

Report of the Ombudsman for Children to the
Oireachtas Joint Committee on Health and Children
on complaints about child protection

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Published by Ombudsman for Children's Office

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ISBN 978-1-907074-07-3

1. Introduction

1 Background

1.1 *Outline of the report*

The aim of this report is to bring to the Committee's attention complaints conveyed to my Office regarding child protection in Ireland.

This report contains a summary and analysis of 61 complaints submitted to my Office by members of the public. In the complaints, the complainants have indicated concerns about the way in which reports of child abuse, in all its forms, have been handled by the relevant authorities. The report highlights the issues of concern raised by the complainants and makes recommendations aimed at addressing the difficulties identified.

The report does not attempt to give an overview of child abuse in Ireland nor to substantiate the reports of child abuse or the substance of the complaints transmitted to my Office to date.

1.2 *Submission to the Oireachtas Joint Committee on Health and Children*

This report is submitted to the Oireachtas Joint Committee on Health and Children further to Section 13(7) of the Ombudsman for Children Act, 2002, which provides for the submission of occasional reports to the Oireachtas and Section 7(1) of the Act which provides that I shall highlight issues relating to the rights and welfare of children that are of concern to children.

I have elected to submit this report to the Committee as I consider the forum that it provides to be the most appropriate one in which to raise these matters at this stage. By compiling a report under section 13 (7) of this Act, I aim to:

- highlight the main issues of concern brought to my Office by complainants;
- give an opportunity to the relevant authority to benefit from that learning; and
- bring positive change for any child who may need child protection services.

The relationship between my Office and the Oireachtas is of fundamental importance and I have been encouraged by the interest shown by Oireachtas Committees in our work. This is a relationship which I will seek to develop into the future. I remain at the Committee's disposal should any clarification or elaboration of the instant report be required.

This submission is timely; the Minister of State with responsibility for Children, Mr Brian Lenihan TD, recently announced that the National Children’s Office will conduct a review of “Children First – the National Guidelines for the Protection and Welfare of Children”. The Minister also announced that he has requested the Health Service Executive to launch a nationwide publicity and awareness campaign on child sexual abuse.¹ The issues raised in this report should be borne in mind in the context of the proposed review and awareness campaign and a recommendation to that effect is made in this report.

¹ Press Release “Minister Lenihan Launches Young Adult Support Training Manual at the County Wexford Partnership”, 11 November 2005.

2. Context

Child abuse remains a reality for many children living in Ireland today. According to the SAVI report of 2002, the vast majority of abused children are abused by persons known to them.² As a society, we all have a role to play in ensuring that children are protected from all forms of abuse. Parents and guardians have primary responsibility for the protection of children. However, when they do not provide this protection, the State, and those statutory authorities specifically mandated to protect children, have powers to act to protect children from abuse.

2.1 *Role of the HSE*

The Child Care Act, 1991 places a statutory duty on the Health Services Executive (HSE) to promote the welfare of children who are not receiving adequate care and protection. This duty is wide ranging and extends to a duty to institute court proceedings where such a step appears necessary to the HSE for the protection of a child.

In line with this role and the standard reporting procedure set out in “Children First; the National Guidelines for the Protection and Welfare of Children”, concerns regarding children should be reported to the HSE. Once a significant doubt arises from an investigation into an allegation of abuse, the HSE is obliged to act to protect the child concerned.

The HSE has responsibility for regularly reviewing its policies and practices, developing standards and quality control systems and operating complaints procedures about the services it provides. It is also responsible for the publication of advice for the general public about child protection.

2.2 *Role of the Government*

As noted in “Children First”, the Government, through the Department of Health and Children is responsible for:

- the provision of the legislative and structural framework for service delivery;
- developing national policy and guidelines;
- setting objectives and standards; and
- monitoring and inspecting services and outcomes and ensuring that resources are available to achieve these tasks.

² The SAVI report (Sexual Abuse and Violence in Ireland), Hannah McGee, Rebecca Garavan, Mairéad De Barra, Joanne Byrne and Ronán Conroy, Royal College of Surgeons in Ireland, at p 177: “in four-fifths of cases of child sexual abuse, the perpetrator was known to the abused person”.

2.3 Role of the Ombudsman for Children

As outlined above, the task of investigating reports of child abuse lies with the HSE. While my Office does not have a direct protection role in this respect, I am required under the Ombudsman for Children Act, 2002 to promote the rights and welfare of children and to ensure that legislation, policy and practice in the State are adequate. In this respect, the protection of children is inherent in all aspects of the work of my Office.

As regards State practice, I can investigate complaints about the actions of public bodies where it appears that a child has been adversely affected and the action taken was against fair or sound administration. Therefore, while I do not directly investigate reports of abuse, I can investigate the manner in which such reports are handled by the relevant authorities.

As regards legislation and policy, the Ombudsman for Children Act, 2002, provides *inter alia* that I shall:

- highlight issues relating to the rights and welfare of children;
- encourage public bodies to develop policies, practices and procedures designed to promote the rights and welfare of children;
- advise Government Ministers on the development of policy; and
- monitor and review relevant legislation.³

The role of my Office was also flagged in the Ferns report, which recalled that when the Government decided against introducing the mandatory reporting of abuse in 1996, a revised template for the delivery of child protection services was published by the Department of Health that year. The template, set out in "Putting Children First: Promoting and Protecting the Rights of Children", included the appointment of an Ombudsman for Children, the appointment of child care managers, the revision of child protection guidelines and a range of other measures.

It is clear that, prior to the establishment of my Office, Government policy makers envisaged a central role for the Office in promoting the rights of children and safeguarding their welfare, including as regards child protection.

There is an important connection between the investigatory and promotional functions

³ Ombudsman for Children Act, 2002, Section 7.

of my Office. Where a pattern of concerns comes to light through our complaints procedure, I will seek to address those concerns by undertaking advocacy work aimed at effecting policy or legislative change. In this instance, I consider that the best course of action to address the issues raised in the 61 child protection complaints received to date is to place them in the public domain via the Oireachtas.

2.4 International human rights obligations

In addition to the provisions of relevant national legislation such as the Child Care Act, 1991, international human rights treaties also place a number of positive obligations on the State to protect children from abuse. In assessing the adequacy of child protection legislation, policy and practice in the State, these obligations must be considered. They are outlined in the UN Convention on the Rights of the Child and the European Convention on Human Rights.

Article 19 of the UN Convention on the Rights of the Child places a positive obligation on the State to take measures to protect against abuse. The text of Article 19 is appended to this report at Appendix 1. The UN Convention also requires that States guarantee to children the right to be heard (Article 12). The best interests of the child must also be a primary consideration in all actions taken concerning children (Article 3).

The European Convention on Human Rights (ECHR) places a positive obligation on the State to protect children from torture and inhuman or degrading treatment or punishment (Article 3). In the case of *A v UK*, the European Court held that, by failing to act to prevent physical abuse by a family member against a child in the home, the UK had violated Article 3 of the ECHR. By virtue of the European Convention on Human Rights Act, 2003, every "organ of the State" is obliged to "perform its functions in a manner compatible with the State's obligations under the Convention provisions".⁴

⁴ Section 3(1), European Convention on Human Rights Act, 2003.

3. Complaints received

3.1 Information about complaints received

Up to 31 December 2005, the Ombudsman for Children's Office has received a total of 455 complaints.

During the first year in operation, April 2004 – April 2005, 177 complaints were received, 9% (16) of which related to child protection concerns. From April 2005 to December 31 2005, a further 278 complaints were received, of which 16.5% (45) related to child protection concerns (see Appendix 2 for further statistics).

This report is based on the 61 child protection complaints received by the Office from April 2004 to December 31 2005.

The complaints describe the experience of 94 children and young people all under 18 years of age.⁵ In terms of geography the complaints are evenly spread across the country with a slightly higher incidence in the Dublin and Southern regions.

Of the 61 complaints:

- 29 concerned reports of abuse by immediate or extended family members;
- 22 concerned reports of abuse by members of the local community;
- 8 concerned reports of abuse of children in the care of the State; and
- 2 complainants did not wish to disclose further information.

Two of the complaints were brought directly to the Office by a child. The majority of the complaints received were brought to the Office by adult members of the child's family. The remaining complaints were referred to the Office by children's organisations and other concerned adults.

The substance of the complaints concerned the response of the relevant authorities to reports of child abuse; physical, sexual and/or neglect and often a combination of the different forms of abuse. In all cases, the alleged abuser is a person close to the child, most often a member of the immediate family, extended family or a friend.

⁵ ie a single complaint can concern more than one child. Complaints concerned 26 children in the first year and 68 children in the second year.

3.2 *Review of complaints received*

As outlined above, 61 child protection complaints affecting 94 children came to my Office since its inception.

Some complainants approached this Office before having approached the appropriate authority within the HSE; they either made a direct disclosure of abuse or brought a complaint about the way the HSE was currently dealing with an allegation of child abuse. Most complainants sought immediate protective action for their children which, under my Act, I cannot offer⁶. As explained in the introductory section, the HSE has a statutory responsibility for child protection and the work of my Office focused on guiding complainants to the appropriate agency with responsibility for immediate remedial action. While the decision to investigate a case is a discretionary provision under section 10(5) of the Ombudsman for Children Act, 2002, my Office is required in the first place to ascertain whether the complainant has taken reasonable steps to seek redress with a public body before my Office can intervene⁷.

In 59% of the complaints, the case was known to the HSE but the complainant had not pursued redress with the HSE. The concerns raised regarded the way a case was being handled. My Office directed the complainant to the relevant person within the HSE. My Office did a large amount of work explaining to the complainants the statutory framework, structures and processes of child protection and put them in contact with the relevant authority within the HSE. When appropriate and possible, my Office also contacted the relevant authority to draw their attention to the case. My Office also advised complainants on external support that they could obtain from other agencies and support groups.

13% of the complaints represented direct disclosures made to this Office. My Office directed the complainants to the relevant person in the HSE and alerted the HSE of the case by writing to the relevant childcare manager. Some of these cases were known to the HSE but the complainants presented new evidence of abuse, my Office followed national guidelines on child protection and informed the relevant authorities.

⁶ Under Section 10 (4) of the Ombudsman for Children Act, 2002, "a preliminary examination or investigation by the Ombudsman for Children shall not affect the validity of the action examined or investigated or any power or duty of the person who took the action to take further action with respect to any matters the subject of the examination or investigation".

⁷ This is in line with Section 10(2) (a) (iii) of the Ombudsman for Children Act, 2002.

9% of the complaints were not pursued by the complainant.

4% of the complainants sought advice on how to further their complaint with the HSE.

4% of the complaints required a preliminary examination by this Office.

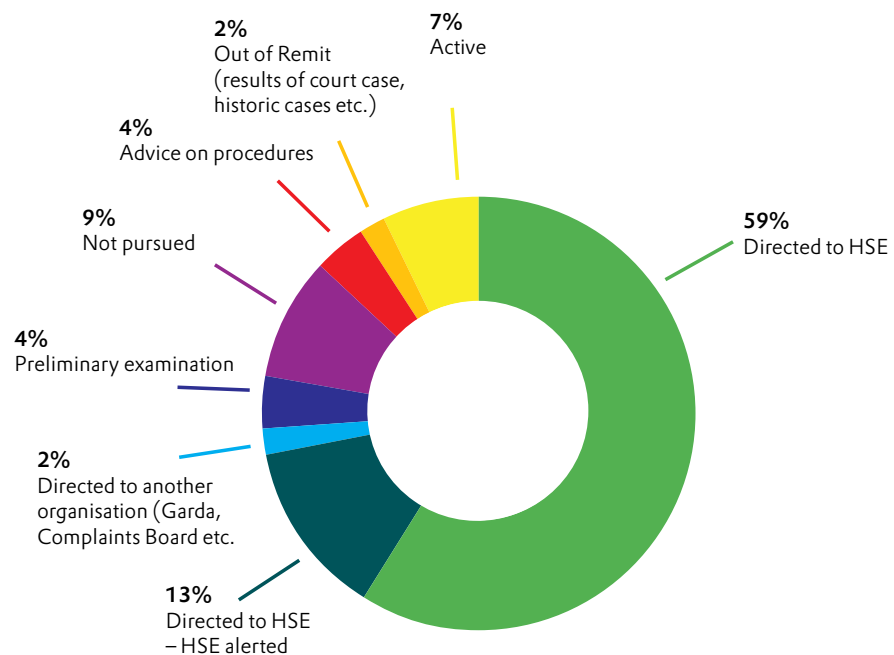
7% of the complaints are currently active and being examined by my Office.

2% of the complaints regarded organisations other than the HSE and my Office referred the complainant to the appropriate organisation.

2% of the complaints were out of remit.

While it is not appropriate for my Office to investigate any of the 61 complaints at this time, the safety of the children involved was a prime consideration and my Office took immediate action to direct the complainant to the relevant authority.

Action(s) taken by the Ombudsman for Children's Office



4. Issues raised in the complaints received

This section of the report identifies the major themes raised in the complaints received by my Office. The themes reported on below are those most frequently raised by individual complainants.

4.1 Access to initial services

Complainants reported that they experienced problems in reporting abuse to the HSE. These problems ranged from difficulties in reaching the appropriate person by telephone to establishing who should be contacted in the first instance. Complainants noted that, often, telephone calls were not returned and that they had to go to great lengths to report abuse to an appropriate person.

4.2 Lack of information and awareness about child protection services

All complainants had little or no knowledge of HSE child protection practice and procedures; the HSE internal complaint mechanisms; the right of appeal against HSE decisions, and the existence of “Children First; the National Guidelines for the Protection and Welfare of Children”. As a result, complainants did not know to whom to report abuse and what would be the consequences of reporting abuse.

The lack of awareness regarding the consequences of reporting, for the complainant themselves, the child and family concerned, discouraged disclosure. Children and young people often feared that if they told, their parents would be put in prison and their siblings in care. Such fear, coupled with misplaced feelings of shame, guilt and responsibility made disclosure very difficult for many.

Examples of the types of questions raised with the Office included:

- “I have real concerns for my child, will I be believed?”
- “My child is being abused, is it my fault?”
- “If the perpetrators say it is not true, what will happen?”
- “If I tell about my friend’s child being abused and she/he says it is not true, what will happen?”
- “If I tell, will the child and his/her siblings be taken into care?”
- “Will the perpetrator of the abuse be sent to prison?”

In addition, some complainants said their lack of awareness about the role and powers of the HSE led them to develop false expectations of how the HSE could respond to reports of abuse.

4.3 Delays in interventions and regional inconsistencies in service provision

Complainants noted they had experienced delays in the initial response of the HSE to their disclosures of abuse. These delays ranged from several days to a number of weeks until a first response was forthcoming. Many complainants reported further delays of several months before supports were put in place for the child. Delays were of concern to the complainants for the following reasons:

- complainants felt the delay post disclosure left the child unprotected as he/she remained in the abusive situation without support and with the fear of “having told”;
- complainants also reported that the delays had a negative impact on the child and their relationship with their family and/or the person they disclosed to; the child was reported to feel “betrayed” that the trusted adult could not offer protection.

Although the number of complaints upon which this paper is based may not be representative (61), it is of interest to note that there appear to be regional differences in terms of child protection practice; from a cautious approach, to a more interventionist approach.

4.4 Lack of adequate and appropriate support after disclosures have been made

The main area of concern highlighted by complainants was the lack of support and/or the inadequacy of support for children and young people after disclosures of abuse were made. Complainants noted that while disclosure was a hard step to take, the period after disclosure could be even more challenging for them personally.

All complainants noted a delay in the provision of psychological and other therapeutic support to the child or young person concerned. When support was provided it was often provided in a sporadic fashion and coordination between different service providers was poor. Many complainants reported a lack of family support services.

Most complainants felt that the onus was on them to contact the HSE to seek updates on their case and to push for provision of services. They described having to proactively “chase services”. Some families believed that they had been labelled as “difficult” either because they were “known” to the local community or because of their insistence on the provision of services. Such families felt that they did not benefit from the same level or

quality of services because of that “labelling”.

The lack of appropriate psychological services for children and young people was raised. Some complainants reported that a lack of adequate psychological support resulted in children and young people needing long-term psychiatric treatment. The abuse experience was compounded by the fact that children who had been abused by adults were placed in adult psychiatric institutions.

Complainants considered that the placement of young people in adult psychiatric institutions was inappropriate and impacted negatively on young people.

Many complainants referred to difficulties encountered with regard to the turnover of social workers. Children and families felt that the onus was placed on them to rebuild an understanding of the case with each new social worker assigned to their case.

Issues were raised regarding the reluctance of some HSE social services staff to participate in family court proceedings where they possessed relevant information regarding abuse allegations. The reasons for participation or non-participation in court proceedings was not explained in many cases and left complainants feeling let down.

4.5 Lack of respect for the voice of the child

Many complainants felt that the voice of the child was not respected with regard to decisions taken concerning the child. Many children/young people were not involved in decisions when, the complainants felt, it would have been appropriate and positive to so involve them. Children and young people themselves reported that they were given “false promises” about services or the provision of services. One complainant said they were told they could enter a residential care home on a voluntary basis and return home if they didn’t like it. Once in residential care they were told that they had to stay there and could not return home.

In addition to the matters raised in the complaints received, my Office is in direct contact with many children and young people, some of whom have raised this issue directly with me. They said that they did not think they would be believed by the authorities to whom they are supposed to turn to report abuse. Children were concerned that they couldn’t be guaranteed confidentiality under current guidelines.

4.6 Perceived lack of accountability

As noted above, all complainants had little or no knowledge of the existence of the HSE internal complaint mechanisms or the right of appeal against decisions made by the HSE. Those who were aware of the HSE complaints procedure said they were reluctant to use it in case it prejudiced the handling of their case or the provision of services to them.

4.7 Added complexities in family contexts

Many complainants felt that the threshold for State intervention was higher in respect of family contexts. The threshold was even higher in family separation contexts where custody was granted to one parent and access to the other. Such situations can be immensely complex, but complainants felt that, at times, consideration of the best interests of the child could take second place to other considerations. Complainants perceived an unwillingness on the part of the HSE to intervene in child protection issues particularly where custody cases were ongoing.

5. Conclusion

The importance of an appropriate and effective response to a disclosure of child abuse cannot be overstated. The Ferns Report noted that the impact of child abuse upon a child or young person will be determined by a number of factors, one of which is the response to any complaint made.⁸

The 61 complaints concerning child protection submitted to my Office to date indicate that there are problems with regard to the response of the authorities to reports of abuse.

To recap, the issues reported by complainants, as set out in Section B above, are:

- difficulties in accessing services;
- a lack of information and awareness about child protection services;
- delays and regional inconsistencies regarding interventions;
- a lack of adequate support after disclosures of abuse;
- a lack of respect for the voice of the child;
- a perceived lack of accountability; and
- a reluctance to intervene in family separation contexts.

The complaints received by my Office are a unique set of data. However, the issues they raise are, I believe, already known to the relevant authorities. Indeed, Dr Helen Buckley, an expert in this field, recently noted that the current child protection system is failing to engage with the needs of vulnerable children.⁹ Action now needs to be taken to address these issues.

On foot of the publication of the Ferns Report, Mr Brian Lenihan, Minister of State with Responsibility for Children announced that the National Children's Office will conduct a review of "Children First" – the National Guidelines for the Protection and Welfare of Children and that the Health Service Executive will launch a nationwide publicity and awareness campaign on child sexual abuse.¹⁰ Both of these initiatives are welcome.

⁸ The Ferns Report, delivered to the Minister for Health and Children in October 2005, at p 11.

⁹ "Reviewing Children First: Some Considerations", Helen Buckley, Irish Journal of Family Law, Number 3, 2005.

¹⁰ Press Release "Minister Lenihan Launches Young Adult Support Training Manual at the County Wexford Partnership", 11 November 2005.

As regards a review of the "Children First" guidelines, it is important to note that reviews of, these guidelines have already been undertaken. What is required now is a comprehensive evaluation of child protection services provided by the HSE which takes account of, and addresses the issues raised in the complaints received by my Office. Anything less than a comprehensive review of child protection policy, practice and procedure will fall short of what is required to put things right.

There is a real need for the announced nationwide publicity and awareness campaign on child sexual abuse; however, I think such a campaign should extend to raising awareness about all forms of child abuse and not just sexual abuse. I would also encourage the HSE to involve children and young people in the preparation of any campaign from the outset. The lack of clarity and understanding about what will happen to a child or their family if they disclose abuse may be preventing children and young people from reporting. This needs to be tackled with the participation of children and young people so that the most vulnerable may be reached. In planning the campaign, the different language needs of children and adults in a fast changing multicultural Ireland should be addressed.

My role, as Ombudsman for Children, is to promote and safeguard the rights of children. One of my functions is to receive and act on complaints about the way in which children are treated by public bodies in the State. In this instance, I have elected to bring the child protection concerns raised in the complaints received by my Office to the attention of this Committee. I have chosen this course of action because I consider it to be the most effective way to advocate for a change in child protection services. This will affect all children who come into contact with such services.

My Office will continue to monitor this matter, through the complaints it receives and through its oversight of policies, practices and procedures in the State. In considering how best to proceed in order to ensure that adequate policies, practices and procedures are in place for the safeguarding of children from abuse, I will endeavour to use my mandate in the most effective way possible.

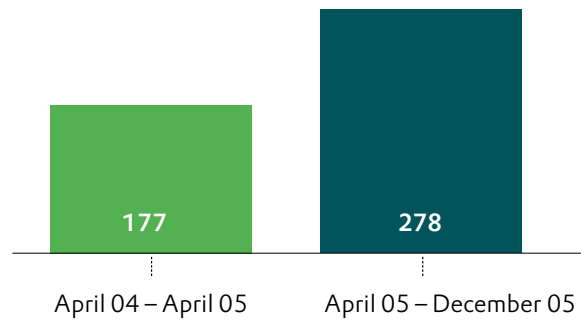
Appendix 1

The benchmark my Office uses in assessing the adequacy of legislation, policy and practice in the State is the UN Convention on the Rights of the Child, Article 19 of which provides:

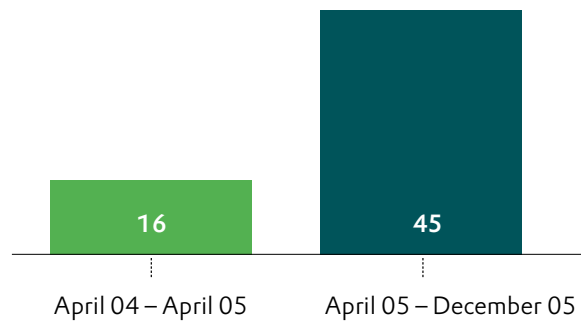
- “(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*
- (2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”*

Appendix 2

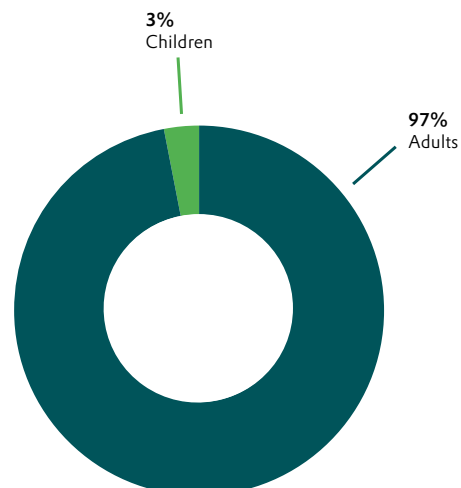
Overall numbers of complaints received by the Ombudsman for Children's Office



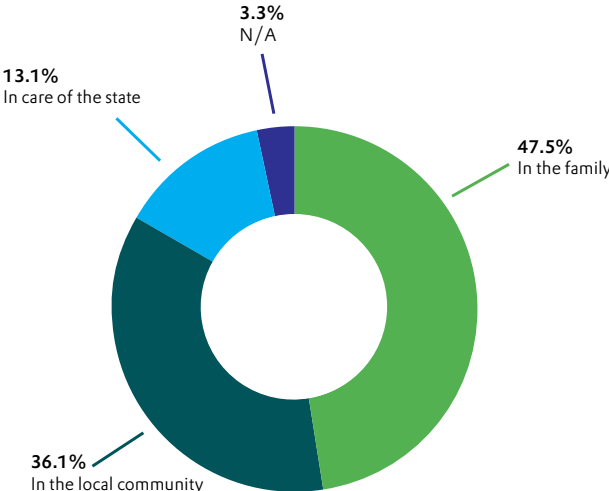
Child protection complaints received by the Ombudsman for Children's Office



Complainants



Context of the abuse in %



HSE Regions in %

