



**ombudsman
do leanaí
for children**

**Department of Justice and Equality:
Consultation on a draft new Youth Justice Strategy 2020-2026**

**Submission by the Ombudsman for Children's Office
June 2020**

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1. Introduction

The Ombudsman for Children's Office (OCO) is an independent statutory body, which was established in 2004 under the Ombudsman for Children Act 2002, as amended (2002 Act).¹ One of the OCO's core statutory functions under the 2002 Act is to promote the rights and welfare of children up to the age of 18 years. The OCO has prepared this submission pursuant to Sections 7(1)(a) of the 2002 Act, which provides for the Ombudsman for Children to advise any Minister of the Government on the development and coordination of policy relating to children, and Section 7(4), which provides for the Ombudsman for Children to advise any Minister of the Government on any matter relating to the rights and welfare of children.

The OCO welcomes the publication of the draft new Youth Justice Strategy 2020-2026 and the decision to undertake a public consultation on the draft Strategy. The OCO appreciated the opportunity to participate in the Open Policy Forum about the proposed Strategy held in May 2019. Similarly, we appreciate the invitation from the Department of Justice and Equality to provide observations on the draft Strategy.

The OCO welcomes the draft Strategy, including its vision to collaborate across all sectors of government and society in the development and delivery of opportunities for children and young people, to harness support in their families and communities in order to strengthen their capacities to live free from crime and harm. The OCO also welcomes a number of provisions in the draft Strategy, which aim to strengthen the rights of children in contact with, or at risk of coming into contact with, the child justice system, including the following principles:

- Measures, programmes and interventions included in this Strategy will aim to uphold the best interests of children and young people.
- The development of policies, programmes and systems will be informed by the voices of children and young people.
- Young people should be diverted from the formal youth justice system to the greatest extent possible, with due regard for the welfare of communities and society in general.
- Detention is a measure of last resort.

The OCO also welcomes many of the proposed objectives contained in the draft Strategy, including:

- the focus on and inclusion of prevention and early intervention measures
- the provision of legislative underpinning for collaboration between agencies based on the principle of the best interests of children and through amendments to the Children Act 2001, where required
- the development of enhanced capacity among all those working directly with children and young people
- the provision of specific training for professionals involved in the child justice system
- the strengthening of the operation of Diversion
- the alignment of national policies on children in detention and in State care, within the National Policy Framework for Children and Young People and successor frameworks

¹ Ombudsman for Children Act 2002. Available at <http://www.irishstatutebook.ie/eli/2002/act/22/enacted/en/html>

- the prioritisation of the processing of child and young adult cases to minimise delays.

In accordance with the OCO’s statutory function to promote children’s rights and welfare, the purpose of this submission is to briefly highlight a number of proposals which the OCO believes could be further enhanced to protect the rights and welfare of children and, in particular, groups of children who are over-represented in our child justice system, including children in care, Traveller children and children with mental health difficulties.²

This submission is informed by relevant international and European children’s rights standards, particularly:

- the UN Convention on the Rights of the Child (UNCRC), with a focus on Articles 37 and 40
- the UN Committee on the Rights of the Child’s (the Committee) General Comment No. 24 (2019) on children’s rights in the child justice system³
- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.⁴

2. Terminology

In its most recent General Comment, the Committee “*encourages the use of non-stigmatizing language relating to children alleged as, accused of or recognized as having infringed criminal law*” and uses the term “*child justice system*” in place of “*juvenile justice*”.⁵ The OCO is of the view that consideration should be given to calling the strategy the Child Justice Strategy and to using the term ‘child’ rather than ‘youth’ throughout the document, including by referencing the ‘child justice system’ rather than the ‘youth justice system’. Using the term ‘child’ would be in keeping with a core principle of child justice, namely: children are different from adults due to their age and stage of development and therefore must be treated differently. Use of the term ‘child’ would also help to promote awareness and understanding of children who are conflict with the law, or who are at risk of coming into conflict with the law, as being children first. Furthermore, the term ‘child’ may also be more appropriate given that the Strategy includes a strong focus on prevention and early intervention and, as such, on the needs of children from a young age onwards.

Inclusion of the principle of detention as a measure of last resort in the draft Strategy is welcome. However, the OCO notes that the draft Strategy contains references to “*alternatives to detention*”.⁶ While the draft Strategy states that “*detention will only be considered as the final option*”,⁷ the use

² Children’s Rights Alliance, Making rights real for children: A Children’s Rights Audit of Irish Law (2015), pp.147-148. Available at https://www.childrensrights.ie/sites/default/files/submissions_reports/files/MakingRightsReal2015.pdf. See also Oberstown Children Detention Campus, Key characteristics of young people in detention: A snapshot (2019). Available at <https://www.oberstown.com/wp-content/uploads/2019/10/Oberstown-Final-Characteristics-of-Young-People-Report-2019.pdf>

³ UN Committee on the Rights of the Child, General Comment No. 24 on children’s rights in the child justice system (2019) CRC/C/GC/24. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en.

⁴ Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010). Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3.

⁵ Supra note 3, p.3.

⁶ Department of Justice and Equality, Draft new Youth Justice Strategy 2020-2026 (2020), Objective 3.6.

⁷ Ibid.

of the phrase “*alternative to detention*” could imply that detention remains the standard option and will only be avoided if an alternative can be found. Consideration should be given to ensuring that the phrasing used creates no confusion that detention is only to be used in exceptional circumstances and as a measure of last resort.

3. Prevention and Early Intervention

The Committee considers prevention and early intervention to be core elements of a comprehensive child justice policy⁸ and the inclusion of these elements in the draft Strategy are welcome. However, the OCO is of the view that the draft Strategy could be strengthened by providing further detail on the roles of some of the Departments and agencies involved.

The Committee has highlighted the importance of investment in early childhood care and education as this correlates with lower rates of future violence and crime.⁹ The groups of children most at risk of coming into contact with the child justice system are known and they, and their families, would benefit most from focused early intervention and prevention services. Wide-ranging supports are required to support children within their families, communities, pre-schools and schools and as regards relationships with peers at the different stages of their lives. In order for prevention and early intervention to be effective, integrated services must be provided by relevant Departments and agencies in a manner that offers a continuum of support for children and responds appropriately to children’s evolving needs and circumstances from early childhood onwards. One example in this regard concerns children’s progression from pre-school to primary school.

The OCO suggests that in order to provide a clear demarcation of roles and responsibilities as regards the provision of prevention and early intervention measures, consideration should be given to providing more detail on the individual roles of the different Departments and agencies in the Strategy. This might usefully include providing further detail on the roles and responsibilities of the Department of Children and Youth Affairs *and* Tusla in relation to their work with children. Furthermore, in light of the Committee’s suggestion that home visitation programmes to enhance parenting capacity could take place when a child is very young,¹⁰ consideration should be given to detailing the role of the Department of Health as well as professionals such as Public Health Nurses who already have direct contact with families with very young children.

4. Roles and Responsibilities

In its General Comment on general measures for implementing the UNCRC, the Committee highlights the importance of coordination among central government Departments, between central and other levels of government and between Government and civil society in order to ensure respect for all of the UNCRC’s principles and standards for all children.¹¹ Effective, appropriate

⁸ Supra note 3, p.4.

⁹ Supra note 3, para.10.

¹⁰ Ibid.

¹¹ UN Committee on the Rights of the Child, General Comment No.5 on General measures of implementation of the Convention on the Rights of the Child (2003), CRC/CGC/2003/5, para.37. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en

collaboration and coordination between government Departments and State agencies are important in ensuring the rights of children and young people are respected before, during and after their engagement with the child justice system. Accordingly, the OCO welcomes the intention to develop a system-wide collaborative approach involving all relevant agencies and community partners to underpin the implementation of the Strategy.

There are a significant number of government Departments and State agencies referenced in the draft Strategy. While it is welcome that the different areas of expertise of these Departments and agencies are being drawn upon, care must be taken to ensure that the Strategy provides a clear delineation of the roles and responsibilities of these different bodies so that there is no confusion as to who is responsible for what action. Care must also be taken to ensure that the roles allocated to different Departments and agencies are complementary, appropriate and correspond to their respective areas of responsibility and expertise. For example, in terms of prevention and early intervention, staff of State agencies linked to the Department of Justice and Equality should not be working with children who have not committed an offence.

The key roles that certain Departments and agencies may play in relation to certain objectives should also be highlighted. For example, as mentioned above, the role that Tusla can play in relation to prevention and early intervention, including increasing the supports and services it provides to children who are known to be at greater risk of entering the child justice system, should be outlined. The role that Tusla plays in relation to care planning for children in alternative care leaving detention should also be referenced.

Taking into account complaints that the OCO has received about education provision in Oberstown Children Detention Campus (Oberstown), we note that the Department of Education and Skills is not included as a relevant agency in the section on detention in the draft Strategy. Consideration should be given to including the Department of Education and Skills as a relevant agency in this section and outlining its corresponding responsibilities to ensure that the educational needs of young people in Oberstown are fully considered and resourced.

The OCO also notes that the housing needs of young people leaving detention are not addressed in the draft Strategy. The vulnerability of young people leaving detention to becoming homeless should be acknowledged and addressed in the draft Strategy, with consideration given to including the Department of Housing, Planning and Local Government as a relevant agency in the appropriate sections of the draft Strategy.

5. Legal System

Court is not a child-friendly environment. Therefore, objectives and actions included in the draft Strategy regarding reviews of facilities and procedures in Garda Stations and Courts, the provision of effective specialised representation and information services, and the prioritisation of the processing of children's cases to minimise delays are welcome. However, the OCO is of the view that these provisions could be strengthened to ensure greater compliance with children's rights standards.

Delays in the court process are an issue that has been raised through complaints to the OCO. Both the Committee¹² and the Council of Europe¹³ state that cases involving children should be dealt with as quickly as possible, while allowing for legal safeguards to be fully respected. While the draft Strategy commits to developing enhanced practices and procedures to reduce delays in bringing cases to court, consideration could be given to including a review or audit of any measures put in place to ensure that these measures are operating effectively.

According to the Committee, *“a comprehensive child justice system requires the establishment of specialized units within the police, the judiciary, the court system and the prosecutor’s office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.”*¹⁴ The Council of Europe has encouraged Member States to consider the establishment of a system of specialised judges and lawyers for children.¹⁵ While the objective included in the draft Strategy to ensure provision of effective specialised representation and information services to assist children throughout the Courts process is welcome, the OCO is of the view that consideration should be given to the establishment of a specialised panel of solicitors and barristers to deal with children’s cases. In order to ensure consistency, consideration should also be given to ensuring that a child is represented by one solicitor and one barrister for the duration of their involvement with the child justice system if the child wishes for this to be the case. Finally, taking the particular vulnerabilities of children into account, consideration should also be given to establishing a panel of specialised judges to deal with children’s cases.

The Council of Europe has made a number of recommendations on how justice proceedings could be made more child-friendly.¹⁶ This includes the provision of child-friendly interview and waiting rooms as well as familiarisation for children with the court layout and the officials involved. While it may not be possible to change existing court facilities in the short term, consideration should be given to how improvements can be made to enable cases involving children to be conducted in a more child-sensitive way.

6. Awareness of Rights

As noted, the objective in the draft Strategy to ensure effective specialised representation and information services to assist children throughout the Courts process so that they are fully informed of what the Courts process involves is welcome. However, arising from our direct engagement with young people in Oberstown, we are aware that children in conflict with the law do not always have access to the information they need. Common queries that young people in detention have raised with the OCO include questions about how to change solicitor or social worker and about housing supports upon release.

¹² Supra note 3, paras. 55-56.

¹³ Supra note 4, pp.28-29, p.32 and p.83.

¹⁴ Supra note 3, para. 106.

¹⁵ Supra note 4, p.30.

¹⁶ Supra note 4, pp.29-30 and pp.84-85.

According to the Committee, “children need to know their rights and to know about and have easy access to request and complaints mechanisms.”¹⁷ In this regard, the Committee states that the authorities should ensure that children understand the charges, options and processes involved and that an oral explanation of the content of official documentation is necessary.¹⁸ The Council of Europe’s Guidelines provide detailed information on the information and advice that should be provided to children from their first involvement with the justice system and throughout their time in the process in order that they understand the systems and processes involved, the charges they face and the possible consequences.¹⁹ According to these Guidelines:

- Children and their parents should be promptly and adequately informed of their rights, in particular the specific rights children have with regard to the justice system.
- Information and advice should be given in a manner suited to the child’s age and maturity.
- Children and their parents should both receive the information (i.e. parents should not receive the information instead of their child).²⁰

The Council of Europe’s Guidelines also recommend that “*Child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services for children such as specialised websites and helplines established*”.²¹

In order to ensure that children are fully aware of their rights and the different systems and processes involved in the child justice system, the draft Strategy needs to include robust commitments to providing appropriate information materials to children and their parents/guardians at the different stages of the child justice process. As well as information on the different stages of the child justice system itself, these materials should all include information on the rights of children in the child justice system overall as well as information on how and where complaints can be made.

7. Mental Health Supports

There are a significant number of children with mental health difficulties in the child justice system.²² Through our work on children’s mental health, the OCO is aware of a number of deficits in the provision of mental health care to children in Ireland. These shortfalls include high numbers of children on CAMHS waiting lists and a lack of adequate coordination between services for children with a dual diagnosis. That children and young people are not receiving appropriate and timely psychological support may be a factor in them coming into contact with the child justice system.

While references to the delivery of mental health services in the Early Intervention and Prevention section of the draft Strategy is welcome, the Strategy could be strengthened by acknowledging the importance of appropriate and timely psychological supports for children as well as identifying

¹⁷ Supra note 3, para. 95(i).

¹⁸ Supra note 3, para. 48.

¹⁹ Supra note 4, pp.20-21 and pp.58-59.

²⁰ Supra note 4, pp.20-21.

²¹ Supra note 4, pp.21.

²² Supra note 2.

possible avenues through which psychological supports could be provided for children at risk of coming into contact with, as well as those already in contact with, the child justice system. In this regard, the OCO notes that the Education section provides no reference to mental health. Consideration should be given to including reference in the Education section of the Strategy to the psychological supports that may be provided to children through schools.