



Submission to the DCYA Review of the Child Care Act 1991

Focus Ireland welcomes the opportunity to contribute to the review of the Child Care Act 1991. As one of the State's largest housing and homelessness organisations, with 30 years of specialist work with families that are homeless, we have experience of working with children and young people at their most vulnerable.

We run a number of services which support children and young people who are homeless or vulnerable to homelessness – either because they are homeless with their families or are in state care. Focus Ireland runs a residential care service for children in the care of the State. We also run a number of residential aftercare programmes across the country and we operate a low-threshold emergency accommodation service for young people, with the support of Tusla. We also operate the Family Homeless Action Team in Dublin city, on behalf to the Dublin Region Homeless Executive, and employ specialist child support workers to work with children experiencing homelessness, with the support of Tusla and the HSE.

Our experience shows us that, in order for children to be safe and protected, their rights must be enumerated in legislation and those rights must be respected by all those involved in decision-making which impacts the child.

The majority of our experience as service providers comes not from engagement with the courts, but from engagement with statutory decision-makers. We welcome the review of the Child Care Act and understand that its emphasis is on the needs of children entering or in the care of the State. However, we would note that protective provisions which apply to children in care do not apply to children who are experiencing adversity while living with their families. Legislative provision should be considered to ensure that the best interests of all children are considered in decision-making processes which affect them. The rights afforded to children in light of Article 42A of the constitution should not be limited to certain cohorts. The increased, and welcome, emphasis on seeking solutions for families without taking children into care will be undermined if too great a gap opens up between the protections offered to children with their families and those in state care.

We understand that the review is a considerable undertaking, and we would be happy to contribute further over the coming months.

Best interests of the child

The Children and Family Relationships Act 2015 sets out the factors which should be considered in determining the best interests of the child. We would support the enumeration of these factors in renewed child care legislation. Because of the circumstances in which in which Focus Ireland supports families, staff are often required to make child protection notifications. We believe that a clear legislative provision articulating what must be considered in child protection cases would be of use to judges and also to social care workers.

Child Friendly Social Services

Focus Ireland believes that protection for children must extend beyond the court system to other decision-making arenas. We are increasingly concerned there are no processes or procedures in place to ensure that the best interests of the child are considered, and the voice of the child is heard, in decisions made by local authorities relating to the provision of emergency accommodation or housing for families that are homeless.

The Council of Europe has produced recommendations relating to children's rights and social services friendly to children and families.¹ In this document general social services include 'the fulfilment of basic needs of children and families in situations of poverty such as financial assistance, subsidised housing and access to health care and education for all children'.

The recommendation document lists key strategies in child-friendly social service delivery:

1. Information and advice should be child-friendly and transparent.
2. Children should have equal access to social services.
3. Social services must be available to meet the diverse needs of children and families.
4. Social services must be suitable and appropriate.
5. There must be interdisciplinary and multi-agency collaboration.
6. There must be professional competency including training, supervision and accountability.
7. The safety of the child should be a primary consideration.
8. Confidentiality and privacy rights should be respected.
9. There must be effective mechanisms for complaints and review procedures of decisions affecting the child.
10. There must be quality standards, monitoring and evaluation.

¹ Council of Europe Recommendation on children's rights and social services friendly to children and families. Available at: <https://rm.coe.int/168046ccea>

We believe that the above strategies should be enumerated in cross-departmental guidance which should also include detailed factors for considering the best interests of children. This should be supported by a training programme for front-line staff, which ensures that no staff are placed in the position of making such decisions in relation to children prior to receiving the training.

Prevention and Early Intervention

Focus Ireland believes that a policy statement is needed which outlines the Department and Tusla's commitment to prevention and early intervention. Focus Ireland also advocates for a preventative focus in housing and homelessness provision. International evidence shows that investment in preventative and early intervention programmes results in reduced care services (ie. children in care).² We believe that these practices must be embedded in service delivery.

Focus Ireland operates a Family Mediation service in Dublin which is now partially funded by Tusla. The service has successfully supported young people presenting to CISP to return to their family home following intensive mediation. While mediation may not always be suitable in cases of relationship breakdown, and while a return to the family home may not be an appropriate outcome, improving family relationships is a worthwhile aim and is in keeping with the 'best interests of the child' test set out above.

We believe that expansion of mediation services to meet demand should be a priority. Other jurisdictions provide mediation supports in schools and community groups, meaning that families have access to the services before problems become crises.

Children experiencing homelessness with their family

While the current child care legislation is concerned with children in care, Focus Ireland staff are increasingly concerned about children who are experiencing homelessness in stable family arrangements but are nonetheless at risk. We are taking this opportunity to reiterate concerns about families presenting as homeless who are unable to source emergency accommodation. The Department has been briefed on this issue previously, but we feel there is a significant child protection element which merits examination in light of the legislative review.

Families may not be accommodated for a number of reasons: they may be awaiting the paper work required to demonstrate they are homeless, they may not have a lawful immigration status³, they may be self-accommodating and there may be no hotel bookings available. In

² Brian Harvey, The Case for Prevention and Early Intervention, 2014, page 4. Available at: <https://www.iasw.ie/attachments/edadcaa5-8ecb-4a99-9f05-75f5fa5d5bf4.PDF>

³ We have previously raised concerns about the legality of this practice. The Housing Act 1988, which defines homelessness and respective services, does not require individuals to have immigration status before they can be provided with assistance. We believe local authorities are conflating requirements to access social housing with homeless supports.

these instances, families present to Focus Ireland in need of assistance. Staff work until late at night trying to place these families in emergency accommodation. On some nights there are no bookings or emergency beds left. The only place of safety to which staff can refer these families is the Garda station, but we cannot always confirm whether the families attend.

When a family disengages from service staff at night with no known place to stay, Focus Ireland takes the view that there is a real risk to the well-being of the child or children involved. In line with the Children First guidelines, our staff issue a child protection notice to Tusla in respect of the incident. Staff have followed this procedure since 2011/14, when the first of such incidents occurred. Since then, we have received several requests from Tusla to desist from sending such notices.

The Department of Children and Youth Affairs must investigate the practice of refusing to accept child protection notifications for children at risk of sleeping rough and put in place a strategic response that ensures the welfare rights of children are vindicated.

Section 5 Accommodation

Staff have raised concerns that accommodation provided under Section 5 of the Child Care Act is being provided for prolonged periods, leaving children with uncertainty and a lack of clarity about their situation. Section 5 accommodation should be provided on a short-term basis.

Our residential service would see a small number of young people being accommodation for over 9 months before being taken in care. The legislative responsibilities for the social work department are much less clear in these circumstances and there is a similar lack of clarity for children being accommodated. A policy document entitled "HSE National Policy and Procedure on the Use of Section 5 of the Child Care Act 1991" outlines the process for accommodating young people in this manner. We believe that this is still the relevant policy document, but it dates from 2012. This policy document should be updated and consideration should be given as to whether aspects of the procedures should be enumerated in legislation.

The Department of Children and Youth Affairs should record on a regular basis the frequency of Section 5 being used to accommodate children and the length of time children are being accommodated in this manner. The data should be scrutinised at a senior level on an on-going basis and appropriate interventions made.

The Department should consider also investigating how many young people accommodated under Section 5 return to the family home and how many proceed to a full statutory care order. Consideration could then be given to utilising family mediation supports in certain circumstances.

Voluntary Care

While our staff agree that voluntary care orders are a necessity and can be a useful intervention, there is concern about the lack of independent oversight when compared to statutory care orders. The fact that parents are still engaged can create a lack of certainty when it comes to staff and social work decision making. Sometimes parents and social work professionals can come to different conclusions about the best interests of the child and there is a lack of clarity in these circumstances.

The lack of Guardian Ad Litem provision for these children is also inappropriate. There is a significant lack of clarity for children under voluntary care orders, and these orders can sometimes run for the duration of the child's time in care. Again, this may be the most beneficial arrangement, but there are concerns that the voice of the child is not being heard in such circumstances.

The Department of Children and Youth Affairs should consider the introduction of independent officers who could provide some oversight in voluntary care arrangements.

Aftercare

Focus Ireland has long campaigned for improved aftercare services. We welcomed the introduction of the Child Care (Amendment) Act 2015, which provided for a statutory right to an aftercare plan. However, we remain concerned that the permissive nature of much of the legislation does not adequately protect young people that we know are at risk. Additional resources are required to ensure that aftercare plans are actioned. Resource designation must extend to staffing, with the additional requirement to provide aftercare assessments potentially impacting aftercare workers' ability to manage their caseloads.

With regards assessment and planning, Focus Ireland believes that more prescriptive provisions are required. Section 45(a) of the principal act (as amended) should be amended to specify when an assessment should be carried out. This should occur no later than when a child reaches 16 and a half years of age. Section 45(b) should be amended to specify that aftercare plans should be prepared before a child in care reaches the age of 17. This allows sufficient time for the young person and the aftercare worker to prepare.

Section 45(4)(b) of the principal act concerns educational support and states that Tusla will continue to provide assistance to young people after 21 years of age if they are completing a course of education. This support continues until they have completed the course or until the end of the academic year in which they turn 23, whichever is earlier. This can mean that a young person has their financial support withdrawn before they can complete their course. This can derail a young person's education plans and have long-term consequences. Focus Ireland believes that such support should be continued until a course is completed. This would be in

line with growing international practice that aftercare supports can be essential for a longer period.

More broadly, we are concerned that such provisions discriminate against young people who choose to enter the labour market rather than engage in further education in the manner envisaged. At present the policy appears to divide young care leavers into those who will undertake further education and those who will remain on social welfare. Insufficient attention is given to supporting care leavers to engage in the labour market. We would advocate for similar supports for young people engaging in training in order to improve their employment prospects e.g. apprenticeships, training programmes and work experience.

Section 45(d) provides for a review and update of the aftercare plan. This provision states that Tusla must review the aftercare plan within 3 months of receipt of a request for review. Focus Ireland is concerned that 3 months is too long a response period for young people at risk. A tighter timeframe should be legislated and provided for.

Conclusion

This submission has been informed by the knowledge and experience of services staff working with families and children at risk and in the care of the State. We would also recommend that the Department of Children and Youth Affairs makes a specific effort to meet and engage the children and young people impacted by the provisions of child care law. While staff and service providers have certain expertise, children and young people with lived-experience will provide a vital perspective and must be consulted.