

INVESTIGATION STATEMENT

August 2011

An investigation by the Ombudsman for Children into the provision of supports and therapeutic services for a child with special needs in foster care

Ombudsman for Children upholds complaint in favour of the child with multiple physical and intellectual disabilities and his foster family against the HSE in accordance with Section 8 of the Ombudsman for Children Act, 2002.

On the basis of the Ombudsman for Children's investigation the HSE has:

- allocated a social worker to the child, following a period of 6 years without a social worker.
- undertaken an independent assessment of the child's therapeutic needs in order to adequately plan for the child's complex needs.
- reimbursed the foster family more than €30,000 for a special adapted vehicle which is required to safely transport the child to his multiple hospital appointments and to school.
- committed to develop and disseminate a standard national policy for the provision of foster care services for children with special needs by the end of 2011.

Background to Complaint

In September 2008 the Ombudsman for Children commenced an investigation under Section 8 of the Ombudsman for Children's Act, 2002 following the receipt of a complaint regarding the provision of supports to a child with special needs in foster care.

The child in question is 14 years old. He was born with multiple physical and intellectual disabilities and is visually impaired. Legally the child is in the care of the HSE and has been living with his foster parents on a full-time fostering basis as part of their family since he was an infant. He is completely dependent on his foster parents in all areas of his care including feeding, toileting, bathing and dressing.

In their complaint to the Ombudsman for Children's Office the foster parents outlined a number of core issues of concern:

- As their foster child was a child in the care of the Health Services Executive (HSE), the foster parents had understood at the time of the long term placement that he would be allocated appropriate and sufficient supports and services according to existing foster care standards. However this had not happened and the services being offered to the child were insufficient to meet his multiple and complex needs.
- The refusal of the HSE to provide funding for a specially adapted vehicle for the child was having an adverse effect on his quality of life and was presenting as a health and safety risk. This vehicle was required to transport the child safely to and from multiple hospital appointments and to school.
- There were ongoing serious difficulties in communication with the HSE.

Adequacy of therapeutic services provided

Because of the multi-faceted nature of the child's disabilities, he requires a range of therapeutic services including speech and language therapy; physiotherapy; and occupational therapy.

These services were provided by a private service provider contracted by the HSE; by the HSE directly through community services; and sourced by the family and paid for using the foster care allowance. According to the complainant, the level and quantity of therapeutic services being provided was and continued to be insufficient to address the child's needs. As the child is in the care of the HSE, it was the understanding of the foster parents that the appropriate supports and services would be made available to him as per the National Standards for Foster Care and was agreed at the time of the fostering placement.

Need for Adapted Vehicle

Due to his medical condition, the child in question cannot sit, stand or bear weight and requires transportation in order to access support services to meet his needs such as to attend multiple hospital appointments and to attend school.

It was in this context that the foster parents requested funding from the HSE for a specially adapted vehicle.

The child had been traveling in the family car using a special car seat, paid for by the HSE, but as the child had grown the car seat was no longer suitable and was now posing a risk to his safety. The situation had become so critical that the child could only be transported in the family car with one foster parent driving and the other sitting in the back seat holding his head. It expressly communicated to the HSE that the foster family would soon be unable to take the child outside of the family home at all without the specially adapted vehicle. This would mean that the child would not be able to avail of crucial therapeutic and support services, nor would he be able to access schooling.

Social workers engaging with the family at the time raised the urgency of the need for an adapted vehicle with the HSE on numerous occasions. Requests were made to the HSE, to the Local Health Office and the local General Manager, and to the Fostering Payments Section, but applications for funding were rejected. The family was advised to seek assistance through the Disabled Persons Motorised Transport Scheme, but the eligibility criteria for this scheme ruled it out as a viable alternative.

However, even though the child was in the care of the HSE, no funding or assistance was made available by the HSE to purchase or adapt a car. Eventually, the foster parents in question had no option but to borrow money to fund the purchase of an adapted vehicle themselves at a cost of more than €30,000.

Examination and Investigation

Following receipt of this complaint the Ombudsman for Children's Office conducted a preliminary examination of the complaint and determined that an investigation was warranted. This investigation was initiated in September 2008.

The Ombudsman for Children was satisfied that shortly after her intervention, in October 2008, the HSE took actions to address one of her immediate concerns and the original decision not to grant funding for the vehicle adaptation was revisited by the HSE and it was subsequently decided that the money was to be reimbursed to the complainants.

It is always open to the public body to take steps to mitigate against an action that is having an adverse affect on a child in the course of any Ombudsman for Children's investigation. It is not unusual for public bodies to take steps to rectify difficulties in the course of investigations.

Once the HSE had reimbursed the money, it inquired whether the Ombudsman for Children's investigation was to proceed.

The Ombudsman for Children was concerned that the decision to reimburse the expenditure may have been based solely on circumstances unique to this particular matter rather than as a result of an overall administrative process to identify and appropriately address the particular requirements of any individual foster child with special needs. Her Office wanted to understand the impact on the child and was concerned about the vague nature of the contract for care. She was also concerned that other foster children with similar special needs could also be adversely affected if they were unable to obtain resources or experienced unnecessary delays in accessing services due to the current administrative system. Therefore she advised the HSE that investigation of other matters raised by the family would proceed.

The key legislation and regulations considered in the course of the investigation were:

- the *Child Care Act, 1991*,
- the *Child Care (Placement of Children in Foster Care) Regulations, 1995*,
- the *Child Care (Placement of Children with Relatives) Regulations, 1995*, and
- the *Children Act, 2001*.

The placement of children in foster care is governed by the *Child Care (Placement of Children in Foster Care) Regulations*. The regulations deal with the promotion of the welfare of the child, the pre-placement provisions, the monitoring of placements and the removal of children from placements where appropriate.

Findings

Following an investigation, the Ombudsman for Children made a number of findings in relation to this complaint:

- The child in question did not in the past receive, and is now not receiving, the level of therapeutic services that he needs, and that there was a lack of planning with respect to the serious medical disabilities and wide ranging special needs of the child. A generic care plan process – which is applied to all foster children – was also applied to this case even though this child had significant special needs requirements.
- The Ombudsman for Children found that it was wholly unacceptable that the situation be allowed to persist whereby a child with special needs in the care of the HSE be allowed to be transported to and from therapy and services in circumstances where a foster carer or other adult must accompany the child in the back seat so that his head is supported and that no injury or further discomfort be endured.
- The Ombudsman for Children also found that the issue of safe transport for the child in question, as a child with serious special needs in the care of the HSE, should have been planned for properly, and should not have needed to become a point of argument between the foster parents and the HSE 8 years after the placement of the child with these foster parents.
- Allowances paid to foster carers to account for the day to day costs of caring for a child cannot be expected to cover large capital costs, such as providing adapted means of transport as with this case.
- That the need for transportation support and funding over above day-to-day expenses for children with special needs in the care of the HSE should be met by the HSE.
- That it was unacceptable that the child was without a social worker for 6 years. It should be noted that there was evidence of genuine advocacy and petitioning on behalf of the child by the social workers who were involved periodically in his life. However, the failure of the HSE to ensure that social workers were assigned to this child and his foster family for such a substantial period of his life, placed him in the unfavorable position of not having a professional advocate working continuously on his behalf. The foster parents in this case were very competent and able to advocate very well for the child but this does not mean that they did not need support.

- The lack of assistance provided to this family was in contradiction to National Foster Care guidelines.
- The HSE should have considered the best interests of the child when making decisions about addressing his needs.

Recommendations

While this investigation is based on a complaint concerning a particular child, the Ombudsman for Children endeavours to use individual casework, wherever possible, as an opportunity to bring about systemic change by making recommendations that would improve the way the public body in question provides its services to children and families. The intention is to create a positive benefit not just for the child at the centre of the investigation but all other children and families who come into contact with the particular public body.

On conclusion of the investigation, the Ombudsman for Children made recommendations specific to this case and others which relate more broadly to all children with special needs in foster care.

With respect to **the child in question**, in addition to making recommendations that to allocating the child a social worker, undertaking a comprehensive needs assessment for the child and reimbursing the foster family for the cost of the specially adapted vehicle, the Ombudsman for Children has recommended that:

1. The HSE to immediately identify the current therapeutic needs of the child to include the areas of occupational therapy, physiotherapy and speech and language therapy.
2. Having identified these needs, the HSE must ensure that they are provided for without delay.
3. The HSE must also make all reasonable efforts to ensure that future therapeutic needs are identified and addressed in a coordinated and timely fashion.
4. The HSE must devise an individual, tailored, long-term care plan which will expressly set out its commitment to provide the therapies and resources that this child requires for his health, welfare and development.

The following recommendations apply to **all children with special needs in foster care**:

1. The HSE is to systematically review the status of all such foster children with special needs to ensure that each child has an assigned social worker to advocate on their behalf.
2. The HSE is to revise the structure and process of how the statutory reviews of care plans take place to ensure that they occur at a frequency that may best address the ongoing needs of that child and so that decisions affecting the welfare of the child may be made in a more timely manner.
3. The HSE is to revise the fostering arrangement and care planning process to ensure that issues such as the procurement of specialist equipment and therapies which may be required for a child are discussed and recorded at time of placement. In that way any ambiguity with respect to the role and responsibilities of each party to the agreement may be avoided.
4. The HSE is to devise a separate administrative scheme to ensure that funding, advice and assistance is made available to identify and address the special transport needs of those children.
5. The HSE is to prioritise the provision of services and therapies for children with special needs in the care of the State in fostering arrangements.
6. The HSE is to provide the OCO with a copy of its proposed policy which shall deal with the issues raised in this complaint to also include any other proposed actions to be taken by the HSE in the performance of its duties and obligations with respect to the children with special needs in its care.

Post Script

The Ombudsman for Children is satisfied that it is the intention of the HSE to address her findings and recommendations in respect of the individual child and more broadly to the small cohort of children with special needs in foster care. However, given the vulnerability of the child in question, and his immediate and pressing needs, the Ombudsman for Children believes that, while significant progress has been made, HSE must progress her remaining recommendations in a more timely manner. Her Office will continue to monitor this case until it she is satisfied that the supports provided to this child and his foster family adequately address his multiple and complex needs.

