

## Discussion Paper

# The establishment of Cosáint, The National Adult Safeguarding Authority



**Institute of Public Administration**

**October 2017**

## 1. Introduction

In April of this year the Adult Safeguarding Bill 2017 passed the second stage of the legislative process and is now at the third (committee) stage where a detailed consideration of the bill's proposals will take place.

The Adult Safeguarding Bill 2017 does two main things:

- 1) Provides for mandatory reporting by certain professionals and others where an adult has suffered abuse or harm, is suffering abuse or harm, or is at risk of suffering abuse or harm.
- 2) Establishes a National Adult Safeguarding Authority that will:
  - Be required to respond effectively if significant concerns of abuse or harm are reported. The Authority will have the power to investigate including the power to enter
  - Direct the HSE and others to provide additional support or assistance if required
  - Be able to appoint an independent advocate
  - Provide education, training and public awareness about adults at risk
  - Promote standards in safety and quality of services and provide guidance to state bodies and the Minister for Health
  - Provide information directly to adults at risk of abuse and harm via a helpline and website.

In June 2017 Senator Colette Kelleher who introduced the legislation commissioned the Institute of Public Administration (IPA) to prepare a research paper looking at the institutional and governance options in respect of the establishment of Cosáint,<sup>1</sup> the National Adult Safeguarding Authority, in particular:

- 1) To explore how Cosáint might be established, including the advantages and disadvantages of a range of institutional and governance options.
- 2) To provide an overview of other organisational issues relevant to the establishment of Cosáint.

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<sup>1</sup> Cosáint is the Irish word for protection

## **2. Institutional and governance options for the proposed National Adult Safeguarding Authority**

The question arises of how Cosáint could be established. This section provides a short background to the approach in Ireland to the need for new public functions or services and then reviews the most likely options in respect of Cosáint. In no particular order these are:

- An independent agency under the auspices of a government department
- An executive office of a government department
- Part of the Health Service Executive
- Incorporated into an already existing agency.

### **2.1 Approach in Ireland to the need for new public functions or services:**

There are a wide number of terms for what typically in Ireland are called state agencies. Government, executive or central may on occasion be the preferred prefix. In Europe the term Public Law Administrations (PLAs) is sometimes used. In the UK they are called non-departmental public bodies (NDPBs) or arms-length bodies (ALBs). More pejoratively they are sometimes referred to as quangos (quasi autonomous non-governmental organisations)<sup>2</sup>.

The UK Cabinet Office define NDPBs as:

A body which has a role in the processes of national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers (Cabinet Office, 2012).

McGauran et al (2005) characterised agencies in Ireland on the basis of the following criteria:

- Is structurally differentiated from other organisations
- Has some capacity for autonomous decision making
- Has some expectation of continuity over time
- Performs some public function

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<sup>2</sup> There term quangos is misleading because they are government organisations.

- Has some personnel
- Has some financial resources.

There has been criticism of the proliferation of agencies across OECD countries in recent decades and many countries have engaged in agency rationalisation. However, according to the OECD (2008:294), ‘agencies are not good or bad per se, but require appropriate forms of control and accountability which, in turn, depend on the agency’s function and on the wider governance environment.’

While an increase in agency numbers was common in many OECD countries from the 1990s on, the OECD in its review of the Irish public service (2008) commented that ‘agencification’ in Ireland was different to that experienced elsewhere. Typically in other countries it arose as a result of public service restructuring and a desire to devolve decision-making away from central government. In Ireland, agencies were created to respond to service delivery challenges and to carry out new public service functions.

The OECD report also commented (2008:311) that Ireland has ‘had difficulties in establishing a clear governance framework for agencies’, which would provide objective criteria in relation to agency creation. Furthermore, any new approach to agency management should allow agency directors to have greater independence in managing resources, within general parameters. According to the OECD the value added by agencies is less a result of their policy autonomy and more as a result of the performance focus that derives from managerial autonomy.

In response to the OECD report, successive Irish governments commenced a process of agency rationalisation. This involved a series of mergers of government agencies or their absorption either into government departments or other state bodies. According to the Department of Public Expenditure and Reform (2014) when the process is complete there will be 181 fewer public bodies than in 2011.<sup>3</sup> The guiding principles in respect

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<sup>3</sup> This figure includes the local government reforms of 2014, whereby 80 town councils were dissolved with their functions incorporated into local authorities, three city and county council merges, 3 new regional assemblies were put in place to replace the ten previous regional authorities and assemblies, and the work of the 35 city and county enterprise

of agency rationalisation and reform agreed by government (DPER, 2014) are, in summary:

- Citizen focus: proposals should respect and enhance the relationship between citizen and state
- Policy formulation: Government departments are, and should be, the primary locus of public policy formulation, evaluation and analysis
- Clear democratic and/or cost benefit: Restructuring bodies should have a clear benefit in terms of cost savings, service delivery benefits
- Specialist bodies: A separate body may be required if specialist skills are required or where independence in the performance of functions requires functional separation from government departments
- Streamlining: decisions should be cognisant of duplication, overlapping, similarities and potential synergies
- Service sharing: even where bodies should remain separate, the possibility of sharing services and or ‘back office’ functions, with either their parent department or other bodies should be explored
- Agency life cycle: ongoing review of existing agencies to assess if they are still required
- Performance focus: appropriate performance management and governance
- Respect for staff interests: A reference to commitments around staff redeployments and staff interests as set out in the Croke Park and subsequent public service agreements

However, the debate in respect of agencies in Ireland has continued, in particular in respect of agency formation and performance management. Boyle (2016:33) noted that ‘agencies are often established for good reasons’ and that ‘the demand for new agencies to be created to address particular issues and problems will continue’. Boyle concludes that focusing the debate simply on the number of agencies is unhelpful, more pertinent is to develop more systematic policy around agency creation and performance management.

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boards were absorbed into local authorities. A complete list of rationalised bodies is available from DPER (2014)

## **2.2 Possible options in respect of Cosáint**

This section reviews potential institutional and governance options in respect of Cosáint.

### *2.2.1 Cosáint as a separate agency*

The principal advantage of setting up Cosáint as a separate agency would be the autonomy afforded to a separate organisation. The work of Cosáint would be sensitive and specialised. Operating outside of the civil service would allow the authority greater independence in defining its purpose, in focusing on clients' needs, in involving stakeholders and in ensuring service delivery coherence. It would also have more autonomy in recruitment which would enable it to identify candidates with competencies necessary to fulfil its mission. The government's guidelines on agency rationalisation and reform (DPER, 2014) emphasise the primacy of the relationship between the citizen and the need for public bodies to be designed to meet the needs of citizens.

As a regulatory body with statutory obligations, being institutionally separate would afford the authority a degree of independence and remove any potential for a perception of conflict of interest which might apply with other institutional arrangements. The government's guiding principles on agency rationalisation and reform (DPER, 2014) recognise the possibility of a separate agency being required to deliver a new service where there is a need for specialist skills and independence from government departments. In addition, Article 16 of the United Nations Convention on the Rights of People with Disabilities (UNCRPD, 2006) which refers to the protection of people with disabilities from abuse, requires that all facilities and programme designed to service persons with disabilities are effectively monitored by independent authorities.

The disadvantages of a separate agency are primarily cost. While it is likely that some staff currently working across the public service in the area of adult safeguarding would be invited to transfer to the new authority, there would of course be establishment costs. However, these are likely to apply regardless of the institutional arrangement chosen

and acceptance of the cost is a political decision that has to be set against the benefits of the proposed authority and its work.

It will take time to establish the authority in any guise. However, setting up a new organisation might take longer due to potentially more significant resourcing, operational and staffing challenges. However, once the legislation is enacted this provides the framework for all subsequent work. There is also considerable learning available from the establishment or merger of other Irish agencies.<sup>4</sup>

Further potential challenges with the establishment of the authority as a separate agency, not unique to Cosáint, are the need for robust performance management arrangements to ensure good governance and accountability. As identified by the OECD (2008) this has not always been the case in respect of the management of Irish agencies. There is an increasing body of learning available in respect of best practice in other countries (Verhoest et al, 2012; Boyle, 2016).

Recommendations in this regard include regular performance dialogue between an agency and its parent department allowing for mutual learning and adjustment of expectations. Robust performance management also involves a balance between ex-ante controls, which are oriented towards inputs for example staff and budgets, and ex-post controls, where the emphasis is on outputs and outcomes or what an agency actually does.

Learning from other countries also points to the value of formal stakeholder consultation, performance contracts for agency directors and periodic review to assess the ongoing need for the agency. In the UK, all government departments are required to have 'sponsorship teams' who manage the relationship between a department and an agency and who have developed specific expertise in this regard.

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<sup>4</sup> For example research by the IPA in respect of the Tipperary County Council merger (O'Riordan and Boyle, 2015), the establishment of Tusla (IPA research study on behalf of the Department of Public Expenditure and Reform) and a review of the EPA-RPII merger (EPA, 2015).

However, the literature also emphasises the importance of trust between agencies and their parent departments. Control arrangements should be based on a risk assessment approach, with agencies that are more mature and have performed well in the past subject to less intensive controls.

Agencies in Ireland are typically established with a non-executive governing board which provides the agency with direction and advice and should also ensure good governance.<sup>5</sup> The establishment of the [stateboards.ie](http://stateboards.ie) website portal in 2014, under the auspices of the Public Appointments Service, was to ensure independence, objectivity and greater efficiency in respect of state board appointments and to guarantee that members of boards had the appropriate skills, qualifications and experience to provide good support and guidance to the agency.

Disadvantages of the non-executive board approach are the costs incurred in meeting directors expenses, the performance challenges that arise where a board doesn't have the requisite skills to provide good guidance to the agency and the danger of 'mission creep', whereby an agency and its board, if allowed to operate in something of a vacuum, can become diverted from the tasks it was set up to fulfil and instead become involved in other endeavours.

### 2.2.2 *Cosáint as an executive office*

Executive offices, referred to by the OECD (2008) as 'departmental agencies' are not legally separate from the civil service and operate without a governing board. The chief executive of the office reports to the minister via the secretary general of the department.

The advantage of an executive office is that there is management autonomy and the possibility of independent branding of the office (an example is Cosc, the National

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<sup>5</sup> One agency that has been established as an independent legal entity without a non-executive board of directors is the Environmental Protection Agency (EPA). The board of the EPA consists of the Director General and five executive directors who constitute the EPA's governing authority, in addition to fulfilling their functional responsibilities. This model was adopted because of a desire for independence due to the regulatory functions of the EPA.



Office for the Prevention of Domestic, Sexual and Gender-based Violence, an executive office of the Department of Justice and Equality). This is important for an issue, for example adult safeguarding, requiring a whole of government response rather than being of relevance only to a single department.

Executive offices have been favoured in many OECD countries (OECD, 2008:300) because they provide a degree of independence, particularly in respect of staffing, while maintaining clear lines of accountability from the director of the office to the secretary general of the parent department. The absence of a non-executive board further mitigates the risk of ‘mission creep’ whereby agencies can become involved in activities beyond their remit.

However, questions remain as to how an executive office can have an independent legal personality. For example, the department would be the employer and incorporate the expenditure of the office with its own expenditure and would carry legal responsibility for the actions of the office. It is therefore possible that department officials might become involved in day-to-day decision making within the office, perhaps without the necessary knowledge and experience.

It is probable that an executive office could admirably fulfil the education, training and public awareness briefs of the proposed authority. However, being required to respond effectively to and investigate concerns of abuse and harm requires specialist expertise. Executive offices are typically staffed by civil servants with generalist skills who may not have the required competencies. As noted above, public bodies need to be designed to deliver quality public services that most appropriately meet the needs of citizens.

### 2.2.3 *Cosáint as part of the HSE*

Following on from its 2014 policy and procedures document, *Safeguarding Vulnerable Persons at Risk of Abuse*, the HSE has developed a number of safeguarding structures. The National Safeguarding Office oversees the implementation, monitoring, review and ongoing evaluation of the safeguarding policy as well as coordinating development and roll out of safeguarding training. The HSE is also one of the agencies involved in

the National Safeguarding Committee. The Committee is a multi-agency and inter-sectoral body with an independent chair. Approximately sixty HSE staff work in the area of adult safeguarding with a further 900 staff across the country trained as designated officers and mandated to receive concerns or referrals in respect of abuse.

The HSE is to be credited for developing the area of adult safeguarding in recent years. However, unless an alleged victim is resident in a HSE owned or funded institution, they have little power to act. In contrast, and representing a major difference in focus, the Adult Safeguarding Bill has been specifically framed to encompass and safeguard all adults at risk of abuse or harm rather than only adults in hospital or residential care. While Cosáint would need to work closely with the HSE to avoid overlap and ensure best use of resources and a sharing of learning and experience, the establishment of Cosáint remain essential to protecting all adults at risk and providing a statutory basis for safeguarding in Ireland.

In addition, from a governance perspective difficulties arise whereby an agency is both a provider and regulator of services. In other words, there is the potential for a conflict of interest or competing loyalties. As a regulatory body, it would be vital that Cosáint would be, and would be perceived by users of the service to be, impartial and independent. As noted earlier, DPER's (2014) guidelines in respect of agencies recognise the need for a separate body where independence in the performance of its functions is deemed to be necessary.

#### *2.2.4 Cosáint as part of an existing agency*

Both the Health Information and Quality Authority (HIQA) and the Mental Health Commission (MHC) are existing state agencies with regulatory responsibilities in the area of health and social care. HIQA regulates residential services for older people and those with a disability, while the MHC does the same in respect of mental health facilities. Both are well regarded for the inspection and regulation services they provide, but critically from the perspective of Cosáint, both only have a remit in respect of residential care providers.

However, it would be possible to expand the resources of either in order to provide for the far broader remit of adult safeguarding. There is a precedent for this. The Department of Public Expenditure and Reform's report on the agency rationalisation process includes a list of bodies rationalised or absorbed into other bodies (DPER, 2014). Guidelines in respect of the merger of public bodies emphasise the importance of synergies from a customer or service delivery perspective. It is suggested that where there are similar or complementary services or functions, or indeed overlap, a merger can be desirable.

However, the international literature also indicates the challenges in respect of public service mergers. The government's guidelines on agency rationalisation (2014) indicate that merging and restructuring bodies should have a clear and demonstrable benefit in terms of delivering greater democratic control, improved service delivery and or financial savings. In other words there should be a strategic imperative for a merger, rather than simply a desire to reduce agency numbers.

In the case of the MHC it has already been determined that the Assisted Decision Making Support Service, provided for under the Assisted Decision-Making (Capacity) Act 2015, will be part of the Commission. When established the Decision Support Service will support decision-making by and for adults with capacity difficulties and will regulate individuals who are providing support to people with capacity difficulties.

In its business plan for 2017 the Mental Health Commission has identified a number of priority areas to prepare for the operational roll-out of the Decision Support Service (DSS), subject to receiving the budgetary allocation in respect of the service. From a governance perspective, the director of the DSS will report to the chief executive of the MHC. The DSS will also be able to avail of the advice and guidance of the existing ten person Mental Health Commission (board). While there are parallels between the work of the DSS and Cosáint, it is likely that the MHC will be challenged by the need to accommodate one major expansion of its functions without also taking on the area of adult safeguarding.

HIQA has more wide-ranging responsibilities than the specialist remit of the MHC. Beyond the inspection of residential care services for children, older people and people with a disability, it has a role in providing health information and in determining standards more generally in relation to health and social care services in Ireland. The Law Reform Commission (2011) recommended that HIQA be given additional regulatory and inspection powers to ensure that appropriate legal standards are in place for undertakings (public or private) providing professional homecare.

It is possible that Cosáint could be incorporated into HIQA. As noted, there are parallels between HIQA and the proposed authority in that both have statutory responsibilities in respect to the protection of vulnerable citizens and both also have a role in promoting standards and providing information. HIQA also has a well-established citizen-focused culture which would align well with the objectives for Cosáint.

However, there are also differences and challenges in respect of mergers. HIQA's remit is in respect of health and social care services, and its regulatory functions relate to suppliers of these services whereas Cosáint will have a remit in respect of any vulnerable adult and will need to develop appropriate systems to respond to mandatory reporting. The capacity of HIQA to expand their remit and of their governing board to take on this further expansion of services would need to be assessed in greater detail.

### **3. Organisational issues in respect of the establishment of Cosáint**

Regardless of the organisational and governance options chosen in respect of Cosáint there are wide-ranging operational or practical tasks that will need to be considered. The UK Cabinet Office (2006) have published a guide of the tasks that need to be fulfilled in setting up a new public body. The guidelines include considerations in respect of project management, engagement with stakeholders, corporate governance, legislation, risk planning, financial management, performance management and resource planning. Experience in Ireland is available from the recent establishment and merger of a number of other public bodies (see footnote 4). Some specific areas where challenges may arise are discussed below.

### *Governance arrangements*

Governance relates to the way in which organisations are directed, controlled and led. Importantly, it defines where accountability lies throughout the organisation. Mindful of past governance failures in the Irish public service, clarity in respect of leadership and accountability is essential for Cosáint. International experience indicates there is no one best way of delivering new public service functions, rather there is a need to review the proposed services in the light of a range of objective criteria. Regardless of the delivery model chosen, there is a need to put in place safeguards and procedures to ensure that there is a partnership approach with the parent department and ministers and senior officials, who will have responsibility for Cosáint.

This may require a review of staffing arrangements by the department to ensure that those staff working with Cosáint have the appropriate financial, legal and performance management experience. Similarly, if the delivery model chosen results in a non-executive board, care needs to be taken with regard to the capacity and relevant experience of the personnel chosen.

### *Industrial relations arrangements*

Regardless of the delivery option chosen, Cosáint will require appropriate staffing. This may in part be achieved through the transfer or secondment of staff with experience of safeguarding work from elsewhere in the public sector. There is considerable experience and precedent for this, for example the transfer of community welfare officers from the HSE to the Department of Social Protection, and the establishment of Tusla which involved the transfer of staff from the HSE and also the incorporation of staff from two smaller agencies, the National Education and Welfare Board and the Family Support Agency.

In the case of Tusla, strong leadership from the Department of Health and Department of Children and Youth Affairs facilitated positive, ongoing dialogue with the staff to be transferred and their trade-union, IMPACT. At a practical level, negotiations were also supported by a commitment that, on an ongoing basis, staff in Tusla would have the option of transferring to the HSE and vice-versa.

### *Due diligence*

Transferring resources and putting in place appropriate financial management arrangements is a challenging but normal feature of the establishment of any new public service. Furthermore, the emphasis within the public service is increasingly on joined-up government and greater cooperation. This applies in respect of policy but also in terms of service delivery. Shared services arrangements are now an important feature of the Irish public service in respect of HR, procurement and, by 2018, financial management. Cosáint would likely benefit from these arrangements.

### *Project management*

Naturally there are operational risks in establishing any new public service function. The high profile and sensitive nature of a service such as safeguarding further add to the challenges involved. The involvement and engagement of top level managers from the relevant stakeholders and a professional project management approach will help to address the risks involved.

## **4. Conclusions**

The challenge facing government is to determine the best institutional and governance arrangements to deliver the functions set out in Adult Safeguarding Bill 2017. The government's guiding principles on agency rationalisation and reform (DPER, 2014) represent an important reference point. They emphasise the primacy of the relationship between the citizen and the state and the importance of public bodies being designed in a manner that will 'respect and enhance this relationship'. This guideline is particularly pertinent in the case of Cosáint which will be required to respond sensitively and efficiently to concerns pertaining to the safety and wellbeing of those who are vulnerable in our society.

Reductions in public service spending and numbers were a key government priority over the past decade in order to address the crisis in the public finances. During this period government agencies, as all areas of the public service, were seen as a target for generating savings. However, as emphasised by the OECD (2008:294) 'agencies are

neither good nor bad per se', they represent one option in respect of the organisation of state services and their effectiveness depends on how they are managed.

The government's guidelines on agency rationalisation (DPER, 2014) recognise that at times an independent agency can be the preferred option where specialist skills may be needed, and where independence in the performance of functions requires functional separation from government departments. Understandably concerns around the potential for a conflict of interest can arise where a department or agency is both a provider and a regulator of services. Ensuring that Cosáint is separate from both the HSE and the Department of Health would therefore seem essential. This suggests that the most viable options for Cosáint are either as an independent agency or as part of an existing agency.

There is considerable Irish and international experience in respect of the merger of public bodies. The government's guidelines (DPER, 2014) refer to the importance of mergers delivering greater democratic control, improved service delivery and or savings. In other words there should be a strategic imperative for the merger rather than motivated by a desire to avoid the establishment of a new agency. Mergers are time-consuming and involve costs. To make this endeavour worthwhile, the new organisation needs to be more than 'the sum of its parts'. Therefore it is imperative that synergies are identified and realised.

The establishment of Cosáint will be a political decision. This paper has set out a number of considerations in respect of the most likely institutional and governance options. Regardless of the options chosen there will be a cost involved and a period of intensive work for those involved in its establishment. However, it is likely that there would also be a high degree of goodwill for the project and a sense of shared vision and commitment towards Cosáint.

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A large, faint watermark of the IPA logo is centered on the page. It consists of the letters 'IPA' in a large, light blue serif font, with the same stylized graphic of slanted lines to the right, all rendered in a light blue color.