

Tuesday, 12th June 2012

Good Afternoon Chairman and Committee Members.

The most recent findings of the national longitudinal study on children confirm that the majority of children in Ireland are developing well without significant social, emotional or behavioural problems. In short, Ireland is a good place to be a child. Childhood ought to be a positive, happy, carefree time. It is important that, as adults, we do all we can to protect the qualities of childhood including immaturity, innocence, trusting and fun loving. It is also important that in our efforts to protect children we do not stifle or deny all the positive benefits that normal interactions with adults bring. In legislating for the protection of children we must seek to find the correct balance between safeguarding children and protecting all that is good about childhood.

I welcome the opportunity to comment on the Heads of the Children First Bill.

It is important to acknowledge the approach by the Minister for Children and her Department to the development of the Heads of the Children First Bill which has been characterised by a very open engagement in terms of exploring the genuine complexities of this legislation.

As the Committee is aware, the Ombudsman for Children's Office is the independent, national human rights body with statutory responsibility for promoting and monitoring children's rights and welfare in the State and in this regard I function independently of Government and report directly to the Oireachtas. My role and functions are set out in primary legislation, the Ombudsman for Children Act, 2002.

Section 7 of the Ombudsman for Children Act 2002 provides that the Ombudsman for Children may give advice to Ministers of the Government on any matter relating to the rights and welfare of children, including the probable effect on children of proposals for legislation. In accordance with this statutory

function, I have set out a number of observations and recommendations on the proposals put forward by the Government in relation to the Children First Scheme and the Withholding Information Bill which I bring before the Oireachtas today. It is in the context of those Advices that I will make my comments today.

My Office is in a position to come before the Committee with a significant level of expertise and body of evidence which I hope the Committee will consider useful. Deirdre O'Shea with me today is a Senior Investigator at my Office, a qualified social worker and former principal psychotherapist at St Clare's Child Sexual Abuse and Therapy Unit at Temple Street Hospital.

In 2008 my Office undertook the only independent, national, systemic investigation into State compliance with the Children First Guidelines, for which Deirdre was the lead investigator. This was an own volition investigation. Both the HSE and the Office of Minister for Children and Youth Affairs were the subjects of this investigation.

Following the investigation, I made 11 findings of unsound administration against the Health Services Executive and the Office of the Minister for Children and Youth Affairs. In accordance with the Ombudsman for Children Act, 2002 I made 22 recommendations to improve the system. My Office recently published a review of how the public bodies in question responded to those recommendations. Many improvements were made since the commencement of the investigation but there remain areas that continue to require attention.

A number of points which I raise in my Advice on the Children First Scheme relate to our Children First Investigation, they include the following recommendations:

- all necessary resources be put in place to ensure that social work departments can respond effectively to any increase in reporting consequent upon the Children First Scheme and the Withholding Information Bill;

- unnecessary multiple reporting of the same child protection incident should be prevented and, to that end, making a referral in accordance with Children First should obviate the need to make a separate report under the Withholding Information Bill 2012 where the threshold for referring under both has been met; and
- an effective system of monitoring, for example by the Social Services Inspectorate of the Health Information and Quality Authority, is put in place to monitor the effects of the legislation on child protection services.

A number of other recommendations on this legislation that I wish to bring to the attention of the Committee today include:

- In the course of our investigation it was clear that consistent definitions of abuse were not being employed across the country - definitions of abuse in the Children First Guidance should be relied on in the Bill.
- It should be clarified that professionals working with children under the age of consent who have engaged in non-abusive sexual relations should be able to use their discretion to decide whether, given the facts of the case and any risk factors present, a referral to the statutory authorities should be made.
- Any discrepancies between the Children First Scheme and the Scheme of the National Vetting Bureau Bill be addressed in the forthcoming National Vetting Bureau Bill.
- Non-criminal sanctions be employed for failure to comply with *Children First* and that criminal sanctions currently in the Scheme be removed.
- There should be consistency between the Children First Scheme and the Withholding Information Bill with respect to what constitutes a

reasonable excuse for not reporting concerns to the relevant authorities.

In conclusion, the Irish State has an obligation under Article 3 of the UN Convention on the Rights of the Child, to which we are a signatory, to ensure that in all actions concerning children, whether undertaken by public or private institutions, courts of law, administrative authorities or legislative bodies, that the best interests of the child shall be a primary consideration. This principle is undisputed. There is no disagreement regarding the fact that children's best interests must be at the heart of our child protection and welfare services.

This provision of the UN Convention articulates a basic principle of sound administration in the design and provision of child care and child protection services: standards governing the provision of those services must be set; services must comply with those standards; and the State must provide for adequate supervision and monitoring.

We all have a collective responsibility for child protection but as legislators you have an additional duty to act in the public interest and ensure that confidence is inspired in our child protection services. I strongly recommend that this Committee should proactively monitor the legislation underpinning Children First and to this end I have recommended in my advice today that the legislation underpinning Children First should include a requirement on the Minister for Children and Youth Affairs to review the effects of that legislation on child protection practice no later than three years after its commencement. This review should be considered by the Oireachtas Committee on Health and Children.

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 with you.

Ombudsman for Children's recommendations on the Children First Scheme

General

- It is recommended that the Withholding Information Bill 2012 and the forthcoming Children First Bill 2012 be advanced through the Houses of the Oireachtas at the same time in order to ensure that both pieces of legislation cohere fully with each other.

- This Office agrees with the general approach of the Children First Scheme and the Withholding Information Bill and the introduction of statutory obligations to report concerns or allegations of child abuse provided the following recommendations are implemented, being that:
 - all necessary resources be put in place to ensure that social work departments can respond effectively to any increase in reporting consequent upon the Children First Scheme and the Withholding Information Bill;
 - unnecessary multiple reporting of the same child protection incident should be prevented and, to that end, making a referral in accordance with *Children First* should obviate the need to make a separate report under the Withholding Information Bill 2012 where the threshold for referring under both has been met;
 - an effective system of monitoring, for example by the Social Services Inspectorate of the Health Information and Quality Authority, is put in place to monitor the effects of the legislation on child protection services;

and

- the legislation underpinning *Children First* should include a requirement for the Minister for Children and Youth Affairs to review

the effects of that legislation on child protection practice no later than three years after its commencement. The review should be considered by the Oireachtas Committee on Health and Children.

Children First Scheme

- This Office recommends that the same definitions of abuse as found in *Children First: National Guidance for the Protection and Welfare of Children* (2011) be relied on in the Bill.
- It should be clarified that professionals working with children under the age of consent who have engaged in non-abusive sexual relations should be able to use their discretion to decide whether, given the facts of the case and any risk factors present, a referral to the statutory authorities should be made.
- It is recommended that any discrepancies between the Children First Scheme and the Scheme of the National Vetting Bureau Bill be addressed in the forthcoming National Vetting Bureau Bill.
- This Office recommends that non-criminal sanctions be employed for failure to comply with *Children First*.
- There should be consistency between the Children First Scheme and the Withholding Information Bill with respect to what constitutes a reasonable excuse for not reporting concerns to the relevant authorities.
- If the criminal offence of failing to report concerns under *Children First* is retained, it is recommended that the legislation include a defence for not referring a concern where the HSE has advised that the information provided does not meet the threshold for referral.

- It is recommended that the powers of the HSE to monitor compliance with the legislation be enhanced and that the enforcement mechanisms under Head 14 be further clarified.
- It is recommended that the provisions of the Scheme relating to HSE/Garda cooperation be clarified to ensure that the mutual reporting obligations reflect fully the requirements of the *Children First* guidance.