

COMMITTEE FOR HEALTH – PRIMARY LEGISLATION – ADULT PROTECTION BILL- CALL FOR EVIDENCE

Closing date for comments: Friday 26 September 2025.

FAO THE COMMITTEE FOR HEALTH NI ASSEMBLY

Thank you for the opportunity to respond to this piece of legislation. I respond as an individual who has had experience of having relatives in various care homes.

Please note that if any part of this submission is to be published, I would prefer that it was published anonymously.

Comment In General

My overriding concern is that this legislation as presently drafted can only be used where an adult at risk is being, or is likely to be, **seriously** harmed". While I have no doubt that the powers in this Bill will be mostly necessary and of use in those particular situations, these situations should be the exception rather than the norm and hopefully relatively few in number. Considered in this light, the costs of the implementation of the Bill appear disproportionate unless prevention can be brought within its scope.

The way in which the Nursing Homes Regulations (Northern Ireland) 2005 has been drafted (according to some in RQIA) appears to contribute to the failure by RQIA, to bring Care Home Providers and managers to timely and serious account for failure to provide adequate staffing levels and to maintain standards of basic patient - centred care as set out by the Care Standards for Nursing Homes (April 2015).

In some cases, inadequate staffing levels, poor standards of care and lack of accountability for the failure to maintain the required standards may potentially foster an undesirable "cultural norm" which may in turn have serious consequences. At the present time, there appears to be little in the way of deterrent sanctions for inadequate staffing, inadequate resources and poor standards of care.

It would be my view that this Bill and other relevant legislation such as The Nursing Homes Regulations (Northern Ireland) 2005 should have their thresholds and penalties for offences carefully scrutinized to ensure they prevent and deter rather than simply react to situations such as Dunmurry Manor.

What is the interplay between the Nursing Homes Regulations (Northern Ireland) 2005 and the Adult Protection Bill? Lowering the threshold in the Bill from one of "serious" harm to "harm" while providing the same penalties for care provider and care workers may be a sufficient deterrent to bring about cultural change.

In summary, it would appear that the Bill as presently drafted will put a great many more social workers in the system at considerable expense to investigate "serious" complaints only. Additionally intention is required to prove wilful neglect or ill-treatment. Broadening the scope of the Bill and lowering thresholds for harm may bring about cultural change and an improvement in standards.

Specific Comments in respect of particular clauses are made below.

COMMENTS ON SPECIFIC CLAUSES

ADULT PROTECTION BILL

[AS INTRODUCED]

PART 1

PROTECTION OF ADULTS AT RISK OF HARM

S 2 “Adult at risk”

Section 2(4) provides that “conduct” in Part 1 includes neglect and other failures to act however the Care Provider and Care worker offences are only for ill-treatment and wilful neglect not neglect simpliciter. Neglect may also cause serious harm. What is the definition of “ill-treatment”? Wilful neglect requires intention, a high threshold.. How is mal-treatment (which may also cause harm or serious harm) to be caught by this legislation?

Has the interplay between the offences against the registered person in The Nursing Homes Regulations (Northern Ireland) 2005 (Regulation 36) and the Offences in the Adult Protection Bill been considered?

S 3. Duty to make inquiries

3(b) What is the threshold for HSC intervention?

Section 8(5)(c) appears to suggest that the threshold is, “an adult at risk who is being, or is likely to be, **seriously** harmed”.

What is the definition of “**serious** harm” please?

S 5. Visits by Social Worker

5(1) A social worker may enter **any premises** for the purpose of enabling or assisting an HSC trust conducting inquiries under section 3 to decide...

s29 (Interpretation) “premises” includes any place and, in particular, includes any vehicle or vessel and any moveable structure.

Under this definition, premises presumably also refers to entry to domestic homes as well as to care homes.

S10 Assessment Orders

S10(4) Is there not a mandatory requirement for Care Homes to provide privacy for an assessment? If an application for an Assessment Order is necessary to assess a patient in the context of an Independent Care Home (e.g. for lack of privacy), could this potentially lead to a situation where a patient is moved to another care home rather than investigating and addressing the standards which gave rise to the concerns being addressed?

S 9 Applications for Production Orders: Procedure and s26 Independent Advocates

s9(5) The affected adult may be accompanied at any hearing conducted in respect of an application by-

- (a) an independent advocate assigned to the adult under section 26;
- (b) A friend, a relative or any other representative chosen by the adult.

Comment:

Should there be after (a) **or** or **and** (b)?

Is s 26 an imperative given that s 9 provides that the affected adult **may** be accompanied by

- (a) An independent advocate under section 26:
- (b) A friend, a relative or any other representative chosen by the adult.

S 26 Independent Advocates

Should s 26 read

- (1) Each HSC trust must make arrangements to secure that an independent advocate is available...**if required**.

It is not clear whether the assignment of an independent advocate is mandatory or assigned and what conditions? In my view, primacy of family/other involvement chosen by the adult should be paramount.

S 27 Exercise of Functions of social worker, health professional and HSC trust.

S 27(1) & (2) The difference between “an adult protection social worker” and a “social worker” is not clear. What is the difference between them? It appears from 27(2) that “a social worker” can carry out most of the important functions under Part 1 of the Bill.

Under S27(3) The particular functions conferred on “ adult protection social workers” by or under Part 1 is not clear or specified. What are these please?

S 28 Involvement by HSC trust of relevant persons

28(1) In exercising its function under this Part in relation to an adult an HSC must, ~~to such extent as it considers reasonably practicable and appropriate—~~ (suggested deletion)

- (a) Establish the views of relevant persons
- (b) Have regard to those views, and
- (c) Keep relevant persons informed as to the exercise by the Trust of those functions

This section has been qualified by what the Trust considers reasonably practicable and appropriate. What constitutes “reasonably practicable” or “appropriate” in the Trust’s view?

In my view, the onus should be on the Trust to explain why it has not carried out the requirements (a) –(c). If a Trust is genuine in its concerns for a vulnerable adult, cognizant of issues of consent, the primacy of the family and confident and competent in its own skills, resources and processes it should not have any difficulty with this.

PART 2

THE ADULT PROTECTION BOARD FOR NORTHERN IRELAND

S 30 Establishment of the Board

Under s30 the Board must include a Chair appointed by the Department, plus 6 representatives of the bodies specified in subsection (3) (all of whom are part of government funded bodies) plus 2 but not more than 4 other persons who are not representatives of the persons or bodies specified in subsection 3.

Re subsection (5) representatives of “other bodies” are subject to the approval of the Department.

The Board can therefore be heavily weighted (7 to 2) or at a maximum (7 to 4) in favour of Department /government funded agencies. Is there a reason for this? I would suggest a more equitable split.

This is particularly important given the requirements of s 32(3) where the Board must “monitor, review and hold to account the exercise by bodies and persons represented on the Board...of their functions relating to the protection of adults at risk; keep the practices and procedures of such bodies....under review with a view to encouraging best practice, the standardization of procedures and co-operation as well as make arrangements for training and adviceand in its undertaking of serious case reviews.

S 33(1) Directions to the Board. This would suggest that the Department may potentially override the Board in the exercise of any of its functions. The Board does not appear to be wholly independent. To what extent will scarce resources impact on the functions of the Board?

S 35 Committees and sub committees of the Board. There appears to be the potential for the Board to establish sub committees but no mention of the nature of the functions to be undertaken by those Committees. What are these functions likely to be? What are the costs for a relatively small cohort of “serious cases” as presently defined?

PART 3

OFFENCES INVOLVING ILL TREATMENT OR WILFUL NEGLECT

S 38 Ill-Treatment or neglect: care worker offence.

S 38(1) The care provider and care worker offences are for ill-treatment and wilful neglect not neglect simpliciter which may also cause serious harm. Section 2(4) specifies that “conduct” includes neglect and other failures to act yet the offences do not address these.

What is the definition of “ill-treatment”? Wilful neglect is a high threshold. How is mal-treatment (which may also cause harm or serious harm) to be caught by this legislation?

What of gross negligence?

If the threshold was “harm” rather than “serious harm” and the offences were “neglect” and “failure to act”) the penalties in s38(2) might go some way in bringing about cultural change.

38(2) Care Worker Penalties for a Care Worker Offence.

On conviction on indictment an individual is liable to imprisonment for a term not exceeding 5 years or a fine or both. On summary conviction an individual is liable to imprisonment for a term not exceeding **6 months** or a fine not exceeding the **statutory maximum** (or both). (bold my emphasis)

The statutory maximum on summary conviction [£5,000] Art.4 The Fines and Penalties (Northern Ireland) Order 1984.

NB Comparing and Contrasting with Animal Welfare (Cruelty to Animals). Under the Welfare of Animals Act (NI) 2011, s.31(1) a person guilty of an offence under section 4(1) (unnecessary suffering) the penalty on indictment is for a term not exceeding 5 years imprisonment and/or an unlimited fine. However, on a summary conviction, the penalty is for a term not exceeding **12 months** imprisonment and/or **£20,000 fine**. This is a greater maximum penalty than for the protection of people. Why is this?

An additional penalty (not specified) should also be considered/included i.e. the removal of a care worker convicted of an offence from a professional register or barring them from further work in the care sector.

Definition of Care Worker

38(4) states that Care worker includes a volunteer who provides health and social care for an adult while working for a body whose activities are **not** carried on for profit however why is a volunteer who provides health and social care for an adult while working for a profit making body not a “care worker” and excluded? Why are there other exclusions from the “care worker” definition as set out at 38(4)(b)? What is the rationale for these exclusions where ill treatment or wilful neglect is involved?

S 39 Ill-treatment or neglect: care provider offence

In addition to ill treatment and wilful neglect 39(a) an offence is committed by a Care provider if 39(b) the care provider’s activities are managed or organized in a way which amounts to a gross breach of a relevant duty of care owed by the care home provider to the adult who is ill-treated or neglected and (c) in the absence of the breach, the ill-treatment or neglect would not have occurred

39(6) defines a breach as “gross” if the conduct alleged to amount to the breach falls **far below** what can **reasonably be expected** of the care provider **in the circumstances**. What do the words “far below”, “reasonably be expected” and “in the circumstances” mean?

S 40 Care Provider Offence: Penalties

S 40(1) A person guilty of an offence under section 39 is liable-

(a) On conviction on indictment to a fine;

(b) On summary conviction to a fine not exceeding the statutory maximum (underlining my emphasis)

These penalties should be compared and contrasted with those maximum sentences and penalties available for Animal Welfare (see comments at 38(2) above)

40(2) A court before which a person is convicted of an offence under section 39 may (whether instead of or as well as imposing a fine) make either or both of the following orders

(a) A remedial order

(b) A publicity order

The penalties for a care provider do not include imprisonment. The care worker and care provider penalties should be the same. The court should have recourse to all the available options and decide the appropriate penalty in all the circumstances of the case.

In 40(2) remedial orders and publicity orders appear optional. In my view, these orders should be mandatory in the public interest and for the protection of the public.

Suggested rewording of 40(2)

40(2) A court before which a person is convicted of an offence under section 39 (as well as imposing a fine or imprisonment or both) shall make the following orders:

(a) A remedial order

(b) A publicity order

PART 4

REGULATION OF CCTV SYSTEMS ON CERTAIN ESTABLISHMENTS

S 44 Regulations should also provide for the number of unannounced inspections by RQIA of the regular working of the CCTV system in Care Homes etc. The regulations should also provide for the time periods for storage and retention of CCTV information.

PART 5

GENERAL

No Comment