

Presentation by Ombudsman for Children, Emily Logan, to the Joint Oireachtas Investigations, Oversight and Petitions Committee

11th October 2011

Chairman, members of the Committee, let me start by thanking you for the invitation to meet with you today. I appreciate the opportunity for an open exchange of views. I know that you are facing a new challenge and I hope that our contribution today and into the future will assist the Committee in its important work.

In this presentation I would like to briefly outline the role of my Office and as requested in previous conversations between my Office and the Committee's Secretariat make some suggestions as to how my Office could formally engage with the Committee. Of course, I am also open to exploring any suggestions that the Committee itself may have in this regard.

Background to the Ombudsman for Children's Office

As the Committee is aware the Office was established under primary legislation, the Ombudsman for Children Act 2002.

The creation of the Ombudsman for Children's Office firmly positioned Ireland alongside States that have a national human rights institution dedicated to the advancement of children's rights and the safeguarding of their welfare. It represented a strong response by Ireland to the recommendation of the United Nations Committee on the Rights of the Child that every State needs such an institution to be able to monitor, promote and protect children's rights in an independent and systematic way. This development was of fundamental importance to fostering of those rights as set out in the UN Convention on the Rights of the Child (CRC).

I was appointed Ireland's first Ombudsman for Children in 2003 following an open competition. I was appointed by President McAleese and I account directly to the Oireachtas. The statutory independence of the Office has been a critical feature in its development over the past seven years.

My interaction with the Oireachtas extends beyond our obligation to lay my annual report before both Houses. I regularly meet with relevant committees and I submit Advices, Special Reports and other reports to the Oireachtas. By way of assistance to the Committee all of the submissions made since the establishment of the Office in 2004 are in the appendix to this document. All of these documents are available in full on my website.

Statutory functions

In addition to the traditional, independent complaints handling function of an Ombudsman, the Ombudsman for Children has a number of key and unique functions: the promotion of children's rights, including the principles of the UN Convention on the Rights of the Child, advising Ministers of Government on issues relating to children's rights and welfare and reporting to the Oireachtas on any matter relating to the rights and welfare of children.

I also have a statutory obligation to encourage the development of policies, practices and procedures that promote the rights of children amongst public bodies and agents of the State.

Uniquely I also have a mandate to highlight issues relating to the rights and welfare of children that are of concern to children themselves.

Regrettably, there are certain groups of children who are excluded from our investigatory remit - in particular I refer to children incarcerated in St Patrick's Prison and separated children in the care of the State. I have, however, employed my wider statutory functions to engage directly with these groups and seek their views on the issues of most concern to them. I have sought improvements for the way the State interacts with these children following these consultations. The two key projects where we have seen results from

my Office's intervention are with the children in prison and separated children seeking asylum. The public bodies in both cases responded positively to my intervention and changes have been introduced. However, I remain dissatisfied that children in St Patrick's Prison still do not have access to an independent complaints mechanism and I continue to seek a change in my legislation to address this.

Child Death Review

An example of how the various functions of my Office can be brought to bear on a particular issue is that of child death review. My Office's work in this area was initially prompted in 2008 by information that came to my attention through an investigation my Office was undertaking into the death of a child in care. It became apparent that there was no systematic or independent mechanism to review such deaths and this situation was at odds with both international best practice and Ireland's obligations under relevant human rights standards. In light of our statutory function to advise on the development and coordination of policy relating to children, my Office submitted advice to Government on the establishment of a child death review mechanism in Ireland such as those found in other jurisdictions; I also presented this advice to the Oireachtas Committee on Health and Children.

This illustrates the ability of my Office to use the combination of its statutory functions and the information and data received through its complaints role, to identify trends and anticipate future issues of major significance in the area of children's rights and welfare. Such information and its analysis might prove useful to future work of the Committee and I would ask the Committee to bear this in mind when considering the nature of the relationship it would like to have with my Office.

Complaints and Investigation remit

The Ombudsman for Children Act 2002 provides for the examination and investigation of administrative actions by public bodies affecting children under eighteen years. These legislative provisions set out standard

maladministration grounds for the review of complaints. Given that the effect of an action on a child must be the subject of any investigation conducted by the Ombudsman for Children and that children themselves can bring complaints to the Office, the Act sets out a range of specific legislative provisions which take particular account of the vulnerability of children. These include my obligation to have regard to the best interests of the child and to give due consideration to the child's views on the matter.

The Act does not oblige me to investigate the extent to which such action or inaction meets or has met international children's rights standards.

It may be useful by for the Committee to be aware of the investigatory powers conferred on me by the Ombudsman for Children Act 2002. These powers include the power to compel information, documents and witnesses; anyone so requested to appear before the Ombudsman for Children enjoys the same immunities as a witness before the High Court. Information or documents obtained by my Office in the course of an examination or investigation are exempt from Freedom of Information legislation and I am obliged to carry out my investigations otherwise than in public.

It may be of interest to the Committee to know that in the seven years since my Office's establishment, I have never had occasion to bring a report to an Oireachtas Committee due to the non-compliance of a public body to my recommendations following the conclusion of an investigation.

The annual number of complaints has risen from 95 in our first year of operation to over 1200 in 2010. We are predicting another significant increase for 2011. The vast majority of complaints are made by parents and extended family members. It is our experience that parents are the principal advocates for their children - thus much of the attention of the Office outside of our complaints function has been on children without parental care.

While the individual complaint is of course very important to the child and individual family, we have monthly meetings where we analyse the patterns

and trends of complaints with a view to selecting a case that may deliver systemic change. For example, the Committee may be aware that my Office undertook the only systemic investigation into State compliance on the implementation of the Children First Guidelines. Both the HSE and the Office of the Minister for Children and Youth Affairs were the subject of this investigation.

Skills set of staff

The Ombudsman for Children Act, sets out three distinct provisions in the legislation regarding how my Office engages with and on behalf of children. They are:

1. Children can make a direct approach to my office.
2. We are obliged to consider the best interests of children.
3. We are obliged to hear the views of the children involved.

When providing a complaints handling service for children, it is crucial that you have a full and thorough understanding of how to identify and prioritise complex issues in order to understand the needs, rights and welfare of children who come to the attention of my Office - and be entirely comfortable working with vulnerable children and families.

I have taken great care – by opening advertising posts when possible - to ensure that the staff of my Office are engaged in and supporting our investigatory work have the appropriate diversity of skills and competencies, most particularly in the field of social work, law, teaching, health, psychotherapy and public administration.

Constitutional Amendment

As the person with statutory responsibility for promoting and monitoring children's rights and welfare in Ireland, it would be remiss of me not to take the opportunity of speaking with you the legislature to raise once again my

views on the necessity of constitutional rights for children. I will not go into too much detail as my opinions and recommendations in this regard are on the record of the Oireachtas and are available for members who wish to read them on my website.

However, I will say that it is a dominant feature of my 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 affected children directly and sometimes indirectly was not informed by its impact on the children concerned; nor was it informed by children's rights principles. In particular, the parameters of the child's best interests and the child's right to be heard were not used to guide administrative actions or decision-making to any great extent if at all. The procedures were not sensitive to, and in some cases those applying them were not aware of, the needs or rights of children or their families.

Other considerations appeared to dominate over ensuring that the rights and interests of individual children are met. In this respect, the individual children appeared to be largely invisible in the decision-making process. There are examples of an excessively bureaucratic approach to public decision-making, and often a disconnect between administrative decision-makers and those affected by those decisions.

It is important that we send out a clear unambiguous message in the primary legal document in the State. The rules and principles it contains define our cultural values about children and provide direction to decision makers at all levels in public life.

Of course this decision is about law, but it is also about policy, practice, procedure and culture that will affect the day to day lives of children. Central to that decision has to be the need to provide for all children.

Future interaction with the Committee

It has been suggested that my Office formally presents its annual report to this Committee, especially with a view to discussing and exploring future trends that I have identified. I would also like to suggest that the Committee consider the broader remit of my Office when deciding how it would like to engage with me and my work.

I remain, as always, at the disposal of the Committee should I be in a position to assist it in any further way in its continuing work. I thank you for the opportunity to meet and wish the committee well in their deliberations.

Appendix

Submission on Primary Medical Care in the Community - November 2008

Submission to the Joint Committee on the Constitutional Amendment on Children - February 2008

Submission to Oireachtas Joint Committee on Education & Science re School Transport - March 2007

Submission to the Oireachtas Joint Committee on Child Protection - August 2006

Submission to the Task Force on Student Behaviour - March 2005

Submission to the All-Party Oireachtas Committee on the Constitution - January 2005

Report to Joint Committee on Foreign Affairs & Joint Committee on European Affairs - June 2008

Report to the Oireachtas on the Twenty-Eighth Amendment of the Constitution Bill 2007 - March 2007

Report to Joint Committee on Health & Children on Complaints about Child Protection - January 2006

Advice on the Child Care (Amendment) Bill 2009 - August 2010

Advice on the Civil Partnership Bill 2009 - July 2010

Advice on the Health (Amendment) Bill 2010 - June 2010

Advice on the Adoption Bill 2009 - November 2009

Advice in relation to the Spent Convictions Bill 2007 (Private Members Bill) - March 2008 & June 2009

Advice on issues related to the manifestation of religious belief in schools - August 2008

Advice on the Immigration, Residence and Protection Bill - March 2008

Advice on the General Scheme of Criminal Law (Trafficking in Persons & Sexual Offences) Bill - May 2007

Advice on the proposed referendum on children's rights - December 2006

Advice in relation to the Criminal Law (Sexual Offences) Bill 2006 - June 2006

Advice on the proposed changes to the Children Act, 2001 - April 2006

