

Introduction

Good afternoon 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. While I have already met many of the Committee members individually or on other Committees, I am delighted to meet formally with you today. You will recall that we have already made a submission to the Committee on Primary Medical Care in the Community, on Child Protection (in 2006) and you are familiar our Child Death Review options paper, which I will discuss presently.

I have been asked to adhere to a five minute presentation and therefore must limit myself to indicate the key aspects of my work that I believe will be of interest to the Committee.

Role and functions of the Ombudsman for Children

I would like to begin by giving you a brief overview of the role, functions and structure of my Office.

I was appointed Ireland's first Ombudsman for Children in December 2003 following an open recruitment competition which involved fifteen children and three adults. Following a resolution that was passed by both Houses of the Oireachtas, I was formally appointed to the post by President McAleese. I function independently of Government, and I account directly to the Oireachtas.

I have a staff of fourteen. This staff allocation was agreed in advance of my appointment. These posts have been recruited through a combination of confined and open competitions through the Public Appointments Service. The range of experience and expertise of staff at the Office now includes: child health, education, youth participation, human rights law, communications, social work, psychotherapy, and senior public administration.

My budget allocation fell from €2.463m in 2008 to €2.377m in 2009. As with all public sector organisations this has already been reduced. It is now €2.310m. This represents a drop of 6.5%.

My principal responsibility is to promote 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 role and functions of my Office are set out in primary legislation, the Ombudsman for Children Act, 2002. The three main functions are: providing an independent complaints handling service; advising on policy and draft legislation affecting children; and promoting the participation of children and young people.

I have a role in encouraging the development of policy, practice and procedure on children's rights. Uniquely, we are the only office to have an express mandate to highlight issues relating to the rights and welfare of children that are of concern to children themselves.

Complaints & 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 is 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. 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.

In our first year of operations we received 95 complaints. That figure is now up to 810 for 2008. In the first six months of 2009 there has been an increase of 23% in complaints compared to the same time last year. With this increase in numbers we have seen a significant change in the in the complexity of the issues raised. For example we currently have complaints that relate to child death, response to reports of rape, child protection,

children in care of the State with complex needs and the lack of mechanisms to deal with inappropriate behaviour towards children.

In 2008, 41% of complaints were education related. The main areas were special needs allocation; mechanisms for handling inappropriate behaviour towards children; school transport; handling of allegations of bullying; and policies and procedures.

34% of complaints fell into the health category and concerned the adequacy of HSE services; waiting lists for HSE services; child protection; decisions regarding children in care; the lack of mechanisms to deal with inappropriate behaviour towards children.

The majority of complaints (approximately 75%) received are made by parents and extended family members. It is our experience that parents are the principal advocates for children's rights and welfare. Over the past twelve months there has been an increase in professionals, such as teachers, social workers and those working in care settings, contacting the Office on behalf of children. Professionals now account for 15% of complainants. While we receive only a small number of complaints from children directly, a significant portion of those seeking out our Office are children who are not living with their families. It is my view that children without parental care are a particularly vulnerable group and a priority for my Office. I will discuss some of the projects we are currently undertaking with children in the care of the State in a moment.

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. Several of these relate to child protection. The HSE and Department of Health and Children are the subject of two of these investigations. One concerns the implementation of the Children First Guidelines. The second concerns the HSE Audit of the Catholic Church Diocese. Both are ongoing and I hope to publish my findings on these in the Autumn. Other bodies party to investigations include a provider of services to children with intellectual disabilities.

Information obtained through the complaints and investigation function provides a growing body of evidence in relation to children's experiences of public services. This knowledge assists the work of the Office in relation to our role in 'encouraging' the

development of policy, practice and procedures that reflect the best interests of children and principles of good administration.

Policy and Legislation

Section 7 of the Ombudsman for Children Act, 2002 outlines the policy and legislation role of my Office, which includes:

- monitoring and reviewing the operation of legislation relating to the rights and welfare of children;
- advising Ministers on the development and co-ordination of policy relating to children; and
- exchanging information with Ombudspersons for Children of other States.

In addition, the 2002 Act makes clear that I may give advice to Ministers on any matter relating to the rights and welfare of children. This includes the important function of advising Ministers on legislative proposals and the implications of such proposals for children. While I am pleased with the evolution of this statutory advisory function, in particular the value placed on that advice by the Department of Justice, Equality and Law Reform, I would like to see the referral to my Office by other government departments of all draft legislation affecting children to become commonplace. I intend to play a more active role in this regard and will remind and encourage Ministers to submit draft legislation to my Office for independent advice.

The legislation that I have given advice on to date includes the General Scheme of the Criminal Law (Trafficking in Persons & Sexual Offences) Bill; the Criminal Law (Sexual Offences) Bill 2006; and the changes to the Children Act, 2001. While the primary recipient of my advice is a Government Minister, I publish all advice on my website shortly after submitting it to a Minister.

As many members will be aware, I have also actively engaged with successive Ministers and Oireachtas Committees examining the proposed amendment to the Constitution on children's rights.

I am obliged to keep under review the Ombudsman for Children Act, 2002. As our work advances, I gain a growing appreciation of the strength of the legislation guiding the

work of my Office. I am aware that there was much debate in the Oireachtas on this piece of legislation and that considerable energy and effort went into creating a strong Act that would advance the interests of children. In a recent international comparative study undertaken by the UNICEF Innocenti Research Centre, my Office is cited as a strong institution and an exemplar in its inclusion of children in its establishment. However, I do have some concerns that there are deficits in the Act. I have already contacted the Clerks of Dáil and Seanad Éireann and the Minister for Health and Children outlining my intention to seek amendments to the Act. I would greatly appreciate the Committee's help in progressing this in the future.

Participation of children and young people

Section 7 of the Ombudsman for Children Act 2002, outlines my direct work with children:

- encouraging public bodies, schools and voluntary hospitals to develop policies, practices and procedures designed to promote children's rights and welfare;
- promoting awareness among members of the public, including children and young people, of matters relating to children's rights and welfare, including the UN Convention on the Rights of the Child;
- highlighting issues relating to the rights and welfare of children that are of concern to children;
- establishing structures to consult with children.

Article 12 of the UN Convention is forthright in saying that children and young people must have a say in decisions that directly affect them. This Article is about providing the significant platforms and tools for them to have their say in the first place. It is also about supporting them and building their capacity to make their mark. The participation work of my Office is all about promoting this right, through our own work and by encouraging public bodies to include children and young people in decisions that affect them, when appropriate.

I have always believed that the importance of listening to children and young people cannot nor should it be underestimated. Unfortunately we live in a society which does not place sufficient weight on hearing young people's views. The single most common

violation of children's rights across many public sector services in Ireland today is the lack of respect for the right of children to participate in decisions that affect them. Only recently, with the publication of the Ryan Report, we saw the consequences of children's voices being ignored. As with the survivors of abuse in Ferns, it was only when these children became adults that they were believed. It is imperative that we do not repeat the same mistakes.

Areas of concern

Over the past five years, I have become more and more convinced that parents are the best advocates for their children. Research undertaken for my Office by Dr Ursula Kilkelly of University College Cork identified children without parental care for whatever reason as an extremely vulnerable group. That is why I have made the decision to prioritise working with and on behalf of these children.

This year my Office initiated an independent consultation with separated children, who have come to Ireland without their parents, on the circumstances in which they are living in the care of the State.

Much of the current debate about Separated Children focuses on 'Missing Children'. However, the obligations of the State commence as soon as a child comes into the care of the State, not just when a child goes missing.

The purpose of our consultation is to find out and understand the experiences of these children – good and bad – since they have arrived in Ireland, with a view to improving the situation for the children.

Through this project, which will run until autumn 2009, we aim to identify key issues of concern to the children themselves and in so doing, identify any gaps in supports for Separated Children and develop recommendations aimed at addressing these gaps. In this project we intend to explore the points where the children's needs may not be met and how this may make them vulnerable.

At present, my Office has identified approximately 129 Separated Children under the age of 18 living in the Dublin area. While all of these children are in the care of the State, only a small number live in approved registered residential centres and the majority

reside in private hostels which have been contracted by the HSE to provide accommodation for the children. This private accommodation is not subject to any independent inspection. Separated children do not have access to an independent guardian and many separated children do not have regular access to a social worker directly allocated to them. In the absence of such mechanisms, separated children have brought a range of concerns to the my Office.

We have already met with a large number of these young people in the hostels and at an open day hosted in our Office in April, 47 of these children turned up of their own volition. We are delighted that 27 of these young people have volunteered their time to meet with us every two weeks over the summer to give us some insight into their lives.

Child Death Review Mechanism

As the Committee is aware, I submitted an options paper earlier this year on the establishment of a child death review mechanism. This paper sets out aspects of child death that are already being examined in Ireland at present and the issues that should be considered in the context of establishing a child death review mechanism in this jurisdiction. This is a significant piece of work undertaken by my Office, in consultation with the statutory agencies that would have a role to play in any such mechanism. I would like to put on the public record my strongly held conviction for the necessity of such a mechanism. I believe that this Committee could play an important role in helping to establish a child death review mechanism. My Office intends to run a seminar later in the year to progress this initiative, and the Committee might consider attending or perhaps participating in this.

St Patrick's Institution

My Office has begun a participative youth justice project which will involve consulting with young people being detained in St Patrick's Institution on issues of concern to them. It will be recalled that conditions in St Patrick's Institution have been the subject of criticism by a number of international human rights bodies and that the Government has undertaken to ensure that in future, children who are detained following a conviction for a criminal offence will be detained in the children detention schools. The project is in the preparatory stages.

Intellectual disability

I have outstanding concerns about the lack of monitoring of residential services for children with intellectual disabilities. I intend to publish an individual case that I believe will provide evidence for my concerns about a lack of appropriate inspection, monitoring and complaints mechanisms for children with intellectual disabilities in residential care.

I have over the past two years convened a series of meetings with the SSI (now HIQA), HIQA, the Department of Health and Children and the Minister for Children to ascertain progress on the establishment of inspection services for residential centres for children with intellectual disabilities. At these meetings I raised concerns about the continued lack of an inspection regime for residential centres for children with intellectual disabilities in the interim and was informed that a HSE working group has been established to look at this matter. As we know these inspections still have not commenced.

I will continue to investigate cases and to push for the commencement of the inspections of the centres.

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.