



26th September 2023

Deputy Fergus O'Dowd
Dáil Éireann
Leinster House
Kildare Street
Dublin 2.

PQ 36252/23 - To ask the Minister for Health with respect to the dissemination of information to all staff in health and socialcare services and following the non-disclosure of a serious incident in a care facility, if he will take immediate action to inform and/or remind all health and social care services that a person shall be guilty of an offence if they fail without reasonable excuse to disclose offences set out in Schedule 2 of the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 (2012 Act) (List of Schedule 2 offences attached); and if he will make a statement on the matter.

- **Fergus O'Dowd**

Dear Deputy O'Dowd,

The Health Service Executive (HSE) has been requested to reply directly to you in the context of the above Parliamentary Question, which you submitted to the Minister for response.

All persons working in health and social care services are subject to the reporting obligations set out in the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 (the "**2012 Act**") in relation to offences scheduled under that Act. Where the 2012 Act applies, it is an offence for a person to withhold information on certain offences against children or vulnerable persons. The 2012 Act provides a specific definition for a "vulnerable person".

In general terms, the reporting obligations arise under Section 2 and 3 of the 2012 Act where:

- (a) The person knows or believes that an offence, listed in the schedules to the 2012 Act, has been committed by another person against a child or vulnerable person, and
- (b) The person has information which he or she knows or believes might be of material assistance in securing the apprehension, prosecution or conviction of that other person for that offence,

An offence occurs where the person fails, without reasonable excuse, to disclose the information as soon as it is practicable to do so to a member of An Garda Síochana. Section 4 of the 2012 Act sets out certain defences to the offence, including in certain circumstances where the child or vulnerable person sets out their view that the commission of the offence should not be made known to the Gardai.

The 2012 Act schedules a range of offences for the purposes of the reporting obligation. In relation to vulnerable persons specifically, these include false imprisonment, assault causing harm, non-fatal strangulation or non-fatal suffocation, listed sexual offences, and offences under the Criminal Law (Human Trafficking) Act 2008.

Section 7 of the 2012 Act it sets out the penalties for failing to comply with Sections 2 or 3:

- (a) On summary conviction a Class A fine or imprisonment for a term not exceeding 12 months
- (b) On conviction on indictment a fine or imprisonment according to the gravity of the Schedule 1 offence or Schedule 2 offence concerned.

The HSE safeguarding policy 'Safeguarding Vulnerable Persons at Risk of Abuse: National Policy & Procedures' outlines a number of principles to promote the welfare of vulnerable people and safeguard them from abuse and sets out the reporting obligations under the 2012 Act in respect of vulnerable persons.

As set out within the HSE safeguarding policy, it applies:

- (a) To all statutory and public funded non-statutory service providers (including for-profit organisations) with responsibility for the provision of health and social care services to vulnerable persons. It applies to all staff and volunteers.
- (b) Across all service settings, including domestic, alternative family placements, residential care, respite services, day care and independent living (associated support services such as transport are also included).
- (c) To all other relevant directly provided HSE services.
- (d) In situations where formal health or social care services are not in place but where concerns have been raised by, for example, neighbours, family members and members of the public in relation to the safeguarding of an individual and a health and/or social service response is required.

The HSE National Safeguarding Office is responsible for overseeing the implementation, monitoring, review and ongoing evaluation of the Safeguarding Policy as well as coordinating the development and roll-out of safeguarding training¹. The HSE have a specific form for use by staff when reporting potential offences to An Garda Síochána under the 2012 Act².

The HSE National Safeguarding Office publishes Annual Reports. The 2022 Annual Report provides:

- (a) The HSE aims to provide integrated health and personal social services that meet the highest standards, where people are treated with respect and dignity and can live as independently as possible. The HSE safeguarding policy and CHO Safeguarding Operations are part of a wide range of measures to protect the welfare and safety of adults who may be vulnerable and at risk of abuse. These measures also include the complaints process, protected disclosure, incident management framework, risk management policy and procedures and the office of the confidential recipient.
- (b) In implementing the adult safeguarding policy, the HSE set up the National Safeguarding Office as well as nine Safeguarding and Protection Teams (SPTs) in 2015, one in each Community Health Organisation

¹ <https://www.hse.ie/eng/about/who/socialcare/safeguardingvulnerableadults/safeguardingvuladts.html>

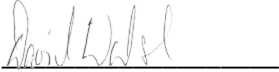
² <https://www.hse.ie/eng/services/list/2/primarycare/childrenfirst/resources/notification-to-an-garda-siochana.docx>

(CHO). These teams are managed and led by a Principal Social Worker and staffed by qualified social workers. As well as assessing and managing community referrals they provide a range of safeguarding functions including quality assurance, oversight and advisory support to HSE and funded service providers. The oversight function is of particular importance in monitoring the standards of individual preliminary screenings and safeguarding plans. Importantly the service retain responsibility for the safety of the person at risk. Within the service agreements with funded agencies there is an obligation to evidence compliance with the HSE safeguarding policy.

Further details are set out in the HSE National Safeguarding Office Annual Report 2022.

I trust this information is of assistance to you.

Yours sincerely,



David Walsh
National Director
Community Operations