

Separated children living in Ireland

A report by the Ombudsman
for Children's Office

Ombudsman for Children's Office

Millennium House
52-56 Great Strand Street
Dublin 1

Phone 01 865 6800

Email oco@oco.ie

Web www.oco.ie

Oifig an Ombudsman do Leanaí

Teach na Mílaoise
52-56 Sráid na Trá Mhór
Baile Átha Cliath 1

Guthán 01 865 6800

R-phost oco@oco.ie

Gréasán www.oco.ie

This report was written by **Karla Charles** for the
Ombudsman for Children's Office

The artwork used is by young people involved in this project. Many thanks to **Kitty Rogers** and the Hugh Lane Gallery for facilitating this.

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Contents

1. Foreword	6
2. About the Separated Children Project	10
3. Introduction	12
3.1 About the Ombudsman for Children’s Office	13
3.2 Article 12 of the UN Convention on the Rights of the Child	13
3.3 Separated children	13
3.4 Baseline statistics	15
4. Background to the project	16
4.1 Reasons for commencing the project	17
4.2 Aims and objectives	18
5. Project implementation	20
5.1 The project team	21
5.2 Literature review	21
5.3 Consultation phase	21
5.4 Accommodation for separated children	21
5.5 Developing the advisory group of separated children	24
5.6 Developing project groups	26
5.7 The drop-in time	27
6. Issues of concern raised by separated children or adults on their behalf	28
6.1 Background – overview of legislation	29
6.2 The asylum process	30
6.3 Age assessment	31
6.4 Social Worker / Project Worker support	33
6.5 Absence of an independent guardian	35
6.6 Right to be heard	37
6.7 Child centred approach and best interests principle	38
6.8 Accommodation	38
6.9 Inspection of hostels	40
6.10 Disparity of treatment and integration	41
6.11 Missing children	42
6.12 Education	43
6.13 Child mothers	47
6.14 Aftercare	48
6.15 Health – GP visits	49
6.16 Family reunification	50
6.17 The future of the young person	51
7. Summary of primary concerns and recommendations	52

Foreword

As Ombudsman for Children I have statutory responsibility for promoting the rights and welfare of all children living in Ireland. In 2007, research commissioned by my Office identified children without parental care as particularly vulnerable and facing multiple barriers in the enjoyment of their rights. Following on from this research I decided to initiate an independent consultation with separated children living in the care of the State.

The overall aim of the project was to better understand the life and level of care afforded to separated children in Ireland by hearing directly from this group of young people. The project provided an opportunity for these young people to reflect on their lives and experiences and raise issues of direct concern to them with my Office. Central to the mandate of the Ombudsman for Children's Office is the implementation of Article 12 of UN Convention on the Rights of the Child which sets out the right of children to a voice in all matters concerning them. Section 7(2)(a) of the Ombudsman for Children Act states that the Ombudsman for Children shall consult with groups of children she considers representative for the purposes of her function under this section.

In this report we refer to the situation for 'separated' children living in Ireland. This term is preferable to 'unaccompanied' because it better defines the problems that such children face. Namely, that they are without the care and protection of their parents or legal guardian and as a consequence suffer socially and psychologically from this separation. While some separated children appear to be accompanied when they arrive, the accompanying adults are not necessarily able or suitable to assume responsibility for their care. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation.

Separated children face particular difficulties vindicating their rights, including their rights to: education, housing, play and health care. They are at grave risk of breaches of their rights to protection from harm, including: from trafficking; from racism and discrimination; and from poverty. They face particular challenges with respect to their position in the asylum process, and frequently lack an independent advocate to represent their concerns both in the asylum process and in the education, housing and health care areas.

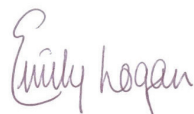
The State is duty bound by both national and international law to protect and provide for separated children in the same way as children normally resident in the State. Both the Child Care Act 1991 and the UN Convention on the Rights of the Child place a duty on the State to provide for any child who is in need of care or protection. The Refugee Act, as amended, incorporated the 1951 Geneva Convention and the 1967 Protocol into Irish Law and with it our international obligations.

Separated children are entitled to the same treatment and rights as nationals or resident children. They should be treated as children first and foremost. All considerations of their immigration status should be secondary.

In developing this project, the OCO project team met with a large number of separated children. This included the young people who attended the open day and those who volunteered to work on the various aspects of the project. We are grateful to all of these young people. Without their commitment, energy, determination and hard work the project could not have been brought to a successful conclusion.

The project team also met with a range of organisations and individuals including, the HSE, hostel staff and project workers, the Office of the Refugee Applications Commissioner (ORAC), the Reception and Integration Agency (RIA), the Health and Information Quality Authority (HIQA), the UNHCR, and a range of non-governmental organisations. Meetings with additional key agencies occurred throughout the roll out of the project. The HSE was instrumental in facilitating the OCO's initial roll out of the project, as well as supporting the project throughout. The HSE assisted the project team on many levels, including initial communication with all the hostels and residential centres requesting their co-operation with the project. We are grateful to all of these agencies for the support afforded to the Ombudsman for Children's Office throughout this project.

This project is predicated on the belief that children and young people have the right to participate in decision making which affects them. The young people involved in the project have clearly expressed their views and opinions about their experience of life and services in Ireland. Our aim is that by bringing this report to the attention of policy makers, legislators and other senior decision makers, in partnership with the young people on the project, together, we can influence positive change for these children and others like them.

A handwritten signature in purple ink that reads "Emily Logan". The signature is written in a cursive, flowing style.

Emily Logan

About the
separated
children project

This publication was produced by the **separated children project** run by the **Ombudsman for Children's Office**. The project involved the participation of 35 separated children living in the Dublin area.

Separated children are defined by the Separated Children in Europe Programme as "*children under 18 years of age who are outside their country of origin and separated from both parents, or previous/legal customary primary care giver*".

The project ran from January 2009 to October 2009 and the young people worked on the project intensively during their summer holidays. The aim of the project was to better understand the lives and level of care afforded to separated children in Ireland by hearing directly from them.

There are three principal outputs from the project: a **guidebook** compiled by the young people, a **story book** setting out their stories and this **project report**. For copies of the other two publications, please contact the Ombudsman for Children's Office.

The Ombudsman for Children's Office wishes to say **thank you** to all the young people who took part in the project. You are an inspiration to us all and we are grateful for everything we learned from you. A very special thank you goes to **Leylah Mohammed** and **Ahmed Ali** the Project Liaison Officers who did so much to make the project possible and to **Karla Charles**, the Project Co-ordinator who pulled it all together.

Introduction

3.1 About the Ombudsman for Children’s Office

The Ombudsman for Children’s Office (OCO) has a statutory responsibility to promote the rights and welfare of children and young people living in Ireland. In accordance with Section 7 of the Ombudsman for Children Act, 2002, giving effect to this mandate includes:

- encouraging public bodies, schools and voluntary hospitals to develop policies, practices and procedures designed to promote children’s rights and welfare;
- promoting awareness among members of the public, including children and young people, of matters relating to children’s rights and welfare, including the UN Convention on the Rights of the Child;
- highlighting issues relating to the rights and welfare of children that are of concern to children; and
- establishing structures to consult with children for the purposes of the OCO’s work to promote children’s rights and welfare and giving due weight to children’s views in accordance with their age and understanding.

3.2 Article 12 of the UN Convention on the Rights of the Child

Central to the mandate of the OCO is the implementation of Article 12 of the UN Convention on the Rights of the Child which sets out the right of children to a voice in all matters concerning them. Creating a culture where children’s voices are respected takes time. The promotion of children’s rights is not merely about campaigns or materials or single events, it is about encouraging children and young people and the people who make decisions affecting children to consider their best interests.

The OCO Separated Children Project was developed in line with the above mandate.

3.3 Separated Children

Separated children are defined by the Separated Children in Europe Programme as “children under 18 years of age who are outside their country of origin and separated from both parents, or previous/legal customary primary care giver”.

The term “separated” is preferable to “unaccompanied” because it better defines the essential problem that such children face. Namely, that they are without the care and protection of their parents or legal guardian and as a consequence suffer socially and psychologically from this separation. While some separated children appear to be “accompanied” when they arrive, the accompanying adults are not necessarily able or suitable to assume responsibility for their care.¹ Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation.² Separated children face

1 Separated Children in Europe Programme (SCEP), Statement of Good Practice, 2004, p. 2. The SCEP currently includes partners in many countries, including Ireland.

2 Separated Children in Europe Programme (SCEP), Statement of Good Practice, 2004, p. 2.

particular difficulties vindicating their rights, including their rights to: education, housing, play and health care. They are at grave risk of breaches of their rights to protection from harm, including: from trafficking; from racism and discrimination; and from poverty. They face particular challenges with respect to their position in the asylum process, and frequently lack an independent advocate to represent their concerns both in the asylum process and in the education, housing and health care areas.³

Article 42(5) of the Irish Constitution

In accordance with Article 42(5) of the Irish Constitution the

“State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child”.

In line with this article, all separated children who enter Ireland are placed in the care of the Health Service Executive (HSE), with 174 separated children currently in care.⁴ The Health Service Executive Intercultural Health Strategy 2007 – 2012 states that

“Separated children are without family members or guardians to care for them and as a result may experience a wide range of complex care and support needs around their physical, psychological, emotional and vocational wellbeing. Although the resilience of this cohort generally is acknowledged, this remains a very vulnerable group.”⁵

Under the Child Care Act, 1991 and the Refugee Act, 1996 (as amended), the HSE is responsible for the total care needs of separated children who seek asylum in the State. The HSE’s responsibilities include; providing immediate and ongoing care placements, social, medical and psychological services, liaison with educational and youth services and tracing relatives, providing assessments and reunification where safe and possible. The HSE is also responsible for supporting a child through the asylum process. The Separated Children Seeking Asylum (SCSA) Service of the HSE is primarily responsible for the delivery of services to separated children seeking asylum. It receives referrals primarily from the Office of the Refugee Applications Commissioner and immigration officials at ports of entry.

Children seeking asylum are more likely to experience poverty and social exclusion than many other groups in Irish society due to: higher levels of dependence on social welfare, direct provision, lower levels of welfare payments and higher levels of housing deprivation.⁶ Language difficulties, racism and institutional barriers, in addition to having fewer rights and entitlements also mean that asylum seekers experience greater difficulties.⁷ This situation places these children at serious risk of multiple breaches of their rights.

The Separated Children in Europe Programme (SCEP) was established in 1997 due to the rising number of separated children arriving in Western Europe.⁸ It is a joint initiative of the International Save the Children Alliance and the United Nations High Commissioner for Refugees. The programme is based on the complementary mandates and expertise of the

3 Kilkelly, Ursula; Ombudsman for Children’s Office; Barriers to the Realisation of Children’s Rights in Ireland; 2007; p31.
4 As of July 2009. (Source HSE).

5 Health Service Executive National Intercultural Health Strategy 2007 – 2012; p53.

6 Corrigan, OECD Thematic Review of Early Childhood Review and Care Policy in Ireland; p14.

7 Veale, Palaudaries and Gibbons; The Irish Refugee Council; Separated Children Seeking Asylum in Ireland; p7-8 and Mooten; The Irish Refugee Council; Making Separated Children Visible; The Need for a Child Centred Approach; p40-41.

8 Mooten; Irish Refugee Council; Making Separated Children Visible; 2006; p8

two organisations. The programme aims to realise the rights and best interests of separated children who have come to or across Europe by establishing a shared policy and commitment to best practice at national and European levels.⁹

Aged out minors' are separated children who turn 18 years old while their application for asylum is being processed or who have been granted refugee status.

3.4 Baseline statistics

Applications for Asylum from Unaccompanied Minors 2004 - 2009 (up to the end of June 2009)

Year	2004	2005	2006	2007	2008	2009 (up to the end of June)
Total	128	131	131	94	98	29

Recommendations to grant Refugee Status to Unaccompanied Minors at first Instance and Appeal Stage 2004 - 2009 (up to the end of June 2009)

Year	2004	2005	2006	2007	2008	2009 (up to the end of June)
Total	92	75	41	30	17	5

(Please note that the figures refer to the year in which the decision was made not the year in which the application was lodged. Statistics are not maintained in relation to the number of persons who claim asylum initially as minors who are subsequently deemed to be adults.)¹⁰

⁹ Separated Children in Europe Programme; Statement of Good Practice; Third Edt; 2004; p2.
¹⁰ Figures from the Department of Justice Equality and Law Reform.

Background to the project

4.1 Reasons for commencing the project

The OCO decided to focus on separated children and to conduct a specific project together with them for a number of reasons.

In April 2006, the OCO submitted a report to the UN Committee on the Rights of the Child in advance of the Committee's examination of Ireland's Second Report in September 2006. In this report, the OCO highlighted its concerns in relation to the services provided to separated children in the State.¹¹ This project provided an opportunity to follow up on those concerns.

Later in 2006, the OCO commissioned Dr Ursula Kilkelly of UCC to undertake a piece of research entitled "Barriers to the Realisation of Children's Rights in Ireland". Published in August 2007, the research identified separated children as a group more likely to experience multiple barriers to and breaches of their rights.¹²

In November 2007, the OCO conducted the Big Ballot – the largest ever national poll of children in the State. During the poll, over 75,000 children voted on what mattered most to them. The issue of family and alternative care topped the poll and the OCO adopted the issue as a strategic priority for the Office.

During 2007, as part of the preparation for the Big Ballot, the OCO met with a range of groups of children and young people including children in care, children living in areas of deprivation and children from ethnic minority backgrounds. As part of this consultation, the OCO met with a group of separated children and many of the issues they raised were a cause of concern to the Office.

A combination of the information which came to the Office through the activities mentioned above, ongoing concern about the large numbers of separated children who continued to go missing from State care and concern about the continued use of accommodation and services of a lower standard to those made available to Irish children in care prompted the OCO to undertake the separated children project. This project is part of a broader programme of work that the OCO is focusing on over the coming years on children who are living without parental care.¹³

11 Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland's Second Report to the Committee, April 2006, at pages 30 – 32.

12 Barriers to the Realisation of Children's Rights in Ireland, Dr Ursula Kilkelly, Commissioned by the OCO, August 2007.

13 The other key group of children and young people without parental care that the OCO is focusing on is children in detention in St Patricks' Institution. Many issues concerning children in care are also brought to the attention of the complaints and investigation team in the OCO.

4.2 Aim and objectives

The overall aim of the project was to better understand the life and level of care afforded to separated children in Ireland by hearing directly from this group of young people. Section 7(2)(a) of the Ombudsman for Children Act states that the Ombudsman for Children shall consult with groups of children she considers representative for the purposes of her function under this section.

The objectives of the project included ensuring that the project was shaped by and guided by separated children from the outset through to its conclusion. When the OCO was at initial planning stages for this project, the OCO consulted with two separated children who were members of the OCO's existing Youth Advisory Panel (YAP) in order to get their first impressions and views on the project, as well as to help develop the aims, objectives, and methodology. This level of participation continued throughout the course of the project, in accordance with the OCO ethical guidelines.

Given that the children were giving up considerable time during their summer holidays we wanted to employ methods that would engage them and also that they would enjoy.

Project Implementation

5.1 The project team

The OCO project team consisted of one adult and two young people, both of the young people were former separated children who were members of the OCO advisory team.

5.2 Literature review

There is a dearth of written information in relation to the services provided to separated children and the policies, practices and procedures relevant to the care and protection of these children. At the time of going to print, it is understood that the HSE has yet to produce an operational plan setting out the services and care provided to this group of children. Due to this lack of documentation the OCO relied on verbal accounts provided by the HSE, other service providers and the separated children themselves. Before embarking on the project, the OCO made sure it was aware of other work that had been carried in relation to this group of young people in order to avoid duplication.¹⁴ The main focus of the OCO's project, as distinct from previous research work conducted, was on receiving the views of the separated children themselves and those working with them. This focus was very much in line with the functions of the OCO to 'collect and disseminate information on matters relating to the rights and welfare of children', and 'highlight issues relating to the rights and welfare of children that are of concern to children'.¹⁵

5.3 Consultation phase

The planning for and roll out of the project involved preparatory meetings and discussions with key organisations and agencies working with separated children. The OCO in developing the project met with a range of organisations and individuals including separated children, the HSE, hostel staff and project workers, the Office of the Refugee Applications Commissioner (ORAC), the Reception and Integration Agency (RIA), the Health and Information Quality Authority (HIQA), the UN Refugee Agency (UNHCR), and a range of non-governmental organisations. Meetings with additional key agencies occurred throughout the roll out of the project. The HSE was instrumental in facilitating the OCO's initial roll out of the project, as well as supporting the project throughout. The HSE assisted the OCO on many levels, including initial communication with all the hostels and residential centres requesting their co-operation with the project.

5.4 Accommodation for separated children

In order to make contact with the separated children living in the Dublin area, the OCO project team visited the centres where the children are accommodated. The vast majority of separated children are accommodated in 8 hostels in the Dublin area. The remaining children are

¹⁴ The literature review included, for example: IRC; Making Separated Children Visible: The Need for a Child Centred Approach; 2006. IRC; General Comments on Immigration, Residence and Protection Bill. IHRC; Comments on the Immigration Residence and Protection Bill. HSE; Separated Children Seeking Asylum Premises Audit; 2004. Ralaheen; Separated Children Seeking Asylum Research Study, health, social and educational needs. VEC; Education and Language Needs of Separated Children 2004. Transition Supports Project; Report of the Needs of Separated Children Seeking Asylum and Aged Out Minors. ARD; Missing: Research Into Separated Children Gone Missing from State Care. UN Committee on the Rights of the Child; General Comment No. 6. Save the Children / UNHCR; Separated Children in Europe Programme; Statement of Good Practice. European Network of Ombudsmen for Children (ENOC); Statement on State Obligations for the Treatment of Unaccompanied Children; European Commission Against Racism (ECRI); Third Report on Ireland; 2007. Immigration Law Practitioner's Association (ILPA); Child First, Migrant Second. MacArthur Foundation; Seeking Asylum Alone: unaccompanied and separated children and refugee protection in Australia, the UK and the US.

¹⁵ Ombudsman for Children Act, 2002, Section 7(1)(c) and (e).

accommodated in foster care or in one of the two residential care centres which accommodate separated children.

During March and April 2009 the OCO project team visited 9 of the ten accommodation centres for separated children. The tenth centre is a transition after care centre mainly for young people over 18 years of age and the project team focused on the 9 centres accommodating those under 18. The visits were greatly facilitated by the HSE which contacted each of the hostels and centres in advance of the visits and ensured their co-operation. The purpose of the visits was to make initial contact with the children residing at hostels and residential centres, as well as the staff working there, and to invite the children to an open day at the OCO.

Of the 9 accommodation centres, 7 are not registered or inspected residential centres, contrary to the requirement that all children's residential centres be inspected by the Social Services Inspectorate under the Child Care Act, 1991. The seven residential centres for separated children seeking asylum are provided by non-statutory service providers on behalf of the HSE. However, the Health Information and Quality Authority, HIQA, does not inspect residential services operated by non-statutory service providers. When the relevant sections of the Health Act, 2007 are commenced, the remit of HIQA will include inspections of both statutory and non-statutory children's residential centres. Accommodation centres for separated children therefore do not fully adhere to requirements under the Child Care Act, 1991, the Child Care Regulations 1995, Child Care (Standards in Children's Residential Centres) Regulations 1996, and the Guide to Good Practice in Children's Residential Centres. To summarise, this has two key implications:

- I. The centres do not meet the standards stipulated in the legislation and standards listed above, including important factors with regards to staff children ratios and other key care factors.
- II. The centres are not subject to independent inspection by HIQA.

While this report does not aim to provide an overview of arrangements or conditions in the hostels and residential centres occupied by separated children, it does record some of the circumstances pertaining to such centres.

Unregistered hostel accommodation:

- I. **Staircase Hostel, Dublin city centre:** This hostel houses approximately 30 young men and is run by a private company. A hostel manager is usually present between 9am and 5pm. It was understood that after 5pm the only adults on duty until the following morning would be two security staff. This means that from 5pm until the following morning, no care staff were on the premises where 30 children under the age of 18 were residing.
- II. **Brehon House, Dublin city centre:** At the time of our visit, the hostel accommodated 30 young men. When the manager finished work for the day, we understood that the only adults on duty would be two security staff.
- III. **Sandford House, Dublin 6:** This is a house that has been converted into hostel accommodation for 7 teenage boys. It was our understanding that no qualified care staff were present at the hostel (with the exception of the visiting project worker who was not employed at the hostel on a full time basis).

- IV. **Chester House, Dublin 7:** This hostel was accommodating 27 teenage girls at the time of our visit. Again, the staff present at night are two security staff.
- V. **Ashton House, Dublin 9:** This hostel accommodates 12 teenage girls. Two security staff are on duty at night.
- VI. **Riversdale, County Dublin:** At the time of our visit this hostel was accommodating 12 young people. However these young people have since been moved to the two new residential centres which opened in June 2009.

Registered residential centres¹⁶:

- I. **Lansa House, Dublin 4:** This registered residential centre opened in June 2008 and accommodates 6 young people, with 5 fully qualified care staff present at all time.
- II. **Belleview House, Dublin 24:** This is a large house accommodating 6 young people. There were 5 care staff present.

The difference between the two types of accommodation was stark. The registered residential centres are all houses, run by care staff, with recreation space outside. In contrast, many of the unregistered hostel accommodation centres have around 30 children living in them. The hostel manager who is in the hostel during the day is not a qualified care worker. While, on occasion the managers appear to go beyond their contractual obligations in terms of supporting the young people, it must be acknowledged that this is simply down to the good will of the individual as opposed to a responsibility. Many of the hostel managers were concerned at some of the legal guardian type issues they were asked or obliged to deal with, given that they are not the legal guardian of any of these young people. During the night, hostels only have two security guards present and no care staff.

The two project workers employed by the HSE or the social workers who link in with each unregistered hostel of 30 young people have significant caseloads, and though it varies, it seems that most project workers are available for a set few hours most days during the week. However, it is clear that having no qualified care staff available in each unregistered hostel is inadequate. This is in stark contrast to the registered residential centres which have 5 qualified staff present at any one time during the day, and 2 available during the night. The inferior care provided to separated children living in unregistered hostel accommodation is unacceptable and contrary to the legal provisions set out in our national child care legislation. It may also place the State in breach of its obligation to prevent discrimination under the UN Convention on the Rights of the Child and the European Convention on Human Rights. These arrangements are also not in keeping with requirements set out in the Separated Children in Europe Programme Statement of Good Practice that those working with separated children should receive appropriate training on the needs and rights of separated children.¹⁷

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Two new residential centres have opened and Riversdale was closed down since the OCO visited the accommodation centres. Separated Children in Europe Programme; Statement of Good Practice; Third Edt; 2004; p10.

5.5 Developing the advisory group of separated children

Having met some of the young people during the visits to the unregistered hostels and registered residential centres, the project team felt it was important to follow up the initial visits with an invitation to all the separated children living in the 9 centres to an OCO Open Day event. Previous work in the OCO with children indicated that a personalised invitation would be more likely to yield better engagement by children, as a result personalised cards went out to the young people inviting them to an open day to meet staff at the OCO Office. Sign up sheets were also distributed to each of the hostels and the Separated Children Project Co-ordinator liaised with hostel managers and staff, project workers and social workers to try and encourage the young people to attend. The Office appreciated the liaison work on the part of the hostel staff and project workers who were instrumental in encouraging the young people to attend the open day and who were helpful in communicating potential numbers to the Office.

The OCO wasn't sure what to expect in terms of turn out and was delighted when 48 young people came to the open day. The open day was held at the end of the Easter holidays in order to facilitate the young people and not to interfere with school attendance.

Leaflets introducing the OCO and the Separated Children Project were distributed to the young people, and the OCO project team were present to answer questions or queries, and to meet the young people. The focus of the day was to inform the group about the role and functions of the OCO, to introduce them to the Separated Children Project, to develop their trust and to have a preliminary discussion about human rights. Two young people who were on the OCO Young Advisory Panel (YAP)¹⁸ started the day off by introducing Emily Logan, the Ombudsman for Children, to the group. This instantly helped bridge the gap between the OCO and the young people. It was important that the young people recognised the OCO as a distinct and independent Office dedicated to promoting the voice of children and young people. The open day had a number of different parts to it, and the young people rotated to three different workshops: message board, human rights, and information/awareness about the work of the Office.

At the end of the open day the young people indicated if they were interested in taking part in the development of the project and the role out of the Advisory Group. There was tremendous interest by the young people. All the young people who expressed an interest in participating were contacted and invited to come back to the Office for a follow-on meeting. Three further large group meetings with 35 young people were held to discuss the project in more detail, to get an idea of what the young people thought of the project plan and to help expand the project aims and objectives. Some of the most popular issues raised by the young people during the OCO open day were discussed in greater detail. It was at this stage in the role out of the meetings that young people started coming to the Office during the organised 'drop-in time'. In all there were 22 group meetings, as well as numerous visits by young people for the 'drop-in time'.

Some key issues raised by the young people during the ‘human rights session’ of the OCO Open Day event included:

- Separation from older siblings who age out – some young people who are living with a sibling/siblings will be separated from them when they age out. This was a source of particular concern to some of the young people as siblings are likely to be the only family the young people have in Ireland and may be the only people of the same nationality in the hostel.
- Being treated respectfully and fairly by staff at the hostels – concern was expressed by a number of young people regarding the attitude of catering staff and hostel managers/staff.
- Concern was expressed that young people who are themselves raising children are expected to pay a percentage of the childcare costs if they want to return to full-time education and put their children into a crèche during the day. This effectively bars them from returning to school.
- Little or no information about rights and entitlements is given to the young people. A number of young people highlighted the dearth of information provided to them and the consequent difficulties associated with dealing with the asylum application process and their access to public services.
- Sometimes misleading information is given to the young people and different organisations with which they interact have different understandings of their entitlements (for example, Gardaí are often unfamiliar with the asylum identification card they have to get stamped to obtain travel documents).
- Young people experience difficulties in having their religious practices accommodated. Religious instruction for Muslim girls and attending prayers on a Friday was raised, as was fasting during Ramadan.
- Right to education, particularly beyond leaving certificate level. There was considerable frustration at the inability to access third level education. One young person indicated that he is currently re-sitting the leaving cert even though he has no desire to do so in order to stay in full-time education.
- Privacy in hostels is not respected as it should be. Young people find that staff in the hostels enter their rooms freely. Young people are not informed if staff enter their rooms while they are out at school, for example.
- The allowance for clothing is insufficient for the young people and the weekly allowance (€19.10) was considered by all to be too low.
- There are often delays in making an appointment to see a GP or to receive medical treatment. The young people said that they have to go through their social worker or project worker in order to make an appointment, and this incurs significant delays.¹⁹
- Food in the hostels is poor, does not vary and is sometimes unavailable to the young people if they are not in the hostels at mealtime for whatever reason.

- A number of young people said that there was a lack of respect from certain staff in the hostels and that they even sometimes feel threatened. They also said that they are not able to express themselves freely.
- Poor hygiene in some of the hostels – one young person said that the washing machines in his hostel were out of order for 2 months and that bathroom facilities are not being maintained as they should be (including toilet paper not being in toilets for days on end).
- Accommodation standards can be low. Bedding was mentioned as a problem in this context and a request by one young person to replace very old pillows and sheets was not granted, despite numerous requests over a period of 12 months, in one of the hostels. Broken bed slats are often not replaced.
- A number of young people indicated that filling in forms and applying for things can be very difficult and frustrating, particularly in the absence of adequate support.
- Complaints from young people regarding issues which arise on a day-to-day basis in the hostels are not always dealt with properly and in a respectful manner.
- The young people do not have any say in the day-to-day running of the hostels.
- The confidentiality of personal information and correspondence is not always respected. A number of young people indicated that letters issued to them have sometimes already been opened.
- One young person indicated that staff in the hostels are not concerned if young people are absent from school for some reason and do not check to make sure they are alright.
- Some young people don't have an allocated social worker, or have their social worker taken from them if they are no longer deemed 'at risk or vulnerable'.

5.6 Developing project groups

The young people were involved in 3 main activities over the summer months:

A. Dublin – Your City, Our City

This guide book was compiled by separated children for separated children. The booklet contains some information about life in Ireland, as well as useful information on issues of relevance and importance to separated children in Ireland. The idea is to help inform young people about practical issues on adjusting to life in Ireland in order to ease and assist their integration.

The young people picked 6 different and key areas of information, from education to top tips on leisure. It was important that the young people had complete ownership of the book, and that it is something that they wished to create for other separated children arriving in Ireland in the future. The guide book sessions were facilitated by the Liaison Officers who, as mentioned above are former separated children. This ensured complete ownership and responsibility of this activity by the young people.²⁰

B. 'All I have to say'

This publication aims to help promote understanding as well as personalise the experience of life as a separated child in Ireland. Often separated children are referred to by means of numbers or statistics, and it is hoped that a publication such as this will help raise awareness about the life experiences of this group of children. Greater awareness should enhance understanding of the needs of the children and support the development of tailored support to meet their requirements. It will also help to shed light on some of the experiences that these young people have overcome as well as to highlight what life is like for a separated child living in Dublin.

The story and experiences book was an optional publication which some of the young people wanted to be involved in. The young people were facilitated to write in their first language, or to work with a writer. They were encouraged to share any aspect of their lives that they so wished, from their home country, how they came to Ireland or indeed their life since moving to Dublin. Many of the young people found this experience emotionally challenging, and those that did share experiences and stories were very brave to do so.

C. Creative Art / Photography:

The OCO was very keen that the young people involved in this project could have a significant input into the visual aspect of the guide book. Through the Hugh Lane Gallery, the OCO arranged for a number of the young people to work with an artist for three consecutive days to develop visual material in a range of media on the theme 'Dublin, Your City, Our City'. The young people reported that this part of the project was very successful and enjoyable.

5.7 The 'drop-in time'

The 'drop-in time' was established as a time available to all young people who wished to discuss or raise an issue or concern on a one-to-one basis. The session was also extended to all those separated children who we met but who weren't part of the advisory group and who wished to share their experiences or raise concerns with the OCO. This was because each week more young people turned up to the advisory group. After a certain stage in the project, it was decided not to accept any more young people into the advisory group as those already involved found it difficult to have new people each time. This decision was taken for multiple reasons: the sheer number of young people already involved, and the understanding that had already been established between the young people and the OCO in relation to the role of the OCO and the project. As a result, some young people who did show up at various stages later in the project were not able to join in. These young people were therefore offered the drop-in time as an opportunity to raise any issues or concerns with the Office that they might have. All young people were also informed about the complaints and investigations service in the OCO. Where relevant, the OCO took the opportunity to clarify with the young people its understanding of the exclusion set out in the Ombudsman for Children's Act relating to any action taken in the administration of the law relating to asylum, immigration, naturalisation, or citizenship. The Office's understanding is that this exclusion relates only to decisions on status. This is in accordance with statements made in the Dáil by the Government during the passage of the Ombudsman for Children Bill.

**Issues of concern
raised by separated
children or adults
on their behalf**

6.1 Background – overview of legislation

Before proceeding to a summary of the concerns raised by separated children during the course of the project, it is useful to outline briefly the legislation relevant to the status and care of separated children in the State.

The State is duty bound by both national and international law to protect and provide for separated children in the same way as children normally resident in the State. Both the Child Care Act, 1991 and the UN Convention on the Rights of the Child place a duty on the State to provide for any child (under 18 years) who is in need of care or protection. The Refugee Act, as amended, incorporated the 1951 Geneva Convention and the 1967 Protocol into Irish Law and with it our international obligations.

Inconsistency exists in how separated children are treated and cared for in Ireland, with different sections of the Child Care Act, 1991 being used by different professionals, depending on where they are working around the country. In some instances, separated children are treated as homeless children under section 5 of the Act and are placed in hostel accommodation. They are therefore not received into the care of the Health Service Executive (HSE) and do not benefit from the potential to be allocated a social worker, or care planning. In Dublin, by comparison, separated children are dealt with under section 4 of the Act and are taken into the care of the HSE.

The Immigration, Residence and Protection Bill 2008 (IRP Bill) is currently going through the Dáil, but despite lobbying from various children's rights and human rights organisations, it does not include the fundamental overarching principle of the best interests of the child.²¹ It is unfortunate that the Bill, as it stands, does not address the needs of this group of children. Furthermore, without properly defining its terminology it refers to this group of young people as 'unaccompanied minors' which is more limiting than the term 'separated children', as it does not take into account young people who simply don't have an adequate guardian in Ireland. The IRP Bill does not outline specific supports and provisions and does not mention children within Section 124 '*suspected victims of trafficking*'.

The principal concern with the IRP Bill is that it does not sufficiently take account of the particular vulnerability of children and of the need to provide them with special assistance and protection. Children who seek protection in this State, such as separated children seeking asylum and child victims of trafficking, are among the most vulnerable in our society and face multiple barriers to the realisation of their rights. A general provision should be included in the Bill to the effect that children's best interests shall be a primary consideration at all times and in all decisions affecting them.

The Bill should state that an appropriately trained, independent guardian shall be appointed to each separated child to represent those interests. Many of the difficulties faced by separated children stem from the absence of such a guardian who could support and inform the child, as well as liaise with the relevant State agencies.

An alternative status, distinct from refugee status or subsidiary protection, should be made available to children on humanitarian grounds in order to make sure that they are not denied the protection of the State simply because they do not fit the strict criteria for protection laid down in the Bill. This would include, for example, child victims of trafficking who might not satisfy the conditions for refugee status or subsidiary protection but are nonetheless in need of special assistance and protection.

On a more positive note under the IRP Bill children may not be detained on immigration grounds. The OCO however has already expressed its concerns regarding the qualifications of that prohibition and other situations in which children might be detained. For example, if the conditions are violated, a child can in fact be detained and there are no limits or safeguards currently in place to safeguard against this. Separated children should not be detained for immigration related reasons and the Bill should explicitly state the principle that, where a child is detained, it should only be as a measure of last resort and for the shortest possible period of time, in line with Article 37 of the UNCRC and section 96 of the Children Act, 2001.²²

As the Bill currently stands, age assessment will be carried out by a member of the Gardai or an immigration officer, and not a professional independent panel as promoted by international best practice.²³

6.2 The asylum process

By its nature, the asylum process can be a source of great stress to an applicant and the project was informed by key agencies involved in the process of steps they take to try to address this reality, particularly for child applicants. During the project, the separated children raised the following concerns in relation to the asylum process.

Separated children have informed the OCO that they find the asylum process very stressful and not particularly child friendly, or indeed sensitive to their unique situation. The young people said they found that the adversarial nature of the process coupled with the legal uncertainty that accompanies the process further compounds this stressful experience. The asylum process must of course be thorough, but understandably, the young people find the recounting of their experiences to be very daunting and emotional.

The young people said that the best way to support them through the process would be to ensure that they fully understand the nature and format of the interview through good preparation before the interviews take place. They said that if they were confident about their rights during the course of the interview it would help them feel more in control of the situation and better able to understand the reason for the probing questions. For example, if a young person is aware that s/he can stop the interview at any stage should they get upset or stressed, and that the legal and HSE staff present are providing a protective function for them, then that in itself should ease the stress of the interview and support the young persons coping mechanisms. They also said that a supportive and empathetic interviewer who listens to them would be paramount. Any long delays that occur in the asylum process will contribute significantly to the stress levels in this population.²⁴ The OCO has been informed by young people that there are currently particularly long delays in relation to interviews for applicants of Somali origin.

²² See the OCO submission on the Immigration Residence and Protection Bill; March 2008. Available at www.oco.ie .
²³ See sections 24, 58 and 73 of the IRP Bill, and see also section 6.3 below.
²⁴ In conversation with the HSE.

Young people told the OCO that correspondence relating to their asylum process is not child friendly, and in particular section 11 letters have been described as 'scary and unfriendly' by separated children. However, it seems that where possible, social workers and project workers withhold such letters from separated children until they can be sure to meet with them and go through the correspondence together with the young person.

Current arrangements and the Immigration Residence and Protection Bill provide that an application for asylum by a child shall not be made where the HSE decides it is not in the best interest of the child to proceed with an application. The OCO project team was informed by one young person who wished to make an asylum claim that their social worker had informed them that there was '*no point as nobody from that country was being granted refugee status*'. The young person felt this was very unfair. This was communicated to the HSE.

While there is a role for the HSE in participating in a best interests decision as to whether a young person should put themselves through the rigour of an asylum determination process, this role should not be so broad as to interfere with the right of a young person to seek asylum. It appears that the role of the HSE is an area which should be clearly defined in legislation and practice guidelines. Consideration should also be given to establishing a Guardian system to ensure that children are independently advised and represented.²⁵

6.3 Age assessment

Millions of children each year are not registered at birth. It is not uncommon for separated children to present without any identity documents, and the authorities are therefore often unclear as to the age of the young person. A young person may not have documentation for a variety of reasons; they may not have any documentation, they may have lost it, had it confiscated by a trafficker, told to discard the documentation when they arrived or indeed never brought the documents with them because they had to flee suddenly.

*"The uncertainty of whether or not a young person is believed to be under 18 years of age will be a significant stressor and as such will contribute significantly to the overall stress levels being experienced."*²⁶

According to the Separated Children in Europe Programme, age assessments should include physical, developmental, psychological and cultural factors, and should be carried out by independent professionals with appropriate expertise and familiarity with the child's ethnic and cultural background. In cases of doubt, young people should always provisionally be treated as under 18 years of age. Age assessment is not an exact science, it requires a considerable margin of error and no fool proof method currently exists.²⁷

During the course of the project, the OCO project team was contacted by service providers who were concerned that persons claiming to be under the age of 18 had been placed in adult accommodation. The service providers had made contact with the HSE and other relevant agencies with a view to facilitating access for the persons concerned to an age re-assessment process. Having made this contact, the service providers remained unclear as to how the age assessment and re-assessment process operated.

²⁵ For further information on the Immigration Residence and Protection Bill see the Irish Refugee Council submissions on the bill.

²⁶ In conversation with the HSE.

²⁷ Save the Children, Separated Children in Europe Programme, Statement of Good Practice, 2004, p18; IOM Exchange of information and best practices on first reception, protection, and treatment of unaccompanied minors, 2008. Available at <http://www.belgium.iom.int/> (22.07.09).

There appears to be outstanding confusion about how the age assessment and re-assessment processes operate and who is responsible for them.

No statutory age assessment procedure currently exists in Ireland, but of more concern is the apparent inconsistency with which different authorities approach this issue. The HSE, the Office of the Refugee Applications Commissioner (ORAC) and the Garda National Immigration Bureau (GNIB) all appear to be arbiters as to age. The HSE informed the OCO project team that it follows the 'UK Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers', and the HSE Separated Children's Social Work Team informed the OCO that it has passed these guidelines on to the ORAC and the GNIB, but neither body, according to the HSE, follow the guidelines.²⁸ Consistency, independence and panel expertise is currently missing from age assessment in Ireland. Indeed the Commissioner for Human Rights, Mr Thomas Hammarberg, made reference to this in his report following his visit to Ireland in November 2007.²⁹ The Representative of the UN High Commissioner for Refugees in Ireland has also expressed concern regarding separated children who are not identified as such by Irish immigration officials at a port of entry, partly due to the absence of standardised methods for age assessment.³⁰

The ORAC carries out asylum determination interviews and their role in preparation for and during such interviews can involve a determination as to the age of a young person. It appears that children are only referred to the HSE if it is determined by the ORAC or the GNIB that a young person is in fact a minor. Any age assessment interview by the ORAC is carried out by one or sometimes two members or staff, but on appeal a more senior member of staff will carry out the interview. This process does not appear to accord with best international practice as set out by the Separated Children in Europe Programme which advocates a panel interview made up of a number of independent experts.³¹ Moreover, in a report to a UN Treaty Monitoring body for the UNHCR the Irish Government stated

"Where a person claims to be an unaccompanied minor but appears to be over the age of 18 years, a determination is made by at least one (and in many cases two) senior and experienced ORAC staff members, following an interview with the person (with interpretation if required). The objective of the interview is to seek to establish the age of the person concerned by exploring a range of issues with him or her such as his or her early childhood, education and the ages of other family members. Applicants are entitled to appeal the age determination decision and advised of their rights in relation to legal representation and contact with the UNHCR. No negative inferences are drawn from the fact that an applicant's claim to be under the age of 18 years may not have been accepted by ORAC in the refugee status determination process."³²

There is a lack of clarity as to which State agency is the final arbiter as to age. It appears that the view of the HSE is that the GNIB is the final arbiter of age. However, the OCO understands that the GNIB do not receive any specific training in relation to age assessment but often rely on information provided by the HSE. The OCO further understands that if ORAC considers that an asylum applicant is over 18 years of age, that person will be dispersed to an adult accommodation centre without the HSE being alerted. These unclear arrangements leave

28 'UK Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers', available at <http://www.childrenslegalcentre.com/> (20.08.2009).

29 This report can be found at <https://wcd.coe.int/> (21.07.09).

30 <https://wcd.coe.int/> (21.07.09) at paragraph 51.

31 Save the Children, Separated Children in Europe Programme, Statement of Good Practice, 2004, p18

32 Supplementary additional information by the Government of Ireland concerning the List of Issues (CCPR/C/IRL/Q/3) taken up in connection with the consideration of the Third Periodic Report of Ireland under the International Covenant on Civil and Political Rights (CCPR/C/IRL/3). Available at: <http://www.dfa.ie/> (20.09.2009).

open the possibility that a child incorrectly age assessed as an adult might be placed in adult accommodation without access to the HSE and without information on their rights and entitlements as regards access to age re-assessment. Given the apparent lack of clear procedures and safeguards relating to age assessment process, there is a risk that separated children might be wrongly accommodated with other adults and not provided with the level of support to which they are entitled, and to which the State has a duty to provide. It should also be noted that the GNIB are often the preliminary arbiters of age due to their initial contact with young people at ports of entry to the country.

The OCO understands that no appeal process for age assessment currently exists, but it is possible to request an age re-assessment on certain grounds. This can be done by the Refugee Legal Service or the HSE. If the HSE wishes to have a young person age re-assessed, they must go back to the original referring body.

It must be recognised that child protection issues do also arise when persons age assessed as under 18 years, are in fact adults. Particular difficulties arise when such individuals are placed in accommodation centres together with minors. It is for this reason, as well as those previously stated above, that a panel of independent experts should be used to conduct age assessment to ensure that a fair and transparent system is in operation.

Temporary Residence Certificate (TRC) cards are issued to young people by the ORAC once they claim asylum. TRCs are photo-cards, which list the young person's stated date of birth, and their asylum number, but are not recognised as a piece of identification. These cards often cause confusion, particularly in medical settings, as the card notes the age as declared by the card holder whereas ORAC many have assessed the person concerned to be an adult. The project team was contacted by a number of medical practitioners who were concerned that they were being asked to treat a 'minor', without parental or guardian consent. It later transpired that, notwithstanding the stated age on the card, the State considered the persons concerned to be over the age of 18. These arrangements are a cause of confusion for some service providers.

6.4 Social Worker /Project Worker support

The majority of separated children that have come into contact with the OCO through the course of the project have been positive about their social workers and project workers employed by the HSE. It is clear that many social workers and project workers go above and beyond the call of duty in order to assist and support this group of young people. However, it does seem that the level of care provided falls short in terms of delivering the best possible care to this group of young people. This is not necessarily the fault of individual social/project workers, but rather the hostel set up coupled with the large volume of young people in the care of each worker, and the limiting regular working hours which apply in respect of the vast majority of workers' schedules. Furthermore, though many project workers are qualified carers, it is not a pre-condition for employment, resulting in some separated children not having access to a qualified carer. The falling number of separated children entering the country has however improved the ratio of social worker or project worker to young person. This group of young people can only be classified as vulnerable, and each and every young person should be entitled to a social worker assigned directly to them. A reasonably high staff turnover rate further adds to the unsettled life of a separated child.³³ The OCO understands

that social workers in the separated children seeking asylum team who have left their positions have not been replaced, and those that have gone on maternity leave have not been replaced during their absence. There are currently approximately 8 social workers and about 10 project workers on the Separated Children Social Work Team, which has also been seeking to fill 5 vacancies for some time.³⁴

Many of the separated children involved in the project reported the lack of a 'mother figure' in their lives. Others said they did not have a social worker directly allocated to them and they did not have anyone in authority to turn to if they had a problem or needed help. This brings home the isolation and lack of support that can be felt by separated children and the need for an independent Guardian to be assigned to each young person. Some young people are involved with the 'Big Brother Big Sister' mentoring programme, with tremendous success.

On the 28th of July 2009 Barry Andrews TD, Minister for Children and Youth Affairs launched the Government's Implementation Plan in response to the Report of the Commission to Inquire into Child Abuse, 2009. This implementation plan includes a commitment that 270 social work posts within the HSE will be filled. Minister Andrew's stated that

"This will enable all children in care to have access to a designated social worker. Unfortunately, this is not always the case today, but under this Plan, I am confident that this protection and entitlement will be delivered".

The Government is considering and is in discussion with the HSE to introduce extended working hours to meet the welfare needs of children and families in communities. Currently staff works from 9am to 5pm, whereas under the new proposals staff would be available from 8am to 8pm.³⁵

The Implementation Plan of the Report of the Commission to Inquire into Child Abuse 2009, states that

*"The HSE will ensure that all children in care have an allocated social worker (as per Recommendation 10, Action 33 – by December 2010)."*³⁶

It is assumed that this applies to separated children as well as Irish children in care. This report also states that siblings who live apart should have planned visits and holidays together. The OCO has come across some siblings that have been separated and others that have been accommodated together in foster care. It seems that where possible and when they wish to remain together, every effort is made to keep siblings together.

34 As of end of July 2009.

35 Office of the Minister for Children; Report of the Commission to Enquire into Child Abuse, 2009 Implementation Plan; p46.

36 *ibid*; p50.

6.5 Absence of an independent guardian

During the course of the project, a number of children raised issues which would normally be sorted out quite easily by a parent, sibling or other adult looking out for the child. For example, one young person told us that they had been accepted on an undergraduate course at university, secured funding and attended the orientation course at the beginning of term. At the final stage of the matriculation process, the university declined to proceed with the matriculation process because of a misunderstanding in relation to the funding secured. By the time the young person approached the OCO, the course had commenced 3 weeks previously and the young person was resigned to missing out on university. A couple of telephone calls and emails to the university and the funding body resolved the misunderstanding and the young person took up their place on the course.

These are the kind of matters that parents and other adults sort out for teenagers heading off to university all of the time. The fact that this impasse arose at all demonstrates how isolated some of these children are. It also underlines the need for independent guardians to be assigned to each separated child to assist and support them with the everyday things and the big things that come their way.

Stable, secure, consistent and reliable relationships with caring adults are fundamental to children's healthy physical and psychological development, at both an early age and as they progress into adolescence.³⁷ The absence of a 'mother' or 'father' figure is keenly felt by an unaccompanied child or adolescent as this is experienced as the absence of someone who really cares for, provides for and protects. While attempts are made by services and care providers to fill these roles it is rarely possible in an unregistered hostel or residential care setting. It is more possible to provide such 'mother' and 'father' roles and relationships in a foster family or supported lodgings placement.³⁸

One type of guardian that is already known in domestic law and practice here is the guardian ad litem. While the guardian ad litem concept is narrower than the role envisaged for guardians for separated children (by, for example the separated children in Europe programme) it is useful to reflect on the role of guardian ad litem's and how that role might be developed to best support separated children.

A guardian ad litem is generally understood to be an independent person appointed to represent children. Following a national consultation held by the Children Acts Advisory Board, it was agreed that the role of the guardian ad litem should be to,

*"independently establish the wishes, feelings and interests of the child and present them to the court with recommendations"*³⁹

There is however, no official definition and no nationally agreed standard for the role, qualifications, appointment or training for such a guardian.⁴⁰ The guardian ad litem is independent of all other professionals and agency staff involved with the child and family. In the National Children's Strategy 2000 the Government gave a commitment that

37 In conversation with the HSE. Also, this issue of a 'mother figure' was raised by young people.

38 In conversation with the HSE.

39 Children's Acts Advisory Board; Giving a voice to children's wishes, feelings and interests. Guidance on the Role, Criteria for Appointment, Qualifications and Training of Guardians ad Litem Appointed for Children in Proceedings under the Child Care Act, 1991; May 2009; p3.

40 *ibid*; p1.

“Unaccompanied children seeking refugee status will be treated in accordance with best international practice, including the provision of a designated social worker and guardian ad litem.”⁴¹

Separated children are, by their nature, without advocates or guardians to advocate on their behalf and provide necessary support. Young people that go missing lack an advocate to ensure that everything is done to trace them. In 2006, the Committee on the Rights of the Child expressed concern that the appropriate guidance, support and protection may not be available to separated children during the asylum process, in particular with respect to access to services and independent representation.⁴² It also recommended that an independent guardian be appointed expeditiously for separated children.⁴³ The Child Care Act, 1991, specifically refers to the importance of a child’s wishes and his/her welfare and in certain circumstances a guardian may be the only independent promoter of these considerations. In addition, Section 16 of the Children Act, 2001 inserts a new Part IVA into the Child Care Act of 1991 relating to ‘children in need of special care and protection’, under which separated children naturally fall.

The Separated Children in Europe Programme Statement of Good Practice recommends that an independent guardian or adviser be appointed as soon as a separated child is identified, in order to advise and protect separated children. The responsibilities of this person should be:

- to ensure that all decisions are taken in the child’s best interests;
- to ensure that a separated child has suitable care, accommodation; education, language support, and health care provision;
- to ensure that a child has suitable legal representation to deal with his or her immigration status or asylum claim;
- to consult with and advise the child;
- to contribute to a durable solution in the child’s best interests;
- to provide a link between the child and various organisations who may provide services to the child;
- to advocate on the child’s behalf where necessary;
- to explore the possibility of family tracing and reunification with the child: and
- to help the child keep in touch with his/her family.⁴⁴

The guardian / adviser should be appointed to the child within one month of a child coming to the attention of the authorities.⁴⁵

The Minister for Children and Youth Affairs has committed to engage with ministerial colleagues to agree a future policy of management and funding of the service of guardian ad litem, in the context of the Children Acts Advisory Board guidance on the issue.⁴⁶

41 National Children’s Strategy 2000, p71.

42 Committee on the Rights of the Child; Concluding Observations: Ireland; 2006; para 64.

43 Committee on the Rights of the Child; General Comment No 6: treatment of unaccompanied and separated children outside their country of origin; CRG/GC/2005/6, para 21.

44 Separated Children in Europe Programme; Statement of Good Practice; Third Edition; 2004; p16.

45 *ibid*; p16.

46 Children Acts Advisory Board; see www.caab.ie. Report of the Commission to Inquire into Child Abuse, 2009: Implementation Plan; p73, action point 80.

6.6 Right to be heard

Many of the young people involved in the project informed the OCO that they did not feel their views were taken into account in relation to decisions concerning them. Many said they were not consulted on their care plan and were informed about changes in their accommodation arrangements at short notice and without any say in the matter. Others said that, as they had no allocated social worker, they did not know who to talk to in order to voice their concerns if something was wrong. The absence of real opportunities for the young people to have their voices heard was a recurrent theme at the meeting with the young people.

Article 12 of the UN Convention on the Rights of the Child (CRC) requires states to facilitate children's expression of their views in all matters affecting them, with due weight being given to those views in line with their age and understanding. Article 12(2) makes specific provision for children to be heard and, if necessary, represented in judicial and administrative proceedings affecting them. In respect of Ireland, the Committee on the Rights of the Child has recommended the use of independent representatives (like an independent guardian), especially where children are separated from their parents such as in the case of separated children.⁴⁷

Ensuring that children and young people have a voice on issues that affect them is also emphasised in Irish legislation and national policy. The Report of the Commission to Inquire into Child Abuse states that

"Children in care should be able to communicate concerns without fear"⁴⁸...and "children who have been in child care facilities are in a good position to identify failings and deficiencies in the system, and should be consulted."⁴⁹

In the 2009 Implementation Plan the Government has committed to the following

"The OMCYA will conduct a consultation exercise with children and young people in the care of the State. A working committee will examine methods of communicating with young people in care and detention settings, and ways of establishing permanent forums, with findings to be published (by September 2010)."⁵⁰

These steps would certainly be a positive development in ensuring children and young people have a voice and a platform.

The Separated Children in Europe Programme Statement of Good Practice provides

"The views and wishes of separated children should be sought and taken into account whenever decisions affecting them are being made. Measures should be put in place to facilitate their participation in line with their age and maturity".⁵¹

47 Committee on the Rights of the Child; Concluding Observations: Ireland; 2006; para 25(b).
48 Report of the Commission to Inquire into Child Abuse Executive Summary, Recommendation 14, p29
49 Report of the Commission to Inquire into Child Abuse Executive Summary, Recommendation 18, p30
50 Office of the Minister for Children; Report of the Commission to Enquire into Child Abuse, 2009 Implementation Plan; p73.
51 UNHCR, Save the Children; Separated Children in Europe Programme; Statement of Good Practice, Third Edition; 2004; p8.

6.7 Child centred approach and best interests principle

Through discussions with separated children and social workers, the OCO was informed of instances where confidentiality in relation to the most sensitive of matters was breached and instances where correspondence to young people was opened by unregistered hostel staff. One young person received official correspondence that was addressed to him with the salutation 'Dear Mr Child'.

Any service delivery to children must place the child and his or her needs at the centre of the care process. The separated child comes into contact with many people through the course of their first few months in Ireland, and it is vital that all service providers adopt the same child centred ethos. Furthermore, all individuals who come into contact with these young people should receive cross cultural sensitivity training as part of their ongoing development. Effective communication between the young people and care staff should at all times be promoted and monitored.

Article 3 of the UNCRC states that the 'best interests of the child' shall be a primary consideration in all actions concerning children. Article 3(1) emphasises that governments and private bodies must ascertain the impact on children of their actions, in order to ensure that the best interests of the child are a primary consideration. This is particularly significant because the wording indicates that the scope of the article is very wide and goes beyond state initiated actions to include private bodies, and embraces all actions concerning children as a group. The Committee on the Rights of the Child explains the need and obligation on governments for child impact assessments, self monitoring and evaluation, as well as independent monitoring and progress. It goes on to state that

"Every State should consider how it can ensure compliance with article 3(1) and do so in a way which further promotes the visible integration of children in policy-making and sensitivity to their rights."⁵²

Principles of best interests must embrace both short and long term considerations for the child, and any interpretation of best interests must be consistent with the spirit of the Convention. It is to be welcomed that the Report of the Commission to Inquire into Child Abuse 2009 Implementation Plan commits the HSE to arranging exit interviews for children on changing placements and on leaving care which will be formally recorded and will be considered individually and collectively in the planning and delivery of services.⁵³

6.8 Accommodation

Many of the young people who took part in the project raised concerns about the unregistered hostel accommodation in which they lived. Some said that, due to a lack of care staff and, at night time, any staff besides security staff, they had no one to talk to if they had a problem. Many said that they had raised issues about the accommodation centres with hostel staff but nothing was done to address the issues they raised. The issues the young people raised with us included the following. Several young people said they had no access to the kitchen in their hostel and if they missed the evening meal, they could not get access to any food in the kitchen and had no one to approach to request access to the kitchen.

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Committee on Rights of the Child, General Comment No.5, 2003, CRG/GC/2003/5, paras.45-47.
Office of the Minister for Children; Report of the Commission to Enquire into Child Abuse, 2009 Implementation Plan; Action point 81; p73.

Some young people spoke of being accommodated 2 or 3 to a room and being uncomfortable about sharing a bedroom with other people they did not know. They were several accounts of poor maintenance of the hostels buildings including delays in repairing broken windows and broken washing machines.

Many young people raised issues relating to practice and procedure in the unregistered hostels which appeared to illustrate a lack of training and/or practice guidelines for staff in the hostels.

In order to provide adequate care for separated children, especially the most vulnerable, accommodation centres should be staffed by vetted and professional personnel. Separated children seeking asylum should be placed in foster care or in registered residential centres suitable for their needs and that accommodation should be inspected in the normal course. Any child who finds him or herself in the care of the State should be afforded equal protection for their rights as Irish children. Furthermore, particular attention needs to be paid to the prevention of disappearances among this group.⁵⁴ Separated children lack the protection normally provided by a young person's family and are particularly vulnerable, especially when they are residing in unsecured unregistered hostel accommodation.

A common complaint made by young people living in unregistered hostel accommodation relates to the quality and variety of food that is available. Spaghetti or chips might be recognised as staple fare for many young people, but to some of these young people this food will be completely alien and therefore unsettling. Whilst recognising the difficulties in satisfying the food preferences of a diverse group of young people, it would be of some comfort to young people if they could occasionally have familiar food. A greater attempt at cultural awareness and sensitivity would go a long way. Perhaps one day a fortnight a different country's cuisine could be served, not only providing some diversity to meal time, but also recognising the disparate countries of origin of the young people, as well as promoting cultural recognition and awareness amongst the young people living together.

The Government's Implementation Plan, in response to the Report of the Commission to Inquire into Child Abuse, 2009 states that:

"Hostel accommodation is not suitable for children except in an emergency or as a short-term placement."⁵⁵

The HSE has commenced a process to change its model of care for separated children so that foster care and residential arrangements will be more easily accessible to this group. The HSE has also appointed a senior manager with responsibility for managing these changes and developments on a full time basis.⁵⁶ This is a positive development and it is hoped that this change will occur swiftly, with appropriate support given to foster carers, including information on the specific needs of separated children.

There is no doubt that residential care settings are more appropriate for young people than large hostels, and the commitment by the HSE to

"...end the use of separately run hostels for separated children seeking asylum and accommodate children in mainstream care, on a par with other children in the care system"

by December 2010 is very much to be welcomed.⁵⁷

54 See the section 6.11 on Missing Children.

55 Office of the Minister for Children; Report of the Commission to Enquire into Child Abuse, 2009 Implementation Plan; p11.

56 Seanad debates; Missing Persons; Thursday 9th of July 2009.

57 Report of the Commission to Inquire into Child Abuse, 2009: Implementation Plan; p68.

6.9 Inspection of hostels

Minister Barry Andrews has stated that the inspections of hostels for separated children will be undertaken by the Health Information and Quality Authority and will come into play on the commencement of the Health Act, 2007.⁵⁸ This commitment has been reiterated in the Government's Implementation Plan, in response to the Report of the Commission to Inquire into Child Abuse, 2009, which states:

"The Health Act 2007 will be commenced to allow the SSI of the HIQA to undertake independent inspection of all children's residential centres and foster care (by July 2010)."

Given the commitment to end the use of separately run hostels for separated children and accommodate children in mainstream care, this development is welcome.⁵⁹

Currently, hostel accommodation is not inspected by the Health Information and Quality Authority nor is it governed by the National Standards for Children's Residential Centres (2001). This has long been criticised by many organisations, including the OCO. Project workers prepare monthly reports to the HSE in which they report on many issues, including the provision of hostel accommodation. This is not an appropriate substitute for regular, professional and independent inspection. The inadequacy of the current system was highlighted recently when a young person informed this Office that the bed sheets in her room were removed for 24 hours once a week in order for them to be washed. No replacement sheets were provided for the 24 hour period and young people were forced to lie either directly on the mattress or to lay out their own clothes as makeshift bed sheets. When the young person approached the hostel staff to enquire about getting a second set of sheets, the young person was told that s/he could purchase a second set of sheets with his/her own money. This issue was raised by the OCO with the HSE.

The OCO raised the issue of the availability of complaint mechanisms for separated children accommodated in the unregistered hostels with the HSE and was informed that complaints boxes were available in the hostels for children to place anonymous complaints. When the OCO raised this with the young people, many of them were unaware of any complaints box within the hostels. Some said that they knew of a complaints box but that it was placed beside the reception or office area where staff are generally present, removing the anonymous aspect of the complaint and reducing the likelihood of a complaint being made. There seem to be no procedures in place to monitor the complaints, or indeed to follow up on the issues raised via the complaints. No complaints process can be seen as adequate if there is no monitoring process, either by the hostel itself and indeed by the HSE. Issues relating to accommodation, food or staff can be raised at House Meetings which are held every few months by some of the hostels. Such meetings however are not anonymous so many young people indicated that they may feel too intimidated to speak out. The OCO recommends that the HSE review the hostel complaints mechanism, taking into account the issues above, which were all raised by young people.

Formally recorded exit interviews about the young person's accommodation and care should be carried out, in line with best practice for Irish children in care. This would ensure that improvements to the way in which young people are cared for within the unregistered hostel

⁵⁸ Minister for State with special responsibility for Children and Youth Affairs, Department of Health and Children; Dáil Debate, Health Matters; 19th February 2009.

⁵⁹ Report of the Commission to Inquire into Child Abuse, 2009: Implementation Plan; p68.

or registered residential centre could continuously be improved upon. Every effort should be made to improve care provision for young people, and the young people should actively be encouraged to play a part in improving the care provided. Article 12 of the UN Convention on the Rights of the Child states that

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

The 2009 Report of the Commission to Inquire into Child Abuse specifically mentions that

“Children in care should be able to communicate concerns without fear”⁶⁰...and “children who have been in child care facilities are in a good position to identify failings and deficiencies in the system, and should be consulted.”⁶¹

The Government has undertaken to give effect to this recommendation by a number of means including

“The HSE will arrange for ‘exit interviews’ to be conducted with children on changing placements and on leaving care. These interviews should be formally recorded and should be considered, both individually and collectively, in the planning and delivery of services.”⁶²

This is a positive development and is welcomed.

6.10 Disparity of treatment and integration

Unlike Irish children in the care of the HSE, the vast majority of separated children in care are placed in privately contracted hostels that are unregistered, profit-making and not governed by the National Standards for Children’s Residential Centres (2001) nor inspected by the Health Information and Quality Authority (HIQA). There is no requirement that staff working in the hostels be appropriately trained and there is no dedicated social worker assigned to each child.

There is an urgent need to address this disparity and to ensure that separated children receive a level and quality of care that is no less than that offered to Irish children in care. The care and supports delivered to separated children should take into account their particular situation and be tailored to their needs. The following points of general application should be taken into account in this respect.

The development of a coherent integration and immigration policy that is rights based and child focused would be particularly valuable for separated children. The Separated Children in Europe Programme Statement of Good Practice states

“It is vital that separated children be able to maintain their mother tongue and links with their culture and religion. Provision of childcare, healthcare and education should reflect their cultural needs. Care should be taken not to perpetuate those aspects of cultural traditions that are harmful to and discriminate against children. Preservation of culture and language is also important should a child return to their home country.”⁶³

60 Report of the Commission to Inquire into Child Abuse Executive Summary, Recommendation 14, p29

61 Report of the Commission to Inquire into Child Abuse Executive Summary, Recommendation 18, p30

62 This commitment is listed on p73, and the timeframe is September 2009.

63 UNHCR, Save the Children; Separated Children in Europe Programme; Statement of Good Practice, Third Edition; 2004; p8.

There are significant coinciding psychological stressors for the separated child seeking asylum – the absence of a primary carer; culture shock and cultural transition; separation from and the loss of family and community; the impact of possible traumatic experience; the stress inherent in the asylum process; and possible hostility in the host country. However many will have experienced a stable and secure early family life with positive relationships with their parents or guardian and this type of early experience, we know from research results, supports psychological resilience in the event of major and multiple stressors. So, while the levels of stress cannot be underestimated, it is also important to recognise the psychological resilience that is present and demonstrated by many of these children and adolescents.⁶⁴

Since the psychology service to separated children seeking asylum was established in 2000, between 20-30% of those taken into care have been referred to this service each year. The main psychological problems are those relating to post trauma symptoms together with issues in relation to loss and bereavement. These problems are compounded by the coinciding stress inherent in the asylum process and, for some, the psychological demands in cultural transition. The incidence of suicide and self harm in the separated child population has been very low compared to the population of Irish children in care. One older minor in this population tragically took his own life earlier this year. However, this has been the only such suicide amongst this group of young people in the last decade.⁶⁵

6.11 Missing children

Between 2000 and 2008, 454 separated children seeking asylum went missing from the care of the HSE and, of these, 58 were subsequently accounted for. These figures relate to the Dublin south east area where the majority of separated children seeking asylum are cared for. 396 separated children remain missing from the care of the HSE.⁶⁶ In 2009 from January to June 23 children have gone missing. One young person who was involved in the OCO advisory group went missing while attending school.

This large number of missing children is alarming as is the apparent lack of further investigation into incidents. Minister Barry Andrews stated earlier this year that

“We wish to treat all unaccompanied children seeking asylum in the same way as all children in the State are treated.”⁶⁷

Yet, the majority of missing separated children are not listed on the missing persons website.⁶⁸

Children Missing from Care; A Joint Protocol between An Garda Síochána and the Health Service Executive, was set up to ensure a consistent and coherent response for every missing child, and to maximise inter-agency co-operation and promote the safety and welfare of children. This Protocol was drawn up to include separated children seeking asylum, and the working group established for the development of this Protocol included the Acting Principal Social Worker from the Separated Children Team. This Protocol, though certainly a step in the right direction, does not adequately address the specific issues of a separated child who goes missing. As the statistics indicate, a separated child who goes missing from care is unlikely to

64 In conversation with HSE.

65 In conversation with HSE.

66 Seanad Debate, ‘Missing Persons’, Maria Corrigan, 9th July 2009.

67 Minister for State with special responsibility for Children and Youth Affairs, Department of Health and Children; Dáil Debate, Health Matters; 19th February 2009.

68 <http://ie.missingkids.com>

be found. Excluding separated children seeking asylum, 53 children have gone missing from HSE care from January 2009 to date. Of these, 51 are accounted for. Two remain missing, although contact has been made with them, and all appropriate efforts are being made to ensure their safety. The contrast couldn't be more pronounced when you examine the statistics for separated children. The HSE has indicated that 27 children went missing between January and May 2009, of whom only two are accounted for. Separated children are generally not found or do not reappear once they go missing. A young person who was known to this Office unfortunately went missing earlier this year. The young person in question has not yet appeared on the missing person website, nor was any publicity given to the disappearance.

At a national level both the HSE and An Garda Síochána have agreed to review the protocol after six months of operation and at appropriate intervals thereafter. This means that an initial review should take place at the end of October 2009. The OCO would hope to see some improvements to the protocol specifically in relation to separated children.

6.12 Education

No single domestic legislative instrument delineates separated children's education rights and entitlements. Article 2(1) of the United Nations Convention on the Rights of the Child states that all children and young people under the age of 18 have the same rights, irrespective of their parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth or other status.⁶⁹ The Separated Children in Europe Programme Statement of Good Practice is based on international human rights law, and includes 11 principles required to protect separated children's rights and entitlements. Specifically related to education it recommends that

"Separated Children should have access to the same statutory education as national children. Schools need to take a flexible, welcoming approach with separated children and provide second language support. In order to preserve their cultural identity separated children should have access to mother tongue teaching. Vocational and professional training should be available to separated young people. It is likely to enhance their life chances if they return to their home country."⁷⁰

Separated children in Ireland are entitled to primary and secondary education. If a separated child arrives in Ireland with little or no English they first attend an English language school on Parnell Square (CDVEC). After a certain period they are then incorporated into the normal school system. It was suggested by some young people that the intensive English language course is not long enough and that some children are enrolled in mainstream education before they are able to cope from a linguistic perspective. Educational assessments together with vocational training options and mother tongue tuition should further be encouraged. Some schools request that the young person undergo an assessment exam to help them determine the most appropriate school year for the young person. Depending on their age, many separated children are placed in standard second level school provision. Suitable programmes for older children aged 16-18, who are unlikely to integrate into the standard upper second level school setting, are available in certain CDVEC schools. The CDVEC Separated Children Education Service offers an education advice, referral and support service to unaccompanied minors/separated children living within the CDVEC area. The following services are offered

69 Ireland signed the Convention on the 30th September 1990, and ratified it on the 28th September 1992.

70 Save the Children, UNHCR; Separated Children in Europe Programme, Statement of Good Practice; Third Edt 2004; p22.

by the CDVEC Separated Children Education Service in coordination with the HSE Team for Separated Children Seeking Asylum:

- English Language and Literacy Assessments prior to placement.
- Advice on school placements and/or other courses
- Referrals to schools and /or other suitable programmes
- Ongoing liaison and support for students
- After schools programmes (Study Buddy Homework Club, Easter Camp)
- Part-time Access Programmes to prepare students for mainstream education
- Annual summer school
- Information for schools with separated children
- Liaison with other relevant schools, agencies and organisations.⁷¹

According to a report produced by the City of Dublin VEC, County Dublin VEC, and Dún Laoghaire VEC in December 2004 on the education and language needs of separated children, lack of literacy and basic education support is the biggest gap in provision for bilingual and multilingual students. The report found that a considerable number of separated children experience difficulties in reading and writing in their first language, and it also suggested that teachers should be trained in new approaches on how to teach Standard English dialect to African English speakers while still valuing these students other English dialects.⁷²

Education is seen as a high priority for the majority of separated children, and it ranked as the primary concern for the young people in the OCO Advisory Group. The group discussed education generally and a number of issues were raised by the young people:

- Classrooms are sometimes divided between Irish and international students. Some separated children feel isolated not only from Irish students but other international students who may be from different countries. In one school, there was a plan for international students to sit beside Irish students for a week and though this was considered to be beneficial, it wasn't properly followed through. One school attended by some separated children has a pairing/buddy system which was seen as very useful for making people feel welcome, as well as assisting integration. The separated children noted that it was still up to the individual to make an effort to make friends.
- Some principals seem to make a point of making sure that the young people are assisted and make it clear that if they have any difficulties, the young people can go to the principal. This was seen as a positive welcoming gesture.
- The young people recognised that there is a natural tendency for young people to mix with people that are similar to themselves and that this can sometimes make integration more difficult. It was suggested that school outings and trips are a good way to get to know other students, and indeed in some schools there

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CDVEC Separated Children Education Service, Parnell Adult Learning Centre, 1 Parnell Square, Dublin 1. www.cdvec.ie
Ward, T; City of Dublin VEC, County Dublin VEC, Dún Laoghaire VEC; Education and Language Needs of Separated Children; 2004; p109.

are efforts to integrate the international students through group activities, even within the classroom setting. It was suggested by some young people that it would be useful to establish groups or clubs within schools to help promote integration - they could organise activities and help with schoolwork.

- It was reported that one guidance counsellor in a school decided not to give CAO forms to separated children that had not been given refugee or other permanent residential status.
- It was pointed out that other options in education should be emphasised, not just the leaving certificate.
- Some separated children get presents at Christmas from their school.
- The young people felt that having supportive and encouraging teachers made a big difference.
- The young people were concerned about being moved to a different school if they turned 18 before they finished their leaving certificate.⁷³
- There were mixed views about what year of schooling the young people should be placed in. It was generally felt that it would be a good thing to have tests upon arrival to school as the young people could be properly streamed. Some felt it would be good to stay with young people their own age and receive additional support rather than be put into a class with much younger people. Obvious difficulties can arise if 16/17 year olds are put in a class with 13 year olds. Having a separate year of intense language learning before entering mainstream school was suggested as another possible solution, and would ensure better outcomes from the education system.
- The young people felt that having a school close to their home was important. Some young people travelled long distances right across the city to get to school, and many changed schools several times.
- A good community and atmosphere within the school were emphasised as being crucial.
- Some said that the school day was too long, that there should be half-day or day off during the week (though one young person argued for a longer week with shorter days)
- Trips and activities can be expensive – it seems that occasionally teachers even pay for separated children out of their own money. The young people are able to approach their social worker for money for school trips or activities.
- The young people felt that there should be a place or a library where they could go at the weekend to do their homework and where they could get support.
- Continuous assessment was suggested as a better approach than exam based assessment.
- Concern was expressed that young people who are themselves raising children are expected to pay a percentage of the childcare costs if they want to return to full-time education and put their children into a crèche during the day. This is a barrier to them returning to school.

- Young mothers are usually made leave school once they are visibly pregnant.
- It was suggested that it might be useful in terms of welcoming young people with poor English language skills to have signs around the school in different languages. This would also raise cultural awareness.
- There was a suggestion by some young people that school should finish early on a Friday to accommodate Muslim pupils getting to the mosque for prayer.

In light of Budget 2009 the Department of Education and Science published a circular for schools setting out how the new arrangements will operate for the allocation of language support teachers from September 2009. The circular clarifies the operation of the alleviation measures that were announced in the budget for schools that have a significant concentration of newcomer pupils. The alleviation measures mean that such schools can qualify for up to 4 language support posts with the possibility of additional posts also being approved through the independent staffing appeals mechanism. Schools can apply to the Department for language support posts. These posts will be approved on a provisional basis initially and will then be confirmed in September 2009 following receipt from the schools of actual enrolments of pupils requiring language support. Such measures may negatively impact schools who accept separated children or aged out minors with language difficulties part way through the academic year.

The Consumer Price Index in June 2009 showed a 4.5% yearly increase in the cost of education.⁷⁴

Secondary School - Child aged 12 entering 1st year	Basic Costs
Clothing* (not including footwear - estimated at €50- €100)	€385
School Books	€390
Voluntary Contribution	€135
Total	€910
Back to school clothing and footwear allowance	€305

Source: Barnardos, *Back to School Cost Analysis 2009*⁷⁵

The school books grant scheme is available in state primary and post primary schools to help with the cost of school books. Funding for the scheme comes from the Department of Education and Science, and is administered by each school principal. It was announced in the Budget 2009 that this scheme would be restricted to schools in the Delivering Equality of Opportunity in Schools Scheme (DEIS), it is unclear at this stage how severe cuts to this books grant programme will affect separated children. There are currently 203 schools involved in the DEIS. A school book rental scheme also exists in some schools.

Separated children with refugee status can access further education on the same basis as an Irish citizen. When separated children are granted refugee status they usually receive Unemployment Assistance rather than Social Welfare Allowance, because in theory they are eligible to work. Once the young person secures a place in third level education they are no

⁷⁴ Central Statistics Office, Consumer Price Index, June 2009. www.cso.ie
⁷⁵ <http://www.barnardos.ie> (10.08.2009).

longer eligible for Unemployment Assistance. Such separated children are entitled to apply for Higher Education Maintenance Grants, but the requirement to have three years residency often precludes this group of separated children from receiving the grant.

6.13 Child Mothers

Separated children who are themselves young mothers are a particularly vulnerable group in need of extra support and assistance. The unregistered hostel accommodation available for these young mothers is not particularly suitable. The bedrooms are very small; with a single bed, a cot, closet and very limited floor space. The communal rooms downstairs are made up of a dining room, living area and television room, but there is no specific play area. Overall the accommodation is not child friendly. There is however, a large garden which the young people are free to use.

One of the major difficulties facing this group is their apparent inability to return to formal full time education due to childcare costs. The OCO understands that the Community Welfare Office will not cover crèche fees in order to permit young people to return to school. Indeed, we understand that young mothers are asked to make a contribution to the cost of any child care provided out of the €19.10 which is provided to them each week. Over the last few years, the OCO understands that no young mother has been able to return to full time education after having a baby. Some young mothers have been able to access informal education. However, this has been described more as entertainment or as a way to get the young person out of the house rather than providing them with skills to return to full time education, or indeed to get a job should the young person have refugee status. Clearly, this is an inadequate situation that should not be allowed to continue. The OCO would strongly recommend that resources be immediately put in place to ensure that once a young mother feels able to return to full time education that she is encouraged and supported to do so.

This group of young people urgently needs an after hours support service. A young person who is pregnant may require support at any hour of the day, including when they go into labour. The current set up arrangement is inadequate and is dependent on the good will of a project worker to work beyond his/her hours and to provide an after hours support service. The project worker is employed from 9am to 5pm and yet is often called on at all hours to assist young people in their care including when they go into labour. This project worker is not the legal guardian of these children and yet is required to take on this role within the hospital when emergency procedures might be required. This is clearly a situation that cannot continue. Proper after hours support should be available for all young people, and in particular this group of vulnerable young mothers and young mothers to be.

6.14 Aftercare

The Intercultural Health Strategy states that

“serious concerns are emerging around the situation of aged out minors who leave residential accommodation at the age of 18 and, without adequate follow up and support, are at risk of a range of social ills; a number of anecdotal accounts of members of this cohort engaged in prostitution have been received. Child trafficking and related exploitation and abuse of children is emerging as an additional issue in this area.”⁷⁶

The HSE Model for the Delivery of Leaving Care and Aftercare Services states that non-Irish nationals with refugee status and young people with humanitarian leave to remain who are in the care of the HSE are eligible to access a leaving and aftercare service on the basis of their individual needs assessment. It further states that asylum seeking non-Irish nationals on reaching 18 years of age who have been in the care of the HSE under the Child Care Act, 1991, will be considered on an individual basis by the HSE with a view to meeting the young person’s needs in aftercare.⁷⁷

Many of the separated children involved in the project who were about to turn 18 told us that they had not been informed of any after care plan for them. The OCO was also in contact with a number of separated children who turned 18 during the project and in respect of whom an aftercare plan did not appear to be in place. The apparent lack of comprehensive aftercare planning for all separated children in the care of the State is a cause for concern.

The Youth Homeless Strategy (YHS) was launched as Government policy in October 2001. The YHS “requires that each health board produce an aftercare policy on the basis that an effective aftercare policy strengthens the position of the young person leaving care.” This Government policy document clearly states that *“aftercare is an integral part of the care process, it is not an optional extra”*.⁷⁸

The Recommendations that arose out of the Ryan Report on the Commission to Inquire into Child Abuse stated:

“Aftercare services should be provided to give young adults a support structure they can rely on. In a similar way to families, childcare services should continue contact with young people after they have left care as minors.”⁷⁹

Furthermore, the Report of the Commission into Child Abuse 2009 Implementation Plan states that all children who have been in State care should have access to support services. However, this is qualified in action point number 64:

“The HSE will ensure the provision of aftercare services for children leaving care in all instances where the professional judgment of the allocated social worker determines it is required.”⁸⁰

The Implementation Plan does clarify that the HSE will ensure that care plans include aftercare planning for all young people of 16 years and older.⁸¹

76 Health Service Executive National Intercultural Health Strategy 2007 – 2012; p53

77 HSE Model for the Delivery of Leaving Care and Aftercare Services in HSE North West Dublin, North Central Dublin & North Dublin; 2006; p11 and Appendix 17.

78 HSE Model for the Delivery of Leaving Care and Aftercare Services in HSE North West Dublin, North Central Dublin and North Dublin; 2006; p6-7.

79 Towards Redress and Recovery The Ryan Report on the Commission to Enquire into Child Abuse; Recommendations; Vol. IV; p464; 7.17.

80 Office of the Minister for Children; Report of the Commission to Enquire into Child Abuse, 2009 Implementation Plan. To be implemented by November 2009.

81 Office of the Minister for Children; Report of the Commission to Enquire into Child Abuse, 2009 Implementation Plan; Action point 67; to be implemented by June 2010.

6.15 Health – GP

Many young people told the OCO about inordinate delays in getting appointments to see a GP. Delays seem to result because separated children are told they must get their project worker or social worker to make an appointment on their behalf. One young person had to wait almost three weeks before she saw a doctor. When the OCO contacted the HSE about this issue and doctor's appointments generally the Office was informed that any separated child can make their own appointment with a GP, and that a separated child does not need to be accompanied by a project worker to the doctor, but that it is considered best practice to do so. The HSE also stated that no project worker had made a young person wait that long for an appointment and that if a young person is sick at any time they are brought immediately to a doctor, or to Accident and Emergency (A&E).

It appears to be standard practice for the project workers to accompany the young people into a doctor's appointment. This can be seen in positive and negative terms. The young person may be unclear about the diagnosis or treatment and having their project worker present during the appointment ensures that they can discuss the appointment and its outcomes after they leave the doctor's surgery. However, privacy and autonomy is lost; an issue which is of particular importance for young people who are sixteen years or older.⁸² The Committee on the Rights of the Child addressed the issues of confidentiality and privacy in relation to adolescent health in its General Comment No.4 on "Adolescent health and development in the context of the Convention on the Rights of the Child":

"In order to promote the health and development of adolescents, States Parties are also encouraged to respect strictly their right to privacy and confidentiality, including with respect to advice on counselling on health matters (art. 16)...Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services, including treatment."⁸³

In hostel settings it is often left to the unregistered hostel managers to take young people to the A&E ward on weekends or after hours during the week when the regular social work service is closed. Hostel managers do not have a guardian like responsibility for this group of young people, and are often placed in difficult situations when it comes to issues of consent. This issue was raised by different hostel managers with the OCO, and is clearly of concern to them. Emergency social care services are apparently available for separated children, and yet the hostel managers who raised this concern with the OCO said that the reality is that project workers or social workers are not available at short notice to accompany a young person who falls ill to hospital if an emergency arises.

The Intercultural Health Strategy 2007-2012 states that the Social Inclusion Unit of the HSE has

"a mandate and a responsibility to promote and support cross-cutting policies and actions aimed at reducing and eliminating health inequalities and improving access to services for socially excluded service users, including service users from diverse cultural and ethnic backgrounds."⁸⁴

82 The age of 16 is relevant because it is the age at which a child can consent to medical treatment under Section 23 of the Non Fatal Offences Against the Person Act 1997. Where the child is under 16, consent may still be given, but it requires that the medical practitioner assess whether the young person has the maturity (Gillick Competent) to understand and make their own decisions about the handling of their personal health information. The interpretation of the word 'treatment' has caused some concern, as there is doubt as to whether it would extend to the use of prescription medicines. The English courts have defined treatment in its widest sense to include prescription medicines.

83 Committee on the Rights of the Child, General Comment No.4 2003, CRC/GC/2003/4, para 11.

84 HSE; Intercultural Health Strategy 2007-2012, p35.

This holds particularly true for separated children, who might find it difficult to communicate with a health care provider about personal health issues.

Knowledge about the situation and circumstances of separated children in the wider health sector can be limited. Separated children who are young mothers are very vulnerable. There have been instances where separated children who go into labour are asked inappropriate questions or simply questions that show a lack of understanding as to the circumstances of a separated child. An innocuous question such as 'Is your mother coming in to see you and your baby?' can obviously stir up all sorts of emotions for a young new mother who is a separated child. Two staff on the Separated Children's Social Work Team have met with the Master of the National Maternity Hospital and are meeting with medical and care staff in September 2009 to promote awareness and understanding about the circumstances of separated children.

6.16 Family reunification

Under Irish Law refugees and beneficiaries of subsidiary protection have a statutory right to family reunification. This is set out in Section 18 of the Refugee Act, 1996 (as amended) and Section 16 of the European Communities (Eligibility for Protection) Regulations 2006. Persons granted leave to remain have no statutory right to family reunification even if they are unable to return due to protection related reasons. Under Article 6 of the Dublin II Regulation, where a separated child makes an application for a declaration as a refugee, the member state responsible for examining the application must be the state where a member of the child's family is legally present, where possible, and if this is in the best interest of the child.⁸⁵ The Separated Children in Europe Programme (SCEP) has recommended that EU States should 'proactively facilitate family reunion' where separated children have relatives in other EU States, if this is in the best interest of the child.⁸⁶ Once a young person is naturalised and becomes an Irish citizen, s/he is no longer a refugee and therefore no longer benefits from any entitlement to family reunification. In the UK, refugees who subsequently become British citizens are still entitled to apply for family reunification in the same way as refugees who have not naturalised.⁸⁷ Family reunification for all children, including separated children, can be rendered meaningless by the fact that the child must prove that their sibling is dependent on them. This means that a young person can apply for their parents to be reunified with them, but not their siblings, thereby forcing parents to choose between remaining with their children wherever they may currently be living, or moving to Ireland to join one of their children and thereby abandoning their other children. Vulnerable refugees such as separated children could benefit for a variety of reasons from having a family member join them.⁸⁸

⁸⁵ See also Dublin II Regulation, Article 15.

⁸⁶ SCEP, Statement of Good Practice, 2004.

⁸⁷ For more information, see Refugee Information Service, The Challenges facing Refugees, Beneficiaries of Subsidiary Protection and Persons Granted Leave to Remain, as they seek reunification with their families in Ireland, 2009, p19; and see the UK Home Office <http://www.ind.homeoffice.gov.uk/partnersandfamilies/familyreunion/> (26.07.09).

⁸⁸ Refugee Information Service, The Challenges facing Refugees, Beneficiaries of Subsidiary Protection and Persons Granted Leave to Remain, as they seek reunification with their families in Ireland, 2009, p22.

6.17 The future of the young person

Experts working in the area of traumatic experience recommend that following a traumatic experience one of the most important tasks is to re-establish normal routines and structures. Getting separated children involved in the normal structures of life such as school, activities, and peer relationships as soon as possible promotes their positive psychological health.

These 'normal' structures will be new and often culturally different so the young people will require significant support and guidance in this process. Helping young people to focus on their future in a constructive and purposeful way will also support healthy psychological adjustment. This can be very challenging particularly within the uncertain context of a young person's asylum application. However, it can be achieved with support, encouragement and guidance in relation to constructive coping strategies. Facilitating positive relationships with adults who can be available to support and guide is essential in supporting the minors' psychological health⁸⁹.

The OCO is aware that the HSE and the RIA are developing arrangements to try and ensure that the dispersal of former separated children to direct provision accommodation outside of the Dublin area will not adversely affect service provision to the young person concerned.

The OCO project team understands that these arrangements involve an assessment by the HSE of the needs of the young person, and transfer of that information to the RIA in advance of the young person's departure from HSE care. The HSE has also been going to the various dispersal areas to talk and link in with the local services.

If a young person has a younger sibling in the care of the HSE or is involved in intensive treatment in Dublin, the OCO understands that the RIA will keep the aged out minor in Dublin to facilitate this relationship or care treatment. The HSE can keep a young person beyond eighteen years of age in its care, if it is deemed that the young person is particularly vulnerable. Notwithstanding these arrangements, the OCO project team has been informed by some of the young people involved in the project that young people have been moved into direct provision in the middle of an academic year. The HSE also confirmed that separated children are occasionally moved within an academic year if the young person has not been attending school or if the young person requests to be moved. The OCO project team has been informed by the RIA that young people will be consulted about their move both before and after the move.

Summary of
primary concerns
and recommendations

I. Best interests of the child

The Immigration, Residence and Protection Bill 2008 (IRP Bill) is currently going through the Dáil, but despite lobbying from various children's rights and human rights organisations, it does not include the fundamental overarching principle of the best interests of the child. The principle of best interests, as set out in Article 3 of the UN Convention on the Rights of the Child, should guide any legislation affecting children, in particular separated children affected by the Immigration Residence and Protection Bill 2008.

II. Non - discrimination

Separated children receive a lower standard of care than children in the mainstream care system. The inferior care provided to separated children living in unregistered hostel accommodation is unacceptable and contrary to the legal provisions set out in our national child care legislation. It also places the State in breach of its obligation to prevent discrimination in accordance with Article 2 of the UNCRC and article 14 of the European Convention on Human Rights. The practice of accommodating separated children in hostel accommodation should cease.

III. Independent inspection

It is of concern that children are being accommodated in hostels that are not subject to any mechanism of inspection.

All services for children, including hostel accommodation as an interim measure should be subject to regular, independent inspection.

IV. Missing children

Estimates indicate that from the end of 2000 and up to June 2009, 419 separated children have gone missing⁹⁰. The large number of missing children is alarming, as is the response to such incidents. Children Missing from Care; A Joint Protocol between An Garda Síochána and the Health Service Executive should be kept under review and adapted to take account of the particular circumstances of separated children who go missing.

V. Asylum process

Separated children have said that they find the asylum process very stressful and not child friendly, or indeed sensitive to their unique situation. The young people described a process that is perceived as adversarial in nature. The asylum process must of course be thorough, but understandably, the young people find the recounting of their experiences to be very daunting and emotional. The asylum process needs to take into consideration the particular needs of separated children. Staff involved in processes for children should be encouraged to treat separated children as children first and foremost, with considerations of their immigration status secondary. Appropriate training should be provided for all staff working with children in this context.

VI. Education

Separated children in Ireland are entitled to primary and secondary education. Education is seen as a high priority for the majority of children and it ranked as the primary concern for the young people on the OCO advisory group. In its general comment on education the UN Committee on the Rights of the Child states that the goal of education is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. This was borne out through our discussions with young people who felt that having supportive and encouraging teachers really made a difference to their day to day lives. Given the significant role schools play in the lives of separated children, every effort should be made to develop a more inclusive school environment.

VII. Absence of an independent Guardian / Adviser

In accordance with international standards and best practice, separated children should be allocated a guardian to act as an independent adviser and support. Consideration should be given to the establishment of a mechanism of advocacy for separated children. In addition, a guardian / adviser system should be introduced to ensure that children are independently advised and represented.

VIII. Communication of concerns

There is no effective mechanism for separated children to express concerns. In addition there appears to be no effective way to complain about any aspect of their care. An effective communication and complaint mechanism should be set up in all accommodation centres. The HSE should review the hostel complaints mechanism to ensure that children have a genuine mechanism to express any concerns. The complaints should be monitored not only by the hostels but also by the HSE and developments regularly communicated to the young people.

IX. Aftercare

The policy to disperse young people without any aftercare provision and general support for young people is of concern. Aftercare should be established, for all children in care, as a statutory responsibility of the Health Services Executive.

X. Out of hours support

The current plan to extend the availability of support services to 8pm does not go far enough and still leaves many vulnerable young people at risk. Separated children are at grave risk of breaches of their rights to protection from harm, including from trafficking. There is a real need for a 24 hour 7 day a week support system to be put in place to protect these children from harm.

