



**ombudsman
do leanaí
for children**

Submission to the Oireachtas Joint Committee on Health on the Mental Health (Amendment) Bill 2016

The Ombudsman for Children’s Office was invited to make a submission to the Oireachtas Joint Committee on Health on the Mental Health (Amendment) Bill 2016 in March 2019 to be submitted in early April. Due to the short timeframe available, this short submission was made in the form of a letter from the Ombudsman for Children, Dr Niall Muldoon to the Chairperson of the Committee, Dr Micheal Harty TD

Dear Dr Harty,

I wish to thank you and your colleagues on the Oireachtas Joint Committee on Health for your invitation of 14 March 2019 to the Ombudsman for Children’s Office to make a written submission in relation the Mental Health (Amendment) Bill 2016 (2016 Bill).

One of my core statutory functions as Ombudsman for Children is to promote the rights and welfare of children up to the age of 18 years. The observations on the 2016 Bill set out in this letter are made pursuant to section 7(4) of the Ombudsman for Children Act 2002, as amended (2002 Act), which provides that the Ombudsman for Children can advise on any matter, including legislative proposals, relating to the rights and welfare of children.

‘Take My Hand’ report

In the first instance, I would like to bring to your attention a report that my Office published in June 2018 about young people’s experiences of mental health services. I attach a copy of this report with this letter. The report, which is called ‘Take My Hand’, arose from a consultation that we undertook in 2017 with young people under 18 who were receiving inpatient and care and treatment for their mental health at the time. The overall aim of this consultation, in which 25 young people between 14 and 17 years of age took part, was to hear and highlight the experiences and perspectives of young people as regards their respective journeys through mental health services.

While I understand that the work which you and your colleagues on the Oireachtas Joint Committee on Health (the Committee) are currently doing in relation to children and young people's mental health is focused on the 2016 Bill, I would welcome if you could give your attention to my Office's 'Take My Hand' report. From my perspective, this report provides an important context for the observations on the 2016 Bill set out below as it outlines key areas of concern that my Office has in relation to mental health provision for children and young people.

Having regard to the perspectives shared by young people who took part in our consultation and taking into account relevant international standards and guidelines as well as developments in legislation and public policy at national level, 'Take My Hand' also identifies several priorities for action that my Office believes need to be progressed in order that children's right to the highest attainable standard of mental health is respected, protected and fulfilled (please see pp.27 to 30 of the report).

Developments in legislation relating to children's mental health

Arising from a concern about the current statutory framework relating to children's mental health and about the slow pace of legislative reform in this area, one priority area for action highlighted in 'Take My Hand' is the need to progress legislative reform without delay (see p.27 of the report). Cognisant of recommendations made by, among others, the UN Committee on the Rights of the Child, the Law Reform Commission, the Special Rapporteur on Child Protection and the Expert Group on the Review of the Mental Health Act 2001 (2001 Act), I am of the view that the 2001 Act should include a dedicated part focused on provisions relating to children and make appropriate, explicit provision for:

- children's right to the highest attainable standard of mental health
- children's right to have their best interests considered in all actions and decisions relating to their mental health
- children's right to be heard in all decisions concerning their mental health and for their views to be afforded due weight, in accordance with their age and maturity
- children's consent to and refusal of medical treatment in a manner that recognises children's evolving capacities
- children and young people who are admitted to be accommodated in a child-centred environment that is appropriate to their ages and needs
- services to be provided to children in close proximity to their parents/guardians and families, wherever possible.

In this regard, I am aware that a Private Members' Bill sponsored by James Browne TD – the Mental Health (Amendment) Bill 2017 – was signed into law by Uachtarán na hÉireann in July 2018. As you know, the Mental Health (Amendment) Act 2018 (2018 Act) has not yet been commenced. I would suggest that it would be helpful for the Committee to consider

how the provisions proposed under the 2016 Bill, which you are currently examining, relate to the provisions made in the 2018 Act in respect of children. Consideration by the Committee of this matter would serve the interests of legislative clarity and coherence. In this respect, as you and your colleagues know, the 2018 Act has provided for the insertion of a new Section 4A into the 2001 Act, which focuses on guiding principles in respect of children. This new section provides that:

- the best interests of the child must be treated as the paramount consideration in decisions under the 2001 Act concerning the care or treatment of a child
- decisions under the 2001 Act concerning the care or treatment of a child must have regard to the need:
 - for every child to have access to health services that aim to deliver the highest attainable standard of child mental health
 - for a child who is capable of forming their own views to be consulted, where practicable, at each stage of diagnosis and treatment and to have due weight given to their views and to their will or preferences, in accordance with their age and maturity
 - in so far as practicable, to provide care and treatment:
 - in an age-appropriate environment
 - in close proximity to the child's home or family, where appropriate
 - that is the least intrusive possible and in the least restrictive environment practicable
 - that respects the child's right to dignity, bodily integrity, privacy and autonomy.

In addition, for the purposes of informing the Committee's deliberations on the 2016 Bill, it may be worthwhile to seek to establish the progress being made by the Department of Health in relation to the Mental Health (Amendment) Bill, which is intended to give effect to recommendations of the Expert Group review of the 2001 Act and which is listed in the Legislation Programme for the Spring Session 2019.

Mental Health (Amendment) Bill 2016

The 2016 Bill that the Committee is currently examining has its genesis in serious concerns about the practice of admitting children and young people under 18 to adult inpatient mental health units. As you know, the Mental Health Commission (MHC) has characterised this practice as undesirable and inappropriate. Emphasising that the provision of age-appropriate approved centres for children and adolescents must be addressed as a matter of urgency, the MHC's 2006 Code of Practice relating to Admission of Children under the Mental Health Act 2001 states that the practice of admitting children and young people to adult inpatient mental health units should only be used in situations where it is necessary because there is no available alternative.

I share the concerns of Senator Joan Freeman, who has sponsored the 2016 Bill, and I have highlighted my concerns on several occasions since being appointed Ombudsman for Children in 2015, including in a report to the UN Committee on the Rights of the Child in 2015, in a submission to the Seanad Public Consultation Committee on Children's Mental Health Services in Ireland in 2017, and in the aforementioned 'Take My Hand' report.

Equally, I share the view of Senator Freeman and others that the practice of admitting children and young people to adult inpatient mental health units must end. In this regard, I would encourage the Committee to read the true story of Rita and Cait, which is included in a publication by my Office called *A Word from the Wise* that I am attaching with this letter (see pp.32-37). Concerning a complaint that was brought to my Office a number of years ago, this story offers an insight into the experience of a young person (Cait) who was admitted to an adult inpatient mental health unit and the challenges experienced by her and her mother (Rita).

Given the vulnerability of children and young people with complex mental health needs, it is wholly unacceptable that the necessary measures have not yet been implemented to end the practice of admitting children and young people to adult inpatient mental health units: the 2016 Bill exists because the State has failed to put in place sufficient appropriate child and adolescent mental health services and supports.

Providing for an end to the practice of admitting children and young people to adult inpatient mental health units requires the development of and further investment in preventative measures, in primary care, and in specialist community Child and Adolescent Mental Health Services (CAMHS). In the case of many, if not all, children and young people, the availability of appropriate supports and services at this stage will mitigate against the escalation of mental health difficulties that children and young people experience to the point where they require inpatient care and treatment. Furthermore, ending the practice of admitting children and young people to adult inpatient mental health units also requires the availability of sufficient out-of-hours facilities for children and young people and of sufficient specialist inpatient units for children and young people with complex mental health needs. While I understand the challenges that currently exist in relation to providing the necessary supports and services for children and young people, I am disappointed that more progress has not been made.

In the absence of sufficient supports and services, the 2016 Bill seeks to put in place safeguards to mitigate against the adverse effects on children and young people of being admitted to adult inpatient mental health units. In doing so, my understanding is that, if enacted, the 2016 Bill would establish a legal basis for the admission of children and young people to these units. This being the case, I encourage the Committee to examine what, if

any, unintended adverse consequences this might have for children and young people. For example, is there a risk that this:

- may result in making an inappropriate practice more acceptable?
- may see an approach that is far from optimal and significantly inferior to providing treatment to children in dedicated child and adolescent inpatient units becoming a long-term or permanent feature of our mental health services?
and/or
- may exacerbate the already protracted delay in implementing the measures needed to bring an end to the admission of children and young people to adult inpatient mental health units?

Furthermore, I would suggest that it would be helpful for the Committee to examine what is envisaged through the references made in the 2016 Bill under the proposed 4(b) and 4(d) to:

- an environment that is suitable to a child's age and needs
- age-appropriate facilities, including appropriate accommodation for children, segregated by age and gender from adults.

An examination of this matter might usefully clarify the nature and extent of the resources required to provide for such an environment, facilities and accommodation. Such clarification could facilitate the Committee to consider whether it is preferable to invest the resources needed in this way or in strengthening provision in existing child and adolescent mental health services with a view to mitigating against the admission of children and young people to adult inpatient mental health units.

The 2016 Bill also seeks to place on a statutory footing some of the guidance contained in the aforementioned MHC Code of Practice as regards what should apply if adult inpatient mental health units are used of necessity for the care and treatment of children and young people. In this regard, provisions made under the proposed 4(c), 4(d) and 5(a) of the 2016 Bill reflect the guidance set out by the MHC under 2.5 (a), (b) and (i) in its Code of Practice. I would suggest that it would be worthwhile for the Committee to seek to clarify why certain other elements of the MHC's guidance under section 2.5 of its Code of Practice have not been included in the 2016 Bill. It may also be useful for the Committee to consider whether or not it would be desirable to make provision for one or more of these additional elements in the 2016 Bill, having regard to the implications, including the resource implications, of doing so and whether it would be more appropriate to channel the resources concerned into strengthening existing children and adolescent mental health services.

Among the elements of the MHC's guidance that are worth noting in this regard is section 2.5 (e), which advises that staff should receive training relating to the care of children. While

the 2016 Bill seeks to safeguard children who are admitted to adult inpatient mental health units by ensuring that a child-appropriate environment, facilities and accommodation are provided, it does not include any explicit provision in relation to staffing. I am aware that Senator Colette Kelleher proposed an amendment when the Bill was being considered by the Seanad in February 2018 to provide that any child who is admitted to an adult inpatient unit must be treated by staff who have had appropriate training in treating children and young people. I understand that it was proposed and agreed during a Seanad debate at Committee Stage in February 2018 that this proposed amendment could be resubmitted for consideration at a later stage. While I am very aware of the significant challenges that currently exist as regards recruiting suitably qualified professionals, I am of the view that, if the 2016 Bill is to be progressed, the Committee should give serious consideration to the inclusion of a provision for children and young people admitted to adult inpatient mental health units to be treated by professionals who have appropriate training in child and adolescent mental health.

Finally, I am aware that points were raised during the Seanad's examination of the 2016 Bill in February 2018 regarding some of the wording contained in the Bill, including the terms "admission order(s)", "child inpatient unit" and "age-appropriate facilities". While I note that the wording of the 2016 Bill the Committee is currently examining is the same as that examined by the Seanad last year, I understand that Senator Freeman acknowledged at that time that certain amendments in this regard would need to be made. I trust that the Committee's examination of the 2016 Bill will address these matters.

If the 2016 Bill, once finalised, is enacted, careful consideration will need to be given to the timing of the commencement of its provisions. In this regard, it would appear prudent for the provisions to be commenced once the child-appropriate environment, facilities and accommodation required under the proposed section 4 have been put in place in adult inpatient mental health units.

I hope the above observations are of assistance to the Committee's deliberations. If I can be of further assistance, please contact me.

Yours sincerely,

Dr Niall Muldoon
Ombudsman for Children