

25th April 2014

Speech by Ombudsman for Children, Emily Logan, at the OCO's 10th Anniversary Symposium Children, Families and the State

Check against delivery

A dhaoine uisle

Tá fáilte romhaibh go léir go dtí Baile Átha Cliath

Chair, distinguished guests, I am delighted to welcome you here today for a symposium to mark the tenth anniversary of the Ombudsman for Children's Office.

But first let me tell you a story about Bruno Mulvihill.

Mulvihill was a 19-year-old novice with the Norbertine Order when in 1964 he first tried to warn his abbot about the notorious paedophile Father Brendan Smyth. He was told he was 'imagining things'.

Four years later, in 1968, Fr Mulvihill answered a telephone call from the Bishop of Providence, Rhode Island, in the USA. The bishop said that Brendan Smyth was being put on a plane back to Ireland in disgrace after it was discovered that he had been sexually abusing children in Providence.

But it was not until 1994 -- 20 years after the young Father Mulvihill first raised his concerns -- that Smyth was eventually convicted in Belfast of 17 counts of sexual abuse.

The government collapsed following the mishandling of the extradition of Brendan Smyth, placing Austin Currie, Ireland's first Minister of State for Children, under significant political pressure to introduce mandatory reporting of child abuse. This prompted Currie to propose the idea of an Ombudsman for Children in 1996.

Alongside this and following Ireland's first hearing before the UN Committee on the Rights of the Child in 1998, came a recommendation from the Committee that Ireland establish an independent mechanism of redress to protect children's rights.

The Office of the Ombudsman for Children was set up after a steering committee, which included Ireland's first Ombudsman Michael Mills, took the view that the nature

of the work, including the extensive powers to promote children's rights, required a separate institution.

I was honoured to be appointed by the President as the first Ombudsman for Children back in 2004.

Over the past ten years, we have received a huge amount of support for the work we undertake from the public, politicians, civil society and the media.

But we have also been confronted with significant pockets of resistance, both active and passive, to the advancement of children's rights.

This resistance can be subtle. This comes in the form of civil or public administrative tensions with my Office in the course of an investigation.

It can sometimes also be overt. For example, in 2007 we undertook a Big Ballot of 75,000 children in 560 schools countrywide, the largest consultation with children ever to have taken place in Ireland.

We asked the children to vote on the top five issues they most cared about. It was an election year. So we had organised for the children to cast their votes in a polling station with a ballot box. We also held a count in City Hall in Dublin with a returning officer to oversee the outcome.

The area of family and care received the most votes and this result informed the Office's decision to include the rights and welfare of children in the care of the State among its strategic priorities. This exercise in democracy provoked an unexpected negative response from some quarters, days before the vote – an application was made to the High Court for judicial review of the project and an attempt made to injunct the vote by the 75,000 children.

My legal team advised me that I should indicate how seriously I took this challenge by personally turning up for the hearing. I was accused of 'undermining the social order' by disseminating information to children about their rights. In addition, it was stated that I was either 'ignorant of the legislation' or 'wilful'.

While this challenge was unsuccessful, my card was marked by those who to this day continue to resist the notion that children are individual rights holders and indeed active participants in the exercise of their rights.

This resistance to change in some quarters will hardly come as a surprise to our distinguished Chair today.

Many of you will recall that Catherine McGuinness, then a senior counsel, chaired an inquiry in to the case of a Kilkenny girl who had been raped and assaulted by her father for years. The abuse had continued despite the fact that the girl had come to the attention of the health services on more than 100 occasions.

The Kilkenny Incest Report (1993) stated that the emphasis on the rights of the family in the Constitution may have been interpreted as giving a higher value to the rights of parents than to the rights of children. Judge Mc Guinness proposed strengthening children's rights in the Irish constitution. This recommendation was all the more important given the clear evidence that children are most at risk from abuse and neglect in their own families, rather than from strangers.

That same year, Catherine McGuinness was elevated to the bench and was no longer quite so free to lead on the public debate around children's rights. Shortly after I took up office, I quickly realised how important that call actually was and how Judge McGuinness's vision had not been advanced. For those reasons I made Constitutional reform a strategic objective of my Office – and announced publicly, at my first press conference, my conviction that such change was required.

Justice McGuinness would wait almost 20 years before the people were given the chance to make their views known on this issue. Happily, in 2012, they voted to amend the constitution to strengthen the rights of children. As an Ombudsman I was not allowed to influence the electorate or campaign once that writ was moved. I

was very grateful to have Catherine, by then retired from the Supreme Court, as a respected ally when seeking to influence government leaders about the wording of that amendment.

But while some changes take a long time, others can be achieved more quickly-- particularly where the state has empowered an institution to act.

I am happy to report that the Office of the Ombudsman has generally been able to move quickly to resolve complaints. Over the last ten years, we have handled almost 10,000 cases. These cases typically involve issues such as health, education, housing and children in care.

Other investigations take more time, often because they relate to more complex, such as our systemic own volition investigation in 2008 in to the compliance with the national child protection guidelines or our work with children in St Patrick's prison, which, with the help of international actors like the UNCAT resulted in this government stopping the detention of children in prisons.

We also investigated the refusal by a school to admit a 16 year old girl on the basis that she was pregnant. The Minister for Education has published a proposal for legislation that will address the issue identified in our investigation.

The Office of the Ombudsman for Children also has the job of promoting children's rights, consulting with children and giving advice on legislation.

For example, in 2009, we consulted with 45 out of the 220 children living in 10 hostels in the greater Dublin area. These children are separated children - living without the care and protection of a parent or legal guardian. Many were victims of

trafficking, sexual exploitation, or severe material deprivation. We found a lower standard of care provided to these children than to Irish children in care, including serious concerns for their safety and security. I recommended the closure of all hostels and parity of treatment for these children with Irish children. By December 2010 all hostels were closed and the care of these children has been brought in line with international best practice which involves assessment and placement in foster care.

I would like to think that if that young novice Father Bruno Mulvihill were here today, he would be heartened to see an office dedicated to investigating complaints made by children and young people or by adults acting on their behalf.

I would like to think too that he would be heartened by Taoiseach Enda Kenny's 2011 Children First speech following the publication of the Cloyne Report in which he reminded us that "ours is a Republic of laws... of rights and responsibilities... of proper civic order."

Looking towards the future, I believe that the orientation of law and policy in Ireland must be towards fuller respect for the rights enumerated in the UN Convention on the Rights of the Child.

I believe that Ireland continues to require dedicated, expert and independent oversight of civil and public administration in this area.

In addition, we need to move past a culture in which public policy can be significantly affected by knee jerk responses to crises that may 'land' badly for Ministers rather than solid and progressive public policy development. As Ombudsman for Children I would prefer to see a more proactive approach to policy development than much of the reactive approach of the last ten years.

As I finish my second term next year, I want to draw attention to the importance of the independence of the institution of the Office of the Ombudsman for Children.

As Ombudsman for Children, I account directly to the Oireachtas. However, I do not believe that Ombudsman Institutions in Ireland enjoy the level of independence required to secure our future as a mature and well-functioning democracy.

The late Taoiseach Charles J Haughey famously slashed the funding for Ireland's first Ombudsman-- Michael Mills -- in what Mills described as personal hostility to both himself and his Office.

In February 1988, during a Seanad debate on the 'savage cutbacks' Senator Kelleher reminded the house that the Ombudsman is 'totally independent of the Government in decision making but, of course, dependent on the Government for funding.'

Senator Mary Robinson, who would later become our President, commended Mills for having the guts and courage to recognise that the office was not doing their job and was willing to report on it.

In my view, the legislature should reconsider the relationship between the Executive and Ombudsman institutions to ensure and enhance their independence. At the moment, the Executive controls the funding of Ombudsmen through Oireachtas votes, even though the Ombudsmen are charged with overseeing the very public bodies that determine our budgets.

The potential for this situation to weaken the independence of Ombudsmen could be diminished by a more direct relationship with the Oireachtas, including by charging an Oireachtas Committee with determining our budgets. This would provide for financial accountability, as well as ensuring that people like me are doing their jobs.

While I have met many committed and dedicated individuals working in the public service – and I see in front of me today, many public servants who have also inspired me personally. As Ombudsman - my job is about improving standards of public administration and I therefore often comment on systems of accountability that will enable individuals to be more effective in their jobs.

The work continues. In the context of our investigations, we have worked hard at building our relationships and credibility with public bodies. This has assisted us in achieving our ultimate objective as an Ombudsman's office: the speedy resolution of complaints.

Over the next two years, we aim to enhance the position of children in legislation including children affected by assisted human reproduction, children affected by surrogacy, children affected by adoption and children raised by same sex couples.

As the environment in which children grow up continues to change posing new challenges and raising new opportunities for them, I am constantly reminded of the importance of having an independent Office that will be available to promote their rights, investigate complaints and provide redress.

Go raibhmaith agaibh.

Tásúilagam go dtaitneoidhan lálibh.

ENDS