

OMBUDSMAN FOR CHILDREN / DO LEANAÍ

ANNUAL REPORT / TUARASCÁIL BHLIANTÚIL 2012



Ombudsman for Children Annual Report 2012



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MESSAGE FROM THE OMBUDSMAN FOR CHILDREN



I am pleased to submit to the Oireachtas my annual report for the period January 1 to December 31 2012 pursuant to Section 13(7) to the Ombudsman for Children Act, 2002.

This year, 2012, marked a significant milestone in the advancement of children's rights in Ireland: the holding of a referendum to include a new article on children in the Constitution.

In January 2005, in my first year as Ombudsman for Children, I called for the strengthening of the position of children's rights in the Irish Constitution. I was not the first; Judge Catherine Mc Guinness posed the question in 1993 in the context of the Kilkenny Incest Inquiry. However, when my Office was established it had been seven years since the notion was given any credence, dating back to the Constitution Review Group of 1996 and the UN Committee on the Rights of the Child in 1998.

Since my first meeting in November 2006 with the then Minister of State with responsibility for children, the late Brian Lenihan, my Office has worked tirelessly to achieve this objective. It was therefore a tough decision for me not to support the original amendment set out in the Twenty Eighth Amendment of the Constitution Bill 2007.

The reason for adopting this position was that I believed the 2007 wording did not go far enough in advancing certain fundamental children's rights. My commitment to seeking a worthwhile amendment was strengthened by opposition I encountered in advancing the realisation of those rights. Once such incident involved the first formal challenge to my authority in relation to my mandate to promote the rights of children in 2007, which came in the form of a High Court challenge with an attempted judicial review and injunction of a schools project undertaken by my Office, the Big Ballot; this was an exercise in democratisation which involved the dissemination of information to children about their rights. In the course of the hearing I was accused of "*undermining the social order*" with the suggestion that I was either "*ignorant of my legislation*" [the Ombudsman for Children Act 2002] or "*wilful*". While the challenge itself was unsuccessful, it was an early lesson for me in the underlying resistance to the notion of accepting children as individuals and active participants in the exercise of their rights.

It is impossible to isolate a single catalyst for the change that culminated in the publication by an Oireachtas Committee on the Constitutional Amendment on Children in 2010 of a proposal to amend the Constitution. It resulted from an amalgam of occurrences dating back years in Ireland's shameful history of mistreating children, as well as the fall of the legislative framework relating to statutory rape in 2006 as a result of the decision of the Supreme Court in the CC case. However, central to the shift in the public psyche about children, in my view, is the chronicling of egregious breaches of the fundamental human rights of thousands of voiceless children in Ireland in a number of reports published over the last number of years.

I wish to reference in particular the report of the Commission to Inquire into Child Abuse, which documents gross, systemic, and widespread violations of the rights of children placed in institutions in Ireland during the period 1936 to 2000. For me, as Ombudsman for Children, I see it as illustrative of the breadth of power that exists to this day over children's lives by adults across civil, public and judicial administration and how the arbitrary use and abuse of that power has and can destroy the lives of many children.

It was no coincidence that the vast majority of children who suffered in this way came from marginalised backgrounds. It is self-evident that it is easier to violate the human rights of people who are not socially powerful. Indeed, one of the core characteristics of human rights is that they act as a bulwark against the arbitrary exercise of power by those who have it over those who don't. A society that is fully committed to promoting and protecting human rights is one that establishes systems of accountability and redress, preventing anyone from exercising power in this way.

This is why, in addition to an express statement of children's rights, I pressed in particular for the inclusion in the Constitution of the two bedrock principles of children's rights: the obligation to consider the best interests of children when making decisions affecting them and the right for children to be heard across civil, public and judicial administration.

In the experience of my Office, the absence of clearer protection for children's rights in the Constitution has had an adverse effect on children across a wide range of areas. The organs of the State with which my Office deals most regularly are the Oireachtas, Government departments, civil and public administration, local authorities, the HSE and schools. While much of the debate about the Constitution centred on the impact that any proposed amendment could have on judicial proceedings, I would argue that decision making by civil and public administration is much more likely to affect larger numbers of children and families.

When the current government announced it was going to positively progress the issue I held meetings in early 2012, accompanied by retired Supreme Court Justice, Judge Catherine McGuinness, to outline my views and experience, at the highest political level with the Taoiseach, the Tánaiste and the Minister for Children.

I am delighted, having hoped in my tenure as Ireland's first Ombudsman for Children to see a strengthening of children's rights in the Constitution. I know that it is not a panacea. Constitutional change is not in and of itself sufficient to bring about the fundamental change of culture that is required.

This report illustrates why the advancement of children's rights in Ireland is indeed an unfinished project.

A handwritten signature in black ink that reads "Emily Logan". The signature is written in a cursive style. A thin, horizontal yellow line is drawn across the page, passing through the middle of the signature.

Emily Logan
Ombudsman for Children

2 ORGANISATIONAL DEVELOPMENT

Corporate Services

Financial Control

The 2012 financial allocation of the Ombudsman for Children's Office was €2.112m.

As set out in Sections 17(1) and (2) of the Ombudsman for Children Act, 2002, the Ombudsman for Children is responsible for preparing Financial Statements and for ensuring the regularity of the Office's transactions. The functions underpinning these responsibilities include authorising and monitoring payments for goods and services, tendering processes, the operation of payroll, and compilation of monthly returns.

The Financial Statements are subject to audit by the Office of the Comptroller and Auditor General. The audit of the 2011 accounts took place in April 2012. Financial Statements for a particular year are generally not audited at the time of the relevant annual report's publication. Once approved by the Office of the Comptroller and Auditor General, they are published on the OCO's website and annual accounts for all years up to 2011 are available at www.oco.ie.

CrowleysDFK Chartered Accountants provided accountancy services to the Office during 2012.

Human Resources

The Office has an approved complement of 15 staff. The use of this key resource to meet demands that continue to increase year-on-year, both in terms of volume and complexity, remains an ongoing challenge. For the third year running I wish to report an over reliance on our Investigation panel due to the volume and complexity of complaints received.

The roles and functions of all staff in the Office are reviewed on a continual basis.

Millennium House – Use of Premises

Along with running human rights education workshops for visiting groups of children and young people, and a pilot equivalent for post-graduate students the Ombudsman for Children continued to make the facilities in Millennium House available as a venue for appropriate events focused on the rights and welfare of children and young people.

For example, consultations were held here with young people by the National Children's Hospital Youth Forum; BeLoNG To; EPIC and the Northside Partnership.

The HSE also used the space on a number of occasions.

Training and Professional Development

The Office successfully organised and ran in conjunction with Queen Margaret University Edinburgh the Professional Certificate in Ombudsman and Complaint Handling Practice course. The course was attended by the OCO Caseworkers and officers from a number of other Ombudsman's Offices in Ireland and the United Kingdom. The costs of the course were shared across attendee offices. Following the course all caseworkers in the Ombudsman for Children's Office received a Professional Certificate in Ombudsman & Complaint Handling Practice.

Legal Services

In line with the Department of Public Expenditure and Reform policies the Office sought to enter into a shared service arrangement during the year in relation to tendering for Legal Services. An invitation to tender for the provision of legal services was published in June 2012. Following this process a panel of firms to provide legal services was set up. Ronan Daly Jermyn provided legal services to the Office during 2012.

Media

As with previous years, there was significant media interest in, and wide-spread coverage of, the Office's work. The issue of children's rights more generally was also widely discussed by the media and other commentators in the context of the Children's Referendum in November 2012. Interestingly, although the Ombudsman for Children is an Independent Officer of the State, with statutory responsibility to promote and monitor children's rights in Ireland, the media were reluctant to conduct interviews about the proposed referendum citing legal fears of biased coverage. This was despite a number of high-level meetings prior to the referendum campaign where it was explained that the Ombudsman for Children was free to discuss the referendum but had no role in trying to influence the electorate about how to vote and therefore would not sit on any panel discussion. However, in the run up to the referendum the Ombudsman for Children's work in many areas received significant media coverage.

Public Affairs

The Ombudsman for Children reports directly to the Oireachtas and has a statutory mandate to give advice to Government Ministers on laws and policies that affect children. The Ombudsman for Children had significant engagement with Government including the Taoiseach, the Tánaiste and the Minister for Children and Youth Affairs in relation to the wording of the Bill to amend the Constitution. The Ombudsman for Children also committed to, and invited all parties to meet with her prior to the publishing of said Bill.

In addition to her statutory obligation to lay her annual report before the Houses each year, the Ombudsman for Children welcomes any opportunity to meet with members of the Oireachtas to discuss her work. In 2012 the Ombudsman for Children and members of her staff met with the Joint committee on Jobs, Social Protection and Education in March to outline areas of the OCO's work that are pertinent to the Committee and the Joint Committee on Health and Children in June to discuss the Children First Bill 2012.

Website

The Office's website remains a key tool for communicating with the public. At a time when our human resources were under pressure, particularly on our complaints team, the website proved an invaluable method of assisting potential complainants with understanding how and when we can help them, allowing them the facility of completing a complaint form online in addition to providing a cost effective way of communicating on a large scale. It also provides an efficient way of ensuring that all of OCO's policy documents, education materials and research were available to download as well as making sure that news items, upcoming events and activities were readily accessible on the website's homepage.

Overview of Energy Usage in 2012

In December 2009, the Minister for Communications, Energy and Natural Resources, gave effect to Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006, and made the 'European Communities (Energy End-use Efficiency and Energy Services) Regulations 2009 (S.I. 542 of 2009)'. The Regulations require public sector organisations to report annually from January 2011 on their energy usage and actions taken to reduce consumption.

In 2012, the Ombudsman for Children's Office used 88.197 MWh of electricity compared to 88.225 MWh in 2011.

Actions Undertaken in 2011

Corporate services continued to ensure that non-essential electrical equipment was shut down at night.

In line with our efforts to reduce energy consumption the OCO continues to operate an internal recycling system.

3

COMPLAINTS AND INVESTIGATIONS

The complaints and investigation function is a core and busy function of the Office. Under the Ombudsman for Children's Act 2002, the OCO can investigate complaints made by children and young people, or by adults on their behalf, about public organisations, schools or hospitals. This is a free, independent and impartial service.

Distinct Provisions

The 2002 Act provides for the operation of the complaints and investigations functions by the Ombudsman for Children. These legislative provisions set out standard maladministration grounds for the review of complaints and the conduct of investigations. Given that the effect of an action on a child must be the subject of any investigation conducted by the Ombudsman for Children and that children themselves can bring complaints to the Office, the Act sets out a range of specific legislative provisions which take account of the particular vulnerability of children.

1. Obligation to have regard to best interests of the child

The Act provides that in the performance of her complaints and investigations functions, the Ombudsman for Children shall have regard to the best interests of the child.

2. Obligation to give due consideration to the child's wishes

The Act provides that in the performance of her complaints and investigation functions, the Ombudsman for Children shall, in so far as is practicable, give due consideration, having regard to the age and understanding of the child, to his or her wishes.

Overview

The information obtained through the receipt, examination, and investigation of complaints by the Office continues to provide valuable insight into the experiences of children and families in dealing with public services. It is also an investigation mechanism that is more accessible to vulnerable citizens. The continued examination of complaints handling provides valuable performance feedback to the public service providers concerned.

Once again in 2012, it highlights a lack of awareness of the impact of public administrative decision-making on the lives of children and their families. Decision-making that affected

children directly and sometimes indirectly was not informed by its impact on the children concerned; nor was it informed by children's rights principles. In particular, the parameters of the child's best interests and the child's right to be heard were not used to guide administrative decision making to any great extent, if at all.

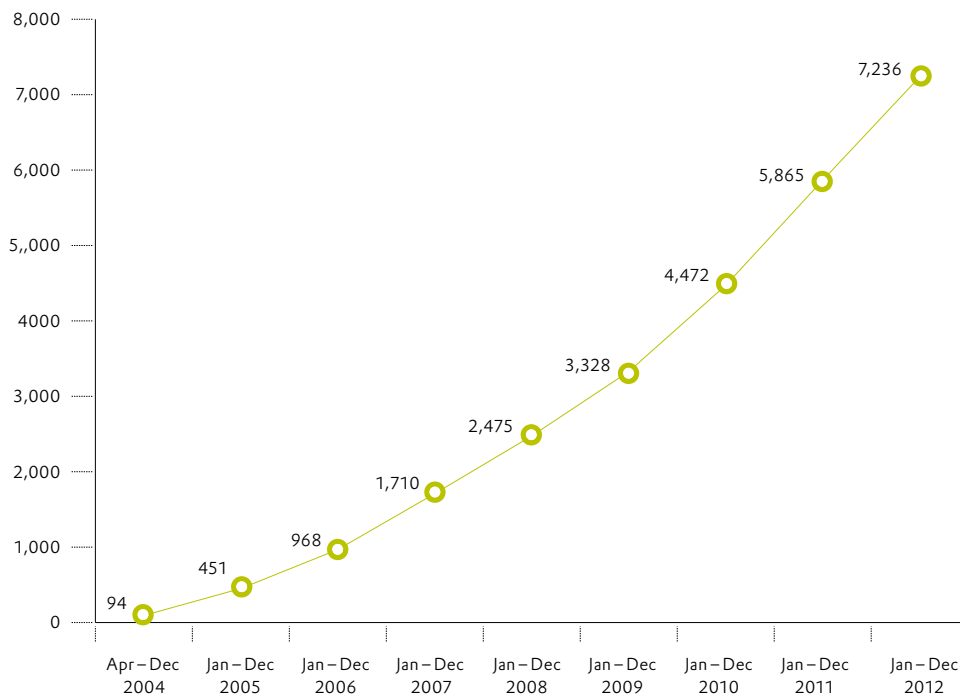
In many cases there are examples of an excessively bureaucratic approach. There are instances where health professionals had indicated in writing a child's need for therapy or equipment but this was stymied in an administrative process that was not about the interests of the child. The absence from the decision-making process of an awareness of how quickly harm can be done to children is very stark, by depriving children of education, separating them from parents, lack of access to siblings.

Statistics

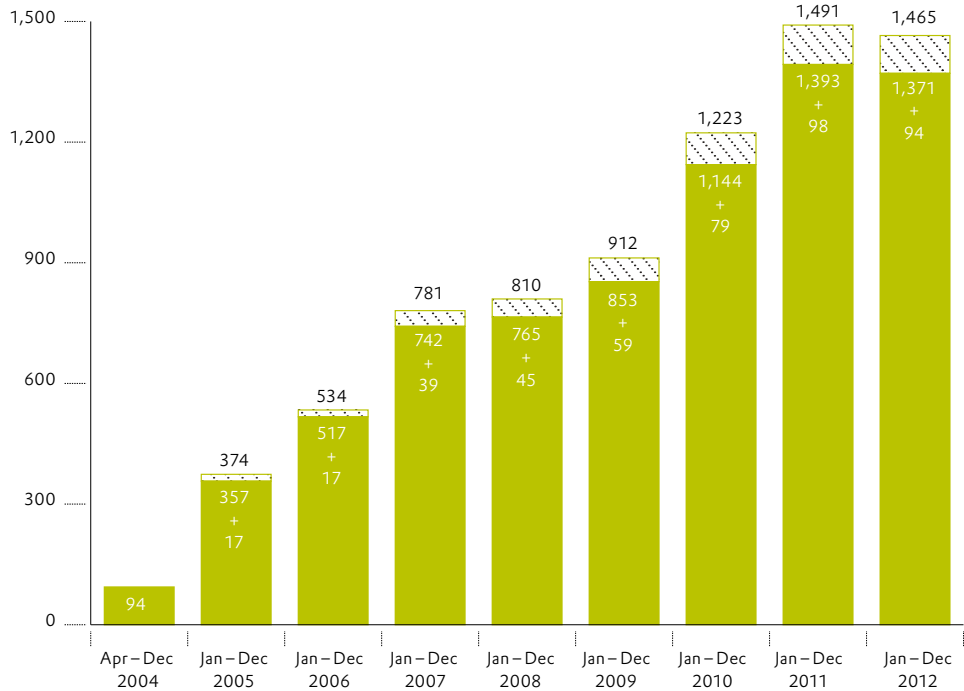
Complaints Dealt with in 2012

In comparison to previous years, 2012 maintained the number of complaints received by the Office with 1,465 complaints dealt with over the course of the year representing 1,371 new complaints received and 94 carried over from 2011. This entails a 1.5% decrease in the number of complaints received in comparison to the previous year but still means that the Office is dealing with a 17% increase in workload since 2010.

Cumulative Growth

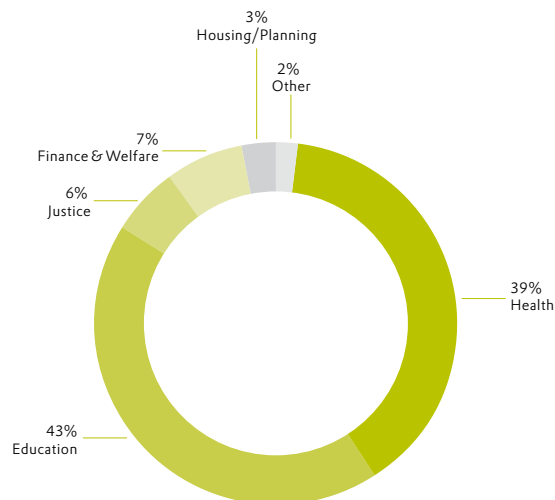


Number of Complaints Dealt With



The chart below shows the sectoral distribution of the total of the 1,371 new complaints received:

Complaint Category (January – December 2012)



Comparison between the categories of new complaints for 2011 and 2012 shows that:

- the overall proportion of complaints relating to Health matters rose from 32% to 39%
- the overall proportion of complaints related to the Justice sector increased from 5% to 6%;
- This year we are able to show that Finance and Welfare constitutes 7% of our total complaints.
- The Other category at 2% is made up of issues such as Social, Media, Sports and Community Facilities.

Further detail of categories

Education

The table below shows the main categories of new complaints received in respect of education matters:

Education complaints 2012 (43% of all complaints)
Top 5 Sub-Categories
Handling of Allegations of Inappropriate Professional Conduct
Handling of Peer Bullying
Education Policies, Schemes and Curriculum
Expulsion, Suspension and Enrolment
Special Needs Resources

Health

The tables below show the sub categories of new complaints received in respect of health matters. Health has been broken into two categories; i) Health and ii) Family Support Care and Protection making up a combined total of 39% of all complaints received in 2012. The new category of Family Support Care and Protection allows us to further identify what issues are being brought to the Office as complaints.

As an Office we took a deliberate decision to disaggregate the Health (Hospitals, Community, Mental and Public Health) from the Family and Child Protection complaints. The figures below clearly highlight the importance, for children, of the establishment of the new Child and Family Support Agency so that the child protection and welfare element of the HSE can be separated out from the mammoth task associated within the overall Health remit.

Family Support Care and Protection Complaints in 2012
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Top 5 issues (28% of all complaints)

Child Protection

Alternative Care

Family Support

Other Social Work Services

Other

Health Complaints in 2012

Top 5 issues (11% of all complaints)

Community Care Services

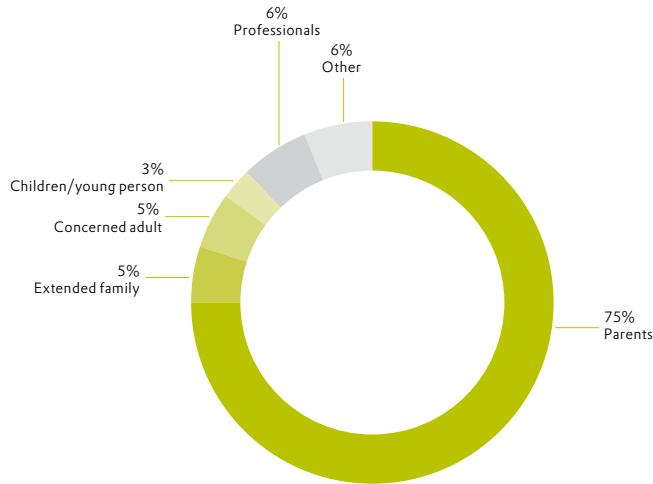
Hospitals

Other Health Service

Mental Health Service

Public Health Services

Complainants



Each year, parents continue to be the principal advocates for children and represent the majority of complainants to the Office.

Issues arising through complaints examined

Children in care accessing Child and Adolescent Mental Health Services (CAMHS)

The Office has completed a number of investigations where the issue of mental health service provision for children in care has arisen. In particular this has highlighted issues regarding co-ordination and communication across Children and Family Services and Child and Adolescent Mental Health Services (CAMHS). Key issues that have arisen include:

i) Accessibility for children in the locality/area where they are placed

In investigations concluded by the Office, the young people were not able to access local CAMHS services in the area where they were residing in Special Care and Foster Care, as they came from outside the catchment area or did not have an allocated social worker in the area (as the case had not been transferred although the foster family had relocated). In both cases the young people were redirected to CAMHS in the area where they originated.

In one case the CAMHS from the originating area did not offer a service as the young person was no longer residing in the locality resulting in them not being able to access mental health services from either area. The young person subsequently accessed services through a different CAMHS. This case raises concerns about the level of supports that can be reasonably expected to be provided given the distance involved in accessing such services, and may involve either the young person or CAMHS travelling considerable distances. In addition it also highlights the inconsistencies between policies in different Child and Adolescent Mental Health Services given that the young person was eventually seen by a third CAMHS service.

Following the intervention of this Office, the issue of access to services in the area of residence was subsequently resolved for the young person where the issue remained ongoing and the local CAMHS policy was amended to reflect this. The Office has recommended that

- children in care should receive mental health services in the locality where their placement is; and
- that a CAMHS National policy should be developed on the delivery of the service, with particular regard to the treatment of children in care, to ensure a consistent approach is adopted in all areas.

ii) Liaison and Integration between Children and Family Services and CAMHS

The integration of CAMHS assessments and recommendations in the Care Planning process has also been raised. CAMHS assessments can provide relevant and critical information to assist in the Care Planning process in order to ensure that the child's mental health needs are met and to guide appropriate interventions and therapies to assist with any difficulties the child is experiencing.

In an investigation completed in 2012, the Office found that while psychological and psychiatric assessments had been obtained, the recommendations arising from these were not adequately considered, included or addressed in the young person's Care Plan.

In addition, the adequacy of follow-up and communication by CAMHS directly with children, their parents or the Children and Family Services was also highlighted as deficient.

Early intervention and provision of appropriate treatment and therapies for children with mental health problems is essential in order to prevent escalation of any difficulties. The issue of mental health service provision was also highlighted in the Independent Child Death Review.

Given the establishment of the Child and Family Services Agency, which is becoming operational in 2013, and the possibility that CAMHS will continue to be delivered under the auspices of the HSE, it is vitally important, specifically in the transition process that both agencies work together. Effective and consistent interagency working is required to ensure that an holistic and integrated approach is taken in the provision of mental health services to children in care or who are receiving family support services.

Children in Care who require housing to facilitate access and reunification

This year, the Office has received a number of complaints regarding the handling by State agencies of the housing needs of families who have children in care. Parents and children themselves brought complaints that children in care were sometimes precluded from having access or being reconciled with their family because of their parents' physical environment, even when the HSE is supportive of such access or reunification. When the physical environment is directly provided (by a local authority) or subsidised (through rent allowance) by the State, it is unclear how agencies are working together to fulfil their respective statutory duties and support families.

This raises particular concerns as the families or children concerned may not have access to appropriate advocates. Families have also reported that there were legal issues with pursuing complaints with agencies that are not directly party to care proceedings.

In one case, the local authority refused to grant permission for a child, who was previously in care, to reside with his mother on foot that it would create overcrowding in the mother's local authority flat. The child was residing with his mother under a supervision order. In another case, a local authority refused to add children to their relative's application for housing because the relative did not have 'custody' but the children were placed with him under a Court sanctioned care order. On these and other occasions, the HSE, who is the statutory agency responsible for care and protection of children, was of the opinion that the children's best interest would be best met by the children being reunited with their family under supervision order or by building up overnight access with their family with a view to potential reunification.

In the majority of the complaints to this Office, the HSE social worker directly and actively advocated for other State agencies to meet the family's housing needs. However, when these families are local authority tenants, some local authorities do not take into account the housing needs of children in care to facilitate access or reunification. In some situations, it appears to trigger a vicious circle whereby children are not included in their family's housing needs assessment until they are actually with them while the HSE cannot work at reunifying them until the physical environment is appropriate. This issue is sometimes compounded by the fact that the Department of Social Protection will give rent allowance according to the family's housing needs as assessed by the local authority (i.e. if children in care are not included in the family's housing needs then no payment will be made with respect to them). Local authorities have therefore a key role to play in the physical environment side, which in turns has a key role in facilitating the development of family ties.

Following a number of cases received by this Office concerning one particular local authority, this Office wrote to said authority to bring the issue to their attention and enquire about their practice in this regard. The local authority replied that all applications, on receipt of the necessary documentations, are processed according to the Allocations scheme. The local authority further outlined that the HSE may refer an applicant/tenant to the Council for their application to be subjectively considered under exceptional welfare

grounds or for guidance in this regard. However, the local authority explained that it *‘does not have any legal standing in child protection matters but rather this function is vested with the Health Service Executive’*.

This Office is of the view that, while the responsibility for child protection and children in care is vested with the HSE in the Child Care Acts, all State agencies have an obligation in national and international law to support the family. Moreover, Children First outlines that *‘no one professional has all the skills, knowledge or resources necessary to comprehensively meet all the requirements of an individual case. It is essential, therefore, that all professionals and organisations involved with the child and his/her parents/carers deliver a coordinated approach.’* One of Children First key principles states that *‘reunion should be considered in the context of planning for the child’s future.’*

Therefore, where the HSE is of the opinion that the family’s environment frustrates the HSE’s efforts to potentially reunify a family and when this environment is provided by another organ of the State, it would appear reasonable that there should be some sort of collaborative approach between all the relevant State agencies, including local authorities. This would help provide a solution that would be in the child in care, and their family’s, best interest. There is a human cost to a lack of effective collaboration between State agencies in term of a loss of opportunities to rebuild families and the ensuing impact on the child. There is also an economic cost for the State as a whole to slowing family reunification, expending social work resources on advocacy for public services or having a child in care rather than providing adequate housing for the family.

Such a collaborative approach would appear in line with the current drive for public service reform which aims at providing more integrated and cost effective services.

Transfer of cases between HSE Social Work Offices

A further issue highlighted through the investigations work of the Office relates to the transfer of children in care between HSE Social Work Offices in different areas of the country. Case transfer policy states that where children in foster care move from their HSE area of origin, then cases should be transferred to their local social work service 'as soon as possible' and that a statutory review should be organised by the original area within three months of the young person's move, with the original area remaining responsible for statutory review and visits for a period of up to one year.

The information obtained has highlighted significant delays in the transfer process being initiated in some cases which ranged up to 4 years and also delays in the receiving Social Work area accepting the transfer. In one case the transfer was not accepted due to resource constraints and the Office found that there was a substantial waiting list of transfer requests, a situation that had been ongoing for 3 years, with only child protection cases being accepted. In addition there was no mechanism for review and prioritisation of the transfer requests.

In situations where cases are not transferred in line with the National Policy, children remain dependent upon geographically distant social work services which impacts on the level and range of support and intervention available. The real effect of such delays is of serious concern. In one case, the family reported a lack of sufficiently frequent contact with the social work department due to the distance and travelling involved and a lack of local support to assist them which became more urgent when difficulties arose.

The Office has recommended that HSE National should ensure that the full and consistent implementation of the Social Work Case Transfer Policy is progressed as a matter of priority.

Children with Chronic Illness and/or Disabilities

The Office has received a number of complaints relating to home care support for children with serious illnesses or significant disabilities where a recommendation has been made that the children be discharged home. Families raised concerns that the support services required to facilitate this were delayed due to issues of funding remaining to be resolved or difficulties in sourcing and providing the required supports. There were additional concerns raised that support was agreed but not implemented, and also in relation to the level and adequacy of the support provided.

The children concerned required a range of supports, including home nursing care to assist with their significant medical needs whilst at home, or home care support to provide assistance given the extent of the child's needs.

Parents have raised concerns that such difficulties have resulted in:

- Their children remaining hospitalised for longer periods than necessary and thus not able to reside with their families. One family reported a delay of 10 months before their child could return home.
- The impact on their child and his/her development and on family life of extended and unnecessary periods of hospitalisation.
- Children who have returned home not receiving, or facing delays in, receiving the level of care recommended, thus creating the potential for home placements to break down due to the inadequacy of home supports and leading to further hospitalisation.
- Onus on parents to actively seek to address these issues themselves and to provide care for seriously ill children.

In addition, as reported by one hospital, there is the knock-on effect whereby delays in discharging children can lead to delays for other children accessing hospital care.

It is of serious concern that such delays and difficulties can arise when it is agreed by the medical professionals involved that it is in the best interests of the child to return home. It appears that a number of administrative difficulties have impacted on the area. In particular there appears to be a lack of specific funding/budget for home care packages for children who require this type of support and intervention. Whilst care is provided, this is through hospitalisation and funded through the hospitals budget and each HSE region, when potentially a less expensive and more appropriate care for the child's needs could be available if they were supported at home with their family.

Other difficulties arising relate to the availability of home nursing care for a variety of reasons, including unavailability of nurses with the required Paediatric qualification or ICU nurses, and nurses unavailable in the particular area or for the required times. In addition, in one case while the nursing agency was unable to provide the required hours, the HSE were precluded from accessing these through another agency because of procurement restrictions. The availability and delay in provision of required training for home care assistants was also raised.

Based on the information provided through complaints, it appears that there is no National HSE approach or policy with regard to home care support for children, with support provided based on the availability of local HSE funding and/or services.

This Office has highlighted this issue in previous annual reports, specifically in 2010 regarding delays in onward placements for children and young people and also through a case study in 2011. It is of concern that these types of difficulties continue to re-occur and indicates the need for a national approach by the HSE to ensure such children's needs are adequately and appropriately met.

The Office understands that this issue is currently under consideration by the HSE arising from cases brought to their attention through the hospitals.

Cost of Maladministration

A key strategy for this Office is to ensure that at a time of national recovery, the State fulfils its obligation to protect all children's fundamental rights.

In doing this we try to ensure that decision makers consider the true effect of any actions which may directly or indirectly affect children. This is not to unilaterally intervene on budget cuts or reduction in services; rather it is to seek to ensure that the subsequent administrative actions and decisions which are made are fair and equitable.

Throughout 2012, there were increasing examples of administrative actions and decisions of public bodies which:

- Had far greater impact and adverse effect than the decision makers may have intended
- Appear to have missed the opportunity to be more cost effective or cost neutral
- Appear to have missed the opportunity for greater integration between public bodies

It is important to note that in the examples provided below, the actions of the public bodies were in adherence with their own guidelines or protocols. However, when considering the effect on the child and the opportunity for better administration which may have been missed, it is important that those actions are highlighted.

Home Care packages

The Office has examined a number of cases of children who had serious medical needs that required a Home Care package to be put in place before they could be discharged from hospital to be with their families.

The benefits to some children being cared for at home are often commonly agreed. When children who could have been cared for at home have had to remain in hospital due to the absence of suitable home care packages, this can have an effect not only on the child but it also places a huge strain on families, including siblings. Having a child remain in hospital has a significant impact on a family's resources, including the emotional cost. Additional avoidable pressure is also put on the acute hospital setting, with resulting knock on effects for other children.

While there are clearly clinical decisions to be made to ensure the best care is made available to the children in question, in some of these cases a significant impediment to children being discharged from hospital related to the availability of funding for home care packages or of qualified, experienced nurses to assist the family which falls to the HSE to provide.

The lack of a national approach to home care packages for sick children has led to unnecessary time spent by staff in acute services trying to organise with individual HSE areas for a child to go home. The cost of caring for a child in an acute setting when they could be nursed at home needs to be reviewed. There is a need for a national standardised approach to home care packages for sick children to ensure that the best interests of the child and family are not ignored.

Education and care for children with special needs

Complaints received have highlighted the following issue regarding child care places.

The Early Childhood Care and Education (ECCE) Scheme funds places in crèches for the pre-school year but attendance may be dependent on other supports such as a pre-school assistants being made available by other agencies. Those decisions may occur on a discretionary basis and vary from region to region.

If there is a divergence between the child's needs and the support offered by other agencies, then the child may not be in a position to attend and avail of early child care. In addition to missing out on early education and the positive benefits that this brings, it can also place an extra burden on such families. In some instances, child care (already paid in advance by the State through ECCE) may not be utilised.

There are also instances where crèches are refusing to enrol pupils with special needs unless they have such supports secured in advance. That is a situation which negates all the good intentions behind the scheme.

Communication of decisions by public bodies

Brevity of rationale

Complaints received at this Office typically tell of a family or advocate's experience in dealing with the public body or school in addition to their actual concern or complaint. The need for good communication in those circumstances cannot be overestimated.

Through preliminary examinations the Office looks to determine whether the matter can be resolved at local level and whether there is a need for further investigation. In both public bodies and schools this Office has seen reasonable or well-grounded decisions being briefly accounted for to complainants. In previous Annual Reports this Office cited the example as problematic, to both the complainant and the school, of Board of Managements who did not provide sufficient rationale for decisions or explain their views when dealing with complaints. In certain circumstances their communications did not clearly or sufficiently represent the intense level of consideration of issues that did occur – thus doing themselves a disservice.

Following this, complainants expend considerable time and energy seeking further information on decisions made or on how they can access such supports or resources in future. This has an obvious effect on the resources of the body or school being complained about. Explaining clearly why a decision has been made is an example of good administration.

Good examples of complaint handling are cases where schools and public bodies agree a means of suitable communication with complainants where there are difficulties. Where applicable, they also set out how the involvement of third party organisations such as the HSE or an Garda Síochána will be dealt with.

Communication of resource issues

For 2012 we have seen the issue of budgetary constraints and resources having a greater influence on how decisions are being explained and communicated to members of the public.

Frequently letters refusing applications or requests for services openly advise of regional or national difficulties such as recruitment embargos, moratoriums and the economy as being the primary reason for refusal.

Instances where parents and individual children are placed in a direct conflict between service providers and public bodies with respect to resources are increasing.

The language used with respect to our current situation as a nation is that of a recovery period. In the experience of complainants, the interim steps of what the public body is doing to remediate the current adverse effect is not provided. This Office would advance that members of the public are fully aware of the financial difficulties that are collectively faced by public bodies and service providers. What is of greater import to parents and advocates are the steps being taken to resolve matters – this should be more regularly communicated in individual interaction and on wider media. This is fairer on both the complainants and public bodies.

Clarity in communicating criteria

In circumstances where parents and advocates are applying for services or resources for children, and are ultimately unsuccessful, we are seeing how the effect of poorly written and ambiguous criteria only serve to add to the frustration of complainants seeking to make sense of decisions.

An example of this is the use of the phrase “nearest suitable school” by the Department of Education & Skills in a number of schemes which it operates. We have seen numerous lengthy exchanges between parents and the DES which show how the objective and subjective nature of what *suitable* means is extremely problematic. When the phrase is coupled with “is or can be resourced” as a mechanism to determine where a child should attend school in order to be eligible for transport, grants, special educational resources etc. it creates even greater confusion.

Parents then seek professional reports, medical opinions or school’s views in order to validate their own view in circumstances where they perceive that the driving force behind decisions may be financial rather than the attainment of an unclear standard of what *suitable* is. In the majority of complaints received the DES’s standard of what *suitable* is, is invariably lower than that of the parents and/or professional opinion. This additional burden on parents is particularly unfair in circumstances where the nearest school does not currently have resources in place to address the child’s needs and agrees with the complainant that the child’s needs are better served elsewhere.

The issue of parental choice being the determinant factor in such instances, while relevant, does not reduce the need for transparency and fairness in the manner in which

resources are provided by the DES. This Office has recommended and requested greater clarity from the DES in relation to the operation of such schemes so that parents and advocates can make informed educational choices in a timely manner to minimise adverse effect on children.

Focus on local resolution

In 2012 the Office worked hard at encouraging schools to resolve issues at a local level. As an Ombudsman's office the emphasis is on ensuring that local resolution has had an opportunity to address appropriate complaints. The relationship between school, parents and children is unique and the benefit of early and timely resolution cannot be overstated.

Schools whose actions have been the subject of complaints to this Office will have experienced this approach.

On suitable cases, if we identify difficulties relating to access to or problems with the complaints procedure being operated we will engage with the school and the complainant to advise our view that local redress needs to occur. This will involve giving our view on how the complaint could be better handled or encouraging an alternative approach. Each side is aware that it is not a finding on the actions being complained about, rather it is to allow parties a space to resolve without the need for further actions.

For the majority of case this approach is well received and the intention behind the approach is appreciated. In 2012 this approach led to resolution of complaints at a local level in 30 schools.

St. Patrick's Institution

From July 1st 2012 St. Patrick's Institution came within the investigative remit of the Ombudsman for Children's Office. In this first six months we received a total of 4 complaints, all from parents or advocates of the young people.

A common theme related to a lack of communication with parents or advocates regarding incidents that may have happened to the young people while in the prison. From the small number of complaints received to date, the general theme would suggest that parents or advocates receive very little contact from the prison authorities and trying to get information remains difficult. The process of arranging visits also appears to be difficult and the withdrawal of family visits due to disciplinary sanction is an issue which has been brought to our attention through contact with parents.

Even at this early stage there are a number of concerns that emphasise the need to stop the incarceration of children in a custodial environment as soon as possible. From our on-going contact with young prisoners and their families it has been conveyed to us that a culture of violence prevails in the juvenile section of St Patrick's and assaults and injuries are commonplace. This Office remains concerned that opportunities for rehabilitation are lost while this culture continues to prevail.

In relation to the ability of St. Patrick's to carry out internal investigations there are a number of issues that have been raised directly with the management of St. Patrick's by this Office. In one of the cases this Office found the method of internal investigation to be questionable. This case was brought to the attention of Judge Reilly, the Inspector of Prisons, and the case referred to the Irish Prison Service external investigation team.

In this case the Ombudsman for Children has submitted general comments about procedures to St. Patrick's for attention, they include:

- Why young people under eighteen, with poor literacy, are expected to submit a written complaint
- What kind of assistance, if any, is provided to a young person who wishes to make a complaint
- The fact that an allegation of assault did not elicit a child protection response, in line with Children First guidelines
- In this case the internal report suggests that in the absence of CCTV evidence, that a complaint of assault by a staff member against a young person under eighteen cannot be verified and as a result the action of a staff member outside of the CCTV area will not be upheld
- Consideration should be given to advocacy for a young person who has made the complaint, in addition to feedback there should be monitoring in the event of any ramifications for the complainant.

The visiting committees continue to report their satisfaction with St. Patrick's Institution, as have previous Inspector of Prison Reports, prior to Judge Reilly's June 2012 report.

While I must again reiterate my concern for young people detained in St. Patrick's Institution I believe the answer to lie in the progress of the Oberstown project. I would urge the Oireachtas to pay attention to this issue as the question of transition to Oberstown I believe is now under threat.

Case Work and Investigations

HSE – Homelessness service provision for children and young people

Over a number of years the Office has called attention to this issue arising from complaints made by or on behalf of young people who were homeless and/or accessing crisis intervention and out-of-hours services.

As these individual cases highlighted issues of a systemic nature, the Office commenced a preliminary examination of those issues with the HSE in March 2011. In May 2011 the Office informed the HSE that it intended to carry out a systemic investigation into the management and governance of the policy and practice in the provision of services to homeless children.

Information provided by the HSE as part of this process, indicated a number of immediate policy directives and steps it intended to advance in order to improve services it provides to homeless children. Given the actions were ongoing, a decision was made to hold open the matter of investigating and to continue to engage with the HSE on the progress made in this area.

The Office continued to engage with the HSE during 2012 in relation to this matter, holding a further meeting as well as seeking further documentary information regarding the steps taken – these include:

- A National Manager for Youth Homelessness was appointed in December 2010, who chairs the National Youth Homelessness Forum which takes a lead on review of practice and policy nationally in this area.
- A national audit of the use of Section 5 of the Child Care Act was carried out in 2011, and a policy directive developed which became operational in 2012. This includes a new national directive on the use of B&B and states that they shall not be used for children and young persons under the age of 18 years.
- An audit of the use of Supported Lodgings has taken place and a policy developed in 2012.
- Each young person will now be subject to a comprehensive assessment on presentation, as this is the key to determining the appropriate provision for each child presenting as homeless in order to ascertain their circumstances and need for supports.
- A national aftercare policy has been introduced and an aftercare implementation plan regarding provision of aftercare services was being developed.
- Improved data collection has been addressed through new performance indicators introduced on the number of children accessing youth homelessness units and through specific data collection on the use of Section 5 through quarterly returns.

Since this Office's initiation of the examination and proposed investigation, the HSE has taken a number of important steps in relation to homeless service provision. On this basis a decision was made to discontinue the proposed investigation and a number of recommendations were made to the HSE in October 2012, including the following:

1. Use of Section 5 of the Child Care Act should not be for extended periods which should be reflected in the national policy.
2. Aftercare policy should make provision for children who have been accommodated under Section 5, specifically those where it has been used for extended periods.
3. The need for consistency in all relevant documentation that supported lodgings should only be considered for children aged 16 years and over.
4. Accessibility: It is not appropriate for children who are homeless to access services through Garda Stations and this should be reviewed as a matter of urgency given that the young people who contributed to this Office's consultation "recalled that having to do so had made them feel embarrassed, ashamed or anxious". Those same young contributors made suggestions for alternative ways for them to access services which included enabling children to contact social work service through a Freephone number or supporting children to go directly to emergency accommodation and link in with social work services there. The HSE have advised that there had been some changes to this process and therefore new referrals will not have to access homeless accommodation through the Gardaí if they have been referred by the Crisis Intervention Service.
5. The need to address the issue of children in care accessing homeless service provision including immediate review of all children in such situations and use of data gathering to inform the strategy on alternative care provision.
6. Barring and restricted access to homeless services should be monitored and all steps should be taken to ensure timely provision of appropriate placements and supports.
7. Monitor and review outcomes for children accessing emergency/out of hours services nationally.
8. National oversight and monitoring should be maintained and continue to progress this important area.

The Office, through its participation and education function, also heard directly from young people with experiences of homelessness – see page 47.

Case Studies

The case studies represent a sample of the work carried out by the Office over the year.

Local Authority Housing

Case Study 1

The complaint

A mother contacted the Office about her 17 year old son who had previously been in the care of the State and who had his care order discharged in Court under Court condition that he reside with his mother at her address. When the family attempted to follow this Court direction, the Local Authority refused the child permission to reside with his mother on the basis of overcrowding.

The child lived with his mother and sister despite this refusal and as a result of not having a bedroom of his own and sleeping on the floor he developed a health complication which required hospital treatment.

OCO examination

On examination of the case the Office queried the practice of the Local Authority to request/refuse a child permission to reside with his/her parent guardian. It also became apparent that there was a lack of liaison between the Local Authority and the HSE regarding the child who had been in the child care system for a number of years.

The examination also highlighted a lack of central record keeping and information sharing between the various Local Authority sections. It also became apparent that although the Local Authority was advised by the child's solicitor of the conditions of the Court direction, this did not result in the Local Authority facilitating the terms of the Court order.

Outcome

As a result of our intervention with the Local Authority, a commitment was given that what happened in this case was not Local Authority policy or standard practice. The Local Authority confirmed that it will commit to fulfil the terms of Court directions when notified and that a child who wishes to reside with his family should not have to apply to reside and therefore should not be refused to reside on overcrowding or any other grounds. From the response received from the Local Authority, the Office is therefore satisfied that it is not the Local Authority's policy to put impediments in the way of children's right to family life.

Education

Case Study 1

The complaint

The Office was contacted separately by two sets of parents about the same issue in the same primary school. As such it was decided to examine both complaints together.

Both sets of parents contacted the Office about practices in a primary school where their children were withdrawn because of how their education was handled. Both children were diagnosed with learning and behavioural difficulties with one child having emotional difficulties such as anxiety and self-confidence issues. Both sets of parents were particularly concerned with how end-of-term and classroom reporting and feedback appeared to be highlighting negative aspects of their educational progress. This negative reporting was happening despite the school being made aware of the children's conditions through occupational therapy and Psychologist reports. The parents also felt the recommendations in these reports were not being implemented sufficiently.

OCO examination

This Office contacted the school as part of a preliminary examination of the complaints. The Office stressed that the examination was looking at overall policies within the school and not concerned with individual practices or decisions made by particular teachers. It transpired that the school had been reasonably pro-active in creating educational plans for both children and at attempting to implement report recommendations. However, the difficulties were arising when the children's educational progress was being reported on in negative terms and when they felt they were being asked to keep up with their peers in certain areas where their diagnosis indicated that they would have difficulties.

Outcome

The Office made recommendations to the school regarding the possibility of adapting reporting templates to include sections that could relate a child's progress to targets set in their education plans, rather than rating them against their peers.

The Office suggested that planning and reporting on a child with learning difficulties' education should be as inclusive as possible, including liaising with parents. The Office also highlighted the need for positive reporting and feedback to children. The school responded positively to these recommendations. Although both children were no longer at the school, both sets of parents were happy with this outcome, and were content that other children in the future may not experience the difficulties their children experienced.

Case Study 2

The complaint

A parent made a complaint about the difficulties she had experienced while trying to have her daughter's new diagnosis of dyslexia included in her Individual Educational Plan (IEP). The process and engagement with the primary school took over six months and affected the relationship between the parent and the school to the extent that the parent felt it was necessary to remove her daughter and to have her educated at a different primary school.

OCO examination

During the examination of this complaint it became apparent that the Board of Management of the school and the educational psychologist from the National Educational Psychological Service (NEPS) had differing views on the role of the school in formulating IEPs for children with certain learning difficulties.

The NEPS Psychologist had written to the school to advise of their role. It appeared that the school were of the opinion, and had informed the parents, that it was NEPS' role to put the IEP in place and to set targets for the child. NEPS clarified to the school that they may have a support role in this process, if requested, but that these roles were primarily for the class teacher, the Learning Support Teacher and should be done with input from parents, and the educational psychologist if required, as per the NCSE's 2006 Guidelines on the Individual Education Plan Process.

Outcome

As a result of the Office's intervention, the Board of Management agreed that they had responded to the complainant incorrectly with regard to the school's function in the IEP formulation process for her child. The Board committed in future to include all relevant parties in the formulation of IEPs where appropriate. Although the child was no longer in the school and direct redress was not possible the Board committed to write to the complainant and clarify any previous misgivings it may have communicated to her regarding the school's role in the process.

Case Study 3

The complaint

The complaint was submitted to the Office by the parents on behalf of their 17 year old son. He was diagnosed with a learning disability and autism, and was attending a Special National School. He was due to leave the school when he turned 18 and transition to an Adult Day Service run by the HSE. However there was no placement available for him in an Adult Service. Although his school had informed the Department of Education and Skills (DES) that they were able to cater for him, as well as the new pupils who were enrolled within their current resources, the DES refused to allow him to stay in school for an extra year.

Examination

The Office intervened to ascertain why DES were refusing to allow him to stay in the school for an extra year, as there was no place for him in Adult Services and the school was willing and able to enrol him.

The DES responded, advising that they had reviewed the situation and had taken into account (1) the effort made by the school to facilitate a transition to adult services, (2) the difficulties they experienced and (3) the availability of a placement in adult services.

Outcome

In this case they permitted the complainant to stay in his school until a placement was sourced for him in an adult facility. The DES also pledged that it would take the same factors into consideration when considering future applications from schools in similar circumstances to retain pupils who are over 18 and do not have a place in adult services to transfer to.

Case Study 4

The complaint

This Office received a complaint from a mother who raised concerns that her son's application for Home Tuition was refused by the Department of Education and Skills (DES). This young person, aged 14, was diagnosed with a rare disorder. As a result of which he suffers from severe epileptic seizures, severe developmental problems and autistic spectrum presentation. In addition, the young person has poor communication skills and requires a lot of care as he is not toilet trained. The parent advised that her son's seizures had become more severe and frequent in recent years. The parents withdrew their son from his most recent school due to difficulties the school had encountered regarding their son's behaviour as a result of his condition. At the time of the complaint to this Office the young person did not have an educational placement.

Examination

This Office wrote to the DES to highlight concerns raised and to request their understanding in relation to this complaint. In this instance the DES refused the Home Tuition Grant under the medical category because the criteria stated '*that he needed to be currently enrolled and attending a school in order to apply under this category*'. However, the parent was of the view that it was not appropriate for her son to attend a school as his condition had deteriorated and a school environment was not suitable for him at that time. There was supporting correspondence from medical professionals in support of the young person Home Tuition application.

Outcome

As a result of this Office's intervention the DES advised that they have reviewed the issue of eligibility criteria applicable to applicants for home tuition on medical grounds. If parents of applicant children can satisfy the DES that the child would be enrolled in a recognised school were it not for their medical condition, then it will not be essential that the child is on the roll of the school.

The DES contacted the parent with a view to considering any further applications of home tuition under the medical category of the scheme. As part of this the DES advised this Office that they may also consider the provision of retrospective funding for home tuition under the medical category.

Case Study 5

The complaint

A parent raised concerns on behalf of her child with respect to the handling by a school of reported bullying. The young person felt intimidated by a group of peers, which resulted in irregular school attendance during sixth year.

Examination

A preliminary examination was carried out by the Office on the school's response to the allegations of bullying and the handling of the subsequent complaints made by the parent. During the examination process, it became apparent that this situation had the potential to negatively affect the young person's Leaving Certificate. This was an issue also highlighted to the school.

Outcome

Overall, the Office was satisfied with the handling of this matter by the school. The school provided a comprehensive response, which detailed the immediate investigation of the allegations of bullying and interviews with the relevant students. Teachers provided supports, including counselling, to the young people affected and sought to address the situation using restorative practices. The school demonstrated a proactive approach to counter-act bullying in the school. However, the Office made recommendations in relation to the school's Anti-Bullying Policy to clarify the procedure that follows an allegation of bullying.

With regard to the young person's Leaving Certificate, in agreement with the family, the school and State Examinations Commission agreed to special arrangements with a view to alleviating any potential adverse impact.

Health

Case Study 1

The complaint

The young person, with the assistance of his Guardian ad Litem, brought a complaint to the Office regarding several issues he had brought to the HSE as part of a complaint. He felt that he had not received an adequate response from the HSE regarding his complaint. He had made a complaint stating that he thought that his emergency foster placement was inappropriate and lasted longer than was intended. Issues about how he was treated at that placement were unresolved and he felt the lack of progress regarding the breakdown of this placement, and his subsequent complaint, led to a delay in his aftercare plan being arranged and implemented.

OCO examination

The Office had extensive contact with HSE Consumer Affairs, as well as the Principal Social Worker of the HSE Social Work Team involved. On examination of the case the Office found that there was an on-going internal HSE investigation into the temporary foster placement used in this case. It was advised that this impacted on the examination of the complaint made by the young person. However, it transpired that the young person was given no indication of this and was left to feel that his concerns were not being taken seriously.

Another issue which came to light in the examination of this complaint related to the transfer of files between social work teams working in different counties. It became apparent that, for a significant time while this young person was in foster care, his case was being managed by a team which was not his local social work team.

The Office gave notice to the HSE that an investigation may be warranted into this complaint. However, the HSE responded by giving certain commitments which the young person was happy with and which clarified future practices within the HSE. The young person was met by the Principal Social Worker concerned and given an explanation of the various aspects of his case and also given an apology regarding any practices which may have made him feel that his original concerns were not taken seriously by the HSE.

Outcome

As a result of this the Office did not proceed to investigation and made recommendations which were responded to positively by the Office of the National Director, HSE. Commitments were made to improve complaint handling regarding young people in care and policy guidelines have been issued. It was accepted that emergency placements should not be used for longer than is necessary and should not be a replacement for proper care planning. The Office was also advised that the issue of the transfer of case files is under review and the difficulties highlighted in this case would feed into this review process.

Case Study 2

The complaint

The complaint was submitted to the Office by a mother on behalf of her son. At the time of the complaint he was 10 years old. As a result of spinal difficulties he is a wheelchair user. His physiotherapist recommended that to maintain his health and strength, and specifically to maintain bone density, digestion and the drainage of his bladder and bowel, he should use a standing frame every day. However his frame broke in January 2012 and despite both his mother and the physiotherapist requesting the HSE to repair it, it still had not been repaired 10 months later.

Examination

As part of the examination of the complaint the Office wrote to the HSE to find out what was causing the delay and to request that it be fixed as soon as possible.

The HSE responded by explaining that there was such a long delay in the standing frame being repaired because the application was misplaced. The HSE assured the Office that they were reviewing their current waiting system both to ensure the mistake / misplacement would not happen again and to improve its efficiency.

Outcome

Two weeks after the Office wrote to the HSE, the standing frame was fixed.

Case Study 3

The complaint

A complaint was received from a mother about her child. A HSE Assessment of Need report recommended that a child be provided Occupational Therapy (OT) within the speciality of Child and Adolescent Mental Health Services (CAMHS). However, there was no Occupational Therapist as part of the CAMHS' team in the child's geographical area. While the family sought to provide this support to the child privately, this was not financially viable to sustain. A Complaints Officer upheld a complaint on behalf of this child in relation to the delay in providing OT to the child. Notwithstanding this decision by the Complaints Officer, no service was provided to the child.

Examination

As part of the examination of the complaint the Office included a focus on the communication with the family about the delay in providing OT to the child, as well as seeking a resolution for both the child and other children requiring this service in the same geographical area.

Outcome

Following the examination process, the HSE committed to having two Occupational Therapist posts as part of the CAMHS' team in the specific geographical area. Having regard to the alleged adverse effect on the child as a result of not being provided OT services, the HSE agreed to providing interim therapeutic supports to the child while the recruitment process took place. In addition, the Office encouraged the HSE to actively liaise with parents in relation to alternative supports where the service(s) recommended by the HSE for their child as part of the Assessment of Need process is not available in their area.

Case Study 4

The complaint

The Office was contacted by a 19 year old who had been in the care of the HSE and was, at the time of her complaint, receiving aftercare supports from the HSE. Her complaint related to a proposed change in her placement. The young person explained that she was in 5th year in secondary school, having previously missed a significant period of school due to issues relating to her mental health and well-being.

The young person explained that she had moved into her current placement in December 2009 and understood that the aim of the placement was to help her integrate safely back into education and society and that, if she returned to secondary school, she would be supported until she completed her Leaving Certificate. She stated that the placement had been positive for her to the extent that she had been able to attend school and hoped to sit her leaving certificate in June 2013.

Her concern related to her understanding that the HSE were to end funding for this placement and that she would begin transitioning to independent living. The young person expressed the opinion that this decision may have a serious impact on her education, her personal ambitions and her mental health and that it was unfair in light of the support she felt had previously been promised to her. Furthermore she stated that she had been informed of this decision on the 13th January 2012 and that she would be required to leave the placement on the 6th February 2012.

Examination

On examination of the complaint the Office initiated contact with the HSE at local and national level and, as well as requesting information regarding the care planning for this young person, requested that she be contacted directly in an effort to find possible redress locally.

The response of the HSE area was that a care plan was in place for the young person until she completed second level education and that it had always been the plan to transition her, with supports, to independent living in an 'appropriate and cost effective manner.' Following on from her expressed concerns the HSE stated that they had secured funding

for the transition period to be extended until April 2012. The National level response from the HSE stated that 'only in exceptional circumstances and in the clear best interest of the young person' should they be moved during the course of an academic year, regardless of whether it is due to reaching the age of 18 or any other reason.

It was also noted that austerity measures were being imposed on HSE services but steps were being taken to ensure that all children requiring care and protection are provided for regardless of resource pressures.

Outcome

Following on from her expressed concerns, the HSE stated that they had secured funding for the transition period to be extended to April 2012. The young person explained that she had remaining concerns about a reduction in these supports in her Leaving Certificate year, as well as transitioning prior to her Leaving Certificate exam but that she would progress with the move.

The Office recommended that the HSE remain in contact with the young person to ensure that the supports provided to her are reviewed regularly and are appropriate to meet her needs.

Case Study 5

The complaint

The Office received a complaint from a 17 year old in the care of the HSE. His concerns related to his level of access with his younger brother, stating that he had not seen his brother in 27 months despite trying to arrange access with his Social Worker. He expressed concern that if the matter was not resolved before he was 18 there may be additional barriers to establishing contact with his brother. It appeared that the young person had, at the same time as contacting the Office, written to the HSE's area Complaints Officer to express his unhappiness with the situation.

Examination

The Office initiated contact with the HSE to establish if the HSE had received the complaint and if it was to be addressed through HSE channels. The HSE acknowledged that the complaint had been received and that it had been forwarded to the area's Principal Social Worker for response. The Office then wrote directly to the Social Work department and encouraged it, as a matter of priority, given his age and concerns to engage directly with the young person. The Office also liaised with the young person's advocate in EPIC in order to establish updates from his perspective.

Outcome

Within a week of the Office's contact with the HSE a review meeting between the young person and the Social Work team occurred. It was established that the young person was reasonably happy with the HSE's responses to him during the meeting. His advocate advised that he would await progress from the HSE and if required revert to the Office if the issue remained unresolved. Following the steps taken by the HSE and the views of the young person, the Office determined that further examination was not required.

Case Study 6

The complaint

This complaint was submitted by a 21 year old young person on behalf of himself and his three siblings. He and two of his siblings were over the age of 18 while one sibling was still a child at the time of contacting the Office. The complainants had first contacted the Office in 2011 to state that they were unhappy with the HSE's interventions with their family in respect of a supervision order which had been made on one of their parents following allegations (not involving the family) made against the parent.

The children felt that the HSE's implementation of the order had been overly interventionist and had adversely affected their relationship with their parent. At that time the Office redirected the young people to the HSE's own complaints procedures.

The reason for re-contacting the Office was that, having received the HSE's response to their complaint, the siblings were unhappy with the outcome and did not feel their voices had been heard in the process.

Examination

Upon reviewing the HSE's response, the Office was of the view that the HSE's complaint report had, in general, upheld the contentions of the siblings, made a number of findings supporting their views and, in addition, recommended a number of actions aimed at improving future practice. With this in mind, the Office did not feel that there was a need to further examine the complaint. However, given the continuing upset of the complainants and their belief that they were not heard in the complaint process the Office wrote to the HSE's Advocacy section and encouraged them to engage directly with the young people regarding their remaining concerns.

Outcome

The HSE Advocacy section responded to inform the Office that the Head of Advocacy had offered to meet the siblings to discuss the matter further. While the complainants remained dissatisfied with the actions of the HSE, it was the Office's view that adequate redress had been offered and that no further redress would be practicable through our intervention.

Case Study 7

The complaint

A complaint was brought by a 16 year old boy's former foster parents regarding his welfare and protection while in the care of the HSE. More particularly, they raised concerns about how the HSE addressed his lack of schooling, his engagement in risky behaviours and the lack of care planning and suitable and secure placement for him (including a period of homelessness). The child's foster placement had broken down 8 months previously, there were serious concerns about his welfare and safety, with long periods where he was missing from care.

Examination

This Office initiated an investigation of the complaint. During the course of the investigation, the situation for the child changed as latest social work reports outline that he has returned to his former foster carers' care (i.e. the complainant), his schooling has improved and his behaviour has settled.

There were indications on the file that there has been an active involvement from the social work team on the case and that the child has received some CAMHS input (assessment and support). The HSE's view is that he no longer requires secure care. A number of recommendations were made by the Foster Care Committee which subsequently approved the child placement with the former foster family on foot of these recommendations being implemented namely:

- the appointment of a clinical case manager (led by either primary care psychology or SW and supported by CAMHS psychiatry) to attend to the boy's mental health needs; and
- a residential unit to provide support and respite to the fostering placement.

Outcome

Shortly after the approval of the above recommendations, the respite services for this child (one of the key recommendations for the approval of the placement) were withdrawn from the child. The foster carer explained that good respite and good support for his mental and behavioural issues are key to the sustainability of his placement and of his schooling and it appeared that all professionals agreed with this. This Office wrote to the Regional director of services about this issue and the service was reinstated immediately.

The child went on to sit his junior cert that year.

Having discussed the case with the foster family and being satisfied that redress had being provided, this Office decided to discontinue the investigation.

The Ombudsman for Children wrote to the National Director for Family Services to recommend a review of this case to learn what the key positive determinants in the changes of circumstances were for this child. It offered an opportunity for the HSE to further identify and support positive practice in that regard. This Office also encouraged the HSE to further support this child and his foster family as the sustainability of any improvements may be partially dependent on the level of supports given to this child and his foster family.

School Transport

Case Study 1

The complaint

A parent of a 4 year old girl, with Down Syndrome, submitted a complaint regarding the actions of the Department of Education and Skills refusal of the school transport application for the child to travel to a special school for the 2010/2011 school year. The parent advised that the application was refused on the basis that there was a nearer school available. However, it was contended that her daughter may not be able to access health therapies in the nearer school and that a special sign language system was also required for her daughter, which was consistently available in the school identified by the parents.

Examination

The investigation focused on the actions of the Department of Education and Skills (DES), as well as the School Transport Appeals Board and also the HSE.

The DES advised that school placement is a matter of parental choice and that school transport is provided to the nearest school/special class or unit that is or can be resourced to meet the child's special educational needs. The investigation established that the sign language system was available in both schools. However, the Office raised concern regarding the DES's view that the availability of the sign language system is not a determining factor in school transport applications.

Based on a previous investigation by this Office, the DES had accepted a recommendation that the School Transport Scheme should be revised to make available concessionary transport for children with special needs in certain circumstances. The DES advised that this would be put in place by the 2011/2012 school year.

On investigating this complaint, the Office found that the DES's actions in relation to the decision regarding the school transport application did not come within the ambit of Section 8 of the 2002 Act. However, a finding was made that the actions of the DES not to consider concessionary school transport until the school year 2011/2012 was contrary to fair and sound administration. The Office noted its concerns that the contentions raised by the parents were not comprehensively considered or responded to in the school transport appeals process.

The investigation established that the HSE could have made the required provision available to the child in the nearer school, and no findings of unsound administration were made regarding their actions.

Outcome

During the investigation the child was granted concessionary school transport to the school the parents had selected.

Investigations

The Ombudsman for Children's Office published a number of investigations in 2012 that are available on our website <http://www.oco.ie/complaints/complaints-publications.html>

- A statement under Section 13(2) of the Ombudsman for Children Act 2002. An investigation regarding the actions of School A – April 2012.
- Review Report – Follow up on progress made in relation to the recommendations made on conclusion of the investigation into the implementation of Children First: National Guidelines for the Protection and Welfare of Children – March 2012.
- A statement based on an investigation regarding the refusal to provide an assistive technology grant to a child by the Department of Education and Skills – March 2012.

4

EDUCATION AND PARTICIPATION

Section 7 of the 2002 Act invests the Ombudsman for Children with a set of unique statutory powers that complement the Office's work to investigate complaints and place a positive obligation on it to promote and monitor the rights and welfare of children up to 18 years of age. Among the Ombudsman for Children's functions under Section 7 are:

- to encourage policies, procedures and practices that promote children's rights and welfare;
- to promote awareness among members of the public, including children, of matters relating to children's rights and welfare, including the UN Convention on the Rights of the Child;
- to establish structures to consult with children and highlight issues relating to children's rights and welfare that are of concern to children themselves; and
- to collect and disseminate information on, as well as to undertake, promote or publish research into, matters relating to the rights and welfare of children and how those rights can be enforced.

Viewed in broad terms, the Office's human rights education programme and its initiatives to hear and highlight the views of children comprise two strands. The first strand aims to engage with the general population of children and to promote awareness of matters relating to children's rights that are relevant to many thousands of children. The second strand focuses on linking directly with vulnerable groups of children who are harder to reach and whose voices are seldom heard.

Rights Education Programme

Rights education workshops

Educational workshops on children's rights are delivered on a twice-weekly basis to groups of children and young people visiting the Office. A mainstay of the OCO's rights education programme, these workshops provide a valuable opportunity to engage directly, and on an on-going basis, with children and young people of different ages, living in different parts of the country and in diverse circumstances. During 2012, over one thousand children and young people from schools, youth projects and other children's services in sixteen counties visited the OCO to learn about the Office's work, to develop their understanding

of children's rights, and to explore matters relating to children's rights and children's lives in Ireland. In the context of these workshops, children and young people also have an opportunity to raise and ask questions about issues of interest and concern to them.

Among the issues brought up by children and young people during 2012 were:

- the adverse effects of unemployment and migration/emigration by parents for work on family life;
- the extent to which children and young people have adequate opportunities to express their views on matters affecting them in different contexts;
- mental health issues and supports for children and young people; and
- the rights of and support services for more vulnerable groups of children, including children experiencing homelessness and children with disabilities and/or special needs.

Resource materials for schools

During 2012, the OCO devised additional educational resource materials for primary and post-primary schools. The third in a series of educational resources developed by the Office since 2007, *Small Places* supports children and young people to make connections between children's rights, as set out in the UN Convention on the Rights of the Children and taking into account the Constitution and their daily lives at home, at school and in their communities. By facilitating children and young people to explore these connections with each other, with their teachers, and with their parents/guardians, the activities aim to develop their understanding of how children's rights relate to their own lives and of the various ways in which a wide range of people, including children and young people themselves, can participate in the protection of different children's rights on a daily basis. Produced in English and Irish, and designed for use in the context of curriculum teaching and learning at primary and post-primary level, the *Small Places* resource was disseminated to schools throughout the country in September 2012 and is also available for downloading from the OCO's website.

Rights education seminars for postgraduate students

Since its establishment, the OCO has engaged with third level institutions in a variety of ways, including through commissioning research, providing internship opportunities for graduates and delivering guest lectures and seminars to undergraduate and postgraduate students. In line with its statutory obligations under Section 7 of the 2002 Act and its strategic priorities, the OCO built on these engagements during 2012 by designing and delivering a series of rights education seminars for postgraduate students on a pilot basis. The pilot seminars were targeted at students undertaking postgraduate studies in social work or social care on account of the OCO's engagement through its different statutory functions with a wide range of issues that are relevant to the areas of social work and social care (e.g. child protection, family support, alternative care and aftercare for children and young people, child and adolescent mental health, youth detention, youth homelessness, and policy and provision for separated children).

Over 120 postgraduate students from five third level institutions (NUI Galway, University College Dublin, Trinity College Dublin, University College Cork and Athlone IT) participated during October and December 2012 in OCO's pilot seminars. Delivered by OCO staff, the seminars aimed to raise awareness of the OCO's statutory mandate, functions and corresponding areas of work; to develop understanding of fundamental children's rights principles and their application in the context of professional practice; and to encourage child-centred practice and decision-making.

In light of the interest in and positive evaluations of the pilot seminars, the OCO is planning to develop and diversify this programme, as appropriate and practicable, during 2013.

Hearing and Highlighting Children's Views and Concerns

The provisions of Section 7 of the 2002 Act afford the OCO the scope to take a versatile and innovative approach to hearing and highlighting the views and concerns of children. The contrasting initiatives in this area that were completed by the Office during 2012 are illustrative of this approach.

Hearing from young people with experience of homelessness

"When you're in care for that first time, you're all over the place ... and ... the one thing that needs to stay the same is the place you stay in ... You get depressed over it because you feel 'Does anybody care/' ... You don't feel like someone is caring over you. And no matter how old you are – people don't admit it, but it's true – you need someone to care for you ..."

Child consulted by OCO

Between September and December 2011, the OCO implemented a consultation with young people with experience of homelessness and of accessing out-of-hours, crisis intervention and emergency accommodation services in Dublin and Cork.

This consultation was part of a wider piece of working involving engagement by the Office with the HSE on the issue. The Office's consultation sought to gain an insight into young people's first-hand experiences of accessing and using homelessness services and, based on these experiences, what they think should be done to improve existing provision for children who need to avail of these services.

Published in April 2012, the report arising from this consultation, *Homeless Truths*, documents children's and young people's candid accounts of accessing and using homelessness services. As the Ombudsman for Children noted at the time, one of the most striking things to emerge from their accounts of the challenges they faced, the risks they were exposed to, and the supports they received is the vulnerability of being homeless and the corrosive effects that homelessness can have on children's and young people's sense of dignity, self-esteem, safety and security.

On the basis of this consultation the OCO made a range of recommendations as to how existing policy and provision for children who need to use homeless services might be

strengthened in the interests of safeguarding their rights and welfare more effectively. Among the measures proposed were:

- enabling children to present to and access homelessness services during the day and providing alternative routes to garda stations for accessing services;
- ending the practice, where it exists, of requiring children to present and access accommodation on a day-to-day basis and, in the case of children who cannot return home and for whom a suitable longer term placement cannot be found quickly, aiming to provide a measure of placement stability;
- reducing the use of short-term, 'hostel'-style accommodation to a minimum, never using it for children under 16 years and, where possible and appropriate, trying to locate accommodation in or close to children's local communities;
- in light of the serious risks that children experiencing homelessness can encounter, ensuring that care and education professionals can offer practical supports to children and young people to continue in education or training, providing adequate alternative programmes of activity to children and young people during the day and, where necessary, permitting them to stay in their temporary accommodation during the day; and
- addressing societal stigma by building public awareness of the circumstances that can lead to children becoming homeless and sensitivity to the challenges they can face in this situation.

These and other viewpoints shared by participating children and young people were highlighted to, *inter alia*, the HSE, which has statutory responsibility under the Child Care Act 1991 for children and young people under 18 years in these circumstances, and the Centre for Effective Services, which has been conducting a review of the 2001 Youth Homelessness Strategy and is due to make recommendations on a new Implementation Framework to address youth homelessness.

Consultation with children on bullying

"Everyone needs to be more informed about how bullying affects young people. Unless people have been bullied themselves, they don't understand what it's like unless they're told. People could come in and talk to students about the effects and results of bullying."

Young person consulted by OCO

The issue of bullying is raised regularly with the OCO by parents, professionals and children themselves and is consistently among the five issues raised most frequently in education-related complaints dealt with by the Office. While the OCO has no role to investigate or substantiate allegations of bullying, it has considered the manner in which such matters are dealt with in and by schools.

As the Ombudsman for Children indicated at a meeting in July 2012 with the Working Group established by the Minister for Education and Skills to examine how different forms of bullying can best be tackled in schools, in response to a majority of complaints made, the Office encourages Boards of Management to resolve the issues arising through schools' local complaints procedures. When necessary, the Office independently and impartially examines the matter further in order to arrive at an understanding of the issues involved and, where appropriate, make recommendations as to how the matter may be resolved in the best interests of the child or children affected.

In light of the concerns and complaints about bullying that have been raised with the Office, and building on direct work that OCO staff undertook with children on the issue during 2011, the Office conducted a consultation with children between June and September 2012 on dealing with bullying in schools. The consultation was solution-oriented and its overall aim was to facilitate children and young people to identify actions, which they feel could make a significant contribution to dealing effectively with bullying in schools.

The opinions and ideas of over 300 children and young people between 10 and 17 years of age, including young people in care, young people with physical disabilities and LGBT young people, are documented in a report that was launched by the Ombudsman for Children in Limerick in November 2012. As the report highlights, the viewpoints shared by children and young people suggest that work with and by schools to deal with bullying could benefit from a two-strand approach comprising prevention and intervention strategies.

A notable aspect of children's views was the emphasis placed on preventive work and in particular on initiatives dedicated to raising awareness of bullying and tackling the discriminatory attitudes, including homophobia, which can give rise to bullying. A further interesting message to emerge from the consultation workshops was the broadly shared view among children and young people that incidents of bullying will be most appropriately and effectively dealt with through restorative measures. In this and other areas for action, which they discussed, children and young people consistently emphasised the importance of all students being facilitated to express their views and actively participate in measures to deal with bullying. They made a wide range of concrete and creative suggestions as regards how children and young people can be encouraged and supported to take an appropriate share of responsibility for addressing the problem of bullying and, as such, for building a culture of respect for the rights and dignity of every child.

Taking into account the views expressed by children and young people, the Ombudsman for Children has emphasised the importance of responsibilities for tackling bullying being taken and shared by the wider education system and, where necessary, by other agencies. In this regard, and in the context of publishing the OCO's report, she has called on the Government to build on the work of the Department of Education and Skills in this area by

including the Department of Health in the development of an anti-bullying strategy that addresses bullying as a public health issue.

The OCO's report on its consultation, *Dealing with Bullying in Schools*, was disseminated to relevant stakeholders as well as to schools throughout the country, as a resource to support their on-going work to address bullying. The OCO notes the consideration given to the findings of its consultation by the aforementioned Department of Education and Skills Working Group and the incorporation of viewpoints shared by children and young people with the OCO into the Action Plan on Bullying that was launched at the end of January 2013 by the Minister for Education and Skills and the Minister for Children and Youth Affairs.

The Big Debate

"We've heard about the referendum ... I think ... it would be good if we voted in it as well."

Young person speaking to OCO in November 2012 about the referendum on children's rights

In advance of the referendum on children's rights on 10 November, the Ombudsman for Children hosted a special event with and for young people at the Aviva Stadium in Dublin on 6th November. Aware that young people under 18, while they could not vote in the referendum, had an interest in the proposed amendment to strengthen children's rights protection in the Constitution, the OCO organised The Big Debate in order to afford young people an opportunity to express their views, debate the issues and participate in a vote to indicate whether they were broadly in favour or against the proposed amendment.

Almost 200 students from schools and youth groups in Dublin, Laois, Limerick, Clare, Galway and Monaghan attended the event. Throughout the morning, eight students stepped up to the podium to debate arguments for and against the proposed amendment, after which the debate was opened up to the floor. It was evident from the young people's energetic engagement that they had a keen interest in the issues and attached importance to having their voices heard. A recurring message from young people who spoke from the floor was that there was not enough readily available, accessible information about the referendum, in particular information for children and young people; they felt that even though they could not vote, they should have been more fully informed about the proposed amendment since it directly affected them.

In the vote that took place in conclusion to The Big Debate, young people voted in favour of the proposed amendment to the Constitution.

5

POLICY AND LEGISLATION

Section 7 of the Ombudsman for Children Act 2002 sets out the policy, research and legislative review functions of the Office. In particular, it provides that the Ombudsman for Children shall:

- advise Ministers on the development and co-ordination of policy relating to children;
- advise Ministers on any matter relating to the rights and welfare of children, including the probable effect on children of proposals for legislation;
- undertake, promote and publish research into any matter relating to the rights and welfare of children; and
- exchange information and co-operate with Ombudspersons for Children of other states.

Constitutional change

The Ombudsman for Children's recommendation to amend the Constitution in order to give greater protection to the rights of the child has been outlined and reiterated in every annual report to the Houses of the Oireachtas since the Office's establishment in 2004. The endorsement by the People of the Thirty-First Amendment of the Constitution in November 2012 was therefore a very significant event for the Ombudsman for Children's Office, in addition to being a milestone in the advancement of children's rights in Ireland.

In accordance with its function under section 13 of the *Ombudsman for Children's Act 2002* to submit special reports to the Houses of the Oireachtas, the Ombudsman for Children's Office prepared a report on the Thirty-First Amendment of the Constitution (Children) Bill 2012. This submission built on the four previous submissions made by the Ombudsman for Children to the Government and to the Oireachtas on proposals to amend the Constitution. The central message of each submission has been the same: Ireland should enshrine key children's rights principles in the Constitution in order to underpin a fundamental shift in our law, policy and practice regarding children. In particular, the Ombudsman for Children called for the inclusion of specific principles set out in the UN Convention on the Rights of the Child (UNCRC) in any such amendment to the Constitution. This position also underpinned the Ombudsman for Children's direct engagement with the Minister for Children and Youth Affairs, the Taoiseach and the Tánaiste in relation to the wording of the Bill to amend the Constitution.

The referendum of 10 November 2012 was the culmination of a long process that has involved consideration by the Oireachtas, by successive Governments, by various inquiries and investigations, and indeed by international human rights monitoring mechanisms. It must be acknowledged that producing a wording that would enjoy a broad consensus both within and outside the Houses of the Oireachtas was not a straightforward task.

The endorsement of the new Article 42A of the Constitution represents a significant and positive step forward for children and families in Ireland. Although it does not incorporate the principles of the UN Convention on the Rights of the Child to the extent recommended by this Ombudsman for Children, it will provide a strong foundation for future incorporation of those principles in our law and policy. How much of a difference the amendment will make in the long term will depend on the commitment of the Oireachtas and the Government to using and building on these provisions in the development of law and policy relating to children, and on the approach of the judiciary to the lines of jurisprudence that may emerge from it.

Achieving constitutional change is not the conclusion of advancing children's rights in Ireland; compliance with the UNCRC remains an unfinished project. Even in the absence of a more maximal approach to the incorporation of the UNCRC's principles in the Constitution, Ireland's compliance with its children's rights obligations can and should be advanced by other means. Nothing in the amendment precludes the possibility of giving further effect to the provisions of the UNCRC in primary legislation, including by extending such legislation to require administrative authorities to have due regard to the State's human rights obligations when carrying out their functions.

Review of the operation of the Ombudsman for Children Act 2002

Section 7 of the Ombudsman for Children Act 2002 provides that the Ombudsman for Children shall monitor and review the operation of the 2002 Act and, whenever she thinks it necessary, make recommendations for amending the Act to the Minister for Children and Youth Affairs and/or to the Houses of the Oireachtas. In accordance with this statutory function, the Ombudsman for Children submitted a report on the operation of the Ombudsman for Children Act 2002 to the Minister for Children and Youth Affairs and to the Oireachtas in March 2012.

The report was informed by a number of key considerations, including:

- The UN Principles relating to the status of national institutions for the promotion and protection of human rights (The "Paris Principles");
- International best practice and the experience of Ombudspersons for Children of other jurisdictions; and
- The experience gained by the Ombudsman for Children's Office since its establishment in 2004, particularly with respect to the conduct of investigations.

The 2002 Act is, in general, a robust and well-functioning piece of legislation; however, the Ombudsman for Children's previous annual reports to the Oireachtas have also consistently highlighted certain deficiencies in the 2002 Act, particularly with respect to the Office's investigatory remit. These deficiencies have also been noted by international human rights monitoring mechanisms such as the UN Committee on the Rights of the Child and the Council of Europe Commissioner for Human Rights. In addition to reiterating these long-standing concerns, the review of the 2002 Act set out a number of additional aspects of the Act that could benefit from amendment.

The principal recommendations of the review of the operation of the 2002 Act were to:

- remove existing exclusions to the investigatory remit of the Ombudsman for Children;
- include additional public bodies with functions relating primarily or exclusively to children within the remit of the Ombudsman for Children;
- expand and clarify the advisory functions of the Ombudsman for Children;
- place a new duty on public bodies to provide appropriate assistance and guidance to complainants;
- enhance the powers of the Ombudsman for Children to ensure that public bodies comply with requests for information, documents or other records in the course of investigations; and
- clarify that the *in camera* rule should not operate in such a way as to frustrate statutory investigations under the Ombudsman for Children Act 2002.

The Department of Children and Youth Affairs has engaged very openly and constructively with the Ombudsman for Children's Office in relation to the implementation of these recommendations. Shortly after the review of the 2002 Act was submitted, the Minister for Children and Youth Affairs announced that she was in favour of removing the exclusion to the Ombudsman for Children's investigatory remit with respect to St. Patrick's Institution. With the consent of the Minister for Justice and Equality, the Minister for Children and Youth Affairs made the relevant order under section 11 of the 2002 Act in June 2012.

During the passage of the Ombudsman (Amendment) Bill 2008 through the Houses of the Oireachtas, an opportunity arose to address some of the recommendations contained in the review of the 2002 Act. Following contact between the Ombudsman for Children and the Minister for Public Expenditure and Reform, as well as subsequent engagement by the Department of Children and Youth Affairs with the Department of Public Expenditure and Reform, significant amendments to the investigatory remit and powers of the Ombudsman for Children were achieved through the Ombudsman (Amendment) Act 2012. The efforts of both Departments in bringing about these changes in an efficient and expeditious manner were greatly appreciated by the Ombudsman for Children's Office.

The enactment of the Ombudsman (Amendment) Act 2012 in October 2012 raised a query regarding the legal basis on which this Office could continue to investigate complaints regarding places of detention. However, this did not operationally impede the Ombudsman for Children's Office from raising and resolving concerns with the management of St. Patrick's Institution or the Irish Prison Service. This matter is being addressed and clarified to the satisfaction of the Ombudsman for Children.

The Ombudsman for Children's Office will continue to liaise with the Department of Children and Youth Affairs in relation to the recommendations contained in the review of the 2002 Act that have not yet been implemented. The Ombudsman for Children's Office is of the view that primary legislation will be required to address these outstanding issues and it is hoped that such legislation will come before the Houses of the Oireachtas at the earliest opportunity.

Advice on the Heads and General Scheme of the Children First Bill and the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012

The Minister for Children and Youth Affairs published the Heads and General Scheme of the Children First Bill on the 25th of April 2012. The stated purpose of the Children First Scheme was to place certain aspects of *Children First: National Guidance for the Protection and Welfare of Children* on a statutory footing. The Minister for Justice, Equality and Defence also published the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012 on the same day. This legislation created a criminal offence of withholding information in relation to serious specified offences committed against a child or vulnerable person.

In accordance with section 7 of the *Ombudsman for Children Act 2002*, the Ombudsman for Children prepared advice for both the Minister for Children and Youth Affairs and the Minister for Justice and Equality on the proposed legislation.

These proposals represented a significant development in the legislative framework governing child protection in Ireland. The Ombudsman for Children decided to comment on the *Children First* Scheme and the Withholding Information Bill in the same submission because of the overlap between them with respect to the issue of reporting abuse. Notwithstanding the differences between them regarding the nature of the offences to be reported and the quality of the information held by the person on whom there is an obligation to report, both dealt with arrangements for reporting child abuse and formed part of a suite of child protection legislation being advanced by the Government at that time.

The Ombudsman for Children's Office agreed with the general approach of the *Children First* Scheme and the Withholding Information Bill but regarded it is essential to ensure that:

- all necessary resources be put in place to ensure that social work departments can respond effectively to any increase in reporting consequent upon the Children First Scheme and the Withholding Information Bill;
- unnecessary multiple reporting of the same child protection incident should be prevented and, to that end, making a referral in accordance with Children First should obviate the need to make a separate report under the Withholding Information Bill 2012 where the threshold for referring under both has been met;
- an effective system of monitoring, for example by the Social Services Inspectorate of the Health Information and Quality Authority, be put in place to monitor the effects of the legislation on child protection services; and
- the legislation underpinning *Children First* include a requirement for the Minister for Children and Youth Affairs to review the effects of that legislation on child protection practice no later than three years after its commencement. The review should be considered by the Oireachtas Committee on Health and Children.

In its advice on the specific provisions set out in the Children First Scheme, the Ombudsman for Children's Office made recommendations in relation to:

- the definitions of abuse to be used in the legislation;
- the sanctions provided for in the event of non-compliance;
- the role of the HSE; and
- HSE/Garda cooperation under *Children First*.

The Ombudsman for Children's Office also made recommendations for amending the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012 regarding:

- the consistency between the Bill and *Children First: National Guidance for the Protection and Welfare of Children*;
- the definition of a reasonable excuse for failing to make a report to An Garda Síochána;
- the defences provided for in the Bill; and
- the question of legal privilege.

Children and Young People's Policy Framework 2012-2017

The Minister for Children and Youth Affairs launched a public consultation on the Children and Young People's Policy Framework 2012-2017 in June 2012. The aim of the Framework – which will succeed the previous National Children's Strategy – is to set out the Government's high level policy priorities for children and young people for the next five years.

The submission of the Ombudsman for Children on the Children and Young People's Policy Framework emphasised the need for the Framework to be fully underpinned by the State's obligations under the UN Convention on the Rights of the Child. Specifically, the Ombudsman for Children's Office recommended that the Framework should incorporate the recommendations of the UN Committee on the Rights of the Child, both in respect of the elaboration of such plans or strategies generally and the Committee's observations on Ireland's last periodic report under the Convention. Of particular note in this regard are the recommendations relating to marginalised or vulnerable groups of young people, including children living in poverty, children with disabilities, Traveller children, immigrant and asylum-seeking children, and children in conflict with the law.

The Ombudsman for Children's submission also highlighted the importance of robust implementation and monitoring mechanisms and recommended that the actions set out in the Framework have clear and achievable targets as far as possible. Given the high-level nature of the document and the span of time it encompasses, the Ombudsman for Children was of the view that it would be appropriate for the Oireachtas to have a direct role in the oversight and monitoring of the Framework's implementation.

Audit of investigation statements

In 2011, the Ombudsman for Children's Office published a report on a sample of cases which were the subject of investigation under sections 8 and 9 of the 2002 Act, assessing the extent to which the actions of the public bodies in question complied with the State's international human rights obligations. The investigations chosen for inclusion in the report covered a wide range of issues including school transport, the allocation of local authority housing, supports for children with special needs in foster care, special care, and the death of a child in the care of the State.

The Ombudsman for Children's Office commissioned a further report in 2012 on a sample of more recent investigations undertaken by the Office. Work on the second report is at an advanced stage and it is expected that the audit will be published early in 2013.

Access to therapeutic notes

In early 2011, concerns were raised with the Ombudsman for Children's Office regarding the issue of access to therapy notes relating to children who have been sexually abused and the use of information contained in them in the context of criminal prosecutions. Senior medical professionals providing assessment and therapeutic services to children who have been sexually abused expressed the view that the release of notes made during the course of therapeutic work – as distinct from the assessment process – for the purposes of assisting with the prosecution was problematic. In particular, there was a concern that if clinicians cannot establish a sense of privacy, trust and confidentiality in the therapeutic relationship, then the children involved cannot take the risk and engage in the therapy.

This issue was raised in our 2011 Annual Report where we acknowledged that we had reported our concerns on this issue to both the Minister for Justice and the Director of

Public Prosecution and were informed that consultations were on-going between the DPP, An Garda Síochána and the Department of Justice around a solution for this matter. In 2012 we also raised the issue with the Minister for Children and Youth Affairs and are very disappointed to find that there is no further security offered to the children who share their trauma with clinicians in order to overcome the pain and wide reaching effects of sexual abuse. This appears to be very clearly running contrary to the best of interests of the child.

In addition, the Minister for Justice was asked that consideration be given to addressing the matter in primary legislation. In the subsequent correspondence with the Minister for Children and Youth Affairs, this view was reiterated, indicating that legislation would provide greater clarity in balancing the interests of protecting victims of abuse and also supporting prosecutions.

HSE National Consent Policy

The HSE invited the Ombudsman for Children's Office to comment on its Draft National Consent Policy in June 2012. The aim of the document is to provide one overarching policy for consent in health and social care services.

The Ombudsman for Children's Office welcomed the publication of the draft policy, as it provides clarity to health and social care professionals in relation to the issue of consent to interventions for both adults and children. In commenting on the policy, the Ombudsman for Children's Office made reference to:

- the desirability of developing a national policy on child-friendly healthcare, which is required in order for children to realise their right to the highest attainable standard of health in accordance with Article 24 of the UNCRC;
- the importance of the Council of Europe Guidelines on Child-Friendly Health Care as a guide for policy development in the health sector;
- the refusal of treatment or social care interventions by those under the age of 18;
- the situation of children in care;
- the particular needs of young people accessing mental health services; and
- safeguards for children with disabilities.

Engagement with international networks and organisations

One of the functions of the Ombudsman for Children's Office set out in section 7 of the 2002 Act is to cooperate with the Ombudspersons for Children of other states. In 2012, the OCO continued its strong and active engagement with the European Network of Ombudspersons for Children (ENOC), as well as the British and Irish Network of Ombudsman and Commissioners for Children (BINOCC). Both of these networks were established to facilitate the exchange of information and good practice between independent national human rights institutions with a mandate to promote children's rights.

The Ombudsman for Children's Office also held bilateral meetings with a range of international organisations and office-holders charged with the promotion and protection of human rights, including:

- The OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro;
- The Council of Europe Commissioner for Human Rights, Mr. Nils Muižnieks;
- The United Nations Secretary General's Special Representative on Violence Against Children, Ms. Marta Santos Pais;
- The United Nations High Commissioner for Refugees, Mr. António Guterres; and
- Dr Maria Herczog, member of the UN Committee on the Rights of the Child.

Ombudsman do Leanáí

Tuarascáil Bhliantúil 2012



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1

TEACHTAIREACHT ÓN OMBUDSMAN DO LEANAÍ



Táim sásta mo thuarascáil bhliantúil le haghaidh na tréimhse dar críoch 1 Eanáir go dtí 31 Nollaig 2012 a chur faoi bhráid an Oireachtais, de bhun Alt 13(7) den Acht um Ombudsman do Leanaí, 2002.

Shonraigh an bhliain 2012 garsprioc shuntasach i ndul chun cinn chearta na leanaí in Éirinn: is é sin, reáchtáil an reifrinn chun airteagal nua maidir le leanaí a chur san áireamh sa Bhunreacht.

I mí Eanáir 2005, i mo chéad bhliain mar Ombudsman do Leanaí, d'iarr mé seasamh chearta na leanaí a neartú i mBunreacht na hÉireann. Ní raibh mé ar an gcéad duine a rinne amhlaidh; d'ardaigh Catherine McGuinness an cheist i 1993 i gcomhthéacs

an Fhiosrúcháin ar Chiorrú Coil Chill Chainnigh. Faoin uair a bunaíodh m'Óifig, áfach, chuaigh seacht mbliana thart ó tugadh aon chreidiúint don tuairim, ag dul siar chuig an nGrúpa Athbhreithnithe ar an mBunreacht i 1996 agus chuig Coiste na Náisiún Aontaithe um Chearta an Linbh i 1998.

Ó mo chéad chruinniú leis an Aire Stáit le freagracht as leanaí, Brian Lenihan nach maireann, i mí na Samhna 2006, d'oibrigh m'Óifig gan scíth leis an gcuspóir seo a bhaint amach. Dá bhrí sin, bhí sé ina chinneadh doiligh dom gan tacú leis an leasú bunaidh atá leagtha amach sa Bhille um an Ochtú Leasú is Fiche ar an mBunreacht, 2007.

Ghlac mé leis an seasamh seo mar go raibh mé den tuairim nár leor foclaíocht 2007 chun dul chun cinn a dhéanamh ar bhunchearta áirithe leanaí. Mar gheall ar an bhfreasúra ar theagmhaigh mé leis agus dul chun cinn á dhéanamh agam ar réadú na gceart sin, neartaíodh mo thiomantas do leasú fiúntach a shaothrú. In 2007, bhí teagmhas amháin den chineál sin i gceist leis an gcéad uair fhoirmiúil a cuireadh i gcoinne m'údaráis i dtaca leis an sainordú a bhí agam chun cearta na leanaí a chur chun cinn. Tháinig sé as agóid Ard-Chúirte a cuireadh in aghaidh iarrachta ar athbhreithniú breithiúnach agus urghaire ar thionscadal ar thug m'Óifig faoi, is é sin, an Bhallóid Mhór; ba éard a bhí i gceist anseo cleachtadh ar dhaonlathú inar scaipeadh faisnéis do leanaí faoina gcearta. Le linn na héisteachta, cuireadh i mo leith go ndearna mé *"an bonn a bhaint den ord sóisialta"* agus maíodh go raibh mé *"aineolach ar mo reachtaíocht"* [Acht an Ombudsman do Leanaí, 2002] nó *"ceanndána"*. Cé nár éirigh leis, bhí sé ina cheacht luath dom faoin seasamh bunúsach in aghaidh an smaoinimh um ghlacadh le leanaí mar dhaoine aonair agus mar rannpháirtithe gníomhacha i gcleachtadh a gceart féin.

Ní féidir aon spreagthach a shainithint maidir leis an athrú a bhí an togra le haghaidh an Bunreacht a leasú arna fhoilsiú ag Coiste an Oireachtais um an Leasú Bunreacht maidir le Leanaí in 2010 mar bhuaicphointe aige. Tháinig sé as roinnt teagmhas a dhátaíonn blianta siar trí stair náireach na hÉireann ó thaobh mí-úsáid leanaí de, i dteannta dheireadh an chreata reachtaigh a bhaineann le héigniú reachtúil in 2006 mar gheall ar chinneadh na Cúirte Uachtaraí sa chás CC. Mar sin féin, is cuid lárnach, i mo thuairimse, den athrú ar dhearcadh an phobail maidir le leanaí é croiniciú na sárúithe tromchúiseacha ar bhunchearta an duine atá ag na mílte leabh nach rabhthas ag éisteacht leo in Éirinn i roinnt tuarascálacha a foilsíodh le roinnt blianta anuas.

Is mian liom tagairt a dhéanamh go háirithe don tuarascáil ón gCoimisiún chun Drochúsáid Leanaí a Fhiosrú, ina ndoiciméadaítear ollsárúithe córasacha agus fairsinge ar chearta na leanaí a cuireadh i bhforais in Éirinn i rith na tréimhse idir 1936 agus 2000. Ó mo thaobh féin de, mar Ombudsman do Leanaí, breathnaím air mar léiriú den mhéid cumhachta atá ag tuismitheoirí ar leanaí sa lá atá inniu ann ar fud riarachán sibhialta, poiblí agus breithiúnach agus den dóigh a bhféadann agus a ndearna úsáid agus mí-úsáid ansmachtúil na cumhachta sin saol cuid mhór leanaí a scriosadh.

Ní iontas é gur tháinig formhór na leanaí a d'fhulaing sa chaoi seo as cúlra imeallaithe. Tá sé soiléir le feiceáil go bhfuil sé níos fusa sárú a dhéanamh ar chearta daonna na ndaoine sin nach bhfuil cumhachtach ón taobh sóisialta de. Go deimhin, is é ceann de na saintréithe lárnacha de chearta an duine go ngníomhaíonn siad mar chosaint ar chleachtadh ansmachtúil cumhachta na ndaoine sin a bhfuil cumhacht acu in aghaidh na ndaoine sin nach bhfuil cumhacht acu. Is ionann sochaí atá tiomanta go hiomlán do chur chun cinn agus chosaint a dhéanamh ar chearta an duine agus sochaí a bhunaíonn córais chuntasachta agus sásaimh, rud a chuireann cosc ar aon duine cumhacht a chleachtadh sa chaoi seo.

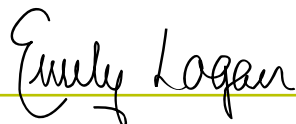
Mar gheall air seo, de bhreis ar ráiteas soiléir ar chearta na leanaí, d'éiligh mé go háirithe go gcuirfí an dá phrionsabal phríomha de chearta na leanaí san áireamh sa Bhunreacht: is iad sin, an oibleagáid chun breithniú a dhéanamh ar leas is fearr na leanaí agus cinntí a théann i bhfeidhm orthu á ndéanamh agus an ceart do leanaí chun a dtuairimí a chur in iúl ar fud riarachán sibhialta, poiblí agus breithiúnach.

I dtaithí m'Óifige, d'imir an easpa cosanta níos soiléire do chearta na leanaí sa Bhunreacht drochthionchar ar leanaí ar fud raon leathan réimsí. Is iad an tOireachtas, ranna Rialtais, riarachán sibhialta agus poiblí, údaráis áitiúla, FSS agus scoileanna na comhlachtaí Stáit lena ndéileálann m'Óifig is minice. Cé go raibh an-chuid den díospóireacht maidir leis an mBunreacht dírithe ar an tionchar a d'fhéadfadh aon leasú molta a imirt ar imeachtaí breithiúnacha, d'áiteoinn gurb é is dóichí go rachadh cinnteoireacht an riaracháin sibhialta agus phoiblí i bhfeidhm ar líonta níos mó leanaí agus teaghlach.

Nuair a d'fhógair an rialtas reatha go ndéanadh sé dul chun cinn dearfach ar an tsaincheist, thionóil mé cruinnithe go luath in 2012, i dteannta an Bhreithimh Catherine McGuinness, Breitheamh na Cúirte Uachtaraí ar scor, d'fhonn mo thuairimí agus mo thaithí a achoimriú ag an leibhéal polaitiúil is airde leis an Taoiseach, leis an Tánaiste agus leis an Aire Leanaí.

Táim ríméadach toisc go raibh súil agam go bhfeicfinn neartú ar chearta na leanaí sa Bhunrecht le linn mo sheilbhe oifige mar an gcéad Ombudsman do Leanaí de chuid na hÉireann. Is eol dom nach uile-íoc é. Ní leor athrú bunreachtúil é féin chun an bunathrú ar chultúr atá ag teastáil a chur ar fáil.

Léirítear sa tuarascáil seo an fáth a bhfuil dul chun cinn chearta na leanaí in Éirinn ina thionscadal neamhchríochnaithe go fóill.

A handwritten signature in black ink that reads "Emily Logan". The signature is written in a cursive style and is positioned above a thin horizontal line.

Emily Logan

Ombudsman for Children

2

FORBAIRT EAGRAÍOCHTÚIL

Seirbhísí Corparáideacha

Rialú Airgeadais

Ba é €2.112m leithdháileadh airgeadais 2012 Oifig an Ombudsman do Leanaí.

Mar atá leagtha amach in Alt 17(1) agus in Alt 17(2) d'Acht an Ombudsman do Leanaí, 2002, tá an tOmbudsman do Leanaí freagrach as Ráitis Airgeadais a ullmhú agus as rialtacht idirbhearta na hOifige a chinntiú. Áirítear leis na feidhmeanna a chuireann taca faoi na freagrachtaí seo íocaíochtaí ar earraí agus ar sheirbhísí a údarú agus a mhonatóiriú, próisis tairisceana, oibriú an phárolla, agus tuairisceáin mhíosúla a thiomsú.

Tá na Ráitis Airgeadais faoi réir ag iniúchadh ag Oifig an Ard-Reachtair Cuntas agus Ciste. Rinneadh iniúchadh ar chuntais 2011 i mí Aibreáin 2012. De ghnáth, ní dhéantar iniúchadh ar Ráitis Airgeadais do bhliain ar leith i gcomhthráth le foilsiú na tuarascála bliantúla lena mbaineann. Nuair a bheidh siad faofa ag Oifig an Ard-Reachtair Cuntas agus Ciste, foilsítear iad ar láithreán Gréasáin an Ombudsman do Leanaí, agus tá cuntais bhliantúla le haghaidh gach bliana suas go dtí 2011 ar fáil ag www.oco.ie.

Chuir Cuntasóirí Cairte CrowleysDFK seirbhísí cuntasáíochta ar fáil don Oifig i rith 2012.

Acmhainní Daonna

Tá líon faofa 15 ball foirne ag an Oifig. Is dúshlán leanúnach é úsáid a bhaint as an acmhainn lárnach seo chun freastal ar éilimh atá fós ag méadú bliain i ndiaidh bliana, maidir le toirt agus castacht. Don tréimh bliain i ndiaidh a chéile, is mian liom a thuairisciú go rabhthas ag brath barraíocht ar ár bpainéal Imscrúdaithe mar gheall ar líon agus castacht na ngearán a fuarthas.

Déantar athbhreithniú ar ról agus ar fheidhmeanna na foirne ar fad san Oifig ar bhonn leanúnach.

Teach na Mílaoise – Úsáid Áitribh

Chomh maith le ceardlanna oideachais ar chearta daonna a reáchtáil do ghrúpaí leanaí agus daoine óga ar cuirt, agus coibhéis thrialach do mhic léinn iarchéime, lean an tOmbudsman do Leanaí ar aghaidh leis na háiseanna i dTeach na Mílaoise a chur ar fáil mar ionad le haghaidh imeachtaí cuí a bhí dírithe ar chearta agus leasanna leanaí agus daoine óga.

Mar shampla, chuir Fóram Óige Ospidéal Náisiúnta na Leanaí, BeLoNG To, EPIC agus Comhpháirtíocht Thuaisceart Bhaile Átha Cliath comhairliúcháin ar siúl anseo le daoine óga. Bhain an FSS úsáid as an ionad roinnt ócáidí freisin.

Oiliúint agus Forbairt Ghairmiúil

D'éirigh leis an Oifig, i gcomhar le Queen Margaret University, Dún Éideann, cúrsa an Teastais Ghairmiúil i gCleachtas Ombudsman agus Láimhseála Gearán a eagrú agus a reáchtáil. D'fhreastail oibríthe cásanna leithleacha Oifig an Ombudsman do Leanaí agus oifigigh ó roinnt Oifigí eile Ombudsman in Éirinn agus sa Ríocht Aontaithe ar an gcúrsa. Roinneadh na costais ar an gcúrsa i measc na n-oifigí freastail. Tar éis an chúrsa, fuair gach oibrí cásanna leithleacha in Oifig an Ombudsman do Leanaí Teastas Gairmiúil i gCleachtas Ombudsman agus Láimhseála Gearán.

Seirbhísí Dlí

I gcomhréir le beartais na Roinne Caiteachais Phoiblí agus Athchóirithe, d'fhéach an Oifig le dul isteach i socrú seirbhísí comhroinnte i rith na bliana maidir le cur amach tairiscintí ar Sheirbhísí Dlí. Foilsíodh iarratas ar thairiscintí maidir le soláthar seirbhísí dlí i mí an Mheithimh 2012. Tar éis an phróisis seo, bunaíodh painéal gnólachtaí le seirbhísí dlí a sholáthar. Sholáthair Ronan Daly Jermyn seirbhísí dlí don Oifig le linn 2012.

Na Meáin

Mar a bhí i mblianta roimhe seo, bhí suim shuntasach ag na meáin in obair na hOifige, chomh maith le clúdach forleathan di. Phléigh na meáin agus tráchtairí eile an tsaincheist um chearta leanaí i gcoitinne go forleathan i gcomhthéacs Reifreann na Leanaí i mí na Samhna 2012. Tá sé suimiúil go raibh na meáin drogallach agallaimh a dhéanamh faoin reifreann beartaithe mar gheall ar bhuarthaí dlí faoi chlúdach claonta, cé gur Oifigeach Neamhspleách an Stáit í an tOmbudsman do Leanaí ar a bhfuil freagracht reachtúil as cur chun cinn agus monatóireacht a dhéanamh ar chearta leanaí in Éirinn. Tháinig an cás seo aníos in ainneoin roinnt cruinnithe ardleibhéil roimh an bhfeachtas reifrinn inar míníodh go raibh an tOmbudsman do Leanaí saor le plé a dhéanamh ar an reifreann ach nach raibh ról ar bith aici in iarracht a dhéanamh ar thionchar a imirt ar na toghthóirí ar an dóigh ar cheart dóibh vótáil agus, dá bhrí sin, nach mbeadh baint acu le haon phlé painéil. Mar sin féin, fuair obair an Ombudsman do Leanaí i gcuid mhór réimsí an-chlúdach sna meáin sa tréimhse roimh an reifreann.

Gnóthaí Poiblí

Tuairiscíonn an tOmbudsman do Leanaí go díreach don Oireachtas agus tá sainordú reachtúil aici comhairle a thabhairt d'Airí Rialtais ar dhlíthe agus ar bheartais a bhfuil tionchar acu ar leanaí. Bhí teagmháil shuntasach ag an Ombudsman do Leanaí leis an Rialtas, lena n-áirítear an Taoiseach, an Tánaiste agus an tAire Leanaí agus Gnóthaí Óige maidir le foclaíocht an Bhille leis an mBunreacht a leasú. Gheall an tOmbudsman do Leanaí go bhfoilseofaí an Bille thuasluaite agus thug sí cuireadh do gach páirtí bualadh léi sular foilsíodh é.

De bhreis ar an oibleagáid reachtúil atá uirthi a tuarascáil bhliantúil a chur i láthair na dTithe gach bliain, fáiltíonn an tOmbudsman do Leanaí roimh aon deis le bualadh le comhaltaí den Oireachtas lena cuid oibre a phlé. In 2012, bhuaill an tOmbudsman do Leanaí agus baill dá foirne leis an gComhchoiste um Poist, Chosaint Shóisialta agus Oideachas i mí an Mhárta chun breac-chuntas a thabhairt ar obair Oifig an Ombudsman do Leanaí atá bainteach leis an gCoiste agus leis an gComhchoiste um Shláinte agus Leanaí i mí an Mheithimh chun an Bille um Thús Áite do Leanaí, 2012, a phlé.

Láithreán Gréasáin

Tá láithreán Gréasáin na hOifige fós ina phríomhuirlis chun cumarsáid a dhéanamh leis an bpobal. Le linn tréimhse ina raibh ár n-acmhainní daonna faoi bhrú, agus ár bhfoireann gearán go háirithe, bhí an láithreán Gréasáin ina mhodh ríthábhachtach le cuidiú le gearánaigh fhéideartha tuiscint conas agus cén uair is féidir linn cabhrú leo, leis an áis a thabhairt dóibh chun foirm ghearáin a chomhlánú ar líne agus bealach cost-éifeachtúil chun cumarsáid a dhéanamh ar mhórsála a chur ar fáil dóibh. Ina theannta sin, soláthraíonn sé bealach éifeachtúil a chinntíonn go bhfuil na cáipéisí beartais, na hábhair oideachais agus an taighde ar fad de chuid Oifig an Ombudsman do Leanaí ar fáil le híoslódáil agus a dhéanann cinnte go bhfuil imeachtaí agus gníomhaíochtaí atá ag teacht aníos inrochtana go réidh ar leathanach baile an láithreáin Ghréasáin.

Forbhreathnú ar Úsáid Fuinnimh in 2012

I mí na Nollag 2009, thug an tAire Cumarsáide, Fuinnimh agus Acmhainní Nádúrtha, éifeacht do Threoir 2006/32/CE ó Pharlaimint na hEorpa agus ón gComhairle an 5 Aibreán 2006, agus rinne sé 'Rialacháin na gComhphobal Eorpach (Éifeachtacht Úsáid Deiridh Fuinnimh agus Seirbhísí Fuinnimh) 2009 (I.R. 542 de 2009)'. Ceanglaítear sna Rialacháin ar eagraíochtaí san earnáil phoiblí tuarascáil a thabhairt go bliantúil, ó mhí Eanáir 2011, ar a n-úsáid fuinnimh agus bearta a rinneadh le hídiú a laghdú.

In 2012, d'úsáid Oifig an Ombudsman do Leanaí 88.197 MWh de leictreachas, i gcomparáid le 88.225 MWh in 2011.

Bearta a Rinneadh in 2011

Lean seirbhísí corparáideacha ar aghaidh le cinntiú gur múchadh trealamh leictreach neamhriachtanach san oíche.

Ag teacht lenár n-iarrachtaí chun ídiú fuinnimh a laghdú, leanann an OCO ar aghaidh le córas athchúrsála inmheánach a oibriú.

3

GEARÁIN AGUS IMSCRÚDUI THE

Is é an fheidhm ghearán agus imscrúdaithe croí-fheidhm agus feidhm ghnóthach na hOifige. Faoi Acht an Ombudsman do Leanaí 2002, is féidir leis an OCO imscrúdú a dhéanamh ar ghearáin a dhéanann leanaí agus daoine óga, nó a dhéanann daoine fásta thar a gceann, faoi eagraíochtaí poiblí, scoileanna nó ospidéal. Is seirbhís saor in aisce, neamhspleách agus neamhchlaonta í.

Forálacha ar Leith

Foráiltear in Acht 2002 d'oibriú na bhfeidhmeanna gearán agus imscrúdaithe ag an Ombudsman do Leanaí. Sna forálacha reachtúla sin leagtar amach foras caighdeánach drochriaracháin maidir le hathbhreithniú ar ghearáin agus déanamh na n-imscrúdaithe. Ós rud é go gcaithfidh an éifeacht ghnímh ar leanbh a bheith ina hábhar imscrúdaithe a rinne an tOmbudsman do Leanaí agus gur féidir le leanaí iad féin gearáin a thabhairt chuig an Oifig, leagtar amach san Acht raon forálacha reachtúla sonracha a chuireann leochaileacht ar leith leanaí san áireamh.

1. Dualgas chun aird a thabhairt ar leas is fearr an linbh

Foráiltear san Acht go mbeidh aird an Ombudsman do Leanaí ar leas is fearr an linbh agus a feidhmeanna gearán agus imscrúdaithe á gcomhlíonadh .

2. Dualgas chun aird a thabhairt ar mhianta an linbh

Foráiltear san Acht go mbeidh aird chuí an Ombudsman do Leanaí i bhfeidhmiú a feidhmeanna gearán agus imscrúdaithe, nuair is infheidhmithe, ar mhianta an linbh, agus aois agus tuiscint an linbh á gcur san áireamh aici.

Forbhreathnú

Leanann an t-eolas a fhaightear trí ghearáin a fháil, a scrúdú, agus a imscrúdú ag an Oifig le léargas luachmhar a chur ar fáil maidir le heispéiris na leanaí agus na dteaghlach agus iad ag déileáil le seirbhísí poiblí. Is meicníocht imscrúdaithe í freisin a bhfuil teacht níos fearr ag saoránaigh leochaileacha uirthi. Soláthraíonn an t-imscrúdú leantach ar láimhseáil gearán aiseolas ríthábhachtach feidhmíochta do na soláthraithe seirbhíse poiblí lena mbaineann.

Arís eile in 2012, leagann sé béim ar easpa feasachta ar an tionchar a imríonn cinnteoireacht riaracháin phoiblí ar shaol na leanaí agus a dteaghlach. Níor tugadh eolas don chinnteoireacht a chuaigh i gcion ar leanaí go díreach agus, corruair, go hindíreach leis an tionchar a bhí aici ar na leanaí i gceist, ná le prionsabail um chearta na leanaí ach oiread. Go sonrach, níor baineadh úsáid as na paraiméadair um leas is fearr an linbh agus um cheart an linbh go n-éistear leis nó léi chun cinnteoireacht riaracháin a threorú go dtí aon phointe suntasach, má baineadh úsáid astu ar chor ar bith.

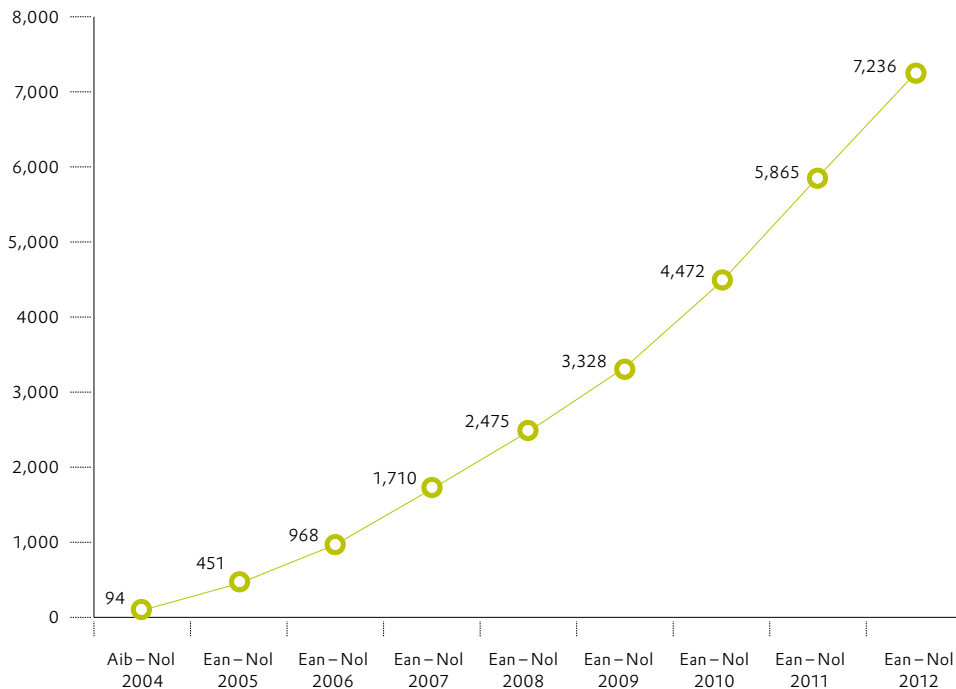
Tá samplaí de chur chuige ró-mhaorlathach i gcuid mhaith cásanna. Tá cásanna inar chuir gairmithe sláinte in iúl i scríbhinn go raibh teiripe nó trealamh ag teastáil ó leanbh ach chuir próiseas oibriúcháin nach raibh ar mhaithe leis an leanbh cosc orthu. Ní féidir a sheachaint go bhfuil neamhláithreacht feasachta sa phróiseas cinnteoireachta ar cé chomh mear is a fhéadtar dochar a dhéanamh do leanaí trí oideachas a bhaint de leanaí, iad a scaradh ó thuismitheoirí agus easpa rochtana a bheith acu ar shiblí.

Staitisticí

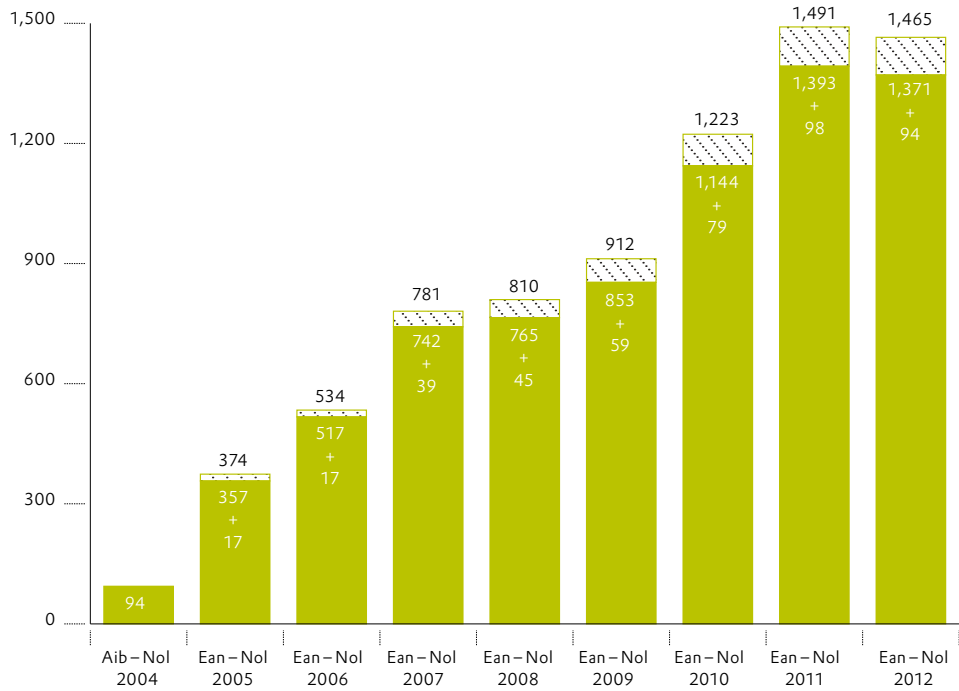
Gearáin ar Déileáladh leo in 2012

I gcomparáid le blianta roimhe seo, coinníodh líon na ngearán a fuair an Oifig ag an leibhéal céanna in 2012, agus 1,465 gearán ar déileáladh leo le linn na bliana, arbh ionann é sin agus 1,371 gearán nua a fuarthas agus 94 a tugadh ar aghaidh ó 2011. Is ionann é sin agus laghdú 1.5% ar líon na ngearán a fuarthas i gcomparáid leis an mbliain roimhe, ach ciallaíonn sé go fóill go bhfuil an Oifig ag déileáil le méadú 17% ar an ualach oibre ón mbliain 2010.

Fás Carnach

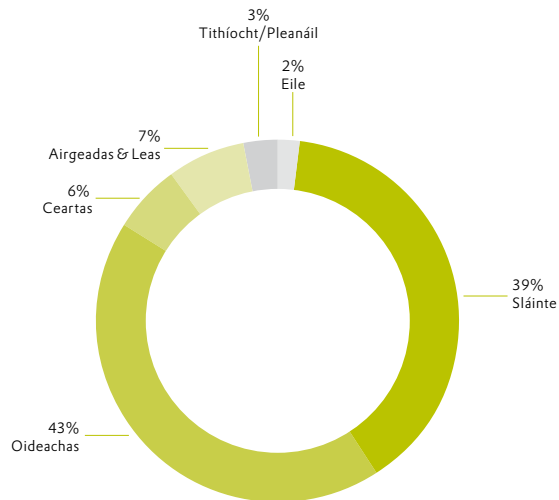


Líon na nGearán ar Déileáladh Leo



Léiríonn an chart thíos an dáileadh earnaíla den iomlán de na 1,371 gearán nua a fuarthas:

Catagóir Ghearán (Eanáir – Nollaig 2012)



Léirítear an méid seo a leanas i gcomparáid idir na catagóirí de ghearáin nua le haghaidh 2011 agus 2012:

- tháinig méadú ar an gcéatadán iomlán de ghearáin a bhaineann le cúrsaí Sláinte ó 32% go 39%
- tháinig méadú ar an gcéatadán iomlán de ghearáin a bhaineann le hearnáil an Cheartais ó 5% go 6%;
- I mbliana, táimid ábalta a thaispeáint go seasann Airgeadas agus Leas do 7% de na gearáin ar fad a fuaireamar.
- Is éard atá sa chatagóir 'Eile' ag 2% ná saincheisteanna ar nós saincheisteanna Sóisialta, Meán, Spóirt agus Áiseanna Pobail.

Tuilleadh sonraí faoi chatagóirí

Oideachas

Léiríonn an tábla thíos na príomhchatagóirí géaran nua a fuarthas maidir le cúrsaí oideachais:

Gearáin oideachais 2012 (43% de na gearáin ar fad)
Na 5 Fhochatagóirí is Mó
Láimhseáil Líomhaintí maidir le hlompar Gairmiúil Míchuí
Láimhseáil maidir le Bulaíocht Piaráí
Beartais, Scéimeanna agus Curaclam Oideachais
Díbirt, Fionraí agus Clárú
Acmhainní Riachtanas Speisialta

Sláinte

Léiríonn na táblaí thíos na fochatagóirí gearán nua a fuarthas maidir le cúrsaí sláinte. Tá Sláinte roinnte in dhá chatagóir; i) Sláinte agus ii) Cúram agus Cosaint Tacaíochta Teaghlaigh agus tá siad freagrach as iomlán comhcheangailte 39% de na gearáin ar fad a fuarthas in 2012. Tugann an chatagóir nua um Chúram agus Chosaint Tacaíochta Teaghlaigh an deis dúinn na saincheisteanna a bhíonn á dtabhairt chuig an Oifig mar ghearáin a shainaithint tuilleadh.

Mar Oifig, rinneamar cinneadh lántoiliúil ar na gearáin Sláinte (Ospidéal, Sláinte an Phobail, Meabhair-Shláinte agus Sláinte Phoiblí) a dhí-chomhbhailiú ó na gearáin Chosanta Teaghlaigh agus Leanaí. Léiríonn na figiúirí thíos go soiléir an tábhacht do leanaí a

bhaineann le bunú na Gníomhaireachta nua um Thacaíocht Leanaí agus Teaghlaigh ionas go bhféadfar an ghné chosanta agus leasa leanaí d’Fheidhmeannacht na Seirbhíse Sláinte a scaradh ón tasc ollmhór atá bainteach leis an sainchúram foriomlán Sláinte.

Gearáin faoi Chúram agus faoi Chosaint Tacaíochta Leanaí in 2012

Na 5 Shaincheist is Mó (28% de na gearáin ar fad)

Cosaint Leanaí

Cúram Malartach

Tacaíocht do Theaghlaigh

Seirbhísí Oibre Sóisialta Eile

Eile

Gearáin Sláinte in 2012

Na 5 Shaincheist is Mó (11% de na gearáin ar fad)

Seirbhísí Cúram Pobail

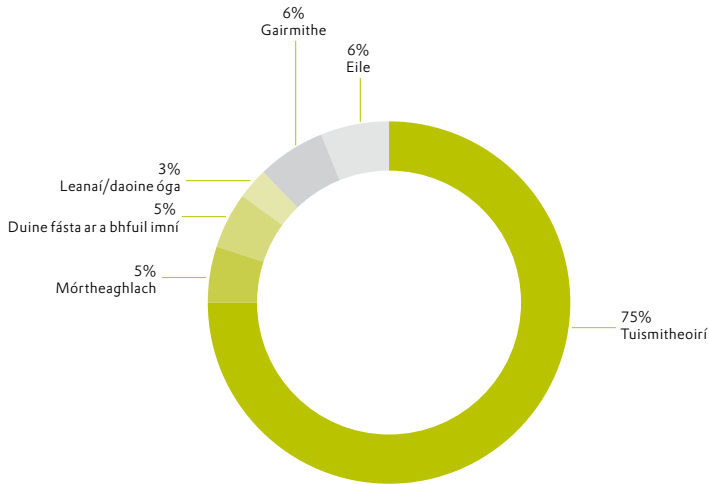
Ospidéal

Seirbhís Sláinte – Eile

Seirbhís Meabhair-Shláinte

Seirbhísí Sláinte Poiblí

Gearánaigh



Gach bliain, leanann tuismitheoirí de bheith ar na príomhthacadóirí do leanaí agus is iadsan a dhéanamh formhór na nGearán leis an Oifig.

Saincheisteanna a thagann aníos trí ghearáin a scrúdaíodh

Leanai faoi chúram a bhfuil rochtain á bhfáil acu ar Sheirbhísí Meabhairshláinte do Leanai agus d'Ógánaigh (CAMHS)

Chuir an Oifig roinnt imscrúduithe i gcrích inar tháinig an tsaincheist um sholáthar seirbhíse meabhairshláinte do leanai faoi chúram aníos. Go háirithe, d'aibhsigh sé saincheisteanna maidir le comhordú agus cumarsáid ar fud Seirbhísí do Leanai agus do Theaghlaiigh agus Seirbhísí Meabhairshláinte do Leanai agus d'Ógánaigh (CAMHS). Áirítear na nithe seo a leanas leis na buncheisteanna a tháinig aníos:

i) Inrochtaineacht do leanai sa dúiche/cheantar ina gcuirtear iad

In imscrúduithe a chuir an Oifig i gcrích, ní raibh na daoine óga ábalta rochtain a fháil ar sheirbhísí áitiúla CAMHS sa cheantar ina raibh cónaí orthu agus iad faoi Shainchúram agus faoi Chúram Altrama, toisc gur tháinig siad as áit lasmuigh den dobharcheantar nó nach raibh oibrí sóisialta leithdháilte sa cheantar acu (toisc nár aistríodh an cás cé gur athlonnigh an teaghlach altrama). Sa dá chás, atreoraíodh daoine óga chuig CAMHS sa cheantar as ar tháinig siad.

I gcás amháin, níor chuir an CAMHS as an gceantar bunaidh seirbhís ar fáil mar nach raibh cónaí ar an duine óg sa dúiche a thuilleadh. Mar gheall air sin, ní raibh an duine óg ábalta rochtain a fháil ar sheirbhísí meabhairshláinte i gceantar de na ceantair. Fuair an duine óg rochtain ar sheirbhísí trí CAMHS eile ina dhiaidh sin. Ardaíonn an cás seo buarthaí faoi leibhéal na dtacaí ar féidir a bheith ag súil lena gcur ar fáil go réasúnach mar gheall ar an bhfad atá i gceist i rochtain a fháil ar na seirbhísí sin, agus d'fhéadfadh sé go mbeadh an duine óg nó an CAMHS ag taisteal achair shuntasacha. De bhreis air sin, leagann sé béim ar na

neamhréireachtaí idir beartais i gcinn éagsúla de Sheirbhísí Meabhairshláinte do Leanaí agus d'Ógánaigh ós rud é gur fhreastail an tríú seirbhís CAMHS ar an duine óg sa deireadh.

Tar éis don Oifig seo idirghabháil a dhéanamh, réitíodh an tsaincheist maidir le rochtain ar sheirbhísí sa cheantar cónaithe ina dhiaidh sin don duine óg sa chás go raibh an tsaincheist fós ann agus leasaíodh beartais an CAMHS áitiúil chun an méid sin a léiriú. Mhol an Oifig:

- gur cheart do leanaí faoi chúram seirbhísí meabhairshláinte a fháil sa dúiche ina bhfuil a socrúchán; agus
- gur cheart beartas náisiúnta CAMHS a fhorbairt maidir le soláthar na seirbhíse, le haird faoi leith ar chóireáil na leanaí faoi chúram, chun a chinntiú go nglactar le cur chuige comhsheasmhach i ngach ceantar.

ii) Teagmháil agus Comhtháthú idir Seirbhísí Leanaí agus Teaghlaigh agus CAMHS

Ardaíodh an comhtháthú measúnuithe agus moltaí CAMHS sa phróiseas Pleanála Cúraim freisin. Is féidir le measúnuithe CAMHS faisnéis ábhartha agus ríthábhachtach a chur ar fáil chun cabhrú leis an bpróiseas Pleanála Cúraim d'fhonn a chinntiú go gcomhlíontar riachtanais mheabhairshláinte an linbh agus chun idirghabhálacha agus teiripí iomchuí a threorú chun cabhrú le deacrachtaí ar bith atá ag an leanbh.

In imscrúdú a cuireadh i gcrích in 2012, bhreathnaigh an Oifig go bhfuarthas measúnuithe síceolaíocha agus síciatracha ach ní dhearnadh na moltaí a tháinig astu a bhreithniú nó a chur san áireamh agus níor tugadh aghaidh orthu go hiomchuí i bPlean Cúraim an duine óig.

Ina theannta sin, aibhsíodh gur easnamhach a bhí leorgacht na hathleanúna agus na cumarsáide ag CAMHS go díreach le leanaí, lena dtuismitheoirí nó le Seirbhísí Leanaí agus Teaghlaigh freisin.

Tá luath-idirghabháil agus soláthar cóireála agus teiripí iomchuí do leanaí a bhfuil fadhbanna meabhairshláinte acu bunriachtanach d'fhonn géarú ar aon deacrachtaí a chosc. Leagadh béim ar an tsaincheist um sholáthar seirbhísí meabhairshláinte san Athbhreithniú Neamhspleách ar Bhás Leanaí freisin.

Ag féachaint do bhunú na Gníomhaireachta um Sheirbhísí Leanaí agus Teaghlaigh, a bheidh i bhfeidhm in 2013, agus don fhéidearthacht go leanfar ar aghaidh le CAMHS a sholáthar faoi choimirce an FSS, tá sé ríthábhachtach go n-oibríonn an dá ghníomhaireacht le chéile, sa phróiseas trasdula go sonrach. Tá oibriú idirghníomhaireachta éifeachtach agus comhsheasmhach ag teastáil chun a chinntiú go n-úsáidtear cur chuige iomlánaíoch agus comhtháite maidir leis an soláthar seirbhísí meabhairshláinte do leanaí faoi chúram nó atá ag fáil seirbhísí tacaíochta do theaghlaigh.

Leanaí faoi chúram a bhfuil tithíocht ag teastáil uathu chun rochtain agus athaontú a éascú

I mbliana, fuair an Oifig roinnt gearán maidir leis an dóigh ar láimhseáil gníomhaireachtaí Stáit riachtanais tithíochta na dteaghlach a bhfuil leanaí faoi chúram acu. Rinne tuismitheoirí agus na leanaí iad féin gearáin gur cuireadh cosc ar leanaí faoi chúram corruair rochtain a

bheith acu ar a dteaghlach nó athmhuintearas a dhéanamh lena dteaghlach mar gheall ar thimpeallacht fhisiceach a dtuismitheoirí, fiú i gcás ina dtacaíonn FSS leis an rochtain nó leis an aontú sin. Nuair atá an timpeallacht fhisiceach curtha ar fáil go díreach (ag údarás áitiúil) nó fóirdheonaithe (trí liúntas cíosa) ag an Stát, níl sé soiléir conas atá gníomhaireachtaí ag obair le chéile lena ndualgais reachtúla faoi seach a chomhlíonadh agus le tacú le teaghlaigh.

Ardaíonn sé buarthaí ar leith toisc go bhféadfaí nach mbeadh rochtain ag na teaghlaigh ná na leanaí ar thacadóirí iomchuí. Thuairiscigh teaghlaigh freisin go raibh ceisteanna dlí i gceist le leanúint de ghearáin le gníomhaireachtaí nach raibh ina bpáirtithe díreacha in imeachtaí cúraim.

I gcás amháin, dhiúltaigh an t-údarás áitiúil cead a thabhairt do leanbh, a bhí i gcúram roimhe sin, cónaí lena mháthair mar go gcruthódh sé plódú in árasán údaráis áitiúil na máthar. Bhí cónaí ar an leanbh lena mháthair faoi ordú maoirsithe. I gcás eile, dhiúltaigh údarás áitiúil leanaí a chur le hiarratas a ngaoil ar thithíocht toisc nach raibh 'coimeád' ag an ngaol ach cuireadh na leanaí leis faoi ordú cúraim a cheadaigh an Chúirt. Ar na hócáidí seo agus ar ócáidí eile, bhí FSS, atá ar an ngníomhaireacht reachtúil a bhfuil freagracht uirthi as cúram agus cosaint leanaí, den tuairim go gcomhlíonfaí leas is fearr na leanaí trí na leanaí a athaontú lena dteaghlach faoi ordú maoirsithe nó trí rochtain thar oíche ar a dteaghlach a fhorbairt d'fhonn athaontú féideartha a cheadú.

I bhformhór na ngearán leis an Oifig seo, rinne oibrí sóisialta an FSS tathant díreach agus gníomhach le go gcomhlíonfadh gníomhaireachtaí eile Stáit riachtanais tithíochta an teaghlaigh. Mar sin féin, i gcás inar tionóntaí údaráis áitiúil iad na teaghlaigh sin, ní chuireann roinnt údarás áitiúil riachtanais tithíochta na leanaí faoi chúram san áireamh chun rochtain nó athaontú a éascú. I gcásanna áirithe, is cosúil go gcruthaíonn sé ciorcal lochtach nach gcuirtear leanaí san áireamh dá bhíthin i measúnú riachtanas tithíochta a dteaghlaigh go dtí go bhfuil siad leo iarbhair agus nach féidir leis an FSS oibriú le haghaidh iad a athaontú go dtí go bhfuil an timpeallacht fhisiceach iomchuí. Uaireanta, téann an tsaincheist chun donachta de dheasca na fírice go dtabharfaidh an Roinn Coimirce Sóisialaí liúntas cíosa de réir riachtanais tithíochta an teaghlaigh arna measúnú ag an údarás áitiúil (i.e. mura gcuirtear leanaí faoi chúram san áireamh i riachtanais tithíochta an teaghlaigh, ní dhéanfar aon íocaíocht ina leith). Tá ról ríthábhachtach le himirt ag údaráis áitiúla ó thaobh na timpeallachta fisic de, rud a bhfuil ról ríthábhachtach aige faoi seach i bhforbairt na nasc teaghlaigh a éascú.

Tar éis roinnt cásanna a fuair an Oifig seo a bhaineann le húdarás áitiúil ar leith amháin, scríobh an Oifig seo chuig an údarás sin chun a aird a tharraingt ar an tsaincheist seo agus chun fiafraí de faoina chleachtas ina leith seo. D'fhreagair an t-údarás áitiúil go ndéantar gach iarratas, ar na doiciméid riachtanacha a fháil, a phróiseáil de réir na scéime Leithdháiltí. Ina theannta sin, d'achomrigh an t-údarás áitiúil go bhféadfaidh an FSS iarratasóir/tionónta a tharchur chuig an gComhairle le go mbreithneofar a n-iarratas go suibhachtúil faoi fhoras leasa eisceachtúil nó le haghaidh treorach ina leith seo. Mar sin féin, mhínigh an t-údarás

áitiúil 'nach bhfuil aon seasamh dlíthiúil aige i gcúrsaí cosanta leanaí ach, ina ionad sin, tá an fheidhm seo dílsithe d'Fheidhmeannacht na Seirbhíse Sláinte'.

Tá an Oifig seo den tuairim go bhfuil oibleagáid ar gach gníomhaireacht Stáit sa dlí náisiúnta agus idirnáisiúnta tacú leis an teaghlach, cé go bhfuil an fhreagracht as cosaint leanaí agus as leanaí faoi chúram dílsithe d'Fheidhmeannacht na Seirbhíse Sláinte sna hAchtanna um Chúram Leanáí. Ina theannta sin, leagtar amach in Tús Áite do Leanáí: 'Níl na scileanna ná an t-eolas ná na hacmhainní go léir ag gairmí ar bith le déileáil go huileghabhálach le riachtanais aon cháis faoi leith. Ar an ábhar sin ní mór cur chuige comhordaithe a bheith ag na gairmithe agus ag na heagraíochtaí go léir atá ag déileáil le leanbh agus lena t(h)uismitheoirí nó lena c(h)úramóirí.' Sonraítear i gceann amháin d'eochairphrionsabail Tús Áite do Leanáí: 'ba cheart athaontú a bhreithniú i gcomhthéacs pleanála le haghaidh thodhchaí an linbh.'

Dá bhrí sin, i gcás ina bhfuil an FSS den tuairim go gcuireann timpeallacht an teaghlaigh iarrachtaí an FSS ar theaghlach a athaontú go féideartha ó rath agus nuair a chuireann comhlacht eile an Stáit an timpeallacht seo ar fáil, ba chosúil go mbeadh sé réasúnta gur cheart cur chuige comhoibríoch de chineál éigin a bheith ann idir gach gníomhaireacht Stáit lena mbaineann, lena n-áirítear údaráis áitiúla. Chabhródh sé le réiteach a chur ar fáil a bheadh ar leas is fearr an linbh faoi chúram agus a theaghlaigh/teaghlaigh. Tá costas daonna ar easpa comhair éifeachtúil idir gníomhaireachtaí Stáit

maidir le cailleanas deiseanna le teaghlaigh a athfhorbairt agus leis an tionchar ar an leanbh a leanann aisti. Chomh maith leis sin, tá costas eacnamaíoch don Stát ina iomláine ar athaontú teaghlaigh a mhoilliú, ar acmhainní oibre sóisialta a chaitheamh ar thathant do sheirbhísí poiblí nó leanbh a bheith faoi chúram in ionad tithíocht imleor a chur ar fáil don teaghlach.

Ba chosúil go mbeadh an cur chuige cur chuige comhoibríoch sin i gcomhréir leis an bhfeachtas reatha le haghaidh athchóiriú na seirbhíse poiblí a dhíríonn ar sheirbhísí a chur ar fáil atá níos comhtháite agus níos éifeachtaí ó thaobh costais de.

Aistriú cásanna idir Oifigí Oibre Sóisialta an FSS

Baineann saincheist bhreise ar leagadh béim uirthi trí obair imscrúduithe na hOifige leis an aistriú leanaí faoi chúram idir Oifigí Oibre Sóisialta an FSS i gceantair éagsúla ar fud na tíre. Sonraítear sa bheartas um aistriú cásanna gur cheart, i gcás ina mbogann leanaí faoi chúram altrama óna gceantar bunaidh de chuid an FSS, cásanna a aistriú chuig a seirbhís oibre sóisialta áitiúil 'a luaithe is féidir' agus gur cheart don cheantar bunaidh athbhreithniú reachtúil a eagrú laistigh de thrí mhí tar éis bhogadh an duine óig, agus beidh an ceantar bunaidh freagrach go fóill as athbhreithniú reachtúil agus as cuairteanna ar feadh tréimhse bliana ar a mhéad.

Aibhsíodh san fhaisnéis a fuarthas moilleanna suntasacha ar thosú an phróisis aistrithe i gcásanna áirithe a bhí cothrom le suas go dtí 4 bliana agus moilleanna freisin ar an gceantar Oibre Sóisialta glactha ag glacadh leis an aistriú. I gcás amháin, níor glacadh leis an aistriú mar gheall ar chonstaicí acmhainní agus d'aimsigh an Oifig go raibh liosta mór feithimh

d'íarratais aistrithe, cás atá ag leanúint ar aghaidh le 3 bliana anuas, agus níor glacadh ach le cásanna cosanta leanaí amháin. Ina theannta sin, ní raibh aon mheicníocht le haghaidh na hiarratais aistrithe a athbhreithniú agus a chur in ord tosaíochta.

I gcásanna nár aistríodh cásanna i gcomhréir leis an mBeartas Náisiúnta, bíonn leanaí fós spleách ar sheirbhísí oibre sóisialta atá i gcéin ó thaobh geografaíochta de, rud a imríonn tionchar ar leibhéal agus raon na tacaíochta agus na hidirghabhála ar fáil. Baineann inní thromchúiseach le héifeacht fhíor na moilleanna sin. I gcás amháin, thuairiscigh an teaghlach easpa teagmhála a bhí imleor ó thaobh minicíochta de leis an rannóg oibre sóisialta mar gheall ar an bhfad agus ar an taisteal a bhí i gceist agus easpa tacaíochta áitiúla chun cabhrú leo, rud a d'éirigh ní ba phráinní nuair a tháinig deacrachtaí aníos.

Mhol an Oifig gur cheart don FSS Náisiúnta a chinntiú go ndéanfar dul chun cinn ar chur chun feidhme iomlán agus comhsheasmhach an Bheartais um Aistriú Cásanna Oibre Sóisialta mar chúrsa tosaíochta.

Leanaí ar a bhfuil Tinneas Ainsealach agus/nó atá faoi Mhíchumais

Fuair an Oifig roinnt gearán a bhaineann le tacaíocht cúram baile do leanaí ar a bhfuil tinnis thromchúiseacha nó atá faoi mhíchumais shuntasacha i gcás ina ndearnadh moladh gur cheart na leanaí a scaoileadh abhaile. D'ardaigh teaghlaigh buarthaí gur moillíodh na seirbhísí tacaíochta a bhí ag teastáil lena éascú mar gheall ar shaincheisteanna maoinithe atá le réiteach go fóill nó mar gheall ar dheacrachtaí maidir leis na tacaí riachtanacha a fhoinsiú agus a chur ar fáil. Ardaíodh tuilleadh buarthaí gur comhaontaíodh tacaíocht ach nár cuireadh chun feidhme í, chomh maith le buarthaí faoi leibhéal agus leorgacht na tacaíochta a cuireadh ar fáil.

Theastaigh raon tacaíochtaí ó na leanaí lena mbaineann, lena n-áirítear cúram altranais sa bhaile chun cabhrú lena riachtanais shuntasacha leighis agus iad sa bhaile, nó tacaíocht chúram baile chun cúnaimh a chur ar fáil de réir mhéid riachtanais an linbh.

D'ardaigh tuismitheoirí buarthaí gur tháinig na nithe seo a leanas as na deacrachtaí sin:

- A gcuid leanaí ag fanacht san ospidéal ar feadh tréimhsí níos faide ná is gá agus, dá bhrí sin, níl siad ábalta cónaí lena dteaghlach. Thuairiscigh teaghlach amháin moill 10 mí sula bhféadfadh a leanbh filleadh abhaile.
- An tionchar a imríonn tréimhsí sínte agus neamhriachtanacha san ospidéal ar a leanbh agus ar a fhorbairt/forbairt agus ar shaol teaghlaigh.
- Leanaí a d'fhill abhaile gan an leibhéal cúraim molta a fháil, nó a d'eispéirigh moilleanna ar an gcúram sin a fháil, rud a chruthaíonn an cumas atá ag socrúcháin bhaile briseadh anuas mar gheall ar neamhleorgacht na dtacaí baile agus atá mar chúis le fanacht breise san ospidéal.
- Dualgas ar thuismitheoirí féachaint go gníomhach le tabhairt faoi na saincheisteanna seo iad féin agus cúram a chur ar fáil do leanaí ar a bhfuil tinneas tromchúiseach.

De bhreis air sin, tá toradh iarmhartach ann, mar a thuairiscigh ospidéal amháin, trína bhféadann moilleanna ar leanaí a scaoileadh amach a bheith ina gcúis le moilleanna do leanaí eile atá a bhfuil rochtain á bhfáil acu ar chúram ospidéil.

Is ábhar imní tromchúiseach é gur féidir na moilleanna agus na deacrachtaí sin teacht aníos nuair a chomhaontaíonn na gairmithe leighis lena mbaineann go bhfuil sé ar leas is fearr an linbh fillleadh abhaile. Is cosúil gur imir roinnt deacrachtaí riaracháin tionchar ar an réimse. Go sonrach, is cosúil go bhfuil easpa maoinithe/buiséid shonraigh ar fáil le haghaidh pacáistí cúram baile do leanaí a bhfuil an cineál seo tacaíochta agus idirghabhála ag teastáil uathu. Cé go soláthraítear cúram, is trí ospidéalú a sholáthraítear é agus trí bhuiséid ospidéil agus gach réigiún den FSS a mhaoinítear é, nuair a d'fhéadfaí cúram ní ba shaoire agus ní b'oiriúnaí do riachtanais an linbh a bheith ar fáil dá dtacófaí leo sa bhaile lena theaghlach/teaghlach.

Baineann deacrachtaí eile leis an bhfáil ar chúram altranais sa bhaile ar chúiseanna éagsúla, lena n-áirítear an neamh-infhaighteacht altráí a bhfuil an cháilíocht Phéidiatraiceach riachtanach acu nó altráí aonaid dianchúraim, agus altráí nach bhfuil ar fáil sa cheantar ar leith nó do na hamanna riachtanacha. Anuas air sin, i gcás amháin ina raibh an ghníomhaireacht altranais neamhábalta na huaireanta riachtanacha a chur ar fáil, cuireadh cosc ar an FSS iad a rochtain trí ghníomhaireacht eile mar gheall ar shrianta soláthair. Ardaíodh an fháil agus an mhoill ar an soláthar oiliúna riachtanaí do chúntóirí cúram baile freisin.

Bunaithe ar an bhfaisnéis a cuireadh ar fáil trí ghearáin, is cosúil nach bhfuil aon chur chuige ná aon bheartas náisiúnta ag an FSS maidir le tacaíocht chúram baile do leanaí, agus cuirtear tacaíocht ar fáil bunaithe ar an bhfáil ar mhaoiniú áitiúil an FSS agus/nó ar sheirbhísí an FSS.

Chuir an Oifig seo béim ar an tsaincheist seo i dtuarascálacha bliantúla roimhe seo, go sonrach in 2010 maidir le moilleanna ar shocrúcháin ar aghaidh do leanaí agus do dhaoine óga agus trí chás-staidéar in 2011 freisin. Is ábhar imní é go leanann na cineálacha seo deacrachtaí ag tarlú agus cuireann sé an gá le cur chuige náisiúnta ag an FSS in iúl chun a chinntiú go gcomhlíonfar riachtanais na leanaí sin ar bhealach imleor agus iomchuí.

Tuigeann an Oifig go bhfuil an tsaincheist seo á breithniú ag an FSS faoi láthair, ag teacht as cásanna ar tarraingíodh a haird orthu trí na hospidéil.

Costas an Drochriaracháin

Straitéis lárnach don Oifig seo ná a chinntiú go gcomhlíonfaidh an Stát a dhualgas chun cearta bunúsacha gach linbh a chosaint ag am téarnaimh náisiúnta.

Agus é sin á dhéanamh againn, déanaimid iarracht a chinntiú go gcuireann an lucht déanta cinntí fíorthionchar aon ghníomhartha a d'fhéadfadh difear díreach nó indíreach a dhéanamh do leanaí san áireamh. Níl sé mar aidhm aige sin idirghabháil aontaobhach a dhéanamh ar chiorruithe buiséid nó seirbhísí a laghdú; ach féachann sé lena chinntiú gur cóir agus cothrom atá na gníomhartha agus na cinntí riaracháin a dhéantar ina dhiaidh sin.

Le linn 2012, bhí tuilleadh samplaí de ghníomhartha riaracháin agus de chinntí comhlachtaí poiblí a raibh na nithe seo a leanas mar thoradh orthu:

- Bhí tionchar níos mó agus níos díobhálaí acu ná mar a bhí beartaithe ag an lucht déanta cinntí
- Ba chosúil gur chaill siad an deis chun bheith níos éifeachtaí nó neodrach ó thaobh costais de
- Ba chosúil gur chaill siad an deis le haghaidh comhtháthú níos fearr a bheith ann idir comhlachtaí poiblí

Tá sé tábhachtach a thabhairt faoi deara go raibh gníomhartha na gcomhlachtaí poiblí ar aon dul lena gcuid treoirilínte nó prótacail féin sna samplaí atá tugtha thíos. Mar sin féin, nuair atá an éifeacht ar an leanbh agus an deis le haghaidh riarachán níos fearr a bheith ann a d'fhéadfadh a bheith cailte á gcur san áireamh, tá sé tábhachtach go dtarraingítear aird ar na gníomhartha sin.

Pacáistí Cúram Baile

Rinne an Oifig imscrúdú ar roinnt cásanna a bhain le leanaí a raibh riachtanais thromchúiseacha leighis acu agus ar theastaigh pacáiste Cúram Baile uathu sula scaoilfí amach as an ospidéal iad le bheith lena dteaghlaigh.

Comhaontaítear na tairbhí a bhaineann le haire a thabhairt de leanaí sa bhaile go minic. Sa chás go raibh ar leanaí a bhféadfaí aire a thabhairt dóibh sa bhaile fanacht san ospidéal de bharr easnamh pacáistí cúram baile oiriúnacha, ní amháin go bhféadfadh sé sin cur isteach ar an leanbh ach cuireann sé strus ollmhór ar theaghlaigh, lena n-áirítear siblíní. Téann sé sin i bhfeidhm go mór ar acmhainní an teaghlaigh nuair a bhíonn leanbh san ospidéal, an costas mothúchánach san áireamh. Cuirtear brú breise a bhféadfaí é a sheachaint ar thimpeallacht an ospidéil ghéarmhíochaine chomh maith, agus dá bharr sin bíonn iarmhairtí tulchnagtha ar leanaí eile ar liostaí feithimh.

Cé gur léir go bhfuil cinntí cliniciúla le déanamh lena chinntiú go gcuirtear an cúram is fearr ar fáil do na leanaí lena mbaineann, i roinnt de na cásanna sin bhain bac suntasach ar leanaí a scaoileadh ón ospidéal le hinfhaighteacht maoiniúcháin le haghaidh pacáistí cúram baile nó altráí cáilithe ag a bhfuil taithí chun cuidiú leis an teaghlach agus is faoin FSS atá sé é sin a sholáthar.

Mar thoradh ar an easpa cur chuige náisiúnta maidir le pacáistí cúram baile do leanaí tinne chaith baill foirne a lán ama nach gá i seirbhísí géarmhíochaine ag iarraidh eagrú chun leanbh a chur abhaile le ceantair aonair an FSS. Ní mór athbhreithniú a dhéanamh ar an gcostas a bhaineann le haire a thabhairt do leanbh i dtimpeallacht ghéarmhíochaine sa chás go bhféadfaí aire a thabhairt dóibh sa bhaile. Tá gá ann le cur chuige caighdeánaithe náisiúnta maidir le pacáistí cúram baile do leanaí tinne lena chinntiú nach ndéantar neamhaird de leasa is fearr an linbh agus an teaghlaigh.

Oideachas agus cúram do leanaí a bhfuil riachtanais speisialta acu

Tarraingíodh aird i ngearáin a fuarthas ar an tsaincheist seo a leanas maidir le háiteanna cúram leanaí.

Maoiníonn an Scéim um Chúram agus Oideachas Luath-Óige (ECCE) áiteanna i gcreiseanna le haghaidh na bliana réamhscoile, ach d'fhéadfadh an freastal a bheith ag brath ar thacaíochtaí eile, ar nós cúntóirí réamhscoile a bheith á gcur ar fáil ag gníomhaireachtaí eile. D'fhéadfaí na cinní sin a dhéanamh ar bhonn lánroghnach agus a bheith éagsúil ó réigiún go réigiún.

Sa chás go bhfuil difríocht idir riachtanais an linbh agus an tacaíocht a chuireann gníomhaireachtaí eile ar fáil, d'fhéadfadh nach mbeidh an leanbh in ann freastal ar chúram luathóige agus leas a bhaint as. Ní hé amháin go gcailltear oideachas luathóige agus na buntáistí dearfacha a bhaineann leis sin, ach d'fhéadfadh sé ualach breise a chur ar theaghlaigh den sórt sin freisin. I gcásanna áirithe, d'fhéadfadh nach mbaintear leas as cúram leanaí (atá íoctha roimh ré ag an Stát trí ECCE).

Bhí cásanna freisin inar dhiúltaigh creiseanna do dhaltaí a raibh riachtanais speisialta acu a chlárú ach amháin i gcásanna ina raibh tacaíochtaí den sórt sin faighte acu roimh ré. Baineann cásanna mar sin an bonn ó gach dea-rún atá taobh thiar den scéim.

Cur in iúl cinní ag comhlachtaí poiblí

Gontacht réasúnaíochta

Is é a bhí i gceist de ghnáth le gearáin a fuair an Oifig seo ná eispéireas teaghlaigh nó tathantóra maidir le déileáil leis an gcomhlacht poiblí nó leis an scoil mar aon lena n-ábhar imní nó lena ngearán féin. Ní féidir an gá atá le dea-chumarsáid sna cásanna sin a rómheas.

Trí réamhscrúduithe, féachann an Oifig lena chinneadh cé acu is féidir nó nach féidir an cheist a réiteach ag leibhéal áitiúil agus cé acu atá nó nach bhfuil gá le tuilleadh imscrúdaithe. Chonaic an Oifig seo cinní réasúnacha agus cinní a raibh údar maith leo a bheith á míniú go hachomair do ghearánaigh i gcomhlachtaí poiblí agus i scoileanna araon. I dTuarascálacha Bliantúla roimhe seo, luaigh an Oifig seo

gur fadhbach, ó thaobh an ghearánaigh agus na scoile araon, a bhí Boird Bhainistíochta nár thug míniú leordhóthanach maidir leis an réasúnaíocht a bhí taobh thiar de chinntí agus nár mhínigh a gcuid tuairimí agus iad ag déileáil le gearáin. I gcásanna áirithe, níor léiríodh an leibhéal dian breithnithe a rinneadh ar shaincheisteanna ar bhealach soiléir ná

leordhóthanach ina gcuid cumarsáide – rud a chuir droch-chomaoin orthu féin.

Ina dhiaidh sin, caitheann gearánaigh méid suntasach ama agus fuinnimh agus iad ag lorg tuilleadh faisnéise ar chinntí a rinneadh agus ar conas is féidir leo teacht ar thacaíochtaí nó ar acmhainní den sórt sin sa todhchaí. Tá tionchar soiléir aige sin ar acmhainní an chomhlachta nó na scoile a bhfuil gearán á dhéanamh faoi/fúithi. Sampla de dea-riarachán is ea míniú soiléir a thabhairt ar cén fáth go ndearnadh cinneadh.

Dea-shamplaí de láimhseáil gearáin is ea cásanna ina n-aontaíonn scoileanna agus comhlachtaí poiblí ar bhealach cumarsáide oiriúnaí le gearánaigh i gcásanna ina bhfuil deacrachtaí. Nuair is infheidhme, leagann siad amach an dóigh a ndéileálfar le rannpháirtíochtaí tríú páirtí amhail an FSS nó an Garda Síochána freisin.

Cur in iúl saincheisteanna acmhainní

In 2012, chonaiceamar go bhfuil tionchar níos mó ag srianta buiséid agus acmhainní ar an dóigh a bhfuil cinntí á míniú agus á gcur in iúl do bhaill an phobail.

Ba mhinic a cuireadh in iúl go hoscailte i litreacha inar diúltaíodh d’iarratais nó d’iarratais ar sheirbhísí go raibh deacrachtaí réigiúnacha nó náisiúnta, amhail lánchoisc agus moratóirí ar earcaíocht agus an geilleagar, ar an bpríomhchúis leis an diúltú.

Tá méadú ag teacht ar líon na gcásanna ina bhfuil tuismitheoirí agus daoine aonair á gcur i gcoimhlint dhíreach le soláthraithe seirbhíse agus le comhlachtaí poiblí maidir le hacmhainní.

Is í an teanga a úsáidtear maidir lenár staid reatha mar náisiún teanga a bhaineann le tréimhse athshlánaithe. In eispéireas na ngearánach, ní mhínítear na bearta eatramhacha atá á ndéanamh ag an gcomhlacht poiblí chun an tionchar díobhálach reatha a réiteach. Mholfadh an Oifig seo go bhfuil baill an phobail go hiomlán ar an eolas faoi na deacrachtaí atá roimh chomhlachtaí poiblí agus roimh sholáthraithe seirbhíse i gcoitinne. Rudáí atá níos tábhachtaí do thuismitheoirí agus don lucht tathanta is ea na bearta atá á ndéanamh chun cúrsaí a réiteach – ba cheart é sin a chur in iúl go rialta in idirghabháil duine le duine agus sna meáin níos leithne. Tá sé sin níos cothroime do na gearánaigh agus do chomhlachtaí poiblí araon.

Soiléireacht maidir le critéir a chur in iúl

Sa chás go bhfuil iarratas á dhéanamh ag tuismitheoirí agus ag an lucht tathanta i gcomhair seirbhísí nó acmhainní do leanaí, agus nach n-éiríonn leis na hiarratais ar deireadh, táimid ag feiceáil nach ndéanann critéir atá drochscríofa agus débhríoch rud ar bith ach cur leis an bhfrustrachas atá ar ghearánaigh atá ag iarraidh ciall a bhaint as cinntí.

Sampla de sin is ea úsáid an fhrása “an scoil oiriúnach is gaire” ag an Roinn

Oideachais agus Scileanna i roinnt scéimeanna a oibríonn sí. Chonaiceamar roinnt malartáin fhada éagsúla idir tuismitheoirí agus an Roinn Oideachais agus Scileanna a léiríonn an nádúr oibiachtúil agus suibiachtúil maidir leis an gciall atá leis an bhfocal oiriúnach, rud atá an-fhadhbach. Nuair a chuirtear “atá acmhainnithe nó is féidir a acmhainniú” leis an

bhfrása sin mar mheicníocht chun a chinneadh cén áit inar cheart do leanbh freastal ar scoil d'fhonn a bheith incháilithe i gcomhair iompair, deontas, deontais oideachais speisialta etc, cruthaíonn sé tuilleadh mearbhaill.

Mar gheall air sin, lorgaíonn tuismitheoirí tuarascálacha gairmiúla, tuairimí leighis nó tuairimí na scoile d'fhonn a gcuid tuairime féin a bhailíochtú i gcásanna ina mbraitheann siad gur cúrsaí airgeadais, seachas caighdeán doiléir a bhaint amach ar cad is ciall leis an bhfocal oiriúnach, iad an príomhúdar le cinntí. I bhformhór na ngearán a fuarthas, tharla sé go minic go raibh caighdeán na Roinne Oideachais agus Scileanna maidir leis an bhfocal oiriúnach i bhfad níos ísle ná caighdeán na dtuismitheoirí nó tuairim an lucht ghairmiúil. Tá an t-ualach breise sin ar tuismitheoirí go háirithe éagórach sa chás nach bhfuil acmhainní i bhfeidhm ag an scoil is gaire chun freastal ar riachtanais an linbh agus go n-aontaíonn an gearánach go bhfreastalófaí ar riachtanais an linbh ar bhealach níos fearr in áit eile.

Cé go bhfuil sí ábhartha, ní dhéanann an tsaincheist a bhaineann le rogha phearsanta a bheith ar an toisc chinntitheach i gcásanna den sórt sin laghdú ar an ngá atá le trédhearcacht agus le cothroime ar an mbealach a chuireann an Roinn Oideachais agus Scileanna acmhainní ar fáil. Rinne an Oifig soiléireacht níos mó a mholadh don Roinn Oideachais agus Scileanna agus a iarraidh uaithi maidir le hoibriú scéimeanna den sórt sin ionas gur féidir le tuismitheoirí agus leis an lucht tathanta roghanna eolasacha oideachais a dhéanamh ar bhealach tráthúil chun laghdú a dhéanamh ar an tionchar díobhálach ar leanaí.

Fócas ar réiteach áitiúil

In 2012, d'oibrigh an Oifig go crua chun scoileanna a spreagadh chun saincheisteanna a réiteach ag leibhéal áitiúil. Mar oifig Ombudsman, cuirtear an bhéim ar a chinntiú go raibh deis ag réiteach áitiúil aghaidh a thabhairt ar ghearáin chúil. Is uathúil atá an caidreamh idir an scoil, na tuismitheoirí agus na leanaí agus ní féidir áibhéil a dhéanamh ar an tairbhe a bhaineann le réiteach luath agus tráthúil.

Beidh taithí sa chur chuige sin ag scoileanna a raibh a gcuid gníomhartha ina n-ábhair ghearán a cuireadh in iúl don Oifig.

I gcásanna oiriúnacha, má aithnímid deacrachtaí a bhaineann le rochtain ar an nós imeachta gearán atá i bhfeidhm nó fadhbanna leis an nós imeachta gearán atá i bhfeidhm, déanfaimid teagmháil leis an scoil agus leis an ngearánach chun ár dtuairim a chur in iúl gur gá sásamh áitiúil a bheith ann. Is é a bheidh i gceist leis sin ná ár dtuairim a thabhairt faoi conas a d'fhéadfaí déileáil leis an ngearán ar bhealach níos fearr nó cur chuige eile a mholadh. Tá gach taobh ar an eolas nach cinneadh ar na gníomhartha a bhfuil gearán á dhéanamh ina leith é, ach tá sé ceaptha chun deis a thabhairt do pháirtithe an gearán a réiteach gan aon ghá le tuilleadh gníomhartha.

Glactar go maith leis an gcur chuige sin i bhformhór na gcásanna agus is maith ag daoine an rún atá taobh thiar den chur chuige. A bhuí leis an gcur chuige sin, réitíodh gearáin ag leibhéal áitiúil i 30 scoil in 2012.

Foras Naomh Pádraig

Ó 1 Iúil 2012 tháinig Foras Naomh Pádraig laistigh de théarmaí tagartha imscrúdaithe Oifig an Ombudsman do Leanaí. Sna chéad sé mhí, fuair eamar iomlán de 4 ghearán, gach ceann dóibh ó thuismitheoirí nó ó thacadóirí na ndaoine óga.

Bhain téama coitianta le heaspa cumarsáide le thuismitheoirí nó tacadóirí maidir le teagmhais a d'fhéadfadh sé gur tharla siad do na daoine óga agus iad sa phríosún. As an líon beag gearán a fuarthas go dtí seo, tugann an téama ginearálta le fios nach bhfaigheann thuismitheoirí nó tacadóirí mórán de theagmháil ó údaráis an phríosúin agus go mbíonn sé deacair fós faisnéis a fháil. Is cosúil go mbíonn an próiseas um chuirteanna a eagrú deacair freisin agus is saincheist í cuairteanna teaghlaigh a tharraingt siar mar gheall ar smachtbhanna araíonachta, rud a cuireadh in iúl dúinn i dteagmháil le thuismitheoirí.

Fiú ag an gcéim luath seo, tá roinnt ábhar imní ann a leagann béim ar an ngá le deireadh a chur le príosúnacht leanaí i dtimpeallacht coimeáda a luaithe is féidir. Cuireadh in iúl dúinn inár dteagmháil leanúnach le príosúnaigh óga agus lena dteaghlaigh go bhfuil cultúr foréigin i rannóg na n-ógánach i bhForas Naomh Pádraig agus go dtarlaíonn ionsaithe agus gortuithe go minic. Tá an Oifig seo den tuairim fós go gcailltear deiseanna athshlánaithe a fhad is a bhíonn an cultúr seo i bhfeidhm.

Maidir le cumas Fhoras Naomh Pádraig imscrúduithe inmheánacha a dhéanamh, d'ardaigh an Oifig seo roinnt saincheisteanna go díreach le bainistíocht Fhoras Naomh Pádraig. I gcás amháin, chinn an Oifig seo go raibh an modh maidir le himscrúdú inmheánach amhrasach. Cuireadh an cas seo faoi bhráid an Bhreithimh Reilly, Cigire na bPríosún, agus bhain an cas leis an bhfoireann um imscrúdú seachtrach de chuid Sheirbhís Príosún na hÉireann.

Sa chás seo, thug an tOmbudsman do Leanaí nótaí tráchta ginearálta maidir le nósanna imeachta ag Foras Naomh Pádraig le haird a tharraingt orthu, lena n-áirítear:

- Cén fáth a bhfuiltear ag súil go ndéanann daoine óga faoi ocht mbliana déag d'aois, a bhfuil drochlitearthacht acu, gearán scríofa
- Cén sórt cúnaimh, más ann dó, a chuirtear ar fáil do dhuine óg ar mian leo gearán a dhéanamh
- Sa chás d'ionsaí líomhnaithe, níor tharla freagra cosanta leanaí, de réir treoirlínte Tús Áite do Leanaí
- Sa chás seo, moltar sa tuarascáil inmheánach, in éagmais fianaise CCTV, nach féidir gearán d'ionsaí ag ball foirne in aghaidh duine óig faoi ocht mbliana déag d'aois a fhíorú agus, mar thoradh air sin, ní sheasfar le gníomh de bhall foirne lasmuigh den limistéar CCTV
- Ba chóir breithniú a dhéanamh ar thacaíocht do dhuine óg a rinne an gearán agus, mar aon le haiseolas, ba chóir go mbeadh monatóireacht sa chás d'aon iarmhairtí ag an ngearánach.

Leanann na coistí cuairte a sástacht le Foras Naomh Pádraig a thuairisciú, mar a bhí an cás le Tuarascálacha Chigire na bPríosún roimhe sin, roimh thuarascáil Bhreitheamh Reilly i Meitheamh 2012.

Cé gur gá dom an t-imní atá orm faoi dhaoine óga faoi choinneáil i bhForas Naomh Pádraig a athlua, creidim go bhfuil an réiteach ann i ndul chun cinn tionscadail Bhaile an Oibricigh. Ba mhaith liom tathant ar an Oireachtas aird a thabhairt ar an tsaincheist seo, mar go gcreidim go bhfuil ceist an aistrithe go Baile an Oibricigh anois faoi bhagairt.

Cás-Obair agus Imscrúduithe

FSS – Soláthar seirbhíse easpa dídine do leanaí agus do dhaoine óga

Le roinnt blianta anuas, thug an Oifig aird ar an tsaincheist seo a thagann as gearáin a rinne daoine óga a bhí gan dídean nó a bhí ag fáil rochtana ar sheirbhísí idirghabhála géarchéime agus ar sheirbhísí lasmuigh de ghnáthuaireanta oibre nó as gearáin a rinneadh thar ceann na ndaoine sin.

Toisc gur tharraing na cásanna aonair sin aird ar shaincheistanna de chineál córasach, chuir an Oifig tús le réamhscrúdú a dhéanamh, i gcomhar leis an FSS, ar na saincheistanna sin i mí an Mhárta 2011. I mí na Bealtaine 2011, chuir an Oifig in iúl don FSS go raibh sé beartaithe aici imscrúdú córasach a dhéanamh ar bhainistíocht agus ar rialachas an bheartais agus an chleachtais maidir le soláthar seirbhísí do leanaí gan dídean.

I bhfaisnéis a chuir an FSS ar fáil mar chuid den phróiseas seo, léiríodh roinnt treoracha agus céimeanna láithreacha beartais a raibh sé beartaithe aici dul chun cinn a dhéanamh orthu d'fhonn feabhas a chur ar na seirbhísí a chuireann sí ar fáil do leanaí gan dídean. Toisc go raibh na gníomhartha ar siúl, rinneadh cinneadh an

t-imscrúdú a choinneáil oscailte agus leanúint ar aghaidh le dul i dteagmháil leis an FSS ar an dul chun cinn a rinneadh sa réimse seo.

Lean an Oifig ar aghaidh le dul i dteagmháil leis an FSS le linn 2012 maidir leis an ábhar seo, agus thionóil sí cruinniú eile agus lorg sí faisnéis bhreise dhoiciméadach maidir leis na bearta a rinneadh – i measc na mbearta sin, bhí:

- Ceapadh Bainisteoir Náisiúnta um Easpa Dídine na hÓige i mí na Nollag 2010. Déanann sé cathaoirleacht ar an bhFóram Náisiúnta um Easpa Dídine na hÓige a stiúirann athbhreithniú ar chleachtas agus ar bheartas náisiúnta sa réimse seo.
- Rinneadh iniúchadh náisiúnta ar úsáid Alt 5 den Acht um Chúram Leanaí in 2011, agus forbraíodh treoir bheartais a tháinig i bhfeidhm in 2012. Áirítear na nithe seo a leanas leis an treoir bheartais sin treoir náisiúnta nua ar úsáid Leapa is Bricfeasta agus luaitear inti nach n-úsáidfear í i gcás leanaí agus daoine óga faoi bhun 18 mbliana d'aois.
- Rinneadh iniúchadh ar úsáid Lóistíní Tacaithe agus forbraíodh beartas in 2012.
- Beidh gach duine óg faoi réir measúnaithe chuimsithigh, mar gurb é sin an phríomhthoisic maidir le cinneadh a dhéanamh ar an soláthar atá oiriúnach do gach leanbh atá i láthair mar dhuine gan dídean d'fhonn a gcuid cúinsí agus an gá le tacaíochtaí a fháil amach.
- Tugadh beartas náisiúnta iarchúraim isteach agus bhí plean forfheidhmithe iarchúraim maidir le soláthar seirbhísí iarchúraim á fhorbairt.
- Tugadh aghaidh ar bhailiú feabhsaithe sonraí trí tháscairí nua feidhmíochta a tugadh isteach maidir le líon na leanaí a fhaigheann rochtain ar aonaid easpa dídine na hóige agus trí bhailiú sonraí sonracha ar úsáid Alt 5 trí thuaisceáin ráithiúla.

Ó chuir an Oifig seo tús leis an scrúdú agus mar gheall ar an imscrúdú atá beartaithe, rinne an FSS roinnt bearta tábhachtacha maidir le soláthar seirbhíse do dhaoine gan dídean. Ar an mbonn sin, rinneadh cinneadh chun deireadh a chur leis an imscrúdú a bhí beartaithe agus cuireadh roinnt moltaí faoi bhráid an FSS i mí Dheireadh Fómhair 2012, lena n-áirítear na nithe seo a leanas:

1. Níor cheart Alt 5 den Acht um Chúram Leanaí a úsáid ar feadh tréimhsí fada, agus ba cheart é sin a bheith léirithe sa bheartas náisiúnta.
2. Ba cheart do bheartas iarchúraim soláthar a dhéanamh do leanaí ar cuireadh cóiríocht ar fáil dóibh faoi Alt 5, go háirithe sna cásanna sin inar úsáideadh í ar feadh tréimhsí fada.
3. Mar gheall ar an ngá atá le comhsheasmhacht i ngach doiciméad ábhartha, níor cheart lóistíní tacaithe a chur san áireamh ach amháin i gcás leanaí atá 16 bliana d’aois nó níos sine.
4. Inrochtaineacht: Níl sé oiriúnach do leanaí gan dídean rochtain a fháil ar sheirbhísí trí Stáisiúin an Gharda Síochána agus ba cheart é sin a athbhreithniú mar ábhar práinne mar gheall go ndúirt daoine óga a ghlac páirt i gcomhairliúchán na hOifige seo “go raibh aiféaltas, náire nó imní orthu toisc go raibh orthu é sin a dhéanamh”. Rinne na daoine óga céanna sin moltaí maidir le bealaí eile a d’fhéadfaidís rochtain a fháil ar sheirbhísí, lena n-áirítear cur ar chumas leanaí teagmháil a dhéanamh le seirbhís oibre sóisialta trí uimhir Shaorghlao nó tacaíocht a thabhairt do leanaí chun dul díreach isteach i gcóiríocht éigeandála agus nascadh isteach le seirbhísí oibre sóisialta ansin. Chuir an FSS in iúl go raibh roinnt athruithe ar an bpróiseas sin agus, dá bhrí sin, nach mbeadh ar atreoruithe nua rochtain a fháil ar chóiríocht do dhaoine gan dídean trí na Gardaí sa chás gur atreoraigh an tSeirbhís Idirghabhála Géarchéime iad.
5. Tabharfaidh an gá atá le haghaidh a thabhairt ar an tsaincheist a bhaineann le leanaí faoi chúram a bheith ag fáil rochtana ar sholáthar seirbhíse do dhaoine gan dídean, lena n-áirítear athbhreithniú láithreach ar gach leanbh i staideanna den sórt sin agus úsáid bhailithe sonraí, eolas i gcomhair na straitéise um sholáthar cúraim mhalartaigh.
6. Ba cheart monatóireacht a dhéanamh ar rochtain ar sheirbhísí do dhaoine gan dídean a urchosc nó a shrianadh agus ba cheart gach beart a dhéanamh chun a chinntiú go soláthraítear socrúcháin chuí agus tacaíochtaí cuí ar bhealach tráthúil.
7. Monatóireacht agus athbhreithniú a dhéanamh ar thorthaí do leanaí atá ag fáil rochtana ar sheirbhísí éigeandála/lasmuigh de ghnáthuaireanta oibre ar fud na tíre.
8. Ba cheart maoirseacht agus monatóireacht náisiúnta a choimeád ar bun agus ba cheart dóibh leanúint le dul chun cinn a dhéanamh ar an réimse tábhachtach seo.

Chuala an Oifig, trína feidhm rannpháirtíochta agus oideachais, go díreach ó dhaoine óga a raibh taithí acu ar easpa dídine freisin – féach leathanach 47.

Cás-Staidéir

Léiríonn na cás-staidéir sampla den obair a rinne an Oifig le linn na bliana.

Tithíocht Údaráis Áitiúil

Cás-Staidéar 1

An gearán

Rinne máthair teagmháil leis an Oifig maidir lena mac a bhí 17 mbliana d'aois agus a bhí faoi chúram an Stáit agus ar urscaoileadh a ordú cúraim i gCúirt faoi choinníoll Cúirte nach mór dó cónaí lena máthair ag a seoladh. Nuair a rinne an teaghlach an t-ordú sin ón gCúirt a leanúint, dhiúltaigh an tÚdarás Áitiúil do chead a thabhairt don leanbh chun cónaí lena máthair mar gheall ar phlódú.

Chónaigh an leanbh lena mháthair agus lena dheirfiúr beag beann ar an diúltú sin agus, mar gheall nach raibh a sheomra leapa féin aige agus gur chodail sé ar an urlár, d'fhorbair sé aimhréidh sláinte a raibh ga aici le cóireáil ospidéil.

Scrúdú OCO

Agus scrúdú á dhéanamh aici ar an gcás, cheistigh an Oifig cleachtas an Údaráis Áitiúil cead a iarraidh/a dhiúltú do leanbh chun cónaí lena t(h)uismitheoir is caomhnóir. Bhí sé soiléir freisin go raibh easpa idirchaidrimh idir an tÚdarás Áitiúil agus an FSS maidir leis an leanbh a bhí sa chóras cúram leanaí ar feadh roinnt blianta.

Chomh maith leis sin, tharraing an scrúdú aird ar an easpa coimeádta taifead lárnach agus ar an easpa comhroinnt faisnéise a bhí ann idir rannóga éagsúla an Údaráis Áitiúil. Bhí sé soiléir freisin, cé gur thug atur nae an linbh fógra don Údarás Áitiúil faoi choinníollacha an Ordaithe ón gCúirt, nár éascaigh an tÚdarás Áitiúil téarmaí an Ordaithe Cúirte beag beann air sin.

Toradh

Mar thoradh ar ár n-idirghabháil leis an Údarás Áitiúil, tugadh gealltanais nach raibh an méid a tharla sa chás seo mar bheartas ná mar chleachtas caighdeánach Údaráis Áitiúil. Dheimhnigh an tÚdarás Áitiúil go gcomhlíonfadh sé téarmaí na horduithe ón gCúirt nuair a thugtar fógra dó ina leith agus nár cheart do leanbh ar mhian leis/léi cónaí lena t(h) eaghlach iarratas a dhéanamh chun cónaí leo agus, dá bhrí sin, nár cheart diúltú dó cónaí leo ar fhorais phlódaithe nó ar fhorais ar bith eile. Ón bhfreagra a fuarthas ón Údarás Áitiúil, tá an Oifig sásta, mar sin, nach é beartas an Údaráis Áitiúil baic a chur ar an gceart atá ag leanbh chun saol teaghlaigh.

Oideachas

Cás-Staidéar 1

An gearán

Rinne dhá phéire tuismitheoir teagmháil ar leithligh leis an Oifig maidir leis an tsaincheist chéanna sa bhunscoil chéanna. Mar sin, cinneadh an dá ghearán a scrúdú le chéile.

Rinne an dá phéire tuismitheoir teagmháil leis an Oifig maidir le cleachtais i mbunscoil ár baineadh a gcuid leanaí uaithe mar gheall ar an dóigh ar déileáladh lena gcuid oideachais. Diagnósíodh an bheirt leanaí le deacrachtaí foghlama agus iompraíochta agus bhí deacrachtaí mothúchána, amhail fadhbanna imní agus féinmhúine, ag leanbh amháin. Bhí imní ar leith ar an dá phéire tuismitheoir maidir leis an dóigh ar chosúil gur leagadh béim i dtuairisciú agus in aiseolas deireadh téarma agus seomra ranga ar ghnéithe diúltacha de dhul chun cinn oideachais na leanaí. Rinneadh an tuairisciú diúltach sin in ainneoin go raibh an scoil ar an eolas faoi riochtaí na leanaí trí thuairiscí Teiripeoir Saothair agus Síceolaí. Bhí na tuismitheoirí den tuairim freisin nach raibh na moltaí sna tuairiscí sin á gcur i bhfeidhm ar bhealach leordhóthanach.

Scrúdú OCO

Rinne an Oifig teagmháil leis an scoil mar chuid de réamhscrúdú ar na gearáin. Leag an Oifig béim ar an bhfíric go raibh an scrúdú ag féachaint ar bheartais fhoriomlána laistigh den scoil agus nár bhain sé le cleachtais aonair ná le cinní a rinne múinteoirí ar leith. Tharla sé go raibh an scoil sách réamhghníomhach maidir le pleananna oideachais a chruthú don bheirt leanaí agus maidir le moltaí na dtuairiscí a chur i bhfeidhm. Mar sin féin, bhí na deacrachtaí ag teacht chun cinn nuair a bhí dul chun cinn oideachais na leanaí á thuairisciú i dtéarmaí diúltacha agus nuair a bhraith siad go rabhtas ag iarraidh orthu cos a choinneáil lena gcuid piaráí i réimsí áirithe inar thug a ndiagnóis le tuiscint go mbeadh deacrachtaí acu leo.

Toradh

Rinne an Oifig moltaí don scoil maidir leis an bhféidearthacht a bhaineann le teimpléid tuairiscithe a oiriúnú chun gnéithe a d'fhéadfadh a bheith bainteach le dul chun cinn na leanaí maidir le spriocanna a leagadh síos ina gcuid pleananna oideachais a chur san áireamh, in ionad iad a rátáil in aghaidh a gcuid piaráí.

Mhol an Oifig gur cheart do phleanáil agus do thuairisciú ar oideachas linbh a bhfuil deacrachtaí foghlama aige/aici a bheith chomh cuimsitheach agus is féidir, lena n-áirítear idirchaidreamh a dhéanamh le tuismitheoirí. Tharraing an Oifig aird ar an ngá atá le tuairisciú agus le haiseolas dearfach a thabhairt do leanaí freisin. D'fhreagair an scoil ar bhealach dearfach do na moltaí sin. Cé nár fhreastail an bheirt leanaí ar an scoil a thuilleadh, bhí an dá phéire tuismitheoir sásta leis an toradh sin, agus bhí siad sásta nach mbeadh ar leanaí sa todhchaí déileáil leis na deacrachtaí céanna a bhí ag a gcuid leanaí féin.

Cás-Staidéar 2

An gearán

Rinne tuismitheoir gearán faoi na deacrachtaí a bhí aici agus í ag iarraidh diagnóis nua a hiníne a bheith curtha san áireamh ina Plean Aonair Oideachais (IEP). Mhair an próiseas agus an rannpháirtíocht leis an mbunscoil níos mó ná sé mhí agus rinneadh an oiread sin difear don chaidreamh idir an tuismitheoir agus an scoil gur bhraith an tuismitheoir gur ghá a hiníon a bhaint ón scoil agus í a aistriú chuig bunscoil eile ar mhaithe lena cuid oideachais.

Scrúdú OCO

Agus scrúdú á dhéanamh ar an ngearán seo, bhí sé soiléir go raibh tuairimí éagsúla ag Bord Bainistíochta na scoile agus ag an síceolaí oideachais ón tSeirbhís Náisiúnta Síceolaíochta Oideachais (NEPS) maidir le ról na scoile i bPleananna Aonair Oideachais a cheapadh do leanaí a bhfuil deacrachtaí áirithe foghlama acu.

Scríobh Síceolaí NEPS chuig an scoil chun comhairle a thabhairt di maidir lena ról. Ba chosúil go raibh an scoil den tuairim, agus gur chuir sí in iúl do na tuismitheoirí, gurbh é ról NEPS Plean Aonair Oideachais a chur i bhfeidhm agus spriocanna a leagan síos don leanbh. Shoiléirigh NEPS don scoil go bhféadfadh ról tacaíochta a bheith aici sa phróiseas seo, nuair a iarrtar uirthi, ach go bhfuil na ról sin de dhualgas ar an múinteoir ranga agus ar an Múinteoir Tacaíochta Foghlama go príomha agus gur cheart na ról sin a chomhlíonadh in éineacht le hionchur a fháil ó thuismitheoirí, agus ón síceolaí oideachais más gá, de réir Threoirlínte NCSE maidir le Próiseas an Phlean Aonair Oideachais a foilsíodh in 2006.

Toradh

Mar thoradh ar idirghabháil na hOifige, d'aontaigh an Bord Bainistíochta gur thug sé freagra mícheart don ngearánach maidir le feidhm na scoile i bpróiseas ceaptha an Phlean Aonair Oideachais dá leanbh. Gheall an Bord go mbeadh baint ag na páirtithe ábhartha uile le ceapadh Pleananna Aonair Oideachais nuair is cuí amach anseo. Cé nár fhreastail an leanbh ar an scoil a thuilleadh agus cé nach rabhthas in ann an tsaincheist seo a shásamh go díreach, gheall an Bord go scríobhfadh sé chuig an ngearánach agus soiléiriú a thabhairt di maidir le haon fhaisnéis mhícheart a chuir sé in iúl di maidir le ról na scoile sa phróiseas.

Cás-Staidéar 3

An gearán

Chuir na tuismitheoirí an gearán faoi bhráid na hOifige thar ceann a mic a bhí 17 mbliana d'aois. Diagnóisíodh é le míchumas foghlama agus le huathachas, agus bhí sé ag freastal ar Scoil Náisiúnta Speisialta. Bhí sé leis an scoil a fhágáil nuair a bhain sé 18 mbliana d'aois amach agus le haistriú chuig Seirbhís Lae do Dhaoine Fásta a bhí á reáchtáil ag an FSS. Ní raibh aon socrúchán ar fáil dó i Seirbhís do Dhaoine Fásta áfach. Cé gur chuir an scoil in iúl don Roinn Oideachais agus Scileanna go raibh sí in ann freastal air, agus ar na daltaí nua a bhí cláraithe, laistigh dá hacmhainní reatha, dhiúltaigh an Roinn Oideachais agus Scileanna do chead a thabhairt dó fanacht sa scoil ar feadh bliana eile.

Scrúdú OCO

Rinne an Oifig idirghabháil chun a fháil amach cén fáth go raibh an Roinn Oideachais agus Scileanna ag diúltú do chead a thabhairt dó fanacht sa scoil ar feadh blianaeile, mar nach raibh aon áit ar fáil dó i Seirbhís do Dhaoine Fásta agus mar go raibh an scoil sásta agus ábalta é a chlárú.

Thug an Roinn Oideachais agus Scileanna freagra inar chuir sí in iúl go ndearna sí athbhreithniú ar an gcás agus gur chuir sí na nithe seo a leanas san áireamh: (1) an iarracht a rinne an scoil chun aistriú chuig seirbhís do dhaoine fásta a éascú, (2) na deacrachtaí a bhí ann agus (3) an infhaighteacht socrúcháin i seirbhís do dhaoine fásta.

Toradh

Sa chás seo, thug sí cead don ghearánach fanacht ina scoil go dtí go bhfaighfí socrúchán dó i saoráid do dhaoine fásta. Gheall an Roinn Oideachais agus Scileanna go gcuirfeadh sí na tosca céanna san áireamh agus breithniú á dhéanamh aici ar iarratais amach anseo ó scoileanna i gcúinsí den chineál céanna chun daltaí atá os cionn 18 mbliana d'aois agus nach bhfuil áit acu i seirbhís do dhaoine fásta ar féidir leo aistriú chuici a choinneáil.

Cás-Staidéar 4

An gearán

Fuair an Oifig seo gearán ó mháthair a chuir imní in iúl gur dhiúltaigh an Roinn Oideachais agus Scileanna d'iarratas a mhic ar Theagasc Baile. Diagnóisíodh an duine óg seo, a bhí 14 bliana d'aois, le neamhord annamh. Mar thoradh air sin, fulaingíonn sé taomanna diana titimis agus fadhbanna diana forbartha agus léiríonn sé saintréithe speictream an uathachais. Ina theannta sin, tá drochscileanna cumarsáide ag an duine óg agus teastaíonn a lán cúraim uaidh mar nach bhfuil sé oilte in úsáid an leithris. Chuir an tuismitheoir in iúl go bhfuil taomanna a mic

níos déine agus níos coitianta le blianta beaga anuas. Bhain na tuismitheoirí a mac óna scoil is déanaí mar gheall ar na deacrachtaí a bhí ag an scoil maidir le hiompar a mic mar thoradh ar a riocht. Nuair a rinneadh an gearán chuig an Oifig seo, ní raibh socrúchán oideachais ag an duine óg.

Scrúdú OCO

Scríobh an Oifig chuig an Roinn Oideachais agus Scileanna chun aird a tharraingt ar na hábhair imní a cuireadh in iúl agus chun tuiscint na Roinne a lorg maidir leis an ngearán seo. Sa chás seo, dhiúltaigh an Roinn Oideachais agus Scileanna don Deontas Teagaisc Bhaile faoin gcatagóir leighis toisc gur luadh sna critéir *'nach mór dó a bheith cláraithe agus ag freastal ar scoil faoi láthair chun a bheith incháilithe chun iarratas a dhéanamh faoin gcatagóir seo'*. Mar sin féin, bhí an tuismitheoir den tuairim nach raibh sé oiriúnach dá mac freastal ar scoil toisc gur mheathlaigh a riocht agus toisc nach raibh timpeallacht scoile oiriúnach dó ag an am sin. Bhí comhfhreagras tacaíochta ó ghairmithe leighis inar tugadh tacaíocht d'iarratas an duine óig ar Theagasc Baile.

Toradh

Mar thoradh ar idirghabháil na hOifige seo, chuir an Roinn Oideachais agus Scileanna in iúl go ndearna sí athbhreithniú ar an tsaincheist a bhaineann leis na critéir cháilitheachta is infheidhme maidir le hiarratasóirí ar theagasc baile ar chúiseanna leighis. Más féidir le tuismitheoirí na leanaí is iarratasóirí an Roinn Oideachais agus Scileanna a shásamh go mbeadh an leanbh cláraithe i scoil aitheanta mura raibh riocht leighis orthu, ní bheidh sé riachtanach go bhfuil an leanbh sin ar rolla na scoile.

Rinne an Roinn Oideachais agus Scileanna teagmháil leis an tuismitheoir d'fhonn breithniú a dhéanamh ar aon iarratais eile ar theagasc baile faoi chatagóir leighis na scéime. Mar chuid de sin, chuir an Roinn Oideachais agus Scileanna in iúl don Oifig seo go bhféadfadh sí breithniú a dhéanamh ar mhaoiniú cúlghabhálach a sholáthar le haghaidh teagasc baile faoin gcatagóir leighis.

Cás-Staidéar 5

An gearán

Chuir tuismitheoir inní in iúl thar ceann a linbh maidir leis an dóigh ar dhéileáil scoil le bulaíocht tuairiscithe. Bhí imeagla ar an duine óg roimh ghrúpa piaraí, rud as ar tháinig freastal neamhrialta ar scoil le linn bhliain a sé.

Scrúdú OCO

Rinne an Oifig réamhscrúdú ar fhreagra na scoile ar na líomhaintí faoi bhulaíocht agus ar an dóigh ar déileáladh leis na gearáin a rinne an tuismitheoir ina dhiaidh sin. Le linn an phróisis scrúdaithe, bhí sé soiléir go bhféadfadh an cás seo tionchar diúltach a imirt ar chúrsa Ardteistiméireachta an duine óig seo. Tarraingíodh aird na scoile ar an tsaincheist sin freisin.

Toradh

Ar an iomlán, bhí an Oifig sásta leis an dóigh ar dhéileáil an scoil leis an gceist seo. Thug an scoil freagra cuimsitheach, inar mionsonraíodh an t-imscrúdú láithreach ar na líomhaintí faoi bhulaíocht agus agallaimh leis na daltaí cuí. Thug múinteoirí tacaíochtaí, lena n-áirítear comhairleoireacht, do na daoine óga lena mbaineann agus rinne siad iarracht dul i ngleic leis an gcás trí chleachtais aisírocha a úsáid. Thaispeáin an scoil cur chuige réamhghníomhach chun bulaíocht a chomhrac sa scoil. Mar sin féin, rinne an Oifig moltaí i leith Bheartas Frithbhulaíochta na scoile chun soiléiriú a thabhairt maidir leis an nós imeachta a nglactar leis tar éis líomhna faoi bhulaíocht.

I gcás chúrsa Ardteistiméireachta an duine óig, d'aontaigh an scoil agus Coimisiún na Scrúduithe Stáit, i gcomhaontú leis an teaghlach, ar shocruithe speisialta d'fhonn aon tionchar díobhálach a d'fhéadfadh a bheith ann a mhaolú.

Sláinte

Cás-staidéar 1

An gearán

Rinne an duine óg, le cabhair a Chaomhnóra ad Litem, gearán leis an Oifig maidir le roinnt saincheistanna ar thug sé don FSS mar chuid de ghearán. Bhraith sé nach bhfuair sé freagra sásúil ón FSS maidir lena ghearán. Rinne sé gearán ina ndúirt sé go raibh a shocrúchán altrama éigeandála míchuí agus gur mhair sé níos faide ná mar a bhí beartaithe. Níor réitíodh ceistanna faoin dóigh ar caitheadh leis ag an socrúchán, agus bhraith sé go raibh moill ina phlean iarchúraim á eagrú agus á chur i bhfeidhm mar gheall ar an easpa dul chun cinn i dtaca le briseadh an tsocrúcháin seo, agus a ghearán ina dhiaidh sin.

Iniúchadh OCO

Bhí teagmháil leitheadach ag an Oifig le Gnóthaí Tomhaltóirí an FSS, chomh maith le Príomhoibrí Sóisialta Fhoireann na hOibre Sóisialta FSS lenar bhain. Ar iniúchadh a dhéanamh ar an gcás, fuair an Oifig go raibh imscrúdú inmheánach leanúnach an FSS ar siúl ar an socrúchán altrama sealadach a úsáideadh sa chás seo. Cuireadh in iúl go raibh tionchar aige seo ar an iniúchadh ar an ngearán a rinne an duine óg. Mar sin féin, tharla sé nár cuireadh é sin in iúl don duine óg agus go raibh sé den tuairim nar déileáladh go dáiríre lena chuid buarthaí.

Bhain ceist eile a tháinig chun solais in iniúchadh ar an ngearán seo leis an aistriú comhad idir foirne oibre sóisialta a bhíonn ag obair i gcontaetha éagsúla. Ba léir, ar feadh tréimhse suntasach nuair a bhí an duine óg faoi chúram altrama, go raibh a chás á bhainistiú ag foireann nach raibh ina fhoireann oibre sóisialta áitiúil.

Chuir an Oifig in iúl don FSS go bhféadfadh sé go mbeadh gá iniúchadh a dhéanamh ar an ngearán seo. D'fhreagair an FSS, áfach, le gealltanais áirithe á dtabhairt aige a raibh an duine óg sásta leo agus a shoiléirigh cleachtais sa todhcháil laistigh den FSS. Bhuail an Príomh-Oibrí Sóisialta leis an duine óg agus tugadh míniú dó ar ghnéithe éagsúla a cháis agus gabhadh leithscéal leis maidir le haon chleachtais faoinar cheap sé nach raibh an FSS dáiríre faoina chuid buarthaí bunaidh.

Toradh

Mar thoradh air seo, níor lean an Oifig ar aghaidh le hiniúchadh agus rinne sí moltaí ar thug Oifig an Stiúirthóra Naisiúnta, FSS, freagra dearfach orthu. Rinneadh gealltanais chun feabhas a chur ar láimhseáil gearán maidir le daoine óga faoi chúram agus eisíodh treoirilínte beartais. Glacadh leis nár chóir socrúcháin éigeandála a úsáid níos faide ná mar is gá agus níor chóir iad a úsáid in ionad pleanáil chúraim chuí. Cuireadh in iúl don Oifig freisin go bhfuil an cheist maidir le haistriú comhad faoi athbhreithniú agus go mbeadh tionchar ag na deacrachtaí ar leagadh béim orthu ar an bpróiseas athbhreithnithe.

Cás-staidéar 2

An gearán

Chuir máthair gearán isteach chuig an Oifig thar ceann a mic. Ag am an ghearán bhí sé 10 mbliana d'aois. Mar thoradh ar dheacrachtaí dromlaigh, ní mór dó cathaoir rothaí a úsáid. Mhol a fhisiteiripeoir dó gur chóir dó fráma seasaimh a úsáid gach lá lena shláinte agus lena neart a choimeád, agus go sonrach chun dlús cnámh, díleá agus draenáil a lamhnáin agus a phutóige a choimeád. Mar sin féin, briseadh a fhráma in Eanáir 2012 agus, in ainneoin gur iarr a mháthair agus an fisiteiripeoir ar an FSS é a dheisiú, ní raibh sé deisithe fós 10 mí ina dhiaidh sin.

Iniúchadh

Mar chuid den iniúchadh ar an ngearán, scríobh an Oifig chuig an FSS le fáil amach cad a bhí taobh thiar den mhoill agus le hiarraidh orthu é a dheisiú a luaithe is féidir.

D'fhreagair an FSS le míniú gur tharla an moill fhada leis an bhfráma seasaimh a dheisiú toisc gur cailleadh an t-iarratas. Dhearbhaigh an FSS don Oifig go raibh athbhreithniú á dhéanamh acu ar a gcuid córas feithimh reatha chun a chinntiú nach dtarlódh an botún/cailleadh arís agus chun feabhas a chur ar a cuid éifeachtúlachta.

Toradh

Deisíodh an fráma seasaimh dhá sheachtain tar éis don Oifig scríobh chuig an FSS.

Cás-staidéar 3

An gearán

Fuarthas gearán ó mháthair faoina leanbh. Moladh i Measúnú Riachtanas FSS gur chóir Teiripe Shaothair (TS) a chur ar fáil laistigh den speisialtacht de Sheirbhísí Meabhairshláinte do Leanaí agus d'Ógánaigh (CAMHS). Ach, ní raibh aon Teiripeoir Saothair mar chuid d'fhoireann an CAMHS i limistéar geografach an linbh. Cé go ndearna an teaghlach iarracht an tacaíocht seo a chur ar fáil don leanbh go príobháideach, ní raibh sé seo inmharthana coinneáil leis ó thaobh airgeadais de. Sheas Oifigeach Gearán gearán thar ceann an linbh seo i ndáil leis an moill TS a sholáthar don leanbh. D'ainneoin an chinnidh seo ag Oifigeach na nGearán, níor tugadh aon tseirbhís don leanbh.

Iniúchadh

Mar chuid den iniúchadh ar an ngearán, dhírigh an Oifig ar an gcumarsáid leis an teaghlach faoin moill TS a sholáthar don leanbh, chomh maith le réiteach a lorg don leanbh agus do leanaí eile a éilíonn an tseirbhís seo sa limistéar geografach céanna.

Toradh

Tar éis an phróisis scrúdaithe, gheall an FSS dhá phost Teiripeoir Saothair a bheith aige mar chuid d'fhoireann an CAMHS sa limistéar ar leith geografach. Agus aird ar an éifeacht dhíobhálach líomhnaithe ar an leanbh de thairbhe nár cuireadh seirbhísí TS ar fáil, d'aontaigh an FSS tacaíochtaí eatramhacha teiripeacha a sholáthar don leanbh le linn don phróiseas earcaíochta a bheith ar siúl. Ina theannta sin, spreag an Oifig an FSS dul i dteagmháil go gníomhach le tuismitheoirí i ndáil le tacaíochtaí malairte i gcás nach bhfuil an tseirbhís (na seirbhísí) molta ag an FSS dá leanbh mar chuid den phróiseas Measúnaithe Riachtanas ar fáil ina limistéar.

Cás-staidéar 4

An gearán

Chuaigh cailín 19 mbliana d'aois a bhíodh faoi chúram an FSS i dteagmháil leis an Oifig, agus a bhí, tráth a gearáin, ag fáil tacaíochtaí iarchúraim ón FSS. Bhain a gearán le hathrú molta ar a socrúchán. Mhínigh an duine óg go raibh sí sa 5ú bliain sa mheánscoil, tar éis di tréimhse shuntasach scoile a chailleadh mar gheall ar shaincheisteanna a bhain lena sláinte mheabhrach agus lena dea-bhail.

Mhínigh an duine óg gur aistrigh sí isteach ina socrúchán reatha i Nollaig 2009 agus gur thuig sí go raibh an aidhm leis an socrúchán cabhrú léi comhtháthú go sábháilte ar ais isteach san oideachas agus sa tsochaí agus go mbeadh tacaíocht aici go mbeadh sí críochnaithe san Ardteistiméireacht, dá bhfillfeadh sí ar an meánscoil. Dúirt sí go raibh an socrúchán dearfach di sa mhéid is go raibh sí in ann freastal ar scoil agus bhí síil aici an Ardteistiméireacht a dhéanamh i Meitheamh 2013.

Bhain an t-ábhar cúraim a bhí aici leis an tuiscint a bhí aici go raibh an FSS le maoiniú le haghaidh a tsocrúcháin seo a thabhairt chun deiridh agus go dtosódh sé ag maireachtáil go neamhspleách. Chuir an duine óg an tuairim in iúl go mbeadh tionchar tromchúiseach ar a cuid oideachais, ar a huaimhianta pearsanta agus ar a sláinte mheabhrach mar gheall ar an gcinneadh seo, agus go raibh sé míchothrom i bhfianaise na tacaíochta a bhraith sí a bhí geallta di roimhe sin. Ina theannta sin, dúirt sí gur cuireadh ar an eolas í faoin gcinneadh seo ar 13 Eanáir 2012 agus go mbeadh uirthi an socrúchán a fhágáil ar 6 Feabhra 2012.

Iniúchadh

Ar scrúdú a dhéanamh ar an ngearán, chuaigh an Oifig i dteagmháil leis an FSS ag leibhéal áitiúil agus náisiúnta agus, chomh maith le faisnéis maidir le planáil chúraim don duine óg seo a iarraidh, d'iarr an Oifig go rachfaí i dteagmháil dhíreach leí chun iarracht a dhéanamh teacht ar réiteach féideartha go háitiúil.

Ba é freagra an limistéir FSS go raibh plean cúraim i bhfeidhm don duine óg go dtí go mbeadh sí críochnaithe san oideachas dara leibhéal, agus go raibh beartaithe i gcónaí a chur ar thrasdul, le tacaíochtaí, chun maireachtáil go neamhspleách ar bhealach 'cuí agus éifeachtach ó thaobh costais de.' Tar éis di a himní a chur in iúl, luaigh an FSS go bhfuair siad maoiniú don idirthréimhse a leathnú

go dtí Aibreán 2012. Dúirt freagra an leibhéil náisiúnta ón FSS 'gur in imthosca eisceachtúla amháin agus ar mhaithe le leas soiléir an duine óg' ar chóir iad a aistriú le linn na bliana acadúla, beag beann ar cibé an bhfuil sé mar gheall ar aois 18 a bhaint amach nó ar aon chúis eile.

Tugadh faoi deara freisin go raibh bearta déine á bhforchur ar sheirbhísí FSS, ach go raibh céimeanna á nglacadh le cinntiú go soláthrófar cúram agus cosaint do gach leanbh a bhfuil riachtanas acu, gan aird ar bhrúnna acmhainne.

Toradh

Tar éis di a imní a chur in iúl, luaigh an FSS go bhfuair siad maoiniú don idirthréimhse a leathnú go dtí Aibreán 2012. Mhínigh an duine óg go raibh imní uirthi fós maidir le laghdú ar na tacaíochtaí sin sa bhliain a dheánfadh sí an Ardteistiméireacht, chomh maith le trasdul sula ndéanfadh sí an Ardteistiméireacht, ach go leanfadh sí ar aghaidh leis an aistriú.

Mhol an Oifig don FSS fanacht i dteagmháil leis an duine óg lena chinntiú go ndéantar athbhreithniú rialta ar na tacaíochtaí a sholáthraítear di agus go bhfuil siad cuí lena riachtanais a chomhlíonadh.

Cás-staidéar 5

An gearán

Fuair an Oifig gearán ó bhuachaill 17 mbliana d'aois a bhí faoi chúram an FSS. Bhain a imní lena leibhéal rochtana ar a dheartháir níos óige, ag rá nach bhfaca sé a dheartháir le 27 mí anuas, in ainneoin go ndearna sé iarracht rochtain a shocrú lena Oibrí Sóisialta. Chuir sé imní in iúl mura mbeadh an t-ábhar réitithe sula mbeadh sé 18 mbliana d'aois go mbeadh bacainní breise ann maidir le teagmháil a dhéanamh lena dheartháir. Ba chosúil, tráth a chuaigh sé i dteagmháil leis an Oifig, gur scríobh an duine óg chuig Oifigeach Gearán an limistéir FSS lena míshástacht leis na cúinsí a chur in iúl.

Iniúchadh

Chuaigh an Oifig i dteagmháil leis an FSS le fáil amach an bhfuair an FSS an gearán agus an rachfaí i ngleic leis trí chainéil an FSS. D'admhaigh an FSS go bhfuarthas an gearán agus gur cuireadh ar aghaidh é chuig Príomh-Oibrí Sóisialta an limistéir chun freagra a thabhairt air. Scríobh an Oifig ansin go díreach chuig roinn na hOibre Sóisialta agus thug spreagadh di, mar ábhar tosaíochta, mar gheall ar a aois agus imní, dul i dteagmháil díreach leis an duine óg. Chuaigh an Oifig i dteagmháil freisin le habhcóide an duine óig in EPIC chun nuashonruithe óna dhearcadh a dhearbhu.

Toradh

Laistigh de sheachtain ó chuaigh an Oifig i dteagmháil leis an FSS, tionoladh cruinniú athbhreithnithe idir an duine óg agus foireann na hOibre Shóisialta. Dearbhaíodh go raibh an duine óg réasúnta sásta le freagraí an FSS dó le linn an chruinnithe. Chuir a abhcóide in iúl go mbeadh sé ag fanacht ar dhul chun cinn ón FSS agus, más gá, go rachadh sé chuig an Oifig dá mbeadh an cheist fós gan réiteach. I bhfianaise na mbeart a rinne an FSS agus tuairimí an duine óg, chinn an Oifig nach raibh imscrúdú breise riachtanach.

Cás-staidéar 6

An gearán

Chuir duine óg 21 bliain d'aois an gearán seo isteach ar a shon féin agus ar son a thriúr siblí. Bhí sé féin agus beirt dá shiblí os cionn 18 mbliana d'aois, agus siblín amháin fós ina leanbh tráth a chuaigh sé i dteagmháil leis an Oifig. Chuaigh na gearánaigh i dteagmháil leis an Oifig don chéad uair in 2011 le cur in iúl go raibh siad míshásta le hidirghabhálacha an FSS lena dteaghlach maidir le hordú maoirseachta a rinneadh ar dhuine dá dtuismitheoirí tar éis líomhaintí (nár bhain leis an teaghlach) a rinneadh i gcoinne an tuismitheora.

Bhraith na páistí go raibh forfheidhmiú an FSS den ordú ró-idirghabhálach agus go raibh tionchar diúltach ar a gcuidreamh lena máthair mar thoradh air. Ag an am sin, d'atreoraigh an Oifig na daoine óga chuig nósanna imeachta gearán an FSS féin. Ba í an chúis leis na siblí a dhul i dteagmháil leis an Oifig arís, ar fhreagra an FSS ar a ngearán a fháil dóibh, go raibh siad míshásta leis an toradh, agus gur bhraith siad nár chualathas a gcuid tuairimí sa phróiseas.

Iniúchadh

Ar fhreagra an FSS a fháil di, bhí an Oifig den tuairim gur sheas tuarascáil ghearán an FSS, i gcoitinne, le háitiú na siblí, fuair sí roinnt torthaí lena dtuairimí a thacú agus, ina theannta sin, mhol sí roinnt gníomhaíochtaí dírithe ar chleachtas sa todhchá a fheabhsú. Agus aird air sin, bhí an Oifig den tuairim nach raibh gá le himscrúdú breise ar an ngearán. Mar sin féin, mar gheall ar mhíshástacht leanúnach na ngearánaithe agus gur chreid siad nár chualathas a gcuid tuairimí sa phróiseas gearán, scríobh an Oifig chuig roinn Abhcóideachta an FSS agus spreagadh iad dul i dteagmháil díreach leis na daoine óga maidir leis an imní a bhí orthu fós.

Toradh

Thug Abhcóideachta an FSS freagra don Oifig le cur in iúl di gur thairg an Ceann Abhcóideachta bualadh leis na siblí chun an scéal a phlé tuilleadh. Cé go raibh na gearánaigh míshásta fós le gníomhartha an FSS, ba í tuairim na hOifige gur tairgeadh sásamh imleor agus nach mbeadh aon sásamh breise indéanta trínár n-idirghabháil.

Cás-staidéar 7

An gearán

Rinne iar-thuismitheoirí altrama le buachaill 16 bliana d'aois gearán maidir lena leas agus lena chosaint agus é faoi chúram an FSS. Go sonrach, d'ardaigh siad imní faoi chonas a chuaigh an FSS i ngleic lena easpa scolaíochta, a rannpháirteachas in iompraíochtaí rioscúla agus an easpa pleanála cúraim agus socrúchán oiriúnach daingne dó (lena n-áirítear tréimhse gan dídean). Briseadh socrúchán altrama an linbh 8 mí roimhe sin, agus ba ábhar imní dáiríre é a leas agus a shábháilteacht, le tréimhsí fada ann nuair a bhí sé ar iarraidh ó chúram.

Iniúchadh

Chuir an Oifig seo tús le himscrúdú ar an gearán. Le linn an imscrúdaithe, athraíodh cúinsí an linbh, mar go léiríonn na tuarascálacha oibre sóisialta is déanaí go bhfuil sé ar ais faoi chúram a iarchúramóirí altrama '(i.e. an gearánach), gur tháinig feabhas ar a chuid scolaíochta agus go bhfuil a iompar socraithe.

Bhí comharthaí ar an gcomhad go raibh baint ghníomhach ag foireann na hoibre sóisialta ar an gcás agus go bhfuair an leanbh roinnt ionchur CAMHS (measúnú agus tacaíochta). Is í tuairim an FSS nach bhfuil cúram daingean de dhíth air a thuilleadh. Rinne an Coiste Cúram Altrama roinnt moltaí, agus d'fhaomh siad socrúchán an linbh ina dhiaidh sin leis an iartheachalach altrama faoi réir na moltaí seo a leanas a bheith curtha i bhfeidhm, mar atá:

- ceapachán bainisteoir cás cliniúil (faoi stiúir ag síceolaíocht chúraim phríomhúil nó ag SW agus le tacaíocht ó shíciatracht CAMHS) chun freastal ar riachtanais sláinte mheabhrach an bhuachalla; agus
- aonad cónaithe chun tacú agus faoiseamh a sholáthar don socrúchán altramaithe.

Toradh

Tamall gairid i ndiaidh do na moltaí thuas a bheith faofa, baineadh na seirbhísí faoisimh don leanbh seo (ar cheann de na príomh-mholtaí le faomhadh an tsocrúcháin) a aistarraingt ón leanbh. Mhínigh an cúramóir altrama go bhfuil faoiseamh maith agus tacaíocht mhaith do na ceisteanna meabhrach agus iompair ata aige ríthábhachtach maidir le hinbhuanaitheacht a shocrúcháin agus a chuid scolaíochta, agus dhealraigh sé gur aontaigh gach gairmí leis seo. Scríobh an Oifig seo chuig stiúrthóir Réigiúnach na seirbhísí faoin gceist seo agus athchuireadh an tseirbhís láithreach.

Rinne an leanbh a theastas sóisearach an bhliain sin.

Tar éis an cás a phlé leis an teaghlach altrama agus sástacht a fháil gur cuireadh sásamh ar fáil, chinn an Oifig seo scor den imscrúdú a .

Scríobh an tOmbudsman do Leanaí chuig an Stiúrthóir Náisiúnta do Sheirbhísí Teaghlaigh le moladh a thabhairt athbhreithniú a dhéanamh ar an gcás seo le foghlaim cad iad na deitéarmanaint dhearfacha lárnacha in athrú ar chúinsí don leanbh seo. Thairg sé deis don FSS cleachtas dearfach i dtaca leis sin a aithint agus a thacú tuilleadh. Spreag an Oifig seo freisin an FSS chun tuilleadh tacaíochta a thabhairt don leanbh agus dá theaghlach altrama, d'fhéadfadh inbhuanaitheacht d'aon fheabhsuithe a bheith ag brath i bpáirt ar leibhéal na dtacaíochtaí a thugtar don leanbh seo agus dá theaghlach altrama.

Iompar Scoile

Cás-staidéar 1

An gearán

Chuir tuismitheoir cailín 4 bliain d'aois, a bhfuil Siondróm Down uirthi, gearán isteach maidir le gníomhartha na Roinne Oideachais agus Scileanna iarratas iompar scoile don leanbh taisteal chuig scoil speisialta le haghaidh na scoilbhliana 2010/2011 a dhiúltú. Chuir an tuismitheoir in iúl gur diúltaíodh an t-iarratas ar an mbonn go raibh scoil níos cóngaraí ar fáil. Mar sin féin, bhí sé áitithe nach mbeadh a hiníon in ann rochtain a fháil ar theiripí sláinte sa scoil níos cóngaraí, agus go raibh córas teanga chomharthaíochta speisialta ag teastáil freisin óna hiníon, rud a bhí ar fáil go comhsheasmhach sa scoil aitheanta ag na tuismitheoirí.

Iniúchadh

Díríodh san imscrúdú ar ghníomhartha na Roinne Oideachais agus Scileanna (DES), mar aon leis an mBord Achomhairc Iompar Scoile agus an FSS freisin.

Chuir an DES in iúl gur rogha na dtuismitheoirí é an socrúchán scoile agus go gcuirtear iompar scoile ar fáil don scoil/rang nó aonad speisialta is cóngaraí atá athfhoinsithe nó a d'fhéadfadh a bheith athfhoinsithe chun freastal ar riachtanais speisialta oideachais an linbh. Dearbhaíodh san imscrúdú go raibh an córas teanga chomharthaíochta ar fáil sa dá scoil. Mar sin féin, d'ardaigh an Oifig inniúchadh maidir le dearcadh an DES nach bhfuil infhaighteacht an chórais teanga chomharthaíochta ina fhachtóir cinntitheach in iarratais ar iompar scoile.

Bunaithe ar imscrúdú roimhe ag an Oifig seo, ghlac an DES le moladh gur chóir an Scéim Iompar Scoile a athbhreithniú chun iompar lamháltais a chur ar fáil i gcúinsí áirithe do leanaí a bhfuil riachtanais speisialta acu. Chomhairligh an DES go gcuirfeadh sé seo ar fáil faoin mbliain scoile 2011/2012.

Ar an ngearán seo a fhiosrú, dhearbhaigh an Oifig nach raibh gníomhartha an DES i ndáil leis an gcinneadh maidir leis an iarratas iompar scoile laistigh de raon Alt 8 den Acht 2002.

Mar sin féin, rinneadh cinneadh go raibh gníomhartha an DES gan iompar scoile lamháltais go dtí an scoilbhliain 2011/2012 a mheas contrártha le riarachán cóir agus fónta. Thug an Oifig a cuid buarthaí dá haire nár rinneadh na háitimh a tharraing na tuismitheoirí anuas a mheas go cuimsitheach nó nár tugadh freagra orthu i bpróiseas achomharc iompair scoile.

dearbhaíodh san imscrúdú go bhféadfadh an FSS an soláthar is gá a chur ar fáil don leanbh sa scoil níos cóngaraí, agus níor aimsíodh drochriarachán maidir lena gníomhaíochtaí.

Toradh

Le linn an imscrúdaithe, tugadh iompar scoile lamháltais don leanbh chun na scoile a roghnaigh na tuismitheoirí.

Imscrúduithe

D'fhoilsigh Oifig an Ombudsman do Leanaí roinnt imscrúduithe in 2012 atá ar fáil ar ár láithreán Gréasáin <http://www.oco.ie/complaints/complaints-publications.html>

- Ráiteas faoi Alt 13 (2) den Acht um Ombudsman do Leanaí 2002. Imscrúdú maidir le gníomhartha Scoil A – Aibreán 2012
- Tuarascáil Athbhreithnithe – Obair leantach ar an dul chun cinn a rinneadh i ndáil leis na moltaí a rinneadh ag tabhairt chun críche an imscrúdaithe ar chur i bhfeidhm Tús Áite do Leanaí: Treoirlínte Náisiúnta um Chosaint agus Leas Leanaí – Márta 2012
- Ráiteas bunaithe ar imscrúdú maidir leis an diúltú deontas teicneolaíochta cúnta a chur ar fáil do leanbh ag an Roinn Oideachais agus Scileanna – Márta 2012

4

OIDEACHAS AGUS RANNPHÁIRTÍOCHT

In Alt 7 den Acht 2002 tugtar sraith cumhachtaí reachtúla uathúla don Ombudsman do Leanaí, a chuireann le hobair na hOifige chun gearáin a imscrúdú agus dualgas dearfach a chur uirthi cearta agus leas leanaí suas le 18 mbliana d'aois a chur chun cinn agus a mhionatóiriú. I measc fheidhmeanna an Ombudsman do Leanaí faoi Alt 7 tá siad seo a leanas:

- beartais, nósanna imeachta agus cleachtais a spreagadh a chuireann cearta agus leas leanaí chun cinn;
- feasacht a chur chun cinn i measc bhail an phobail, lena n-áirítear leanaí, ar ábhair a bhaineann le cearta agus leas leanaí, lena n-áirítear Coinbhinsiún na Náisiún Aontaithe um Chearta an Linbh;
- struchtúir a bhunú chun dul i gcomhairle le leanaí agus aird a tharraingt ar shaincheisteanna a bhaineann le cearta agus leas leanaí atá ábhartha do na leanaí féin; agus
- eolas a bhailiú agus a scaipeadh ar ábhair a bhaineann le cearta agus leas leanaí agus conas is féidir na cearta sin a fhorfheidhmiú, chomh maith le taighde a dhéanamh, a chur chun cinn nó a fhoilsiú air sin.

Tríd is tríd, tá clár oideachais um chearta daonna na hOifige agus a chuid tionscnamh le héisteacht le tuairimí na leanaí agus aird a tharraingt orthu comhdhéanta de dhá shnáithe. Tá sé mar aidhm sa chéad snáithe dul i ngleic le pobal na leanaí i gcoitinne agus feasacht ar ábhair a bhaineann le cearta leanaí atá ábhartha do na mílte leanbh a chur chun cinn. Díritear sa dara snáithe ar nascadh díreach le grúpaí leochaileacha leanaí atá níos deacra iad a rochtain agus nach gcluintear a gcuid tuairimí rómhínic.

Clár Oideachais ar Chearta

Ceardlanna oideachais ar chearta

Seachadtar ceardlanna oideachais ar chearta leanaí dhá uair sa tseachtain do ghrúpaí leanaí agus do dhaoine óga a thugann cuairt ar an Oifig. Is príomhghné de chlár oideachais faoi chearta an OCO iad, agus soláthraíonn na ceardlanna seo deis luachmhar chun dul i dteagmháil go díreach, agus ar bhonn leanúnach, le leanaí agus le daoine óga d'aoiseanna éagsúla, a chónaíonn in áiteanna éagsúla ar fud na tíre agus i gcúinsí éagsúla. Le linn 2012,

thug breis agus míle leanbh agus duine óg ó scoileanna, tionscadail óige agus seirbhísí leanaí eile i sé chontae dhéag cuairt ar an OCO chun foghlaim faoi obair na hOifige, chun a dtuiscint ar chearta leanaí a fhorbairt, agus chun ábhair a bhaineann le cearta leanaí agus saolta leanaí in Éirinn a fhiosrú.

I gcomhthéacs na gceardlann seo, bíonn deis ag leanaí agus daoine óga ceisteanna a ardú agus a chur faoi shaincheisteanna a bhaineann le hábhar atá abhartha dóibh.

I measc na saincheisteanna a d'ardaigh leanaí agus daoine óga le linn 2012 bhí siad seo a leanas:

- éifeachtaí díobhálacha na dífhostaíochta agus imirce/eisimirce ag tuismitheoirí le haghaidh oibre ar shaol an teaghlaigh;
- an méid deiseanna imleora a bhíonn ag leanaí agus daoine óga a gcuid tuairimí ar ábhair a bhaineann leo a chur in iúl i gcomhthéacsanna éagsúla;
- ceisteanna sláinte meabhrach agus tacaí do leanaí agus do dhaoine óga; agus
- na cearta agus na seirbhísí tacaíochta do ghrúpaí leanaí níos éislíní, lena n-áirítear leanaí gan dídean agus leanaí faoi mhíchumas agus/nó a bhfuil riachtanais speisialta acu.

Ábhair acmhainne do scoileanna

Le linn 2012, cheap an OCO ábhair acmhainne bhreise oideachais do bhunscoileanna agus d'iar-bhunscoileanna. Is é an tríú ceann i sraith acmhainní oideachais forbartha ag an Oifig ó 2007 i leith, tacaíonn Áiteanna Beaga le leanaí agus daoine óga chun ceangail a dhéanamh idir cearta leanaí, mar atá leagtha amach i gCoinbhinsiún na Náisiún Aontaithe um Chearta an Linbh agus ag cur san áireamh an Bunreacht agus a saolta laethúla sa bhaile, ar scoil agus ina bpobail. Trí leanaí agus daoine óga a éascú chun iniúchadh a dhéanamh ar na naisc lena chéile, lena múinteoirí, agus lena dtuismitheoirí/gcaomhnóirí, tá sé mar aidhm leis na gníomhaíochtaí a dtuiscint a fhorbairt ar conas a bhaineann cearta leanaí lena saolta féin agus ar na bealaí éagsúla inar féidir le réimse leathan daoine, lena n-áirítear leanaí agus daoine óga iad féin, páirt a ghlacadh le cearta leanaí éagsúla a chosaint ar bhonn laethúil. Déantar i mBéarla agus i nGaeilge é, agus é deartha le húsáid sa chomhthéacs den churaclam a theagasc agus a fhoghlaim ag leibhéal bunscoile agus iar-bhunscoile, scaipeadh an acmhainn Áiteanna Beaga chuig scoileanna ar fud na tíre i Meán Fómhair 2012, agus tá sé ar fáil freisin le híoslódáil ó láithreán Gréasáin an OCO.

Seimineáir oideachais ar chearta do mhic léinn iarchéime

Ó bunaíodh é, chuaigh an OCO i dteagmháil le hinstiúidí tríú leibhéal ar bhealaí éagsúla, lena n-áirítear trí thaighde a choimisiúnú, deiseanna intéirneachta a sholáthar do chéimithe agus aoi-léachtaí agus seimineáir a sheachadadh do mhic léinn fhochéime agus iarchéime. I gcomhréir lena dhualgais reachtúla faoi Alt 7 den Acht 2002 agus a thosaíochtaí straitéiseacha, chuir an OCO leis na coinní seo le linn 2012 trí shraith de sheimineáir oideachais ar chearta do mhic léinn iarchéime a dhearadh agus a sheachadadh ar bhonn píolótach. Díriodh sna seimineáir phíolótacha ar mhic léinn i mbun staidéir iarchéime in obair shóisialta nó faoi chúram

sóisialta mar gheall ar rannpháirteachas an OCO trína fheidhmeanna reachtúla éagsúla le raon leathan saincheisteannta atá ábhartha do réimsí na hoibre sóisialta agus an chúraim shóisialta (m.sh. cosaint leanaí, tacaíocht teaghlaigh, cúram malartach agus iarchúram do leanaí agus do dhaoine óga, sláinte mheabhrach leanaí agus ógánach, coinneáil na n-óg, easpa dídine na n-óg, agus beartas agus soláthar do leanaí scartha).

Ghlac os cionn 120 mac léinn iarchéime ó chúig institiúid tríú leibhéal (Ollscoil na hÉireann, Gaillimh, Ollscoil na hÉireann, Baile Átha Cliath, Coláiste na Tríonóide, Baile Átha Cliath, Ollscoil na hÉireann, Corcaigh agus Institiúid Teicneolaíochta Bhaile Átha Luain IT) páirt i seimineáir phíolótacha OCO i nDeireadh Fómhair agus i Nollaig 2012. Is foireann OCO a sheachaid na seimineáir, agus iad dírithe ar fheasacht ar shainordú reachtúil, feidhmeanna agus réimsí comhfheagracha oibre an OCO a ardú; tuiscint a fhorbairt ar phrionsabail bhunúsacha um chearta leanaí agus ar a gcur i bhfeidhm i gcomhthéacs an chleachtais ghairmiúil; agus le cleachtas agus cinnteoireacht dírithe ar an leanbh a spreagadh. I bhfianaise na suime sna seimineáir phíolótacha agus na meastóireachtaí dearfacha orthu, tá sé beartaithe ag an OCO an clár seo a fhorbairt agus a éagsúlú, de réir mar is cuí agus indéanta, le linn 2013.

Ag Éisteacht le Tuairimí agus Buarthaí Leanaí agus Aird a Tharraingt orthu

I bhforálacha Alt 7 den Acht 2002 tugtar scóip don OCO cur chuige ilúsáide agus nuálach a ghlacadh chun éisteacht le tuairimí agus buarthaí leanaí agus aird a tharraingt orthu. Léiríonn na tionscnaimh chodarsnacha sa réimse seo a chuir an Oifig i bhfeidhm le linn 2012 an cur chuige seo.

Scéal na ndaoine óga gan dídean

“Nuair a bhíonn tú faoi chúram don chéad uair, bíonn do shaol bun os cionn ... agus ... an rud amháin gur gá bheith comhsheasmhach ná an áit ina gcónaíonn tú ... Bíonn tú faoi dhúlagar mar gheall air toisc go mbraitheann tú ‘An cuma le duine ar bith?’ ... Ní mhothaíonn tú go bhfuil duine ar bith ag tabhairt aire duit. Agus is cuma cén aois atá tú – ní admhaíonn daoine é, ach tá sé fíor – is gá duit duine a bheith agat chun aire a thabhairt duit ...”

Leanbh i gcomhairle le OCO

Idir Meán Fómhair agus Nollaig 2011, chuir an OCO comhairliúchán ar bun le daoine óga a bhfuil taithí de bheith gan dídean acu agus a fuair rochtain iar-ama ar idirghabháil ghéarchéime agus seirbhísí cóiríochta éigeandála i mBaile Átha Cliath agus i gCorcaigh.

Bhí an comhairliúchán seo mar chuid de phíosá oibre níos leithne a bhaineann le rannpháirteachas ag an Oifig leis an FSS ar an tsaincheist. Bhí comhairliúcháin na hOifige ag iarraidh léargas a fháil ar thaithí pearsanta dhaoine óga de sheirbhísí easpa dídine a rochtain agus a úsáid agus, bunaithe ar na heispéiris seo, cad a cheapann siad ba chóir a dhéanamh chun soláthar atá ann cheana féin do leanaí a bhfuil riachtanas acu leas a bhaint as na seirbhísí seo a fheabhsú.

Foilsíodh in Aibreán 2012, doiciméadaíonn an tuarascáil a eascraíonn ón gcomhairliúchán seo, Homeless Truths, cuntais mhacánta leanaí agus daoine óga ar sheirbhísí easpa dídine a rochtain agus a úsáid. Mar a thug an tOmbudsman do Leanaí dá aire ag an am siúd, is é an leochaileacht a bheith gan dídean agus na héifeachtaí creimneacha a bhíonn ag easpa dídine ar mhothú dínite, féin-mheas, sábháilteacht agus slándáil leanaí agus dhaoine óga ar cheann de na rudaí is suntasaí a thagann as a gcuid cuntas ar na dúshláin a bhí acu, na rioscaí a bhí rompu, agus na tacaíochtaí a fuair siad.

Ar bhonn an chomhairliúcháin seo, rinne an OCO raon moltaí maidir le conas a d'fhéadfadh beartas agus soláthar atá ann cheana féin do leanaí a bhfuil riachtanas acu seirbhísí do dhaoine gan dídean a úsáid a neartú ar mhaithe lena gcuid ceart agus leasa a chosaint ar bhealach níos éifeachtaí.

I measc na bearta a moladh ná iad seo a leanas:

- cur ar chumas leanaí dul agus rochtain a fháil ar sheirbhísí easpa dídine le linn an lae agus bealaí malairte a sholáthar chuig stáisiúin an Gharda Síochána chun rochtain a fháil ar sheirbhísí;
- deireadh a chur leis an gcleachtas, sa chás go bhfuil sé ann, ceangal a chur ar leanaí dul agus rochtain a fháil ar chóiríocht ar bhonn lae go lá agus, i gcás leanaí nach féidir leo filleadh abhaile agus nach féidir socrúchán oiriúnach níos fadtéarmaí a fháil ar a son go tapa, iarracht a dhéanamh cobhsaíocht socrúcháin de chineál éigin a chur ar fáil;
- úsáid de chóiríocht ghearrthéarma den chineál 'brú' a íoslághdú, gan é a úsáid le haghaidh leanaí faoi 16 bliana d'aois agus, más féidir agus más cuí, ag iarraidh cóiríocht a aimsiú i bhobail áitiúla leanaí nó cóngarach dóibh;
- i bhfianaise na rioscaí tromchúiseacha a d'fhéadfadh a bheith roimh leanaí gan dídean, ag cinntiú gur féidir le gairmithe cúram agus oideachas tacaíochtaí praiticiúla a chur ar fáil do leanaí agus do dhaoine óga chun leanúint ar aghaidh san oideachas nó oiliúint, ag soláthar clár malairte leordhóthanach de ghníomhaíocht do leanaí agus do dhaoine óga i rith an lae agus, nuair is gá, ligean dóibh fanacht ina gcóiríocht shealadach i rith an lae; agus
- dul i ngleic leis an stiogma sochaí trí fheasacht an phobail a ardú ar na cúinsí a d'fhéadfadh a bheith ina gcúiseanna le leanaí a bheith gan dídean, agus íogaireacht an phobail a ardú ar na dúshláin a bhíonn rompu sa chás seo.

Cuireadh béim ar na tuairimí seo agus ar thuairimí eile roinnte ag leanaí rannpháirteacha agus daoine óga don, inter alia, FSS, a bhfuil freagracht reachtúil aige faoin Acht um Chúram Leanaí 1991 do leanaí agus do dhaoine óga faoi 18 mbliana d'aois sna cúinsí seo, agus don Lárionad do Sheirbhísí Éifeachtacha, a bhí ag déanamh athbhreithnithe ar Straitéis Easpa Dídine na nÓg 2001, agus tá sé le moltaí a dhéanamh maidir le Creat Feidhmiúcháin nua chun aghaidh a thabhairt ar easpa dídine na n-óg.

Comhairliúchán le leanaí ar bhulaíocht

“Ní mór do gach duine a bheith níos eolasaí faoi thionchar na bulaíochta ar dhaoine óga. Mura ndearnadh bulaíocht ar dhaoine, ní thuigeann siad mura n-insítear dóibh faoi. D’fhéadfadh daoine teacht isteach agus labhairt leis na daltaí faoi éifeachtaí agus torthaí na bulaíochta.”

Duine óg i gcomhairliúchán leis an OCO

Ardaíonn tuismitheoirí, gairmithe agus leanaí iad féin ceist na bulaíochta go minic leis an OCO ag, agus is é sin go seasta i measc na gcúig shaincheist is minice a ardaítear i ngearáin a bhaineann le hoideachas lena ndéileáil an Oifig. Cé nach bhfuil aon ról ag an OCO líomhaintí faoi bhulaíocht a fhiosrú nó a fhíorú, tá measúnú déanta aige ar an tslí ina ndéileáiltear leis na cúinsí sin i scoileanna agus ag scoileanna.

Mar an chuir an tOmbudsman do Leanáí in iúl ag cruinniú in Iúil 2012 leis an nGrúpa Oibre bunaithe ag an Aire Oideachais agus Scileanna chun scrúdú a dhéanamh ar conas is féidir dul i ngleic le cineálacha difriúla bulaíochta i scoileanna, mar fhreagra ar fhormhór na ngearán a rinneadh, spreagann an Oifig Boird Bhainistíochta na saincheisteanna a thagann chun solais a réiteach trí nósanna imeachta gearán áitiúla scoileanna. Nuair is gá, déanann an Oifig scrúdú neamhspleách agus neamhchlaonta an scéal le teacht ar thuiscint ar na saincheisteanna atá i gceist agus, nuair is cuí, moltaí a dhéanamh maidir le conas is féidir an cheist a réiteach ar mhaithe le leas an linbh nó na leanaí lena mbaineann.

I bhfianaise na n-ábhar imní agus na ngearán faoin mbulaíocht a ardaíodh leis an Oifig, agus ag forbairt ar an obair dhíreach a rinne foireann an OCO le leanaí ar an tsaincheist seo le linn 2011, rinne an Oifig comhairliúchán le leanaí idir Meitheamh agus Meán Fómhair 2012 maidir le déileáil le bulaíocht i scoileanna. Bhí an comhairliúchán dírithe ar réitigh agus an aidhm a bhí leis leanaí agus daoine óga a éascú le gníomhaíochtaí a shainiú, a chreideann siad go bhféadfaí cur go suntasach le déileáil go héifeachtach le bulaíocht i scoileanna.

Taifeadh tuairimí agus smaointe níos mó ná 300 leanbh agus duine óg idir 10 agus 17 mbliana d’aois, lena n-áirítear daoine óga faoi chúram, daoine óga atá faoi mhíchumas fisiciúil agus daoine óga LGBT i dtuarascáil a sheol an tOmbudsman do Leanáí i Luimneach i Samhain 2012. Mar atá léirithe sa tuarascáil, tugann na tuairimí roinnte ag leanaí agus daoine óga le fios go bhféadfaí an obair a dhéantar le scoileanna agus ag scoileanna chun déileáil le bulaíocht leas a bhaint as cur chuige dhá shnáithe a chuimsíonn straitéisí coisc agus idirghabhála.

Ba ghné shuntasach de thuairimí leanaí an bhéim a chuirtear ar obair choisctheach agus, go háirithe, ar thionscnaimh atá tiomanta d’fheasacht a ardú ar bhulaíocht agus dul i ngleic le meonta idirdhealaitheacha, lena n-áirítear homafóibe, is féidir bheith ina gcúiseanna le bulaíocht. Teachtaireacht shuimiúil eile a tháinig as na ceardlanna comhairliúcháin ná an dearcadh i measc na leanaí agus na ndaoine óga go ginearálta go rachfar i ngleic le bulaíocht ar an mbealach is cuí agus is éifeachtaí trí bhearta aisiríocha. Sa réimse seo agus i réimsí eile le haghaidh gníomhaíochta, a ndearna siad plé orthu, leag leanaí agus daoine óga béim go seasta ar an tábhacht a bhaineann le gach dalta a éascú lena gcuid tuairimí a chur in iúl agus a bheith

rannpháirteach go gníomhach i mbearta chun déileáil le bulaíocht. Rinne siad raon leathan moltaí nithiúla agus cruthaitheacha maidir le conas is féidir leanaí agus daoine óga a spreagadh agus a thacú cuid den fhreagrach a ghlacadh le dul i ngleic le fadhb na bulaíochta agus, chuige sin, cultúr measa ar na cearta agus ar dhínit gach leanbh a thógáil.

Ag cur san áireamh na tuairimí arna léiriú ag leanaí agus daoine óga, leag an tOmbudsman do Leanaí béim ar an tábhacht a bhaineann le freagrachtaí chun dul i ngleic le bulaíocht á nglacadh agus á gcomhroinnt ag an gcóras oideachais i gcoitinne agus, nuair is gá, ag gníomhaireachtaí eile. I dtaca leis seo, agus sa chomhthéacs maidir le tuarascáil an OCO a fhoilsíú, d'iarr sí ar an Rialtas forbairt ar obair na Roinne Oideachais agus Scileanna sa réimse seo tríd an Roinn Sláinte a chur san áireamh i bhforbairt straitéis fhrithbhulaíochta ina dtugtar aghaidh ar bhulaíocht mar shaincheist sláinte poiblí.

Scaipeadh tuarascáil an OCO ar a chomhairliúchán, Déileáil le Bulaíocht i Scoileanna, ar pháirtithe leasmhara ábhartha agus ar scoileanna ar fud na tíre, mar acmhainn chun tacú lena gcuid oibre leanúnaí chun dul i ngleic le bulaíocht. Tugann an OCO dá aire an machnamh a rinneadh ar thorthaí a chomhairliúcháin ag Grúpa Oibre na Roinne Oideachais agus Scileanna réamhluaithe, agus ionchorprú na dtuairimí comhroinnte ag leanaí agus daoine óga leis an OCO isteach sa Phlean Gníomhaíochta ar Bhulaíocht a sheol an tAire Oideachais agus Scileanna agus an tAire Leanaí agus Gnóthaí Óige ag deireadh Eanáir 2013.

An Díospóireacht Mhór

“Chualamar faoin reifreann ... Measaim ... gur rud maith a bheadh ann dá vótálfaimis ann freisin.”

Duine óg ag labhairt le OCO i Samhain 2012 faoin reifreann ar chearta leanaí

Roimh an reifreann ar chearta leanaí ar 10 Samhain, d'óstáil an tOmbudsman do Leanaí ócáid speisialta le daoine óga agus ar a son ag an Staidiam Aviva i mBaile Átha Cliath ar 6 Samhain. Bhí a fhios aige go raibh leas sa leasú beartaithe agus le cosaint cearta leanaí a neartú sa Bhunreacht ag daoine óga faoi 18 mbliana d'aois, cé nach raibh siad i dteideal vótáil sa reifreann, d'eagraigh an OCO An Díospóireacht Mhór d'fhonn deis a thabhairt do dhaoine óga a gcuid tuairimí a chur in iúl, na saincheistanna a phlé agus páirt a ghlacadh i vótáil lena léiriú an raibh siad i bhfabhar an leasaithe bheartaithe nó ina choinne.

D'fhreastail beagnach 200 dalta ó scoileanna agus grúpaí óige i mBaile Átha Cliath, i Laois, i Luimneach, sa Chlár, i nGaillimh agus i Muineachán ar an ócáid. Ar fud na maidine, sheas ocht dalta suas ar an bpóidiam chun argóintí a phlé ar son agus i gcoinne an leasaithe bheartaithe, agus ina dhiaidh sin oslaíodh an díospóireacht dóibh siúd go léir a bhí i láthair. Ba léir ó rannpháirteachas fuinniúil na ndaoine óga go raibh an-suim acu sna ceistanna agus bhí tábhacht ag baint leis na tuairimí a bhí acu, dar leo. Ba í an teachtaireacht athfhillteach ó dhaoine óga a labhairt ón urlár nach raibh go leor faisnéise inrochtana faoin reifreann ar fáil go héasca, go háirithe faisnéis do leanaí agus do dhaoine óga; bhraith siad cé nárbh fhéidir leo vótáil a chaitheamh, ba chóir eolas níos iomláine a chur orthu faoin leasú beartaithe, de thairbhe gur bhain sé go díreach leo.

Sa vóta a tharla mar chríoch leis An Díospóireacht Mhór, vótáil daoine óga i bhfabhar an leasaithe atá beartaithe ar an mBunreacht.

5

BEARTAS AGUS REACHTAÍOCHT

In Alt 7 den Acht um Ombudsman do Leanaí 2002 leagtar amach beartas, taighde agus feidhmeanna athbhreithnithe reachtaíochta na hOifige. Go sonrach, forálann sé go ndéanfaidh an tOmbudsman do Leanaí na nithe seo a leanas:

- comhairle a chur ar Airí faoi fhorbairt agus faoi chomhordú beartais a bhaineann le leanaí;
- comhairle a chur ar Airí faoi aon ábhar a bhaineann le cearta agus leas leanaí, lena n-áirítear an éifeacht dhóchúil ar leanaí ag tograí le haghaidh reachtaíochta;
- taighde a dhéanamh, a chur chun cinn agus a fhoilsiú faoi aon ábhar a bhaineann le cearta agus leas leanaí; agus
- faisnéis a mhalartú agus comhoibriú le hOmbudsmána do Leanaí i stáit eile.

Athrú reachtaíochta

Leagadh amach agus athdhearbhaíodh moladh an Ombudsman do Leanaí an Bunreacht a leasú d'fhonn cosaint níos fearr a thabhairt do chearta an linbh i ngach tuarascáil bhliantúil do Thithe an Oireachtais ó bunaíodh an Oifige in 2004. Dá réir sin ba imeacht suntasach a bhí i bhformhuiniú ag an bPobal den Aonú Leasú is Tríocha ar an mBunreacht i Samhain 2012 maidir le hOifige an Ombudsman do Leanaí, chomh maith le bheith ina gharsprioc i dtaca le cur chun tosaigh cearta leanaí in Éirinn.

I gcomhréir lena feidhm faoi alt 13 den Acht um Ombudsman do Leanaí 2002 maidir le tuarascálacha speisialta a chur faoi bhráid Thithe an Oireachtais, d'ullmhaigh Oifige an Ombudsman do Leanaí tuarascáil ar an mBille um an tAonú Leasú is Tríocha ar an mBunreacht (Leanaí) 2012. Chuir an aighneacht seo leis na ceithre aighneacht roimhe sin a rinne an tOmbudsman do Leanaí chuig an Rialtas agus chuig an Oireachtas maidir le moltaí chun an Bunreacht a leasú. Ba ionann teachtaireacht lárnach gach aighneachta: ba chóir d'Éirinn prionsabail lárnacha chearta leanaí a cumhdaíodh sa Bhunreacht d'fhonn taca a chur faoi athrú bunúsach inár ndlí, beartas agus cleachtas maidir le leanaí. Go háirithe, d'éiligh an tOmbudsman do Leanaí cuimsiú na bprionsabal atá leagtha amach i gCoinbhinsiún na Náisiún Aontaithe um Chearta an Linbh (UNCRC) in aon leasú den chineál sin ar an mBunreacht. Cuireann an seasamh seo taca faoi theagmháil dhíreach an Ombudsman do Leanaí leis an Aire Leanaí agus Gnóthaí Óige, leis an Taoiseach agus leis an Tánaiste maidir le foclaíocht an Bhille chun an Bunreacht a leasú.

Ba é reifreann an 10 Samhain 2012 an toradh ar phróiseas fada abhain le breithniú ag an Oireachtas, le Rialtas i ndiaidh Rialtais, le fiosrúcháin agus imscrúduithe éagsúla, agus go deimhin ag meicníochtaí monatóireachta idirnáisiúnta chearta an duine. Ní mór a admháil nach raibh táirgeadh foclaíochta a bheadh comhaontaithe go forleathan lasmuigh agus laistigh de Thithe an Oireachtais ina thasc simplí.

Is céim shuntasach agus dhearfach chun tosaigh do leanaí agus teaghlaigh in Éirinn é formhuiniú Airteagal 42A nua den Bhunreacht. Cé nach ndéantar prionsabail Choinbhinsiún na Náisiún Aontaithe um Chearta an Linbh a ionchorprú ann sa mhéid is atá molta ag an Ombudsman do Leanaí, soláthrófar bonn láidir ann le haghaidh ionchorprú na bprionsabal seo inár ndlí agus inar mbeartas sa todhchaí. Beidh an méid difríochta a dhéanfaidh an leasú san fhadtéarma ag brath ar thiomantas an Oireachtais agus an Rialtais na forálacha sin a úsáid agus a chur leo i bhforbairt dlí agus beartais a bhaineann le leanaí, agus ar chur chuige na mbreithiúna i dtaca leis na línte dlí-eolaíochta a d'fhéadfadh teacht as.

Ní deireadh le cearta leanaí a chur chun tosaigh in Éirinn é athrú bunreachtúil a bhaint amach; tá comhlíontacht leis an UNCRC fós ina thionscadal neamhchríochnaithe. Fiú in éagmais cur chuige níos uasta i dtaca le prionsabail an UNCRC a ionchorprú sa Bhunreacht, d'fhéadfadh comhlíonadh na hÉireann lena dualgais chearta leanaí a chur chun tosaigh ar mhodh eile, agus ba chóir sin a dhéanamh. Ní bhacann aon ní sa leasú an fhéidearthacht tuilleadh éifeachta a thabhairt d'fhorálacha an UNCRC i reachtaíocht phríomhúil, lena n-áirítear trí reachtaíocht den chineál sin a shíniú ionas go bhfuil ceangal ar údaráis riaracháin aird chuí a thabhairt do dhualgais chearta daonna an Stáit agus a fheidhmeanna á ndéanamh acu.

Athbhreithniú ar oibriú an Ombudsman do Leanaí 2002

Foráiltear in Alt 7 den Acht um Ombudsman do Leanaí 2002 go ndéanfaidh an tOmbudsman do Leanaí monatóireacht agus athbhreithniú ar oibriú an Achta 2002 agus, aon uair is dóigh léi gur gá é, moltaí a dhéanamh maidir leis an Acht don Aire Leanaí agus Gnóthaí Óige agus/nó do Thithe an Oireachtais. I gcomhréir leis an bhfeidhm reachtúil, chuir an tOmbudsman do Leanaí tuarascáil ar oibriú an Ombudsman do Leanaí 2002 faoi bhráid an Aire Leanaí agus Gnóthaí Óige agus faoi bhráid an Oireachtais i Márta 2012.

Cuireadh roinnt nithe tábhachtacha sa tuarascáil mar bhonn eolais, lena n-áirítear:

- Prionsabail na Náisiún Aontaithe a bhaineann le stádas na n-institiúidí náisiúnta i dtaca le cearta an duine a chur chun cinn agus a chosaint (“Prionsabail Pháras”);
- Dea-chleachtas idirnáisiúnta agus taithí na nOmbudsman do Leanaí i ndlínsí eile; agus
- An taithí atá faighte ag Oifig an Ombudsman do Leanaí ó bunaíodh é in 2004 maidir le stiúradh na n-imscrúduithe

Is píosa reachtaíochta láidir é an tAcht 2002, go ginearálta, a fheidhmíonn go maith; ach, leagadh béim go leanúnach i dtuarascálacha bliantúla an Ombudsman do Leanaí

roimhe seo chuig an Oireachtas ar easnaimh áirithe in Acht 2002, go háirithe maidir le sainchúram imscrúdaithe na hOifige. Tá na heasnaimh sin tugtha dá n-aire ag roinnt meicníochtaí cearta daonna idirnáisiúnta, amhail Coiste na Náisiún Aontaithe um Chearta an Linbh agus Coimisinéir Chomhairle na hEorpa um Chearta an Duine. Chomh maith le hábhair inmí fhadtéarmacha a athrá, in athbhreithniú ar an Acht 2002 leagadh amach roinnt gnéithe breise den Acht a d'fhéadfadh tairbhe a bhaint as an leasú.

Is iad seo a leanas príomh-mholtaí ó athbhreithniú ar oibriú an Achta 2002:

- eisiámh atá ann cheana féin i sainchúram imscrúdaithe an Ombudsman do Leanaí a bhaint;
- comhlachtaí poiblí breise a bhfuil feidhmeanna acu a bhaineann go príomha nó go heisiach le leanaí a chur san áireamh laistigh de shainchúram an Ombudsman do Leanaí;
- feidhmeanna comhairleacha an Ombudsman do Leanaí a leathnú agus a shoiléiriú;
- dualgas nua a chur ar chomhlachtaí poiblí le cúnaimh agus treoir cuí a sholáthar do ghearánaigh;
- cumhachtaí an Ombudsman do Leanaí a fheabhsú chun a chinntiú go gcomhlíonann comhlachtaí poiblí iarratais ar fhaisnéis, doiciméid nó taifid eile le linn imscrúduithe a bheith ar siúl; agus
- a shoiléiriú nach n-oibríonn an rialail cruinniú iata sa chaoi is go mbíonn sé ina bhac ar imscrúduithe reachtúla faoin Acht um Ombudsman do Leanaí 2002.

Chuaigh an Roinn Leanaí agus Gnóthaí Óige i dteagmháil go hoscailte agus go cuiditheach le hOifig an Ombudsman do Leanaí i ndáil le cur i bhfeidhm na moltaí seo. Tamall gairid tar éis athbhreithniú ar an Acht 2002 a chur isteach, d'fhógair an tAire Leanaí agus Gnóthaí Óige go raibh sí i bhfabhar deireadh a chur leis an eisiámh ar shainchúram imscrúdaithe an Ombudsman do Leanaí i ndáil le Foras Naomh Pádraig. Le toiliú an Aire Dlí agus Cirt agus Comhionannais, rinne an tAire Leanaí agus Gnóthaí Óige an t-ordú iomchuí faoi alt 11 den Acht 2002 i Meitheamh 2012.

Le linn don Bhille Ombudsman (Leasú) 2008 a ghabháil trí Thithe an Oireachtas, tháinig an deis chun aghaidh a thabhairt ar chuid de na moltaí san athbhreithniú ar an Acht 2002. I ndiaidh teagmhála idir an tOmbudsman do Leanaí agus an tAire Caiteachais Phoiblí agus Athchóirithe, chomh maith le rannpháirteachas ina dhiaidh sin ag an Roinn Leanaí agus Gnóthaí Óige leis an Roinn Caiteachais Phoiblí agus Athchóirithe, baineadh amach leasuithe suntasacha ar an sainchúram imscrúdúcháin agus cumhachtaí an Ombudsman do Leanaí trí Acht an Ombudsman (Leasú) 2012. Bhí Oifig an Ombudsman do Leanaí an-bhuíoch as iarrachtaí an dá Roinn maidir leis na hathruithe seo a bhaint amach ar bhealach éifeachtach agus tapúil.

Le hachtú an Achta Ombudsman (Leasú) 2012 i nDeireadh Fómhair 2012, ardaíodh ceist maidir leis an mbunús dlí ar a bhféadfadh an Oifig seo leanúint ar aghaidh le gearáin a

fhiosrú maidir le hionaid choinneála. Mar sin féin, ní raibh sé seo ina bhac oibríochtúil ar Oifig an Ombudsman do Leanaí ó ábhair imní a ardú agus a réiteach leis an mbainistíocht ag Foras Naomh Pádraig nó Seirbhís Príosún na hÉireann. Téitear i ngleic leis an gceist seo agus é á shoiléiriú chun sástacht an Ombudsman do Leanaí.

Leanfaidh Oifig an Ombudsman do Leanaí ar aghaidh ag déanamh idirchaidrimh leis an Roinn Leanaí agus Gnóthaí Óige i ndáil leis na moltaí san athbhreithniú ar Acht 2002 nár cuireadh i bhfeidhm go fóill. Tá Oifig an Ombudsman do Leanaí den tuairim go mbeidh reachtaíocht phríomhúil ag teastáil chun aghaidh a thabhairt ar na saincheisteanna amuigh agus táthar ag súil go mbeidh reachtaíocht den sórt sin os comhair Thithe an Oireachtais a luaithe is féidir.

Comhairle ar na Ceannteidil agus Scéim Ghinearálta an Bhille Tús Áite do Leanaí agus an Bhille um Cheartas Coiriúil (Faisnéis faoi Chionta in aghaidh Leanaí agus Aosaigh Shoghonta a Choimeád Siar) 2012

D'fhoilsigh an tAire Leanaí agus Gnóthaí Óige na Ceannteidil agus Scéim Ghinearálta den Bhille Tús Áite do Leanaí ar 25 Aibreán 2012. Ba é cuspóir luaite na Scéime Tús Áite do Leanaí gnéithe áirithe den Tús Áite do Leanaí: Treoir Náisiúnta um Chosaint agus Leas Leanaí a chur ar bhonn reachtúil. D'fhoilsigh an tAire Dlí agus Cirt, Comhionannais agus Cosanta freisin an Bille um Cheartas Coiriúil 2012 ((Faisnéis faoi Chionta in aghaidh Leanaí agus Aosaigh Shoghonta a Choimeád Siar) ar an lá céanna. Cruthaíodh leis an reachtaíocht seo cion coiriúil maidir le faisnéis a choinneáil siar i ndáil le cionta sonraithe tromchúiseacha a dhéantar i gcoinne linbh nó duine leochailigh.

De réir alt 7 den Acht um Ombudsman do Leanaí 2002, d'ullmhaigh an tOmbudsman do Leanaí comhairle don Aire Leanaí agus Gnóthaí Óige agus don Aire Dlí agus Cirt agus Comhionannais ar an reachtaíocht a moladh.

Bhí na moltaí seo ina bhforbairt shuntasach sa chreat reachtaíochta faoina rialaítear cosaint leanaí in Éirinn. Chinn an tOmbudsman do Leanaí trácht a dhéanamh ar an Scéim Tús Áite do Leanaí agus ar an mBille um Choinneáil Siar Faisnéise san aighneacht chéanna mar gheall ar an bhforluí eatarthu i ndáil leis an tsaincheist ar mhí-úsáid tuairiscithe. D'ainneoin na difríochtaí eatarthu maidir le nádúr na gcionta le tuairisciú agus le cáilíocht na faisnéise atá i seilbh an duine, ar a bhfuil dualgas a thuairisciú, dhéileáil an bheirt le socrúithe chun mí-úsáid leanaí a thuairisciú agus bhí siad mar chuid de shraith de reachtaíocht um chosaint leanaí á cur chun tosaigh ag an Rialtas ag an am siúd.

Chomhaontaigh Oifig an Ombudsman do Leanaí leis an gcur chuige ginearálta den Scéim Tús Áite do Leanaí agus den Bhille um Fhaisnéis a Choimeád Siar, agus mheas sí go bhfuil sé riachtanach na nithe seo a leanas a chinntiú:

- gach acmhainn is gá a chur i bhfeidhm chun a chinntiú gur féidir le ranna oibre sóisialta freagairt go héifeachtach le haon mhéadú i dtuairisciú de dhroim na Scéime Tús Áite do Leanaí agus an Bhille um Fhaisnéis a Choimeád Siar;
- ba chóir iltuairisciú neamhriachtanach ar an teagmhas céanna cosanta leanaí a chosc

agus, chuige sin, trí atreorú a dhéanamh i gcomhréir le Tús Áite do Leanaí, níor chóir go mbeadh tuairisc ar leith a dhéanamh faoin mBille um Fhaisnéis a Choimeád Siar 2012 riachtanach, más rud é gur comhlíonadh an tairseach chun tagairt a dhéanamh faoin dá cheann;

- córas éifeachtach monatóireachta, mar shampla ag Cigireacht na Seirbhísí Sóisialta den Údarás um Fhaisnéis agus Cáilíocht Sláinte, a chur i bhfeidhm chun monatóireacht a dhéanamh ar éifeachtaí na reachtaíochta ar sheirbhísí cosanta leanaí; agus
- riachtanas a bheith mar chuid den reachtaíocht a chuireann taca faoi Tús Áite do Leanaí a éilíonn ar an Aire Leanaí agus Gnóthaí Óige athbhreithniú a dhéanamh ar éifeachtaí na reachtaíochta sin ar chleachtas um chosaint leanaí tráth nach déanaí ná trí bliana tar éis dó a chur i bhfeidhm. Ba chóir do Choiste an Oireachtais um Shláinte agus Leanaí an t-athbhreithniú a mheas.

Ina comhairle ar na forálacha sonracha atá leagtha amach sa Scéim Tús Áite do Leanaí, rinne Oifig an Ombudsman do Leanaí moltaí i ndáil le:

- sainmhínte ar mhí-úsáid atá le húsáid sa reachtaíocht;
- na smachtbhannaí dá bhforáiltear i gcás neamh-chomhlíonta;
- ról an FSS; agus
- comhoibriú an FSS/an Gharda faoi Tús Áite do Leanaí.

Rinne Oifig an Ombudsman do Leanaí moltaí freisin leis an mBille um Cheartas Coiriúil (Faisnéis faoi Chionta in aghaidh Leanaí agus Aosaigh Shoghonta a Choimeád Siar) 2012 a leasú maidir le:

- an comhchuibheas idir an Bille agus Tús Áite do Leanaí: Treoir Náisiúnta um Chosaint agus Leas Leanaí;
- an sainmhíniú ar leithscéal réasúnach maidir le teip tuarascáil a thabhairt don Gharda Síochána;
- na cosaintí dá bhforáiltear sa Bille; agus
- ceist na pribhléide dlí.

Creat Beartais Leanaí agus Daoine Óga 2012-2017

Sheol an tAire Leanaí agus Gnóthaí Óige comhairliúchán poiblí ar Chreat Beartais Leanaí agus Daoine Óga 2012-2017 i Meitheamh 2012. Is é aidhm an Chreata, a thiocfaidh i ndiaidh na Straitéise Náisiúnta Leanaí roimhe sin, tosaíochtaí beartais ardleibhéil an Rialtais a leagan amach do leanaí agus do dhaoine óga go ceann cúig bliana.

Leagadh béim in aighneacht an Ombudsman do Leanaí ar an gCreat Beartais Leanaí agus Daoine Óga ar an ngá atá leis an gCreat a bheith mar bhonn taca go hiomlán ag dualgais an Stáit faoi Choinbhinsiún na Náisiún Aontaithe um Chearta an Linbh. Go sonrach, mhol Oifig an Ombudsman do Leanaí gur cheart don Chreat moltaí Choiste an Náisiúin

Aontaithe um Chearta an Linbh a ionchorprú, araon i ndáil leis an leathnú ar na pleananna nó straitéisí den chineál sin i gcoitinne agus tuairimí an Choiste maidir le tuarascáil thréimhsiúil deiridh na hÉireann faoin gCoinbhinsiún. Maidir leis seo, tá na moltaí a bhaineann le grúpaí daoine óga imeallaithe nó leochaileacha suntasach, lena n-áirítear leanaí ag maireachtáil i mbochtaineacht, leanaí faoi mhíchumas, leanaí ón Lucht Siúil, leanaí inimirceacha agus leanaí ag lorg tearmainn, agus leanaí i gcoimhlint leis an dlí.

Leagadh béim freisin san aighneacht an Ombudsman do Leanaí ar an tábhacht a bhaineann le meicníochtaí láidre monatóireachta agus feidhmiúcháin, agus moladh inti go mbeadh spriocanna soiléire agus indéanta chomh fada agus is féidir ag na gníomhartha atá leagtha amach sa Chreat. Mar gheall ar nádúr ard-leibhéal an doiciméid agus an tréimhse ama a chuimhsítear ann, bhí an tOmbudsman do Leanaí den tuairim go mbeadh sé cuí don Oireachtas ról díreach a bheith aige i gcur i bhfeidhm an Chreata a mhaoirsiú agus a mhonatóiriú.

Iniúchadh ar ráitis imscrúdaithe

In 2011, d'fhoilsigh Oifig an Ombudsman do Leanaí tuarascáil ar shampla de chásanna a bhí ina n-ábhar imscrúdaithe faoi ailt 8 agus 9 den Acht 2002, le measúnú a dhéanamh ar mhéid ghníomhaíochtaí na gcomhlachtaí poiblí atá i gceist a chomhlíon dualgais idirnáisiúnta cearta daonna an Stáit. Chumhdaigh na himscrúduithe a roghnaíodh le cur sa tuarascáil raon leathan saincheistanna, lena n-áirítear iompar scoile, leithdháileadh tithíochta an údaráis áitiúil, tacaíochtaí do leanaí a bhfuil riachtanais speisialta acu faoi chúram altrama, cúram speisialta, agus bás an linbh faoi chúram an Stáit.

Rinne Oifig an Ombudsman do Leanaí tuarascáil bhreise a choimisiúnú in 2012 ar shampla d'imscrúduithe níos déanaí a rinne an Oifig. Tá an obair ar an dara tuarascáil ag céim chun cinn agus táthar ag súil go bhfoilseofar an t-iniúchadh go luath in 2013.

Rochtain ar nótaí teiripeacha

Go luath in 2011, ardaíodh ábhair imní le hOifig an Ombudsman do Leanaí maidir le saincheist na rochtana ar nótaí teiripe a bhaineann le leanaí ar baineadh mí-úsáid ghnéasach astu, agus úsáid na faisnéise atá iontu i gcomhthéacs ionchúiseamh coiriúil. Chuir gairmithe leighis sinsearach a sholáthraíonn seirbhísí measúnaithe agus teiripeacha do leanaí ar baineadh mí-úsáid ghnéasach astu an tuairim in iúl go raibh scaoileadh na nótaí a rinneadh le linn na hoibre teiripí – ar leith ón bpróiseas measúnaithe – le cabhrú leis an ionchúiseamh fadhbach. Go háirithe, bhí imní ann más rud é nach féidir le cliniceoirí mothú príobháideachta, muiníne agus rúndachta a chur ar bun sa chaidreamh teiripeach, sa chás sin ní féidir leis na leanaí i gceist an riosca a ghlacadh agus dul i mbun teiripe.

Ardaíodh an cheist seo inár dTuarascáil Bhliantúil 2011, sa chás gur admhaíomar gur chuireamar ár n-imní maidir leis an gceist i dtuairisc chuig an Aire Dlí agus Cirt agus chuig an Stiúrthóir Ionchúiseamh

Poiblí agus cuireadh in iúl dúinn go raibh comhairliúcháin ar siúl idir an SIP, An Garda

Síochána agus an Roinn Dlí agus Cirt le réiteach ar an gceist seo a aimsiú. In 2012, d'ardaíomar freisin an tsaincheist leis an Aire Leanaí agus Gnóthaí Óige, agus tá an-díomá orainn a fháil amach nach dtairgtear aon slándáil bhreise do leanaí a roinneann a dtráma le cliniceoirí chun an pian agus na héifeachtaí leithne a bhaineann le mí-úsáid ghnéasach a sháru. Is léir go bhfuil sé seo in éadan leas an linbh.

Ina theannta sin, iarradh ar an Aire Dlí agus Cirt go ndéanfar an t-ábhar a mheas i reachtaíocht phríomhúil. I gcomhfhreagras ina dhiaidh sin leis an Aire Leanaí agus Gnóthaí Óige, athdhearbháodh an dearcadh seo, agus léiríodh go soláthródh reachtaíocht níos mó soiléireachta ar mhaithe le híospartaigh de mhí-úsáid a chosaint agus le hionchúisimh a thacú freisin.

Beartas Náisiúnta Toilithe an FSS

D'iarr an FSS ar Oifig an Ombudsman do Leanaí ráiteas a dhéanamh ar a Dréacht-Bheartas Náisiúnta Toilithe i Meitheamh 2012. Is é is aidhm leis an doiciméad beartas amháin uileghabhálach a chur ar fáil le haghaidh toilithe i seirbhísí sláinte agus cúraim shóisialta.

Chuir Oifig an Ombudsman do Leanaí fáilte roimh fhoilsiú an dréacht-bheartais, toisc go dtugtar soiléireacht ann do ghairmithe sláinte agus cúraim sóisialta i ndáil leis an tsaincheist ar thoilíú le hidirghabhálacha do dhaoine fásta agus do leanaí. Ina ráiteas ar an mbeartas, rinne Oifig an Ombudsman do Leanaí tagairt do:

- an inmhianaitheacht le beartas náisiúnta a fhorbairt maidir le cúram sláinte nach ndéanann dochar don leanbh, atá riachtanach do leanaí a gceart a bhaint amach ar an gcaighdeán is airde sláinte i gcomhréir le hAirteagal 24 den UNCRC;
- an tábhacht a bhaineann le Treoirlínte Chomhairle na hEorpa maidir le Cúram Sláinte nach ndéanann dochar don leanbh mar threoir d'fhorbairt bheartais san earnáil sláinte
- an diúltú ag daoine faoi 18 mbliana d'aois cóireáil nó idirghabhálacha cúraim sóisialta a bheith acu;
- cás na leanaí faoi chúram;
- na riachtanais ar leith de dhaoine óga teacht ar sheirbhísí sláinte mheabhrach; agus
- cosaintí do leanaí faoi mhíchumas.

Rannpháirteachas le líonraí agus le heagraíochtaí idirnáisiúnta

Is é ceann d'fheidhmeanna Oifig an Ombudsman do Leanaí atá leagtha amach in alt 7 den Acht 2002 comhoibriú le hOmbudsmana do Leanaí i stáit eile. In 2012, lean an OCO lena gníomhaíocht láidir agus ghníomhach le Líonra Eorpach na nOmbudsman do Leanaí (ENOC), chomh maith le Líonra Ombudsman na Breataine agus na hÉireann agus Coimisinéirí Leanaí (BINOCC). Bunaíodh an dá cheann de na líonraí seo chun malartú faisnéise agus dea-chleachtais a éascú idir institiúidí neamhspleácha cearta daonna náisiúnta a bhfuil sainordú acu cearta leanaí a chur chun cinn.

Bhí cruinnithe déthaobhacha ag Oifig an Ombudsman do Leanaí freisin le réimse eagraíochtaí idirnáisiúnta agus sealbhóirí oifige atá freagrach as cearta an duine a chur chun cinn agus a chosaint, lena n-áirítear:

- An tIonadaí Speisialta OSCE agus Comhordaitheoir um Gháinneáil ar Dhaoine a Chomhrac, Maria Grazia Giammarinaro;
- Coimisinéir Chomhairle na hEorpa um Chearta an Duine, an tUas. Nils Muižnieks;
- Ionadaí Speisialta Ard-Rúnaí na Náisiún Aontaithe ar Fhoréigean in Aghaidh Leanaí, an tUasal Marta Santos Pais;
- Ard-Choimisinéir na Náisiún Aontaithe do Dhídeanaithe, an tUas. António Guterres; agus
- An Dr Maria Herczog, comhalta Choiste na Náisiún Aontaithe ar Chearta an Linbh.

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