Safeguarding IRELAND

National Shared Services Office

Safeguarding issues

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Overview

- Some relevant Data
- Money Management Arrangements
- Powers of Attorney
- Planning Ahead
- Data Sharing
- Q and A

Demographics

- Population*

				Over 65s
• 2019	4.921 million	65-84 = 619,000	85 + = 77,300	14.1%
• 2029	5.322 million	65-84 = 827,500	85 + = 118,000	17.7%
• 2039	5.676 million	65-84 = 1,026.200	85 + = 198,300	21.6%

- Dementia¤
  - 2018 = 55,000
  - 2038 = 115,426
  - 2048 = 157,883

Alzheimer Europe (2020) for Ireland

2020 = 64,000

2045 = estimated over 150,000

*Department of Health Key Trends 2019

¤ National Dementia Strategy

Most common type of abuse of Older Person + 65

- Psychological Abuse/Coercive Control/Undue Influence

- Financial Abuse

Levels of Financial Abuse

- Age 20 -64 = 20%
- Age over 65 years = 22% - 25%
- Age over 80 years = over 30%

Relationship and Financial Abuse Older Person + 65 (HSE figures)

- Person of concern

Son/Daughter	47%
Other relative	24%

RedC Polls – Safeguarding Ireland

- April 2017 – Half of those surveyed said they have experienced the abuse of vulnerable adults either through being abused themselves or seeing another person being abused.
- October 2018 – Just 6% have created an Enduring Power of Attorney – planned ahead.
- May 2019 – 10% have witnessed abuse of a vulnerable adult in the past 12 months.
- February 2020 – 70% confused about rights and decision-making and consent and was of the view that another person could make decisions about a frail older person even if that person had the capacity to make the decision for him/herself and they did not need the consent of the person.
- August 2020 – About 1 in 20 believe they have experienced financial abuse during COVID-19. Only one in three of those who needed help with managing finance during first lockdown took back control.
- October 2020 – 12% experienced adult abuse during the first 6 months COVID-19. One third reported abuse during lifetime.
- December 2020 – Almost one in four do not know who to report adult abuse to.

Obligations of the State

Protecting Personal Rights

Constitution of Ireland

Article 40.3. ….protection of personal rights including property rights

Article 45.4……protect …..the weaker sections of the community

Article 12.4 UNCRPD

- *State Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.*

Money Management Arrangements

Who is receiving the pension payments?

- Bank Account
- Who is operating the bank account?
- Need for risk assessment

Joint Accounts

- Is it Joint Account i.e. co-ownership arrangement
  - ➢Implications
  - ➢Has co-ownership arrangement been terminated?

Or

- Is the Joint Account in effect an agency account (set up for convenience with no intention of benefiting party added to the account.
  - ➢ Implications
  - ➢Automatically terminates when person lacks capacity

Third Party Bank Account

- Clear intention when setting up
- Arrangement with Bank
- Can facilitate – least intrusive approach

✓Suitable Person

Agency Arrangements

- Department of Social Protection
  - ➢ Type 1 Agency – person has capacity
    - ▪ Authority to collect State pension
  - ➢ Type 2 Agency – person lacks capacity (will probably be subsumed into the arrangements under the *Assisted Decision-Making (Capacity) Act 2015*

- HSE – Patients Private Property Account (Separate account for person)
  - ➢ Must be availing of HSE Services
  - ➢Pension could be paid into this account (person with capacity 'consent' or for person who lacks capacity

- Other Agency Arrangements (person with capacity or who lacks capacity)
  - ➢ Pay Public Service Pension directly to private nursing home

Nursing Home Support Scheme – Fair Deal

- Care Representative
  - Appointed by the Circuit Court
  - Authority to apply for Fair Deal
  - Authority to register charge against person's property

  - No authority to manage money or receive income due to person

Powers of Attorney

Powers of Attorney

- Is it an ordinary Power of Attorney?
  - What authority has the attorney?
  - Only valid while person has capacity but if person lacks capacity automatically becomes void.

  - Time line for a Power of Attorney?
  - What review procedures are in place to check?

  - Risk?
  - Prompts?

Enduring Powers of Attorney (EPA)

- An enduring power of attorney is a mandate given by a person (donor) who has decision-making capacity with the purpose that it will come into effect in the event that the donor lacks capacity to make decisions for him or herself

- Made by person (donor) over the age of 18 years – appoints a person (attorney) over the age of 18 years

- Only comes into effect when person lacks decision-making capacity and when the EPA is registered

Joint and Joint and several appointment

- Donor may appoint more than one attorney and may specify attorney to act –
  - Jointly
  - Jointly and severally or
  - Jointly in respect of some matters and jointly and severally in respect of other matters

  In default of the EPA specifying, attorneys shall be deemed to have authority to act jointly if more than one is appointed

- Where 2 or more persons have authority to act jointly and one dies, lacks capacity or is disqualified the remaining attorney/attorneys may continue to act unless the EPA expressly provides otherwise

Scope of Authority for Attorney

- Donor can confer either or both of:
  - General authority to act on the donor's behalf in relation to **all** or a specified part of the donor's **property and affairs**,

  Or

  - Authority to do **specified things** on the donor's behalf in relation to the donor's **personal care** or property and affairs, or both

  which may, in either case, **be conferred subject to conditions and restrictions**
- 2015 Act – Power of Attorney Decisions – Property & Affairs and Personal welfare to include Healthcare Decisions

Enduring Power of Attorney

- Is it the enduring power of attorney registered?

- What authority has the attorney/s?
  - If more than one attorney have attorneys joint authority?
  - If more than one attorney, has a named attorney been given authority to manage ‘property and affairs’?

- Are there condition and/or restrictions?

- What bank account are the pension payments being made to?

EPAs created under 1996 Act

- EPAs created under the *Powers of Attorney Act 1996* **for both registered EPA (has come into effect) and for unregistered EPA (has not yet come into effect)** the 1996 Act and Rules **will continue to apply i.e. there are no reporting obligations** for attorney under the 1995 Act.

- However the provisions under the 2015 Act **will apply** to 1996 attorneys in relation to:
  - Complaints may be made against attorneys
  - Director of the Decision Support Service may carry out an investigation
  - Matter may be referred to the court
  - EPA may be revoked

Planning Ahead

Public Awareness

- Encourage people to Plan Ahead
  - Information available with first pension payment
  - Periodic reminder
  - Assess Risk

- Watch out for Undue Influence/Coercive Control

- Have a list of supports available if you sense abuse
  - Look at list on www.safeguardingireland.org

Data Sharing – in the public interest

THANK YOU

Safeguarding IRELAND

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