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## Adult disclosures of childhood sexual abuse and section 3 of the child care act 1991: past offences, current risk

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### ABSTRACT

In the Republic of Ireland Section 3(1) of the Child Care Act 1991 places an obligation and legal duty upon the State child protection services “to promote the welfare of children in its area who are not receiving adequate care and protection.” This article focuses on a specific element of this duty; the social worker’s responsibility to accept and assess retrospective reports of childhood sexual abuse. Retrospective disclosures of abuse are referrals made by adults of experiences they encountered as children. This article argues that current social work practice in this area lacks clarity and cohesion and while new policy and practice approaches are emerging ultimately there is a sense of confusion for both social workers and those adults affected by childhood abuse who come forward to disclose. This article presents an examination of the key judgement of Justice Barr in *M.Q. v. Robert Gleeson and Ors* [1998] 4 IR 85 and subsequent, related, precedents and how they relate to current Irish social work policy in this area. Adult disclosures of childhood abuse have the potential to bring alleged abusers to justice and thereby protect current and future children from harm. This article seeks to provide clarity, to social workers and those working with adults affected by abuse, regarding the Irish legal framework relating to adult disclosures of abuse as it stands. The article ultimately argues that further research and policy guidance is required.

### KEYWORDS

Child abuse; sexual abuse; child protection; social work; adult disclosures

## Introduction

Social workers in the Republic of Ireland, operating within the Child and Family Agency (Tusla) are obliged under Section 3(1) of the Child Care Act 1991 “to promote the welfare of children ... who are not receiving adequate care and protection.” Tusla also has an obligation under the Child and Family Agency Act 2013 to “support and promote the ... protection of children.” These obligations are further detailed in the national child protection guidelines known as *Children First* (Department of Children and Youth Affairs, 2011). Historically, child protection social work operated under regional health boards in Ireland (See Skehill, 2004). This role transferred to the Health Service Executive (HSE) in 2005 and subsequently all duties and responsibilities under the Child Care Act 1991

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transferred to the Child and Family Agency (Tusla) under Section 82(2) of the Child and Family Agency Act 2013.

During the development of Ireland's national child protection guidelines "a key finding of the [Children First] Working Group's deliberations was the significant variation in how organisations operate child protection procedures and arrangements" (Department of Health, 1999, p. 12). Children First, the national child protection guidelines, was originally introduced in 1999 and was an attempt to consolidate and introduce consistency in child protection practice for both frontline professionals and those who work with children in the general environment.

In 2008 and 2010 the Department of Health and Children and the Office of the Ombudsman for Children, respectively, carried out independent assessments of child protection practitioner's adherence to Children First guidelines on a national level. Both assessments found that inconsistency and variable practice existed throughout the State, with child protection practice varying from office to office and in some cases from worker to worker (Department of Health and Children, 1999; Ombudsman for Children's Office, 2010). A prominent finding of the Ombudsman's report was that, despite the recent presence of national guidelines, child protection issues were being dealt with in different ways by different social work offices. The effect of this was that a referrer could not say with any degree of certainty how a child protection referral would be dealt with and how the information was managed.

While both of these assessments examined adherence to child protection guidelines in a general sense, Mooney has argued, albeit with non-generalisable qualitative data, that these inconsistencies and variable practices also exist in relation to specific child protection functions, namely, receipt and assessment of adult disclosures of childhood sexual abuse (Mooney, 2013, 2014). In social work practice, referrals made by adults concerning experiences of childhood abuse are known as retrospective disclosures and are now defined in the Children First national guidelines as "disclosures by adults of abuse which took place during their childhood" (Department of Health and Children, 1999, p. 39). Historically these types of referrals have not received due attention. The Ombudsman's report (2010) specifically identified that Ireland's first guidelines to mention child sexual abuse, published in 1987, "did not cover historic cases of abuse" and flagged this as "a significant omission because those who have abused in the past may also pose a present risk to children" (Ombudsman for Children's Office, 2010).

Mooney's initial study (2013) sought to provide a contextual background to adult disclosures of childhood sexual abuse to Irish child protection social work services which had heretofore been absent from Irish debate and, due to a lack of comparable systems, is largely absent in international literature also. The study gathered data from frontline child protection practitioners, as well as from other key stakeholders in this area. In the context of adult disclosure of childhood sexual abuse this study echoed the findings of both the Ombudsman and Department's reports regarding adherence to child protection guidelines and inconsistency in practice (Mooney, 2014). Specifically, Mooney collected data which showed that social workers receiving retrospective referrals in 2013 spoke about their "hands being tied" (2014, p. 11), "nothing being in place to respond to" adult referrals (Mooney, 2014, p. 11) and critically "with the best will in the world there's a brown file in there with an awful lot of names I don't know if anything is being done with that and I think there are people at risk and it needs to be looked into" (Mooney, 2014, p. 11).

Moving forward to 2017 and the ensuing landscape remains a dense entanglement of policy, legislative, judicial and practice issues which this article seeks to extricate. This article will contribute to disentangling some of these issues by specifically focusing on the policy and legal context of adult disclosure of childhood sexual abuse. The article therefore aims to provide clarity for social work practitioners and professionals who may be obliged to report or assess disclosures of abuse. The article concludes by posing some questions and possible recommendations for social work practice in Ireland.

### **Current Irish policy regarding retrospective disclosures**

The current national policy in relation to social work assessment of adult disclosures of childhood sexual abuse, while under-pinned by the Child Care Act 1991, is laid down in Section 3 of the Children First National Guidelines (Department of Children and Youth Affairs, 2011). Section 3.6.1 (and again at Section 7.16.7) states that it is the statutory authority's (Tusla) responsibility to "establish whether there is any risk to any child who may be in contact with the alleged abuser revealed in such disclosures" (Department of Children and Youth Affairs, 2011, p. 15) and that any risks should be reported immediately to the child protection services.

This is where some of the confusion begins. Interpretations aside, whether directly or indirectly, this section creates a mechanism whereby adults who have been abused as children in the past can refer such experiences to the child protection system. In turn the above policy then imposes a duty upon social work services to investigate such a referral by assessing the risk posed to any children. This places adults, sometimes in the later years of their lives, in the position of referring abuse to a system designed to engage with and protect children; a system which in a general sense does not retain information on adults in their own right. Akin to the data gathered from Social Workers in Mooney's study, this created confusion for practitioners as to how to record, file, investigate and respond to such allegations with some offices creating their own good practices while others leave such referrals idle (HIQA, 2015; HIQA, 2016b; Mooney, 2014).

The Health Information and Quality Authority of Ireland (HIQA) has an independent role in auditing health and social care providers and services within the Republic of Ireland. This includes auditing the performance and efficacy of child protection services and their response to referrals. A sample of the findings from three of their most recent reports show that; "... a large number of retrospective abuse referrals had not yet been assessed which meant that the potential risk to children was not fully known" (HIQA, 2015, p. 8). During another HIQA assessment in January 2016 "inspectors found there were significant delays in the service assessing risks in relation to retrospective abuse and there were immediate and high risks that were not dealt with in a timely manner" (HIQA, 2016a, p. 28). While the report of Sligo, Leitrim and Cavan Services in March 2016 highlighting again the importance of these types of referrals in a child protection context; "children identified as a result of retrospective disclosures were risk assessed and actions were taken to keep them safe" (HIQA, 2016b, p. 18). Of note in this vein is HIQA's recent overview of their investigations in 2016. They note in their "Examples of Poor Practice" section, that:

Inspectors identified poor management and oversight of retrospective allegations of abuse against adults. This included delays in the service area assessing the risks and, when assessed, delays in dealing with immediate and high-risk cases. (HIQA, 2017, p. 52)

Historically, child protection services in Ireland have not recorded figures in respect of retrospective disclosures and therefore it has been difficult to ascertain the extent of the issue regarding how these referrals are handled. There is also no comparative international literature because in other comparable jurisdictions such as Australia and the United States adults disclosing childhood abuse are primarily directed towards law enforcement and police agencies. With Ireland's leading sexual abuse prevalence study, the SAVI report (McGee, Garavan, de Barra, Byrne, & Conroy, 2002) now being 15 years old, further research and data collection is needed in respect of retrospective disclosures and sexual abuse in general in Ireland.

Irish child protection services have recently begun to record figures relating to retrospective disclosures and from July 2016 will begin to compile these on a regular basis which will greatly increase our understanding of, and approach to, this area. In a statement to the Irish Government in July 2016 the Minister for Children advised that:

In 2015, Tusla conducted a National Review of Cases Awaiting Allocation which included information on the number of retrospective cases. The review showed, at February 2015, that of the 8,865 cases awaiting allocation nationally there were 1,204 cases of retrospective abuse disclosures. The review did not look at the average waiting times for retrospective cases awaiting allocation of a social worker. (Zappone, 2016)

It is argued that a second source of confusion regarding the assessment of retrospective disclosures arises due to the presence of competing legal rights, issues surrounding burden of proof and statutory versus non-statutory duties and obligations. While Children First clearly outlines an obligation on social work services to respond to such referrals made by adults (DCYA, 2011) these guidelines are not statutorily binding and therefore act as a practice guide only.

The role of a social work child protection investigation is not criminal in nature and, while forensic evidence of the investigation may lend credence to a legal claim or action, the investigation itself is not a criminal process and therefore the burden of proof which applies is that of the "balance of probabilities" and not the higher bar of "beyond all reasonable doubt." In the words of Justice Barr when discussing the distinct child protection roles within both social work and the criminal justice system "... in the former the emphasis is on protection of vulnerable children. In the latter, the objective is the detection and conviction of child abusers" (Barr J., *MQ v. Glesson and Ors.* [1998] 4 IR, p. 100).

Finally, it is argued that an allegation or referral of abuse which occurred in childhood casts two sets of competing legal rights into play; the adult referrer's right to justice and to have his referral investigated and the right of the alleged abuser to privacy, good name and presumption of innocence. A new policy is being developed currently by the Child and Family Agency for frontline child protection staff to address complexities that have arisen in various legal cases regarding the assessment of child abuse allegations (Shanahan, 2015). While this policy will seek to address the matter of retrospective disclosures it is argued here that the above mentioned competing legal rights have caused much confusion within the child protection system and are the central cause of long waiting lists (HIQA, 2015; 2016b, 2017) in relation to the investigation of adult disclosures of childhood abuse.

## Irish judicial interpretation

The foremost judicial pronouncement on this matter came in the form of a judgement by Justice Barr in the case of *M.Q v. Gleeson and Ors.* [1998] 4 IR 85. The applicant in this case wished to become a social care worker and had begun to pursue a social studies course with a local VEC (Vocational Education Committee). This course included a work placement with children. However there had been previous allegations of physical and sexual abuse made against the applicant relating to his own, and his partner's, children. Social work services therefore contacted the VEC, shared the information in respect of the allegations and the applicant's progress on the course was halted. The applicant claimed that the sharing of this information with the VEC was a breach of his legal rights.

While the case did not relate directly to a retrospective disclosure of abuse the Judge's interpretation of the HSE's duty to investigate abuse referrals and share information with third parties is instructive and has led to the development of what are now commonly referred to as the *Barr Principles*. Justice Barr held that where an allegation of abuse is made to child protection services there is no distinction between present and future risk to a child and no distinction between identified and unidentified children at risk. He went on to state:

There are many circumstances which may indicate that a particular person is likely to be (or to have been) a child abuser, but there is insufficient evidence to establish such abuse in accordance with the standards of proof required in a criminal or civil trial. . . . However, there may be evidence sufficient to create, after reasonable investigation, a significant doubt in the minds of competent, experienced health board or related professional personnel . . . . If such a doubt has been established then it follows that a health board cannot stand idly by but has an obligation to take appropriate action . . . (*M.Q v. Gleeson and Ors.* [1998] 4 IR 85, pp. 100–101)

While the details of retrospective allegations of abuse concern an experience that occurred in the past, sometimes many years in the past, they also commonly identify an alleged abuser that may be alive and residing in a particular location. These reports therefore highlight potential risk to current and future children and Justice Barr's judgement is specifically relevant in this regard where he goes on to emphasise social work's proactive duty towards current and future children:

The [child protection service] was not obliged to wait until a child or children had been actually abused . . . . On the contrary . . . the [child protection service] had an obligation to protect children who in its considered opinion would be at risk of abuse . . . (*M.Q v. Gleeson and Ors.* [1998] 4 IR 85, pp. 99–100)

In terms of retrospective disclosures of childhood abuse this judgement proposes that, while due regard must be shown to the rights of the alleged abuser, child protection services have a pro-active duty to investigate any allegations of abuse referred to them whether the details concern current or so called "historic" abuse. This obligation is included and outlined in the HSE Child Protection and Welfare Handbook, a practice guidebook for front-line child protection practitioners, which explicitly references the Barr judgement in terms of retrospective disclosures (Health Service Executive, 2011, pp. 144–146):

Mr Justice Barr did not limit this duty to acting in the interest of specific identified or identifiable children who are already at risk of abuse and require immediate care and protection.

The duty extends to children not yet identifiable who may be at risk in the future by reason of a specific potential hazard to them which the HSE reasonably suspects may come about in the future.

The Barr Judgement therefore established in Irish case law in 1998 that child protection services are duty-bound to assess all referrals of child abuse including retrospective referrals and that the aim of such assessment is not to simply assess risks as presented but also, where sufficient doubt exists, to assess referrals in terms of any future or potential risk. In refusing an application sought by an applicant to halt a similar investigation by the HSE into a referral of child sexual abuse Justice Hedigan in *MI v. Health Service Executive* [2010] IEHC 159 reiterated the Barr Principles by stating that:

The [child protection services] ought to be able to conduct these vital investigations without having to constantly look over their shoulder for possible intervention by the courts. The principles referred to as the “Barr principles” are well established and, based upon them, it is, in my view, perfectly feasible for the [child protection services] to carry out an investigation of this kind with full regard to the applicant’s right to fair procedures and to a fair trial.

Justice Hedigan went on to emphasise the significant role of child protection services in assessing referrals of abuse and he highlighted the pro-active, abuse-preventing, nature of such interventions stating that “such an investigation should always occur at the earliest possible time after the risk to a vulnerable child is apprehended and before the risk crystallises into actual harm” (*MI v. Health Service Executive* [2010] IEHC 159).

Despite the clear message from Barr J., and the re-emphasis by Hedigan J., child protection services’ fear of suit was heightened and further complicated following the judgement of Justice O’Neill in the case of *P.D.P v. Board of Management of a Secondary School and Ors.* [2010] IEHC 189. In this case the Judge deemed the social work assessment in this instance to have been incorrectly carried out with insufficient information being provided to the alleged abuser. While Justice O’Neill supported Justice Barr’s judgement the instant case dealt with a child protection social work investigation that, as deemed by the Judge, was so “utterly wanting in the norms of justice” that the Judge found in favour of the alleged abuser.

The Judge found that an alleged abuser is entitled to all relevant materials pertaining to the allegations against him and all rights under natural justice such as a presumption of innocence, right to a fair hearing and a right to view and question all testimony. While Justice O’Neill further reiterated the Health Board’s duty to fully investigate all allegations of abuse and did nothing to displace the Barr Principles there is no doubt that this judgement has contributed to apprehension in some portions of child protection services when it comes to investigating retrospective or historic allegations of abuse. It is argued that social work services should confine this case to its facts and move forward proactively with the Barr Principles as a cornerstone.

The more recent judgement of Justice Keane in the case of *N.L v. HSE* [2014] IEHC 151 also touches upon these points and further emphasises the importance of the need for balance between both the duty to investigate and rights of natural justice and fair procedures. This matter concerned an ancillary legal application; the request of a school Board of Management to be joined as notice party in legal proceedings. Justice Keane’s judgement details the complexities of a case whereby the then child protection services were attempting to assess an allegation of child sexual abuse against a school teacher.

The teacher had been cleared of similar allegations during a criminal trial, which operates at the standard of “beyond all reasonable doubt.” He therefore went on to argue that the social work department’s finding that a child’s allegation of sexual abuse was credible “on the balance of probabilities” was prejudiced and that their investigation was tainted due to a lack of natural and constitutional justice being afforded to him. The teacher in this matter refused to engage with the social work assessment and the child protection service issued a conclusion stating that they deemed the allegations “credible” but that their outcome was “inconclusive” due to NL’s refusal to engage with the assessment. They notified the school of this outcome and the teacher was subsequently re-instated by the school.

While this case addresses an application to be joined as notice party and does not, in any great depth, address the issues regarding assessment it does highlight the “tightrope” that social workers must traverse when assessing allegations of abuse and neglect whilst juggling competing rights and risk. Jones, Finkelhor, and Kopiec (2001), discussing a potential decline in cases of child sexual abuse, found that child protection workers’ fear of being sued was possibly leading to a reluctance to confirm cases of abuse (2001, p. 1150). It is arguable given the lack of clarity surrounding social work assessment of retrospective cases that such a fear of suit is contributing to waiting lists that HIQA have evidenced.

### **Persuasive authorities & current legislative framework:**

We can see from the above that current Irish policy and case law in this area decree a proactive duty to investigate all allegations of abuse, current or past, which present a potential risk to identified or unidentified children. The next logical step is to examine what the potential consequences are for child protection services who are not meeting this obligation.

McMahon and Binchy (2000) in their seminal text concerning the law of Tort maintain that there are certain statutory functions which are “so essential in maintaining the social scaffolding that it is reasonable for society that they insist that they be discharged properly under sanction of suit” (2000, p. 534). It is reasonable to include the protection and welfare of children within such “social scaffolding” and we need only look to the United Kingdom and wider Europe for persuasive authority in relation to this issue.

In the cases of *S v. Gloucestershire Co. Co.* [2001] 2 WLR 909; *L v. Tower Hamlets LBC* [2001] Fam. 313, both concerning the Statutory Authority’s duty to protect children, the court found that neither Authority was immune from suit in relation to duty to protect children. Therefore, any negligence in respect of this duty is actionable. This point was also confirmed at a European level in the cases of *Z and Ors. V. UK* (2001) and *TP and KM v. UK* (2001) where no immunity from suit was found to exist in relation to this function.

The Health Information and Quality Authority of Ireland (HIQA) has an independent role in auditing health and social care providers and services within the Republic of Ireland. Many of the Authority’s reports in recent years have begun to focus on the issue of adult disclosures of childhood sexual abuse or retrospective disclosures as they are called in practice. HIQA have highlighted that some child protection departments within the State have large volumes of allegations of childhood sexual abuse made by



adults which are not being investigated with the extent of risk to children ultimately unassessed (see HIQA, 2015, 2016a, 2016b, 2017). Without venturing in to a discussion of the effect this may have on adults who have gained the courage to make a referral it is clear from the above judicial authorities, persuasive and otherwise, that there is potential for child protection services to be held legally liable for non-investigation of these allegations and any related damage or injury that may ensue.

This duty and obligation is further emphasised within the framework of legislation that deals with this area in Ireland. The Child Care Act 1999 clearly details the duty upon social workers to ensure the protection and welfare of children at risk. Added to this, both the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 and the Children First Act 2015, despite not yet being fully commenced, outline duties upon professionals and members of the public to report any information relating to offences against children, which would include sexual abuse whether past or present.

Finally, Section 176 of the Criminal Justice Act 2006 provides the offence of Reckless Endangerment of a Child which criminalises ...

... causing or permitting any child to be placed or left in a situation which creates a substantial risk to the child of being a victim of serious harm or sexual abuse, or ... failing to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation. (Section 176, 2006)

## Discussion

Recent policy developments have attempted to bring some clarity to this area for social work practitioners. A Tusla (2014) policy document entitled “Policy and Procedures for Responding to Allegations of Child Abuse and Neglect” was drafted in September 2014 and circulated to all child protection services in the State. The draft version of this policy, yet to be published but in operation in practice, has been publicly criticised due to what social workers have termed “an absence of the victim” within the policy and it being balanced too heavily in favour of the alleged abuser’s rights (Shanahan, June 8th, 2015). The policy relates to allegations of abuse reported by either a child or adult and covers both current and historic, or retrospective, allegations.

The policy is divided into four main sections dealing with the policy context of assessing referrals of abuse, the responsibilities upon social workers, the operational procedures to be followed when responding to allegations and general guidelines concerning the communication of the policy (Child and Family Agency, 2014). The policy adds some welcome improvements to the area including a practice direction that fair treatment is provided to all those against whom allegations of abuse are made (p. 7); a clear statement on the need to establish current risk being essential (p. 8) and provisions for inter-agency co-operation (p. 10) which is critical in tackling issues such as child abuse and neglect.

While any policy developments in this area that seek to add clarity are welcome, this policy also presents a number of challenging issues in terms of the dynamics of sexual abuse and violence. Section 14 of the policy covers issues in respect of a complainant’s refusal to engage with an initial interview with social work services. The policy advises social workers that any such complainant should be advised that:

... if he or she refuses to provide details of abuse that may be viewed as impeding a criminal investigation into suspected criminal violence being perpetrated against a child, he or she may be liable to prosecution under the Criminal Justice (Withholding of information on offences against children and vulnerable persons) Act 2012 (Child and Family Agency, 2014, p. 17)

Leaving aside the potential psychological trauma that could be caused by informing a survivor of childhood sexual abuse that they may be prosecuted for not fully complying with a social work investigation, it should be remembered that such an adult will be referring in the context of their own experience of abuse, highlighting the presence of an alleged abuser and flagging social work's attention to the potential of further current and future abuse.

Under Section 2(3) of the same Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 such an adult is removed from liability for withholding such information. The rationale being that to force an adult or child survivor of abuse to disclose and report their abusive experience could have serious personal consequences for that individual. The above policy is therefore legally inaccurate.

There is further cause for concern at Section 24.1(b) of this policy which provides a mechanism whereby an alleged abuser may seek an opportunity to directly question the complainant (Child and Family Agency, 2014, p. 27). This new policy therefore serves to potentially re-abuse or re-traumatise the adult survivor or child, as the policy relates to both, by informing them that by disclosing they may be requested to be questioned by the alleged abuser. Irrespective of the welcome improvements, discussed above, or concerns raised by this policy and despite its circulation to social workers since 2014 the recent HIQA reports (2015, 2016a, 2016b, 2017) as discussed above show that some social work services are still not assessing these referrals and the potential risks contained therein.

It does stand that any new policy which seeks to address this area and add clarity for frontline practitioners and adults alike is welcome and it is important not to pre-empt what a published version of Tusla's policy will include and ultimately look like. However, currently it is argued here that there is ample cause for concern in respect of the state of policy and practice regarding disclosures made by adults who have experienced childhood sexual abuse. The original format of Children First (1999) recognised the importance of these referrals where it states that:

Investigation of disclosures by adult victims of past abuse frequently uncovers current incidences of abuse and is therefore an effective means of stopping the cycle of abuse. (Department of Health and Children, 1999, p. 40)

Unfortunately, this paragraph was removed in the 2011 revision of the guidelines and, whether coincidentally or not, its absence has coincided with a lack of due attention and prioritisation of referrals made by adults who have experienced abuse in their childhoods. This inaction is resulting in a "large proportion" (HIQA, 2015, p. 8) of child protection concerns from adult disclosures remaining unassessed and therefore the current and future risks to children remaining unknown (HIQA, 2015, 2016a, 2016b, 2017; Mooney, 2014).

However, children who may be at risk from alleged abusers identified in such referrals are not the only population that stand to be harmed by this uncertain state of practice and

policy in the Irish child protection system. The traumatic and lifelong effects of childhood sexual abuse have been well documented in research (Browne & Finkelhor, 1986; Finkelhor, 1990; Freeman & Morris, 2001; Polusny & Follette, 1995). Disclosure of an experience of childhood sexual abuse, at any age, is a monumental life event (Alaggia, 2010; Hunter, 2011) and puts in play numerous power dynamics akin to the abusive experience itself. Issues of power and control are significant to adults who wish to disclose and the impact of *handing over* of their life story or their experiences to anybody, least a State authority, cannot be underestimated (Gagnier & Collin-Vézina, 2016; Linell, 2017; Mian & Collin-Vézina, 2017; Sanderson, 2006). It is further well established that responses and reactions to disclosure are critically linked with the wellbeing of those who disclose and their likelihood to continue the process of disclosure or do so again in the future and an inadequate, insufficient or lack of response to a disclosure of childhood abuse can create the potential for re-traumatisation, stigmatisation, infantilisation and shame (see Hershkowitz, Lanes, & Lamb, 2007; Jonzon & Lindblad, 2004; MacIntosh, Fletcher, & Collin-Vézina, 2016; McElvaney, 2015). While it is yet to be established how exactly the current policy and practice environment described in this article, is affecting adults who disclose to social work services it is clear from the research that such poor responses are at least potentially harmful given the dynamics of abuse. It is argued therefore that clear and robust policy, along with further research in this area, is warranted. Questions that could be posed relate to how the current state of practice affects adults who come forward to disclose, what are the facilitators and barriers in respect of more adults doing so now and in the future and what key messages could those adults' experiences hold for the social work practitioners tasked with meeting their legal, policy and ethical obligations.

While this article aims to present the state of policy and law in the Republic of Ireland regarding adult disclosures and contrast this with the state of practice it is also prudent to remind ourselves that behind these policies and laws are real people; adults affected by childhood abuse, children and frontline social work practitioners.

## Conclusion

In conclusion to this critique of the legal, policy and practice issues surrounding retrospective disclosures of childhood sexual abuse it is prudent to highlight a number of important issues.

Firstly, the legislation in place in the Republic of Ireland places an obligation upon the Child and Family Agency to receive allegations of abuse, investigate those allegations and promote the welfare and protection of children within the State. This obligation is clarified by the Irish Judiciary to extend to both identified and unidentified, future and current children and the duty has been interpreted as being proactive in nature; a duty to assess and intervene before a risk "crystallises." Added to this is the fact that Children First, Irish national child protection guidelines, specifically reference retrospective disclosures and highlight a duty to investigate such referrals. It therefore becomes clear that each element of the State as enshrined in the Constitutional doctrine of Separated Powers (Oireachtas (law makers), Judiciary (Judges) and Executive (Government) respectively) have decreed a duty in relation to retrospective allegations of abuse. A duty which is currently not being met (HIQA, 2015, 2016a, 2016b, 2017; Mooney, 2014).

Secondly, while the interaction between social workers and adults occurs on the frontline when an adult meets a social worker to disclose their experiences of abuse and is, in some cases, met by a system not equipped to manage, assess or advise in relation to such a disclosure, the ultimate responsibility for this interaction lies with those developing social work policy and practice guidelines. The law as it stands, which is clear and concise, must be assimilated into policy alongside the concerns and opinions of frontline social workers and, arguably most importantly, the views, needs and experiences of adults who have previously, or who wish to in the future, disclose to social work services.

Finally, despite the existence of child protection guidelines in Ireland, in one form or another, since the 1970s, high profile clerical, familial and institutional abuse investigations since the 1990s (and others before) and national guidelines specifically referencing adult disclosures of abuse since the turn of the twenty-first century it appears that the voice of adult survivors themselves is still missing from policy and practice in this area. Future research must seek to disentangle the strands of policy, practice and legality. Future policy must seek to clarify practice for those assessing and referring such experiences and ultimately place the voice and experiences of adult survivors of abuse firmly at the centre of any new developments in this area. Effective policy regarding retrospective allegations of abuse must be as much about how we respond to disclosure as it is about how we respond to risk.

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