and addressing the safety of victims at risk of harm from current or former intimate partners or family members, to secure their safety and provide the necessary support to recover from the harm suffered. This is an often-emotional job and, whilst there are many success stories and recoveries, abuse of this type is often a life-shortening experience.

Principles (Part 1, Section 1-2)

Hourglass is positive in seeing that the outlined principles in the Bill respect dignity, safety, accountability, and best interests of adults at risk of harm. We are however disappointed that a narrower scope has been drawn compared to what was outlined in our consultation response, especially concerning a lack of focus on prevention, no explicit mention of regard for older persons and no indication on the UN principles for older persons (Independence, Participation, Care, Self-fulfilment, and Dignity) as opposed to similar references in Scottish and Welsh safeguarding measures.

As we noted:

“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).

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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.”

As such, Hourglass proposes the following amendment:

Each Health and Social Care Trust must exercise its functions with a view to

- (a) preventing adults from becoming adults at risk of harm,
- (b) reducing the likelihood of such adults experiencing harm, and
- (c) reducing the need for protective interventions under this Act.

A Trust must have regard to

- (a) the importance of early identification of risk factors,
- (b) the provision of services or facilities designed to maintain wellbeing and independence, and
- (c) the United Nations Principles for Older Persons (Independence, Participation, Care, Self-fulfilment and Dignity).

The Department may issue guidance and Trusts must act in accordance with such guidance.

Adults and Risk and Definition of Harm (Part 1, Section 1-2)

Hourglass is disappointed that “needs for care and support (whether or not the authority is meeting any of those needs)” and “life circumstances” are not included within the definition of an adult at risk. As we noted in our consultation response in 2021, we think that the inclusion of “life circumstances” provide a greater understanding of capacity to understand the intersections of different characteristics and circumstances and how these impact individuals, especially older adults.

The definition in the Care Act 2014 looks at where an adult “has needs for care and support (whether or not the authority is meeting any of those needs), the highlighting of ‘needs’ situates adults at risk in the relationships that make up their networks. 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. Hourglass is concerned that the omission of “needs for care and support” risks narrowing the number of adults who qualify for protection.

Regarding harm, Hourglass is concerned that the definition of harm laid down in the Bill leaves gaps in safeguarding through the use of a narrower classification than its Scottish, English and Welsh legislative counterparts by not specifically covering elements of “coercion,” “exploitation,” or “self-harm.”

The Adult Support and Protection (Scotland) Act 2007 specifically mentions “conduct exploiting another person.” The NI Act also does not include “self-harm” under the definition of harm, in opposition to defined harm in the Adult Support and Protection (Scotland) Act 2007, “self-harm, neglect, and conduct which exploits or causes fear, alarm or distress.” The NI Act’s explanatory and financial memorandum specifically notes that “self-harm” is excluded, but does not explain why.

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Self-harm, exploitation, and coercive or controlling can be key elements of abuse dynamics concerning older people, and their exclusion narrows support accessibility and coverage from the Act.

Hourglass would recommend an amended Section 2(3) as follows:

Amend Section 2(3) to read:

“In this Part ‘harm’ includes all harmful conduct and, in particular, includes—

- (a) conduct which causes physical harm (including self-harm);
- (b) conduct which causes psychological harm (for example, by causing fear, alarm, distress, coercion or undue influence);
- (c) unlawful conduct which appropriates, exploits or otherwise adversely affects property (for example, theft, fraud, economic exploitation);
- (d) conduct which exploits an adult, including sexual exploitation, modern slavery, labour exploitation, or other forms of abuse of power;
- (e) neglect and other failures to act.”

Mandatory Reporting (Part 1, Section 4)

Hourglass is pleased that the recommendations around mandatory reporting outlined by the Commissioner for Older People in “Home Truths” have been laid down within the Bill in regard to statutory agencies including HSC Trusts, PSNI, RQIA. While this provides an essential step forward in statutory accountability and illustrates the importance of reporting, Hourglass is disappointed that proposals for a more universal mandatory reporting duty covering professionals in other settings “there should be a duty to report...when there is reasonable cause to suspect that there is an adult in need of protection,” have not been taken forward.

While Hourglass is aware that there are concerns that mandatory reporting would both leading to a culture of reporting, not action, as well as breach human rights of the individual to privacy and self-determination, we feel that a broader more universalist duty is key to reducing and preventing abuse, and protecting older adults from harm.

Duty to Make Inquiries (Part 1, Section 3-4)

Hourglass concurred with 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 Inquiries, and are pleased that these have been laid down within the Bill.

Powers of Investigation and Entry (Part 1, Section 5-20)

Hourglass is very pleased with the comprehensive range of investigation and entry powers: social worker visits, private interviews, medical examinations, access to records (with court-ordered production if needed), assessment orders, removal orders, banning orders, and warrants for entry that are laid down within the Bill. This brings Northern Ireland safeguarding powers in line with legislative measures in Scotland (Adult Support and Protection (Scotland) Act 2007) and Wales, and allows frontline professionals the necessary tools and resources to allow them to best protect and support older people with care and support needs who are being, or at risk of being abused in their own home.

Independent Advocacy (Part 1, Section 26-29)

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Hourglass is satisfied with the measures laid down in the Bill for each HSC trust to secure access to an independent advocate for an adult at risk. 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 brings 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

Adult Protection Board (Part 2, Section 30-37)

Hourglass is pleased with the measures laid down in the Bill to develop an Adult Protection board. Like its counterparts in the other constituent nations, Safeguarding Adult Boards, the National Independent Safeguarding Board, and Adult Protection Committees, an Adult Protection Board in Northern Ireland will help ensure the quality of local care and support services. Hourglass is satisfied that the provisions within the Bill include the requirement to produce an annual report and to outline yearly future strategies in a strategic plan, which 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. However, Hourglass is concerned with the placing of the Adult Protection Board under Department of Health direction and oversight, limiting its independence and autonomy.

Serious Case Reviews (Part 2, Section 32)

Hourglass supports the measures outlined within the Bill to mandate that the Adult Protection Board undertakes prescribed serious case reviews. 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.

However, Hourglass is very disappointed that there is a no provision within the Bill for a unified and detailed electronic anonymised database of all adult protection serious case reviews for Northern Ireland. Learnings and recommendations from SARs risk becoming siloed with a lack of efficient sharing and learning across trusts and wider society.

Certain ASBs and SCIE have created a repository of SARs in England. In Wales the Welsh Safeguarding Repository stores all new SUSRS (Single Unified Safeguarding Reviews) and allows the use of AI and machine-learning to enhance its search and analytics functions. Replicated in NI, this would ideally enhance the potential of learning from individual reviews by providing a way to share learning across the system, as well as providing transparency and accessibility to a more widespread audience.

Hourglass would recommend an amendment as follows:

The Adult Protection Board must establish and maintain a central anonymised repository of serious case reviews carried out under section 32.

The repository must contain—

(a) the full text of each serious case review, suitably anonymised to protect the privacy of individuals concerned; and

(b) a summary of lessons learned and recommendations for practice improvement.

The Board must ensure that—

(a) the repository is accessible to Health and Social Care Trusts, the Department, regulators, and other prescribed bodies engaged in adult protection; and

(b) summaries of lessons learned are made publicly available on an annual basis.

Regulations may prescribe—

(a) the process for anonymisation;

(b) the form and content of summaries;

(c) the bodies entitled to access the full repository;

(d) data protection and confidentiality safeguards.

In this section “serious case review” has the meaning given in section 32.

Duty to Cooperate (Part 1, Section 4)

Failure to cooperate, or to share information, is a regular concern arising from Serious Case Reviews, and as such, Hourglass is pleased with the measures outlined within the Bill regarding a duty to cooperate enshrined for HSC Trusts, Probation Board, the Northern Ireland Housing Executive, the Regional Agency for Public Health and Social Well-Being, the PSNI, and persons providing medical and social care services.

Access to Financial Records (Part 1, Section 7)

Hourglass understands concerns 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, and such a power would be effective in addressing issues of economic 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.

As such Hourglass is pleased with the outlining under Section 8 of the Bill enabling access to financial, health, and other records by social workers, as well the establishment that HSC’s may apply to a magistrates’ court for an order (“a production order”) which requires the person holding specified records to give them, or copies of them, to a social worker.

New Offences (Part 3, Section 38-42)

Hourglass is very pleased with the laying out of new offences of ill treatment or neglect for care providers and care workers within the Bill, this brings Northern Ireland legislation in line with England and Wales through sections 20 and 21 of the Criminal Justice and Courts Act 2015, and the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. This measure increases the safeguards for the most vulnerable and closes previous safeguarding gaps for those cared for with capacity.