

Advice of the Ombudsman for Children on
the Child Care (Amendment) Bill 2009

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1. Introduction

- 1.1 The Child Care (Amendment) Bill 2009 was published on 16 September 2009 by the Minister for Children and Youth Affairs. The Bill provides for the High Court to have statutory jurisdiction to hear applications by the HSE for special care orders or interim special care orders where a child's welfare may require his or her detention in a special care unit. The Bill also addresses the question of the appointment of guardians ad litem and provides for the registration and inspection of special care units in accordance with the Health Act 2007.
- 1.2 Section 7(4) of the Ombudsman for Children Act 2002 provides that the Ombudsman for Children shall at the request of a Minister of Government provide advice to the Minister on any matter relating to the rights and welfare of children, including the probable effect on children of the implementation of proposals for legislation. The Child Care (Amendment) Bill 2009 was referred to the Ombudsman for Children by the Minister for Children and Youth Affairs for comment and the advice below has been prepared in accordance with the statutory function set out in section 7(4) of the 2002 Act.
- 1.3 Depriving young people of their liberty for their own protection constitutes one of the most serious interventions the State can make in a young person's life. The making of a special care order is appropriate in only the most difficult cases where a young person's life, health, safety, development or welfare is at risk. Though it is a necessary tool at the courts' disposal, the use of such an order must take place in the context of clear safeguards for the young people in question and be placed firmly in a continuum of care that is mindful of conditions following the completion of a period of special care. It is hoped that the proposed HSE integrated model of care for children in high support and special care will address many of the current difficulties with regard to continuity in the provision of care services to the children who will be affected by the Child Care (Amendment) Bill.
- 1.4 The elaboration of a statutory scheme to underpin the current practice of seeking special care orders in the High Court is a positive development. Indeed, access to special care, the process involved and the impact of such orders on young people have been the subject of examination by my Office under section 8 of the Ombudsman for Children Act 2002. In this context, the absence of a statutory framework within which special care orders can be made has given rise to serious concerns, particularly with respect to young people in need of special care who have also been charged with a criminal offence¹.
- 1.5 Although the Bill is welcome, it could be enhanced in a number of respects to better serve the interests of the children affected by it and

¹ Ombudsman for Children's Office, *Annual Report 2009* (OCO, 2010), p. 17

to guarantee that their rights as set out in international human rights standards to which the State is party are fully respected. In particular, the Bill should be framed in a manner compatible with the State's obligations under the UN Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR)². The Government should also consider the UN Guidelines on the Alternative Care of Children, endorsed by the General Assembly of the United Nations in November 2009³. The Guidelines are rooted in the UNCRC and set out in detail what the Convention requires of States with respect to the alternative care of children.

- 1.6 When the Bill is enacted, it will be the first amendment to the Child Care Act 1991 since the publication of the report of the Commission to Inquire into Child Abuse (the Ryan Report). It will also be the first amendment to the 1991 Act since the publication of the final report of the Oireachtas Committee on the Constitutional Amendment on Children. The passage of the Child Care (Amendment) Bill 2009 through the Houses of the Oireachtas therefore represents a great opportunity to ensure that the legislative framework for providing special care to children in need of the State's protection meets the highest standards, both in light of Ireland's international obligations and in light of the publication of the key reports mentioned above.
- 1.7 The comments below have been prepared with these considerations in mind. What follows is an examination of the most significant issues which arise with respect to the Bill's compliance with international human rights standards and its probable effect on children, rather than a comprehensive analysis of all its provisions.

² The case of *DG v Ireland* (39474/98) (2002) 35 E.H.R.R. 33, which went before the European Court of Human Rights, is of particular note in this regard.

³ United Nations General Assembly resolution A/RES/64/142 of 18 December 2009

2 Special Care Orders

- 2.1 Section 9 of the Child Care (Amendment) Bill 2009 provides for the insertion of a new Part IVA to the Child Care Act 1991 addressing the issue of special care. The existing provisions of the 1991 Act relating to special care never became fully operational⁴ and the High Court has been hearing applications for special care orders under its constitutional power of inherent jurisdiction⁵.
- 2.2 As indicated in my 2009 annual report to the Oireachtas, the Ombudsman for Children's Office has recently completed a number of investigations into HSE service provision for young people for whom special care placements have been sought⁶. Particular concerns have arisen from these investigations regarding difficulties in accessing special care placements and the interface between special care and other measures taken to ensure the welfare of young people in need of care and protection, in particular for those who have been charged with criminal offences.
- 2.3 In the absence of clear statutory guidance on how to approach cases in which the High Court was hearing an application for special care in respect of a child who was also the subject of criminal proceedings in the District Court, it fell to the High Court to determine how the different sets of proceedings should relate to each other. In the case of *HSE v S.S. (a minor)*, the High Court ruled that care must be taken to ensure that the invocation of civil jurisdiction does not stand in the way of the duty of the courts to exercise their criminal jurisdiction and in so far as there may be a conflict between the general welfare rights of a minor and rights relevant to the trial of offences, the latter should have priority and prevail⁷.
- 2.4 The effect of this and related jurisprudence was to inhibit the HSE from making applications for special care in respect of children charged with a criminal offence. Any obstacle that impedes the statutory body with responsibility for child protection from making such an application is a matter of grave concern to this Office. Where a vulnerable child exhibiting behaviour that would warrant placement in a special care unit also allegedly commits a criminal offence, this does not mean that his or her care needs have diminished or disappeared. The hiatus in the provision of care services this situation created has the potential to allow significant risks to arise for the children in question.

⁴ Part IVA of the Child Care Act 1991 was originally inserted by section 16 of the Children Act 2001.

⁵ See the Explanatory Memorandum to the Child Care (Amendment) Bill 2009, p. 1

⁶ See note 1 above.

⁷ *Health Service Executive (Southern Area) v. S.S. (A Minor)* [2007] IEHC 189, at paragraph 80

- 2.5 It is therefore most welcome that the Bill provides that nothing in the 1991 Act shall be construed as preventing the HSE from providing special care to a child who has been charged with a criminal offence but in respect of whom that charge has not been determined⁸. The Bill also provides that the HSE may apply for a special care order in respect of a child who has been found guilty of an offence and where, following such conviction, a custodial sentence was imposed and has been served; a suspended custodial sentence has been imposed; the making of a children detention order has been deferred; or a Children Act order has been made in respect of the child⁹.
- 2.6 The proposed section 23D(6) of the Child Care Act will prohibit the HSE from making an application for a special care order in respect of a child who is being held on remand and will oblige the HSE to apply to have such an order discharged should a child in special care be remanded in custody. While there are situations where detention on remand is unavoidable and in which it would be inappropriate to seek a special care placement for a child in these circumstances, that is not to say that it is always more appropriate to put a child on remand in a place of detention. In one case investigated by this Office involving a child held on remand in respect of whom an application for a special care order was also sought, the court acknowledged that the recent remands of the young person in question had been made for welfare reasons. It is not appropriate for young people to be held on remand in this fashion due to the lack of a suitable care placement. Indeed, research carried out by the Office of the Minister for Children and Youth Affairs on young people in remand pointed to the fact that young people with unstable housing arrangements are particularly vulnerable to detention on remand by virtue of their life circumstances and the limited availability of alternative care placements¹⁰. It further recommended that consideration be given to developing and expanding alternatives to detention on remand¹¹.
- 2.7 There is no difficulty in principle with the idea that the HSE should not be permitted to apply for a special care order in situations where a young person is remanded in custody appropriately - that is, when there is genuinely no other choice¹². However, this must be matched by improved practice in the use of detention on remand so that it is reduced to a minimum and young people have swift access to more appropriate care placements, if that is in their best interests.

⁸ See section 23D of the 1991 Act, as inserted by section 9 of the Child Care (Amendment) Bill 2009.

⁹ See section 23E of the 1991 Act, as inserted by section 9 of the Child Care (Amendment) Bill 2009.

¹⁰ Dr M. Seymour and Dr M. Butler, *Young People on Remand* (Dublin: the Stationery Office/OMCYA, 2008), p. 11

¹¹ *Ibid.*

¹² This would be in keeping with the State's obligation under Article 37(b) of the UN Convention on the Rights of the Child, which states that no child shall be deprived of his or her liberty unlawfully or arbitrarily. It requires further that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

- 2.8 Another issue which should be borne in mind is the reality that providing for the High Court to hear applications for special care while the District Court continues to hear applications for other care orders means that a child may be the subject of multi-jurisdictional applications. This can complicate care planning for children with special care needs and cause delays that are not without consequence. Frequently, by the time the civil application for special care is ready to proceed the child has incurred a criminal law infraction and may be the subject of Children's Court proceedings brought to safeguard their interests. At times, this is because the civil remedies and protections have taken too long to obtain. Once this time has elapsed and an exacerbation of the child's behaviour has occurred, the criminal law aspects of the case take priority and this does not operate in the interests of children.
- 2.9 It is acknowledged that there are distinct advantages to having the High Court hear applications for special care, not least because of the gravity of an order depriving a young person of his or her liberty. However, other care orders are in the first instance made in the District Court, which is more local and accessible to parties. The court may also be dealing with the child and family in other related matters and it may not be in the child's interests to deal with his or her different care and welfare needs in different court structures according to different timetables in different locations.
- 2.10 Court processes should be designed to promote child wellbeing while at the same time furthering other goals of the justice system. Bearing this in mind, consideration should be given to creating a more unified court process at a regional level with specially trained and properly resourced judicial personnel looking at the full spectrum of children's care needs. These proceedings should in so far as possible be inquisitorial rather than adversarial in process. Although this recommendation exceeds the scope of this legislation, it should be borne in mind in the context of any future reform of our court structures.
- 2.11 Finally, consideration should be given to modifying the proposed section 23ND regarding the powers given to the HSE to give consent to any medical or psychiatric examination, treatment or assessment in respect of the child. These are extensive powers that are exercised without court supervision or parental involvement. With respect to any treatment for a mental health disorder, safeguards equivalent to those set out in s. 25 of the Mental Health Act 2001 should apply in the context of children in special care¹³. In addition, it should be borne in mind that, by virtue of section 24 of the Child Care Act 1991, in any proceedings under the 1991 Act the court must have regard to the wishes of the child and to the rights and duties of parents. It would be preferable if no examination or

¹³ Section 25 of the 2001 Act relates to the involuntary admission of children and puts in place a number of safeguards including the need for the HSE to apply to the District Court before such an admission and the need for the prior examination of the child by a consultant child psychiatrist.

medical treatment were undertaken compulsorily without the prior approval of the court and without appropriate medical necessity first being established.

3 The right to be heard and represented

- 3.1 The Bill amends section 24 of the Child Care Act 1991 so that the requirement to regard the welfare of the child as the first and paramount consideration and to give due consideration to the wishes of the child shall also apply to children in special care¹⁴.
- 3.2 Section 24 qualifies the requirement to consider the wishes of the child by stating that such consideration shall be given “in so far as is practicable”. This falls short of the language suggested by the Oireachtas Committee on the Constitutional Amendment on Children in their proposed wording for a constitutional amendment. The Committee has recommended that the Constitution be amended to provide that the State shall guarantee in its laws to recognise and vindicate the rights of all children as individuals including the right of the child to have his or her voice heard in any judicial and administrative proceedings affecting him or her, having regard to the child’s age and maturity¹⁵.
- 3.3 The formulation favoured by the Oireachtas Committee is stronger than that contained in the Child Care Act 1991 in that it posits the State’s obligation to consider the views and wishes of children as flowing from the children’s right to be heard, with the only qualification being that seeking the views of the child may not be appropriate in light of the child’s age or maturity. This language is also more closely modelled on Article 12 of the UN Convention on the Rights of the Child, which provides 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.
- 3.4 In practice, many of the complaints received by this Office from children and young people – including those in care - relate to not being listened to and not being informed about important decisions affecting them, an essential pre-requisite to expressing one’s view in an informed manner¹⁶. The UN Committee on the Rights of the Child expressed its concern that the right to be heard was not adequately protected in Irish law and called on the State to ensure that children are provided with the opportunity to be heard in any judicial and administrative proceedings affecting them, and that due weight is given to those views in accordance with the age and maturity of the child, including the use of a guardian ad litem provided for under the Child Care Act of 1991¹⁷. It would therefore enhance the Child Care Act 1991 to harmonise the general obligation contained in section 24 of the Act with the UNCRC

¹⁴ See section 10 of the Child Care (Amendment) Bill 2009

¹⁵ Final report of the Oireachtas Committee on the Constitutional Amendment on Children, (Dublin: The Stationery Office, 2010), p. 108-109

¹⁶ OCO, *Annual Report 2009*, p. 24

¹⁷ UN Committee on the Rights of the Child, *Concluding Observations on the Second Periodic Report of Ireland* CRC/C/IRL/CO/2 (29 September 2006), at para.25

and also with the proposed wording of the constitutional amendment. This would also encourage a more consistent approach to listening to children's views among members of the judiciary and professionals involved with their care. While there are many examples of good practice in relation to listening to the views of children, practice remains uneven.

- 3.5 In addition to amending section 24, the Bill amends section 26 of the 1991 Act relating to the appointment of guardians ad litem by providing that the court may make such an appointment in cases where a special care order is being sought¹⁸. The Bill also provides greater clarity on the role of the guardian ad litem more generally. Although this amendment goes some way towards addressing the lack of specificity on the role of the guardian ad litem in the 1991 Act, a number of significant problems remain.
- 3.6 Currently, section 26(1) provides that the court may appoint a guardian ad litem for a child in proceedings under Parts IV and VI of the Child Care Act 1991 if it is satisfied that it is necessary in the interests of the child and in the interests of justice to do so. The Child Care (Amendment) Bill extends this provision to include special care proceedings but does not otherwise amend this subsection. In particular, it does not provide for children who are the subject of care proceedings to have access automatically to a guardian ad litem, nor does it even contain a presumption in favour of appointment. It is instructive to consider the contrast between the Child Care Act 1991 and the legislation governing the appointment of guardians ad litem in England and Wales, where courts must appoint a guardian ad litem in proceedings relating to the welfare of a child unless it is satisfied that it is not necessary to do so¹⁹.
- 3.7 A report commissioned by the National Children's Office in 2004 found that there were significant variations in the practice of appointing guardians ad litem in child care proceedings, with certain District Court judges tending not to appoint a guardian in very similar circumstances to cases where other judges may have appointed a guardian²⁰. The disparity was attributed to the lack of any precise guidelines in this area, and the fact that some judges may be unfamiliar with the role of the guardian ad litem²¹. The report went on to note that a guardian ad litem

¹⁸ Section 12 of the Child Care (Amendment) Bill 2009

¹⁹ For a full discussion of the contrast between the Irish system of appointing guardians ad litem and that which exists in England and Wales, see G. Shannon, *Child Law* (Dublin: Thomson Round Hall, 2005), pp. 249-250

²⁰ McQuillan, Bilson and White, *Review of the Guardian Ad Litem Service: Final Report from Capita Consulting Ireland, in Association with the Nuffield Institute for Health* (Dublin: National Children's Office, 2004), p. 36

²¹ The report found that GAL appointments were concentrated in certain parts of the State – the Dublin and Cork areas in particular being busiest for GALs – and this meant that when relevant cases arose in District Courts in other (mostly rural) areas, the presiding judge may simply have had no personal experience of using GALs and may have been unaware of the option to make an appointment. See *Review of the Guardian ad Litem service*, p. 36

was appointed in only 40% of cases in which a child could potentially have been represented by one²².

- 3.8 The absence of a right to representation or even a presumption in favour of the appointment of guardian ad litem is problematic in principle when one considers Ireland's obligations under Article 12 of the UN Convention on the Rights of the Child. However, that fact that there is also such inconsistency in the practice of appointing a guardian ad litem within the current legislative framework makes it correspondingly more important to amend the Child Care Act to include a right to representation by a guardian ad litem in any relevant proceedings. It is noteworthy that in the case of *HSE v D.K (a minor)*, the High Court recommended that in all cases where special care is being sought for a child, a guardian ad litem should be appointed for the child²³.
- 3.9 The Children Acts Advisory Board (CAAB) has produced very welcome guidance on the role, appointment, qualifications and training of guardians ad litem appointed under the Child Care Act²⁴. However, while the courts may consider the guidance in deciding upon the possible appointment of guardians ad litem under the 1991 Act, the guidance is not binding in law²⁵. It is unclear how effective the guidance will therefore be in bringing about more consistency in the exercise of judicial discretion in the appointment of guardians ad litem.
- 3.10 In addition, the Bill does not adequately guarantee the independence of guardians ad litem. Section 26(2) provides that the costs incurred by a guardian ad litem shall be paid by the Health Service Executive. In so far as it is possible that there may be a conflict between what is sought by the HSE in the course of care proceedings and what is recommended by a guardian ad litem, the independence of the guardian could potentially be undermined by the fact that his or her costs are also paid by the HSE. A guardian ad litem's costs should therefore be paid from an independent governmental source with no potential conflict of interest in the case.
- 3.11 Another aspect of the guardian ad litem's independence that is not adequately provided for in the Bill relates to the capacity to appoint and instruct a solicitor. The proposed section 26(2)(c) of the Child Care Act will allow the court to appoint a solicitor to represent the guardian ad litem and to give directions as to the performance of his or her duties, as

²² McQuillan, Bilson and White, *Review of the Guardian Ad Litem Service*, p. 53

²³ *H. S. E. -v- D.K. [a minor]* [2007] IEHC 488, paras. 57 and 59. See also Nicola Carr, "Guiding the GALs: A Case of Hesitant Policy-Making in the Republic of Ireland" in *Irish Family Law Journal* 2009 12(3).

²⁴ Children 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* (CAAB, May 2009).

²⁵ For a discussion of this point, see Aoife Daly, "Limited Guidance: the Provision of Guardian ad Litem Services in Ireland" in *Irish Family Law Journal* (2010) 13(1)

opposed to allowing the guardian to appoint and instruct a legal representative.

- 3.12 As regards the more general operation of the guardian ad litem system, the preface to the CAAB guidance pointed out that unless the issues of funding and management of the GAL service are addressed, the guidance cannot have optimum effect²⁶. Indeed, in the absence of a regulatory structure, it is unclear how the requirements of the guidance with respect to the selection and approval of guardians ad litem, the maintenance and updating of panels of approved guardians and the continuing professional development and training of guardians can be addressed.
- 3.13 The Government committed to agree a future policy of management and funding of the guardian ad litem service in the implementation plan for the report of the Commission to Inquire into Child Abuse (the Ryan Report)²⁷ and it is hoped that this policy will address all of the outstanding issues raised above. Consideration should be given to establishing a regulatory framework for guardians ad litem that is independent of the HSE, that is mindful of the existing work done by voluntary organisations in this area and that will monitor the operation of the system over time.

²⁶ Children Acts Advisory Board, *Giving a Voice to Children's Wishes*, p. iii

²⁷ Office of the Minister for Children and Youth Affairs, *Report of the Commission to Inquire into Child Abuse 2009 - Implementation Plan*, (Dublin: The Stationery Office, 2009) p. 54

4 Aftercare

- 4.1 The Bill provides for an amendment to section 45 of the Child Care Act 1991 so that aftercare services may be provided to young people who have been in special care, in accordance with that section²⁸. The Bill does not, however, guarantee children and young people who have been in care a right to aftercare services, nor does it place a corresponding obligation on the State to provide such services.
- 4.2 In its concluding observations on Ireland's most recent report on the implementation of the UN Convention on the Rights of the Child, the UN Committee on the Rights of the Child recommended that the State strengthen its efforts to ensure and provide for follow-up and aftercare to young persons leaving care²⁹. My Office raised concerns regarding the provision of aftercare services directly with the UN Committee prior to its examination of Ireland's most recent periodic report³⁰.
- 4.3 The UN Guidelines on the Alternative Care of Children provide greater detail on this point and elaborate on States' obligations in this regard. The Guidelines state that:
- Throughout the period of care, the State should systematically aim at preparing the child to assume self-reliance and to integrate fully in the community, notably through the acquisition of social and life skills, which are fostered by participation in the life of the local community.
 - The process of transition from care to aftercare should take into consideration the child's gender, age, maturity and particular circumstances and include counselling and support, notably to avoid exploitation. Children leaving care should be encouraged to take part in the planning of aftercare life. Children with special needs, such as disabilities, should benefit from an appropriate support system, ensuring, inter alia, avoidance of unnecessary institutionalisation.
 - Both the public and private sectors should be encouraged, including through incentives, to employ children from different care services, particularly children with special needs.
 - Special efforts should be made to allocate to each child, whenever possible, a specialised person who can facilitate his/her independence when leaving care.
 - Aftercare should be prepared as early as possible in the placement and, in any case, well before the child leaves the care setting.
 - Ongoing educational and vocational training opportunities should be imparted as part of life skill education to young people leaving care in

²⁸ Section 22 of the Child Care (Amendment) Bill 2009

²⁹ UN Committee on the Rights of the Child, *Concluding Observations on the Second Periodic Report of Ireland* CRC/C/IRL/CO/2 (29 September 2006), at para. 33

³⁰ Ombudsman for Children's Office, *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* (OCO, 2006), p. 21

order to help them to become financially independent and generate their own income³¹

- 4.4 In 2005, the Committee of Ministers of the Council of Europe issued a recommendation to Member States on the rights of children living in residential institutions and one of the basic principles contained in that recommendation was that a child leaving care should be entitled to appropriate aftercare support³². A report on the implementation of the recommendation across the Member States of the Council of Europe found, however, that in many States adequate supportive measures based on individual plans for aftercare were not in place and that evidence of the child's right to participate in developing such aftercare plans was generally not found³³.
- 4.5 In my 2008 annual report to the Houses of the Oireachtas, I highlighted concerns raised with my Office directly by children and young people that there does not seem to be a consistent approach to aftercare provision throughout the country. Although work is underway in both the statutory and voluntary sectors to improve aftercare provision, in 2009 my Office continued to receive complaints primarily from children and young people in relation to the aftercare provision available to them following their discharge from care. Concerns related to delays in aftercare planning, inadequate planning generally, lack of provision of after care support and lack of an allocated social worker. During the course of examining these complaints, my Office became aware of a wide variation in aftercare service provision nationally, with some areas having an aftercare policy and dedicated staff to work with children and young people leaving care, while others had no clear policy and limited services available.
- 4.6 The Health Information and Quality Authority's 2008 National Children in Care Report also found that in four of the centres inspected, there were insufficient or no plans in place to assist children in their preparation for leaving care. The recommendations made by inspectors highlighted the need for the development of leaving-care and aftercare plans within the statutory care planning process at least two years prior to a young person leaving care, in order to ensure the early identification of appropriate supports required for each individual following discharge from residential care. The inspection report also pointed out that 61% of children in residential care in 2008 were aged between 15 and 17 and that anxiety about leaving care is a significant issue for this cohort. This anxiety can be exacerbated by the lack of clear planning for the future³⁴.

³¹ UN Guidelines for the Alternative Care of Children, paras. 130-135

³² Recommendation (2005)5 of the Committee of Ministers of the Council of Europe to members states on the rights of children living in residential institutions (16 March 2005).

³³ Council of Europe, *Rights of Children in Institutions: Report on the Implementation of the Council of Europe Recommendation Rec(2005)5 on the rights of children living in residential institutions*, CDCS (2009)9

³⁴ Health Information and Quality Authority, *National Children in Care Inspection Report 2008*, (HIQA, 2009), p. 61

4.7 The Government has acknowledged that the provision of aftercare services across the country is inconsistent in its plan to implement the recommendations of the Ryan Report³⁵. The Plan stated that

“The HSE will ensure the provision of aftercare services for children leaving care in all instances where the professional judgement of the allocated social worker determines it is required (by November 2009)”.

4.8 It is unclear why the Bill does not contain a statutory obligation to provide aftercare services if the Government is committed to providing such services to all children who need it. Clearly, such a change would have resource implications and it would require a significant improvement in the level of service offered at present in particular parts of the country. However, it is essential that the State acknowledge that the obligation to provide support to children who are leaving care is no less important in principle than the obligation on the HSE under section 3 of the Child Care Act 1991 to provide care and family support services to those under the age of 18. This is especially important when one considers the particular vulnerability of children who have been in care and the fact that they are at greater risk than their peers of experiencing difficulties such as homelessness.

4.9 Indeed, I have already outlined my concerns to the Houses of the Oireachtas regarding the issue of homelessness and the operation of section 5 of the Child Care Act 1991³⁶. In particular, I highlighted concerns raised with my Office that children who are provided for in crisis/out-of-hours services for a considerable period of time but who are not in care cannot access aftercare services.

4.10 Considering the obligation placed on parents to support their children provides an instructive comparison with the State’s position vis-à-vis children leaving care. Parents are obliged by legislation to support their children until 18 years of age or, if the child is in full time education, until the child is 23 years of age³⁷. There is no corresponding obligation on the State to provide for children and young people who have been in its care. If the State’s aim is to act as a corporate parent to children who find themselves without effective parental care, this disparity is entirely illogical. In spite of the fact that most children do not need to demand support of their parents after they reach the age of 18, our laws nonetheless make sure that such an obligation is placed on parents. The situation for children in care is the opposite: although they are invariably in greater need of support past the age of 18, our laws do not place an obligation on the State to provide that support.

³⁵ Office of the Minister for Children and Youth Affairs, *Report of the Commission to Inquire into Child Abuse 2009 - Implementation Plan*, p. 48

³⁶ Ombudsman for Children’s Office, *Annual Report 2009*, p. 26

³⁷ Family Law (Maintenance of Spouses and Children) Act 1976, s. 5

4.11 The Bill needs to be amended to impose a positive obligation on the State to provide aftercare for every child in care whether they are in voluntary care, or in care under a care order, supervision order or under a special care order at least until they are 21. The care plan for each child should address this issue at least two years before the child's eighteenth birthday and foster care support should be extended to cover the entire period of aftercare of the child or young person. The young person should be involved in the case review of the care plan and his or her concerns should be noted and addressed in the review prior to leaving care. Where special difficulties arise, a connection with an appropriate support agency should be made in advance of the exit from care.