

**Presentation by Ombudsman for Children to the Joint Oireachtas
Committee on Jobs, Social Protection and Education
7th March 2012**

Introduction

Good morning Chairman and Committee members. I would like to thank you for the opportunity to meet with the Committee and to update you on the work of my Office in relation to Education.

Role of the Ombudsman for Children's Office

The Ombudsman for Children's Office was established under primary legislation, the Ombudsman for Children Act 2002. Following an open competition, I was appointed by President Mary McAleese as Ireland's first Ombudsman for Children in December 2003 and was re-appointed for a second 6 year term in December 2009. In carrying out my statutory functions I operate independently of government and account directly to the Oireachtas.

My principal responsibility is to promote and monitor the rights and welfare of children and young people up to the age of 18 years, including the rights set out in the UN Convention on the Rights of the Child.

The Ombudsman for Children Act , 2002 confers powers on the Ombudsman for Children that go beyond those of a traditional Ombudsman. In addition to providing for a complaints-handling and investigative function, the Act mandates the Ombudsman for Children to advise Ministers of Government on law and policy relating to the rights and welfare of children. It of note that in the eight years my Office has been in existence, no legislation has been referred by the Department of Education. This is in contrast with the Department of Justice, which regularly avails of this statutory provision.

The Act also provides that the Ombudsman for Children shall consult with children and young people and highlight issues that are of concern to them. Direct engagement with children and young people is a core element of the work. This can take place in the context of visits by schools to the Office for human rights workshops or when the Office is carrying out work with a

particular group of young people. Examples of the latter include projects with those under the age of 18 detained in St. Patrick's Institution and with separated children seeking asylum in Ireland.

In 2011 I met with Professor John Coolahan's group and following this the Office made a submission to the Forum on Pluralism and Patronage in the Primary Sector. We also made a submission to the Department of Education and Skills' consultation on the regulatory framework for school enrolment.

The ESRI and the Children's Research Centre, Trinity College Dublin, are currently undertaking research for my Office on education for children in care. This exploratory research project aims to identify concrete, practicable measures for implementation by relevant services within the education and health/social care systems that can support attendance and participation in education by children living in the care of the State.

Complaints and Investigations

My Office can investigate complaints made by children and young people or by adults on their behalf, about public bodies, schools or hospitals. The key criteria for my intervention are that a child has or may have been negatively affected by the action or inaction of a public body and that there was or may have been maladministration. I can also initiate investigations, of my own volition, into matters that I consider warrant such an investigation. I am currently undertaking a number of 'own volition' investigations.

The Ombudsman for Children Act, 2002, provides that in the performance of my complaints and investigations functions, I shall have regard to the best interests of the child and that in so far as is practicable, I give due consideration, having regard to the age and understanding of the child, to his or her wishes.

In carrying out our complaints function people often assume that we advocate for the child. I am bound by the principles that guide any ombudsman institution – impartiality and independence. In that context we are not allowed to assume the role of an advocate to the child.

To date my Office has received over 6,000 complaints. In 2011 the Office has dealt with 1,491 cases. This represents a 22% increase in the number of complaints received in 2010.

The majority of complaints received are made by parents. Last year this represented 75%. It is our experience that parents are the principal advocates for children's rights and welfare.

Education

The Committee will be interested to know that the proportion of complaints relating to education increased from 37% in 2010 to 47% in 2012. Education complaints relate to both schools and the Department of Education and Skills, with the vast majority relating to the former.

Learning from Investigations

Like other ombudsmen office's, the Ombudsman for Children provides a free, impartial and independent complaints handling service. It is designed to be an alternative to the Courts and is more expeditious than the Courts. It is also worth noting that in these difficult fiscal times, ombudsmen make significant savings to the State by providing this alternative redress mechanism to the public. In a review of pivotal cases by my Office, a professor of child law stated that in her opinion many of the cases in question would have certainly been brought before the Courts had they not been investigated.

I would like to acknowledge that in the entire duration of my tenure, a parent has never contacted the Office seeking compensation. They generally want the difficulties facing their child alleviated, and in very many cases wish to ensure that other children do not have to endure their own experience.

The information obtained through the receipt, examination, and investigation of complaints by the Office continues to provide valuable insight into the experiences of children and families in dealing with public services. And as such allows my Office the opportunity to not only improve the situation for individual children but to also bring about systemic change that will improve the way the public body interacts with all children and families. I believe that in addition to securing children's rights, my Office is contributing to public sector reform.

Parents often tell us of the difficulties they face engaging with multiple agencies, often under the aegis of the same government department, when trying to secure adequate supports and services for their children. This is especially the case of children with special needs, which make up 35% of complaints received by my Office. One mother told us how she had to interact with 21 individuals across multiple agencies in an effort to ensure her child's needs were addressed.

It is a dominant feature of Investigations that with few exceptions they highlight a lack of awareness about the impact of public administrative decision-making on the lives and rights of children and their families. Decision-making that affects children directly and sometimes indirectly is often not informed by its impact on the children concerned; nor was it informed by children's rights principles. The procedures, and in some cases those applying them, are not aware of or sensitive to the needs or rights of children or their families or the relationship between timely decision-making and good administration.

Other considerations appear to dominate over ensuring that the rights and interests of individual children are met. In this respect, the individual children can be largely invisible in the decision-making process. There are examples of an excessively bureaucratic approach to public decision-making, and often a distance between administrative decision-makers and those affected by those decisions. I think it is important to draw a distinction between those

providing front line services and those making decisions far removed from the reality of children and families' lives.

There appears to be few checks and balances in administrative decision-making processes, and few mechanisms for challenging the decision being made or the position adopted. Repeated requests for information, for flexibility or for review appeared to fall on deaf ears. This is indicative of excessive bureaucratisation of public and civil administration.

Concerns regarding the Education Act and the Teaching Council

As evidenced above, education accounted for the highest proportion of complaints received by this Office in 2011. This may to some extent reflect the fact that statutory arrangements set down for parents to raise their concerns about the actions of schools (under section 28 of the Education Act 1998) and about the actions of teachers (under Part V of the Teaching Council Act 2001) have not been put into operation. This is despite the fact that my Office has no role investigating individuals or professional misconduct. Many of the parents coming to my Office with complaints are doing so because they have no where else to bring them. In my 2008 and 2010 Annual Reports, I called attention to the legislative and administrative lacunae created by the failure to follow through on the implementation of these provisions. During 2011, my Office continued to correspond with the Department of Education and Skills to expedite developments and I will maintain my engagement in support of the establishment of statutory arrangements within the education sector where concerns arising can be addressed.

Conclusion

I thank the Committee for their time, and I hope this brief outline of our work was useful. My colleagues and I would be delighted to answer any questions you might have and of course my Office remains at the disposal of the Committee and its individual members should you wish to follow-up a later time on any issues raised here today directly with my Office or indeed if you

would like to discuss any other areas of my work that we may not have an opportunity to discuss within the allocated time today.

ENDS