Domestic Violence and abuse against people with disabilities

Summary of key points

- Article 16 of the UN Convention on the Rights of Persons with Disabilities, commits State Parties to take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse. Ireland, on ratifying the Convention, will be required to fulfill this requirement.

- People with disabilities are at higher risk of violence and abuse compared to others and are more likely than others to have experienced multiple incidents of sexual violence.

- People with impaired mental capacity (who may need appropriate supports to take their own decisions) as well as women and children with disabilities, are particularly at risk.

- Survivors of sexual abuse with disabilities are more likely to disclose having been abused solely as adults, and less likely to report having been solely abused as children, than others.

- There is a need for a renewed focus on appropriate supports and protections in mainstream settings as people with disabilities, in line with Government policy, move out of institutions to living in the community.

- Section 5 of Criminal Law (Sexual Offences) Act 1993 needs to be reformed to widen the definition of what constitutes a sexual offence, to cover different forms of possible sexual abuse.

- This section also needs to be reformed to give clarity on consensual sexual relations between vulnerable adults where they have the capacity to consent to sexual relations – see Law Reform Commission report on sexual offences and capacity to consent.

- Raising awareness, and education about domestic violence and related issues are critical for improving the knowledge levels of people with disabilities considered most at risk in order to empower them in relationships while at the same time protecting them from violence and abuse.
**Introduction**

The National Disability Authority (NDA) is the independent state body providing expert advice on disability policy and practice to the Minister for Justice and Equality, and promoting Universal Design in Ireland. The NDA has undertaken research in the area of abuse and violence against people with disabilities over a number of years and it is a member of the National Steering Committee on Violence against Women, chaired by the National Office for the Prevention of Domestic, Sexual and Gender-based Violence (COSC). The NDA has advised COSC on the National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014.

**UN Convention on the Rights of Persons with Disabilities**

Ireland has signed the UN Convention on the Rights of Persons with Disabilities, and work is currently underway towards ratifying it. Article 16 commits State Parties to take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse. Ireland, on ratifying the Convention, will be required to fulfill this requirement. In this context, the aim of this paper is to highlight key domestic violence issues for people with disabilities, drawing on NDA work in this area to date.

**People with disabilities most at risk**

The National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014 (p.4) states that there are three different dimensions of abuse that characterise domestic violence: physical, sexual and emotional abuse.

An NDA briefing paper has highlighted that there is now a considerable body of evidence that shows that violence and abuse are serious problems for persons with disabilities and they are at greater risk than non-disabled persons. In the case of domestic violence or abuse by an intimate partner, Irish data shows that adults with severely hampering disabilities were 2.9 times more likely to have

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experienced such abuse than other adults. Twice as many adults with disabilities had experienced severe abuse compared with other adults.

The NDA has drawn on studies done in different countries looking at abuse and disability. These show the following groups as being particularly vulnerable to abuse.

**People with intellectual disabilities**
 Adults who have intellectual disabilities may be more vulnerable to different forms of domestic or sexual abuse.

**Sexual abuse**
The 2002 Sexual Abuse and Violence in Ireland (SAVI) Report identified factors which made people with intellectual disabilities more vulnerable to sexual abuse. Vulnerabilities included deficiencies of sexual knowledge, physical and emotional dependence on caregivers, multiple care-givers, limited communication skills and behavioural difficulties. People with intellectual disabilities may also be more vulnerable to abuse because they may lack or have a reduced capacity to consent to sexual relations. A point highlighted at a 2009 NDA expert roundtable discussion is that UK studies have shown that while many people with intellectual impairments may understand the nature of the sex act and its natural consequences such as pregnancy and sexually transmitted diseases, their understanding of abuse tends not to be as developed.2

**Women with disabilities**
Women with disabilities and children with disabilities are particularly vulnerable. The prevalence of abuse among women with disabilities began to be studied internationally in the 1980s and 1990s. In a national survey in the USA, Young et al. (1997) found similar levels of overall abuse among women with and without disabilities (62% of both groups of women had experienced some type of abuse at some points in their lives); however women with disabilities reported significantly longer durations of physical and sexual abuse when compared to non-disabled women and they were more likely to have been abused within the past year. Of women who had experienced abuse, half of each group had experienced physical or sexual abuse. Husbands or live-in partners were the most common perpetrators of emotional or physical abuse for both groups. Male strangers were the most common perpetrators of sexual abuse. Women with physical disabilities

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2 NDA Roundtable on the Mental Capacity Scheme of Bill with a special focus on capacity and sexual relations held on 30 January 2009.
were more likely to be abused by their attendants and by health care providers (Young et al, 1997).

**Children with disabilities**

Some international evidence puts the risk of all types of abuse for children with disabilities at 1.7 times higher than that for children without disabilities while some US research has shown that children with disabilities are twice as likely to be physically, emotionally and sexually abused. Canadian research suggests that risk of sexual violence was 2-4 times higher for those housed in institutional settings (see NDA Briefing Paper).

A study of children with disabilities in Kansas found they were 3 times more likely to be sexually abused than non-disabled children. Evidence from Norway suggests that deaf children are at greater risk than their hearing peers, with 40% of deaf women and 33% of deaf men in a Norwegian study stating they have experienced childhood sexual abuse, compared to 19% and 10% for hearing women and men respectively. Half of these reported cases were in respect of periods spent in boarding schools for deaf children. American estimates show that up to 1 in 3 adolescents with learning disabilities have been sexually abused, while UK estimates are 1 in 10. An Israeli study of 50 adolescents with intellectual disabilities and 50 other adolescents found a higher incidence of abuse among the young people with disabilities. In Ireland, the Ryan report showed that children living in schools for people who were Deaf experienced a high incidence of abuse, and this report also documented abuse in some centres for children with intellectual disabilities.

An inquiry into the Brothers of Charity services in Galway investigated allegations of abuse against children receiving residential services over the period 1965 to 1998. The inquiry investigated allegations of abuse made by 21 former residents against a total of 18 individual staff members.

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### Key issues for people with disabilities

There are a number of key issues that need addressing in seeking to reduce domestic violence against people with disabilities, and for providing enhanced supports to victims.

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3 See the NDA’s Briefing Paper on Abuse for fuller references.
Obstacles to disclosure and reporting
Disclosure of abuse may be particularly difficult for people with disabilities. People with disabilities in a position of care dependency may find it difficult to disclose abuse, particularly if they do not see that they have any realistic care alternatives. A series of NDA expert seminars held in 2006 noted that people with disabilities may feel disempowered from making complaints, may have little contact with the outside world, may find it more difficult to communicate, or to be taken seriously if they do complain, so people with disabilities may be easier for abusers to victimise.

The capacity of the criminal justice system to hear and respond to complaints from people with disabilities is another factor affecting disclosure. The NDA has met with members of the judiciary, the Gardai, and the Courts Service to discuss this and others issues that act as barriers to people with disabilities in accessing the criminal justice system in Ireland. The NDA has a number of resources for those working in the criminal justice system such as the NDA’s Accessibility Toolkit (http://www.accessibility.ie) on how make their information, services and buildings accessible to people with disabilities and on-line disability awareness training for which can be located at http://elearning.nda.ie

Mental health
People who experience domestic violence can be more vulnerable to mental ill-health. Access to mental health supports to promote recovery and enable people regain control of their lives is very important.

Sexual violence
In relation to sexual violence, NDA has funded research by the Rape Crisis Network Ireland on Sexual Violence against People with Disabilities and barriers to disclosure. Key research findings were:

- Between 2008 and 2010, 197 people with disabilities attended Rape Crisis Centres. More than nine in ten of these were survivors of sexual violence.

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• Overall, there were similarities between the details of the sexual violence reported by those with disabilities and by others contacting Rape Crisis Centres for counselling and support. There were a few clear differences however such as:
  
• Survivors with disabilities were more likely to disclose having been abused solely as adults, and less likely to report having been solely abused as children, than others
• Women with disabilities were more vulnerable to sexual violence as they got older, in contrast to other survivors
• Survivors with disabilities were more likely than others to have experienced multiple incidents of sexual violence.

Part of the study explored the barriers to disclosure by people with disabilities of sexual violence, through an anonymous online survey, in which 50 respondents identified as survivors of sexual violence. Of these, 30% were disclosing for the first time. The survey also showed that many of the survivors had never received any information on where to go for support, or been asked whether they had experienced sexual violence.

The top barriers to disclosure were fear of being blamed; fear of not being believed; or fear of the legal process. About a quarter mentioned fear of losing support as a factor in not disclosing abuse.

The survey also highlighted the need to ensure that sexual violence services are accessible and skilled in delivering appropriate services and supports to people with disabilities who contact them, and that they are perceived as accessible by people with disabilities.

**Supports and protection in residential and mainstream settings**

Much of the research on violence and abuse against people with disabilities has focused on those living in residential services because people with disabilities in day or residential services may be exposed to higher risks in the absence of appropriate safeguards. They may be more isolated from friends and family, which may render them more vulnerable to abuse. In particular, their impairment may be targeted as a focus of abuse. In this regard, the recent publication of the National Standards for Residential Services for Children and Adults with Disabilities is significant as they contain specific elements on protection against abuse. NDA welcomes the commitment to implement the Standards from 1 September 2013 which will result in their monitoring by the Health Information and Quality Authority. This will be an important safeguard for the protection and support of those living in residential services.
People with disabilities living in their own homes or group homes in the community also need to be able to access the same protections and supports like everyone else. With the living arrangements of people with disabilities becoming more dispersed and in line with official Government policy to move about 4,000 people with disabilities out of institutions to living in the community, there will be a need for a renewed focus on safeguarding and supports for people with disabilities in the mainstream of the community.

In relation to those people with disabilities attending adult day services, service providers currently have a duty of care and protection in line with HSE practice in this area. The NDA is working with the HSE on developing Draft Interim Standards for Adult Day Services based on New Directions Personal Support Services for Adults with Disabilities. They will contain a specific standard on safe services and supports.

**Need for legislative change**

Section 5 of Criminal Law (Sexual Offences) Act 1993 is problematic for both the empowerment and protection of people with disabilities on a number of grounds. The protections of s5 of the Sexual Offences Act of 1993 for people with intellectual disabilities are confined to a narrow definition of sexual activity and do not protect against other forms of sexual abuse.

**Narrow range of sexual offences covered**

Section 5 of the Act makes it an offence to have, or attempt to have sexual intercourse or commit or attempt to commit an act of buggery with someone who is ‘mentally impaired’ unless they are married to the person or ‘to whom he believes with reasonable cause he is married to’. The Section covers penetrative sexual acts so other acts, for example touching of a sexual nature or forcing a vulnerable person to watch a sexual act, are not covered. In its submission on Capacity and Sexual Relations in the context of the Mental Capacity Scheme of Bill to the Department of Justice and Equality, the NDA recommended that the reform of Section 5 should include widening the range of possible forms of sexual abuse or exploitation, along the lines of The Sexual Offences Act 2003 in England and Wales.

**Criminalising consensual sexual relationships**

However, the same section of the Sexual Offences Act also potentially criminalises consensual relationships between people with intellectual disabilities. The NDA has recommended that Irish law should empower vulnerable adults to engage in loving sexual relationships as do other adults, whilst also protecting
them from sexual abuse and exploitation. This issue is also dealt with in the Law Reform Commission’s 2011 paper on Sexual Offences and Capacity to Consent. The current provisions also appear to be at variance with Article 23 of the UN Convention on the Rights of Persons with Disabilities.

**Need for raising awareness and education**

A second issue relating to Section 5 is that it is unclear on whether sexual relations between two consenting adults with ‘mental impairment’ is lawful. This has resulted in many services providers of intellectual disability residential services not having sex education policies in place. About 16,000 people in Ireland attend day programmes operated by these voluntary organisations, 43% of whom have a mild level of disability. Full time residential services are used by nearly 8,000 people, less than 20% of whom have a mild intellectual disability.

Research funded by the HSE (2009) concluded that while Section 5 has created confusion within [service provider] organisations as to whether carers who facilitate a sexual relationship between people with disabilities are guilty of aiding and abetting the commissioning of a criminal act and that this creates uncertainty regarding the status of policies and programmes. While many organisations have developed organisational policies to look at sexual health and intellectual disability, there is no national driver to develop policies and the motivation for policy development rests with individual organisations.

Education on abuse and violence should be an integral part of a sex education for those considered most at risk. The Law Reform Commission 2005 report on Vulnerable Adults and the Law underlines the importance of sex education in stating that

“undoubtedly the promotion of capacity to consent to sexual relations is closely linked to the provision of sex education to young adults with limited decision-making ability which is pitched at an appropriate level to their capacity” (p.145)

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8 HSE, Friendship and taboos: *Research on Sexual Health Promotion for People with Mild to Moderate Intellectual Disabilities in the 18-25 Age Range* (2009) p.8
A research project carried out in the UK found on average far lower levels of sexual knowledge and far higher levels of vulnerability (in terms of understanding abuse) amongst 16-17 year olds with learning disabilities compared to those of the same age without learning disabilities. However, sex education in the past had a positive impact on scores. The researchers concluded that it was essential for people to have on-going access to sex education (as opposed to the ‘one shot’ variety), particularly with regard to sexual health and pregnancy, contraception, safe sex, abuse, and some aspects of the law (such as consent). Such adults would benefit from wider availability of sex education, in order to empower them to have relationships while at the same time protecting.

**Grant scheme in 2013 targeted at people with disabilities**

The National Office for the Prevention of Domestic, Sexual and Gender-based Violence in conjunction with the Disability Policy Division in the Department of Justice and Equality, under the Cosc grant scheme in 2013, is providing a stream of funding for projects that will develop and deliver appropriate and targeted communication to raise awareness and increase recognition of domestic, sexual and gender-based violence among people with disabilities, particularly those considered most vulnerable. This is a target action for 2013 under the Strategy which seeks to raise awareness of domestic violence among people with disabilities. It is hoped that training and materials developed and delivered under this initiative will have a multiplier effect in the medium term, with a high number of people with disabilities both living in residential services and in the community being reached.

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10 Murphy, G and O’Callaghan, AC (2004) ‘People with intellectual disability – capacity to consent to sexual relationships’, *Psychological Medicine*, 34 (7)