5.

RIGHT TO PROTECTION FROM ABUSE AND NEGLECT

Chapter Grade

B-

The Right to Protection from Abuse and Neglect
Every child has the right to be protected from all forms of abuse, violence, punishment and neglect, whether physical or mental. The State has the responsibility to provide support for children who experience abuse and their carers, as well as mechanisms for prevention, reporting, investigation and treatment.

Summary of Article 19 of the UNCRC

“While we welcome that there has been legislative developments in recent years we are hugely disappointed that the Children First Bill hasn’t lived up to expectations. In particular the lack of sanctions for those who do not report knowledge of child abuse sends a message that the Irish Government are not serious about protecting Children in Ireland.”

Caroline O’Sullivan, Interim CEO, ISPCC
IN THE NEWS

NEW CHILD PROTECTION AGENCY TO BE OFFICIALLY LAUNCHED TODAY

TheJournal.ie 30 January 2014

The Child and Family Agency will take over from the HSE in relation to child welfare.

THE TASOISEACH ENDA Kenny is today launching the new Child and Family Agency, which will bring child services into one centralised regime.

The agency will take over child protection from the Health Service Executive (HSE). Previously three separate agencies, the HSE, the Family Support Agency and the National Education Welfare Board were over the area of child welfare. […]

The Child and Family Agency will bring together over 4,000 staff and will have a budget of €609 million.

The national network will include 106 family resource centres on the ground in communities across the state.

Speaking ahead of the launch today, the Minister for Children and Youth Affairs Frances Fitzgerald said: “I consider the new Child and Family Agency as the most effective response possible to our country’s repeated and tragic failings in child protection, as shown in the evidence of successive enquiries and reviews over many years”. […]

Speaking on RTÉ’s Morning Ireland, Senator and children’s rights activist Jillan van Turnhout said it was a great day, but said the job of the agency now was to ensure it gets all the resources it needs and that all agencies cooperate with each other. […]

By Christina Finn
5.1 CHILD AND FAMILY AGENCY

GOVERNMENT COMMITMENT

The Programme for Government commits to fundamentally reform the delivery of child protection services by removing child welfare and protection from the HSE, and creating a dedicated Child Welfare and Protection Agency, reforming the model of service delivery and improving accountability to the Dáil.

Progress: Good

WHAT’S HAPPENING?

The Child and Family Agency was formally established on 1 January 2014. Budget 2015 provided an additional €34 million for the Agency.

The Child and Family Agency Bill 2013 was enacted on 1 January 2014 bringing the Child and Family Agency into existence. The establishment of the Agency was a key Programme for Government commitment. The Agency brings together the following bodies and services: Health Service Executive’s Children and Family Services, Family Support Agency, National Education Welfare Board, Pre-school Inspection Services, services relating to the psychological welfare of children; and services relating to domestic, sexual and gender-based violence.

The Child and Family Agency was officially launched on 30 January by An Taoiseach, Enda Kenny TD, and the then Minister for Children and Youth Affairs, Frances Fitzgerald TD, in Dublin Castle. At the launch, the Agency published its initial statement of purpose, entitled Ireland’s Child and Family Agency: Towards a Shared Purpose for consultation on the priorities and key objectives to be included in its first Corporate Plan. Also in January 2014, the Agency published its Business Plan for 2014 which identifies 16 priority areas with 59 individual output measures to be monitored throughout the year.

The Child and Family Agency Act 2013 sets out a four step structured dialogue between the Minister for Children and Youth Affairs and the Agency on the development of Agency’s Corporate Plan. This process was completed in 2014 and involved the publication by the Minister for Children and Youth Affairs of a Performance Framework for the Child and Family Agency, an annual performance statement with specific policy guidance, direction, prioritisation and resource parameters in respect of each year for the preparation of the Agency’s Annual Business Plan; and approval by the Minister of the Agency’s three year Corporate Plan, which is due to be published in February 2015.

473 These services comprise child welfare and protection services; foster and residential care and aftercare; and adoption services.

474 The HSE will retain responsibility for Sexual Assault Treatment Units which are located in acute hospitals and other medical services.


Budget: In April 2014, the Government committed in the National Policy Framework for Children and Young People 2014–2020 to adequately resource the Child and Family Agency so that it can ‘implement the change agenda effectively and to deliver better outcomes for children and young people’.\(^{478}\) The Agency was allocated a budget of €609 million for 2014.\(^{479}\) Budget 2015 provided an additional allocation of €34 million – a 5.6% increase over the 2014 budget – bringing the Agency’s budget allocation to €643 million for 2015, including a funding transfer of €2.5 million from the Department of Environment and Local Government in respect of domestic violence refuges and services.\(^{480}\) Over €12 million in capital funding was allocated in Budget 2015 (an increase of €5.6 million on 2014) to meet the cost of the roll-out of the National Child Care Information System.

Workforce: The Agency is preparing a workforce development strategy for publication by end of second quarter 2015. This will ensure strategic and operational workforce development plans and processes are established as key activities in the Agency focusing on improving resource deployment, structured professional and career development, recruitment, retention and turnover of key staff and staff motivation.

DSGBV: Since January 2014, the Agency has assumed responsibility for Domestic, Sexual and Gender Based Violence (DSGBV) services.\(^{481}\) It is currently conducting a review of the delivery of these services. In November 2014, Tusla hosted a learning event for stakeholders in the DSGBV sector to consider the results of the first ever mapping exercise of DSGBV services nationally.

Child Protection and Welfare: In December 2014, the Agency published a comprehensive Alternative Care Practice Handbook.\(^{482}\) A Participation Strategy for the Agency on how children and young people can participate in decision-making within the work of the Agency has been developed, but is not yet public. A child version of the Strategy is in development.

There were 1,403 (whole-time equivalent) social workers employed by the Agency at the end of November 2014 and an additional 193 are being recruited to meet existing vacancies.\(^{483}\) Up to end November 2014, 155 social workers were recruited and had commenced work, while 102 social workers left employment, including those who retired or took maternity leave.\(^{484}\) A pilot Maternity Leave Cover scheme has been introduced to address priority gaps in service resulting from maternity leave through temporary contracts.

Of the 6,454 children in care at the end of October 2014, 93% were in a foster care placement (29% of whom were in relative foster care).\(^{485}\) All children in care must have an allocated social worker. At the end of October 2014, there were 6,454 children in care of which 93% had an allocated social worker,\(^{486}\) meaning 472 children did not have an allocated social worker. Of the 17 administrative areas, six areas had a rate of 100%. However, the Dublin South West/Kildare Wicklow area had a rate of only 78%\(^{487}\).

In relation to children in care having a written care plan, Tusla set a target for 2014 of 90% compliance for 2014. This target was reached for October 2014 (6,781/7,454).\(^{488}\) However, this means 673 children in care are still without a written care plan. Of the 17 administrative areas, 12 has reached or exceeded the 90% target. However, of concern was that in Cavan/Monaghan only 48% and in Dublin South Central 59% of children had a written care plan.\(^{489}\) In the area of foster care, there were 449 relative foster carers awaiting approval by the Foster Care Panel at the end of Quarter 3 2014, 83% of these had a child placed with them for longer than 12 weeks and only 67% have an allocated social worker for the foster carer/s (often referred to as a link worker).

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\(^{479}\) The budget of the HSE Children and Family Services (approximately €534 million) was transferred to the Department of Children and Youth Affairs, Parliamentary Questions: Other Questions, TUSLA (2014), p.10.

\(^{480}\) Ibid., p.12.

\(^{481}\) Ibid.

\(^{482}\) Alternative Care Practice Handbook, Dublin: TUSLA

\(^{483}\) Dr. James Reilly TD, Minister for Children and Youth Affairs, Parliamentary Questions: Other Questions, Child and Family Agency Staff [2204/15], 20 January 2015


\(^{485}\) Ibid., p.10.

\(^{486}\) Ibid.

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On a positive note, the statistics for children in care and remaining in education are encouraging – 98% of children in care between the ages of six and 16 years and 92% of those aged 17 years of age were in full time education and the (school age).

At the end of the third quarter 2014, there were 27,937 cases recorded as 'open' to social work team across the country, an increase of 664 on the previous month. Of the ‘open’ cases, 29% or 8,161 cases were awaiting allocation and of those 2,829 were considered high priority. During 2014, 32,788 referrals were received by social work services. The majority of referrals (57%) relate to a child welfare concern and the remainder to child abuse concerns. At the end of quarter three 2014, there were 1,393 children listed as active on the Child Protection Notification System (CPNS).

**Comment**

Child and Family Agency gets a ‘B’ in Report Card 2015, a slight fall from last year’s ‘B+’ grade. This year’s grade reflects the success of establishing a new statutory agency for children and families and the public sector, policy and service delivery reform undertaken by the Child and Family Agency in its first year of operation. But the grade is also cognisant that delays exist in responding to child protection referrals and failings persist in our child care system.

The establishment of the Child and Family Agency has the potential to change how the State interacts with some of the most vulnerable families and children in need of support. A major challenge exists to shift the focus and resources of the Agency away from crisis intervention to prevention and earlier intervention measures, including family support.

Children’s Rights: The UN Committee on the Rights of the Child has emphasised that child protection must begin with proactive prevention. Under the Convention, the child has a right to protection from abuse and neglect (Article 19), sexual and other forms of exploitation (Articles 34-36) and to rehabilitative care (Article 39). A children’s rights approach to child protection starts with prevention and builds children’s capacity to protect themselves, enhances their understanding of their right to protection, and promotes their participation. Central to this approach is the right of a child to be cared for by his or her parents and not to be separated from their parents unless it is in their best interests.

**The Current Backlog of 8,161 Child Protection Cases Which Have Not Been Allocated a Social Worker Including 2,829 Deemed ‘High Priority’ Is Unacceptable and Must Be Addressed as a Matter of Urgency**

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492 Ibid.

493 Ibid.

494 Communication received by the Children’s Rights Alliance from the Child and Family Agency, 9 February 2014.

495 UN Committee on the Rights of the Child (2011) *General Comment No.13: The right of the child to freedom from all forms of violence, CRC/C/GC/13*, i.3. (e) and (g), and also Recommendation 37(c) of the Committee on the Rights of the Child (2006) Concluding Observations of the United Nations on Ireland.

496 Other relevant articles include the specific protections for children in the care system such as the child’s right not to be separated from his parents and protection for children without families (Articles 9 and 20), the review of care placements (Article 25) and the best interests of the child in adoption cases (Article 21).

497 Under the UN Convention on the Rights of the Child, the term ‘parent’ is interpreted to mean genetic, birth and psychological parent, the latter referring to a person who is not biologically related to the child but cares for the child for significant periods of their childhood as they are ‘intimately bound up in children’s identity’ and identity rights.

Section 9(1) of the Child and Family Act 2014 obliges the Agency to ‘have regard for the best interests of the child’ when carrying out its functions. The legislation does not explicitly state how Agency workers should interpret this principle and no regulation was issued on it during 2014. Sections 9(3) and 9(4) of the Act places an obligation on the Agency to consult and listen to children in the planning and functioning of the Agency and in its work with individual children and families. The implementation of the Agency’s Participation Strategy is a key opportunity to operationalise these provisions. The Agency’s strategy should be in line with the national participation strategy currently being developed.

One of the underlying drivers for the establishment of the Agency was to join up child protection and family support services and early intervention and preventative work with children and families. It is not yet clear how the Agency will achieve the aim set out under Section 8 of the Act to ensure the ‘effective functioning of families’, including delivery of ‘preventative family support services’.

**Budget:** During 2014, Gordon Jeyes, the Agency’s Chief Executive publicly stated that the Agency required additional funding of €45 million ‘just to stand still’. The additional €34 million allocated to the Agency in Budget 2015 is warmly welcomed. However, even with this additional funding concerns remains that the Agency will be unable to meet its statutory obligations given the combination of growing demand for its services and demographic pressures. The Agency may be forced to run over budget or make cuts to key services that are not in the best interests of children and will prove to be a false economy.

**Interagency Linkages:** A key challenge for the Agency is to ensure effective interagency working with relevant services outside of the Agency. A weakness in this area can often lead to a child being failed. Despite a recommendation from the Task Force on the Child and Family Support Agency, a decision was made not to include the Public Health Nurses (PHNs) service and the Child and Adolescent Mental Health Services (CAMHS) in the initial phase of the Agency. The Government should review the composition of the Agency during 2015.

**Child Protection:** Success will be measured by whether the Agency can address waiting lists, deliver high-quality services and improve the experience and outcomes for children and families using its services. The current backlog of 8,161 child protection cases which have not been allocated a social worker including 2,829 deemed ‘high priority’ is unacceptable and must be addressed as a matter of urgency.

The Review of Adequacy for HSE Children and Family Services 2012 report, published in 2014, details that 40,187 referrals were received by the HSE Children and Family Services in 2012. The referrals relate to both child abuse and child welfare. About half the referrals are referred for an initial assessment following a preliminary inquiry. Each referrals does not relate to a new case as there may be multiple referrals made in respect of the same child; the child may already be under assessment; or the referral may not be appropriate for the child protection notification system or a child protection conference was called. Further analysis is needed to unpack this data. For example, is there a quality assurance system in place to monitor whether the threshold is applied consistently across the country and between different socio-economic and ethnic groups? What are the outcomes for children identified as at risk or in need? Did they receive a timely and appropriate intervention?

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CHILD AND FAMILY AGENCY

Immediate Actions for 2015

Ensure the Child and Family Agency is adequately equipped to fulfil its statutory and human rights obligations to children

Adequate resourcing of the Child and Family Agency is paramount to ensure it can comply with its statutory obligations and fulfil its own legislative remit. Under Article 19 of the UN Convention on the Rights of the Child, Ireland has an obligation to ensure children are protected from all forms of harm and abuse. The Agency’s child protection processes must be equipped to respond to children at risk in a timely and effective manner and to uphold the rights of children in care.

Expand the remit of the Child and Family Agency

In line with the recommendation of the Task Force on the Child and Family Support Agency, the Public Health Nurses (PHNs) service and the Child and Adolescent Mental Health Services (CAMHS) should be brought into the Agency to provide a link to a universal service (PHN) and a core support service for children (CAMHS).

Introduce a regulation to clarify how the best interests principle should be interpreted

The Minister for Children and Youth Affairs should provide clarity on Section 9 of the Child and Family Agency Act 2013 by issuing a regulation setting out how Agency staff should implement the best interest principle in their work.
GOVERNMENT COMMITMENT

The Programme for Government commits to implementing the recommendations of the Ryan Report including putting the Children First Guidelines on a statutory footing and legislating for the use of “soft information”.

Progress: Some

WHAT’S HAPPENING?

The Children First Bill, 2014 was published in April 2014. The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 is yet to be commenced.

The Ryan Report Implementation Plan, published in July 2009 to respond to the recommendations contained in the Ryan Report, identified key weaknesses in the child protection system and provided a roadmap for reform.503 The fourth and final Progress Report was due to be published by end of 2013. The Monitoring Group, chaired by the Minister for Children and Youth Affairs, which oversees the development of the report held its final meeting in November 2014, but the report has yet to be laid before the Oireachtas.

Work is under way in the Department of Children and Youth Affairs to prepare a monitoring framework for all significant child care reports, which will replace the work of the Ryan Report Implementation Group, whose term has now come to an end.504 This work includes promoting the application of the CLEAR protocol when devising inquiry recommendations to minimise prescriptive recommendations and focus more on key learning points which may be disseminated within and across organisations.505 In addition, a number of issues raised in the Ryan Report Implementation Plan have been embedded in the Child and Family Agency’s performance activity reporting and in the National Policy Framework for Children and Young People 2014–2020.506

During 2014 a number of significant reports relevant to the recommendations of the Ryan Report Implementation Plan were published including: the seventh annual report of the Special Rapporteur on Child Protection;507 HIQA inspections and four reports by the Child Death National Review Panel. One of the Panel’s reports reviewed the case of a young man who died aged 19 years, it found there was an inadequate response to evidence he had been abused and neglected as a child. His needs were never properly assessed.

503 The Report of the Commission to Inquire into Child Abuse (known as the Ryan Report) was published in May 2009, revealing horrific wrongdoings perpetrated against children living in institutions during the period 1936 to 2000.
504 Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 31 January 2014.
505 Dr. H. Buckley and Dr. C. O’Nolan (2013) An examination of recommendations from inquiries into events into families and their interactions with State services, and their impact on policy and practice, Department of Children and Youth Affairs and Irish Research Council http://dcya.gov.ie/documents/publications/FamilyInquiries2013.pdf
The 2014 HIQA reports continue to highlight good practice but also areas for improvement. For example, a HIQA report on foster care services in Carlow, Kilkenny, South Tipperary noted that as of March 2014, 45 children – the majority with complex needs – were waiting on psychology and mental health services, some were waiting for up to one year. Another HIQA report found that 15 children placed on the Child Protection Notification System had no allocated social worker and these children were not visited by social workers with the regularity required for children with this level of need and risk.

In November 2014, a new Criminal Law (Sexual Offences) Bill 2014 was published, which proposes reforms to better protect children from sexual exploitation, child pornography and online grooming. It addressed many recommendations made by Dr. Geoffrey Shannon, the Special Rapporteur on Child Protection in his annual reports.

Children First: The Children First Bill was published in April 2014 by the then Minister for Children and Youth Affairs, Frances Fitzgerald TD, two years after she published the Heads and General Scheme of the legislation. In line with recommendations of the Ryan Report Implementation Plan, the Children First Bill 2014, puts aspects of the Children First: National Guidance for the Protection and Welfare of Children (2011) on a statutory footing and will ensure the Guidance is uniformly and consistently implemented across the country. This is a significant new piece of child protection legislation and a key component of the suite of legislation promised on foot of the Ryan Report.

The Bill is subject to amendments as it progresses through the Houses of the Oireachtas, as initiated it sets out that specified individuals have a legal duty to report child protection concerns, above a defined threshold, to the Child and Family Agency. Mandated individuals are listed in Schedule 2 of the Bill and include doctors, nurses, social care and social workers, teachers, foster carers, managers of domestic violence shelters, homeless hostels and asylum seeker accommodation, child protection officers of religious, sporting, recreational, cultural, and educational organisations and specified pre-school and youth workers. Under Section 11(1)(d), mandated individuals are required to report if he or she ‘knows, believes or has reasonable grounds to suspect’ or where a child has disclosed to him or her that a child has been harmed, is being harmed, or is at risk of being harmed. Section 11(3) addresses the duty to report in relation to concerns regarding children engaged in sexual activity. In addition, provisions are put in place to avoid the duplication of reports by mandated individuals. An authorised person, or persons, within the Child and Family Agency will acknowledge in writing all reports made.

Under Section 6 of the Bill, the Children and Family Agency shall, in performing its function under the Act, regard the best interests of the child as the paramount consideration. Under Section 13, mandated individuals have a legal duty, if requested, to assist the Child and Family Agency in the child protection assessments.

This novel provision also provides that the Agency may share information about the child who is the subject of a mandated report with the mandated individual who is assisting them. Organisations providing relevant services to children have a legal duty to carry out a risk assessment and prepare an organisational-specific Child Safeguarding Statement. The existing Children First Inter-departmental Group is to be put on a statutory footing under Part 4 to promote compliance and implementation by Government Departments of the Children First Guidance.


511 http://www.dcyg.gov.ie/viewdoc.asp?fn=%2Fdocuments%2FChildren_First%2FChildrenFirstLegislation.htm&mn=chiu&nID=1


Vetting: Two years on from its enactment in December 2012, the National Vetting Bureau (Children and Vulnerable Persons) Act is yet to be commenced. The Act places the vetting of people working with children and vulnerable adults on a statutory basis and allows for the exchange of ‘relevant’ or ‘soft’ information between the National Vetting Bureau and a registered organisation. Elements of the Act relating to the disclosure of convictions require amendment following recent Court judgments before it can be commenced.515

Children First: The publication of the Children First Bill 2014 is positive and long awaited development. Its implementation has the potential to change the culture of child protection in Ireland, ensuring that abuse is tackled head-on and not hidden away. The need for such reform is well documented519 The pace of progressing the legislation through the Houses of the Oireachtas is, however, disappointing. It is critical that the Bill progresses quickly and is enacted to ensure consistency of practice throughout the country, and reduce the risk of child protection cases not being referred to the relevant authorities.

While warmly welcoming the publication of the Bill, advocates have recommended that the Bill be strengthened by providing sanctions for those who fail to make referrals and that clarity be provided in relation to retrospective allegations.520

To promote compliance with the Bill, an investment in education, training and support for stakeholders, including parents will be needed. A key challenge will be to ensure the effective roll out of the legislation across Government Departments and statutory agencies. Based on international experience, it is anticipated that the numbers of referrals will initially rise and then level out. Hence, measures must be put in place to ensure the availability of sufficient social workers to assess referrals and respond to them in an effective and timely manner.

Vetting: The delay in commencing the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 – a key pillar in our child protection system – is deeply disappointing.521 The lack of legislation on soft information vetting leaves a gaping hole.

COMMENT

The Ryan Report Implementation Plan gets a B− grade in Report Card 2015, the same grade as last year. The lack of movement reflects mixed progress. The publication of the Children First Bill 2014 was a positive step forward, but the ongoing delay in the commencement of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 is a cause of concern.

The UN Convention on the Rights of the Child provides that a child has a right to protection from abuse and neglect (Article 19), including sexual and other forms of exploitation (Articles 34 to 36).524 To ensure that children are adequately protected, the UN Committee on the Rights of the Child recommends that States coordinate and implement child protection policies, strategies and services.527 In their Concluding Observations on Ireland in 2006, the UN Committee urged the Government to consider placing Children First on statutory basis, and called for proper vetting of prospective employees and volunteers for all those working with children.518 Nine years on, neither statutes are have been commenced.

515 UK Court of Appeal (T and others v Chief Constable of Greater Manchester, 2013).
516 Other relevant articles include the right to rehabilitative care (Article 39), the specific protections for children in the care system such as the child’s right not to be separated from his parents and protection for children without families (Articles 9 and 20), the review of care placements (Article 25) and the best interests of the child in adoption cases (Article 21).
517 UN Committee on the Rights of the Child (2009) General Comment No. 13: The right of the child to freedom from all forms of violence, CRC/C/GC/13, Section 42.
in our child protection system and means Ireland is operating outside of best practice internationally. It is not clear if the review of the 2012 Act has been concluded and what amendments, if any, are proposed. It is not clear if the review will also allow for a re-examination of the scope of the Bill to address omissions, such as the exclusion of child minders.

Child Victims: Ireland continues to be the only European Union Member State which has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Irish law is broadly in compliance with the Second Optional Protocol except for the legal requirement to introduce victims’ legislation for children. In addition, Ireland has yet to ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, known as the Lanzarote Convention. Ratification of these two important international agreements should be prioritised.

RYAN REPORT IMPLEMENTATION PLAN

Immediate Actions for 2015

Enact the Children First Bill, 2014 and provide funds to promote compliance

It is critical that the Children First Bill, 2014 is enacted as soon as possible to vindicate the child’s right to protection from abuse under Article 19 UN Convention on the Rights of the Child. Investment in education, training and support and adequate social work services will be needed to support compliance with the Children First Bill. The effective roll out of this legislation is a key plank in our child protection system, it must be afforded priority by Government in terms of the legislative agenda and budgetary decisions.

Commence the National Vetting Bureau Act 2012 as a matter of urgency

Conclude the review and commence the legislation as a matter of urgency. Provide support and training to relevant organisations and professionals to enable them to comply fully with their statutory duties under the National Vetting Bureau Act 2012.

Ratify the Second Optional Protocol to the UNCRC and the Lanzarote Convention

The Government must ratify the Second Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography and the Lanzarote Convention on sexual exploitation and abuse as a matter of urgency to ensure greater protection of children, in particular for victims of abuse and trafficking.
5.3 CHILDREN IN DETENTION

GOVERNMENT COMMITMENT

The Programme for Government commits to ending the practice of sending children to St. Patrick’s Institution.

Progress: Slow

WHAT’S HAPPENING?

Phase 1 of the construction work on the new National Detention Facility is complete although the facility is not yet operational. Children continue to be detained in adult prisons, including those on remand in St. Patrick’s Institution.

The Government’s 2012 commitment to end the practice of detaining children in adult prisons is getting close to being achieved through making provision for all 16 and 17 year olds to be detained in the new, integrated, National Children Detention Facility at the Oberstown campus, Co. Dublin.526 The Government reiterated its commitment in the National Policy Framework for Children and Young People 2014–2020, published in April 2014.525

Much progress has been made to date. Since July 2012, all 16 year olds have been detained in the Oberstown campus. In December 2013, all 17 year olds serving a custodial sentence were transferred from St Patrick’s Institution to a dedicated unit in Wheatfield Place of Detention until the completion of the new facility in Oberstown. There were 13 boys serving a sentence in Wheatfield as of 7 January 2015.526 However, for legal reasons Wheatfield is unable to detain children who are on remand (i.e. un-convicted) so they must remain in St. Patrick’s Institution.527 As of 20 January 2015, there were six 17 year olds detained in St Patrick’s Institution,528 this number had dropped to four by 30 January 2015.529

In September 2014, Judge Michael Reilly, the Inspector of Prisons expressed grave concern about the continued detention of a small number of boys in St Patrick’s Institution describing it as ‘at times, tantamount to holding them in isolation and it is certainly inhumane’.530 Despite a Government commitment to close St. Patrick’s Institution completely, following a previous damning report by the Inspector of Prisons in 2012, the prison remains open and continues to detain children.531

527 A person ‘on remand’ is someone who is charged detained in custody but who has not yet been convicted of a crime and is awaiting trial or sentencing. The initial remand period can be extended.
529 Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 6 February 2015.
Also in September 2014, the General Scheme of the Children (Amendment) Bill 2014 was approved by Government.532 The Bill is due to be published during the Spring/Summer 2015 Oireachtas Session.533 Under the new legislation, the three existing Children Detention Schools – Oberstown Boys, Trinity House and Oberstown Girls – will be amalgamated into a single National Children Detention Facility under one Director.534 The Bill will address a court ruling which found that children are entitled to the same remission as adult detainees,535 and also remove legislative references which provide for the detention of children in adult institutions.

The new national facility will encompass the three existing schools and six new residential units. The first three of the new units were formally handed over to the Oberstown campus on 27 November 2014.536 These units will prioritise the transfer of responsibility for 17 year old boys from adult prison facilities. The fourth and fifth units were handed over on 16 January 2015. The final unit is expected to be handed over by July 2015.537 Testing, fit-out and staff training are ongoing. To facilitate staff training and orientation, the first five units are to be occupied with existing staff and children by end quarter one of 2015. The transfer of responsibility for all 17 year old males to the Oberstown campus is due to be completed by end quarter two of 2015, this will be contingent on the completion of staff recruitment and the enactment of the Children (Amendment) Bill 2014.538

Budget: Budget 2015 provided the final instalment of a €56.4 million investment over three years in the national facility.539 An additional €19 million was allocated to complete the national facility and a further €18 million to cover the costs of additional staff and costs associated with the new, larger facility.

Workforce: A recruitment programme was approved by Government to staff the new facility. By end 2014, 40 of the 67 approved new posts had commenced employment, this cohort included 22 residential social care workers who have completed six weeks induction training.540 An additional recruitment phase for residential social care workers is planned for early February 2015 and it is hoped that staff will commence work at the end of April/early May 2015.

Children Detention Schools: A total of 38 boys – and no girls – were detained in the three Schools as of 7 January 2015.541 In 2014, a total of 168 boys and eight girls were remanded or committed to the schools,542 down slightly on the 179 boys and 12 girls held in 2013.543

Therapeutic Services: The Assessment, Consultation and Therapy Service (ACTS) provides specialised clinical services to children with high risk behaviours associated with complex clinical needs. ACTS now provides on-site (in-reach) services to children detention schools, 136 children were referred to it for treatment in 2014 and there is no waiting list for accessing therapeutic services.544 Mental health screening is available to all children within 24 hours of their arrival in detention.

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534 The schools currently operate under the same board of management but not under a single director.
536 Minister for Children and Youth Affairs James Reilly TD, Parliamentary Question: Written Answers 20 January 2015 [2185/15].
537 Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 6 February 2015.
538 Ibid.
539 Department of Finance, Budget 2014: Expenditure Allocation 2014-2016 http://budget.gov.ie/Budgets/2014/Documents/Parter_2014/percent20per cent20per cent20Expenditureper cent20Allocationsper cent202014per cent20per cent202016.pdf [last accessed 10 January 2014].
540 Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 6 February 2015. An additional individual is due to commence work by end February 2015.
542 Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 6 February 2015.
544 It also provides services to special care units, and a community service to support children when they transition out of secure settings.
to assess if they require a referral to the clinical team for treatment.\textsuperscript{546}

In February 2014, the Irish Youth Justice Service published \textit{Tackling Youth Crime: Youth Justice Action Plan 2014-2018}.\textsuperscript{547} The Action Plan aims to improve the effectiveness and efficiency of interventions in addressing the behaviour and needs of children who get into trouble with the law.

\section*{COMMENT}

Children in Detention receives a ‘B+’ grade in \textit{Report Card 2015}, a fall from last year’s grade of B+. This grade recognises the significant work achieved in 2014 in terms of completing the construction work on the first three units and commencement of 40 new staff members. However, the fact remains that children continue to be detained in adult prisons and legislation to underpin the national facility is not yet enacted.

\textit{Children on Remand in St. Patrick’s:} The decision to close St Patrick’s Institution was warmly welcomed and long overdue. The detention of children in an adult prison that operates a penal regime has been criticised as a glaring human rights violation by a number of domestic and international bodies\textsuperscript{547} as it is in direct contravention of Article 37 of the UN Convention on the Rights of the Child (torture and deprivation of liberty).\textsuperscript{548} St Patrick’s Institution was considered to be the most violent prison in Ireland, responsible for one third of all assaults in the prison system.\textsuperscript{549}

It is unacceptable that children on remand continue to be detained in St. Patrick’s. The Inspector of Prison’s recent comments that the detention of 17 year olds now amounts to de facto solitary confinement are extremely concerning and must be acted upon by putting in place an alternative until the new facility is operational.

\textit{Sentenced Children at Wheatfield:} While the transfer of 17 year olds from St. Patrick’s Institution is a welcome step, the transfer to a new interim facility at Wheatfield prison must be ‘a temporary, short-term measure’, as articulated by Emily Logan, then Ombudsman for Children.\textsuperscript{550} Although the Visiting Committee’s 2013 annual report, published in 2014, praises Wheatfield for its provision of a segregated area for these young offenders away from the general prison population,\textsuperscript{551} it is important that there are no further delays in the transfer of these children to the Oberstown campus.

\textit{Physical Environment at Oberstown:} The expansion and investment in the Oberstown campus provides a unique opportunity to build a world class facility with a child-centred, education-focused regime, rooted in a child’s rights framework.\textsuperscript{552} The campus was designed and has operated to date as a group of children detention schools, where children receive care, therapeutic supports and education. However, recent physical changes to the campus, including the erection of a large perimeter fence raise concerns that the model is moving away from its child-centred focus to a more a security-focussed facility. The UN Convention on the Rights of the Child is clear that States must treat children in conflict with the law in a manner that promotes the child’s sense of dignity and worth, reinforces the child’s respect for human rights, and takes account of the child’s age and the desirability of promoting reintegration (Article 40: administration of juvenile justice).

\textit{Reservation:} In 1989, the Irish Government lodged a reservation to Article 10 (2b) of the International Covenant on Civil and Political Rights (right to liberty) which states that; ‘Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication’.\textsuperscript{553} Given the positive measures underway we urge the Government to withdraw this reservation. The Department of Children and Youth Affairs has indicated that

\begin{footnotesize}
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\item \textsuperscript{540} Information received by the Children’s Rights Alliance from the Child and Family Agency 6 February 2015.
\item \textsuperscript{541} Irish Youth Justice Service (2014) \textit{Tackling Youth Crime: Youth Justice Action Plan 2014-2018}.
\item \textsuperscript{542} For further detail see Children’s Rights Alliance (2013) Report Card 2013, Dublin: Children’s Rights Alliance, pp. 77-78.
\item \textsuperscript{543} UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989).
\item \textsuperscript{544} C. O’Keeffe, ‘30per cent of St Pat’s inmates on protection and locked up for over 20 hours a day’, Irish Examiner, 28 September 2012.
\item \textsuperscript{545} Ombudsman for Children’s Office, Address by the Ombudsman for Children to the Joint Oireachts Committee on Health and Children, 17 July 2013 http://www.oco.ie/assets/files/Staements/PresentationontheOireachtsCommitteeonHealthandChildrenJuly2013.pdf [last accessed 13 January 2013].
\item \textsuperscript{547} Ombudsman for Children’s Office (2011) \textit{Young People in St. Patrick’s Institution: A report by the Ombudsman for Children’s Office}, Dublin: Ombudsman for Children’s Office. See also D. Keenan et al (2011) \textit{A Rights-based Approach to Monitoring Children and Young People’s Wellbeing}, National University of Ireland and University of Ulster: Galway.
\item \textsuperscript{548} UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999. A reservation is a caveat to a State’s acceptance of a treaty.
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it will consider withdrawal of this reservation following the transfer of all 17 year olds to the Oberstown campus.\textsuperscript{554}

\textbf{Use of Remand:} As of 30 January 2015, there were 13 children remanded in custody (nine in Oberstown and four in St. Patrick’s Institution).\textsuperscript{555} A total of 96 children were remanded in custody to the Children Detention Schools in 2013 and of these 26 subsequently received an order to be detained in the Children Detention Schools.\textsuperscript{556} Two issues of concern arise given the negative effect of inappropriate remand on children.\textsuperscript{557} Firstly, children on remand who have not been convicted are detained alongside those who have been convicted contrary to Article 10(2)(a) of the International Covenant on Civil and Political Rights (right to liberty).

Secondly, only 27 per cent of those detained on remand were subsequently sentenced to detention on conviction. The question arises as to whether this breaches Section 96 of the Children Act which states that detention (including detention on remand) should only be used as a measure of last resort. In addition, Ireland, unlike other jurisdictions, lacks an outer time limit for the application of remand. Concern also exists about the use of the remand of children in custody on welfare grounds contrary to Section 88 of the Children Act 2001 (as amended) which stipulates that the Court shall not remand a child in custody solely on the basis of care or protection concerns.\textsuperscript{558}

\textbf{Children (Amendment) Bill 2014:} The Children (Amendment) Bill 2014 is a welcome and necessary development to support the establishment of the national facility and should be progressed as a matter of urgency to ensure the transfer of all 17 years olds to the Oberstown campus. However, the Bill contains one retrograde step. Head 8 of the Scheme proposes to change from 12 months to two years the frequency of inspections of the Children Detention Schools.\textsuperscript{559} Given the vulnerability of children who are deprived of their liberty it is imperative that there is an annual inspection of the national facility.

\textbf{Aftercare Bill:} In February 2014, the Government approved the General Scheme and Heads of the Aftercare Bill 2014, which places a statutory duty on the Child and Family Agency to prepare an aftercare plan for each eligible child.\textsuperscript{560} Head 1 sets out the grounds for eligibility based on the length of time a child has been in care, it does not include children in detention.\textsuperscript{561} In July 2014, following a review of the legislation, the Joint Committee on Health and Children recommended that consideration be given to ‘broadening the eligibility criteria to include young persons who have been in the care system but who subsequently end their childhood in detention centres’.\textsuperscript{562}

For some children there is clearly cross over between care and detention. Five of the 38 children (13 per cent) in the Children Detention Schools as of 30 January 2015 had been in the care of the Child and Family Agency prior to their detention, and 22 of the 38 children (58 per cent) had a social worker assigned to their detention.\textsuperscript{563}

\textsuperscript{554} Information received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 15 January 2014.

\textsuperscript{555} Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 6 February 2015.

\textsuperscript{556} Minister for Children and Youth Affairs James Reilly TD, Parliamentary Questions: Written Answers 20 January 2015 [2192/15].


\textsuperscript{559} Section 186 Children Act 2001 (as amended by the Criminal Justice Act 2006) requires that inspections of children detention schools take place at least annually.


\textsuperscript{561} Children’s Rights Alliance (2014) Submission to the Joint Committee on Health and Children on the General Scheme and Heads of Aftercare Bill 2014 [online], http://www.childrensrights.ie/sites/default/files/submissions_reports/files/Children%27s%20Rights%20Alliance%20Submission%20on%20the%20Heads%20of%20Aftercare%20Bill%202014.pdf


\textsuperscript{563} Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs, 6 February 2015, and see ibid., p. 28.
CHILDREN IN DETENTION

Immediate Actions for 2015

Transfer all 17 year olds to the National Children Detention Facility as a matter of urgency

Responsibility for all 17 year olds must be transferred to the National Children Detention Facility as a matter of urgency. The new facility must embed children’s rights principles into its operation and regime, including ensuring the child’s right to education and protection from abuse and bullying are respected.

Withdraw the reservation to Article 10 (2b) of the International Covenant on Civil and Political Rights

Given the positive measures taken in relation to the end of the detention of children in adult prisons, the Government should withdraw its reservation to Article 10 (2b) of the International Covenant on Civil and Political Rights without delay.

Carry out a review on the use of remand for children

The use of remand must be reviewed to ensure it is being used appropriately, including that children are not held on remand for welfare concerns; held for longer than necessary; and that their case comes before the court within a reasonable period of time. Measures must be put in place to ensure children on remand are detained separately from children who have been convicted and are serving a sentence.

Extend the provisions of the Aftercare Bill 2014 to children with experience of detention and track outcomes after detention

A significant proportion of children leaving detention have previously been in care or were known to the Child and Family Agency. Some have ongoing and complex care needs and may find themselves estranged from his or her family. The provisions of the Aftercare Bill 2014 should be extended to include those who have an experience of detention and assessed needs. In addition, an individual case tracking system should be put in place to track the outcomes for children after they leave detention.