

Wednesday 11th March 2015

Check Against Delivery

Presentation by the Ombudsman for Children, Dr. Niall Muldoon, to the Joint Oireachtas Committee on Public Service Oversight and Petitions

I would like to thank the Chairman for the invitation to meet with the Committee this afternoon. As you know I received my Warrant of Appointment from the President last month and I welcome the fact that my first appearance before the Oireachtas in my capacity as Ombudsman for Children is to discuss the role and functions of an Ombudsman.

The Ombudsman for Children's Office is an independent human rights institution established under the Ombudsman for Children Act, 2002 to promote and monitor the rights of children in Ireland.

My Office has a unique combination of statutory functions. The one that is perhaps most familiar to the Committee is the function to examine and investigate complaints made by or on behalf of children. In carrying out this function, the Ombudsman for Children's Office observes the fundamental principles of an Ombudsman: the Office is independent and impartial; it is neither an advocate for the complainant nor an adversary to the public body; the Office seeks at all times to promote the swift resolution of complaints at a local level, where possible; and it aims to achieve systemic change through its investigatory work by tackling the root causes of the complaints we receive.

However, the investigatory mandate set out in the Ombudsman for Children Act also contains a number of distinct elements derived from the UN Convention on the Rights of the Child, namely the obligation to have regard to the best interests of the child and give due consideration to the wishes of the child when investigating a complaint. My Office has developed considerable expertise with respect to engaging directly with children – some of whom are very young – when examining the cases that come to us. This aspect of accessibility has been identified by the UN Committee on the Rights of the Child as an essential component to the work of an Ombudsman for Children.

Complaints and Investigation remit

My Office saw a significant rise in the number of complaints received in 2013 with 16% more complaints received than in 2012 and a 28% increase since 2010. The majority of complaints are in relation to Education (43% in 2013) and a significant proportion of complaints received also relate to family support, care and protection (26% in 2013). The vast majority of complaints (75% in 2013) are brought by parents on behalf of their children.

While we work continuously to provide a high standard of service, the increasing volume and complexity of complaints is placing significant demands on our capacity to respond and I have submitted a business case to the Department of Children and Youth Affairs regarding additional resources to carry out our tasks. . I want to take this opportunity to commend all my staff for their efforts in this regard and must acknowledge that it has put immense pressure on the whole Office

The complaints received range in levels of complexity and the issues raised are often of the most serious nature including complaints about the handling of child protection concerns,

services and supports for children in care, access to education, resource allocation for children with special needs and access to suitable housing.

The information gained through examination and investigation of complaints allows my Office the opportunity to address the situation for individual children and also to look at systemic change that will improve how the public body interacts with all children and families.

A dominant feature of investigations, with few exceptions, is that 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 is 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. At times, individual children can be largely invisible and decision making can be excessively bureaucratic and lacking in flexibility to meet the individual needs of children. There appears to be few checks and balances in administrative decision making processes, and few mechanisms for challenging the decision or the position adopted.

Responsibilities under Section 7 of Ombudsman for Children Act

In addition to examining and investigating complaints, the Ombudsman for Children's Office is mandated to promote and monitor the rights of all children in Ireland. The Oireachtas conferred a range of functions on the Ombudsman for Children under section 7 of the Act to carry out this complementary role. These functions include: advising the Government and the Oireachtas on law and policy affecting children; advising Ministers of the Government on the development and coordination of policy affecting children; promoting awareness of the UN Convention on the Rights of the Child, including among young people; and engaging directly with children and young people to highlight issues relating to their rights that are of concern to children themselves.

The Office's different functions inform and support each other. Work undertaken in accordance with one particular statutory function may trigger complementary work under a different function. Similarly, where there is an obstacle to tackling a children's rights issue – due to an exclusion to the OCO's investigatory remit, for example – we can use another function to address the problem.

An example of this concerns young people in detention. Members of the Committee may recall that prior to 2012, the Ombudsman for Children was excluded from investigating complaints from young people in prison. In the absence of being able to receive complaints, the OCO used its statutory function to engage directly with children and young people in order to undertake a consultation with the young people detained in St Patrick's Institution. The purpose of this work was to give the young people in question the opportunity to highlight concerns they had regarding St Patrick's Institution and put forward concrete suggestions on how their situation might be improved.

My intention in setting out this example is to demonstrate that a broad mandate that blends different functions can offer a range of options to address children's rights issues; this is a very important aspect of the strong and robust mandate that the Oireachtas has given my Office.

Strengthening of Ombudsman for Children Act

Although that mandate is strong and robust, the Ombudsman for Children's Office has identified areas in which the Ombudsman for Children Act could be further strengthened every year since its establishment in 2004.

Of particular note in this connection is that the Ombudsman for Children Act obliges the Ombudsman for Children to monitor and review generally the operation of the Act itself and to make recommendations to the Government and to the Oireachtas for amending the legislation. In March 2012, the OCO submitted its first review of the operation of the Ombudsman for Children Act to the Oireachtas, in accordance with this statutory function. The review was informed by the OCO's own experience, international best practice and the recommendations made by the UN Committee on the Rights of the Child to the State when it last examined Ireland in 2006. The report prepared by the Office was supplemented by concrete suggestions for amending the Act in the form of a draft Ombudsman for Children (Amendment) Bill.

I am glad to report that many of the changes sought by the OCO in its review of the operation of the Ombudsman for Children Act were achieved through the Ombudsman (Amendment) Act 2012. In particular, a number of public bodies previously excluded from the investigatory remit of the Office – such as the National Council for Special Education (NCSE) and the State Examinations Commission (SEC) – became reviewable agencies. I would like to take this opportunity to record my Office's appreciation for the efforts of the Department of Children and Youth Affairs as well as the Department of Public Expenditure and Reform in facilitating and supporting these amendments to the Ombudsman for Children Act.

Nonetheless, a number of issues remain outstanding. I will now set out the principal matters that are in need of further attention.

The independence of my Office should be enhanced. Independence has a number of dimensions but one of the most important is having adequate resources to discharge the functions given to the Office by the Oireachtas and being free from any potential political pressure that could be applied through changes to the Office's financial resources. At present, the OCO receives its funding 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. I believe that the situation should be remedied by providing for the OCO's funding to come directly from the Oireachtas. This was also a recommendation made by the UN Committee on the Rights of the Child; the UN Committee will certainly raise the question once again when it examines Ireland in January 2016 regarding its compliance with the UN Convention on the Rights of the Child.

My Office's investigatory remit is not as extensive as it should be. The Committee is well acquainted with the need for appropriate, independent complaints-handling for protection applicants, including those currently residing in Direct Provision centres. The long-standing position of my Office is that the current exclusion to the investigatory remit of the Office in relation to the administration of the law regarding asylum and immigration relates only to decisions on status; my Office believes everything else – including issues regarding accommodation, administration processes and internal complaint handling– are in remit. However, the Department of Justice and Equality does not share this understanding. The Ombudsman for Children's Office has recommended that the Oireachtas put the matter beyond doubt and provide clear, unambiguous access for protection applicants to my Office.

I would like to thank the Committee for its attention this afternoon. I have only had the opportunity to sketch out a number of issues in general terms. I am very happy to address any queries the Committee may have in relation to them or indeed to other aspects my role and functions as Ombudsman for Children.

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