

# **Review of the Child Care Act 1991**

# **Focus Ireland Submission to the Department of Children, Equality, Disability, Integration & Youth**

### September 2020

This document provides a summary of Focus Ireland’s submission to the review of the Child Care Act 1991.

## General Comments

The Child Care Act 1991 was first enacted when child and family homelessness was not as prevalent as it currently is in 2020. Focus Ireland’s research and experience working to end homelessness over thirty years means that we know just how deep and long-lasting the adverse effect of homelessness can be for people, particularly children.

From the perspective of protecting and caring for children, we must recognise that there is a sizable population of children who have experienced homelessness in their young lives and who will be carrying this experience with them as they grow and develop into adults. While efforts are underway to increase the stock of social housing through acquisitions, leasing, and building, we have yet to adequately respond to the social implications for the thousands of children and young people who have grown up in emergency accommodation, spent time sleeping in cars, lived in overcrowded accommodation, sofa surfed between the homes of relatives and friends, or moved between insecure and temporary tenancies in the private residential sector.

Focus Ireland believes that our legislative response must recognise the current reality and anticipate the future needs of this cohort of young people in order to minimise the negative social effects of their experiences of homelessness. An experience of homelessness in childhood increases the chances that a person will experience homelessness again in adulthood, which is a foreseeable risk we urgently need to mitigate. In the context of a massive rise in family and child homelessness over the past five years (almost 400%), we believe that this legislative review offers an opportunity to give greater recognition to the needs of homeless children and families.

In particular, as we have made clear throughout this submission, there must be clear, standard procedures for addressing cases in which issues of housing/homelessness and child welfare intersect. For example, where a parent’s housing situation is a barrier to reunification, as raised later in this submission.

A home is a basic requirement for a child’s safety and protection. This means that family homelessness is a child welfare issue. While a great deal is being done on the ground in individual cases to work with families experiencing homelessness, we believe that this should be better reflected in relevant legislation.

In particular, interagency cooperation between State organisations working in the area of housing and child protection must be prioritised. High-level attention and recognition of this need should be expressly reflected in the Act.

The Act needs to include an acknowledgement of what is harming children now in the present and make provision for their needs in future. In order to do this, we propose including a “duty to assist” on all agencies working with families at risk of or experiencing homelessness to ensure that families in such a situation receive the support they need. A clear statement under the Act that family support services includes services in respect of homelessness would be welcome as part of this.

Furthermore, we believe that section 45 of the Act in respect of aftercare could be reformed to involve a firm commitment that assistance “shall” be provided, rather than the more passive “may”. We would advise against limiting assistance by age (21) or engagement in a course of education and ensure that aftercare services may continue, if needed, as determined by a person’s need rather than their characteristics. In respect of section 45(2)(e), we believe that a mandatory duty to assist a young person leaving care to find accommodation is needed.

## Guiding principles

The Guiding Principles should include a principle of ‘accountability’. This should be a core principle with respect to children’s welfare, as there are often cases where no one is identified as principally responsible for a child in difficult circumstances. This can lead to inaction and can be slow to remedy where there is no clear statutory obligation to act. In the experience of Focus Ireland, complex cases can fall between agencies and there is no clear point of accountability where this occurs.

We recommend a change in the wording of the following: “In all decisions under the Act the best interests of the child will be *considered* and their views will be ascertained and given due weight” and replace ‘considered’ with ‘paramount’. It should also be noted that the best interests of a child should not be decided without that child’s input – the child’s voice should be taken into account to determine their best interest.

## Interagency coordination and collaboration

Strengthening interagency coordination is dependent on addressing current gaps in accountability where a case falls between the remits of different agencies. For example, in cases where the child’s vulnerability is a result of the family’s housing insecurity or homelessness, the solution depends on support from both Tusla and local authorities to ensure the child’s ongoing security and wellbeing.

Experience with CYPSCs varies widely across the country. While this model can be beneficial in allowing for localised circumstances, it can also lead to varying responses and outcomes determined by geography rather than need. While we are supportive of the proposal to utilise CYPSCs for coordination of interagency collaboration, we are also cognisant of the need for channels by which systemic issues can be accelerated to a national level in order to ensure that issues arising do not become engrained at a local level and can be addressed nationally. This will ensure consistent practice around the country while also ensuring the avoidance of friction occurring where policy is set at a national level, but implemented locally.

Ireland believes that the CATCH model (Community Action Targeting Children Who Are Homeless (CATCH) (See Donlon et al., 2014)) might provide guidance on an appropriate framework for guiding interagency coordination. CATCH could provide a model for enhancing co-ordination of services for families who are homeless to ensure better outcomes for families experiencing homelessness. As family homelessness is a relatively new experience in Ireland, Focus Ireland believes that more needs to be done to recognise the adverse effects on children and, crucially, to take urgent steps to mitigate that harm. While this may not require or demand specific legislative response, we believe that the restructuring proposed in this review provides an opportunity for CYPSCs to play a role in ensuring coordination of local services on the ground and clarity in respect of their interaction with national policy and organisations operating on a national level.

## Early intervention and family support

While we appreciate that Ministerial guidelines would provide a more expansive format for description of what early intervention would entail, we believe that firmer wording should be included in a new legislative provision. “Promoting the wellbeing of children” is indicative of intention but does not commit to firm action. We would recommend stronger language be included to ensure that there is a firm commitment in primary legislation to implementation of early intervention measures, as detailed in statutory guidance and national policy. A legislative commitment, underpinning this secondary guidance, is important and the wording of such must be robust.

Furthermore, this proposed change is highly dependent on the effectiveness of local CYPSCs and a very clear statement of their responsibilities regarding early intervention must be provided. Alongside these additional responsibilities in the Act, there would need to be clear terms of reference, implementation guidelines, accountability mechanisms and national coordination of policy from a ministerial level to ensure national consistency across CYPSCs in this area. Where there are gaps or blockages at a local level concerning early intervention, there should also be a mechanism for escalation of issues to national policy level so that such issues can be systemically resolved.

## Voluntary Care Agreements

Focus Ireland has extensive experience, through our Family Homeless Action Team and our Family Centre in particular, of the precariousness of vulnerable families experiencing homeless. We believe that more can be done to provide support for parents which stops short of a full care order.

In practice, family reunification can be rendered unfeasible by housing insecurity or homelessness. This can have a detrimental impact on children due to prolonging reunification, as well as seriously undermining the rights of the family under Article 41 of the Irish Constitution and the right to family life under Article 8 of the European Convention on Human Rights. While voluntary care orders may be necessary in practice, we believe that more must be done to support families to reunify. In particular, we believe that economic factors flowing from the current housing crisis must be robustly addressed by the State to ensure that family rights are vindicated and where the best interests of the child demands such action.

Local authorities have responsibility for providing housing to people who are experiencing homelessness as defined by section 2 of the Housing Act 1988. This means that local authorities have a role to play in supporting parents to meet housing requirements in order to facilitate family reunification. Focus Ireland believes that the impact of the housing crisis should be expressly recognised in this regard and the role of state bodies in providing housing should be acknowledged.

As discussed earlier in this submission under the Interagency Coordination section, housing needs draw across different areas of responsibility for State agencies. Where housing scarcity and instability impacts on families, (in this instance, in respect of reunification), this must be expressly recognised by agencies working to protect children and families, and vice versa. Greater cooperation across agencies is needed to ensure that children aren’t being harmed by inaction or an accountability gap.

## Accommodation for homeless children

The change of wording from ‘children out of home’ rather than ‘homeless children’ is welcomed.

We also welcome the inclusion of national guidelines in relation to section 5. However, we would ask that the role of Gardaí be reconsidered. At present, the practise of having vulnerable children’s first interaction with services involve a Garda station is problematic. While we appreciate that circumstances can often require an out-of-hours response, we would recommend against reliance on the Garda Síochana. The involvement of Gardaí can be confronting for children and young people, creating a barrier to engagement with supports and assistance. A Garda station can be a highly intimidating environment for a vulnerable young person.

The manner in which children are accommodated should prioritise their welfare and wellbeing at all stages of the process and this should be stated explicitly in respect of this provision.

Focus Ireland would welcome an expansion of section 5 to include a type of “duty to assist” children out of home to secure accommodation. In the context of the Child Care Act, the preamble of which states that it is “an Act to provide for the care and protection of children and for related matters”, we believe that ensuring accommodation and appropriate supplemental supports in respect of housing, is a crucial part of caring for and protecting children.

A duty to assist is a feature of the legal framework on homelessness in Wales and England (see further: House of Commons Briefing Paper: Comparison of homelessness duties in England, Wales, Scotland and Northern Ireland, 5 April 2018). A similar duty to assist children out of home would be beneficial in Ireland, encompassing a much more complete protection framework than is currently provided under applicable legislation.

While initial accommodation for children who are out of home would continue to be central to section 5, a more expansive duty to assist would allow for, for example, expanded mediation services to reunite children with their families where possible, bringing together both housing requirements and broader social support needs. This more accurately reflects the reality of what is needed for children who are out of home, as well as Focus Ireland’s practice in this area.

In respect of both reforms of section 5 and the proposed national guidelines to be published by Tusla, we would stress that services for children who fall under section 5 should be more in line with those provided for children under 16. In our experience, when a young person is 16 and 17 years old, they often do not get the same supports as children under 16. Young people are highly vulnerable and often at more risk as they approach 18 and should receive the same level of care in order to ensure a smooth progression into adulthood. When children falling under section 5 reach 18 years old, they should be automatically entitled to an aftercare plan and supports.

## Corporate Parenting

Where the concept of a corporate parent is both accepted and endorsed by the State in national policy, a legislative underpinning comprising a lawful requirement to act as corporate parent is a much stronger basis on which to introduce the concept more fully to Ireland.

While we note that a cultural shift is important, we disagree that this can or should take place prior to a legislative change. We believe that there is already in Ireland a collaborative and cooperative approach to children in care in Ireland and that enshrining this in legislation is the best possible way to make progress in outstanding areas where obstacles remain, such as interagency cooperation. While the Scottish example is interesting, we do not find it particularly instructive, given that Ireland has already, over the course of several decades and with the benefit of a referendum concerning children’s rights, changed our culture in respect of the care of children. The current proposal places only a passive expectation that state agencies might grow into the role of corporate parent more fully over time, through engagement with BOBF. Given that state agencies have numerous competing obligations, duties and interests, it would take too long and may never happen in practice in the absence of a concrete impetus for action, laid down in legislation.

We do not see why it would be preferable to use BOBF to embed the concept, rather than a statutory provision. National policy does not carry the same weight as legislation and we believe that a non-statutory approach will take too long in practice.

It is also unclear to us how one could measure when the culture is deemed to have sufficiently changed in order to elevate the concept of corporate parenting to a legislative basis. It is, in our view, too easy to push this out for years, rather than to take decisive action to include a statutory provision on corporate parenting in this Act.

We would strongly encourage a review of this proposal and the inclusion of a provision on corporate parenting in the Act