

**Report of the Ombudsman for Children
to the UN Committee on the Rights of the
Child on the occasion of the examination of
Ireland's consolidated Third and Fourth Report
to the Committee**

April 2015

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1 Introduction

- 1.1 The Ombudsman for Children’s Office (OCO) is an independent human rights institution established in 2004 under primary legislation to promote and monitor the rights of children in Ireland. The Ombudsman for Children is appointed by the President of Ireland on the nomination of the Oireachtas (Parliament) and is accountable directly to the Oireachtas.¹
- 1.2 The OCO has dealt with over 10,000 complaints regarding the actions of public bodies since its establishment and has frequently submitted advice to Government on major legislation relating to the rights of children. The Ombudsman for Children is statutorily mandated to promote the principles and provisions of the UN Convention on the Rights of the Child (UNCRC) and aims to ensure that Ireland complies in full with its international human rights obligations.
- 1.3 This report has been informed primarily by the statutory investigations undertaken by the Office; trends emerging from the complaints made by or on behalf of children; the advice given by this Office to Government on legislative change affecting children; and the OCO’s direct engagement with children and young people. The report relates to the period from the UN Committee’s last examination of Ireland to the end of March 2015.
- 1.4 This report also contains excerpts from a complementary publication entitled *A Word from the Wise*, which sets out the stories behind seven cases that have been examined or investigated by this Office and that highlight systemic issues affecting children in Ireland.
- 1.5 The period since the UN Committee on the Rights of the Child’s (hereinafter “the UN Committee”) last examination of Ireland has been marked by significant change. Ireland is emerging from a severe economic crisis that has had a wide-ranging and negative impact on children’s enjoyment of their rights. As Ireland now appears to be moving into a period of greater economic stability and growth, the State must act in accordance with its obligations under the UNCRC and other instruments regarding the progressive realisation of children’s rights.
- 1.6 A recent report by the United Nations High Commissioner for Human Rights recalled that the Convention imposes an immediate obligation on States to take targeted measures to move as expeditiously and effectively as possible towards the full realisation of economic, social and cultural rights and that this obligation entails the prohibition of retrogression without strong justification.² It noted further that in times of financial austerity, any proposed policy change or adjustment must be temporary, covering only the period of crisis; proportionate, in that the adoption of any other policy or a failure to act would be more detrimental to children’s rights; non-discriminatory, in the sense of taking all possible measures to support social transfers and mitigate inequalities that can grow in times of crisis; and ensure that the rights of the disadvantaged and marginalised individuals and groups are not disproportionately affected.³

1 Dr Niall Muldoon was appointed as Ireland’s second Ombudsman for Children on 17 February 2015.

2 Office of the UN High Commissioner for Human Rights (OHCHR), *Towards better investment in the rights of the child: Report of the United Nations High Commissioner for Human Rights, A/HRC/28/33* (19 December 2014), para. 12

3 Ibid.

- 1.7 The State must ensure that the steps it takes to counteract the impact of the recession on children and indeed improve on the situation that obtained prior to the economic crisis are driven by the Convention. This is not simply a question of laudable or prudent social policy; it is a matter of international legal obligation.

2 General measures of implementation

2.1 Ratification of international human rights instruments

- 2.1.1 Ireland has not yet ratified all the major international human rights treaties and other instruments that the Committee has recommended States become party to.⁴ In particular, Ireland has signed but not yet ratified: the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention Against Torture; the Convention on the Rights of Persons with Disabilities; and the Convention for the Protection of All Persons from Enforced Disappearance.
- 2.1.2 The State has indicated that it has no immediate plans of becoming party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or to the Convention against Discrimination in Education.⁵

Recommendation 1

The State should ratify all the major human rights instruments and other instruments that the UN Committee has recommended States become party to.

2.2 Constitutional and legislative framework

- 2.2.1 The UNCRC has not been incorporated into Irish law. Certain principles of the Convention have been partially incorporated into primary legislation in a number of domains but there are others – such as education and health – in which legislation clearly lacks a child rights-based approach or does not exist at all.⁶
- 2.2.2 A referendum to amend the Irish Constitution in order to include a new article on children and their rights was passed in November 2012. The amendment was limited in some important respects but the inclusion of the best interests principle and children’s right to be heard at a constitutional level was a substantial and positive development.⁷ The amendment is not yet in force due to a legal challenge to the validity of the referendum.⁸

4 United Nations Committee on the Rights of the Child, *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5 (27 November 2003), Annex 1

5 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Ireland*, A/HRC/19/9 (21 December 2011), para. 108.1 and Addendum to the Report of the Working Group, para. 107.7

6 For an overview of the extent to which Ireland has incorporated the Convention into domestic law, see Kilkelly, U and Lundy, L., *The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries*, (London: UNICEF UK, 2012), Chapter 4.4

7 Ombudsman for Children’s Office, *Report to the Oireachtas on the Thirty-First Amendment of the Constitution (Children) Bill 2012* (Dublin: OCO, 2012)

8 *Jordan -v- Minister for Children and Youth Affairs & ors*, [2014] IEHC 327

2.2.3 *Better Outcomes, Brighter Futures: the National Policy Framework for Children and Young People 2014-2020* contains a commitment to ensure that Ireland’s laws, policies and practice are compliant with the principles and provisions of the UNCRC and its Optional Protocols.⁹ However, the policy framework does not contain concrete commitments that would secure greater alignment between Irish legislation and the Convention. Specifically, there is no commitment to incorporate the Convention into domestic law, nor is there a commitment to carry out a sectoral audit examining the extent to which legislation that affects children’s enjoyment of their rights in different domains currently complies with Convention obligations. Of particular importance from the perspective of the Ombudsman for Children is the need to place a legal obligation on public bodies to respect the principles of the Convention in all relevant administrative proceedings or decision-making processes. It has been a consistent theme emerging from the examination and investigation of complaints by this Office that public bodies do not routinely have due regard to the State’s obligations under the Convention in carrying out their functions with respect to children. There are areas of good practice but progress to date has been too uneven across the public sector to rely on a commitment to reflect the principles of the Convention in relevant policy, practice or guidance documents. A clear statutory obligation is required.

Recommendation 2

The State should:

- a) **carry out an audit examining the extent to which legislation affecting children’s enjoyment of their rights in different domains currently complies with its obligations under the Convention;**
- b) **proceed with the necessary steps to incorporate the Convention fully into Irish law; and**
- c) **introduce specific legal provisions to ensure that its obligations under the Convention are respected in the context of administrative proceedings and decision-making processes.**

2.3 Comprehensive policy and strategy

2.3.1 *Better Outcomes, Brighter Futures* has many strengths, including: the consultation with children regarding the issues to be tackled in the Policy Framework; its focus on outcomes; and its commitment to configuring and reforming children’s services in an evidence-based manner.

2.3.2 The vision set out in *Better Outcomes, Brighter Futures* is for Ireland to be a country where the rights of all children and young people are respected, protected and fulfilled, and where their voices are heard.¹⁰ It also outlines which Articles of the Convention are relevant to each of the main outcomes contained in the Policy Framework.¹¹ However, the Policy Framework is informed rather than driven by the Convention. It does not go further and make compliance with the different provisions of the Convention individual and explicit goals. This could have been done by reference to the Committee’s Concluding Observations and the detailed guidance contained in the Committee’s General Comments, many elements of which could readily be transformed into indicators, goals and objectives.

⁹ Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: the National Policy Framework for Children and Young People 2014-2020*, (Dublin: DCYA, 2014), p. 105

¹⁰ *Better Outcomes, Brighter Futures*, p. vi

¹¹ *Better Outcomes, Brighter Futures*, Appendix 1

2.3.3 *Better Outcomes, Brighter Futures* does, however, contain a commitment to putting in place a rolling action plan to identify priority issues and report on progress.¹² The action plans developed under the Policy Framework should rely explicitly on the full range of provisions contained in the Convention – and further elaborated by the Committee – in order to ensure that the rights-based vision articulated at the beginning of *Better Outcomes, Brighter Futures* can be realised.

Recommendation 3

The State should ensure that the action plans developed under the National Policy Framework for Children and Young People make compliance with the different provisions of the Convention individual and explicit goals, relying on the Committee’s Concluding Observations and General Comments to generate the relevant indicators.

2.4 Coordination

2.4.1 The establishment of the Department of Children and Youth Affairs (DCYA) in 2011 and the decision to make the Minister for Children and Youth Affairs a member of the Cabinet has given greater prominence to children’s issues at a governmental level. The DCYA has also undertaken substantial work to advance awareness and implementation of the Convention, particularly with respect to young people’s right to be heard.

2.4.2 Issues affecting children necessarily cut across a range of Government Departments and agencies, meaning that effective coordination between different parts of the Government remains essential to the implementation of the Convention. It is not solely a matter for the Department of Children and Youth Affairs. In the experience of the Ombudsman for Children’s Office in carrying out statutory investigations into the actions of Departments of State, problems persist with respect to achieving such effective coordination. Questions that arise in relation to what part of the Government leads or has financial responsibility for a given issue affecting children are not always resolved swiftly and efficiently. The identification of lead Departments and agencies for each of the actions outlined in *Better Outcomes, Brighter Futures* may reduce the frequency with which such difficulties arise. However, there must be a real and ongoing commitment at the most senior level of Government and public administration to overcome these obstacles in a timely fashion when they emerge.

Recommendation 4

The State must ensure that the effective coordination of policy affecting children is not hampered by a lack of clarity regarding which arm of Government has responsibility for a given issue, both financially and with respect to leading the implementation of necessary reforms.

¹² *Better Outcomes, Brighter Futures*, p. 112

Case study

The OCO received a complaint from a parent of a child with special needs regarding the Early Childhood Care and Education Scheme, which provides a free year of early childhood care and education for children of pre-school age. The child in question was attending pre-school at the time of the complaint but had been unable to attend full time due to the lack of required supports.

One aspect of the OCO's investigation was the coordination between the public bodies in addressing the question of supports for children with special needs in the context of early childhood care and education. In April 2010, a cross-sectoral Working Group was set up to develop a framework for the integration of children with disabilities in pre-school settings. This Working Group found that the nature and extent of support across the country varies considerably. It concluded that the arrangements for inclusion of children with disabilities in pre-school settings were inconsistent and inequitable. Moreover, they did not adequately meet the needs of children.

A number of recommendations were made on conclusion of the Working Group's report. During the course of the OCO investigation, it was established that two years after the final meeting of the Working Group, no implementation plan had been drawn up, no timeline established for implementation of the Group's recommendations and no agreement had been reached with regard to which Department should lead out on implementation.

Progress has been made in the intervening period and a further Interdepartmental Group has been tasked with examining this issue as well as others connected with the area of early childhood care and education, with a report due in the summer of 2015. However, the matter remains unresolved.

2.5 Budget

- 2.5.1 *Better Outcomes, Brighter Futures* committed the Government to exploring the development of cross-Government estimates for expenditure on children and young people.¹³ As noted by the UN High Commissioner for Human Rights in his report *Towards Better Investment in the Rights of the Child*, no Government can claim to be fulfilling children's rights to the maximum extent of its available resources unless it is able to identify the proportion of its budgets allocated to children, both directly and indirectly. This does not imply that there should be a separate budget for children, but rather that budgets should be presented in such a way that specific allocations to children can be identified.¹⁴ In light of this, Ireland should proceed with the development of cross-Government estimates for expenditure in this domain without delay.
- 2.5.2 For the last number of years, the Department of Social Protection has published integrated social impact assessments of the annual Budget.¹⁵ The Government has further committed itself to carrying out a social impact assessment of the main social welfare and tax measures for 2016 and subsequent years before the publishing of Budgets.¹⁶ These are positive developments.¹⁷ However, the UN Committee on the Rights of the Child has called for States to undertake ex-ante and ex-post child impact assessments and evaluations of budget and fiscal processes so that the likely impact of decisions on children's rights may be understood and how far the best interests of the child has been a primary consideration in decision-making.¹⁸ This requires the State to expand the current framework for integrated social impact assessments to encompass a fuller form of analysis, rooted in the Convention, which examines the impact of fiscal and budgetary decisions on children's enjoyment of their rights.

Recommendation 5

The State should:

- a) **proceed with the development of cross-Government estimates for expenditure on children and young people; and**
- b) **expand the current framework for integrated social impact assessments in order to ensure that fiscal and budgetary decisions are subject to children's rights impact assessments and evaluations, in accordance with the State's obligations under the Convention.**

2.6 Data collection

- 2.6.1 In recent years the State has made a substantial investment in data and research in order to achieve a better understanding of children's lives.¹⁹ Nonetheless, the State has acknowledged that difficulties persist with both gathering and sharing information.²⁰ This has also become apparent through the OCO's investigatory work and commissioned research.²¹

¹³ *Better Outcomes, Brighter Futures*, p. 43

¹⁴ OHCHR, *Towards better investment in the rights of the child*, para. 35

¹⁵ Social impact assessment is an evidence-based methodology to estimate the likely distributive effects of policy proposals on poverty and social inequality.

¹⁶ Dáil Éireann, Debates, 3 February 2015, Parliamentary Question [2179/15]

¹⁷ The government has also undertaken to incorporate other elements into integrated social impact assessments more generally, including those relating to health. See Department of Health, *Healthy Ireland: A Framework for Improved Health and Wellbeing 2013-2025* (Dublin: Department of Health, 2013), p. 19

¹⁸ UN Committee on the Rights of the Child, *General Comment No. 5*, para. 45

¹⁹ *Better Outcomes, Brighter Futures*, p. 17

²⁰ *Better Outcomes, Brighter Futures*, section 6.3

²¹ See, for example, Darmody, McMahon, Banks and Gilligan, *Education of Children in Care in Ireland: An Exploratory Study* (Dublin: OCO, 2013)

Recommendation 6

The State must ensure that action plans developed under the *National Policy Framework on Children and Young People* identify in sufficient detail current and anticipated future gaps in data and research on children, with corresponding commitments made by the relevant agency or authority to address identified deficits.

2.7 Independent monitoring

- 2.7.1 Establishing a comprehensive framework for independent complaints-handling and the inspection of children's services is an essential element of guaranteeing that children's rights are respected. Regular, independent inspection and the impartial investigation of complaints are critical to maintaining standards, ensuring that the organs of the State are held to account and engendering a culture of respect for children's rights.
- 2.7.2 In 2012, the Ombudsman for Children's Office submitted a review of the operation of Ombudsman for Children Act 2002 to the Oireachtas. The report contained a range of recommendations for enhancing the legislation underpinning the work of the Office in light of the Paris Principles and recommendations made by the UN Committee.²² The Government have given effect to a number of these recommendations, including the extension of the OCO's remit to allow children in prison to submit complaints to the Office.²³ However, a number of issues remain outstanding.
- 2.7.3 The OCO's budget is still drawn down through the Department of Children and Youth Affairs. In practical terms, the control of the OCO's budget by the Department has not proven to be problematic. However, it is inappropriate for an independent human rights institution to receive its funding through a public body that it can investigate and for it not to have autonomy in the recruitment of staff. The situation should be remedied by providing for the OCO's funding to come directly from the Oireachtas.
- 2.7.4 The Ombudsman for Children Act 2002 contains an exclusion that prevents the OCO from investigating the actions of public bodies where those actions involve the administration of the law regarding asylum, immigration, naturalisation and citizenship. The Department of Justice and Equality has interpreted this exclusion broadly and does not accept the jurisdiction of the OCO to investigate complaints from asylum seekers and protection applicants regarding the actions of the Reception and Integration Agency (RIA) and the private service providers contracted to provide accommodation to them.²⁴ The OCO is strongly of the view that protection applicants should have access to an independent complaints-handling mechanism regarding the actions of these bodies and that the OCO's investigatory remit should be clarified accordingly.

22 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Concluding Observations: Ireland*, CRC/C/IRL/CO/2 (29 September 2006), paras.13–15

23 See section 22 of the Ombudsman (Amendment) Act 2012 and S.I. No. 341/2013 – Ombudsman Act 1980 (Section 4(10)) Order 2013.

24 See Ombudsman for Children's Office, *A report by the Ombudsman for Children on the operation of the Ombudsman for Children Act, 2002*, (Dublin: OCO, 2012), pp. 14–15

- 2.7.5 It is still possible for a Minister of the Government to veto the carrying out of an investigation by the Ombudsman for Children.²⁵ Although this provision of the 2002 Act has never been invoked, its inclusion in the legislation could serve to undermine the independence of the Ombudsman for Children.
- 2.7.6 Finally, the OCO's review of the operation of the Ombudsman for Children Act recommended that the Ombudsman for Children be able to investigate complaints from young people up to the age of 21 if they have a disability or have been in the care of the State. The rationale for extending the remit of an Ombudsman for Children to include certain groups of young people in this age cohort is that there can be significant continuity between the services needed by certain young people under the age of 18 and in the early years of adulthood. In addition, offices such as an Ombudsman for Children often develop expertise in dealing with the complexity of these cases, the relevant public bodies and services providers, as well as with the young people in question and their families.²⁶

Recommendation 7

The State should:

- a) **strengthen the mandate of the Ombudsman for Children by providing for the Office's funding to come directly from the Oireachtas; and**
- b) **implement the outstanding recommendations contained in the Ombudsman for Children's review of the operation of the Ombudsman for Children Act 2002.**

2.7.7 The Health Act 2007 provides for the independent inspection by the Health Information and Quality Authority (HIQA) of all residential children's services, foster care services, as well as residential and respite services for children with disabilities. Important sections of the Health Act 2007 have not been commenced. As a result, HIQA does not currently inspect non-statutory (private and voluntary) services for children in care. This means that private entities contracted to provide services on behalf of the Child and Family Agency (known as Tusla) are not subject to independent inspection, though they are inspected by Tusla itself. Privatising children's services should not create a disparity in the inspection and monitoring framework for those services.

Recommendation 8

The State should bring the remaining elements of the Health Act 2007 into force without delay so that HIQA can take on the full inspection mandate envisaged by the 2007 Act.

2.8 *Dissemination and awareness raising*

2.8.1 In 2011, the OCO published a children's rights analysis of a reflective sample of its investigations. The findings of this analysis indicated a lack of awareness among public bodies of children's rights as recognised by international instruments; a failure by public bodies to rigorously apply the best interests principle and to ensure that children's views are appropriately considered in

²⁵ Section 11(4) of the Ombudsman for Children Act 2002.

²⁶ Ombudsman for Children's Office, *A report by the Ombudsman for Children on the operation of the Ombudsman for Children Act, 2002*, p. 18

the context of decision-making; and deficits in awareness as regards the impact of decision-making on children and how quickly harm can be done to children. Accordingly, the analysis highlighted the need to prioritise children's rights training for all relevant public bodies, including professionals working with children and those making decisions that impact on children, either directly or indirectly.²⁷

- 2.8.2 *Better Outcomes, Brighter Futures* recognises that politicians, policy-makers, educators, health professionals, youth workers, the police, the judiciary and legal professions, social workers and all who work with children need to create a culture that respects and advances their rights.²⁸ However, the associated high-level goals do not include explicit commitments to develop children's rights education and training for relevant professionals.²⁹
- 2.8.3 The OCO understands that capacity-building will be a key strand of Ireland's first *National Strategy on Children and Young People's Participation in Decision-Making*, which is currently being finalised by the DCYA. It would be positive if the capacity-building component of this strategy were to go beyond children's participation to include children's rights more generally.
- 2.8.4 The experience of the OCO in examining complaints is that parents are, unsurprisingly, the most tenacious advocates for their children's rights and are by far the single largest category of complainant. In light of this and taking into account the role envisaged by the Convention for the State to support parents in the realisation of their children's rights, the State should strengthen awareness of children's rights among parents, guardians and care givers.

Recommendation 9

The State should:

- a) undertake a comprehensive audit to establish the extent and nature of current provision for children's rights education across all relevant third level and adult education programmes, as well as continuing professional development programmes, and publish the findings of the audit;**
 - b) mainstream children's rights education and training with a view to building capacity among current and future professionals, including those involved in relevant areas of civil and public administration; and**
 - c) strengthen awareness of children's rights among parents, guardians and care givers.**
- 2.8.5 Over the last ten years, the OCO has had occasion to work directly with thousands of children and young people through its rights education programme. The Office's experience of delivering this programme suggests that children's and young people's understanding of the concept of rights is basic and that their awareness of human rights mechanisms and understanding of the purpose of children's rights are generally low. In the context of reforms in primary and post-primary education (including curricular reforms), there is scope to strengthen provision for human rights education, in particular through work focused on:
- building children's and young people's knowledge of human rights and of how human

²⁷ Kilkelly, U., *A Children's Rights Analysis of Investigations*, (Dublin: OCO, 2011)

²⁸ *Better Outcomes, Brighter Futures*, p. 38

²⁹ *Better Outcomes, Brighter Future*, p. 39

- rights relate to their own daily lives as well as to other people living in Ireland and in other countries; and
 - supporting whole school approaches that afford children and young people meaningful opportunities in the context of their daily lives in schools to develop and practice attitudes and skills associated with respecting human rights.
- 2.8.6 There is also scope to strengthen support for equivalent initiatives within the non-formal education system so that opportunities for children and young people to develop and practice skills associated with active, democratic citizenship can be maximised.

Recommendation 10

The State needs to strengthen its support for work undertaken by the formal and non-formal education sectors so as to allow for the continuing development of human rights education, including more meaningful opportunities for children to develop and practice skills associated with active, democratic citizenship.

3 Definition of the child

3.1 Consent to medical treatment

- 3.1.1 Irish legislation does not provide a clear and consistent framework for addressing the question of children and young people’s consent to and refusal of medical treatment. In general terms, 16 and 17 year olds may consent to medical treatment without parental consent, but this is underpinned by a provision in a criminal statute that states that such consent is a defence in any criminal prosecution for assault against a medical professional.³⁰ Furthermore, this does not extend to the domain of mental health, as the Mental Health Act 2001 defines a child as a person under the age of 18.³¹
- 3.1.2 Ireland’s Law Reform Commission has produced detailed recommendations for legislative change in this area. However, the Government has not yet brought forward legislation to give effect to those recommendations, which include: providing that 16 and 17 year olds are presumed to have full capacity to consent to and refuse medical treatment (including with respect to mental health); providing that young people under 16 may be able to give consent to or refuse treatment if they have the capacity to do so; and making specific provision for those under the age of 18 in the Mental Health Act 2001.³²

Recommendation 11

The State should enact legislation that provides comprehensively for children and young people’s consent to and refusal of medical treatment. This legislation must be rooted in the Convention and underpinned by a clear recognition of children’s evolving capacities.

³⁰ Section 23 of the Non-Fatal Offences Against the Person Act

³¹ Section 2 of the Mental Health Act 2001

³² Law Reform Commission, *Children and the Law: Medical Treatment*, LRC 103 – 2011, (Dublin: Law Reform Commission, 2011), Chapter 4.

3.2 Age of Criminal Responsibility

- 3.2.1 The Children Act 2001 raised the age of criminal responsibility in Ireland from 7 to 12, with a rebuttable presumption that children under 14 are incapable of committing an offence.³³ However, the relevant section of the Act never came into force and it was later amended by the Criminal Justice Act 2006. The effect of this amendment was to make the age of criminal responsibility 10 for certain serious crimes and 12 for other offences, and to remove the rebuttable presumption regarding the capacity of children under the age of 14.³⁴
- 3.2.2 The State has taken no action to implement the UN Committee's recommendation in 2006 to restore the original provisions of the Children Act 2001 regarding the age of criminal responsibility.³⁵ Indeed, when Ireland appeared before the UN Human Rights Council in 2011, a recommendation to raise the age of criminal responsibility was one of the few to be rejected outright by the State.³⁶

Recommendation 12

The State should:

- a) **raise the minimum age of criminal responsibility to 12 for all offences; and**
- b) **restore the rebuttable presumption that children under the age of 14 cannot commit an offence.**

3.3 Voting Age

- 3.3.1 The Government committed to holding a referendum before the end of 2015 on a proposal to amend the Constitution to provide for a voting age of 16, following a recommendation from the Constitutional Convention.³⁷ This commitment was reiterated in the *National Policy Framework for Children and Young People 2014–2020*.³⁸ The Government subsequently reneged on this commitment by indicating that it had decided not to hold the referendum at this time.³⁹
- 3.3.2 This reversal is especially surprising given that respect for the views of young people was an element of the referendum on children's rights held in 2012 and is one of the transformational goals contained in the *National Policy Framework for Children and Young People 2014–2020*.

Recommendation 13

The State should hold a referendum on lowering the voting age in Ireland to 16.

33 Section 52 of the Children Act 2001

34 See section 129 of the Criminal Justice Act 2006.

35 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Concluding Observations: Ireland*, paras. 66–67

36 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Ireland*, para. 108.3

37 Dáil Éireann, Debates, Vol. 812, 18 July 2013, Report of the Convention on the Constitution: Statements, 50

38 *Better Outcomes, Brighter Futures*, p. 104

39 Dáil Éireann, Debates, Vol. 863, 14 January 2015, Leaders' Questions, 44

4 General Principles

4.1 Non-discrimination

- 4.1.1 In 2006, the UN Committee welcomed the State's National Action Plan against Racism 2005-2008 (NAPR) and, in particular, the five objectives of the plan for protection, inclusion, provision, recognition and participation.⁴⁰ The NAPR has not been renewed. The Government has indicated that its focus is on the implementation of sectoral strategies⁴¹ – in the areas of health, education and policing, for example – and that it is currently developing a new integration strategy, which will include a strong anti-racism component.⁴² The *National Policy Framework for Children and Young People 2014–2020* also contains a number of commitments to combat racism and discrimination, as well as to support integration.⁴³
- 4.1.2 The Final Report of the Strategic Monitoring Group for the NAPR called on the Government to put anti-racism, interculturalism and integration at the heart of national policy and Irish public life, rather than allow them become the sole concern of one section of a Government Department or the sole responsibility of a Junior Minister.⁴⁴ It recommended further that the Government consider the development of a new national action plan that would, like the original NAPR, operate across all Government Departments.⁴⁵ In light of this and the recommendation contained in the Durban Declaration and Programme of Action for States to establish and implement national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance, including their gender-based manifestations,⁴⁶ the State must ensure that it puts in place an appropriately high-level and comprehensive successor to the National Action Plan against Racism 2005–2008.

Recommendation 14

The State should put in place an appropriately high-level and comprehensive successor to the National Action Plan against Racism 2005–2008.

- 4.1.3 Schools have an exemption under Ireland's equality legislation with respect to their admission policies. Where the school is an environment which promotes certain religious values, the school may admit students of a particular religious denomination in preference to others. Schools may also refuse to admit as a student a person who is not of that denomination and it is proved that the refusal is essential to maintain the ethos of the school.⁴⁷ The majority of primary schools in Ireland (94%) are denominational and publicly funded.⁴⁸
- 4.1.4 If a majority of schools in a given catchment area are of a particular denomination, a child of that denomination can be admitted to all of those schools in preference to another child in the

40 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Concluding Observations: Ireland* para 20.

41 Dáil Éireann, Debates, Vol. 759, 13 March 2012 Parliamentary Question 14331/12

42 Dáil Éireann, Debates, Vol. 873, 2 April 2015, Parliamentary Question 13287/15

43 *Better Outcomes, Brighter Futures*, Commitments 2.22 and 4.9

44 Strategic Monitoring Group for the National Action Plan against Racism 2005–2008, *Final Report*, (January 2009), pg. 3

45 *Ibid.*

46 Adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. See Programme of Action, para. 66

47 Section 7 of the Equal Status Act 2000

48 Dáil Éireann, Debates, Vol. 873, 1 April 2015, Parliamentary Question 13449/15

area who is not of that denomination. This means that the child of the same denomination as the majority of schools in the catchment area has preferential access to most – if not necessarily all – publicly funded education in the area.⁴⁹

- 4.1.5 This is a manifestly unsatisfactory situation that raises a serious concern regarding Ireland’s compliance with its non-discrimination obligations under the Convention. This should be remedied by amending the Equal Status Act in order to provide that no child should in general be given preferential access to publicly-funded education on the basis of their religion.⁵⁰ The Government has disappointingly indicated that it has no plans to remove or alter the current exemption to Ireland’s equality legislation, in spite of repeated recommendations from human rights monitoring mechanisms.⁵¹
- 4.1.6 A further aspect of the Government’s proposed admissions legislation that caused significant concern to the Ombudsman for Children’s Office was that it would continue to allow schools to give preference to the children of former pupils at the school. Children may suffer indirect discrimination by virtue of the fact that their parents are far less likely to have attended school. This includes children from the Traveller community and also children – including Irish citizens – whose parents were born or grew up in another jurisdiction.⁵²

Recommendation 15

The State should ensure that the forthcoming Education (Admission to Schools) Bill removes all discriminatory features of the current system for school admissions, including with respect to giving preference to students on the basis of their religion and on the basis that a parent is a past pupil of a school.

4.2 Best interests of the child

- 4.2.1 Ireland has made some progress in incorporating the best interests principle in legislation affecting children, though further significant work remains to be done in this regard.⁵³
- 4.2.2 As noted above, the OCO continues to have a concern regarding the extent to which the best interests principle is guiding administrative decision-making.⁵⁴ This deficit has been evident in the design and implementation of guidelines or schemes aimed at supporting children and young people but which are applied in an overly rigid manner, thereby failing to make the best interests of the child a primary consideration.

49 The Forum on Patronage and Pluralism in the Primary Sector’s Advisory Group drew attention to the problems presented by so-called stand-alone schools that are denominational, as they are the only schools in their areas and can give preference to students of the same denomination as the school in terms of admissions. See *Report of the Forum’s Advisory Group*, (April 2012), p. 77

50 There may be Constitutional barriers to making this provision unqualified, as noted by the Ombudsman for Children’s Office and the Oireachtas Committee on Education and Social Protection. See Ombudsman for Children’s Office, *Advice of the Ombudsman for Children on the General Scheme of the Education (Admission to Schools) Bill 2013*, (Dublin: OCO, 2013), Chapter 3 and Oireachtas Joint Committee on Education and Social Protection, *Report on the Draft General Scheme of an Education (Admission to Schools) Bill 2013*, (Dublin: Houses of the Oireachtas, March 2014), Section 4.1.3

51 Dáil Éireann, Debates, Vol. 870, 3 March 2015, Parliamentary Question 8761/15

52 Ombudsman for Children’s Office, *Advice of the Ombudsman for Children on the General Scheme of the Education (Admission to Schools) Bill 2013*, (Dublin: OCO, 2013), Chapter 3

53 Kilkelly and Lundy, *The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries*, (London: UNICEF UK, 2012), Chapter 4.4

54 See para 2.2.3 of this Report

Johnny's Story

The complaint was submitted to the OCO by Liz on behalf of her son Johnny, then aged nine, who attended a mainstream national school. Johnny had a number of medical difficulties which had been identified by professionals working with him, though no specific diagnosis had been identified at that time. These issues were causing Johnny difficulties in school with hand writing, fatigue, fine motor coordination and concentration levels.

The complaint made to the OCO related to the recommendation of the National Council for Special Education and the subsequent decision of the Department of Education and Skills to refuse an application for assistive technology made on Johnny's behalf. Although the application was made with supporting documentation from a range of medical professionals, it was refused on the basis that there was no specific diagnosis for Johnny. The projected cost of the assistive technology – consisting of a laptop and appropriate software – was in the region of €1000.

The Department stated that the Scheme is designed to provide technology to support children with a disability and distinguished between an assessed disability and a medical condition. As there was no specific diagnosis at the time, the application did not meet the criteria in spite of Johnny's identified need.

The OCO found that refusing support on this basis – even when a child had a medically identified need – amounted to maladministration.

I remember it so well. Trying to cope in school. I just wasn't able to get everything done. I'd be pumping with pain.

The whole thing was crazy. No one ever really listened to me or understood what I needed in school. We had to fight for a simple laptop from 4th to 6th class it took about 18 months. It was mad. They drove me home from school one day so that I could go to the bathroom because I didn't have a Special Needs Assistant assigned to me. Two of them in a car with me.

In the school once a month they had an award ceremony. Best handwriting. Best improver. I was always ignored.

One day at a meeting my patience went and I let rip at the teachers. It was building up for ages. They tried to stop me talking but my mam said to them they had to listen because they hadn't before. So they did. But then a while later, as a treat, they were allowing the class to see a movie but they said I couldn't go because I had been disrespectful.

When you struggle in school it affects other things, not just your subjects. You feel isolated. Not having the help I needed did lots of damage. It stopped me from making good friends. From mixing.

I felt so bad about everything. I didn't want to be the cause of upset. I didn't want stress for my whole family. But I felt like I was being punished for having a disability.

Now that I have the help I need it has made such a difference. I mix a lot more now. It has even changed things for me like that – not just school work. I'm more confident.

Having the laptop makes things a hell of a lot easier. A homework assignment that took 2 hours now

takes me 30 minutes. I can copy stuff down in school in time. I can draw diagrams on it. I can do my exams on it. My self-esteem is up. No bullying or being made fun of. It's a long way from the time I popped my shoulder out from carrying the schoolbag of books.

It was amazing to be listened to. It made such a difference to us. I hope it helps others.

The best thing is knowing we did something. It's knowing we didn't back down. No child should go through what I went through. It can happen once but never again. I'm proud we won our fight. I'm proud of my mam.

Recommendation 16

The State should:

- a) **mainstream the best interests principle as a positive obligation in all relevant legislation;**
- b) **implement measures that build capacity as regards integrating and applying the best interests principle into relevant policies, procedures and practices.**

4.3 *Right to life, survival and development*

- 4.3.1 In 2009, the OCO submitted an Options Paper to the Government and to the Oireachtas on the establishment of a child death review mechanism in Ireland. A system for reviewing serious incidents and deaths of children in care or known to the child protection services of the Child and Family Agency, known as the National Review Panel, was subsequently introduced in 2010. The Panel is functionally – though not institutionally – independent of the Child and Family Agency, whose actions the Panel examines. The Health Information and Quality Authority (HIQA) also has an oversight role.⁵⁵
- 4.3.2 The Options Paper prepared by the Ombudsman for Children’s Office outlined the advantages of having a fully independent child death review mechanism, as well as the benefits that could flow from having a remit beyond the examination of cases involving children in care or known to child protection services. The OCO therefore believes that the Government should enhance the scope and the independence of the National Review Panel.

Recommendation 17

The State should enhance the scope and independence of the National Review Panel.

4.4 *Respect for the views of the child*

- 4.4.1 There are significant deficits in respect of legislative provision for children to express their views and for those views to be taken into account, as outlined elsewhere in this report with respect to contexts such as the education sector, family law and child care proceedings. There is a corresponding need to strengthen relevant legislation on a sectoral basis in order to create a positive obligation to hear and take due account of children’s views. This legal obligation should also extend to public bodies in the context of administrative proceedings and decision-making.
- 4.4.2 The OCO welcomes the forthcoming *National Strategy on Children and Young People’s Participation in Decision-Making* and its potential role as a vehicle for mainstreaming a culture of children’s participation. Implementation of the Strategy needs to be appropriately resourced so that commitments made in it can be fully realised. In addition, implementation of commitments made by specific departments, agencies and services under the aegis of this Strategy needs to be led at an appropriately senior level within these bodies, with a robust monitoring and accountability structure put in place to ensure commitments are being fulfilled.

⁵⁵ Health Information and Quality Authority, *Guidance for the Child and Family Agency on the Operation of The National Review Panel* (Dublin: HIQA, 2014).

Ciara's Story

This complaint was brought to the OCO by Mike and Jen, whose four year old daughter Ciara had significant motor problems resulting in a diagnosis consistent with cerebral palsy. An application for a powered wheelchair was made to the Health Service Executive but was refused.

One of the parents' main concerns was that Ciara was refused the powered wheelchair using her age as the sole criterion, without any assessment of her ability and without taking into consideration recommendations from the professionals caring for her in regard to her needs and capacity. The officials in question also made the decision without meeting Ciara.

Ciara's parents also stated that there was an inconsistency between their local health office's policy and the policies operational in other areas. Specifically, they indicated that their area would not consider applications from children under the age of 7, whereas children of a similar age and level of need in other health office areas had received powered wheelchairs.

It takes a lot of explaining to tell my story. I'm proud of my mam and dad and what they did for me. The powered wheelchair changed everything for me. I could play with my friends. I could even go across the grass – the manual one gets stuck. If we go out on walks I have independence, I can go on ahead myself.

School is good. I've good friends. I'm the first kid with a chair. I got 10 out of 10 for spelling. The SENO and my SNA are brilliant. I like her cos she helps me. And I need lots of help.

I get botox twice a year in my legs. I have a walking frame and I'm getting stronger on that. I done a charity walk for a friend of mine. He needs a big operation. I got nearly €4,000 for walking from one end of the green all the way to the other. I was tired. I had loads of sweets after to celebrate it. I'm very proud for doing that.

It's been hard sometimes. I've learned that every feeling is OK. It's not bad to feel sad or happy. If I'm angry and frustrated I'll go outside and scream. Things could be worse than what they are.

I want to be a tooth fairy when I grow up. Then I won't need a wheelchair cos I'll be flying around the place.

4.4.3 In view of the need to provide for more fully inclusive opportunities for children to express their views, which complement the use of representative structures, the State must ensure that it develops:

- inclusive approaches to providing for children’s participation that afford every child in a given context or environment an equal opportunity to be heard;
- sustainable, deliberative processes that enable every child to share their views on an ongoing basis in relation to matters that are of interest and concern to them.

Recommendation 18

The State must ensure that:

- a) the forthcoming *National Strategy on Children and Young People’s Participation in Decision-Making* is properly resourced, driven at a senior level and subject to robust monitoring and evaluation;**
- b) all children are given the opportunity to express their views on matters affecting them, in accordance with Article 12 and in ways that complement representative structures.**

5 Civil Rights and Freedoms

5.1 Birth registration

5.1.1 The first piece of legislation regulating assisted human reproduction in Ireland was recently considered by the Oireachtas.⁵⁶ The Ombudsman for Children called for earlier drafts of the legislation to be amended to include specific provisions to protect the identity rights of children born through assisted human reproduction, particularly by prohibiting anonymous gamete donation and linking the Register of Births to a statutory register of information pertaining to those born through assisted human reproduction.⁵⁷ The OCO welcomed the fact that its proposals were accepted by the Government and included in the legislation.

5.1.2 The situation of children born through surrogacy was not addressed in this legislation, though the Government has committed to bringing forward further legislation to address this gap. It is imperative that the identity rights of children born through surrogacy are also protected by ensuring that the full circumstances of their birth – including the identity of the surrogate mother – are recorded and that those born through surrogacy ultimately have a right to access that information. As is the case in a number of other jurisdictions, Ireland should adopt a “sufficient maturity” test rather than specifying an age at which this information may be obtained.⁵⁸

Recommendation 19

The State must ensure that children born through surrogacy have a legal entitlement to access complete information on their birth and origins.

⁵⁶ Children and Family Relationships Bill, No. 14 of 2015

⁵⁷ Ombudsman for Children’s Office, *Advice of the Ombudsman for Children on the General Scheme of the Children and Family Relationships Bill 2014* (Dublin: OCO, 2014)

⁵⁸ *Ibid.*, p. 14

5.2 Gender identity

5.2.1 Ireland recently introduced legislation to provide for the granting of Gender Recognition Certificates to individuals who have a gender identity different from that assigned at birth. The Ombudsman for Children recommended that provision be made for children and young people to be able to obtain a Gender Recognition Certificate in light of Article 8 of the UNCRC and Article 8 of the European Convention on Human Rights.⁵⁹ The Gender Recognition Bill provided for a mechanism by which 16 and 17 year olds could obtain a Gender Recognition Certificate. However, this mechanism is onerous and maintains an inappropriate requirement for medical approval prior to obtaining a Certificate. It also excludes those under the age of 16 entirely from the ambit of the legislation, even where there is parental consent for obtaining a Gender Recognition Certificate.

Recommendation 20

The State should make proper provision for children and young people by enabling parents or guardians to make an application for a Gender Recognition Certificate on behalf of their children and by providing that young people who have reached the age of 16 should be enabled to apply for legal recognition of their preferred gender on their own initiative.

5.3 Protection of privacy

5.3.1 There are a range of protections under Irish law to ensure that judicial proceedings relating to children occur otherwise than in public.⁶⁰ In general terms, these provisions operate in the interests of children by protecting their privacy. In some circumstances, however, they can serve to hinder access by the Ombudsman for Children to documentation relating to or created for legal proceedings regarding children in care. This can impair the capacity of the OCO to evaluate the actions of the relevant public bodies when investigating a complaint made by or on behalf of a child in the care of the State and should be remedied by amending the relevant legislation.⁶¹

Recommendation 21

The State should take the necessary steps to ensure that legal provisions put in place to protect the privacy of children should not operate to impede access by the Ombudsman for Children to documentation relevant to investigating complaints made by or on behalf of children in care.

5.4 Access to information and protection from material harmful to children's wellbeing

5.4.1 The Government has committed to supporting efforts to limit exposure of children to age-inappropriate material on the internet, including material of a sexual or violent nature.⁶² The Government should follow the guidance of the Special Representative of the UN Secretary General on Violence against Children by taking these steps in the context of an inclusive and

59 Ombudsman for Children's Office, *Advice of the Ombudsman for Children on the General Scheme of the Gender Recognition Bill 2013* (Dublin: OCO, 2013)

60 See Ombudsman for Children's Office, *Advice of the Ombudsman for Children on the Courts Bill 2013* (Dublin: OCO, 2013), which addresses the operation of the in camera rule in detail.

61 Ombudsman for the Children's Office, *A report by the Ombudsman for Children on the operation of the Ombudsman for Children Act, 2002*, paras. 4.6–4.8

62 *Better Outcomes, Brighter Futures*, Commitment 3.8

empowering digital agenda for children, as outlined in the Special Representative's recent report, *Releasing children's potential and minimizing risks: ICTs, the Internet and Violence against Children*.⁶³ Of particular importance in this context is the need for children and young people to be centrally involved in the development of advocacy and policy initiatives to capitalise on the potential of ICTs and to minimise and respond to risks associated with them.⁶⁴

Recommendation 22

The State must ensure that the steps it takes to protect children from harmful material on the internet are part of an inclusive and empowering digital agenda for children.

5.5 Freedom of Religion

5.5.1 The Government established the Forum on Pluralism and Patronage in the Primary Sector to address the need for greater diversity in the types of schools available to children in Ireland. This need for greater diversity had been highlighted by the UN Committee on the Rights of the Child and the UN Committee on the Elimination of Racial Discrimination, among others.⁶⁵ Following the conclusion of this process, a patronage divestment process was put in place to alter the mix of school types to bring about greater diversity and choice for parents and young people. However, as the UN Human Rights Committee noted following its most recent examination of Ireland, progress has been slow in increasing access to secular education through the establishment of non-denominational schools and the divestment of the patronage of denominational schools. Four new multi-denominational primary schools are to open in September 2015 under the patronage divestment process. This development will bring to nine the number of new schools opened under the patronage divesting process to date. The Government has indicated that discussions are continuing to take place with the main Catholic patrons to make further progress for 2016 and beyond.⁶⁶ The State needs to take a more active role in advancing this process.

5.5.2 The OCO has also received complaints regarding the practical difficulties that can be encountered by parents whose children attend a denominational school in relation to opting out of religious education.⁶⁷ More generally, the UN Human Rights Committee has drawn attention to difficulties arising from integrated religious curricula in schools accommodating minority faith or non-faith children and the continuing need for Ireland to address this issue.⁶⁸

Recommendation 23

The State should ensure that there are diverse school types available throughout the State and that it is practicable for students to effectively opt out of religious education, in order to meet the needs of minority faith or non-faith children.

63 Special Representative of the United Nations Secretary General on Violence Against Children, *Releasing children's potential and minimizing risks: ICTs, the Internet and Violence against Children* (New York: Office of the SRSG, 2014)

64 *Ibid.* p. 64

65 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Concluding Observations: Ireland*, paras. 60–61

66 Dáil Éireann, Debates, Vol. 873, 31 March 2015, Parliamentary Question 12678/15

67 Ombudsman for Children's Office, *Submission to the Forum on Patronage and Pluralism in the Primary Sector*, (Dublin: OCO, 2011), p. 5

68 United Nations Human Rights Committee, *Concluding observations on the fourth periodic report of Ireland*, CCPR/C/IRL/CO/4 (19 August 2014), para. 21

6 Violence against Children

6.1 Child abuse and neglect

- 6.1.1 In 2010, the OCO published a national, systemic investigation into the implementation of Ireland's child protection guidelines, known as Children First.⁶⁹ The recommendations made by the Office on foot of that investigation related to a range of matters, including the need for independent inspection of child protection services and the desirability of having a stand-alone agency with responsibility for child welfare and protection.⁷⁰ A number of the changes sought by the OCO have since been brought into effect.
- 6.1.2 The Government introduced legislation to underpin the implementation of Children First in April 2014, which will place an obligation on mandated persons to make child protection referrals to the Child and Family Agency, among other things.⁷¹ However, the legislation has not yet been enacted. In its advice on the legislation, the OCO recommended 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 introduction of the legislation and that its impact on child protection services and practice be subject to a formal review.⁷² Furthermore, the OCO recommended that the Health Service Executive (now the Child and Family Agency) be given sufficient powers to monitor compliance with the legislation, particularly by ensuring its capacity to audit the extent to which non-State actors are complying with their obligations to refer allegations of abuse to State authorities.⁷³

Recommendation 24

The State should ensure that:

- a) **all necessary resources are put in place to ensure that social work departments can respond effectively to any increase in reporting when the Children First Bill comes into operation;**
- b) **the legislation should be subject to formal review to assess the impact of its implementation on child protection services and practice; and**
- c) **the Child and Family Agency is given sufficient powers to monitor compliance with the legislation and related guidance, particularly by non-State actors.**

- 6.1.3 The OCO recently investigated concerns raised by a social work professional that there was a significant number of children awaiting a social work service in the area of question and that, while the service responded to children at severe risk, there were high numbers of children at risk who they are unable to respond to due to unavailability of staff.⁷⁴ This was borne out by the OCO investigation. At a national level, there is still a substantial number of child protection

69 Ombudsman for Children's Office, *A report based on an investigation into the implementation of Children First: National Guidelines for the Protection and Welfare of Children*, (Dublin: OCO, 2010)

70 *Ibid.*, Chapter VII

71 Children First Bill 2014, No. 30 of 2014. The other main components of the legislation are the provisions relating to implementation structures, the development of sectoral plans and the obligation on certain organisations to have a child safeguarding statement.

72 Ombudsman for Children's Office, *Advice of the Ombudsman for Children on the Heads of the Children First Bill 2012 & The Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012*, (Dublin: OCO, 2012), p. 6

73 *Ibid.*, p. 17

74 Ombudsman for Children's Office, *Report on the investigation of HSE Social Work Service Provision in North Lee*, (Dublin: OCO, 2013)

referrals to the Child and Family Agency in respect of which the Agency is not meeting its own target timelines for screening and assessment.⁷⁵

Recommendation 25

The State must provide the Child and Family Agency with adequate resources to be able to meet its targets with respect to the timely assessment of child protection referrals to its services.

6.1.4 The UN Committee previously recommended that Ireland put in place a nationwide, 24-hour social work service.⁷⁶ Such an out-of-hours emergency service exists in the greater Dublin area.⁷⁷ While an Out of Hours Social Work service has been piloted in two other areas, this has not yet been rolled out nationally. Elsewhere in the country, an Emergency Place of Safety Service is in place.⁷⁸ Although this can provide young people with a placement in a family setting if an emergency arises outside normal working hours, the local social work service does not take on responsibility for the case until the following morning.

Recommendation 26

The State should ensure that the UN Committee's recommendation regarding the establishment of a nationwide, 24-hour social work service around the country is fully implemented.

6.1.5 In early 2014, the European Court of Human Rights ruled in *O'Keefe v Ireland* that Ireland had violated Article 3 of the European Convention on Human Rights (ECHR) by failing to implement effective measures to prevent and detect sexual abuse of children in Irish schools, and that Ireland had violated Article 13 of the Convention by failing to provide the applicant with an effective remedy in domestic law on foot of the State's violation of her Article 3 rights.⁷⁹ The Government has indicated that following the review of litigation undertaken by the State Claims Agency, it approved proposals to offer out-of-court settlements to those bringing cases of school sexual abuse against the State where the cases come within the terms of the ECHR judgement and meet certain other requirements.⁸⁰ However, concerns have been expressed regarding the Government's narrow interpretation of the judgment and, in particular, the fact that its action plan appears to exclude from the redress mechanism all victims of sexual abuse in Irish schools whose abuse did not take place in the aftermath of a prior complaint that abuse had occurred in that school.⁸¹ This fails to acknowledge the systemic deficits with Ireland's child protection system that left children in schools at risk of abuse even in contexts where there were no prior complaints made against members of staff in those schools.

75 In Quarter 3 of 2014 (most recent figures) 21% of initial assessments were completed within the target of 21 days of receipt of the referrals. Of the total number of child abuse referrals 60% received a preliminary enquiry within 24 hours. See TUSLA, Quarterly 3 National Performance Activity Report, [http://www.tusla.ie/uploads/content/National_Performance_Activity_Report_Quarter_3_2014_Final_\(2\).pdf](http://www.tusla.ie/uploads/content/National_Performance_Activity_Report_Quarter_3_2014_Final_(2).pdf) [accessed 15 April 2015] pp.20–21

76 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Concluding Observations: Ireland*, para. 29

77 This is the Crisis Intervention Service provided by the Child and Family Agency.

78 Dáil Éireann, Debates, Vol. 858, 19 November 2014, Parliamentary Question 43934/14.

79 Application No. 35810/09

80 See the Press Release issued by the Government on 28 January 2015 in connection with this issue http://www.merriestreet.ie/en/News-Room/Releases/Updated_Action_Plan_in_response_to_Louise_O%27%80%99Keefe_case_lodged_with_the_Council_of_Europe.html [last accessed 9 April 2015].

81 Roche, B., "State risks another ECHR challenge over sex abuse, warns academic", *Irish Times*, 23 February 2015 [last accessed 9 April 2015].

Recommendation 27

The State must adopt a more comprehensive approach to providing redress to those who suffered sexual abuse while they were in school, particularly by including victims whose abuse did not take place in the aftermath of a prior complaint that abuse had occurred in that school.

6.1.6 Following an apology by the Government for Ireland's poor record in protecting children from sexual abuse in 1999, the Government established a National Counselling Service to provide therapy for all adults affected by abuse in their childhood. This consists of a network of centres offering free counselling, which is no more than 1 hour from any potential client. Despite a range of reports since that time in relation to abuse of children,⁸² no equivalent free, accessible counselling service has been set up for the children of Ireland who are currently being affected by abuse.⁸³

Recommendation 28

The State should ensure a national specialised service is set up to provide appropriate therapeutic support for children affected by abuse, which is in line with that available to adults.

6.2 Corporal punishment

6.2.1 The State has taken no steps to implement the UN Committee's recommendation to put in place a comprehensive legal prohibition of corporal punishment.⁸⁴ The common law defence of "reasonable chastisement" to a charge of assault remains in place.⁸⁵

6.2.2 The State has committed to keeping the situation under review.⁸⁶ This commitment suggests that, under certain conditions, the Government would be willing to alter its position. It is not clear what those conditions are and, consequently, what the Government's continuous review consists of.

6.2.3 Putting in place a comprehensive ban on corporal punishment is a matter of international legal obligation arising from children's right to equal protection under the law. It is therefore fundamentally inappropriate to make such protection contingent on factors such as the level of public support for a comprehensive ban.

6.2.4 It is clear that the State does not support or promote the use of corporal punishment as such. However, it is equally clear that the State currently has no intention of using the law as an instrument to bring about positive change and equal protection in this sphere.

82 *The Ferns Report, presented by the Ferns Inquiry to the Minister for Health and Children; Commission of Investigation (2005). The Murphy Report, Commission of Investigation Report into the Catholic Archdiocese of Dublin, Commission of Investigation (2009). The Cloyne Report, Commission of Investigation Report into the Catholic Diocese of Cloyne, Commission of Investigation (2010)*

83 (19,000 initial assessments of abuse were carried out in 2012). see TUSLA (2012) *Review of Adequacy for the HSE Children and Family Services*, Dublin: TUSLA p 40

84 UN Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Concluding Observations: Ireland, paras. 39–40

85 Department of Children and Youth Affairs, *Ireland's Consolidated Third and Fourth Report to the UN Committee on the Rights of the Child*, (Dublin: DCYA, 2013), para. 84

86 Dáil Éireann, Debates, Vol. 814, 19 September 2013, Parliamentary Question 38705/13

Recommendation 29

The State should put in place a comprehensive legal prohibition of the use of corporal punishment in all settings.

6.3 Bullying

- 6.3.1 A significant minority of complaints made to the OCO annually relate to education and the issue of how peer-bullying among children is dealt with in and by schools.⁸⁷ In addition to dealing with complaints in this area, the OCO undertook a consultation with over 300 children during 2011 and 2012 to ascertain their views on how schools might deal effectively with bullying.⁸⁸ This consultation was conducted in order to facilitate due consideration of children's viewpoints by relevant stakeholders and in the context of work to develop a new Action Plan on Bullying and new *Anti-Bullying Procedures for Primary and Post-Primary Schools*.
- 6.3.2 Published by the Department of Education and Skills in September 2013, the new *Procedures* set out a monitoring framework, which includes a requirement for schools to undertake an annual review of their anti-bullying policies and an increased focus by the Department of Education and Skills' Inspectorate on the actions schools take to create a positive school culture and to prevent and tackle bullying.⁸⁹ However, no agency is tasked with examining schools' annual reviews or any trends or anomalies that may emerge from them. As a result, it is not clear how the State will fully track progress at a national level in relation to how different forms of bullying are being tackled in schools. The OCO believes that undertaking such a review would strengthen the framework in place for ensuring that the *Procedures* are being properly implemented.

Recommendation 30

The State should build on the monitoring framework contained in the *Anti-Bullying Procedures for Primary and Post-Primary Schools* by examining schools' annual reviews of their implementation of the procedures.

6.4 Freedom of the child from all forms of violence

- 6.4.1 One of the five outcomes of *Better Outcomes, Brighter Futures* is to keep children and young people safe from harm.⁹⁰ It specifically addresses the home environment, the more general protection from abuse and neglect, bullying, and safety from crime and anti-social behaviour. This outcome is further underpinned by related policies and legislation, such as the national guidance for the protection and welfare of children and associated implementation structures.
- 6.4.2 Ireland does not yet have a comprehensive national strategy or a coordinating framework to eliminate violence against children in line with recommendations of the UN global study on violence against children and the Committee's General Comment on Article 19 of the Convention respectively.⁹¹

87 Ombudsman for Children's Office, Annual Report 2013, (Dublin: OCO, 2014)

88 Ombudsman for Children's Office, *Dealing with Bullying in Schools: A Consultation with Children and Young People*, (Dublin: OCO, 2012)

89 Dáil Éireann, Debates, Vol. 870, 3 March 2015, Parliamentary Question 9301/15

90 *Better Outcomes, Brighter Futures*, pp. 75–83

91 United Nations Committee on the Rights of the Child, *General comment No. 13 (2011) The right of the child to freedom from all forms of violence*, CRC/C/GC/13, (18 April 2011) and *Report of the independent expert for the United Nations study on violence against children*, A/61/299, 29 August 2006.

6.4.3 In light of this international guidance, the State should develop a comprehensive, rights-based strategy to reduce and eliminate violence against children. This could be achieved within the overall framework of *Better Outcomes, Brighter Futures*.

Recommendation 31

In light of the 2006 United Nations study on violence against children and the Committee’s General Comment on Article 19 of the Convention, the State should develop a comprehensive national strategy to prevent and address all forms of violence against children and put in place a corresponding national coordinating framework to ensure its effective implementation.

7 Family Environment and alternative Care

7.1 Family law reform

7.1.1 Irish family law is due to be substantially improved following the enactment of the Children and Family Relationships Bill, particularly with respect to putting in place a robust and detailed obligation to make the best interests of child the paramount consideration in relevant proceedings.⁹² The legislation was not as strong in relation to providing for a child’s right to be heard. In order to comply more fully with Article 12 of the Convention, the legislation should be updated to include an unambiguous presumption in favour of seeking a child’s views – subject to the child being willing to express those views – and for the range of mechanisms required to allow children’s views to be made known to the court.⁹³ In addition to enhancing the legislation, this will require the further development of appropriate ancillary court services.

Recommendation 32

The State must ensure that Article 12 of the Convention is fully reflected in Irish family law and that the necessary ancillary court services are in place to vindicate that right.

7.1.2 The Government has made a commitment to establishing a more specialised and efficient family court structure.⁹⁴ In tandem with this, the Government has committed to bringing forward mediation legislation.⁹⁵ These initiatives should be advanced as soon as possible and ensure that a consistent, rights-based approach is adopted to provide adequately for children, particularly with respect to their rights under Article 12 of the Convention.

Recommendation 33

The State should enact the promised family court and mediation legislation as soon as possible and ensure that both pieces of legislation incorporate the relevant principles of the Convention and provide for their consistent application.

92 See generally Ombudsman for Children’s Office, *Advice of the Ombudsman for Children on the General Scheme of the Children and Family Relationships Bill 2014*, (Dublin: OCO, 2014)

93 Ibid., p. 37

94 Seanad Éireann, Debates, Vol. 238, 24 March 2015, Children and Family Relationships Bill 2015: Second Stage, 765

95 Ibid.

7.2 Children in alternative care

- 7.2.1 A significant proportion of complaints examined by the Ombudsman for Children's Office are made by or on behalf of children in the care of the State.⁹⁶
- 7.2.2 The OCO produced a meta-analysis of a number of key investigations into the provision of services to children in care in order to highlight the systemic deficits that gave rise to the investigations and to provide recommendations that address the root causes of these problems. The recommendations related to: assessment and care planning; record keeping; the provision of residential care; handling child protection concerns relating to children who are already in care; social work practice and supervision; inter-professional collaboration; and governance arrangements.⁹⁷ The Child and Family Agency has undertaken to tackle the issues identified in the OCO report as part of its ongoing reform agenda.

Recommendation 34

The State must ensure that the systemic deficits highlighted by the OCO's investigations into Ireland's services for children in alternative care are fully addressed.

- 7.2.3 In the past, the OCO received a number of complaints – some quite serious – in relation to children in special care, which is a form of secure care in which a child is deprived of his/her liberty because a court has determined that his/her behaviour poses a real and substantial risk of harm to his/her life, health, safety, development or welfare. Due to the absence of specialised services in Ireland, some children deemed to be in need of special care are placed in facilities outside the jurisdiction.⁹⁸ Although these steps are taken in light of the assessed needs of the young people and the absence of the required services here, it is highly undesirable that children in need of special care are not being provided for in this jurisdiction, not least because of the impact of being at such a remove from their families and communities.

Recommendation 35

The State should develop its special care services further in order to obviate the need for placing children outside the jurisdiction.

- 7.2.4 When the Ombudsman for Children's Office examines complaints relating to children in care, it frequently has occasion to investigate matters relating to interagency cooperation. Through the course of this work, it has become apparent that the interaction between child protection, mental health and disability services is still not optimal. In particular, the OCO has found that referrals between different services can be problematic, leading to situations in which young people needing to avail of a combination of these services are not being provided with a complete "wrap around" service. Such problems have presented particularly when a young person in care moves between different geographical areas.

⁹⁶ Ombudsman for Children's Office, *Annual Report 2013*, (Dublin: OCO, 2014)

⁹⁷ Ombudsman for Children's Office, *A meta-analysis of repetitive root cause issues regarding the provision of services for children in care*, (Dublin: OCO, 2013).

⁹⁸ See, for example, Dáil Éireann, Debates, Vol. 848, 16 July 2014, Parliamentary Question 31854/14

Recommendation 36

The State must ensure that current difficulties in interagency cooperation between the Child and Family Agency and the mental health and disability arms of the Health Service Executive are addressed immediately.

7.2.5 The Ombudsman for Children’s Office has raised concerns in the past regarding the provision of aftercare services to young people leaving care and the discretionary nature of the legislation underpinning the provision of these services.⁹⁹ The need for more robust obligations to be placed on the State was echoed by the UN Committee on the Rights of the Child.¹⁰⁰ The Government has produced legislative proposals that will create an explicit statement of the Child and Family Agency’s duty to satisfy itself as to the young person’s need for assistance by preparing a plan that identifies his/her needs for aftercare.¹⁰¹ This is a positive development. The Government should build on this initiative further by expanding the eligibility criteria for those who can avail of aftercare services in line with the Oireachtas Committee on Health and Children’s *Report on General Scheme of the Aftercare Bill 2014*.¹⁰² Of particular note is the suggestion that consideration be given to providing for young people who have experienced homelessness and received services under section 5 of the Child Care Act 1991 – but may not have been formally in care – to be eligible for aftercare. The needs of this vulnerable group of young people have been consistently highlighted by the Ombudsman for Children’s Office, both in the context of its investigatory work¹⁰³ and through its direct engagement with young people who have experienced homelessness.¹⁰⁴

7.2.6 In tandem with strengthening the statutory obligations on the Child and Family Agency in relation to aftercare, the State must also ensure that the aftercare plans are matched by the resources to provide adequately for the identified needs of the young people in question.

Recommendation 37

The State should ensure that the forthcoming legislation on aftercare broadens the relevant eligibility criteria, particularly with respect to young people who have experienced homelessness and received services under section 5 of the Child Care Act 1991. The plans prepared by the Child and Family Agency must be matched by the resources required to meet the identified needs of the young people in question.

99 Ombudsman for Children’s Office, *Advice of the Ombudsman for Children on the Child Care (Amendment) Bill 2009*, (Dublin: OCO, 2010), p. 12

100 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Concluding Observations: Ireland*, para. 33

101 The Government approved the Heads of the Aftercare Bill in February 2014.

102 Oireachtas Joint Committee on Health and Children, *Report on General Scheme of the Aftercare Bill 2014* (Dublin: Houses of the Oireachtas, 2014), p. 12

103 Ombudsman for Children’s Office, *Annual Report 2011*, (Dublin: OCO, 2012), p. 36

104 Ombudsman for Children’s Office, *Homeless Truths: Children’s experience of homelessness*, (Dublin: OCO, 2012)

Kaylee's story

The OCO was contacted by Kaylee, a 19 year old care leaver, in relation to the lack of aftercare accommodation for herself and her infant son.

Kaylee explained to the OCO that due to difficulties in accessing suitable accommodation. She and her son – who was not in care – have remained living in a children's residential centre for mothers and babies. While Kaylee appreciated that she had been able to remain in the residential centre, she felt that it was not an appropriate home environment for either her or her son. She advised the OCO that, while living as an adult and a mother in a children's residential centre, daily reports are kept on herself and her child and she is obliged to follow the rules of the centre even if they are not age appropriate.

Kaylee also told the OCO that she was on the local authority's housing list, but did not have any priority listing. She understood that her options were to remain in the children's residential centre or to present as homeless in order to gain priority in this way, which she did not consider appropriate for her or her son. She felt that other young people leaving care had more options than her.

I'm 19 years old now. And my little son Alan is two. I fell pregnant with Alan when I was 17 and I was living in a residential care home. So I moved to a care home for mothers and babies. And I loved it there.

But I was turning 18 and you're supposed to leave when you're 18. But there was no aftercare unit or placements for someone with a baby. Other kids from residential homes have aftercare placements and aftercare services. But there isn't any for girls who have babies.

I don't think it's fair that girls who have babies are out on their own. Because now it's about my baby too. I didn't realise it until I became a mother myself. And then a load of things clicked. Like the importance of attention. Making sure kids get the love and care and praise they need.

You see I wasn't treated very well. I was in and out of care my whole life. And I'm really angry at the authorities and the health service. They screw up.

Like my ma and da were both on drugs for a long time so me and my sisters and brother were put on a full care order. We went to my auntie and uncle. And they were great. They really looked after us. Kept us in school and all.

But then we got sent back to my ma. That should never have happened. They thought she was doing ok and on the methadone, but she wasn't. And like we were just kids, we wanted to be with her. And she was saying she loved us and all. So we went back.

I mean I witnessed things when I was a child. Me ma taking drugs. Violence and murder. If I didn't get into the proper care I'd probably be back there now with four kids and be doing drugs at the weekends.

But after a few years I got taken off my ma. The inspector reported us for missing school and I was put in with a few different families before they sent me to a residential care home. That was a lovely house. And things started going better then. I went to school and all there.

I met Ben when we were 14 – we're still together now. And I fell pregnant when I was 17. So I moved into the mother and baby unit. And it was great. They even let Ben come and spend time with the baby. I learnt things there. You had to pay rent each week and learn how to budget for you and the baby. It was the first time I learnt anything like that. And I'm good with budgeting now.

But I was only there about six months when they said I had to leave. Because when you reach 18 your time is up. And I was used to having people around. Someone to wake up to – the managers, staff and other girls and their babies. Now I'm on my own all day.

I think there should have been some step-down service. Some kind of bridge between the care home and the real world. Other kids I knew from residential homes got aftercare service and training. Some of the aftercare places are literally next door to the residential home. But because I had a baby I was on my own and trying to find some place to live. And rents are crazy. And most places are real dives and won't accept rent allowance.

I was almost going to put myself homeless as well. Alan was only 6 months old and I wouldn't put him in dangerous hostels. I wrote letters to everybody. I wrote 12 letters to managers in the HSE. And they all said there was nothing they could do.

Like I said before, it's just about the proper care and attention. Like when I was in the care home I went to school and, in fairness, I did really well for somebody with no pattern of going to school. But when I got pregnant I had to leave at some point because my uniform wouldn't fit and it was hard to walk around school like that. But one of the teachers used to pop around to me to help me finish assignments. That's someone who cares. So I did my Leaving Cert. I'm very proud of that.

You just need a little help at the right time. A stepdown living space. Just some small houses attached to the mother and baby unit. That way you could link in for some support and advice and practical help when you needed to.

I found it hard to get anyone to listen to me. I think they all should have somebody who was in care telling them what it's really like. They should be listening to the people that have been through it.

I'd rather work than be on social welfare. I don't want to be in voluntary housing for the rest of me life – I want my own house. I'm real proud of myself. I've gone through hell and I've survived. I've a lovely son and I'm going to care for him the way others didn't care for me.

7.2.7 In 2013, the OCO published research on the education of children in care in Ireland. One of the findings of the study was that there needs to be an explicit public policy commitment to promoting educational opportunities – as regards access, participation and attainment in education – for children in care.¹⁰⁵ A subsequent investigation carried out by this Office into the educational needs of a child in care echoed this finding and recommended that the Department of Education and Skills develop a cross-sectoral action plan for the education of children in care that would recognise the additional challenges facing children in care, in accordance with the State’s role and obligations as ‘corporate parent’ to children in care.¹⁰⁶

Recommendation 38

The State should develop a dedicated cross-sectoral action plan for the education of children in care, which recognises and addresses the additional challenges facing this group of young people.

7.3 Adoption

7.3.1 The Adoption Act 2010 consolidated and modernised certain aspects of the law relating to adoption in Ireland.¹⁰⁷ Notwithstanding the progress achieved by the 2010 Act, certain gaps remain. The most significant of these is the absence of a comprehensive statutory framework regulating adopted people’s access to information regarding their birth and origins and family tracing services. The Government has committed to bringing this legislation forward but its proposals have not yet been published.¹⁰⁸ The Ombudsman for Children’s Office has previously recommended that the legislation should contain a general presumption in favour of disclosing information to adopted people regarding their birth and adoption, and that the rights of other parties in relation to the disclosure of identifying information should also be clarified so that there is statutory guidance for the relevant authorities when called upon to balance competing rights.¹⁰⁹

7.3.2 In addition to matters connected with information and tracing, there are other amendments that should be included, such as providing a legal basis for post-adoption services and for the possibility of more open adoptions in line with international practice.

Recommendation 39

The State should bring forward its legislative proposals regarding information and tracing and ensure that they respect fully the rights of adopted people. In addition, the Adoption Act 2010 should be further amended to provide for more open forms of adoption and a statutory basis for post-adoption services.

105 Darmody, McMahon, Banks and Gilligan, *Education of Children in Care in Ireland: An Exploratory Study* (Dublin: OCO, 2013) p. 112

106 Ombudsman for Children’s Office, *A statement based on an investigation into provision by the Department of Education and Skills and the HSE for a child in care* (Dublin: OCO, 2013), p. 19

107 Adoption Act 2010, No. 21 of 2010

108 Dáil Éireann, Debates, Vol. 872, 26 March 2015, Parliamentary Question 12408/15

109 Ombudsman for Children’s Office, *Advice of the Ombudsman for Children on the Adoption Bill 2009*, (Dublin: OCO, 2009), p. 35

8 Disability, basic Health and Welfare

8.1 Children with disabilities

8.1.1 The OCO has identified geographical disparities and fragmentation of services as being a challenge facing children with disabilities in Ireland.¹¹⁰ The Health Service Executive is implementing a model of provision called *Progressing Disability Services for Children and Young People (0–18s)* which aims to address some of the deficits highlighted through the OCO's investigatory work. However, further work remains to be done in respect of providing consistent and coordinated services across the country.

Recommendation 40

The State must ensure that, in the context of the HSE's *Progressing Disability Services for Children and Young People (0–18s)* programme, the difficulties identified by the OCO in relation to geographical disparities and fragmentation of services are addressed.

8.1.2 Through the course of its investigatory work, the OCO has identified the need for the Health Service Executive to establish a model for providing homecare packages and to develop a related national policy in order to ensure that children with disabilities who have enhanced care needs are adequately supported in the home environment and unnecessary lengthy periods of hospitalisation are avoided. The OCO has recommended further that the HSE develop a national assessment process to guide staff in the assessment and determination of homecare package.

Recommendation 41

The State must ensure adequate support is given to children with disabilities who need a homecare package and, to that end, develop:

- a) a model for providing homecare packages;
- b) a related national policy; and
- c) a national assessment process to guide staff in the assessment and determination of homecare packages.

8.2 Health and health services

8.2.1 In 2006, the UN Committee recommended that Ireland introduce comprehensive legislation that addresses the health needs of children.¹¹¹ No such legislation has been introduced. The guidance provided by the Committee in its General Comment on the right of the child to the enjoyment of the highest attainable standard of health will be of particular assistance to the State in implementing this outstanding recommendation.¹¹²

110 Ombudsman for Children's Office, *Annual Report 2009*, (Dublin: OCO, 2010) and *Annual Report 2010*, (Dublin: OCO, 2011)

111 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention – Concluding Observations: Ireland*, para. 45

112 UN Committee on the Rights of the Child, General comment No. 15 (2013), *The right of the child to the enjoyment of the highest attainable standard of health* (Article. 24), CRC/C/GC/15 (14 March 2013)

Danny's story

Sarah contacted the OCO in relation to her 16 year old son, Danny, who had sustained an Acquired Brain Injury (ABI) following a car accident at the age of 15. The complaint related to a lack of dedicated services for 13 to 17 year olds following an ABI, a lack of organised support available for Danny and his family, and the lack of a focal point with responsibility for providing assistance to families in these circumstances.

The complaint set out the difficulty and challenges faced by Danny and his advocates in seeking to secure psychiatric and psychological supports and services on his behalf. The complaint highlighted that the majority of the organisations that Danny's mother contacted would be in a position to help her son if he was 12 years old or younger, or if he was nearing 18 years of age, but that none would take responsibility for his particular age group. The complaint therefore highlighted a potential gap in health services for children of a certain age with ABI.

I can't believe the struggle mammy needed to go on just to get the services I needed put in place. A young person's brain recovers faster and better than an older person's. The quicker you get the services in place, the quicker you get the most of your recovery. You shouldn't have to waste time fighting.

Other people aren't as lucky as me. If I didn't have mam fighting for me, I don't know what I'd have done. She had to give up her job. Not every family can do that.

I started a petition in all the schools in my county calling for services for teenagers with Acquired Brain Injury. That escalated into presenting the petition in the Dáil. Then we got onto the TV and radio. My younger brother Leo spoke for the first time about it all. He shocked me. The emotion in his voice. It just proves young people like us have something important to say.

I was so determined to recover. Will I ever get back to sport? That drove me on. I really applied myself to the therapies and it paid off.

Going back to school was tough. I was really looking forward to it. Some kind of normality. Seeing all my friends. But after one class I was exhausted. I felt my friends were minding me too much. I was being looked at through different eyes by the teachers. They just saw me as someone with a brain injury.

So I moved schools. It's pointless saying I wasn't scared, I was. But it was a great new beginning and people really accepted me. I've made some incredible friends. The teachers are amazing.

I believe young people shouldn't be forgotten. We're important. My younger brother Leo is amazing. He was only 12 at the time and he kind of became my protector. In a way he helped me find my independence again. I remember one day walking down the street and I was holding my mammy's hand. Leo took it on himself to get me to walk beside him in case other lads would see me holding hands with my mother.

I think it's only fair to say that I deserve every chance after what me and mammy went through to provide a future for myself. The scary thing is that someone else will have an injury like mine and they'll come up against the same brick walls.

I'd love if the person with a brain injury would wake up and every service is there available to them and to their family cos the outcome would be much better.

Recommendation 42

The State should implement the outstanding recommendation of the UN Committee to introduce comprehensive legislation that addresses the health needs of children.

8.2.2 As indicated by the findings of research on child-friendly healthcare published by the Ombudsman for Children in 2013, there have been a number of notable public policy developments concerning children's healthcare in Ireland since 2006.¹¹³ However, the research also highlighted that child-friendly healthcare in Ireland could be further advanced, including by: setting standards on the rights of children in healthcare settings; raising awareness among children and parents of children's rights in healthcare; providing appropriate training to healthcare professionals on children's rights in healthcare; conducting situational analyses of current practices in Ireland with a view to highlighting and sharing good practices; providing for a collaborative, coordinated and integrated approach to progressing a child-friendly approach across the healthcare system and within all healthcare settings attended by children; and establishing the practice of taking into account the views and experiences of children as a core value of the Irish healthcare system.

Recommendation 43

The State should build on work already undertaken in the health sector that is consistent with developing child-friendly healthcare in Ireland, in line with recommendations arising from research published by the Ombudsman for Children.

8.2.3 It is evident from the OCO's examination and investigation of complaints over the last ten years that children continue to experience difficulties in accessing primary and community healthcare services. Complaints regarding community care services, including orthodontics, occupational therapy and speech and language therapy, consistently represent around 10% of the complaints received by this Office. Among the specific issues that are raised on a regular basis with this Office in this regard are: long waiting lists for primary care services such as orthodontics; gaps and delays in service provision for children who require a multi-disciplinary approach, including as regards occupational therapy, speech and language therapy, and community psychology services; delays and difficulties in accessing equipment; and geographical disparities in the provision of primary care services between Health Service Executive areas.

Recommendation 44

The State should ensure that the continuing development of primary and community healthcare services takes into account deficits identified by the OCO in the course of its examination and investigation of health-related complaints.

¹¹³ Kil Kelly, U. and Savage, E., *Child-Friendly HealthCare: A Report commissioned by the Ombudsman for Children*, (Dublin: OCO, 2013)

Cait's story

The OCO received a complaint from Rita, whose 15 year old daughter Cait had been admitted to a casualty department in a major regional hospital following a second attempted suicide.

Cait was then transferred to an adult psychiatric ward at the same hospital, pending a place becoming available in a more appropriate adolescent mental health unit. At the time of contacting the OCO, no place in the adolescent unit had been made available; Cait had been placed in the adult ward for two weeks and her mother complained that this was an inappropriate setting, that it was placing her daughter at further risk and that it was not in her best interests.

This complaint was one of a number received by the OCO in recent times relating to the placement of children with mental health difficulties in inappropriate adult units. These complaints have highlighted difficulties nationally and regionally in regard to children accessing appropriate mental health placements and supports.

The first time I attempted suicide I think my real message was 'help me'. But there was no effective help for me. A&E was a nightmare. The adult unit was like prison. The counselling I got from CAMHS (Child and Adolescent Mental Health Services) wasn't right for me and it didn't work.

When I was in hospital after overdosing on paracetamol I was in bits. It was the worst pain I ever experienced. But I didn't want to go home because I was kind of afraid of myself and what I might do. My mam knew I needed residential. But there wasn't much on offer – just the adult unit.

It was not a good experience being in the adult facility. I was in a room by myself. I was being watched 24/7. I wasn't allowed in the main ward. I couldn't shower or go to the toilet by myself. Couldn't go to the shop – even with my mam. I stopped shaving my legs because they'd stare at me. I was very vulnerable. I'm so self-conscious – I can't stand people looking at my body.

The only exercise available was a treadmill. It was in a freezing cold room. I used it for a while out of boredom but then I just couldn't. It seemed wrong anyway. I had an eating disorder and I lost 3 kilos on the treadmill.

I know myself better than anyone knows me. It wasn't a good place for a young person like me. I was alone. I think it wasn't just the wrong place for me – it was a damaging place for me.

I feel I was let down. I needed help and it wasn't there. But some of the nurses were amazing. We had great chats. That's what saved me. Some of them trusted me. The nurses helped me during that time. Helped my thought process. It shows you what might work if they got it right.

I knew I could get better. My mam was fantastic supporting me but I knew I had to fight all the way for myself too. I'm still here now to prove it. That's when I became interested in the career myself. What if in the future I can help someone? I'm aiming to get into university to get the points. Even to make a small difference makes me happy.

I had a terrible experience and other teenagers shouldn't have to go through it. The facilities and lack of staff is kind of a disgrace. People are caring – lots of them are good at their job but there's not enough of them and not enough spaces for children and no out-of-hours response if it's needed. There should be specific wards for my age. The adult unit can't cope with children. That's not fair to us but it's not fair for the staff either.

I know a lot now about mental health. About the system and its faults. I know myself better now. I have a lot to say for myself in the world and about the world. I just wish the right people had listened at the right time.

8.3 Mental Health

- 8.3.1 The commitments set out in A Vision for Change – the Government’s reform programme for mental health services published in 2006 – have not been met in full. Of particular note in this regard is that the number of multi-disciplinary CAMHS teams has not met its target, nor has the number of inpatient beds available in dedicated child and adolescent facilities.¹¹⁴ As a result, children are still being admitted to adult psychiatric wards in Ireland. In addition, out-of-hours services for young people presenting with mental health difficulties are insufficient, as are the specific services in place for young people with eating disorders.
- 8.3.2 The Government is currently undertaking a review of A Vision for Change. However, the implementation of A Vision for Change is no longer subject to independent monitoring.¹¹⁵ This gap should be addressed with the establishment of new independent monitoring mechanism.

Recommendation 45

The State must ensure that child and adolescent mental health services are significantly improved to meet the needs of young people, particularly with respect to the establishment of a sufficient number of multi-disciplinary community teams, appropriate inpatient and out-of-hours facilities, as well as specialised facilities for young people with eating disorders.

8.4 Child Poverty

- 8.4.1 Over the period since the Committee’s last examination of Ireland, the proportion of children living in consistent poverty has increased from 6.8% (2008) to 11.7% (2013). This means that, according to the most recent available data, some 138,000 children in Ireland are living in consistent poverty.¹¹⁶
- 8.4.2 *Better Outcomes, Brighter Futures* contains a national child-specific target to lift over 70,000 children out of consistent poverty by 2020, a reduction of at least two-thirds on the 2011 level.¹¹⁷ However, the Government’s most recent report on the progress made to achieve the national social target for poverty reduction noted that the increase in the number of children living in consistent poverty between 2011 and 2013 means that at least 101,000 children would have to be lifted out of poverty to meet the target population in 2020.¹¹⁸ Moreover, the target set out in *Better Outcomes, Brighter Futures* – a reduction of at least two thirds on the 2011 level – envisages that as many as 37,000 children could be left living in consistent poverty by 2020.¹¹⁹

114 Children’ Mental Health Coalition, *Meeting the mental health support needs of children and adolescents: a Children’s Mental Health Coalition Review*, (Dublin: Children’s Mental Health Coalition, 2015), p. 30

115 *A Vision for Change* recommended the establishment of an Independent Monitoring Group to oversee its implementation. The Monitoring Group reported annually and produced a final Annual Report in June 2012 after 7 years.

116 Department of Social Protection, *Social Inclusion Monitor 2013*, (Dublin: Department of Social Protection, 2015), pp. 30 – 33.

117 *Better Outcomes, Brighter Futures* p. 93

118 *Social Inclusion Monitor 2013*, p. 30

119 *Ibid.*

8.4.3 The Government has indicated that it is finalising an implementation plan for a whole-of-Government approach to child poverty.¹²⁰ In the context of this plan, the target for reducing child poverty needs to be revised to take account of the larger number of children living in consistent poverty since 2011. Furthermore, the target number of 37,000 living in consistent poverty by 2020 is still unacceptably high and represents an acceptance of a higher rate of consistent poverty among children than the general population.¹²¹

Recommendation 46

The State's implementation plan to tackle child poverty should revise the poverty reduction target for 2020 in order to take account of the increased number of children living in consistent poverty and to reduce further the target population, currently set at two thirds of the 2011 level.

8.5 Homelessness

8.5.1 Reflecting the crisis of homelessness affecting families in Ireland at present, the OCO has observed an increase in the complaints from families in this situation. From its examination of these complaints, it appears to the OCO that local authorities with responsibility for housing do not have harmonised systems for determining medical priority. The cases examined by the OCO highlight concerns regarding significant delays in accessing social housing and the impact of inappropriate, temporary or emergency accommodation on children, where they may reside on a long term basis. The accommodation provided, such as hotels or B&B's, impacts negatively on family life and children's development as well as on their access to continuity of services such as education and health checks.

Recommendation 47

The State must address delays in the provision of social housing and ensure that emergency housing support provided to families who are experiencing homelessness is appropriate to children's needs. In addition, the State should address the disruption to accessing services occasioned by changes to children's accommodation.

¹²⁰ Dáil Éireann, Debates, Vol. 870, 5 March 2015, Parliamentary Question 9403/15

¹²¹ The headline target is to reduce consistent poverty to 4 per cent by 2016 and to 2 per cent or less by 2020, from the 2010 baseline rate of 6.3 per cent. *Social Inclusion Monitor* 2013, p. 16.

Tracey and Keith's story

Rose contacted the OCO in May 2014. Her complaint concerned the provision of housing by the local authority and how the local authority addressed her family's homelessness.

The initial complaint concerned the lack of provision of suitable accommodation for her children, Tracey and Keith. Rose told the OCO that she and her children were sharing a house in a Dublin suburb with her two brothers, one of whom had a pitbull dog which bit her daughter. Tracey was hospitalised and needed surgery. Rose also complained that she was unable to use the washing facilities in the house as the bath is in a state of disrepair.

Rose said that the local authority told her that she could no longer stay in the house with her brothers, due both to the threat to the children and because she did not have permission from the local authority to reside at that address. However, at that time the local authority had not provided the family with any alternative accommodation; Rose, Tracey and Keith became homeless.

Rose said that she and her children were placed in unsuitable emergency homeless accommodation. The family was then granted housing priority but difficulties were experienced in the processing of the application; the family was then penalised for anti-social behaviour which had occurred four years previously.

Tracey:

I don't have my own bedroom. We have bunk beds. I have my teddies.

It's freezing. Sometimes in the mornings we get our blankets and pillows and move into mammy's bed. But we're never late for school.

This isn't a normal house. Cos we're not allowed bring friends here. We're not allowed outside when other people are out there. I've never had a sleepover with friends since we came here.

When I imagine what a proper home it would have carpet up the stairs. When I close my eyes our kitchen is a normal size. It has a glass fridge. The sitting room has a three-seater couch. There's a fire in each room and it's cosy.

Upstairs I'd like 3 bedrooms. And two bathrooms. All the rooms have closets and heating.

I imagine a front garden with a dog. At the back there's a porch with chairs and a table. It's all glass and sunny.

There's a back garden too with a trampoline – oh, and an apple tree.

Keith:

It's freezing. That's why I have this furry blanket. I share it with my mam and sister. I don't like when people bully me.

We have no upstairs. I've no space to play except in my room but that's full of clothes. I'm sad cos I can't have a dog here. The apartment we were in before was stinky and smelly. The people upstairs used to fight. One day he battered the pregnant girl outside our front door. We couldn't get past.

When I think of the house I'd like – OK, in the sitting room there's a doggie drinking water. The telly's on.

Upstairs there's a black and white stripey rug in my room. I've two beds so my friend can sleep over. I've pictures on the walls – I can't have any in this house.

In the garden there's a flower pot there and a flower pot there. We've two guard dogs, a trampoline and a bouncy castle. If we had that house we wouldn't have to move all the time. Mammy's cried over that.

9 Education, Leisure and cultural Activities

9.1 Education, including vocational education and training

- 9.1.1 The principal piece of legislation governing the area of education in Ireland is the Education Act 1998. As it currently stands, the 1998 Act does not properly incorporate the elements of the Convention that are relevant to this domain and needs to be reviewed. In particular, the Education Act 1998 needs to be amended to make proper provision for children to exercise their right to be heard both within educational settings and at a more general, systemic level in respect of policy developments affecting them. Children's status as individual rights-holders and as active agents in shaping their own education is not reflected in Irish law at present.
- 9.1.2 Through the course of its examination of complaints in the education sector, the OCO has formed the view 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. The OCO has observed this systemic problem in investigations relating to admissions and child protection, for example. The State must recalibrate the balance between schools' autonomy and oversight by central Government in order to ensure that the State assumes an appropriate level of responsibility for advancing and protecting children's rights within the education system.

Recommendation 48

The State should:

- a) **review the Education Act 1998 to ensure that it adequately reflects the principles of the Convention; and**
- b) **recalibrate the balance between schools' autonomy and oversight by central Government in order to ensure that the State assumes an appropriate level of responsibility for advancing and protecting children's rights within the education system.**

- 9.1.3 Since the UN Committee last examined Ireland there has been increased participation in decision-making by children and young people in schools, particularly with respect to participation on student councils.¹²² The types of activities student councils are involved in vary considerably between schools, as does the extent to which student councils provide an effective platform for young people to input to important areas of school decision-making affecting them. Significant work is needed to achieve consistent standards of quality as regards the role and operation of student councils and to ensure that student councils can and do fulfil their function effectively as mechanisms for students to participate in school decision-making. This work should focus on:

- developing children's skills from a young age so as to build their capacity to participate effectively;
- devising inclusive approaches and mechanisms that enable every child to participate in school decision-making and that complement representative mechanisms (e.g. student councils), even where these work well; and

122 The State of the Nation's Children Report of 2012 suggests that 32.6% of children between 10 and 17 years of age reported that students at their school participate in making the school rules, an increase from 22.5% in 2006. Department of Children and Youth Affairs, *The State of the Nation's Children Report of 2012* (Dublin: DCYA, 2013).

- providing meaningful opportunities that demonstrate to children and young people the value of engagement and active citizenship and, by so doing, support children and young people to self-identify as stakeholders and build their confidence in their own self-efficacy.

9.1.4 At more general level, considerable work needs to be done to mainstream provision for children and young people to have their views taken into account in relation to developments in education policy affecting them, notwithstanding positive developments regarding young people's involvement in areas such as curriculum development and the school inspection process.

Recommendation 49

In the context of its forthcoming *National Strategy on Children and Young People's Participation in Decision-Making*, the State must ensure that children's meaningful participation in decision-making in schools is enhanced and that the Department of Education and Skills supports schools and agencies under its aegis to effect change in this area.

9.2 Complaints-handling in the education sector

9.2.1 The complaints-handling structures in the education sector are incomplete. It was originally envisaged that in order to bring about higher standards and consistency in schools' complaints-handling practice, the Minister for Education and Skills would prescribe procedures for schools to deal with grievances raised by students or their parents, as well as the remedial action to be taken in response to those grievances.¹²³

9.2.2 These provisions never came into operation. This has been a matter of concern to the Ombudsman for Children's Office for many years, as many of the education-related complaints examined by the Office highlight difficulties with the handling of complaints in individual schools.¹²⁴ The Government has indicated that it intends to replace the relevant section of the Education Act 1998 with a provision underpinning the creation of a Parent and Student Charter.¹²⁵ The precise scope of this new provision is not yet known.

9.2.3 Another facet of the complaints-handling framework that has not yet come into operation is the legislation providing for inquiries into teachers' fitness to practice.¹²⁶ The Government has indicated that it intends to bring this legislation into effect later this year.¹²⁷

9.2.4 The prolonged and continuing absence of these parts of the architecture for handling complaints in the education sector represents a barrier to ensuring that where grievances arise, they are dealt with in as swift, appropriate and fair a manner as possible.

123 Section 28 of the Education Act

124 See generally the Annual Reports of the Ombudsman for Children to the Houses of the Oireachtas.

125 Dáil Éireann, Debates, Vol. 869, 24 February 2015, Parliamentary Question 7902/15

126 Part V of the Teaching Council Act

127 Dáil Éireann, Debates, Vol. 869, 24 February 2015, Parliamentary Question 7902/15

Recommendation 50

The State should ensure that a comprehensive and consistent complaints-handling framework is put in place in the education sector.

9.3 Children with special educational needs

9.3.1 Access to supports for children with special needs is one of the largest categories of education-related complaints received by the Ombudsman for Children.

9.3.2 The Education for Persons with Special Educational Needs (EPSEN) Act 2004 provides the statutory framework for supporting and educating children with special educational needs.¹²⁸ However, significant parts of the EPSEN Act have not been brought into effect, including the provisions relating to the preparation of individual education plans for children with identified educational needs.¹²⁹ The Government has indicated that it intends to bring into effect aspects of the EPSEN Act – on a non-statutory basis initially – through policy developments across a range of areas, in conjunction with National Council for Special Education (NCSE) policy advice.¹³⁰ However, it has not provided a specific timeline or commitment to bring the remaining parts of the EPSEN Act into operation.

9.3.3 The State is not under an immediate obligation to implement the EPSEN Act in full. However, in view of the State's obligations to realise the rights of children with special educational needs progressively, the State should at a minimum set out the measurable and concrete steps it proposes to take in order to bring into effect the statutory framework put in place by the Oireachtas over a decade ago. The Government's current position falls short of this requirement.

Recommendation 51

The State should affirm its commitment to implementing the EPSEN Act 2004 in full and set out the concrete, measurable steps it proposes to take to bring this about.

9.3.4 The OCO continues to receive complaints regarding the lack of supports for children with disabilities accessing early childhood education services. The deficits in those supports across the country mean that children are not able to benefit fully from the Early Childhood Care and Education Scheme. The Government has acknowledged that there is not a consistent service nationally, though there are areas in which supports are more developed.¹³¹ An Interdepartmental Working Group chaired by the Department of Children and Youth Affairs is examining this issue and is due to report in the summer of 2015.¹³²

Recommendation 52

The State must ensure fair and equitable access to early childhood education services for children with disabilities.

128 Education for Persons with Special Educational Needs (EPSEN) Act 2004, No. 30 of 2004

129 Dáil Éireann, Debates, Vol. 870, 3 March 2015, Parliamentary Question 8776/15

130 Dáil Éireann, Debates, Vol. 868, 18 February 2015, Parliamentary Question 7252/15

131 Dáil Éireann, Debates, 24 February 2015, Parliamentary Question 7772/15

132 Ibid.

Emma's Story

This case relates to Emma, a 17 year old whose parents contacted the OCO when she was about to sit her Leaving Certificate because they were concerned about the State Examinations Commission's process for assessing their daughter's eligibility for the reasonable accommodations, which was sought because of Emma's dyslexia and dyscalculia.

Emma's application for reasonable accommodation was submitted with supporting documentation from her psychologist, who was of the view that Emma met the criteria for accommodations. But the tests done in the school indicated that she did not meet all the criteria.

Emma's parents were unhappy that such evidence was conflicting and they felt that they had not been provided with a full explanation for their daughter's refusal of accommodations by the State Examinations Commission. They felt the decision not to provide supports was particularly unfair given that Emma had required educational support throughout her education, since she was diagnosed in primary school.

What I feel is that in all of the events that happened last year, I was kind of forgotten – as a student, as a young person. That was because someone I didn't know, someone I couldn't talk to, someone who didn't know me, made a decision that made no sense – and that decision turned my life, and my family's life, completely upside down. It made my life hell at a very stressful time. And it could have had a terrible effect on my future.

I'm very angry about that. And I'm concerned that the same thing will happen again to other people with dyslexia. It's hard enough to cope with a learning disability without having to fight for fairness.

I was diagnosed early in life with dyslexia and dyscalculia. We got a psychologist's assessment when I was in 5th class. Because of that I got the spelling and grammar waiver and I was allowed a reader for exams. I was reassessed for the Junior Cycle and I got the waivers again. But then, just as I was a few months away from sitting the Leaving Cert, I was informed that the waiver had been denied. That I'd have to face the exams with no supports at all. All I felt was panic and fear. Disbelief.

Up until this, me and a few other students had the waivers. Some had dyslexia, some just needed help with subjects. And the school was really great with us. They gave us brilliant support and understanding. In April 2013 we did a writing test. In November the others all got a letter saying they still had the waiver. But I didn't hear anything until February 2014, when they said I had lost my waivers.

I honestly couldn't understand it. I knew better than anyone that I needed help. My mam and dad knew it. The school couldn't understand it. It was the first time a child in the school had been refused. My dad was fuming. He said they were basically telling us that I had been cured overnight – a miracle cure. The school couldn't get an answer from the Department or the Examinations Board.

So we tried to fight it. My parents were brilliant. It took over our lives completely. The school appealed the decision. We appealed it. My resource teacher wrote a letter. We got a letter from the psychologist. We had his report confirming my dyslexia and dyscalculia. We got a letter from the Principal. I wrote a letter myself. All were refused. We spoke with local and national politicians, but got nowhere.

In the end there was nothing. I had to do the exam without the supports I was entitled to. It was horrible.

There are a few things I'm really concerned about. The decision was a terrible one – I knew I needed the supports. I'm in Third Level now and I have the supports back – along with other help they believe I need. And I'm doing great because of that.

The other major issue for me was the timing. Why make a decision like that a few months away from the most important exam in my life – one that would determine my choices in life? It was going to affect every subject, but if you fail maths you're in big trouble in terms of choices for college. Luckily my dad found me a maths grind which helped and I passed – but only just.

The biggest problem was that the clock was ticking. And every question my parents would ask, every letter they'd write, it all took time. And time was one thing I didn't have. I shed tears of anger. It was all too late before we were given a name of the person who made the decision.

From what I can see they just took the result of one test above all the other evidence, appeals and experts. And I've no idea why they did that.

The reality is I did suffer badly because of it. My family suffered. I guarantee I would have done a grade better at least in Maths, English and History. The thing is, I went into those exams with a sense of panic and stress. Can you imagine – every day I had to see my friends who were given the waiver going into the exams with no stress and full of confidence? It just made me feel low and panicked.

I know things can go wrong and mistakes can be made. But when that happens, there should be a simple way of correcting it. Or even a way of finding out why the decision was made so you can give your side. I feel I never got the opportunity to make my case.

The timescale gives you no chance. You go to the same people to appeal – that's not right. I think there should be one independent person you can go to. And an easy process. They should give you a clear reason. There should be some kind of emergency appeals process if things happen so close to exams – but they shouldn't refuse you so close to an exam in the first place.

My dad says we were a family that had a brilliant supportive school, experts on our side and the energy to fight for what's right and we still couldn't get anywhere. What about people who don't have that?

9.3.5 The Government has indicated that it will introduce a new resource allocation model for children with special educational needs, under which children will be allocated additional resources in line with their level of need rather than by a disability category.¹³³ The implementation of this new model has been delayed and it will not come into operation in advance of the next academic year. The OCO concluded an investigation into the resources allocated to support children in Down Syndrome in 2013 and one of the recommendations made in the context of that investigation was that there is a need to monitor the impact of providing additional resources on children with special needs centrally. The question of equitable service delivery can only be addressed by such monitoring and it should form an integral component of the new resources allocation model.

Recommendation 53

The State should proceed with the introduction of the new resource allocation model for children with special educational needs, under which children will be allocated additional resources in line with their level of need rather than by a disability category. The impact of the implementation of the new model needs to be monitored centrally in order to ensure the equitable delivery of services.

9.3.6 The OCO has received a substantial number of complaints relating to decisions made by the State Examination Commission (SEC). The SEC has responsibility for determining the reasonable accommodation that is made for young people with permanent or long-term conditions, including visual and hearing difficulties, or specific learning difficulties, which they believe will significantly impair their performance in their final examinations at post-primary level (the Leaving Certificate). Concerns raised with the OCO include delays in reaching decisions (meaning students are faced with significant uncertainty until very close to their final exams) and a lack of clear reasons – or any specific reasons at all – being given for those decisions, which impacts on families' ability to submit a full appeal of the decision or determine whether to make alternative plans for their child.

Recommendation 54

The State should ensure that decisions regarding reasonable accommodation for young people with disabilities or special needs in state examinations should be fully explained and made in a timely manner, in accordance with the best interests of the child and having due regard to the child's views.

10 Special Protection Measures

10.1 *Children belonging to minorities*

10.1.1 Ireland has not yet implemented the recommendation made by the UN Committee for the Elimination of Racial Discrimination and other international human rights monitoring mechanisms to recognise Travellers an ethnic group.¹³⁴

Recommendation 55

The State should officially recognise Traveller ethnicity without further delay.

10.1.2 In the National Policy Framework for Children and Young People, the Government has acknowledged the poorer health and educational outcomes for Traveller children. The Framework sets out a number of targets for improving the situation for young Travellers. These include tackling inequalities in health outcomes for Traveller children and strengthening social inclusion measures to reinvigorate efforts to improve educational outcomes for Traveller children. Notwithstanding this, it must be noted that the European Commission has been critical of the absence of concrete measures and timelines for achieving this.¹³⁵

Recommendation 56

The State should ensure that more concrete and measurable steps are taken in line with international commitments to tackle the serious challenges that still confront Traveller children.

10.1.3 In July 2014, the Report of the Special Inquiry into the circumstances surrounding the removal of two Roma children from their families – known as the Logan Report – was published.¹³⁶ The report recommended that a national needs assessment for the Roma community be undertaken. The Government has accepted this recommendation. Following on from this, the Government must commit to taking appropriate action in light of the needs that are identified by this assessment.

Recommendation 57

The State must commit to taking clear and measurable steps to address the deficits identified by the national needs assessment for the Roma community.

10.2 *Asylum and Immigration*

10.2.1 Legislative reform in the area of asylum and international protection has been promised for many years. The legislation ultimately enacted by the Oireachtas should include a clear articulation of the general principles of the Convention, as well as provision for a child-centred

¹³⁴ United Nations Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the convention – Concluding observations of the Committee on the Elimination of Racial Discrimination: Ireland Reference*, CERD/C/IRL/CO/3-4, (4 April 2011), para. 12

¹³⁵ European Commission, Directorate-General for Justice, *Report on the implementation of the EU framework for National Roma Integration Strategies*, Brussels: 2014 p.31

¹³⁶ Logan, E., *Report under the Garda Síochána Act 2005 (Section 42)(Special Inquiries relating to Garda Síochána) Order 2013* (Dublin: Department of Justice and Equality, 2014)

process of age assessment for separated children seeking asylum, for the appointment of an independent guardian for those children, for family reunification and for asylum determination processes that meet the highest international standards.¹³⁷

Recommendation 58

The State must ensure that there is no further delay in reforming Ireland’s laws regarding asylum and international protection, and that the legislation reflects the provisions of the Convention and relevant international guidance.

10.2.2 Protection applicants in Ireland – including children residing with their parents or guardians – are generally accommodated in privately run accommodation centres under contract with the Reception and Integration Agency (RIA). This is commonly referred to as the Direct Provision system. The operation of the Direct Provision system – particularly the length of time spent by families living in these accommodation centres – has been the subject of significant criticism on the part of international human rights monitoring mechanisms.¹³⁸ The OCO has received and taken action on complaints regarding child protection, complaints handling within Direct Provision, access to education for children and appropriate clothing and diet for minority faith children.¹³⁹ The OCO believes that accommodating children and young people in Direct Provision for longer than the six month period originally envisaged when the system was established places them in a fundamentally unsuitable setting. The Government has established a Working Group to examine this and other aspects of the protection process in Ireland.¹⁴⁰

10.2.3 As noted above, the OCO has consistently sought legal clarification that it can investigate complaints from and on behalf of children in the Direct Provision system.¹⁴¹ The OCO believes that Direct Provision centres should also be subject to independent inspection, which is not the case at present.¹⁴²

Recommendation 59

The State must take all necessary steps to ensure that children and families are not placed in Direct Provision centres for periods longer than originally envisaged and that other deficits identified with the system should be remedied, particularly by providing for independent complaints-handling and inspection.

10.2.4 In its previous advice to Government on the Immigration, Residence and Protection Bill, the OCO recalled that the State’s obligations under the UNCRC apply to all children in the jurisdiction, not just citizens and children whose parents are lawfully resident here.¹⁴³ The Ombudsman for Children recommended that the provisions of the legislation relating to

137 Ombudsman for Children’s Office, *Advice of the Ombudsman for Children on the Immigration, Residence and Protection Bill 2008*, (Dublin: OCO, 2008)

138 See, for example, the recent comments of the UN Human Rights Committee, *Concluding observations on the fourth periodic report of Ireland*, para. 19

139 Ombudsman for Children’s Office, *Annual Report 2013*, (Dublin: OCO, 2014)

140 The establishment of the Working Group was announced by the Minister for Justice and Equality on 13 October 2014.

141 See para. 2.7.4 of this Report

142 In addition, the OCO believes that clarifying its remit in this way would address the deficiencies highlighted in a recent High Court judgment, which was highly critical of the absence of an independent complaints-handling mechanism for those residing in Direct Provision. See *C.A. and T.A v The Minister for Justice and Equality and others*, [2014] IEHC 532, at para. 8.15-8.16

143 Ombudsman for Children’s Office, *Advice of the Ombudsman for Children on the Immigration, Residence and Protection Bill 2008*, p. 7

immigrants who are not protection applicants should reflect this fact, as should any related regulations made by the Minister for Justice and Equality. The OCO drew specific attention to provisions regarding the extent to which non-Irish nationals and their dependents may access publicly funded services.¹⁴⁴

- 10.2.5 The Government decided not to proceed with enacting the Immigration, Residence and Protection Bill, and to divide the legislation by proceeding with the parts to do with protection applicants first. The Government should make a commitment to deal with the outstanding parts of the legislation regarding migrants who are not protection applicants.

Recommendation 60

The State should enact legislation to provide adequately for the rights of migrant children who are not protection applicants.

10.3 Children in conflict with the law

- 10.3.1 Ireland has made progress with respect to diverting children away from the criminal justice system since the Committee last examined Ireland's compliance with the Convention. However, the concerns raised by the UN Committee regarding the statutory framework for the operation of the Garda (Police) Diversion Programme have not been addressed, particularly those relating to: the admission of children who have engaged in anti-social (as distinct from criminal) behaviour to the Programme; the potential criminalisation of children for breach of behaviour orders; and consideration of an admission of responsibility or admission to the Programme for sentencing in relation to future criminal proceedings against the child.¹⁴⁵
- 10.3.2 Further ways in which the Garda Diversion Programme could be enhanced were identified in a recent report by the Garda Síochána Inspectorate. They included: bringing different agencies engaging with young people in this context together in a co-located team to tackle current difficulties with interagency cooperation; further promoting the use of restorative approaches; and addressing the information deficit on outcomes for young people who enter the Diversion Programme in order to understand which interventions have the greatest impact on recidivism rates.¹⁴⁶

Recommendation 61

The State should build on progress achieved to date with the Garda Diversion Programme by:

- a) addressing the outstanding concerns of the UN Committee regarding the legal framework for the operation of the Programme;**
- b) enhancing interagency cooperation in line with the report of the Garda Síochána Inspectorate; and**
- c) gathering more data on outcomes for young people to support the use of the most effective interventions.**

¹⁴⁴ Ibid.

¹⁴⁵ Ombudsman for Children's Office, *Advice of the Ombudsman for Children on the proposed changes to the Children Act, 2001*, (Dublin: OCO, 2006)

¹⁴⁶ Garda Síochána Inspectorate, *Crime Investigation Report: Part 10 Offender Management*, para. 10.4

10.3.3 When the UN Committee last examined Ireland, 16 and 17 year old boys were still being detained in St. Patrick’s Institution, an adult prison that was inappropriate, unsafe, and seriously injurious to the rights and interests of the young people detained there.¹⁴⁷ The Government has ended the use of St Patrick’s Institution for the detention of children but 17 year old boys detained on sentence are still placed in an adult prison (Wheatfield Prison). This is a temporary measure pending the expansion of capacity at the national detention facility in Oberstown. Although conditions are markedly better in Wheatfield Prison than they were in St Patrick’s Institution, the State must ensure that the use of adult prisons to detain children ends as quickly as possible and that the timeframe for achieving this is not further extended.

Recommendation 62

The State must ensure that the use of adult prison facilities to detain children ceases as soon as possible.

10.3.4 One of the objectives of the *National Youth Justice Action Plan 2014-2018* is to continue to support the Courts Service to ensure the use of detention as a last resort and, in that context, one of the deliverable outcomes identified was to explore new alternatives for the Courts that could result in a reduction in the need for remands to detention.¹⁴⁸

Recommendation 63

The State must ensure that detention on remand is used in exceptional circumstances only and that appropriate alternatives are explored, developed and appropriately resourced.

¹⁴⁷ Ombudsman for Children’s Office, *Young people in St. Patrick’s Institution: A report by the Ombudsman for Children’s Office*, (Dublin: OCO, 2011)

¹⁴⁸ Irish Youth Justice Service, *Youth Justice Action Plan 2014–2018*, (Dublin: Department of Justice and Equality/Department of Children and Youth Affairs, 2013), objective 4.2

11 Annex 1

11.1 *List of recommendations*

1. The State should ratify all the major human rights instruments and other instruments that the UN Committee has recommended States become party to.
2. The State should:
 - a) carry out an audit examining the extent to which legislation affecting children's enjoyment of their rights in different domains currently complies with its obligations under the Convention;
 - b) proceed with the necessary steps to incorporate the Convention fully into Irish law; and
 - c) introduce specific legal provisions to ensure that its obligations under the Convention are respected in the context of administrative proceedings and decision-making processes.
3. The State should ensure that the action plans developed under the National Policy Framework for Children and Young People make compliance with the different provisions of the Convention individual and explicit goals, relying on the Committee's Concluding Observations and General Comments to generate the relevant indicators.
4. The State must ensure that the effective coordination of policy affecting children is not hampered by a lack of clarity regarding which arm of Government has responsibility for a given issue, both financially and with respect to leading the implementation of necessary reforms.
5. The State should:
 - a) proceed with the development of cross-Government estimates for expenditure on children and young people; and
 - b) expand the current framework for integrated social impact assessments in order to ensure that fiscal and budgetary decisions are subject to children's rights impact assessments and evaluations, in accordance with the State's obligations under the Convention.
6. The State must ensure that action plans developed under the *National Policy Framework on Children and Young People* identify in sufficient detail current and anticipated future gaps in data and research on children, with corresponding commitments made by the relevant agency or authority to address identified deficits.
7. The State should:
 - a) strengthen the mandate of the Ombudsman for Children by providing for the Office's funding to come directly from the Oireachtas; and
 - b) implement the outstanding recommendations contained in the Ombudsman for Children's review of the operation of the Ombudsman for Children Act 2002.
8. The State should bring the remaining elements of the Health Act 2007 into force without delay so that HIQA can take on the full inspection mandate envisaged by the 2007 Act.

9. The State should:
 - a) undertake a comprehensive audit to establish the extent and nature of current provision for children's rights education across all relevant third level and adult education programmes, as well as continuing professional development programmes, and publish the findings of the audit;
 - b) mainstream children's rights education and training with a view to building capacity among current and future professionals, including those involved in relevant areas of civil and public administration; and
 - c) strengthen awareness of children's rights among parents, guardians and care givers.
10. The State needs to strengthen its support for work undertaken by the formal and non-formal education sectors so as to allow for the continuing development of human rights education, including more meaningful opportunities for children to develop and practice skills associated with active, democratic citizenship.
11. The State should enact legislation that provides comprehensively for children and young people's consent to and refusal of medical treatment. This legislation must be rooted in the Convention and underpinned by a clear recognition of children's evolving capacities.
12. The State should:
 - a) raise the minimum age of criminal responsibility to 12 for all offences; and
 - b) restore the rebuttable presumption that children under the age of 14 cannot commit an offence.
13. The State should hold a referendum on lowering the voting age in Ireland to 16.
14. The State should put in place an appropriately high-level and comprehensive successor to the National Action Plan against Racism 2005-2008.
15. The State should ensure that the forthcoming Education (Admission to Schools) Bill removes all discriminatory features of the current system for school admissions, including with respect to giving preference to students on the basis of their religion and on the basis that a parent is a past pupil of a school.
16. The State should:
 - a) mainstream the best interests principle as a positive obligation in all relevant legislation;
 - b) implement measures that build capacity as regards integrating and applying the best interests principle into relevant policies, procedures and practices.
17. The State should enhance the scope and independence of the National Review Panel.
18. The State must ensure that:
 - a) the forthcoming *National Strategy on Children and Young People's Participation in Decision-Making* is properly resourced, driven at a senior level and subject to robust monitoring and evaluation;

- b) all children are given the opportunity to express their views on matters affecting them, in accordance with Article 12 and in ways that complement representative structures.
19. The State must ensure that children born through surrogacy have a legal entitlement to access complete information on their birth and origins.
 20. The State should make proper provision for children and young people by enabling parents or guardians to make an application for a Gender Recognition Certificate on behalf of their children and by providing that young people who have reached the age of 16 should be enabled to apply for legal recognition of their preferred gender on their own initiative.
 21. The State should take the necessary steps to ensure that legal provisions put in place to protect the privacy of children should not operate to impede access by the Ombudsman for Children to documentation relevant to investigating complaints made by or on behalf of children in care.
 22. The State must ensure that the steps it takes to protect children from harmful material on the internet are part of an inclusive and empowering digital agenda for children.
 23. The State should ensure that there are diverse school types available throughout the State and that it is practicable for students to effectively opt out of religious education, in order to meet the needs of minority faith or non-faith children.
 24. The State should ensure that:
 - a) all necessary resources are put in place to ensure that social work departments can respond effectively to any increase in reporting when the Children First Bill comes into operation;
 - b) the legislation should be subject to formal review to assess the impact of its implementation on child protection services and practice; and
 - c) the Child and Family Agency is given sufficient powers to monitor compliance with the legislation and related guidance, particularly by non-State actors.
 25. The State must provide the Child and Family Agency with adequate resources to be able to meet its targets with respect to the timely assessment of child protection referrals to its services.
 26. The State should ensure that the UN Committee's recommendation regarding the establishment of a nationwide, 24-hour social work service around the country is fully implemented.
 27. The State must adopt a more comprehensive approach to providing redress to those who suffered sexual abuse while they were in school, particularly by including victims whose abuse did not take place in the aftermath of a prior complaint that abuse had occurred in that school.
 28. The State should ensure a national specialised service is set up to provide appropriate therapeutic support for children affected by abuse, which is in line with that available to adults.
 29. The State should put in place a comprehensive legal prohibition of the use of corporal punishment in all settings.

30. The State should build on the monitoring framework contained in the Anti-Bullying Procedures for Primary and Post-Primary Schools by examining schools' annual reviews of their implementation of the procedures.
31. In light of the 2006 United Nations study on violence against children and the Committee's General Comment on Article 19 of the Convention, the State should develop a comprehensive national strategy to prevent and address all forms of violence against children and put in place a corresponding national coordinating framework to ensure its effective implementation.
32. The State must ensure that Article 12 of the Convention is fully reflected in Irish family law and that the necessary ancillary court services are in place to vindicate that right.
33. The State should enact the promised family court and mediation legislation as soon as possible and ensure that both pieces of legislation incorporate the relevant principles of the Convention and provide for their consistent application.
34. The State must ensure that the systemic deficits highlighted by the OCO's investigations into Ireland's services for children in alternative care are fully addressed.
35. The State should develop its special care services further in order to obviate the need for placing children outside the jurisdiction.
36. The State must ensure that current difficulties in interagency cooperation between the Child and Family Agency and the mental health and disability arms of the Health Service Executive are addressed immediately.
37. The State should ensure that the forthcoming legislation on aftercare broadens the relevant eligibility criteria, particularly with respect to young people who have experienced homelessness and received services under section 5 of the Child Care Act 1991. The plans prepared by the Child and Family Agency must be matched by the resources required to meet the identified needs of the young people in question.
38. The State should develop a dedicated cross-sectoral action plan for the education of children in care, which recognises and addresses the additional challenges facing this group of young people.
39. The State should bring forward its legislative proposals regarding information and tracing and ensure that they respect fully the rights of adopted people. In addition, the Adoption Act 2010 should be further amended to provide for more open forms of adoption and a statutory basis for post-adoption services.
40. The State must ensure that, in the context of the HSE's *Progressing Disability Services for Children and Young People (0-18s)* programme, the difficulties identified by the OCO in relation to geographical disparities and fragmentation of services are addressed.
41. The State must ensure adequate support is given to children with disabilities who need a homecare package and, to that end, develop:
 - a) a model for providing homecare packages;

- b) a related national policy; and
 - c) a national assessment process to guide staff in the assessment and determination of homecare packages.
42. The State should implement the outstanding recommendation of the UN Committee to introduce comprehensive legislation that addresses the health needs of children.
 43. The State should build on work already undertaken in the health sector that is consistent with developing child-friendly healthcare in Ireland, in line with recommendations arising from research published by the Ombudsman for Children.
 44. The State should ensure that the continuing development of primary and community healthcare services takes into account deficits identified by the OCO in the course of its examination and investigation of health-related complaints.
 45. The State must ensure that child and adolescent mental health services are significantly improved to meet the needs of young people, particularly with respect to the establishment of a sufficient number of multi-disciplinary community teams, appropriate inpatient and out-of-hours facilities, as well as specialised facilities for young people with eating disorders.
 46. The State's implementation plan to tackle child poverty should revise the poverty reduction target for 2020 in order to take account of the increased number of children living in consistent poverty and to reduce further the target population, currently set at two thirds of the 2011 level.
 47. The State must address delays in the provision of social housing and ensure that emergency housing support provided to families who are experiencing homelessness is appropriate to children's needs. In addition, the State should address the disruption to accessing services occasioned by changes to children's accommodation.
 48. The State should:
 - a) review the Education Act 1998 to ensure that it adequately reflects the principles of the Convention; and
 - b) recalibrate the balance between schools' autonomy and oversight by central Government in order to ensure that the State assumes an appropriate level of responsibility for advancing and protecting children's rights within the education system.
 49. In the context of its forthcoming *National Strategy on Children and Young People's Participation in Decision-Making*, the State must ensure that children's meaningful participation in decision-making in schools is enhanced and that the Department of Education and Skills supports schools and agencies under its aegis to effect change in this area.
 50. The State should ensure that a comprehensive and consistent complaints-handling framework is put in place in the education sector.
 51. The State should affirm its commitment to implementing the EPSEN Act 2004 in full and set out the concrete, measurable steps it proposes to take to bring this about.

52. The State must ensure fair and equitable access to early childhood education services for children with disabilities.
53. The State should proceed with the introduction of the new resource allocation model for children with special educational needs, under which children will be allocated additional resources in line with their level of need rather than by a disability category. The impact of the implementation of the new model needs to be monitored centrally in order to ensure the equitable delivery of services.
54. The State should ensure that decisions regarding reasonable accommodation for young people with disabilities or special needs in state examinations should be fully explained and made in a timely manner, in accordance with the best interests of the child and having due regard to the child's views.
55. The State should officially recognise Traveller ethnicity without further delay.
56. The State should ensure that more concrete and measurable steps are taken in line with international commitments to tackle the serious challenges that still confront Traveller children.
57. The State must commit to taking clear and measurable steps to address the deficits identified by the national needs assessment for the Roma community.
58. The State must ensure that there is no further delay in reforming Ireland's laws regarding asylum and international protection, and that the legislation reflects the provisions of the Convention and relevant international guidance.
59. The State must take all necessary steps to ensure that children and families are not placed in Direct Provision centres for periods longer than originally envisaged and that other deficits identified with the system should be remedied, particularly by providing for independent complaints-handling and inspection.
60. The State should enact legislation to provide adequately for the rights of migrant children who are not protection applicants.
61. The State should build on progress achieved to date with the Garda Diversion Programme by:
 - a) addressing the outstanding concerns of the UN Committee regarding the legal framework for the operation of the Programme;
 - b) enhancing interagency cooperation in line with the report of the Garda Síochána Inspectorate; and
 - c) gathering more data on outcomes for young people to support the use of the most effective interventions.
62. The State must ensure that the use of adult prison facilities to detain children ceases as soon as possible.
63. The State must ensure that detention on remand is used in exceptional circumstances only and that appropriate alternatives are explored, developed and appropriately resourced.

