



**Joint Committee on Children and Youth Affairs**  
**Opening Statement by the Ombudsman for Children, Dr Niall Muldoon**  
**Wednesday, 20 November 2019**

I would like to thank the Committee for inviting me to appear today, on the occasion of Universal Children's Day and the 30<sup>th</sup> anniversary of the United Nations' adoption of the UN Convention on the Rights of the Child (UNCRC).

To mark this important occasion, the Ombudsman for Children's Office (OCO) is hosting an event in Dublin Castle this morning called Child Talks. At this event, young people between the ages of 12 and 17 are giving talks about a range of issues, including: mental health services for children and young people; the significance of family and having a home; disability services and public transport; climate change; and the importance of young people raising their voices and being heard.

While the issues young people are highlighting at Child Talks are diverse, they also share certain characteristics. All of the young people taking part are speaking about issues that are important to them. In doing so, all of the young people are exercising their rights to freedom of expression and to be heard. And all of the issues they are addressing connect to children's rights under the UNCRC.

Each of the young people speaking at Child Talks needed to think carefully about what issue they wanted their talk to focus on. Similarly, I have thought about what my opening statement to you might usefully focus on within the time available to me to make it.

As Ombudsman for Children, I lead a national institution that has a statutory remit under the Ombudsman for Children Act 2002 to promote the rights and welfare of children up to the age of 18. With my role and the OCO's core statutory functions in mind, I will offer some brief observations, having regard to the UNCRC and to the Concluding Observations that the UN Committee on the Rights of the Child (UN Committee) issued in early 2016 following its examination of the State's progress towards fulfilling its obligations to children under the UNCRC.

As the UN Committee's Concluding Observations illustrate, there are different ways in which we can think about children's rights. We can approach children's rights in terms of different dimensions to children's lives – family, health, housing, education, protection, justice, and so on. We can also consider children's rights from the vantage point of different groups of children – for example, children in care, children with disabilities, and children belonging to ethnic minorities. Equally, we can approach children's rights having regard to the State's status as the primary duty bearer when it comes to ensuring that children's rights are respected, protected and fulfilled and in terms of measures that the State needs to take to make children's rights real for children in what Eleanor

Roosevelt famously identified as the places that give rights meaning: the “*small places, close to home*”.

In 2003, a year after Ireland ratified the UNCRC, the UN Committee published its fifth General Comment, which focuses on providing guidance to States, including Ireland, on general measures to implement children’s rights under the UNCRC. This General Comment remains an important reference point because it sets out cross-cutting actions that the State needs to pursue for the purposes of realising *all* children’s rights in *all* children’s lives. Among these actions are: legislating; developing and implementing national strategies; coordinating; monitoring; providing access to remedies and redress; collecting and analysing data; budgeting; training; and awareness raising.

I would suggest that thinking about children’s rights under the UNCRC in terms of the general measures required to implement children’s rights is a particularly useful approach for all of us who have roles and responsibilities in relation to one or more of these general measures. Among other things, this approach enables us to identify what types of action we are well placed to pursue in order to progress the implementation of children’s rights with and for children living in Ireland.

Section 3 of the 2016 Concluding Observations sets out the UN Committee’s key concerns and recommendations as regards Ireland’s mobilisation of general measures to implement the UNCRC. I would like to comment briefly on two of these measures.

### **Legislating**

Legislating for children’s rights is a vital task. As we all know, legislation can drive behaviour. As a catalyst for change, legislation can require people to do things that they might not otherwise be minded to do and it can enable people to do things that they might not otherwise be permitted to do. Since the UN Committee issued its recommendations in 2016, we have seen some progress in legislating for children and their rights, including in a number of areas referenced by the UN Committee. Examples in the area of education in this regard are the Education (Admission to Schools) Act 2018 and the Education (Student and Parent Charter) Bill 2019, which is currently making its way through the Oireachtas. However, the task of fully incorporating the UNCRC into domestic law, which the UN Committee has urged the State to implement “*as a matter of priority*”, is an unfinished project. Many gaps and deficits remain in Irish law, including in areas that the OCO is engaging with, such as mental health, housing and online safety.

As members of the Oireachtas, you and each of your colleagues have a unique role which enables you to introduce, repeal and amend legislation. Therefore, you are especially well placed to mobilise a key general measure to progress the realisation of children’s rights. When conducting pre-legislative scrutiny of proposed legislation and when examining and proposing amendments to Bills, for example, you and your colleagues have a crucial role to play in making sure that legislation that will impact on children and their rights is child-centred and rights-based. As such, you are in a position to influence positive changes for children and children’s rights in a manner that no one else can.

As Ombudsman for Children, I am firmly of the view that any law which concerns children must put children and their rights first. In a very real way, children are depending on you, as legislators, to

make sure this happens. Therefore, I urge you and your Oireachtas colleagues to persist in your efforts to ensure that relevant legislation is child rights compliant so that it provides a robust foundation for the development and implementation of corresponding policies, procedures and practices that give meaning to children's rights in children's lives.

### **Coordinating**

While our system of government and public administration is organised along sectoral lines, children and their lives do not fit neatly into sectoral silos. The challenges that this misalignment creates and the damaging impact that it can have on children is something that the OCO sees, and has had occasion to engage with, through our examination and investigation of complaints. One example is our investigation of Molly's case, which I discussed with you in 2018. As you will recall, one of our core findings in this case was that the difficulties experienced by Molly and her foster family were largely attributable to a lack of coordination between Tusla and the HSE. Because neither agency saw Molly as a child in care *and* as a child with a disability, the services and supports provided by both organisations were insufficient. What Molly's case highlights so clearly is why effective inter-agency coordination, cooperation and communication at all levels of government and public administration are vital to implementing children's rights. Accordingly, this case informed one of the recommendations that we made in our submission to the Department of Children and Youth Affairs (DCYA) in the context of its review of the Child Care Act 1991, namely: the DCYA should give serious consideration to placing a statutory duty on agencies with responsibilities for children and families to cooperate with Tusla in the exercise of its functions under the 1991 Act.

Recognition of the importance of effective coordination for implementing children's rights is evident in the opening of the Barnhaus, One House Project in Galway in September. The outcome of work that I was involved in with the Minister for Children and Youth Affairs and the former Special Rapporteur on Child Protection, the Barnhaus represents a multi-agency approach to dealing with victims of child sexual abuse. It sees State agencies – the Gardaí, the HSE and Tusla – engaging openly with each other, with the best interests of children always taking priority. I hope that the Barnhaus in Galway marks the beginning of a nationwide rollout of such services to benefit children in all parts of the country.

The need for coordination also informs my continued engagement with relevant Government Departments to encourage implementation of the Youth Mental Health pathfinder project. This project is one of three pathfinder projects included in the 2014 Civil Service Renewal Programme. While the need for a coordinated, whole-of-government approach to youth mental health and other issues affecting children is evident, the challenges that can be involved in joining the dots are striking. Administrative systems and structures should work for, rather than against, those seeking to work together to progress the realisation of children's rights, including children's right to the highest attainable standard of health. I urge this Committee to push the Ministers for Children and Youth Affairs, Health, and Education and Skills to make sure this Pathfinder project is in situ before the end of this Government's term or else thousands of children, who are in enormous mental turmoil, will continue to languish on waiting lists without access to the best possible health care that is their right.

As members of the Joint Committee on Children and Youth Affairs, you appreciate fully the importance of coordination and cooperation among members of the Oireachtas to progress the implementation of children's rights under the UNCRC. In this regard, I want to acknowledge your report on the *Impact of Homelessness on Children*, which you published on 14 November, as well as a complementary report on *Family and Child Homelessness* published by the Joint Committee on Housing, Planning and Local Government on the same day.

Viewed individually and together, these reports suggest that a political consensus is emerging about the changes in law, policy, procedure and practice needed to address child and family homelessness, and to mitigate the injurious effects of homelessness on children. From my perspective as Ombudsman for Children, this consensus and the clarity it provides are encouraging: agreement on what actions are needed is a key prerequisite to implementing short, medium and longer term measures to address child and family homelessness effectively.

Although divergence and robust debate are pivotal to the democratic process, these reports illustrate how important and constructive working together can be. Looking ahead, I encourage you and your Oireachtas colleagues to finalise a programme of work to address child homelessness and to work together to drive its implementation. As with so many issues affecting children and their rights, taking a coordinated, collaborative approach to progressing the implementation of actions can mitigate against the corrosive impact, which the ebb and flow of politics and electoral cycles can have on the best-laid plans.

To conclude, the task of implementing children's rights under the UNCRC is a marathon, not a sprint. While quick wins and fixes for children are possible in some instances, making children's rights real in children's lives requires consistent focus and concerted effort from us all. From a preliminary review of the UN Committee's Concluding Observations in 2016, it is clear that a significant amount of work remains to be done in advance of the State submitting its combined fifth and sixth periodic reports in October 2021. We all need to redouble our efforts. In doing so, it is worth keeping in mind that Ireland is better placed than many countries that have ratified the UNCRC to deliver on our obligations to children under this Convention.