

5. RIGHTS IN THE FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Chapter Grade

D+

 ISPC Childline
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We are not seeing an urgency around cyber safety at a national level. It is the child protection issue of our time
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3.18 AM - 19 Feb 2016

Rights in the Family Environment and Alternative Care

Every child has the right to be protected from all forms of abuse, violence, punishment and neglect. They have the right to not be separated from their parents except where it is in the child's best interests and they have the right to be heard in child care proceedings affecting them. The State is responsible for the protection of child victims.

Summary of Articles 9, 12, 19 and 39 of the UN Convention on the Rights of the Child and Article 8 of the Optional Protocol to the Convention on Sale of Children, Child Prostitution and Child Pornography



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IN THE NEWS

CHILD SEX ABUSE VICTIMS 'HUMILIATED AND RETRAUMATISED' IN CRIMINAL TRIALS

Newstalk.com, 12 October 2016

Survivors of child sexual abuse often fear engaging with the criminal justice system because of 'adversarial' trial practices, according to a support group for victims. [...]

Maeve Lewis of One in Four said victims were "regularly humiliated, demeaned, undermined and retraumatised" during trials.

"The criminal court is adversarial. It is not an ideal place to tease out the complexities of sexual abuse," she told Newstalk [...]

Gardaí are generally professional and sensitive in dealing with abuse allegations but investigations are sometimes not carried out in an appropriate manner, she added.

According to its annual report, One in Four provided 2,563 therapy hours last year to 116 adult survivors and 40 families.

A total of 45 per cent of its clients were men – a figure which challenges the idea that boys are not sexually abused, the charity has pointed out. [...]

Ms Lewis said the Criminal Justice (Sexual Offences) Bill 2015 currently proceeding through the Oireachtas will bring in important changes that may improve victims' experiences of the criminal justice system.

She also welcomed the EU Victims' Directive of November 2015, which introduced specialist training for judges and legal professionals.

But she stressed that all cases must be properly dealt with by child protection services, however challenging this may be for social workers.

One in Four passed on 49 sex abuse allegations to Tusla child protection services last year but most were deemed to be 'unfounded'.

'While we appreciate the difficulty social workers face in assessing retrospective allegations, this does imply that many credible allegations will not be pursued, and children will be at risk,' Ms Lewis said.

By Catherine Healy

5.1

Guardian *ad litem* Service**GOVERNMENT COMMITMENT**

A Programme for a Partnership Government commits to:

- > Review the operation of guardian ad litem (GAL) to ensure that a child's view is always effectively represented in court proceedings.

Progress: Some

Guardian *ad litem* Service' receives a 'D' grade in Report Card 2017. While the review of the Guardian *ad litem* service has been completed and publication of draft legislation proposed on foot of the review is a positive development, issues remain with regard to the independence of the service and how children's rights will be enforced in proceedings.

Every child has the right to have their views heard in any judicial proceedings affecting them and for those views to be given due weight in accordance with the age and maturity of the child.⁵⁶⁰ The UN Convention on the Rights of the Child makes specific reference to the child being heard in court proceedings either directly or indirectly through a representative body, such as a Guardian *ad litem* (GAL).⁵⁶¹ Under the Convention, the State is obliged to ensure that the child's best interests are a primary consideration in all actions and decision that impacts the child,⁵⁶² particularly when a decision is being made in childcare proceedings to take the child into care.⁵⁶³

The UN Committee also notes that to be eligible for appointment as a child's representative, a person must have sufficient knowledge and understanding of the various aspects of the decision-making

process and experience in working with children.⁵⁶⁴

The representative must be aware that she or he represents exclusively the interests of the child and not the interests of other of other persons such as parent(s), institutions or bodies (e.g. residential home, administration or society).⁵⁶⁵ The UN Committee is clear that '[i]f the hearing of the child is undertaken through a representative, it is of utmost importance that the child's views are transmitted correctly to the decision maker by the representative'.⁵⁶⁶

The UN Committee also notes that to be eligible for appointment as a child's representative, a person must have sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.

In 2016, the UN Committee called on Ireland to '[t]ake measures to ensure the effective implementation of legislation recognizing the right of the child to be heard

560 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 12.

561 *ibid* Art 12(2).

562 *ibid* Art 3.

563 UNCRC 'General Comment No. 12 on the Right of the Child to be heard' (2009) UN Doc CRC/C/GC/12 para 53.

564 *ibid* para 36.

565 *ibid* para 37.

566 *ibid* para 36.

in relevant legal proceedings, particularly family law proceedings, including by establishing systems and/or procedures for social workers and courts to comply with the principle.⁵⁶⁷ In *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* the Government commits to create mechanisms to provide children with the opportunity to be heard in judicial proceedings affecting them and this includes independent representatives where appropriate.⁵⁶⁸

Article 42A.4 of the Irish Constitution states that provision shall be made by law for the best interests of the child to be 'the paramount consideration' in child protection and care, adoption and family law proceedings and for the views of the child to be 'ascertained and given due weight'.⁵⁶⁹ This amendment refers to two types of proceedings: (1) public law proceedings - cases between the State and a child/family and (2) private law proceedings - cases between two private parties. The review of the GAL Service relates to public law proceedings.

The Government has given further effect to Article 42A.4 in private law proceedings under the Children and Family Relationships Act 2015, which provides that the court can 'appoint an expert to determine and convey the child's views' but this provision has yet to be commenced.⁵⁷⁰ However, the provision will mean that in private law proceedings, one or both of the parties must pay for cost of the child views expert. The cost will not be covered by the State. As a result, it is likely that the voice of the child will not be heard in private law cases if the parents cannot afford it and a disparity will continue to exist between hearing the views of children in private law proceedings and public law proceedings. The UN Committee on the Rights of the Child expressed its concern on this issue and recommended that the cost of this service should be covered by the State.⁵⁷¹

Review of the GAL Service: The Department for Children and Youth Affairs launched and completed a consultation in autumn 2015 to inform policy development in key areas of reform of the Child Care

Act 1991.⁵⁷² The General Scheme of the Child Care (Amendment) Bill 2017 was approved by Government in January 2017 and has been referred to the Joint Oireachtas Committee on Children and Youth Affairs for pre-legislative scrutiny. At present, the Child Care Act 1991 provides for the views of the child to be heard through a GAL in child care proceedings.⁵⁷³ There are approximately 65 GALs currently operating in the State: 31 working with Barnardos, 13 with The Independent Guardian Ad Litem Agency (TIGALA) and 21 GALs working as individuals or in a small group.⁵⁷⁴



GUARDIANS AD LITEM IN IRELAND

The role of the GAL is not defined in legislation but the High Court has interpreted that 'the function of the guardian should be twofold; firstly to place the view of the child before the court and secondly to give the guardian's views as to what is in the best interests of the child'.⁵⁷⁵ The General Scheme of the Child Care (Amendment) Bill 2017 expands on this and sets out that the function of a GAL is to 'enhance the decision-making capacity of the court' by: (a) informing the court of the child's views, and (b) advising the court on what is in the child's best interests' in light of having considered the child's views.⁵⁷⁶ In carrying out this role, it provides that the GAL will, amongst other things, 'promote and facilitate the child's right to a voice and to have his or her views considered', 'regard the best interests of the child as the paramount consideration', ensure the child is

567 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 32(a).

568 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* (DCYA 2014) Commitment G18.

569 Irish Constitution, Art 42A.4.

570 Children and Family Relationships Act 2015, s 32(b).

571 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 31(b).

572 Department of Children and Youth Affairs, 'Reform of Guardian ad litem arrangements in child care proceedings' <<http://bit.ly/2ljTZb>> accessed 6 February 2017.

573 Child Care Act 1991, s 26.

574 Comptroller and Auditor General, 'Report on the Accounts of the Public Services 2015' <<http://bit.ly/2ljBmcG>> accessed 6 February 2017, 133.

575 HSE v K (a minor) [2007] IEHC 488.

576 General Scheme of the Child Care (Amendment) Bill 2017, Head 5 – Function of a Guardian *ad litem*.

informed, ascertain his or her views, as far as practicable, having regard to the child's age and maturity, and inform the court of those views. Setting out the functions of the GAL is a welcome development and should be retained in any future iteration of the Bill.

However, an issue exists with regard to the status of the GAL in child care proceedings as set out under the General Scheme. In practice, GALs have played a role beyond facilitating the voice of the child to be heard in courts and advising the courts on the child's best interests. They have often been given legal representation in child care proceedings and fulfilled the function of defending the rights of the child as his or her representative in proceedings.⁵⁷⁷ They have done this by testing evidence, making applications in relation to the welfare of the child and making submissions to the court for example. In many cases, the role of the GAL has developed to the point where they effectively have had the same standing in child care proceedings with Tusla and the parents.

In a recent High Court decision, Ms Justice Marie Baker considered that the current role of the GAL is 'consistent with the furtherance of the interests of justice' and that the GAL 'will take a role in the proceedings not merely as a witness'.⁵⁷⁸ However, the General Scheme provides that the status of the GAL is that of a 'special type of expert witness',⁵⁷⁹ rather than that of party to the case as the child's representative. This status fails to take account of the child as a rights holder under both the Irish Constitution and the UN Convention because without a representative, the child's right to fair procedures and effective participation rights will be impacted. Ms Justice Bronagh O'Hanlon notes that if the GAL is not a party to proceedings, they will not have standing in court to take the full range of applications in the welfare of the child as it may be appropriate

to take, or to appeal decisions of the Court.⁵⁸⁰ This would 'significantly weaken the participation and representation of the child in proceedings that centrally affect them'.⁵⁸¹

It is possible under the Child Care Act 1991 for a child to be joined as a party to proceedings.⁵⁸² This is relatively unusual because it may not be in the child's interests to do so or a young child may not understand the issues or may have complex issues themselves.⁵⁸³ If they are joined, they are entitled to fair procedures in the same way as any other party. However, if a child cannot be joined as a party in their own right and cannot be represented through their GAL, they will not be entitled to the same fair procedure rights. One way to ensure that the child's rights are protected would be to designate the child as a party through their GAL.

In child care proceedings at present, it is at the discretion of the judge to appoint a GAL if he or she is satisfied that it is necessary in the interests of the child and in the interests of justice.⁵⁸⁴ However, GALs were appointed in only 53 per cent of cases attended by the Child Care Law Reporting Project with considerable variations in different locations across the country, ranging from a high of 79.8 per cent of children being appointed a GAL in Louth to a low of 13.3 per cent in Galway.⁵⁸⁵ Under the General Scheme, there will be a presumption in favour of appointing a GAL in all child care proceedings and this is welcome.⁵⁸⁶ Where a court declines to appoint a GAL, it must provide reasons for its decision in open court.⁵⁸⁷ A GAL will be appointed in all High Court Special Care proceedings, that is, those that involve the detention of a child for their own welfare and protection.⁵⁸⁸

Under existing law, a child cannot have both legal representation and a GAL at the same time.⁵⁸⁹ The

577 Ann McWilliams and Claire Hamilton, 'There isn't anything like a GAL': The Guardian ad Litem Service in Ireland' [2010] 10 Irish Journal of Applied Social Studies 31, 32.

578 AO'D v O'Leary & ors [2016] IEHC 555, para 57.

579 General Scheme of the Child Care (Amendment) Bill 2017, Head 6, Explanatory Note.

580 Ms Justice Bronagh O'Hanlon, 'Submission from Ms Justice Bronagh O'Hanlon in relation to the survey concerning a policy approach to the reform of *guardian ad litem* arrangements in proceedings under the Child Care Act 1991' <<http://bit.ly/2kDo9wf>> accessed 6 February 2017, 6-7.

581 *ibid*.

582 Child Care Act 1991, s 25. This section provides that a child may be joined as a party to child care proceedings only where the court is 'satisfied having regard to the age, understanding and wishes of the child'. The child's interests and the interests of justice are also to be considered.

583 Children's Rights Alliance, *Making Rights Real for Children: A Children's Rights Audit of Irish Law* (Children's Rights Alliance 2015) 198-199.

584 Child Care Act 1991, s 26(1).

585 Carol Coulter, *Final Report* (Child Care Law Reporting Project 2015) 80.

586 General Scheme of the Child Care (Amendment) Bill 2017, Head 8.

587 *ibid* Head 8, Subhead 4.

588 *ibid* Head 8.

589 Child Care Act 1991 s 25, s 26 (4).

UN Committee provides that 'in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision.'⁵⁹⁰ Given that GALs often reach the same conclusion as Tusla with regard to the threshold criteria in proceedings, their independence from Tusla is crucial to ensure both public confidence in the system, and more importantly the confidence of young people that their views will be accurately represented. The General Scheme dispenses with the automatic prohibition on a child having both legal representation and a GAL concurrently. It provides that the Court will decide whether the appointment of a GAL will continue where the child becomes a party to proceedings.⁵⁹¹

The General Scheme proposes to establish a nationally organised and managed GAL service through a contract with the Minister for Children and Youth Affairs.

GALs are unregulated, there are no professional standards in place and there is no statutory guidance on the eligibility criteria, functions or payment structures.⁵⁹² Guidelines developed by the Children Acts Advisory Board on the qualifications, criteria for appointment, training and role of GALs appointed under the Child

Care Act 1991 were published in 2009 but were never placed on a statutory footing.⁵⁹³ The General Scheme proposes to establish a nationally organised and managed GAL service through a contract with the Minister for Children and Youth Affairs.⁵⁹⁴ Its functions may include tasks such as the recruitment and selection of GALs, implementing performance management and supporting the professional development of GALs as well as monitoring service delivery and quality assurance, providing in-house legal advice and representation where necessary.⁵⁹⁵

Under the current structure, the GAL is dependent on Tusla to meet their costs. Head 9 of the General Scheme provides that funding for the new service will continue to be discharged by Tusla. The Comptroller and Auditor General noted in his report that in child care proceedings the 'position of Tusla as the party initiating the proceedings, and as paymaster of the guardian *ad litem* costs, may lead to a perceived conflict of interest.'⁵⁹⁶ He recommended that the GAL service should come under the remit of 'a body that is independent of the legal proceedings' citing the CAAB guidelines highlighting the need for the GAL 'to be independent of all other professionals and agency staff involved with the child and the family.'⁵⁹⁷ The Ombudsman for Children notes that while he appreciates that efforts were made through the reforms to mitigate against the risk of perceived conflict of interest, 'the Agency should not have any role in such fee transactions and that guardians *ad litem* working in the context of a new national service should be paid from an independent governmental source.'⁵⁹⁸ Children should be able to have confidence that their GAL or

590 The Committee states that 'the child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies. In particular, in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision.' UNCRC, 'General Comment No. 14 on the right of the child to have his or her best interest taken as a primary consideration, (art.3, para.1)' (2013) UN Doc CRC/C/GC/14, para 96.

591 General Scheme of the Child Care (Amendment) Bill 2017, Head 8, Subhead 12. This propose to amend the Child Care Act 1991 s 26(4).

592 See Prof Geoffrey Shannon, *Seventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas* (DCYA 2014) and Carol Coulter, *Final Report* (Child Care Law Reporting Project 2015) 80, and Carmel Corrigan, *The Construction and Impact of Children's Participation through the Guardian ad litem in Child Protection Cases: The Views of District Court Judges, Guardians ad litem and children* (unpublished Phd thesis, Trinity College Dublin 2015).

593 Child Care (Amendment) Act 2007 s 20 established the Children Acts Advisory Board (CAAB). It published CAAB, *Giving a voice to children's wishes, feelings and interests: Guidance on the Role, Criteria for Appointment, Qualifications and Training of Guardians ad Litem Appointed for Children in Proceedings under the Child Care Act, 1991* (CAAB 2009). The guidelines define the role of the guardian *ad litem* as to 'independently establish the wishes, feelings, and interests of the child and present them to the court with recommendations' 3. It was dissolved in 2011.

594 General Scheme of the Child Care (Amendment) Bill 2017, Head 3 – Establishment of a national Guardian *ad litem* service.

595 *ibid* Head 4 - Arrangements with service providers.

596 Comptroller and Auditor General, *Report on the Accounts of the Public Services 2015* (C&AG 2016) 132.

597 *ibid* 131.

598 Office of the Ombudsman for Children, 'Consultation Paper by the Department of Children and Youth Affairs on preparing a Policy Approach to Reform of Guardian *ad Litem* Arrangements in Proceedings under the Child Care Act 1991', <<http://dcya.gov.ie/documents/legislation/20160926OCO.PDF>> accessed 6 February 2017, 8.

the body that regulates them has no tie with any other party to their proceedings. The Department of Children and Youth Affairs has indicated that the service will be evaluated in due course.⁵⁹⁹

Any future Bill in this area should ensure that principles underpinning the new service are explicitly in line with the UN Convention on the Rights of the Child and the Council of Europe Guidelines on Child-Friendly Justice, namely participation, best interests of the child, dignity, protection from discrimination, and rule of law.⁶⁰⁰ In implementing the right of the child to be heard, the UN Committee has set out principles to which the process should adhere including that they be transparent and informative, voluntary, respectful, child-friendly, inclusive, supported by training, safe and sensitive to risk, and accountable.⁶⁰¹ These principles should be explicitly included in standards to underpin the revised GAL system with proper oversight and monitoring mechanisms in place to improve and standardise the service.

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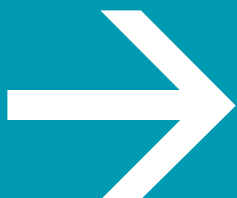
599 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 1 February 2017.

600 Committee of Ministers of the Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice' (Council of Europe Publishing 2010) <http://www.coe.int/t/dghl/standardsetting/childjustice/default_en.asp> accessed 7 February 2017.

601 UNCRC 'General Comment No. 12 on the Right of the Child to be heard' (2009) UN Doc CRC/C/GC/12 paras 132-134.

Guardian *ad litem* Service

Immediate Actions for 2017



ENSURE THAT PRINCIPLES UNDERPINNING THE NEW SERVICE ARE EXPLICITLY INFORMED BY AND COMPLY WITH THE UN CONVENTION ON THE RIGHTS OF THE CHILD.

In addition to the UN Convention on the Rights of the Child and its relevant General Comments, principles underpinning the new Guardian ad litem service should reflect the Council of Europe Guidelines on Child-Friendly Justice.

ENSURE THAT THE GUARDIAN AD LITEM IS AFFORDED THE STATUS OF REPRESENTATIVE OR ADVOCATE TO THE COURT RATHER THAN WITNESS OR SPECIAL ADVISOR IN CHILD CARE PROCEEDINGS.

Ensure that the child's right to a fair trial is protected by providing that the Guardian ad litem has legal standing in proceedings to represent the child, and that the child, through his or her Guardian ad litem, can have equal standing in proceedings to other parties. Ensure that a child who requires a Guardian ad litem due to age or vulnerability, is designated a party to the proceedings through their Guardian ad litem so that they do not have lesser rights than a child who is joined to the proceedings in their own right.

ENSURE THAT FUNDING FOR THE NEW NATIONAL GAL SERVICE IS DISCHARGED FROM A BODY OTHER THAN TUSLA, THE CHILD AND FAMILY AGENCY.

To ensure the independence of the service, to avoid any real or perceived conflict of interest and to ensure that the child has confidence that there is no link between his or her representative, the body that is responsible for paying them and any other party to their proceedings, the new GAL service should be established separately from the Tusla, the Child and Family Agency.

WITH REGARD TO THE ENFORCEMENT OF A CHILD'S RIGHTS IN CHILD CARE PROCEEDINGS, IF THE GUARDIAN AD LITEM IS NOT ENTITLED TO ENFORCE THE CHILD'S RIGHTS BY BEING A PARTY TO A CASE, CLARIFY WHAT MECHANISM IS TO BE PUT IN PLACE TO FULFIL THIS ROLE.

Given that Guardians ad litem have been given the status of 'special type of expert witness' in the General Scheme of the Child Care (Amendment) Bill 2017, and this would appear to preclude a role in the enforcement of a child's rights in child care proceedings, clarity should be provided as to how this role will be fulfilled.

5.2

Child Protection**GOVERNMENT COMMITMENT**

A Programme for a Partnership Government commits to:

- > Ensure robust protections are in place to fully protect children while online and propose updated legislation to effectively deal with sexual offences including stronger sanctions aimed at protecting children from online sexual abuse.



Progress: Good

- > Implement Child Safeguarding Statements as part of Children First legislation.



Progress: Unsatisfactory

- > Enforce robust and efficient vetting procedures for all positions involving substantial access to children.



Progress: Some

'Child Protection' receives a 'C' grade in Report Card 2017. This grade reflects the positive developments that have been made during 2016 to progress the Criminal Law (Sexual Offences) Bill 2015 but the Bill has yet to be enacted. Critical parts of the Children First Act 2015, including those relating to Child Safeguarding Statements, have not been commenced. The commencement of vetting legislation and the launch of e-vetting in 2016 highlights the political commitment in this area but time spent abroad is not currently considered as part of the vetting application process.

Every child has the right to be protected from abuse, including sexual abuse and exploitation.⁶⁰² States must take 'appropriate legislative, administrative' and other

measures to protect children from abuse while in the care of parents, guardians or 'any other person who has the care of the child'.⁶⁰³ In 2016, the UN Committee on the Rights of the Child welcomed the enactment of the Children First Act 2015. It recommended that adequate resources be provided to enable Tusla, the Child and Family Agency to respond to child protection referrals and address the needs of children at risk in a timely manner, as well as implement long-term programmes for addressing the root causes of violence and abuse.⁶⁰⁴ With regard to a child's right to online protection, the UN Committee has recommended that States 'should address the risks posed by digital media and [information and communication technologies] to the safety of children, including online harassment, sexual exploitation of children, access to violent and

602 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 19 which places an obligation on state parties to take all 'appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'.

603 *ibid* Art 19 (1).

604 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 38.

sexual content, grooming and self-generated sexual content through holistic strategies' to ensure the full enjoyment of their rights.⁶⁰⁵ The UN Committee provides that States should guarantee the protection of children's privacy rights in relation to information and communication technology (ICT) 'and develop effective safeguards against abuse without unduly restricting the full enjoyment of their rights'.⁶⁰⁶

States must take 'appropriate legislative, administrative' and other measures to protect children from abuse while in the care of parents, guardians or 'any other person who has the care of the child'.

Online protection: Children and young people in Ireland are highly engaged with digital media and technology. According to a study, social networking is a 'near universal' feature in the lives of Irish teenagers and an increasing part of the lives of younger children.⁶⁰⁷ Eleven per cent of the young people surveyed (aged 11-16) said they had seen or received sexual messages online over the past year.⁶⁰⁸ The same number had been asked to talk about sexual acts with someone on the internet.⁶⁰⁹ There is no doubt that the commitment to ensure robust protection of children online, as set out in the commitment in *A Programme for a Partnership Government* will enhance the right of the child to be protected from abuse online. This right to be protected must be carefully balanced with the range of other

rights that are facilitated through access to ICT. These include the right to participate primarily, as well as the right to freedom of expression,⁶¹⁰ to access appropriate information⁶¹¹ and freedom of association and peaceful assembly⁶¹² in the online environment. To ensure the robust protection of children, as per the Government's commitment but also that the full range of their rights in this area are protected and respected, a high level inter-departmental group should be established, housed in the Department of the Taoiseach. This group should ensure a coordinated, cross-departmental response through a national strategy to ensure that children's rights in the online world are balanced and protected.

Better Outcomes Brighter Futures: The National Policy Framework for Children and Young People 2014-2020 commits to support efforts to limit exposure by children to age-inappropriate material on the internet.⁶¹³ It also commits to support all efforts to combat child sexual abuse, exploitation and trafficking, including through support for an online filtering system in relation to blocking online child abuse material.⁶¹⁴ While a filtering system has not yet been proposed, the Criminal Law (Sexual Offences) Bill 2015 makes important amendments to the existing legislative framework with regard to sexual offences against children. It creates new offences in relation to viewing online child sexual abuse material⁶¹⁵ and sexual exploitation using ICT to address issues such as online grooming and solicitation. The Bill is expected to be enacted before the end of February 2017.⁶¹⁶ If enacted, the Bill would mean that Ireland is closer to meeting its international human rights obligations for children under the Lanzarote Convention,⁶¹⁷ the EU Directive on Combatting the Sexual Abuse of Children and Child Pornography⁶¹⁸

605 UNCRRC, 'Report of the 2014 General Day of Discussion, Digital Media and Children's Rights' (OHCHR, 2014) <http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2014/DGD_report.pdf> accessed 3 February 2017, 22.

606 *ibid.*

607 Brian O'Neill and Thuy Dinh, 'Social Networking Among Irish 9-16 Year Olds' (Arrow@DIT, 2012) <<http://arrow.dit.ie/cgi/viewcontent.cgi?article=1028&context=cserrep>> accessed 3 February 2017, 1.

608 *ibid.* 36.

609 *ibid.*

610 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRRC) Art 13.

611 *ibid.* Art 17.

612 *ibid.* Art 15.

613 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* (DCYA 2014) Commitment 3.8.

614 *ibid.* Commitment 3.13.

615 Criminal Law (Sexual Offences) Bill 2015, s 13. This relates to the offence of 'child pornography'. It's worth noting that Interpol recommends the use of more appropriate and accurate terminology to avoid the trivialisation of the sexual exploitation and abuse of children. For this reason, the term 'child sex abuse material' is used in *Report Card 2017*. For more see Interpol, 'Appropriate Terminology' <<https://www.interpol.int/Crime-areas/Crimes-against-children/Appropriate-terminology>> accessed 3 February 2017.

616 Communication received by the Children's Rights Alliance from the Department of Justice and Equality, 18 January 2017.

617 Council of Europe, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (2010) CETS No. 201.

618 EU Council Directive (EC) 92/EU on 'Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography' OJ L 335 of 17.12.2011.

as well as the Second Optional Protocol to the UN Convention on the Rights of the Child.⁶¹⁹

While the Bill is a landmark piece of legislation for the protection of children online, there are a number of areas in which gaps remain. The Special Rapporteur on Child Protection, Professor Geoffrey Shannon has highlighted that the Bill does not make an explicit reference to ICT in offences such as invitation to sexual touching, sexual activity in the presence of a child and causing a child to watch sexual activity.⁶²⁰ In addition, the Bill does not expressly include computer-generated images of abuse and images of fictitious children in the definition of child pornography under the Child Trafficking and Pornography Act 1998, where it currently only refers to a 'visual representation' of 'a person who is or is depicted as being a child' and who is engaged in 'simulated sexually explicit activity'.⁶²¹

In its 2016 report on *Harmful Communications and Digital Safety*, the Law Reform Commission made relevant recommendations with regard to harassment, stalking and the non-consensual sharing of intimate images. It also suggested the establishment of an Office of a Digital Safety Commissioner of Ireland on a statutory basis to promote digital and online safety and to oversee and regulate a system of 'take down' orders for harmful digital communications.⁶²²

Child Safeguarding Statements: *A Programme for a Partnership Government* commits to implementing Child Safeguarding Statements as part of Children First legislation. *Better Outcomes Brighter Futures* commits to implementing the *Children First: National Guidance for the Protection and Welfare of Children*⁶²³ in full, including legislating for elements of the guidance, implementing sectoral plans, associated training and ensuring vetting requirements are met.⁶²⁴ The Children First Act 2015 placed elements of the Children First National Guidance on a statutory footing. It provides

that services that fall under its remit⁶²⁵ must publish a Child Safeguarding Statement that sets out the organisation's procedures to manage and reduce risk for children availing of their services.⁶²⁶ The Statement should also include a written assessment of the risks to a child and specify the procedures that are in place to manage risks and procedures around the management of allegations against staff and provision of child protection information, instruction and training to staff.⁶²⁷



CHILDREN SAW / RECEIVED SEXUAL MESSAGES ONLINE

While some sections of the 2015 Act have been commenced, those relating to Child Safeguarding Statements and other critical provisions have not. This means that the Government has still not fulfilled its commitment to implement Child Safeguarding Statements under the Act in 2016.

Vetting: *A Programme for a Partnership Government* commits to enforcing robust and efficient vetting procedures for all positions involving substantial access to children. *Better Outcomes Brighter Futures* commits to 'ensuring vetting requirements are met'.⁶²⁸ The National Vetting Bureau (Children and Vulnerable

619 UNCRC, 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography', (2000) A/RES/54/263.

620 Prof Geoffrey Shannon, *Ninth Report of the Special Rapporteur on Child Protection* (DCYA 2016) 122 in relation to s 4, 5 and 6 of the Criminal Law (Sexual Offences) Bill 2015.

621 Criminal Law (Sexual Offences) Bill 2015 s 9. See also Prof Geoffrey Shannon, *Ninth Report of the Special Rapporteur on Child Protection* (DCYA 2016) 123.

622 Law Reform Commission, *Report Harmful Communications and Digital Safety* (LRC 116-2016) Recommendation 4.18.

623 Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children* (DCYA 2011).

624 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* (DCYA 2014) Commitment 3.6.

625 Schedule 1 of the Act sets out the types of organisations that carry out 'Relevant Services' for the purposes of the Act, those for which a necessary and regular part of their work involves access to or contact with children.

626 Children First Act 2015, s 10- 11.

627 *ibid* s 11. If, upon request, a relevant organisation fails to supply their Safeguarding Statement to the Child and Family Agency, they can be issued with a notice of non-compliance, see s 12-13.

628 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* (DCYA 2014) Commitment 3.6.

Persons) Acts 2012-2016 was commenced, almost in full, on the 29 April 2016.⁶²⁹ The commitment refers to enforcing vetting procedures for positions involving 'substantial' access to children. The Act provides for the mandatory vetting of those who work with children and vulnerable people, where 'a necessary and regular part [of this work] consists mainly of the person having access to, or contact with, children.'⁶³⁰ However, because many childminders, nannies and au pairs are unregulated, there is no data available on the extent to which these groups are vetted despite the nature of their work.

A Programme for a Partnership Government commits to enforcing robust and efficient vetting procedures for all positions involving substantial access to children.

The National Vetting Bureau, which prior to the Act was known as the Garda Central Vetting Unit, conducts vetting. It received 389,548 vetting applications in 2016.⁶³¹ E-vetting facilities were launched in 2016 to streamline the vetting process and reduce processing times for applications.⁶³² As a result, 93 per cent of applications were received online by the end of 2016 and of those, 80 per cent were dealt with in five working days.⁶³³ It also allows applicants to track the progress of their application online. Paper applications have an approximate four week turnaround time which is considered a minimum time given the administrative work involved.⁶³⁴

The commencement of the Act is very welcome as is the introduction of e-vetting which has significantly improved the efficiency of the process and would appear to go some way towards meeting the Government's commitment in this area. The robustness

of the procedure is undermined somewhat by the fact that there is no facility or provision internationally for the National Vetting Bureau to seek information from police authorities abroad with regard to time spent living outside of Ireland by a person applying to be vetted.⁶³⁵ This is particularly relevant given the potential online exploitation of children by perpetrators outside of this jurisdiction. The Special Rapporteur on Child Protection has suggested that protocols or administrative arrangements with police authorities in foreign jurisdictions might be engaged to address the issue, or provision for the exchange of information could be established through forthcoming legislation to implement the EU Framework Decision on the exchange of criminal records information.⁶³⁶ In order to ensure the efficacy of vetting, the National Vetting Bureau and the organisations supported to carry out Garda vetting checks must continue to be adequately resourced and supported.

629 The Act was commenced by SI 214/16 apart from s 20 which relates to Re-Vetting. A number of amendments were made by the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016.

630 Under s 2 of the Act, vulnerable persons are people other than children who suffer from a mental disorder, an intellectual disability, a physical impairment or significant disability. Schedule 1 of the legislation lists 'relevant persons' who require vetting if working in the certain environments. These are people for whom access to or contact with children is a necessary or regular part of their work or activity such as people who work in pre-schools, schools, hospitals, detention facilities, asylum reception centres, as religious instructors, involved in transportation of children and research which involves interaction with children.

631 Communication received by the Children's Rights Alliance from the National Vetting Bureau, 19 January 2017.

632 Tánaiste and Minister for Justice, Frances Fitzgerald TD, Written Answers, Garda Vetting Applications, 5 October 2016 [28908/16].

633 Communication received by the Children's Rights Alliance from the National Vetting Bureau, 19 January 2017.

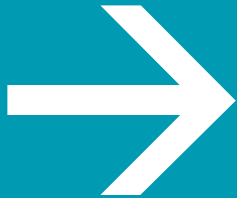
634 Tánaiste and Minister for Justice, Frances Fitzgerald TD, Written Answers, Garda Vetting Applications, 5 October 2016 [28908/16].

635 Prof Geoffrey Shannon, *Eighth Report of the Special Rapporteur on Child Protection* (DCYA 2014) 96.

636 *ibid.*

Child Protection

Immediate Actions for 2017



ENACT AND COMMENCE THE CRIMINAL LAW (SEXUAL OFFENCES) BILL 2015 AS A MATTER OF PRIORITY.

The Criminal Law (Sexual Offences) Bill 2015 should be enacted and commenced without delay to close the loopholes in child protection that currently exist.

DEVELOP A NATIONAL STRATEGY TO PROTECT THE FULL RANGE OF THE RIGHTS OF CHILDREN ONLINE.

A high level inter-departmental group should be established, tasked with ensuring that the rights of children online are balanced and protected. It should develop a national strategy on the digital rights of children to ensure a cross-departmental understanding and response to protecting the full range of the rights of children in the online world.

ENSURE THAT INFORMATION ON TIME SPENT OUTSIDE OF IRELAND IS SOUGHT AND CONSIDERED IN THE GARDA VETTING PROCESS.

The process of vetting individuals to keep children and vulnerable adults safe is undermined significantly if information on periods of time spent abroad is not sought and reviewed as part of the vetting process. This gap should be addressed as a matter of urgency.

5.3

Child Victims of Crime

GOVERNMENT COMMITMENT

A Programme for a Partnership Government commits to:

- > Publish legislation to implement in full the EU Victims of Crime Directive and develop victim support services, including Garda Victims Support Offices, which provide a single point of contact in accessing support and information.



Progress: Some

'Child Victims of Crime' receives a 'D' grade in *Report Card 2017*. The Criminal Justice (Victims of Crime) Bill 2016 was published in late December and reflects a number of the key provisions to safeguard the rights of child victims under the EU Victims of Crime Directive. However, gaps remain and adequate supports and services for child victims are severely lacking.

The State has a duty to promote the recovery and social integration of child victims under the UN Convention on the Rights of the Child.⁶³⁷ States must adopt appropriate measures to protect the rights and interests of child victims at all stages of the criminal justice process including recognition of their vulnerability and adapting procedures to recognise their needs.⁶³⁸ Child victims must be informed of their rights, role, timing and progress of proceedings.⁶³⁹ Unnecessary delays in the processing of their cases should be avoided.⁶⁴⁰ It also provides that the best interests of the child shall be a primary consideration in the treatment of child victims by the criminal justice system.⁶⁴¹

Currently, Irish law does little to protect the rights of victims of crime, adult or child. A 'Victim's Charter and Guide to the Criminal Justice System' was published by the Victims of Crime Office in 2010 but it is not legally binding.

Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020 commits to providing 'effective and timely protection and support services, including therapeutic services for victims of abuse and crime'.⁶⁴² In addition, it commits to reforming domestic violence legislation that includes protection for victims and to a legal and policy framework for child victims of trafficking and measures for their identification.⁶⁴³ In 2016, the UN Committee on the Rights of the Child recommended that the

637 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 39.

638 UNCRC, 'Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography' (2000) A/RES/54/263, Art 8(1) (a).

639 *ibid* Art 8(1)(b).

640 *ibid* Art 8(1)(g).

641 *ibid* Art 8(3).

642 Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020* (DCYA 2014) Commitment 3.10.

643 *ibid* Commitments 3.13, 3.14 and 3.15.

644 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 58; UNCRC 'General Comment No. 20 on the Rights of the Child During Adolescence' (2016) UN Doc CRC/C/GC/20 para 38(b).

State provide redress and rehabilitation to the victims of domestic violence.⁶⁴⁴

Currently, Irish law does little to protect the rights of victims of crime, adult or child. A 'Victim's Charter and Guide to the Criminal Justice System' was published by the Victims of Crime Office in 2010⁶⁴⁵ but it is not legally binding. The EU Victims Directive aims to 'strengthen the rights of victims and their family members to information, support and protection and victims' procedural rights in criminal proceedings' as well as provide training for officials coming into contact with victims and coordinate national services.⁶⁴⁶ Reform in this area is now required as the State is more than a year late in meeting the deadline of 16 November 2015 for transposing the Directive into Irish law. The Heads and General Scheme of the Criminal Justice (Victims of Crime) Bill 2015⁶⁴⁷ underwent pre-legislative scrutiny in October 2015 but the legislation fell with the 31st Dáil.⁶⁴⁸ An updated Bill was published on 29 December 2016.⁶⁴⁹ The State must follow through with its commitment to prioritise the legislation and ensure it is enacted without further delay.

Criminal Justice (Victims of Crime) Bill 2016: The Criminal Justice (Victims of Crime) Bill 2016 sets out a range of rights for victims of crime, including children, in line with the EU Directive but significant gaps remain that must be addressed before the Bill is enacted.

The EU Directive provides that the child 'and the holder of parental responsibility' are to be 'informed of any measures or rights specifically focused on the child'.⁶⁵⁰ The Bill provides for the right of victims, including children, to information relating to the criminal justice process and to their case.⁶⁵¹ Victims may be accompanied by a person of their choice when receiving such information at first instance.⁶⁵²



FOR CHILD VICTIMS OF SEXUAL ABUSE

Children are automatically assumed to have protection needs under the Bill and it provides for a further assessment of the need for protection or special measures to be carried out on their behalf.⁶⁵³ This is a very positive provision. The requirement for special measures by a child will be determined by reference to the child's best interests, his or her views, taking into account his or her age and level of maturity and any views raised by a parent, guardian or any other person authorised to act on his or her behalf.⁶⁵⁴ While this is welcome, the provision falls short of the standard set in the EU Directive, which provides in Article 1 that 'in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis'.⁶⁵⁵ In the Bill, the principle is confined to the section on whether and the extent to which a child might benefit from special or protection measures, and does not apply to the provisions of the Bill generally. The principle should be incorporated as a standalone provision applying to the full application of the Bill as it does under the Directive.⁶⁵⁶

645 Victims of Crime Office, 'Victims Charter and Guide to the Criminal Justice System' (Department of Justice and Law Reform, 2010) <<http://bit.ly/2ljWUpE>> accessed 7 February 2017.

646 European Council Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime OJ L 315/57; European Commission, 'Justice, Building a European Area of Justice, Victims' <<http://bit.ly/2cpbSGJ>> accessed 7 February 2017.

647 Department of Justice and Equality, 'Criminal Justice (Victims of Crime) Bill 2015' <<http://bit.ly/2kJf3AN>> accessed 7 February 2017.

648 Office of the Government Chief Whip, 'Legislation Programme, Autumn 2016' <<http://bit.ly/2knBl9Z>> accessed 7 February 2017, 8.

649 Criminal Justice (Victims of Crime) Bill 2015.

650 EU Council Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime OJ L 315/57, Art 1.2.

651 Criminal Justice (Victims of Crime) Bill 2015, s 6-7.

652 *ibid* s 6(4).

653 *ibid* s 14.

654 *ibid* s 14(7).

655 European Council Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime OJ L 315/57, Art 1.2.

656 *ibid*.

Provision is made in the Bill to seek the child's views only in the same limited circumstances as the best interests principle and is not generally applicable to the provisions of the Bill.⁶⁵⁷ Every child has the right to have their views heard in all matters concerning them.⁶⁵⁸ This should be extended to other provisions of the Bill such as section 17 which provides that the Gardaí or the Ombudsman Commission 'shall arrange for the victim to be accompanied by an appropriate person when attending any interviews and court proceedings at which the victims is required to be present'.⁶⁵⁹ All victims including child victims should be consulted as to whom this 'appropriate person' should be. The Bill sets out a wider definition of the types of offences for which victim impact statements will be heard and this is a welcome development.⁶⁶⁰

Child victims face significant delays in accessing counselling support services; for example the CARI centre in Dublin had a waiting list of 95 children in December 2016. This is an increase of over 200 per cent since January 2016.

Provision is made under the Bill to prevent or minimise further trauma or re-victimisation of a victim in criminal proceedings as a result of the victim having to give evidence in the presence of the accused or the public. The Bill provides that children can give evidence from behind a screen where a live television link is not being used to achieve this aim.⁶⁶¹

The Special Rapporteur on Child Protection has noted that giving evidence behind a screen 'may prove

problematic' because it means that the child still has to come into the 'intimidating atmosphere of a courtroom and remain there for the duration of his or her evidence, knowing the accused is only a few feet away' and he suggests that this be used only as a last resort.⁶⁶² He proposes that an alternative would be that a screen would only be used in relation to child witnesses where the child specifically opts out of giving his or her evidence by television link, subject to the approval of the court and having regard to the child's wishes.⁶⁶³ This would bring the provision into line with Article 8(1) of the Optional Protocol to the UN Convention on the Rights of the Child on the Child Pornography and the Sale of Children and the EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography.⁶⁶⁴

Given the importance of this Bill to the most vulnerable children in a time of crisis and need, it should be fast-tracked through the legislative process as a matter of urgency. Once it has been enacted, a review of the criminal justice system should be undertaken to ensure that it is in compliance with the new legislation.

Victim Support Services: A key provision of the EU Directive to provide 'confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings'⁶⁶⁵ is a gaping omission from the current draft of the Criminal Justice (Victims of Crime) Bill 2016.

Child victims face significant delays in accessing counselling support services;⁶⁶⁶ for example the Children at Risk Ireland (CARI) centre in Dublin had a waiting list of 95 children in December 2016.⁶⁶⁷ This is an increase of over 200 per cent since January 2015.⁶⁶⁸ For those under the age of 14, the difficulties in accessing services are compounded by the existence of only one 24-hour State service providing

657 Criminal Justice (Victims of Crime) Bill 2015, s 14(7)(b)(ii).

658 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 12.

659 Criminal Justice (Victims of Crime) Bill 2015, s 17(1).

660 *ibid* s 27 (a).

661 *ibid* s 26.

662 Prof Geoffrey Shannon, *Ninth Report of the Special Rapporteur on Child Protection* (DCYA 2016) 130.

663 *ibid* 156.

664 EU Council Directive (EC) 92/EU on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography [2011] OJ L 335 of 17.12.2011. It provides that States must ensure that in criminal proceedings relating to sexual exploitation, a 'child victim must be heard in the courtroom without being present, in particular through the use of appropriate communication technologies'.

665 *ibid* Art 8(1).

666 For example, in 2015, a media report highlighted the case of a child who had waited for two years to access counselling. RTÉ Morning Ireland (March 2015) and Kelly O'Brien, 'Abused Boys Wait Two Years for Counselling', *The Irish Examiner* (Cork, 21 March 2015).

667 Communication received by the Children's Rights Alliance from CARI, 7 February 2017.

668 *ibid*, 27 January 2015.

forensic examinations, located in Galway.⁶⁶⁹ In 2015-16, this service has had to temporarily close twice, most recently due to lack of funding.⁶⁷⁰ This is an unacceptable situation for some of the State's most vulnerable children, particularly given that the total cost of providing the 24-hour service in Galway is just €212,000.⁶⁷¹ In December 2016, the Tánaiste and Minister for Justice and Equality announced a total of €1.712 million for organisations supporting victims of crime 'to give effect to the EU Victims Directive in terms of providing information, advice and support to victims.'⁶⁷² While this is welcome, a second 24-hour State service providing forensic examinations for child victims under the age of 14 should be established as a matter of urgency. The right to access these services must be placed on a statutory footing. Victims over 14 years are entitled to access specialist integrated Sexual Assault Treatment Units, but these are unavailable in most parts of Ireland.⁶⁷³

Child victims also face delays in their case proceeding through the courts. The most recent Garda Inspectorate Report from 2014 found delays of up to six months in the interviewing of child victims or witnesses of sexual or physical abuse or serious neglect.⁶⁷⁴ The Guidelines on Child-Friendly Justice, published by the Council of Europe, provide that in all cases involving children, 'the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.'⁶⁷⁵ It notes that a child perceives time differently to an adult and a year of proceedings in a case may seem a lot longer in a child's life than in that of an adult.⁶⁷⁶ A priority list should be developed by the Director of Public Prosecutions

or the Gardai in their work to ensure that cases involving children are fast-tracked through the criminal justice process.

The Garda Victims Services Offices were launched under the previous Government and continue to operate in 2016.⁶⁷⁷ The Offices act as the central point of contact for victims in each Division and they supplement victim support activity already being carried out by investigating members of the Garda Síochána.⁶⁷⁸ The aim of the initiative is to develop a 'renewed culture [that] will see a strong victim-orientation across the Garda service' with the support of victims 'now part of every anti-crime strategy'.⁶⁷⁹ The Offices are staffed by 'specially trained personnel operating to a Standard Operating Procedure'.⁶⁸⁰ This latter point around training would appear to meet the requirement under Article 8(4) of the Optional Protocol to the UN Convention that States 'take measures to ensure appropriate training... for the persons who work with victims...'⁶⁸¹ The 2015 Bill provided for vital awareness training for professionals who have contact with victims in the course of their official duties to 'enable them to deal with victims in an impartial, respectful and professional manner'.⁶⁸² Unfortunately this has not been retained in the 2016 Bill but should be reinstated and enhanced by providing for the training of professionals including all Gardai to enable them to adequately deal with the particular situation of child victims.

The unsuitability of the Irish Court system in dealing with child victims has been highlighted by Professor Geoffrey Shannon, Special Rapporteur on Child Protection.⁶⁸³ Concerns have been raised over the lack

669 Health Service Executive, 'Child and Adolescent Sexual Assault Treatment Services' <<http://www.hse.ie/satu/>> accessed 7 February 2017.

670 Newstalk, 'Ireland's only 24-hour sexual assault clinic for children to close' (3 March 2016) <<http://www.newstalk.com/Galway-Child-Adolescent-Sexual-Assault-Treatment-Unit-SATU-Dr-Joanne-Nelson-closure>> accessed 31 January 2017.

671 *ibid.* €212,000 will fund four specialised examiners, two consultant paediatricians, one consultant gynaecologist and a specialist general practitioner to provide a 24-hour service for child victims of sexual assault.

672 Department of Justice and Equality, 'Tánaiste announces funding of €1.712 million for organisations supporting victims of crime', (30 December 2016) <<http://www.justice.ie/en/JELR/Pages/PR16000405>> accessed 30 January 2017.

673 There are only six Sexual Assault Treatment Units clinics in Ireland (Cork, Dublin, Galway, Mullingar, Donegal and Waterford). Health Service Executive, 'Sexual Assault Treatment Unit,' <<http://www.hse.ie/satu/>> accessed 7 February 2017.

674 Garda Inspectorate, *Crime Investigation Report*, (Garda Inspectorate 2014) 50.

675 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Explanatory memoranda*, (Council of Europe Publishing 2010) 28.

676 *ibid.* 83.

677 An Garda Síochána, 'Launch of The Garda Victims Services Offices 9/12/15' <<http://bit.ly/2jYOFTP>> accessed 7 February 2017.

678 *ibid.*

679 *ibid.*

680 *ibid.*

681 UNCRC, 'Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography' (2000) A/RES/54/263, Art 8(4).

682 Department of Justice and Equality, 'Criminal Justice (Victims of Crime) Bill 2015' <<http://bit.ly/2kJf3AN>> accessed 31 January 2017, Head 20.

of mechanisms to prevent secondary victimisation of children who have been sexually abused.⁶⁸⁴ The European Commission has expressed concern at the lack of training for professionals working with child victims and lack of specific provision in the Garda Charter to provide child victims with information.⁶⁸⁵ Irish courts are ill-equipped to deal with child victims as many lawyers and judges are not trained to work with child victims.⁶⁸⁶ In the United Kingdom, it will soon become mandatory for all advocates wishing to undertake publicly funded work for serious sexual offence cases involving vulnerable witnesses to undertake training with regard to vulnerable witnesses.⁶⁸⁷ There is no equivalent mandatory training required of solicitors and barristers in Ireland undertaking work with vulnerable witnesses or victims. The legal profession should be encouraged to ensure extensive training for all legal professionals working with child victims.

for medical examination and counselling as well as interviews with the possibility of a third party to listen in by video link in an adjacent room. It can ensure that professionals benefit from support and advice of other disciplines when taking decisions that will impact on the child and that the child victim's needs are catered for under one roof.

Child victims also face delays in their case proceeding through the courts. The most recent Garda Inspectorate Report from 2014 found delays of up to six months in the interviewing of child victims or witnesses of sexual or physical abuse or serious neglect.

Given its history of sexual abuse cases, Ireland should lead in world class services and supports for child victims. The Guidelines on Child-Friendly Justice encourage States to increase the multi-disciplinary nature of their response to child victims which would go some way to joining up services and the effectiveness of the response.⁶⁸⁸ One option that might be explored is the establishment of 'Children's Houses' found in Nordic countries.⁶⁸⁹ The 'Children's House' model is a one-stop shop where a range of services are provided for children such as social services, paediatricians, police, prosecutors and forensic medical experts work together. The House provides rooms

683 Prof Geoffrey Shannon, *Eighth Report of the Special Rapporteur on Child Protection* (DCYA 2014) 34.

684 *ibid.*

685 European Commission – Directorate-General for Justice, *Summary of Contextual Overviews on Children's Involvement in Criminal Judicial Proceedings in the 28 Member States of the European Union* (European Union, 2014) 28.

686 Una Ní Raifeartaigh 'Child sexual abuse cases: the need for cultural change within the criminal justice system' (2009) 14 (5) BR 103.

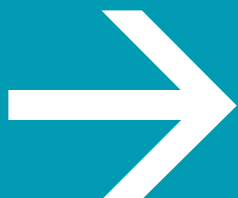
687 The Inns of Court College of Advocacy, 'Advocacy and the Vulnerable' <<http://www.icca.ac.uk/advocacy-the-vulnerable>> accessed 31 January 2017 and The Bar Council UK, 'Bar Council Launches Vulnerable Witness Advocacy Training' (4 November 2016) <<http://bit.ly/2knHVxh>> accessed 31 January 2017.

688 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Explanatory memoranda*, (Council of Europe Publishing 2010) 66.

689 *ibid.*

Child Victims of Crime

Immediate Actions for 2017



STRENGTHEN THE CRIMINAL JUSTICE (VICTIMS OF CRIME) BILL 2016.

The Criminal Justice (Victims of Crime) Bill 2016 is a critical step forward in the provision of rights and support to all victims of crime including children. The Bill should be amended to:

- > Incorporate both the best interests principle and the voice of the child principle as standalone provisions in the application of the Bill where the victim is a child.
- > A child victim should be consulted as to who the 'appropriate person' should be to accompany him or her during interviews or court proceedings.
- > Make provision for the training of professionals including all Gardaí to enable them to adequately deal with the particular situation of child victims.
- > Ensure that where a child is giving evidence in criminal proceedings, the use of a screen should only be used if the child specifically opts out of giving his or her evidence by television link, subject to the approval of the court and having regard to the child's wishes.

FAST-TRACK THE ENACTMENT OF THE CRIMINAL JUSTICE (VICTIMS OF CRIME) BILL 2016 AND CONDUCT A REVIEW OF THE CRIMINAL JUSTICE SYSTEM TO ENSURE ITS COMPLIANCE WITH THE NEW LEGISLATION.

The date for transposition of the EU Directive through the Bill expired in November 2015. The Government should ensure that the legislation is prioritised, strengthened and is fast-tracked through the legislative process at the earliest possible opportunity to ensure that the most vulnerable victims have access to improved supports in their time of need. Once the Bill is enacted, conduct a review of the criminal justice system in light of the new legislation to ensure its compliance.

ENSURE THAT CHILD VICTIMS OF CRIME HAVE IMMEDIATE ACCESS TO ADEQUATE, FREE AND CONFIDENTIAL SUPPORTS SERVICES.

Urgent funding should be made available to establish a second 24 hour State service providing forensic examinations for child victims under the age of 14 and the right to access these services must be placed on a statutory footing.

DEVELOP A PRIORITY LIST FOR CASES INVOLVING CHILDREN IN THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND AN GARDA SÍOCHÁNA.

In order to reduce delays faced by children in court proceedings, the Office of the Director of Public Prosecutions and An Garda Síochána should develop a priority list of cases involving children that should be fast-tracked through the criminal justice system.

CONSIDER THE ESTABLISHMENT OF THE 'CHILDREN'S HOUSE' AS A ONE STOP SHOP FOR PROVIDING SERVICES TO CHILD VICTIMS.

The 'Children's House' model provides multi-disciplinary services to children in one location from social services to police and forensic medical experts and should be considered as a means of providing world class services and supports to child victims.