

Ombudsman for Children's Office report to the UN Committee on Economic, Social and Cultural Rights (pursuant to the fourth periodic report submitted by Ireland)

January 2024



ombudsman
do leanaí
for children

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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](#) (2002 Act). The OCO has two overall statutory functions:

- to promote the rights and welfare of children up to 18 years of age; and
- to independently examine and investigate complaints made by or for children about the administrative actions of public bodies, schools and hospitals that have, or may have, adversely affected a child.

This is the first time that the OCO is submitting an alternative report to the UN Committee on Economic, Social and Cultural Rights (Committee). The purpose of the OCO's report is to bring to the Committee's attention the State's progress and shortcomings in implementing children's economic, social and cultural rights under the International Covenant on Economic, Social and Cultural Rights (Covenant) in some of the areas highlighted by the Committee in its list of issues.

The OCO has prepared this report having regard to several factors, including:

- the Committee's [list of issues for Ireland](#);
- Ireland's [fourth periodic report to the Committee](#) and Ireland's [replies to the list of issues](#);
- the OCO's statutory remit under the 2002 Act, as amended, and associated [strategic priorities](#); and
- issues affecting children's economic, social and cultural rights in Ireland that the OCO has engaged with in recent years in the context of implementing our statutory duties.

I. Issues relating to the general provisions of the Covenant (arts. 1-5)

Maximum available resources (art. 2(1))

1. Government expenditure allocated to children

From a child rights perspective, no Government can claim to be fulfilling children's rights to the maximum extent of its available resources unless it is able to identify the proportion of its budgets allocated to children, both directly and indirectly.¹ The OCO welcomes the commitments made by the State in [Young Ireland: National Policy Framework for Children and Young People 2023-2028](#) (Young Ireland) on child budgeting, including expanding child budgeting analysis to include other Government Departments, coordinating an annual child budget statement, and examining how child expenditures are allocated.² We acknowledge that the report, [Breaking the Cycle: New Measures in Budget 2024 to Reduce Child Poverty and Promote Well-being](#), is a step in the right direction, as it provides a whole-of-government overview of new and additional spending on child poverty in Budget 2024. However, this initiative is limited to the area of child poverty. **The State should start implementing the commitments made in Young Ireland regarding child budgeting as soon as possible.**

While there has been an increase of investment over the years in key areas of children's lives, successive budgets, including in the last three years, have failed to provide targeted measures to reach the most vulnerable groups of children.³ The OCO welcomes, however, measures taken by the State to support households to recover from the impact of Covid-19⁴ as well as to protect them from the rising cost of living.⁵ **The State should introduce specific budget lines for children with ring-fenced funding and targeted supports for the most vulnerable.**

In [2016](#) and in [2023](#), the UN Committee on the Rights of the Child (UNCRC) recommended that the State incorporate a child rights-based approach in the preparation of the State budget, and define specific budget lines for all children, while paying special attention to the most vulnerable. The OCO is concerned that no progress has been made on this, which creates difficulties in evaluating the adequacy and effectiveness of expenditure on children's Covenant rights. Moreover, the State has not taken steps to expand the existing framework of social impact assessments to include child rights impact assessments, to ensure that fiscal and budgetary decisions are compliant with children's rights, including under the Covenant. **The State should include child rights impact assessments in the framework for integrated social impact assessments, to ensure that fiscal and budgetary decisions are compliant with obligations under the Covenant.**

¹ OHCHR (2014), [Towards better investment in the rights of the child](#), A/HRC/28/33, para. 35.

² While in 2022 the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) published a pilot study - [The Irish Government's Expenditure on Children in 2019: A Pilot Study of the Department of Children and Youth Affairs](#), which aims to develop a transparent, easy-to-understand methodology that can be reproduced across departments, this methodology has not yet been expanded to other departments.

³ Children's Rights Alliance, [Budget 2024 delivers key universal measures for children, but targeted interventions on income don't go far enough for low-income families; Budget 2023 goes further than any before to address the cost of education but fails to deliver enough effective targeted supports for the most disadvantaged children; Some relief for families in Budget 2022 but more could have been done for the poorest children](#).

⁴ Department of the Taoiseach, [Government publishes National Action Plan on COVID-19](#), 16 March 2020; Merrion Street, [Government announces National Covid-19 Income Support Scheme](#), 24 March 2020.

⁵ Department of Social Protection, [Budget 2024](#), 10 October 2023; Department of the Taoiseach, [Government announces new cost-of-living measures for families, businesses and the most vulnerable](#), 21 February 2023; Department of Public Expenditure and Reform and Department of Finance, [Ministers McGrath and Donohoe announce €505 million package in measures to mitigate the cost of living](#), 10 February 2022.

Non-discrimination (art. 2(2))

2. Discrimination against children

The OCO welcomes the publication of the [National Action Plan against Racism](#) and plans for the appointment of a [Special Rapporteur on Racial Equality and Racism](#). We also welcome the [review of the Equality Acts](#), along with [commitments to bring forward legislative proposals](#) arising from this in early 2024. In [our submission to this review](#), the OCO proposed that consideration should be given to children as rights holders to ensure that:

- applicable law, policy and practice align with children’s rights and best interests;
- the exemption of children from protection under the age ground is reviewed; and
- a child-friendly complaints process is developed so children who face discrimination can access redress.

The State should give appropriate consideration to children as rights holders as the review of the Equality Acts is completed so that law, policy and practice in this area have appropriate regard to children’s rights.

Arising from our work, the OCO is concerned about persistent discrimination experienced by particular groups of children.⁶ In the children’s report to the UNCRC,⁷ children reported experiencing multiple and intersecting forms of discrimination, including gender discrimination, socio-economic discrimination, racism, homophobia and transphobia. Many public policy measures introduced by the Government to address discrimination, including the [National Traveller and Roma Inclusion Strategy 2017-2021](#) (NTRIS), the [Migrant Integration Strategy 2017-2020](#), the [National Strategy for Women and Girls 2017-2020](#), the [National Disability Inclusion Strategy 2017-2021](#), and the [LGBTI+ National Youth Strategy 2018-2020](#) are awaiting successor strategies. The OCO welcomed [commitments to publish the successor to NTRIS by the end of 2023](#), but note that this has not yet happened. We welcome the recently announced consultation to develop a new [National Disability Strategy](#) but are concerned that there are currently no clear timelines for publication of the other successor strategies. **The State should develop successors to the Migrant Integration Strategy, the National Strategy for Women and Girls, the National Disability Inclusion Strategy, and the LGBTI+ National Youth Strategy in a timely manner and ensure that these successor strategies explicitly address the specific needs and vulnerabilities of children.**

II. Issues relating to the specific provisions of the Covenant (arts. 6–15)

Right to social security (art. 9)

3. Habitual residence condition

Notwithstanding the concerns expressed by the Committee,⁸ the habitual residence condition (HRC) continues to apply to social security schemes, including child benefit. Research has found that Roma families experience challenges accessing social security schemes on an equal basis with other

⁶ For example, see Ombudsman for Children’s Office (2020), [Direct Division: Children’s views and experiences of living in Direct Provision](#), pp. 37-38 and pp. 49-59; Ombudsman for Children’s Office (2021), [No End in Site: An investigation into the living conditions of children on a local authority halting site](#).

⁷ Ombudsman for Children’s Office (2022), [Pieces of Us: A Children’s Report to the UN Committee on the Rights of the Child](#), pp. 92-106 and pp. 146-154.

⁸ UN Committee on Economic, Social and Cultural Rights (2015), [Concluding observations on the third periodic report of Ireland](#), E/C.12/IRL/CO/3, para. 21.

families because of their residence status or inability to prove their habitual residence due to language barriers and insufficient documentation.⁹ Similarly, as international protection applicants are not considered to have a right to reside, and are therefore not considered habitually resident, families seeking international protection are not eligible to access child benefit.¹⁰ This has an impact on their ability to afford adequate food, clothing and healthcare for their children and to finance their full involvement in school-based and extra-curricular activities.¹¹ The OCO is concerned that the continued application of the HRC to child benefit fails to realise the right to social security for all children without discrimination on the basis of their residence status. **The State should remove the HRC as a condition for child benefit.**

Protection of the family and children (art. 10)

4. Childcare

The [European Child Guarantee](#) identifies access to early childhood education and care as one of the key services necessary to prevent and combat social exclusion among children. Ireland is one of only a few countries in the OECD where the [majority of children attend privately run early learning and care \(ELC\) and school age childcare \(SAC\) services](#). The OCO welcomes the [significant increases](#) in different State funding streams for childcare brought in since 2020. We also welcome the focus being given to childcare as a measure to address poverty and support children's health and wellbeing by the [Child Poverty and Well-Being Programme Office](#).¹² However, despite increases in funding, providers have reported that increased costs and staff shortages may result in further closures of childcare facilities,¹³ which [could increase an existing shortage of childcare places](#).

The [Early Childhood Education and Care](#) (ECCE) programme is a free universal programme available to all children for two years prior to starting primary school. There is a 96%¹⁴ uptake of the ECCE scheme nationally versus 76% for Traveller children and 70% for Roma children.¹⁵ There is no data available about the participation of Traveller and Roma children in other types of ELC or SAC.

The [National Childcare Scheme](#) (NCS) provides financial assistance to parents to pay for childcare. The OCO welcomes the ongoing development of an [Equal Participation Model](#), which will seek to promote equitable participation for all children in ELC and SAC, with a particular focus on children experiencing different forms of disadvantage, including Traveller and Roma children. A phased commencement of this model is due to start in September 2024.¹⁶ **The State should intensify the pace of increases to the different childcare funding streams to ensure the provision of sustainable,**

⁹ Pavee Point Traveller and Roma Centre (2014), [Habitual Residence Condition – Briefing Paper](#); Pavee Point Traveller and Roma Centre and Department of Justice and Equality (2018), [Roma in Ireland: A National Needs Assessment](#).

¹⁰ [Social Welfare Consolidation Act 2005](#), as amended, s. 246.

¹¹ Ombudsman for Children's Office (2020), [Direct Provision: Children's views and experiences of living in Direct Provision](#); Irish Refugee Council (2023), [Living in International Protection Accommodation: Exploring the Experiences of Families and Children in Direct Provision](#).

¹² Department of the Taoiseach (2023), [From Poverty to Potential: A programme for Child Poverty and Wellbeing. Initial Programme Plan: July 2023 – December 2025](#), pp. 14 – 15.

¹³ E. Malone, [Protesting childcare providers tell of struggle to survive due to 'inadequate' funding](#), The Irish Times, 26 September 2023; S. Lynch, [Childhood providers' group warns of three-day strike](#), RTE, 17 September 2023; and C. Caden, [Staffing issues may force 'hundreds' of childcare firms to close](#), The Irish Examiner, 6 June 2023.

¹⁴ DCEDIY, [Response from DCEDIY to Joint Committee on Children, Equality, Disability, Integration and Youth](#), 8 September 2023, p. 13.

¹⁵ Data provided by Dr. Anne Marie Brooks, Assistant Secretary General, Early Learning and Care and School-Age Childcare Division in the DCEDIY at the Children's Rights Alliance End Child Poverty Week event on Early Years, 15 September 2023.

¹⁶ DCEDIY (2023), [Budget 2024: Overview and FAQ for Early Learning and Childcare Providers](#), p. 8.

affordable, consistent, high quality ELC and SAC services for children and put in place additional funding and supports for disadvantaged and vulnerable children to mitigate barriers they face to benefiting from the ELC and SAC.

5. Domestic violence

There were [23,536 domestic violence applications](#) to the courts in 2022, a 15% increase since 2019, while the police responded to [over 49,250 domestic abuse reports in 2022](#) - a 9% increase on 2021 figures. The OCO is concerned that victims of domestic violence do not have a right to mandatory free legal aid,¹⁷ and this might prevent them from seeking justice. **The State should ensure that the ongoing [Review of the Civil Legal Aid Scheme](#) establishes the right to mandatory free legal aid for all victims of domestic violence, including children.**

While the OCO welcomes the enactment of the [Domestic Violence Act 2018](#), we are concerned that the provisions made as regards the courts' discretion to give children the opportunity to express their views is giving rise to situations where children are not heard.¹⁸ Additionally, the 2018 Act does not provide for a child to make a court application for protection and safety orders in their own right. **The State should review the impact that the Domestic Violence Act 2018 has had on the protection of the rights of victims of domestic violence, including children. This review should be informed by the views and experience of children impacted by domestic violence.**

GREVIO's [Baseline evaluation report on Ireland](#) raises concerns that family law courts often fail to take into account instances of domestic violence in decisions regarding custody and visitation, including in cases in which the perpetrator has been convicted for acts of violence against the parent and/or their children. In this context, we welcome the release of a new resource designed by children impacted by domestic violence, the [Kids' Coercive Control Web](#), aimed at enhancing the understanding of front line services and other professionals of the impact of domestic violence on children's lives.¹⁹ **The State should ensure that in the determination of custody and visitation rights of children, all incidents of violence covered by the scope of the Istanbul Convention are taken into account and that the rights and safety of children affected are safeguarded at all times.**

While there is no data to give a precise account of how many children are affected by domestic violence, 33,990 disclosures of domestic abuse were reported in 2022, including 5,412 reports of abuse of children.²⁰ Domestic violence has been found a leading cause of homelessness in the State, however, women and children leaving their home due to domestic violence are not considered as "homeless" and as a result are not eligible for housing support.²¹ The OCO is concerned that there continues to be a chronic shortage of refuge accommodation. The State is falling short of the target established by the Istanbul Convention²² to provide one family place per 10,000 of the population (506 family units). It is disappointing that the State has only committed to bring the number of

¹⁷ According to the Legal Aid Board, you must have an annual disposable income of less than €18,000 and disposable assets of less than €100,000 in order to qualify for legal aid. Although the family home is not included in the assessment, many people are excluded because of their income from work. J. Moore, [District Court judge calls for mandatory free legal aid for domestic violence cases](#), *The Journal*, 9 September 2023.

¹⁸ [Domestic Violence Act 2018 \(as amended\), s 27](#). See further: OCO (2017), [Advice of the Ombudsman for Children's Office on the Domestic Violence Bill 2017](#), pp. 5-6.

¹⁹ Barnardos, [Minister of State Listens to Children's Experience of Coercive Control](#), 30 November 2023.

²⁰ Women's Aid (2023), [Annual Impact Report 2022](#).

²¹ Mercy Law Resource Centre (2023), [Social Housing, Domestic Violence and the Public Sector Duty](#).

²² Ireland ratified the [Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence](#) in 2019. We note that the State made [reservations](#) to article 30 (2) on State compensation, and article 44 (3) on jurisdiction.

refuge accommodation to 280 over the lifetime of the [Third National Strategy on DSGBV 2022-2026](#) (the Strategy). It is vital that the new statutory DSGBV agency that is due to be established²³ delivers the refuge accommodation needed. While it is positive that the Strategy specifically recognises children as victims of DSGBV and includes a number of actions aimed at children, the OCO notes that the State needs to ensure that the implementation of these actions is independently monitored. **The State should ensure that the DSGBV Agency is established without delay and adequately resourced to perform its functions, including planning, coordinating and monitoring the development of refuge accommodation for victims of domestic violence.**

Right to an adequate standard of living (art. 11)

6. Child poverty

[Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People, 2014-2020](#) sought to address the issue of child poverty by setting a national child-specific social target to lift over 70,000 children out of consistent poverty by 2020. However, this target was not achieved. Income supports brought in due to the Covid-19 pandemic had a positive effect on mitigating against the risk of poverty of some families, and are in part responsible for a reduction in the rate of consistent child poverty [from 7.2% to 5.2% between 2020 and 2021](#). However, the rate of consistent child poverty [rose again to 7.5% in 2022](#).

The OCO acknowledges the State's work in recent years to address child poverty, including a range of programmes across education, healthcare and housing,²⁴ as well as the commitments made in [Ireland's EU Child Guarantee National Action Plan](#). We welcome recently announced budget measures, which the Government states will result in [approximately 22,000 fewer children at risk from poverty](#). We also welcome that [Young Ireland](#) contains commitments to reduce the number of children and young people living in poverty over the lifetime of the framework, along with the recently [announced consultation to develop a new child poverty target](#). **The State should establish an ambitious new target for reducing consistent child poverty and do so in the context of working systematically across Government to eradicate child poverty.**

The OCO is concerned that certain groups of children are disproportionately affected by poverty, including Roma and Traveller children,²⁵ children in one-parent families, children in Direct Provision.²⁶ We are also concerned about children experiencing intergenerational disadvantage, as well as the lack of a policy to meet the needs of teenagers at risk.²⁷ We welcome the establishment of the [Child Poverty and Well-Being Programme Office](#) in the Department of the Taoiseach along with the priority that has been given to addressing poverty in [Young Ireland](#). However, **the State should ensure that the stated ambitions and commitments are reached, with a particular focus on specific cohorts of children who are most at risk of poverty and social exclusion.**

²³ Department of Justice, [Legislation to establish Cuan: the Domestic, Sexual and Gender-Based Violence Agency passed by Oireachtas](#), 22 November 2023.

²⁴ For examples, see Children's Rights Alliance (2023), [Child Poverty Monitor 2023](#).

²⁵ EU Agency for Fundamental Rights (2020), [Travellers in Ireland: Key results from the Roma and Traveller survey 2019](#).

²⁶ DCEDIY (2020), [Income, Poverty and Deprivation among Children – A Statistical Baseline Analysis](#).

²⁷ These are teenagers that may be in and out of state care.

7. Adequate housing

The OCO welcomes that the [Housing Commission](#), established in December 2021, has been tasked with bringing forward proposals for the wording of a referendum on housing and held a consultation for this purpose in 2022.²⁸ Though the Housing Commission has submitted its report to the Government, it is not clear when the Government intends to publish the report.²⁹ **In line with recommendations of the Committee,³⁰ the State should progress a referendum on enumerating a right to adequate housing in the Constitution.**

The OCO is concerned by the serious adverse impact of homelessness on children. The State does not gather comprehensive disaggregated data on children who are homeless. Data on persons accessing State-provided emergency accommodation show that at least 4,105 children were homeless as of 26 November 2023,³¹ the highest number of homeless children on record and a 211% increase since the State was last reviewed by the Committee in June 2015.³² Evidence shows that children, families with very young children, one parent families, people with a disability, people with a migrant background and Travellers are overrepresented in the homeless population.³³ We welcome the [Young Ireland](#) commitment to address the root causes of homelessness among children, including by strengthening the collection and analysis of data. **The State should implement specific child and family homelessness strategies that prioritise: timely access to adequate, secure and long-term accommodation for homeless families with children; and ending homelessness in line with Ireland's commitments under the [Lisbon Declaration](#).**

Children are invisible in the [Housing Act 1988](#) (1988 Act). Local authorities are not obliged to provide accommodation that is appropriate to children's housing needs and they have considerable discretion as to the type of accommodation and supports they provide to homeless families with children. The OCO is concerned about the negative impacts of such legislative barriers on children's effective access to adequate housing. An OCO consultation with children and families living in Family Hubs, purpose-built or specifically adapted premises to house homeless families with children, identified concerns about the inadequacy of emergency accommodation and its negative impact on children's development, mental health and family life.³⁴ **The State should ensure that emergency accommodation provided to homeless families with children is appropriate to their needs and enjoys appropriate, child-centred and rights-based legislative underpinning.**

8. Deinstitutionalisation for children with disabilities

We welcome the [Young Ireland](#) commitment to ensure no child with a complex disability is taken into care due to insufficient service provision. The OCO continues to receive complaints about children with disabilities who remain in hospital due to a lack of services to support their parents to care for them and to enable children with disabilities to grow up with their family at home. Based on

²⁸ The Housing Commission, [Public consultation on a Referendum on Housing in Ireland](#), 30 June 2022; Ombudsman for Children's Office (2022), [The Housing Commission: Public Consultation on a Referendum on Housing in Ireland - Submission by the Ombudsman for Children's Office](#).

²⁹ Houses of the Oireachtas, Dáil Éireann Debate, [Housing Policy](#) [49145/23], 9 November 2023.

³⁰ UN Committee on Economic, Social and Cultural Rights (2002), [Concluding observations of the Committee on Economic, Social and Cultural Rights: Ireland](#), E/C.12/1/Add.77, para. 23.

³¹ Department of Housing, Local Government and Heritage (2024), [Monthly Homelessness Report: November 2023](#).

³² Department of Housing, Local Government and Heritage (2020), [Homeless Report - December 2015](#).

³³ R. Grotti, H. Russell, É. Fahey and B. Maître (2018), [Discrimination and Inequality in Housing in Ireland](#); Barnardos, [75% of families becoming homeless since eviction ban ended are headed by one parent](#), 27 October 2023.

³⁴ Ombudsman for Children's Office (2019), [No Place Like Home: Children's views and experiences of living in Family Hubs](#).

an investigation by the OCO, we welcome the HSE's commitment to undertake a national audit to identify children whose discharge is delayed and associated remedial actions. However, we remain concerned that, three years on, children still spend significant periods of time in hospital without medical need and that the HSE does not have a comprehensive plan to address this issue.³⁵

It is positive that the expansion of respite provision is included as a key priority in the [Disability Action Plan 2024-2026](#). In 2022, the State provided 1,019 children with respite services and a further estimated 370 children will require new respite services in the next five years.³⁶ An OCO investigation in 2018 highlighted the need for investment in respite services, which are inadequately resourced and inconsistently provided to children across the country.³⁷ The OCO is also concerned that home sharing placements, which involve the provision of care by a family in their home to a person with an intellectual disability and are similar to foster care arrangements, are unregulated and therefore not subject to independent monitoring. This is despite the finding of the [Home Sharing in Intellectual Disability Services in Ireland: Report of the National Expert Group](#) in 2016 that a legal framework is urgently required to underpin the safe governance and management of the service. A reported 180 children were in a home sharing placement in 2023.³⁸ **The State should provide adequate services and sufficient funding to enable children with disabilities to live with their families, and develop a regulatory framework for home sharing services.**

Right to physical and mental health (art. 12)

9. Physical health

The OCO welcomes the [Sláintecare Implementation Strategy](#), which aims to create a health system where everyone has equal access to comprehensive health services based on need, as well as increased investment in paediatric services.³⁹ However, data published on waiting lists highlights a concerning number of children waiting for hospital appointments and treatment. As of 30 November 2023, 89,448 children were on hospital waiting lists, 18,001 (20%) of whom were waiting longer than a year.⁴⁰ Despite increased investment, the OCO remains concerned about the negative impact that challenges in recruiting and retaining healthcare staff are having on children's timely access to health services,⁴¹ including [long delays](#) faced by children waiting for scoliosis treatment.⁴² **The State should implement measures, including allocation of additional resources, to reduce waiting lists and waiting times that are adversely affecting children's access to healthcare.**

The OCO is also concerned about recent [reports](#) that non-medical grade devices were implanted into children during spinal surgeries. While we welcome the announcement of several reviews into this

³⁵ Ombudsman for Children's Office (2020), [Jack's* Case: How the HSE and Tusla, the Child and Family Agency, provided for and managed the care of a child with profound disabilities](#); Ombudsman for Children's Office (2023), [Jack's Case: 2023 Update](#).

³⁶ Health Research Board (2023), [Overview of people engaging with disability services, 2022](#), pp. 27-28 and p. 35.

³⁷ Ombudsman for Children's Office (2020), [Molly Two Years On: Have Tusla and the HSE delivered on commitments to children with a disability in the care of the State?](#)

³⁸ Ombudsman for Children's Office (2023), [Jack's Case: 2023 Update](#), p. 8.

³⁹ Health Service Executive (2023), [2023 Waiting List Action Plan](#), p. 8 and p. 25; Houses of the Oireachtas, Seanad Éireann, [Children's University Hospital Temple Street: Motion](#), 4 October 2023.

⁴⁰ See national waiting list data for October 2023: National Treatment Purchase Fund, [National Waiting List Data](#).

⁴¹ Health Service Executive (2023), [HSE National Service Plan 2023](#), pp. 96-102.

⁴² Ombudsman for Children's Office (2023), [Scoliosis treatment for Ivy](#).

incident,⁴³ **the State must ensure that current and future systems confirm that non-medical grade devices are not used to treat children.**

Children aged 7 and under are entitled to [free General Practitioner \(GP\) care](#). However, the [Minister for Health has not indicated](#) when this scheme will be extended to older cohorts of children. The [abolition of overnight and day case public inpatient charges for children](#) is welcome. Nonetheless, the OCO is concerned about the [costs incurred by families](#) of children requiring hospital treatment, including transport, accommodation for family members and food costs. **The State should implement additional measures to address cost barriers that children and their families can face in accessing health care, including by extending the free GP care scheme to all children up to 17.**

10. Mental health

The OCO welcomes work to progress the [General Scheme of the Mental Health \(Amendment\) Bill 2021](#), but we are disappointed that the Bill has not been published yet.⁴⁴ While we welcome the proposed provisions for children aged 16 and older to consent to and refuse admission and treatment, we are concerned about proposed provisions in relation to children under 16.⁴⁵ We also have significant concerns about proposals to place children's admission to adult inpatient facilities on a statutory footing, which is in direct contradiction with the recommendations made by both the UNCRC in its [2023 Concluding Observations](#) and the Committee in its [2015 Concluding Observations](#) in this regard. There were 20 child admissions to adult inpatient units in 2022.⁴⁶ **The State should ensure that the proposed amendments to the Mental Health Act 2001 concerning children are fully aligned with international children's rights standards and include an explicit prohibition on the admission of children to adult inpatient facilities.**

The OCO welcomes the establishment of a dedicated [National Youth Mental Health Office](#) and the launch of the [new Model of Care for Child and Adolescent Mental Health Services \(CAMHS\) Hubs](#) in September 2023. The OCO supports the recommendations made by the [Independent Review of the Provision of CAMHS in the State](#), which highlighted issues of grave concern, including long waiting lists for access to CAMHS, particular difficulties faced by vulnerable children, lack of regulation in 99% of the services, and lack of emergency and out-of-hours services.⁴⁷ Complaints received by the OCO and children's views about mental health services reflect some of these concerns.⁴⁸ The Independent Review also highlighted that there is no ring-fenced budget for CAMHS, which must compete with other mental health services for resources. The OCO is also concerned with the lack of specialised counselling services for children who have been sexually assaulted,⁴⁹ and the exclusion

⁴³ Houses of the Oireachtas, Seanad Éireann Debate, [Children's University Hospital Temple Street: Motion](#), 4 October 2023; Children's Health Ireland, [Opening Statement by Children's Health Ireland Oireachtas Committee on Health](#), 28 September 2023.

⁴⁴ This Bill was included in the [Spring Legislative Programme 2023](#) as 'priority for drafting,' and remains in the [Autumn Legislative Programme 2023](#) as 'priority for drafting.'

⁴⁵ Ombudsman for Children's Office (2021), [General Scheme of the Mental Health \(Amendment\) Bill: Observations by the Ombudsman for Children's Office](#).

⁴⁶ Mental Health Commission (2023), [Mental Health Commission Annual Report 2022](#), p. 5.

⁴⁷ Houses of the Oireachtas, Joint Committee on Health debate, [Review of Child and Adolescent Mental Health Services: Discussion](#), 11 October 2023.

⁴⁸ Ombudsman for Children's Office (2023), [Falling Behind – OCO Annual Report 2022](#); Ombudsman for Children's Office (2018), [Take My Hand: Young People's Experiences of Mental Health Services](#); Ombudsman for Children's Office (2022), [Pieces of Us: A Children's Report to the UN Committee on the Rights of the Child](#); Ombudsman for Children's Office (2023), [A Piece of My Mind](#).

⁴⁹ UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material (2018), [Visit to Ireland](#), A/HRC/40/51/Add.2, p. 65.

by the HSE of sexual abuse as a mental health issue.⁵⁰ **The State should ensure that the new National Youth Mental Health Office is adequately resourced to implement without delay the recommendations made by the Independent Review, including the immediate and independent regulation of CAMHS in line with international standards by the Mental Health Commission; and create a ring-fenced, child-specific budget for mental health with targeted supports for the most vulnerable.**

The OCO welcomes the launch by the Minister for Education of a [Pilot Programme of Counselling in Primary Schools](#), which started in September 2023. **The State should review the Pilot Programme and expand it to all Primary and Post Primary schools.**

Right to education (arts. 13 and 14)

11. Availability, accessibility and quality of education

The [Delivering Equality of Opportunity in Schools \(DEIS\)](#) programme targets additional resources to schools in disadvantaged areas. While the OECD's commencement of a [review of the DEIS resource allocation policy](#) is welcome, the OCO is concerned that disadvantaged children in non-DEIS schools currently do not receive the same level of support as those attending DEIS schools. **The State should identify further supports that can be provided to disadvantaged children attending non-DEIS schools.**

The OCO welcomes the Department of Education's consultation to develop a [Traveller and Roma Education Strategy](#). However, we remain concerned about educational disadvantage faced by Traveller⁵¹ and [Roma](#) children, along with the impact of reductions in Traveller-specific supports.⁵² **The State should strengthen measures to combat educational disadvantage among Traveller and Roma children.**

Complaints received by the OCO have raised concerns about the lack of a framework to inspect, examine and report on schools that have higher rates of suspension or permanent exclusion, along with a lack of clarity about how suspension and exclusion rates are monitored and reviewed. We are concerned that the lack of data in this area makes it difficult to determine if vulnerable cohorts of children are over-represented among those who are suspended or expelled. **The State should develop a framework to identify and monitor suspensions and permanent exclusions of children from schools to ensure that specific cohorts of children are not being disproportionately affected.**

In light of concerns about the disproportionate use of reduced timetables in respect of certain groups of children,⁵³ the OCO welcomes the Department of Education's [Guidelines for the use of Reduced School Days in Schools](#) and report on [Reduced School Days: 2022/23 School Year](#). However, we remain concerned at the over-representation of Traveller children and children with special educational needs (SEN) in the data. **The State should identify additional child-centred measures to address the more frequent use of reduced school days in relation to particular groups of children.**

⁵⁰ M. Hennessy, [HSE failing today's child sex abuse victims with lack of counselling services](#), The Journal, 15 April 2023.

⁵¹ Department of Children and Youth Affairs (2020), [Statistical Spotlight #4, Young Travellers in Ireland](#); Joint Committee on Education and Skills (2019).

⁵² St. Stephen's Green Trust (2021), [Travellers in the Mainstream Labour Market: Situation, Experience, and Identity](#), pp. 12-13.

⁵³ Ombudsman for Children's Office (2019), [Oireachtas Committee on Education and Skills opening statement from Ombudsman for Children](#), p. 2.

The Education (Admission to Schools) Act 2018 removed significant barriers that some children faced in accessing a school place, including on the grounds of religion. However, the OCO is concerned that schools can continue to [allocate 25% of places](#) to children and grandchildren of former students if they are over-subscribed, which may place particular children, including Traveller children and children of immigrant parents, at a particular disadvantage in accessing a school place.⁵⁴ **The State should repeal the statutory provision that allows schools to give preference to children and grandchildren of former students when they are over-subscribed.**

12. Inclusive education

The [Education for Persons with Special Educational Needs \(EPSEN\) Act 2004](#) aimed to provide a statutory framework for the provision of education to children in an inclusive environment. Despite the Committee's recommendations in 2015,⁵⁵ the State has not brought into effect significant parts of the EPSEN Act twenty years on, including children's entitlement to an assessment of their educational needs and the development of education plans. Supports for children with SEN are therefore based on policy and not law, which has led to unsatisfactory outcomes for children.⁵⁶ As the State notes in its replies to the list of issues, the Department of Education commenced a review of the EPSEN Act 2004 in December 2021.⁵⁷ The OCO welcomes this review. **The State should expedite the review of the EPSEN Act with a view to ensuring a child-centred, rights-based and inclusive approach to providing for the educational needs of children.**

Educational resources for children with SEN are among the most common education issues that the OCO receives complaints about.⁵⁸ The OCO welcomes the significant measures taken by the State to provide increased supports for children with SEN. However, the current approach, which includes separate teacher training programmes for special education and a significant increase in special classes, mitigates against inclusion and reinforces the ongoing segregation of children with disabilities from mainstream education.⁵⁹ In early 2023, the National Council for Special Education provided its policy advice to the Department of Education on special schools and special classes.⁶⁰ The Department of Education committed to considering the right to an inclusive education in the context of this policy advice.⁶¹ We welcome that [Young Ireland](#) commits to ensuring that all children are supported to avail of inclusive education in mainstream schools. **The State should develop and implement a vision and plan to move towards an inclusive education system for all children and engage with schools, parents and children with disabilities in this regard.**

⁵⁴ Ombudsman for Children's Office (2022), [Oireachtas Committee on Education, Further and Higher Education, Research, Innovation and Science: Opening Statement by the Ombudsman for Children, Dr Niall Muldoon](#); Ombudsman for Children's Office (2016), [Advice of the Ombudsman for Children on the Education \(Admission to Schools\) Bill 2016](#).

⁵⁵ UN Committee on Economic, Social and Cultural Rights (2015), [Concluding observations on the third periodic report of Ireland](#), E/C.12/IRL/CO/3, para. 21.

⁵⁶ Ombudsman for Children's Office (2023), [Department of Education Review of the Education for Persons with Special Educational Needs Act 2004: Observations by the Ombudsman for Children's Office](#).

⁵⁷ UN Committee on Economic, Social and Cultural Rights (2023), [Replies of Ireland to the list of issues in relation to its fourth periodic report](#), E/C.12/IRL/RQ/4, para. 149; Department of Education, [Minister Josepha Madigan launches review of the Education for Persons with Special Educational Needs \(EPSEN\) Act 2004](#), 20 December 2021.

⁵⁸ Ombudsman for Children's Office (2023), [Falling Behind: Children's rights in Ireland - The Ombudsman for Children's Office Annual Report](#), p. 5.

⁵⁹ Ombudsman for Children's Office (2022), [Plan for Places: Forward Planning for the Provision of School Places for Children with Special Educational Needs: A Children's Rights Issue](#).

⁶⁰ Information provided by the Department of Education to the Ombudsman for Children's Office in June 2023.

⁶¹ Ombudsman for Children's Office (2022), [Plan for Places: Forward Planning for the Provision of School Places for Children with Special Educational Needs: A Children's Rights Issue](#), p. 68.

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