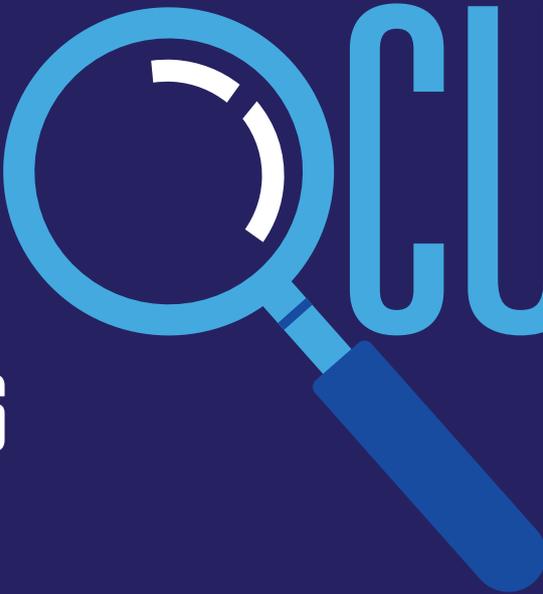


EDUCATION IN FOCUS



November 2016



ombudsman
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All names in relation to the case studies have been changed to preserve the anonymity of the children involved.

FOREWORD



Every child in Ireland has a right to an education and education is an important aspect of all areas of our work in the Ombudsman for Children's Office. Under the Ombudsman for Children Act, 2002 (as amended), the Ombudsman for Children has a responsibility to protect and promote that right.

We do that by examining and investigating complaints brought by or on behalf of children about public bodies and other organisations; carrying out research on children's rights and welfare; providing advice on legislation and policy; promoting children's rights and consulting with children on issues that affect them.

In 2015, 45% of the 1,649 complaints we received at the Ombudsman for Children's Office (OCO) related to education. This is very much in keeping with previous years. Approximately 1,000 children and young people come into our office each year to learn about their rights, and we interact with thousands of schools and teachers across the country. We have made a number of submissions to Government on education policy and legislation, including the Education (Admissions) to School Bill 2016, the Action Plan on Education and others. On this basis I have chosen to focus on education in my first 'In Focus' publication.

This Education In Focus outlines some of the work we have done in the area of education, it details a number of education complaints we received and highlights the immediate and long-term impact that the work of the team at Ombudsman for Children's Office have had.

In this publication we have the opportunity to take a long-term view of some of the systemic issues identified and pursued by this office in the area of education. With the advantage of time and hindsight, we can see clearly the changes that have taken place in the education sector, some problems that exist and how good practice can make a real difference for children and their families.

This is the first of a number of 'In Focus' documents I intend to publish, each focusing on a different theme affecting children. I hope that you find it informative and that it gives you a sense of the important work carried out by the team in the Office to help ensure that every child in Ireland has their right to an education fulfilled.

Niall Mulvaney

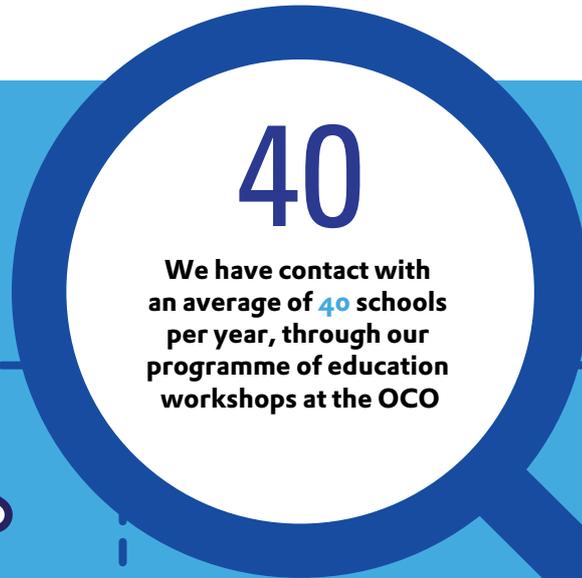
1. EDUCATING CHILDREN ABOUT THEIR RIGHTS

In addition to our complaints-handling function, the Ombudsman for Children's Office has a complementary remit under Section 7 of the Ombudsman for Children Act 2002 to promote the rights and welfare of children and young people under 18 years of age. We do this in a number of ways; by engaging with children through our Participations and Education Programme, and also by offering a child's rights based view on Government legislation and policies.

OCO EDUCATING CHILDREN ABOUT THEIR RIGHTS



We carry out approx. **45** workshops per year



We have contact with an average of **40** schools per year, through our programme of education workshops at the OCO



We welcome an average of over **1,000** children and young people to our office per year

We interact with thousands more throughout the year by visiting schools, attending conferences and events.



Each year we run at least **7** Post-Graduate seminars



Through our Post-Graduate seminars, we interact with approx.

190 students per year



Since the Post-Graduate programme began we have interacted with **9** universities and ITs



We distribute education resource materials to every school in the country

We also raise awareness about children's rights through our It's Your Right platform – website, app, Facebook, Instagram.



Through our direct engagement with schools, we understand the vital place that schools occupy in the lives of children, their families and communities. We are aware of the significant and predominantly positive roles that principals, teachers and other professionals working in schools play in children and young people's lives, and of the different ways in which schools are involved in promoting and protecting a range of children's rights on a daily basis.

All of our materials can be downloaded from our website www.oco.ie

2. ENGAGING WITH EDUCATION POLICY AND LEGISLATION

Through our work with education complaints, and also as a result of the interaction we have with students, parents and teachers through our Participation and Education function, we are aware of the significant and sometimes complex challenges that some children and young people can face in accessing and participating in education. This knowledge informs the work we do in contributing to, and advising on, policy and legislation.

In contributing to education policies, the Ombudsman for Children's Office has facilitated children and young people highlighting their views and ideas to the Department of Education and Skills for the 2013 *Action Plan on Bullying* and the subsequent *Anti-Bullying Procedures for Primary and Post-Primary Schools*. These policies have had a long lasting impact in schools across the country. We have also published research on education for children and young people in care, because we feel strongly that children entering care, or moving placements, have particular needs that must be individually addressed.

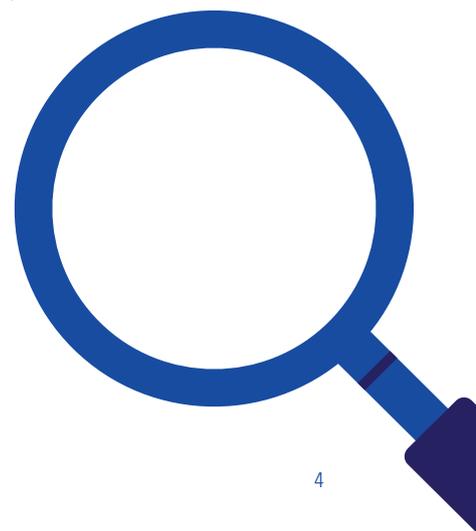
In fulfilling our obligation to promote the rights and welfare of children and young people under 18, we have also been asked by both Government Departments and Oireachtas Committees to contribute to the thinking and clarification of various policies and pieces of legislation relating to education. The Education (Admission) to Schools Bill 2016 is the most significant of these in recent times.

This Bill did not address all of the concerns and recommendations of the Ombudsman for Children's Office. We therefore continue to call for further consideration to be given to several matters, including proposed derogations in cases of oversubscription, in particular the proposed exception arising under Section 7 of the Equal Status Act which, allows for a child to be given preferential access to publicly funded education on the basis of their religion.

The Education (Admission) to Schools Bill 2016 needs to fully consider children's rights and dignity and to take appropriate account of Ireland's international obligations under the UN Convention on the Rights of the Child. Specifically, the right of all children not to be discriminated against on any grounds (Article 2) and to have their best interests treated as a primary consideration in all actions concerning them, including the actions of legislative bodies and administrative authorities (Article 3).

The commencement of Part 5 of the Teaching Council Act, also known as the fitness-to-teach provision, which will allow the Teaching Council to investigate teachers in relation to professional misconduct, was an issue that we had been highlighting for some time, including in a report to the UN Committee on the Rights of the Child in 2015 and before the Oireachtas. The commencement of Part 5 will have a positive impact on complaints handling in the education sector. However, a significant gap still exists as Section 28, the grievance procedures element of the Education Act 1998, has not yet been fully implemented. The Government has plans to address this issue by creating a Parent and Student Charter. We will be monitoring developments to ensure that the charter supports improvements in local complaints procedures in schools.

Our work in education has informed the opinion that the degree of autonomy afforded to Irish Schools has operated in such a way that the State has not been able to exercise responsibility and oversight in the manner required of it as a duty-bearer under the Convention. We have consistently recommended a recalibration of the balance between schools' autonomy and oversight by central Government, to ensure that the State assumes the appropriate level of responsibility for advancing and protecting children's rights within the education system. These are key issues that we will continue to monitor to ensure that policies and legislation in the education sector fully consider the best interests of children.



3. ADDRESSING COMPLAINTS ABOUT EDUCATION

As the vast majority of Irish children avail of state-supported education at some stage in their lives, it is not surprising that education represents the biggest single category of complaints we receive. These complaints give a valuable insight into issues being experienced by children. In some cases we find gaps in the services being provided to children, and in other instances we observe examples of good complaints handling and a child centred approach.

With every complaint, we seek local resolution as a first option because we want problems to be addressed quickly and effectively, in the best interests of the child involved. In some cases, however an investigation is required and recommendations for improvements are made.

The complaints we receive often expose downfalls in the system or changes to legislation and policy that are necessary to improve the lives of children. We often identify an issue in one case that will impact many other children. As Ombudsman for Children, these systemic issues influence the advice we give.

EDUCATION FOR CHILDREN WITH DISABILITIES

We are aware that children with disabilities can face many challenges in their lives. The United Nations report on the rights of children in Ireland recommended that Ireland should adopt a human rights-based approach to disability.¹ This means children should be seen as children first and foremost in government policy and planning. Any child with a disability which may make him/her vulnerable should be protected through a rights based approach in public administration. These cases show how we have affected change in this area through our investigation of cases in education.

CASE 1 HOME TUITION FOR CHILD WITH DISABILITIES



ISSUE

Child with disability with no provision for education



OCO ACTION

Interim support and review recommended



OUTCOME

School place secured and more child centred approach from Department

Lorcan was a ten-year-old child with severe disabilities who was left without education provision for nearly a year while a child protection investigation was on-going in relation to alleged abuse in his school.

Lorcan, who has complex needs and is unable to speak, was attending a school for children with special needs when his parents noticed unexplained and unusual bruises and bite marks on his body. Lorcan's parents reported that he had become very withdrawn and did not want to attend school. They took Lorcan out of the school in April 2012 and brought a complaint to An Garda Síochána who initiated an investigation with the HSE (now TUSLA-The Child and Family Agency and referred to as TUSLA here) into the allegations of abuse.

¹ UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, March 2016. See <https://documents-dds-footnotee>

In September 2012 Lorcan's parents applied to the Department of Education and Skills for home tuition funding while Lorcan waited for a place in a different school. Initially, the Department of Education refused the funding for home tuition. The Department were of the view that he was ineligible for home tuition as he had been voluntarily removed from his original school and still had a place there. The Department of Education and Skills later funded home tuition in February 2013. At this point, Lorcan had been without education provision for seven months. Further delays in processing an application for home tuition occurred between October 2013 and December 2013 when a school place could still not be found for him.

Lorcan's mother contacted us to complain about the Department of Education and Skills' handling of their application for home tuition.

WHAT WE DID

We investigated the complaint and found that the Department of Education and Skills' handling of the application of home tuition and the delays in providing funding for home tuition, negatively impacted Lorcan while he was waiting for a place in a special school. We are not suggesting that home tuition should be provided as a matter of course where a parent removes a child from a school due to dissatisfaction with the school and/or its handling of any concerns arising. However, a child centred approach should inform decisions by the Department and we made a number of recommendations to them.

THE OUTCOME

In 2014 representatives from the Department of Education and Skills met with Lorcan's family, apologised for the delay in processing the applications and approved home tuition until a school place became available. Lorcan started his new school in September 2014.

The Department of Education and Skills undertook an internal review of this and other cases. The outcome of this review was a more child-centred, individualised approach by the Department when considering the continued appropriateness of school placements for individual children in particular circumstances. The Department of Education and Skills has accepted that there are cases where children do not fit easily into schemes and that a clear process for dealing with such applications is necessary.

The Ombudsman welcomes this initiative by the Department and we have found that this new, more individualised approach is reflected in the practice of the Department when considering other cases that have been brought to the Office.

The Department also committed to ensuring that multi-agency discussions would occur in complex cases where relevant information may be held by different bodies such as the Education Welfare Service and the National Educational Psychology Service.

CASE 2

RESOURCE HOURS FOR A CHILD WITH COMPLEX NEEDS



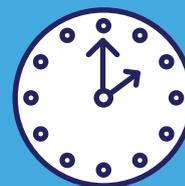
ISSUE

No specific support for child with complex needs



OCO ACTION

Asked DES to reconsider this case



OUTCOME

Reinstatement of resource hours

Chloe's parents contacted us in July 2015 and told us that they were concerned that she wasn't getting the help she needed in school. They said:

- Chloe had a complex medical history and needed resource teaching hours to support her school engagement.
- She had been getting three hours of resource teaching under the policy for children with low incidence special educational provision.
- They felt Chloe needed more resource hours and asked for her hours to be increased based on her having multiple disabilities.
- The National Council for Special Education (NCSE) refused this application as their view was that her learning difficulties were associated with her medical condition.
- This meant that Chloe lost her dedicated resource hours and had to access resource hours under a general model which catered for children with high incidence special educational needs.

Chloe's parents' view was that she should have the resources that she needed and that this should not be dependent on whether she ticked a particular box.

WHAT WE DID

We contacted the NCSE who told us that they were following policy set by the Department of Education and Skills. They said that it was up to Chloe's school to organise support for her through its General Allocation Model (GAM).

Chloe's school told us that she was getting support through the GAM but that, unlike low incidence resource hours, this could not be guaranteed. Therefore, if another child came along who had more needs, Chloe might lose out.

We asked the DES to explain how a child, like Chloe, with such complex medical needs could not get dedicated resource teaching hours. Her parents had provided us with professional reports which indicated that she had complex and enduring learning needs associated with her medical condition.

THE OUTCOME

The Department of Education and Skills told us that a new model of resource allocation was due to be rolled out which would allocate resources based on need rather than on a diagnosed disability. However, they agreed to reinstate the three dedicated resource hours that had been withdrawn from Chloe as the new model was not yet in place. This meant that Chloe had some certainty in terms of resource hours. They also advised that Chloe's school could allocate additional hours under the GAM.

CASE 3

SUPPORT FOR CHILDREN WITH DISABILITIES UNDERTAKING STATE EXAMINATIONS



ISSUE

Lack of fairness, communication and oversight in providing exam support to students with special education needs



OCO ACTION

Direct contact with the SEC and report



OUTCOME

Updated RACE scheme

The RACE scheme in Ireland provides supports to young people with special educational needs so that they can access state examinations such as the Junior and Leaving Certificate. This scheme is managed by the State Examinations Commission (SEC). Schools apply to the SEC for reasonable accommodations on behalf of their students.

We have, over a couple of years, received many complaints about access to RACE.

WHAT WE DID

In June 2016, we published a report on the complaints received about this scheme in order to drive improvements around the fairness of the timing of decision making of the SEC, its communications and its oversight. Key findings from this report include:

Fairness and timing of decision making

- While the scheme states that the eligibility criteria for students for both examinations are the same, the process for determining whether a student meets the criteria is different between Junior Certificate and Leaving Certificate examinations.
- Children were provided with accommodations for their Junior Certificate examinations but were refused these for their Leaving Certificate. We believe that this was unfair and children should know much earlier on in their education what supports will be provided for their final State Examinations.
- The guidance document that the SEC issued to schools about the application process was confusing. Our review of complaints suggests that young people and their parents also found the process unclear.
- In many cases, students did not get a final decision on whether or not they would be provided with accommodations until very close to their exams.

Communication

- A fundamental concern was that the SEC did not provide reasons for its decisions when it refused applications. This meant that complainants had to appeal refusals when they did not have a rationale for the decision.
- The SEC began providing written feedback regarding refusals for applications for the 2016 RACE scheme. However, as this feedback was related to scores of standardised assessments, parents continued to tell the Office that they sometimes did not understand it. This placed the parents at a disadvantage at the time of appeal.

Oversight of the scheme

- Part of overseeing the RACE scheme is ensuring that school staff doing tests of ability and attainment are supported in doing so, are comfortable explaining the tests and give feedback in a way that young people and their parents understand.

THE OUTCOME

We published our report and raised these issues directly with the SEC. The SEC also carried out a full review of the scheme. In October 2016 the SEC rolled out plans for a significantly improved RACE scheme which addressed the findings of the report and implemented the recommendations. These changes included decisions for support at Junior Certificate being carried onwards to Leaving Certificate, improved communication and sharing of information about the scheme and the extension of the scheme to children with general as well as specific learning difficulties.

Full report can be accessed [here](#).

COMPLAINTS ABOUT SCHOOLS

There are 931,383 learners in 3,997 primary and post primary schools supported by the Department of Education and Skills as of June 2016.²

Since 2010, this Office has handled 3,148 complaints about schools. In a number of these cases we found that schools dealt with the complaint appropriately. In others situations improvements were needed. Examples of these improvements include where schools needed to be more transparent about how they came to decisions, or improve how they communicated with parents and children about their complaint.

CASE 4

SPECIAL EDUCATION PROVISION FOR A CHILD IN A MAINSTREAM SETTING



ISSUE

School management of special education needs of child



OCO ACTION

Interacted with school and advised on new policy



OUTCOME

Improved communication with parents and new assistive technology policy

Eoin is a child with special needs. His parents made a complaint to us in relation to his educational experience at school. Eoin's parents were particularly unhappy about:

- Comments made by a teacher about Eoin in the end of year report, which indicated a lack of awareness that he had a diagnosis of dyslexia and dyscalculia, in addition to an exemption in Irish.
- Eoin's assistive technology, granted by the Department of Education and Skills, not being used in the classroom.
- The Board of Management's response to the family's detailed complaint.
- The school's policy on special education, which the parents contended was out of date and had not been reviewed in over a decade.

Eoin's parents told us that they had provided the school with all of the professional reports identifying Eoin's specific learning disabilities and that they had met with the school to discuss the recommendations contained in these reports.

² Department of Education and Skills key statistics 30th June 2016

At the time the complaint was received by the OCO, Eoin had completed his primary school education, which affected the redress available.

WHAT WE DID

We wrote to the Board of Management seeking a response to the issues raised by the family. The Board of Management stated that it was very anxious to resolve this matter at a local level and was open to any assistance we could provide to achieve this.

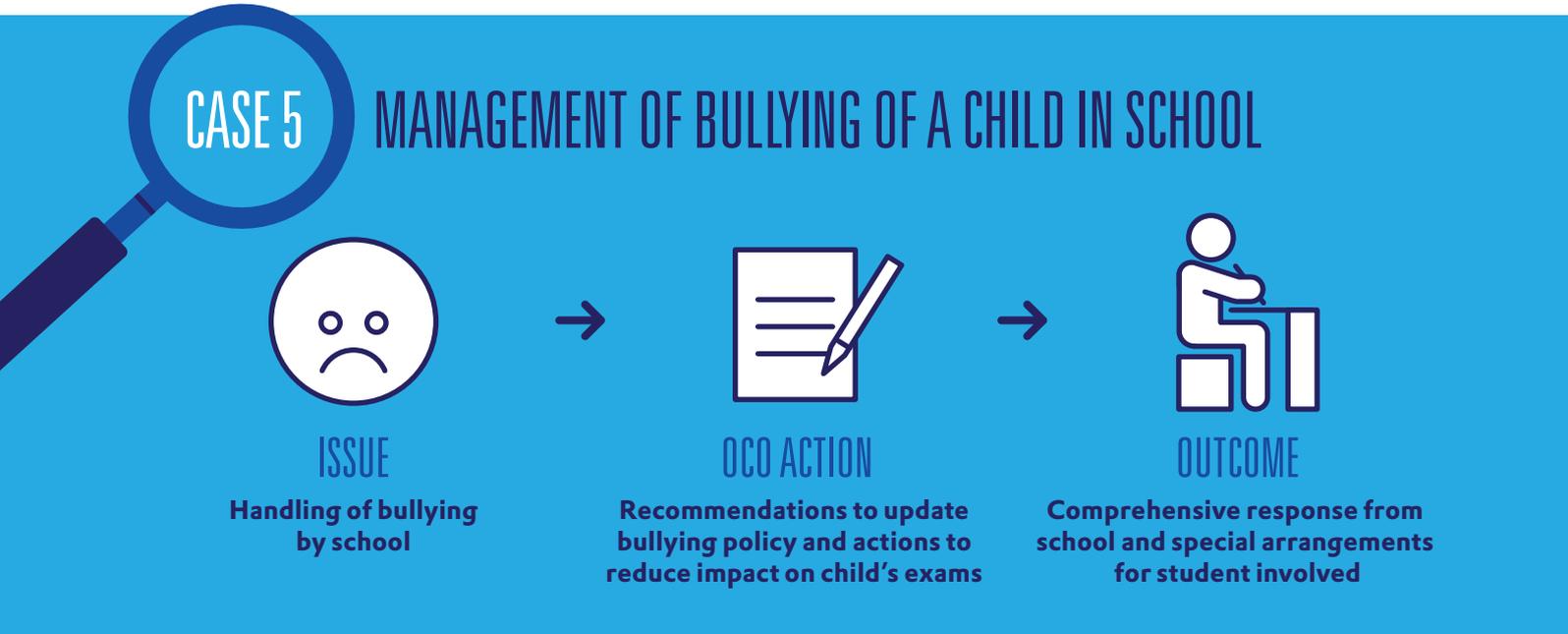
The school explained that it did not have a specific policy in relation to assistive technology but that every effort was made to incorporate the technology in the Eoin’s education. We encouraged the Board to consider additional support services available to staff where Assistive Technology has been sanctioned for a pupil, including the National Centre for Technology in Education, the National Education Psychology Service, the Special Education Support Service, the National Council for Special Education and the Visiting Teacher Service.

In relation to Eoin’s family’s complaint, the school advised that it followed the Catholic Primary School Management Association/Irish National Teachers’ Organisation agreed Parental Complaints Procedures in dealing with the matter. While the Chairperson had compiled a detailed report on the issues and the response of the teachers and Principal, a brief letter of response issued from the Board to the family.

THE OUTCOME

Following our involvement, the Board undertook a review of its policy on special education that took into account the specific concerns raised by Eoin’s family. The school also consulted parents and invited their input into the policy review through the school’s blog. The school invested in screening software for learning disabilities and put detailed tracking systems in place. The Board informed us that it had taken our recommendations on board and planned to implement these where the school had not already fully done so.

We recommended that the Board write further to Eoin’s family to provide a more detailed explanation of the consideration given to their concerns at the time of the complaint, the steps taken while their child was attending the school and the measures that have since been put in place to improve practice. Eoin’s family received a letter from the Board to confirm the detailed investigation of their complaint, explain that the concerns expressed by the family were incorporated in the new policy on special education and that the recommendations by the OCO would be put into practice going forward.



We received a complaint on behalf of Martin about how his school handled his reports of bullying. Martin felt intimidated by a group of peers, which resulted in his irregular school attendance during his sixth year.

WHAT WE DID

We contacted the school about its response to the allegations of bullying and the handling of the subsequent complaints made by Martin’s parent. It became apparent that this situation had the potential to negatively affect Martin’s Leaving Certificate and we highlighted this with the school.

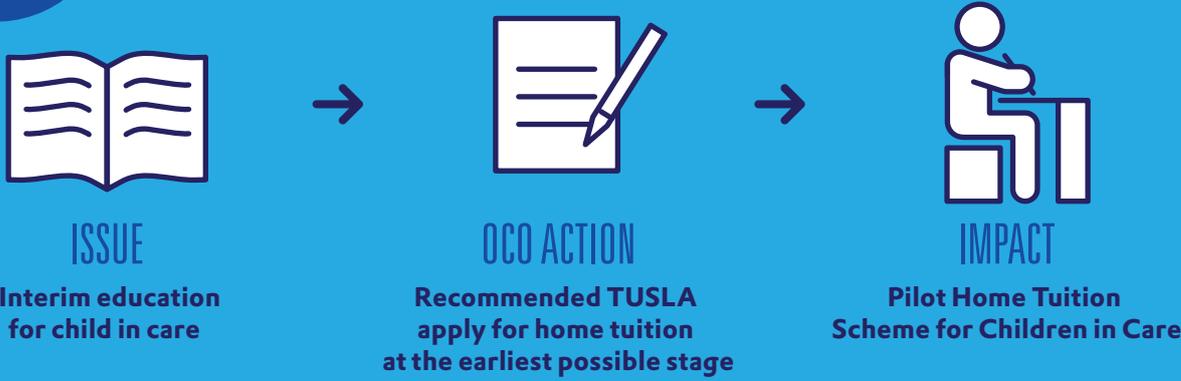
THE OUTCOME

The school provided us with a comprehensive response. This 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, we encouraged the school to make the procedure that follows an allegation of bullying clearer in their Anti-Bullying Policy. With regard to Martin’s Leaving Certificate, in agreement with the family, the school and State Examinations Commission agreed to special arrangements with a view to minimising any potential negative impact.

EDUCATION PROVISION FOR CHILDREN IN CARE

Education can take different forms for different children. It is important that children receive education and supports that meet their needs at different times of their lives. This requires an education system to be agile and flexible in taking a child centred, individual approach at times in response to specific circumstances. For children in care, particularly those who have recently entered care or who have moved into a new placement, school will have a greater significance in their social integration and the stabilisation of care placements and represent a source of constancy and certainty.³ However, a number of complaints we have received highlight the need for interim education provision while school placements are being sought.

CASE 6 EDUCATION PROVISION FOR A CHILD IN RESIDENTIAL CARE



3 Darmody, M., McMahon, L., Banks, J. and Gilligan, R. (2013). *Education of Children in Care in Ireland: An Exploratory Study*. Dublin: Ombudsman for Children’s Office.

In 2015 the Office conducted an investigation into education provision for Shane. Shane was in residential care and was without a school placement or home tuition for a full school year. He had to spend his time alone studying in a public library without professional education support. As a result, Shane had to defer his Junior Certificate exams.

WHAT WE DID

In this case our investigation focussed on the actions of TUSLA in securing education provision for Shane. We recommended that TUSLA ensure that, all necessary actions are taken to secure a school place for children in care. Where a child does not have a school placement, home tuition should be applied for at the earliest possible stage in order to provide interim professional educational support. We also recommended that TUSLA social work services and the Educational Welfare Service (which is now a part of TUSLA) develop more supportive working relationships to ensure that they work together to meet the needs of children in care are addressed.

THE OUTCOME

In response to our recommendations, the Education Welfare Service has produced a guide to school admissions for carers and parents. This has been sent to TUSLA Alternative Care and Social Work Teams to highlight the importance of securing school placements.

The Education Welfare Service also delivered information sessions to all TUSLA Residential Team Managers and Area Managers. These aimed to build stronger links and synergies between Education Welfare Service and Residential Care Teams, to provide information on the role and services provided by Education Welfare Service and to highlight and emphasise the importance of education for children in care.

TUSLA has also established a National Working Group to review the working between the Education Welfare Service, Alternative Care and the Department of Education and Skills' programme, Delivering Equality of Opportunity in Schools.

TUSLA and the Department of Education and Skills have developed a pilot Home Tuition Scheme for Children in Care who are without a school placement due to admission to care or placement disruption.⁴ The scheme allows social workers to apply directly to the Department of Education and Skills for a maximum of nine hours home tuition for a period of six weeks while a school placement is being sought. This scheme will be reviewed at the end of 2016. We particularly welcome this joint initiative by TUSLA and the Department of Education and Skills. This signals a clear effort by the two bodies to jointly address the education needs of children in care and is the first specific provision by the Department of Education and Skills for children in care.

4 Department of Education and Skills Circular No. 0050-2016.
See http://www.education.ie/en/Circulars-and-Forms/Active-Circulars/cl0050_2016.pdf

CASE 7

CHILD IN FOSTER CARE REFUSED ACCESS TO 28 SCHOOLS



ISSUE

No school place for child in 28 schools



OCO ACTION

Recommended specific policy on education provision for children in care



IMPACT

Education (Admissions to Schools) Bill 2016 sets specific parameters in case where a child is refused a school place.

A complaint was received from a Guardian ad Litem on behalf of Ali, a 13-year old child who had been permanently excluded from his school. Despite applications to 28 schools in a wide catchment area by the National Education and Welfare Board (now the Education Welfare Service) and Ali's social worker, as well as one unsuccessful Section 29 appeal, a school place could not be secured.

The Department of Education and Skills sanctioned nine hours home tuition per week, despite the fact that a Department of Education and Skills circular states that the minimum number of instruction hours per week in post-primary school is 28. The Guardian ad Litem contended that the Department failed in its responsibility to provide a school place for Ali and that this involuntary exclusion from school had an adverse impact on his social and academic development.

WHAT WE DID

We investigated this complaint and engaged with both the Department of Education and Skills and TUSLA. In responding to our investigation, the Department contended that the HSE could take Section 29 appeals against each of the 28 schools that refused to admit the child and that the Department of Education and Skills had no responsibility or way to make a school accept any child.

However, the standard length of time to complete a single Section 29 appeal is two months and you cannot run two appeals at the same time.

The Department also argued that an application could have been made by the social work team to have the number of hours of Home Tuition increased in this case above the maximum of 9 hours per week, although information on the availability of such a remedy was not freely available.

THE OUTCOME

Ali was given a school place after two years outside the system and was reported to have been progressing well after a difficult start.

We recommended that a specific policy on education provision for children in care be developed by the Department in conjunction with TUSLA. We also recommended the development of an alternative and more child and user-friendly appeals mechanism.

The Education (Admissions to Schools) Bill 2016 provides for an appeals committee to be established in the case where a child is refused a place. An appeals committee will be independent in carrying out its work. The chairperson and ordinary members of an appeals committee will be appointed by the Minister and will have a special interest in or knowledge of education. In the case of any appeal concerning a child with special educational needs, the committee will include at least one person who has a special interest in or knowledge of special education. In addition, the Education (Admission to Schools) Bill 2016 provides that TUSLA may designate a school for a child where no school placement can be secured. This, if enacted, will help significantly in securing school places for children in care.



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