



**“The decision by Government to close the prison is a strong statement that where institutions cannot meet basic human rights standards, radical action will be taken. In that respect, this decision is a powerful vindication that the Inspection system is working.”**

Liam Herrick, Executive Director, Irish Penal Reform Trust

## Chapter 5:

# Right to Protection from Abuse and Neglect

Grade B



In The News

### We need to adjust our understanding of what it means today to be homeless

By Sr Stanislaus Kennedy

It is 30 years since I carried out my first research project on homelessness in Dublin. After three decades it is hard to accept the reality that the situation is now worse. When I started, people had a narrow view of homelessness: the perception was of a single older man, probably with an alcohol problem or mental health issues, living rough and visible on the streets. Certainly the men struggling with a life on the streets existed then and they exist today. But it is not the typical experience of homelessness. As well as those sleeping rough, we have all kinds of people, including horrifying numbers of children, without a safe and secure place to call home in Dublin, and it is getting worse every day.

Focus Ireland's latest figures show that 173 families lost the roof over their heads in Dublin in the first nine months of this year, double the number last year. These newly homeless families include 191 children. Broken down another way: five children are becoming homeless in Dublin every week. This is unacceptable.

Despite our efforts, the grim reality is the situation continues to deteriorate rapidly, and we all know why. There are all kinds of reasons why people become homeless, but severe economic pressure is the most obvious. I am sure we all know people who have been badly affected by the recession: they have lost their jobs, their businesses, their pensions, their incomes, their homes. Imagine having to leave your accommodation in the morning and spend the day trudging around with your children until you can get back in at nightfall. Imagine getting your children out to school in the morning and not having anywhere for them to do their homework when the school day is over. How can you bring children up properly in such an unstable situation?

Giving priority to blindly balancing the books without looking at the wider impact has not worked and will not work. We need a system that places the needs of people first and adopts a compassionate approach to those in the greatest need. In 2014 the Government must recommit itself to promises made to end homelessness by 2016.

*Irish Times*, 18 December 2013  
[www.irishtimes.ie](http://www.irishtimes.ie)

# 5 | Right to Protection from Abuse and Neglect

Overall  
Grade B

## **The Right to Protection from Abuse and Neglect**

**Every child has the right to be protected from all forms of abuse, violence, punishment and neglect, whether physical or mental. The State has the responsibility to provide support for children who experience abuse and their carers, as well as mechanisms for prevention, reporting, investigation and treatment.** | Summary of Article 19 of the UNCRC

The right to protection from abuse and neglect gets a 'B' grade in Report Card 2014, which is a rise from last year's 'B-'. This chapter again focuses on the Child and Family Agency, the Ryan Report Implementation Plan, youth homelessness and children in detention. The improvement in this year's overall grade reflects the actions initiated by the Government, in particular the Minister for Children and Youth Affairs, to fulfil Government commitments to child protection and vulnerable children.

In its 2006 *Concluding Observations*, the UN Committee on the Rights of the Child noted its concern at delays in accessing child protection services and at the detention of children aged 16 and 17 years-old in St. Patrick's Institution. It recommended comprehensive vetting for those working with children, the development of a child abuse prevention strategy, a legislative ban on corporal punishment within the family, as well as giving consideration to putting the *Children First Guidelines* on a statutory basis.<sup>540</sup>

2013 marked a significant milestone in the reform of child protection and family support as the legislation to establish the Child and Family Agency was enacted in December 2013. The Agency was formally established on 1 January 2014 fulfilling key commitments made by this Government and represents a major piece of public sector reform and is awarded a 'B+' in this year's Report Card. A key challenge for the new Agency will be to ensure that it is adequately resourced at the outset and that comprehensive protocols are put in place to ensure efficient intra-agency and interagency working as well as appropriate sharing of information as it brings together more than 4,000 members of staff.

There was no further progress on the publication of revised Heads and General Scheme of the Children First Bill 2012 and while the National Vetting Bureau (Children and Vulnerable Persons) Bill 2012, was enacted it has not yet been commenced. To improve its grade in next year's Report Card both of these key commitments of the *Ryan Report Implementation Plan* must be implemented in full. The final report of the Ryan Report Implementation Group must be published and a mechanism put in place for future monitoring of the commitments contained within it. The *Review of Youth Homelessness Strategy* was published in 2013 and highlighted progress made in tackling homelessness but the definition used is narrow in scope and does not include all children and young people who may in fact be left homeless and unable to access services as they are reliant on informal supports. The Minister's announcement on her intention to introduce a statutory right to aftercare was a welcome development.

In recognition of the Government's steady progress in relation to children in detention it has maintained its high 'B+' grade from last year. The ongoing redevelopment of the National Children's Detention Centre at Oberstown as well as the steps taken to complete the closure of St. Patrick's Institution demonstrate the commitment made to young people in the youth justice system. However, it is hoped that St. Patrick's Institution will finally close its doors in 2014 to all young people under the age of 18.

<sup>540</sup> UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, paragraph 37.

## 5.1 Child and Family Agency

# Grade B+

### Government Commitment

The *Programme for Government* commits to fundamentally reform the delivery of child protection services by removing child welfare and protection from the HSE, and creating a dedicated Child Welfare and Protection Agency, reforming the model of service delivery and improving accountability to the Dáil.

### Progress

**Historic progress**

### What's happening?

**The Child and Family Agency Bill 2013 was published in July and enacted in December 2013. The Agency was established on 1 January 2014. Approximately 4,000 staff have transferred to the Agency.**

On 1 January 2014, the Child and Family Agency Act 2013 came into force. This legislation established a new, dedicated Child and Family Agency. The Agency is comprised of approximately 4,000 staff members.<sup>541</sup> Norah Gibbons was appointed as Chair and an interim board was appointed in September 2013. The Board will provide oversight and direction for the Agency.<sup>542</sup>

The Child and Family Agency Bill 2013 was published in July 2013 and enacted by 1 January 2014. The Minister for Children and Youth Affairs Frances Fitzgerald TD and her Department consulted widely on the Bill (as was recommended in *Report Card 2013*) including with the community and voluntary sector. The Agency now includes the following bodies and services: HSE Children and Family Services,<sup>543</sup> Family Support Agency, National Education Welfare Board, Pre-school Inspection Services, services relating to the psychological welfare of children and services relating to domestic, sexual and gender-based violence.<sup>544</sup>

A number of services that the Task Force on the Child and Family Support Agency, which advised the Department of Children and Youth Affairs on the establishment of the Agency, had recommended should be transferred to the remit of the Agency were not included at this stage. These included Public Health Nurses, Child and Adolescent Mental Health Services and Speech and Language Therapy.<sup>545</sup> The Minister for Children and Youth Affairs has stated that additional services may be transferred following further consideration and review of the recommendations of the Task Force.<sup>546</sup> If it is considered appropriate to implement further recommendations, following consultation with other relevant departments including the Department of Health, then this will take place according to a 'less immediate timescale'.<sup>547</sup>

541 Department of Children and Youth Affairs, 'Board and Chief Executive of New Child and Family Agency appointed' [press release], 1 January 2014, [http://www.dcyia.gov.ie/viewdoc.asp?fn=/documents/HSE\\_CFA\\_Press\\_Release20140101.htm](http://www.dcyia.gov.ie/viewdoc.asp?fn=/documents/HSE_CFA_Press_Release20140101.htm) [accessed 12 February 2014].

542 The new members of the Board are: Mr. PJ Fitzpatrick, Mr. Gary Joyce, Mr. Noel Kelly, Ms. Sylva Langford, Ms. Ita Mangan, Mr. Rory O'Ferrall and Dr. Noelle Spring.

543 These services comprise child welfare and protection services; foster and residential care and aftercare; and adoption services, which were formerly under the remit of the Health Service Executive.

544 The HSE will retain responsibility for Sexual Assault Treatment Units, which are located in acute hospitals and other medical services.

545 Meeting of the Community and Voluntary Forum with Gordon Jeyes, National Director, Children and Family Services, HSE, 15 November 2012.

546 Ibid.

547 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs on 5 February 2014.

A joint protocol for inter-agency working between the HSE and the Child and Family Agency, has been agreed following extensive dialogue between Children and Family Services, Primary Care, Disability Services and Mental Health Services. The protocol aims to ensure a consistent national approach to service delivery where two or more services are involved in the same case. The protocol provides for local collaboration across care groups at local practitioner level with a mechanism for escalation to area level and beyond if required.<sup>548</sup>

The Agency has been allocated funding of €609 million in 2014 including €7m in capital funding. This funding line forms part of the Vote of the Department of Children and Youth Affairs. An additional €6.7 million was allocated in 2014 to the Agency to support the reform of child welfare and protection services.<sup>549</sup>

In advance of the Agency's establishment, the HSE had been undertaking a reform programme to modernise delivery of Children and Family Services<sup>550</sup> including the formation of an area structure comprising four Regional Service Directors and 17 Children and Families Area Managers, operating under the leadership of the then National Director, Gordon Jeyes (the newly appointed Chief Executive Officer of the Child and Family Agency).<sup>551</sup> A key plank of the reform process is the creation of a National Service Delivery Framework<sup>552</sup> for children's services and the development of a single, consistent mechanism for assessment, referrals and tracking, supported by a new child protection notification system.<sup>553</sup> This new mechanism, known as a Local Area Pathway,<sup>554</sup> comprises a network of community, voluntary and statutory service providers which collaborate in relation to referrals when social work intervention is not necessary but a family still requires support. In 2013, a number of areas nationwide have developed such pathways.<sup>555</sup>

## Comment

Child and Family Support Agency gets a 'B+' in Report Card 2014, a rise from last year's 'B-' grade. This grade reflects the significance of the new agency which has now come into being. This also reflects the fact the Department of Children and Youth Affairs consulted widely on the Bill and that key children's rights principles are included in the primary legislation underpinning the Agency.

The Act brings together a range of key services within the Agency's remit and is a progressive move since one of the major failings of the child protection system has been the lack of a coordinated approach by bodies working separately with the same individual children and families.<sup>556</sup> A 2013 report, commissioned by the Department of Children and Youth Affairs, analysed five specific inquiry reports relating to child protection failings to determine to what extent the recommendations had been implemented to date.<sup>557</sup> Key findings of the report indicated the need for clear policies and procedures to determine roles and responsibilities in cases where a number of professionals are involved as well as protocols on interagency cooperation.<sup>558</sup>

It is disappointing that some universal services have not been transferred to the new Agency, including the Public Health Nurses (PHNs) and the Child and Adolescent Mental Health Services (CAMHS) as recommended by the Task Force on the Child and Family Support Agency.<sup>559</sup> The Task Force felt that they should be included due to the important early intervention and prevention role they play, although it also recognised the logistical challenges this might pose. The Institute of Community Health Nursing (ICHN), the representative body for PHNs, has recognised the important child protection role PHNs

548 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs on 5 February 2014.

549 Department of Children and Youth Affairs, 'Government investing in important reforms for children and families – Fitzgerald' [press release], 15 October 2013, <http://www.dcy.gov.ie/viewdoc.asp?Docid=2999&CatID=11&mn=8&StartDate=1+January+2013> [accessed 12 February 2014].

550 Health Service Executive (2010) *Report of The Task Force for Children and Families Social Services*, Dublin: Health Service Executive, pp. 3-5.

551 HSE Children and Family Services (2012) *September Newsletter*, HSE.

552 HSE Child and Family Services (2012) *Universal Services SDF September 2012*, (handout) Dublin: Health Service Executive.

553 Ibid.

554 HSE Children and Family Services (2013) *February Newsletter*, HSE.

555 Frances Fitzgerald TD, Minister for Children and Youth Affairs, Dáil Debates, 19 September 2013, Vol. 813 No. 2.

556 This failure has been noted in several inquiry reports including the HSE (2010) *Roscommon Child Care Case report: Report of the Inquiry Team to the Health Service Executive*, Dublin: HSE, p.69 and p.73.

557 H. Buckley and C. Nolan (2013) *An examination of recommendations from inquiries into events in families and their interactions with State services, and their impact on policy and practice*, Dublin: Department of Children and Youth Affairs.

558 Ibid., p.76

559 Health Service Executive (2012) *Child and Family Support Agency – From Vision to Practice – The Compelling Story*, Dublin: Health Service Executive.

play and has recommended the provision of a dedicated child and family health nursing service.<sup>560</sup> However, this would necessitate significant reorganisation of public health nursing services since currently PHNs provide services to all age groups within a local area. In addition, the Task Force also prioritised the Child and Adolescent Mental Health Services (CAMHS) for inclusion in the Agency's remit given its 'exclusive focus on children and adolescents.'<sup>561</sup> While these services have not been included in the initial phase of the Agency, the Minister has indicated that her Department has adopted 'an incremental approach' to the organisations and services included in the preliminary stage and she stated that the other recommendations of the Task Force will be examined.<sup>562</sup>

As already indicated, funding of €609 million (including €7 million capital funding) has been allocated to the Child and Family Agency in 2014. This is welcome given that it is important that the Agency begins its work with the slate wiped clean. Nevertheless, there is concern that the service and demographic pressures facing the Agency are such as to mean that demands may outstrip the resources available. Furthermore, the Minister for Children and Youth Affairs, in conjunction with the Child and Family Agency, is examining ways to reduce legal costs incurred by the Agency. A total of €31.1 million was spent in 2012; €15.9 million was spent on HSE solicitor contracts and barristers' fees, €10.8 million was spent on the Guardian ad Litem service and €3.3 million on related costs.<sup>563</sup> The Minister has expressed her wish to see these costs reduced. This will involve a variety of measures being taken by the Agency in relation to legal costs, in order to have more effective and efficient use of legal resources. It is important that while the Agency must ensure value for money, it must also ensure that the service to children is not compromised in any way.

The establishment of the Child and Family Agency represents a major piece of public sector reform which will change how the State interacts with some of the most vulnerable children and families in need of support. The Agency's work must be firmly based on the principles of the UN Convention on the Rights of the Child, in particular its structures, governance, design and service delivery. The UN Committee on the Rights of the Child has emphasised that child protection must begin with proactive prevention. Under the Convention, the child has a right to protection from abuse and neglect (Article 19), sexual and other forms of exploitation (Articles 34-36) and to rehabilitative care (Article 39).<sup>564</sup> A children's rights approach to child protection starts with prevention and builds children's capacity to protect themselves, enhances their understanding of their right to protection, and promotes their participation. Central to this approach is the right of a child to be cared for by his or her parents,<sup>565</sup> and not to be separated from their parents unless it is in their best interests.<sup>566</sup>

The inclusion in the Child and Family Agency Act 2013 of two key children's rights principles – the best interests of the child (Article 3) and the voice of the child (Article 12)<sup>567</sup> – within the function of the Agency is a significant development. Section 9(1) now obliges the Agency to 'have regard to the best interests of the child' when carrying out its functions. However, the legislation does not explicitly state how Agency workers should interpret this principle. It is recommended that the Minister for Children and Youth Affairs provide clarity by issuing a regulation clearly setting out how Agency workers should implement this principle.

Section 9(3) of the Act places an obligation on the Agency to consult with children and young people when exercising its functions. Section 9(4) sets out that in dealing with an individual child, the Agency shall ensure that the views of the child are heard where that child is capable of forming and expressing his or her own views, giving due weight to the age and maturity of the child. This is a welcome development as it places an obligation on the Agency to consult and listen to children both in the planning and functioning of the Agency and in its work with individual children and families. The right of all children to be heard and taken seriously

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560 Institute of Community Health Nursing (2013) *Best Option for Children: Discussion Paper on Child Health*. Dublin: ICHN.

561 *Ibid.*, p 45.

562 Frances Fitzgerald TD, Minister for Children and Youth Affairs, Seanad Éireann Debate, Child and Family Bill 2013: Second Stage, (27 November 2013).

563 Fiach Kelly, 'Social workers get training to act instead of solicitors', *The Irish Times*, 28 December 2013.

564 Other relevant articles include the specific protections for children in the care system such as the child's right not to be separated from his parents and protection for children without families (Articles 9 and 20), the review of care placements (Article 25) and the best interests of the child in adoption cases (Article 21).

565 Under the UN Convention on the Rights of the Child, the term 'parent' is interpreted to mean genetic, birth and psychological parent, the latter referring to a person who is not biologically related to the child but cares for the child for significant periods of their childhood as they are 'intimately bound up in children's identity' and identity rights.

566 UN Convention on the Rights of the Child, A/RES/44/25 (20 November 1989), Art. 9.

567 Health Service Executive (2012) *Child and Family Support Agency – From Vision to Practice – The Compelling Story*, Dublin: Health Service Executive.

constitutes one of the fundamental values of the UNCRC.<sup>568</sup> Article 12 places an obligation on states to ensure that the views of children are heard in all matters affecting them and that these views are given due weight in accordance with the age and maturity of the child.

The definition of the term 'family' set out in the legislation is both welcome and progressive; it recognises family members such as grandparents, step-parents and siblings including step or half-siblings or 'any other person who, in the opinion of the Agency, has a bona fide interest in the child'. The definition of couple is not limited to a married couple but refers to co-habiting couples as well as same-sex couples and civil partners. These definitions recognise and better reflect the diverse range of families living in Irish society today. The inclusion in Section 8 of the Agency's objective to ensure the 'effective functioning of families' including delivery of 'preventative family support services' is welcome but it is not clear how exactly the Agency will achieve this aim.

Traditionally, contact with child protection services has aroused fear among families that their children will be taken into State care. The universal aspects of its services provide an opportunity to present the new Agency in a non-stigmatising manner, casting it as an organisation that supports and assists parents in their parenting role.<sup>569</sup> A public campaign should be run to promote the full breadth of the Agency's work, communicating that the Agency's role is to provide family support and services for children in care, as well as child welfare and protection. Ultimately, to win back public confidence, the Agency must address waiting lists, deliver high-quality services and improve the experience and outcomes for children and families using the services. In order to boost staff morale, the Agency will need to consult with its staff, service providers and community and voluntary organisations to ensure that its performance framework and other corporate plan has buy-in from across all sectors and is effective in serving children and families in Ireland.

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**“The establishment of the Child and Family Agency represents a major piece of public sector reform which will change how the State interacts with some of the most vulnerable children and families in need of support.”**

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568 Committee on the Rights of the Child, General Comments No.12 (2009) The Right of the Child to be Heard, CRC/C/GC/12

569 Department of Children and Youth Affairs (2012) *Report of the Task Force on the Child and Family Support Agency*, Dublin: Government Publications, p. 29.

## Immediate Actions for 2014

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### **Consult comprehensively on the performance framework and corporate plan which will underpin how the Agency operates on a day-to-day basis**

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The corporate documents of the Agency must ensure that appropriate protocols are put in place to ensure that there are clear internal lines of responsibility and that data can be shared where necessary. Protocols must also be put in place for effective interagency working.

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### **Ensure the Agency does not carry over any budgetary deficits and is adequately resourced**

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The Agency must not begin life carrying over budgetary problems from the HSE Children and Family Services. In addition, it is critical that it is appropriately staffed and has the necessary financial, capital, IT and human resources to enable it to function effectively.

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### **Introduce a regulation clarifying how the best interests of the child contained in Section 9 of the Child and Family Agency Act 2013 should be interpreted**

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It is essential that the best interests' principle is interpreted correctly. The legislation does not explicitly state how Agency workers should interpret the best interests of the child (Article 3). It is recommended that the Minister for Children and Youth Affairs provide clarity by issuing a regulation clearly setting out how Agency workers should implement these principles in their work.

## 5.2 Ryan Report Implementation Plan

# Grade B-

### Government Commitment

The *Programme for Government* commits to implementing the recommendations of the Ryan Report including putting the *Children First Guidelines* on a statutory footing and legislating for the use of “soft information”.

### Progress

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### What's happening?

The final progress report of the *Ryan Report Implementation Plan* was due to be published in 2013 but has been delayed. The *Heads and General Scheme of Children First Bill* were published for consultation in 2012, the revised version has not been published but is due in 2014. The *National Vetting Bureau Act 2012* has yet to be commenced. Further resources were made available for *Garda Vetting in Budget 2014*.

The *Ryan Report Implementation Plan*, published in July 2009 to respond to the recommendations contained in the Ryan Report, identified key weaknesses in the Irish child care and protection system and provides a roadmap for reform.<sup>570</sup> The *Fourth Progress Report* was due to be published before the end of 2013 but has not been issued. This report will provide an update on each of the *Implementation Plan's* 99 actions along with a list of key actions to be progressed in 2014. The *Third Progress Report*<sup>571</sup> published in November 2012 reported that, of the 99 actions, 59 were complete, 27 were not yet complete, and 13 were classed as ‘implementation ongoing’ (these are actions which by their very nature do not have a defined end date).<sup>572</sup> Among other things, it set out priorities for 2013 including the strengthening of family support services within the new Child and Family Agency; reform and rationalisation of the Child Protection Notification System; establishment of a multidisciplinary team for children in special care and detention and the agreement of future policy for the management and funding of the Guardian ad Litem service. The Minister for Children and Youth Affairs chairs a cross-agency steering group which is responsible for overseeing the continued implementation of the *Ryan Report Action Plan*.

570 The Report of the Commission to Inquire into Child Abuse (known as the Ryan Report) was published in May 2009, revealing horrific wrongdoings perpetrated against children living in institutions during the period 1936 to 2000.

571 €24 million was provided towards the rollout of the actions contained in the *Implementation Plan*: €15 million in 2010 and €9 million in 2011, it was allocated to the HSE (€23.27 million), HIQA (€0.63 million); and OMCYA/DCYA (€0.10 million). Department of Children and Youth Affairs (2012) *Ryan Report Implementation Plan Third Progress Report*, Dublin: Government Publications, p. 4.

572 Of the 99 actions in the *Plan*, 37 have a timeframe of ‘ongoing’ as they are not once-off actions. Department of Children and Youth Affairs (2012) *Ryan Report Implementation Plan Third Progress Report*, Dublin: Government Publications, p. 10.

In 2013, a number of significant reports relevant to the Ryan recommendations were published including the sixth annual report of the Special Rapporteur on Child Protection;<sup>573</sup> a report by the Rape Crisis Network of Ireland (RCNI) *Hearing Child Survivors of Sexual Violence: Towards a National Response*;<sup>574</sup> an audit of cases carried out on behalf of the Health Service Executive, *A Review of Practice and Audit of the Management of Cases of Neglect*;<sup>575</sup> a research report commissioned by the Department of Children and Youth Affairs to examine the extent to which recommendations from past child abuse inquiries into interfamilial abuse have been implemented<sup>576</sup> and the fourth tranche of reviews of safeguarding practice in Catholic Dioceses and Religious Congregations.<sup>577</sup> Work is under way in the Department of Children and Youth Affairs to prepare a monitoring framework for all significant child care reports: this framework will replace the work of the Ryan Report Implementation Group.<sup>578</sup>

*Social Workers:* The Ryan Report Implementation Plan contained a commitment to recruit 270 social workers, with the objective of ensuring every child in care would have an allocated social worker by December 2010. The HSE completed recruitment of the full additional 270 social workers in 2013.<sup>579</sup> In addition to the recruitment of additional staff, the HSE has been filling the vacancies that have arisen due to individuals leaving the service or taking up posts elsewhere in the service.<sup>580</sup> At the end of October 2013, there were 6,486 children in care of which 5,886 or 90.7% had an allocated social worker and 89.6% had an up-to-date Care Plan.<sup>581</sup>

*Survivors of Sexual Abuse:* In October 2013, the Minister announced the recruitment of four new regional coordinators of services for children demonstrating sexually harmful behaviour.<sup>582</sup> This came on foot of the findings of a report by the Rape Crisis Network of Ireland (RCNI) on sexual violence<sup>583</sup> which indicated that 37% of the perpetrators of sexual abuse against the child survivors with whom RCNI worked were themselves under the age of 18. The report also found that of the 192 children and young people they worked with in 2012, 67% were 16 or 17 years old, 26% were 14 or 15 years old, 4% were 11-13 years old and 4% were under 10 years old in 2012.

*Children First:* The Heads and General Scheme of the Children First Bill were first published by the Minister for Children and Youth Affairs, Frances Fitzgerald TD, in April 2012. The Heads of the Bill outlined proposals to place specific aspects of the revised 2011 national child protection guidelines, *Children First Guidance*<sup>584</sup> on a statutory footing. It provided for a legal duty on certain staff and professionals to report suspected child abuse, to share relevant information and co-operate with other relevant services in the best interests of the child. A range of sanctions for non-compliance were also included. Following an examination and public hearing, the Joint Committee on Health and Children presented a lengthy report to the Minister of Children and Youth Affairs in July 2012.<sup>585</sup> The Cabinet approved revised Heads

573 G Shannon, *Sixth Report of the Special Rapporteur on Child Protection*, January 2013 [http://www.childrensrights.ie/sites/default/files/submissions\\_reports/files/GShannon-SixthRapporteurReport0713.pdf](http://www.childrensrights.ie/sites/default/files/submissions_reports/files/GShannon-SixthRapporteurReport0713.pdf) [accessed 10 February 2014].

574 Rape Crisis Network Ireland (2013) *Hearing Child Survivors of Sexual Violence: Towards a National Response*, Galway: RCNI.

575 L. Peyton (2012) *A Review of Practice and Audit of the Management of Cases of Neglect: Report on the Findings of the Pilot Phase of the National Audit of Neglect*, Dublin: Health Service Executive.

576 In 2012, the Department of Children and Youth Affairs awarded a grant to the School of Social Work and Social Policy in Trinity College Dublin to examine five interfamilial child abuse inquiries (Kilkenny, Kelly Fitzgerald, West of Ireland Farmer, Monageer and Roscommon). The Children's Rights Alliance recommended that such a mechanism be considered in its submission to the Ryan Report Implementation Plan process. Children's Rights Alliance (2009) *Learning from the Past: Responding to the Recommendations of the Commission to Inquire into Child Abuse Report*, Dublin: Children's Rights Alliance.

577 The National Board for Safeguarding Children in the Catholic Church, *Safeguarding Review Reports – 4th Tranche*, December 2013 <http://www.safeguarding.ie/safeguarding-review-reports-4th-tranche/> [accessed 12 February 2013].

578 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs on 31 January 2014.

579 Minister for Children and Youth Affairs, Frances Fitzgerald TD, *Dáil Debate*, 12 November 2013, <http://www.kildarestreet.com/debates/?id=2013-11-12a.81&s=social+worker+recruitment#g84> [accessed 12 February 2014].

580 Department of Children and Youth Affairs (2012) *Ryan Report Implementation Plan Third Progress Report*, Dublin: Government Publications, p. 37.

581 Health Service Executive, October 2013 National Performance Assurance Report, pp. 34-35, <http://www.hse.ie/eng/services/Publications/corporate/performance-reports/oct13pareport.pdf> [accessed 12 February 2014].

582 Department of Children and Youth Affairs 'Minister Fitzgerald commits to 'coordinated national approach' for sexual abuse services for children and young people' [press release], 9 October 2013, <http://www.dcy.gov.ie/viewdoc.aspx?Docid=2989&CatID=11&mn=6&StartDate=01+January+2013> [accessed 12 February 2014].

583 Rape Crisis Network Ireland (2013) *Hearing child survivors of sexual violence: Towards a National Response*, Galway: RCNI.

584 Department of Children and Youth Affairs (2011) *Children First: National Guidance for the Protection and Welfare of Children*, Dublin: Department of Children and Youth Affairs. The Guidance was also accompanied by a practitioner handbook: Health Service Executive (2011) *Child Protection and Welfare Practice Handbook*, Dublin: Health Service Executive.

585 Joint Committee on Health and Children (2012) *Report on Children First (Heads of) Bill*, Dublin: Houses of the Oireachtas.

of Bill in July 2013<sup>586</sup> and a Bill is expected to be introduced into the Oireachtas in 2014.<sup>587</sup> The legislation will include provision for mandatory reporting of child welfare and protection concerns by certain individuals. It is also intended to improve child protection arrangements in organisations providing services to children as well as raising awareness of child abuse and neglect in general.<sup>588</sup>

The Children First Implementation Inter-Departmental Group (CFIDG)<sup>589</sup> is providing support to Departments and their sectors in bringing forward tailored implementation plans based on an assessment of current arrangements and activities and future developments and requirements. The Departments represented on the group have completed Children First Sectoral Implementation Plans, which were published in July 2013 on their websites. The next phase of the Group's work will focus on quality assurance mechanisms in relation to implementation and compliance, and the necessary preparations required for the forthcoming legislation putting *Children First* on a statutory basis.<sup>590</sup>

*Vetting/Soft Information:* The National Vetting Bureau (Children and Vulnerable Persons) Bill 2012 was enacted in December 2012.<sup>591</sup> The Act places the vetting of people working with children and vulnerable adults on a statutory basis and allows for the exchange of 'relevant' or 'soft' information between the National Vetting Bureau and a registered organisation. However, the Minister for Justice and Equality, Alan Shatter TD, indicated that this piece of legislation would be commenced in early 2014 following a review of certain provisions, including minimising the need for duplicate vetting when a person works/volunteers for a number of organisations.<sup>592</sup>

Additional funding of €2 million was announced in Budget 2014. The number of applications for Garda Vetting to the Garda Central Vetting Unit has almost doubled since 2007 from approximately 187,000 to 350,000, resulting in delays in the turnaround of vetting applications.

*Monitoring and Inspection:* In July 2012, the Health Information and Quality Authority (HIQA) published the National Standards for the Protection and Welfare of Children, for Health Service Executive Children and Family Services<sup>593</sup> to monitor how the HSE child protection service is implementing the Children First Guidance. The first of these inspections was published in May 2013<sup>594</sup> and a program of inspections will continue to be rolled out over three years.<sup>595</sup> In July 2013, an overview report was published of 33 inspections of foster and children's residential services carried out in 2012 by HIQA. Examples of good practice were found but the report also called for a 'proactive national strategy' to be put in place by the new Child and Family Agency to deal with vulnerable children placed in care.<sup>596</sup>

In 2013, HIQA published 47 reports on children's residential centres and in October 2013, it published an inspection report on Rath na nÓg (a High Support Unit) which came under particular media scrutiny as it raised a number of serious concerns. The report indicated that children were subjected to systematic bullying at the centre, child protection concerns were not properly reported to the HSE, there were fire safety concerns and issues around the locking of the young people in the centre at night. As a result of the serious concerns raised, the Minister for Children and Youth Affairs announced that the HSE had decided to

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586 Department of Children and Youth Affairs, 'Government approve revised Heads of Children First Bill – Fitzgerald' [press release], 23 July 2013, <http://dcya.gov.ie/viewdoc.asp?Docid=2772&CatID=11&mn=8&StartDate=01+January+2013> [accessed 12 February 2014].

587 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs on 31 January 2014.

588 Ibid.

589 A Children First Inter-departmental Group (CFIDG) has been established to promote the importance of Children First compliance across Government and to ensure consistency of approach.

590 Information received by the Children's Rights Alliance from the Department of Children and Youth Affairs, 31 January 2014.

591 A year earlier in July 2011, the Minister published the Scheme of the Bill and the Joint Committee on Justice, Defence and Equality debated it, including issuing a call for submissions and holding public hearings.

592 Alan Shatter TD, Minister for Justice, Equality and Defence, Parliamentary Questions: Written Answers [51754/13], Dáil Debate, 3 December 2013.

593 Health Information and Quality Authority (2012), *National Standards for the Welfare and Protection of Children, for Health Service Executive Children and Family Services*, Dublin: Health Information and Quality Authority.

594 Health Information and Quality Authority (2013) *Inspection of the HSE Child Protection and Welfare Service in Carlow/Kilkenny Local Health Area in the HSE South Region*, Dublin: Health Information and Quality Authority.

595 Department of Children and Youth Affairs (2012) *Ryan Report Implementation Plan Third Progress Report*, Dublin: Government Publications, p. 29.

596 Health Information and Quality Authority, 'HIQA publishes analysis of children's inspections' [press release], 25 July 2013, <http://www.hiqa.ie/press-release/2013-07-25-hiqa-publishes-analysis-children%E2%80%99s-inspections> [accessed 12 February 2014].

close the unit.<sup>597</sup> The Minister also announced that the closure of the unit formed part of a 'broader National Review of Residential Care including the reconfiguration of High Support and Special Care Units'.<sup>598</sup> Crannóg Nua, another High Support Unit will close in May 2014 to undergo refurbishment to change the unit into a Special Care facility. It is expected to increase the number of Special Care places from 17 places to 25 places when the unit reopens in January 2015.<sup>599</sup>

## Comment

The *Ryan Report Implementation Plan* gets a 'B-' grade in *Report Card 2014*, the same grade as last year. This grade reflects the fact that the final *Ryan Report Implementation Plan* progress report has not yet been published and it is unclear what monitoring mechanism will be put in place to ensure that work continues to implement the ongoing recommendations contained in the *Ryan Report Implementation Plan*. While a number of positive steps have been achieved, including the commitment to put in place a national coordinated approach for sexual abuse services for children and young people and the publication of a number of HIQA reports, more action is still needed to progress all 99 actions of the Implementation Plan including placing *Children First* on a statutory footing.

The UN Convention on the Rights of the Child provides that a child has a right to protection from abuse and neglect (Article 19), including sexual and other forms of exploitation (Articles 34–36).<sup>600</sup> To ensure that children are adequately protected, the UN Committee on the Rights of the Child recommends that States coordinate and implement child protection policies, strategies and services.<sup>601</sup> In their *Concluding Observations* on Ireland in 2006, the UN Committee urged the Government to consider placing *Children First* on statutory basis, and called for proper vetting of prospective employees and volunteers for all those working with children.<sup>602</sup>

The momentum that has built up in relation to child protection reforms must be capitalised upon to bring the remaining *Implementation Plan* commitments to fruition. The Monitoring Group for the Implementation Plan was due to conclude its work in 2013 but a final report has not been submitted. The monitoring framework which will replace the Monitoring Group must continue to implement any ongoing or outstanding commitments and learning from the *Implementation Plan*. It is important that this framework will incorporate into the work of the Department of Children and Youth Affairs and the Child and Family Agency, relevant recommendations from other reports, including the reports of the Special Rapporteur on Child Protection, the National Review Panel for Serious Incidents and Child Deaths, the Health Information and Quality Authority and the Ombudsman for Children. The framework should allow for input from organisations working on children's rights and child protection issues to ensure that progress continues to be made. It should also help to inform the implementation strategies for the National Framework on Children and Young People.

*Social Workers:* While the recruitment of extra social workers is welcome, there are concerns related to the high rate of social workers on maternity leave who have not been replaced and retention of social workers in general. The Minister has acknowledged these concerns and in September 2013 called for a panel to be put in place to fill those positions on a temporary basis.<sup>603</sup> However, the fact that not all children have an allocated social worker or written care plan falls short of the *Ryan Implementation Plan* recommendations. Budget 2014 allocated €6.7m (€12m in a full year) to support the reform of child welfare and protection services. This is expected to include provision for the recruitment of social workers, with details expected to be provided in the Child and Family Agency's Business Plan which is to be submitted to the Minister within 30 days of the Agency's establishment.

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597 Department of Children and Youth Affairs, 'Minister Fitzgerald confirms closure of HSE High Support Unit following HIQA inspection' [press release], 8 October 2013, <http://www.dcy.gov.ie/viewdoc.asp?Docid=2988&CatID=11&mn=#StartDate=01+January+2013> [accessed 12 February 2014].

598 Ibid.

599 Frances Fitzgerald TD, Minister for Children and Youth Affairs, Parliamentary Questions: Written Answers [47701/13], Dáil Debate, 12 November 2013.

600 Other relevant articles include the right to rehabilitative care (Article 39), the specific protections for children in the care system such as the child's right not to be separated from his parents and protection for children without families (Articles 9 and 20), the review of care placements (Article 25) and the best interests of the child in adoption cases (Article 21).

601 UN Committee on the Rights of the Child (2009) *General Comment No. 13: The right of the child to freedom from all forms of violence*, CRC/C/GC/13, Section 42.

602 UN Committee on the Rights of the Child (2006) *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, paragraph 37.

603 Frances Fitzgerald TD, Minister for Children and Youth Affairs, Priority Questions [38725/13], Dáil Debates, 19 September 2013.

*Children First: The Implementation Plan* commits to put aspects of *Children First* on a statutory footing and ensure the Guidance is uniformly and consistently implemented across the country.<sup>604</sup> The Department of Children and Youth Affairs is responsible for producing the legislation while the Child and Family Agency and Gardai will be responsible for its implementation. The need for such reform is well documented.<sup>605</sup> While the Bill itself is welcome, it is unfortunate that the legislation is not yet in place given that it has been under consideration since 2012. It is critical that *Children First* is put on a statutory footing as soon as possible so as to ensure consistency of practice throughout the country, and reduce the risk of child protection cases not being referred to the authorities. The revised Bill should ensure that criminal liability is attached to those who fail to report child protection concerns so as to create a robust regime where no offender can hide. It is essential that education and training are provided to support those working in the area. Further, in the initial stages following the introduction of the legislation, extra social workers will be needed to respond to the increase in referrals that will arise from the attaching of criminal liability to non-reporting.

*Vetting*: The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 is welcome but it is disappointing that it has not yet come into force. It is of concern that child minders remain excluded from vetting. It is estimated that 50,000 children are cared for by 19,000 child minders in Ireland.<sup>606</sup> This represents a huge gap in the child protection system which needs to be addressed. The Act is due to be reviewed before its commencement. It is not clear that all of the remaining gaps in the legislation will be addressed. The additional funding announced in Budget 2014 coupled with a streamlined approach to vetting will also help to address delays in this process.

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**“It is critical that *Children First* is put on a statutory footing as soon as possible so as to ensure consistency of practice throughout the country, and reduce the risk of child protection cases not being referred to the authorities.”**

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604 Office of the Minister for Children and Youth Affairs (2009) *Report of the Commission to Inquire into Child Abuse, 2009: Implementation Plan*, Dublin: Department of Health and Children, actions 85, 86, 89.

605 Office of the Minister for Children and Youth Affairs (2008) *National Review of Compliance with Children First: National Guidelines for the Protection and Welfare of Children*, Dublin: Department of Health and Children; Office of the Ombudsman for Children (2010) *A Report Based on an Investigation into the Implementation of Children First: National Guidelines for the Protection and Welfare of Children*, Dublin: Ombudsman for Children's Office; Special Rapporteur on Child Protection, Geoffrey Shannon (2009) *Third Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas*, [http://www.dcy.gov.ie/documents/publications/Child\\_Protection\\_Rapporteur\\_Report.pdf](http://www.dcy.gov.ie/documents/publications/Child_Protection_Rapporteur_Report.pdf) [accessed 12 February 2014]; H. Buckley, S. Whelan, N. Carr and C. Murphy (2008), *Service users' perceptions of the Irish Child Protection System*, Dublin: Office of the Minister for Children and Youth Affairs.

606 Start Strong, Policy Brief, Childminding - Regulation and Recognition, October 2012, [http://www.startstrong.ie/files/Childminding\\_-\\_Regulation\\_and\\_Recognition.pdf](http://www.startstrong.ie/files/Childminding_-_Regulation_and_Recognition.pdf) [accessed 10 February 2014].

## Immediate Actions for 2014

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### **Publish the final progress report of the *Ryan Report Implementation Plan* and clarify how the work of the Monitoring Group will be mainstreamed into the work of the Department of Children and Youth Affairs**

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The final progress report must be published in early 2014. Steps must be taken to ensure that any outstanding commitments are addressed and the learning from the Monitoring Group will be mainstreamed into the work of the Department of Children and Youth Affairs and the new Child and Family Agency.

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### **Publish the Children First Bill and enact it as a matter of priority**

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Publish the Children First Bill taking into account the concerns raised during the consultation phase on the Scheme and Heads of Children First Bill 2012. This Bill should be enacted as a matter of priority.

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### **Finalise the review of the National Vetting Bureau Act 2012 and commence it**

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Commence the revised legislation and provide support and training of relevant organisations and professionals to enable them to comply with their new statutory duties under the National Vetting Bureau Act 2012.

## 5.3 Youth Homelessness

# Grade C+

### Government Commitment

The *Programme for Government* commits to ending long-term homelessness and the need to sleep rough. To address the issue of existing homelessness it commits to reviewing and updating the existing Homeless Strategy, including a specific focus on youth homelessness, and taking into account the current demands on existing housing and health services with a view to assessing how to best provide additional services.

### Progress

Partially completed

### What's happening?

The review of the *Youth Homelessness Strategy* was published. The Government approved plans for legislation to provide for a statutory right to an aftercare plan.

The Department of Children and Youth Affairs engaged the Centre for Effective Services (CES) in 2011 to facilitate a high level review of the 2001 *Youth Homelessness Strategy*.<sup>607</sup> The objective of the review was to establish the extent to which the Strategy has been successful, identify blockages and challenges to its implementation and make recommendations<sup>608</sup> Consultations were held in early 2012 with relevant service providers, NGOs and young people, and the report was published in July 2013.<sup>609</sup> The review found that the number of children considered homeless - or at risk of homelessness - has decreased since the introduction of the *Youth Homelessness Strategy*. It also found that instances of children sleeping rough have become very rare.<sup>610</sup> Access to emergency accommodation was found to have improved and there is a greater range of accommodation available to children who present as homeless including residential beds in units in urban areas and in more rural areas, an emergency place to stay scheme operates.<sup>611</sup> However, it recommended that the use of Garda Stations as a means to accessing emergency accommodation for the first time should be avoided<sup>612</sup> and emergency accommodation in Dublin should remain open to children during the day.<sup>613</sup>

607 Department for Health and Children (2001) *Youth Homelessness Strategy*, Dublin: Department of Health and Children.

608 Centre for Effective Services, Project Outline, Youth Homelessness Strategy Review, <http://www.effectiveservices.org/images/uploads/file/projects/P203/Project%20Outline%20Youth%20Homelessness%20Strategy%20Review.pdf> [accessed 12 December 2012].

609 Department of Children and Youth Affairs (2013) *Every Child a Home: A Review of the Implementation of the Youth Homeless Strategy*, Dublin: Department of Children and Youth Affairs.

610 Ibid., p.44.

611 Under the emergency place to stay scheme a number of emergency foster placements are available for children that need to be taken into emergency care or children who present as homeless.

612 Ibid., p.38.

613 Ibid., p.5.

The report recommended that another strategy was not needed and instead called for the issue of homeless children to be addressed as part of a wider, integrated response to children in need.<sup>614</sup> The Department of Children and Youth Affairs has indicated that they are engaging with the HSE (now the Child and Family Agency), the National Educational Welfare Board and the Departments of the Environment, Community and Local Government, Education and Skills, Social Protection and Health to ascertain their views on how the recommendations of the Youth Homeless Strategy Review can be implemented.<sup>615</sup>

In February 2013, a new *National Homeless Policy Statement* was issued by the Department of Environment, Community and Local Government.<sup>616</sup> The policy reaffirms the Government's commitment to end long term homelessness by adopting a housing led approach to homelessness. Although the policy centres on adult homelessness, it recommends that the approach to tackling all forms of homelessness, be they child, youth or adult homelessness, should be fully integrated.<sup>617</sup>

The Health Service Executive's *National Service Plan 2012* committed that in 2012 a baseline would be established for the two performance indicators on youth homelessness.<sup>618</sup> To date the baseline has yet to be set<sup>619</sup> and the HSE's *National Service Plans* for both 2013 and 2014 fail to make any mention of this baseline.<sup>620</sup>

*Aftercare:* Currently, there is no statutory obligation to provide aftercare or an aftercare plan to children leaving care when they turn 18. Aftercare comprises a range of services designed to support the young person 'while they make the transition from living in foster or residential care, to adulthood'<sup>621</sup> and may include financial support or assistance in finding accommodation or employment for example. However, some children do not qualify for aftercare including those who are accommodated under Section 5 of the Child Care Act 1991 (as amended)<sup>622</sup> as they are not formally in the care of the State. The review of the *Youth Homeless Strategy* highlighted that there were inconsistencies in the provision of aftercare and issues with eligibility criteria.<sup>623</sup>

In a welcome development in November 2013, Minister for Children and Youth Affairs, Frances Fitzgerald TD announced plans to amend the Child Care Act 1991 to provide for a statutory right to the preparation of an aftercare plan.<sup>624</sup> The purpose of the proposed amendment is to provide clarity around eligibility for aftercare and the arrangements for preparing, reviewing and updating an aftercare plan and for monitoring young care leavers. The detail of this legislative amendment is expected in 2014.<sup>625</sup> Discussions have been held between the Department of Children and Youth Affairs, the HSE, the Child and Family Agency and service providers on the proposed legislative change and on improving service delivery.<sup>626</sup> Meetings have also taken place between the Department and its counterparts in Northern Ireland to discuss the impact of legislating for aftercare and issues they have subsequently encountered in service provision.<sup>627</sup> At the end of December 2013, there were 1,457 young people in receipt of an aftercare service.<sup>628</sup> In addition, a protocol is being

614 Ibid., p.3.

615 Minister for Children and Youth Affairs Frances Fitzgerald TD, Parliamentary Questions, Written Answers, 12 November [47845/13].

616 Department of Environment, Community and Local Government, *National Homelessness Policy Statement*, Dublin: 2013, <http://www.environ.ie/en/PublicationsDocuments/FileDownload,32434,en.pdf> [accessed 18 December 2013]

617 Ibid., p.2.

618 Health Service Executive (2012) *National Service Plan 2012*, Dublin: Health Service Executive, p. 63. These performance indicators as set out in the *National Service Plan 2012* are: 1. The number of children placed in youth homeless centres or units for more than four consecutive nights (or more than 10 separate nights over a year) and 2. The number and percentage of children in care placed in a specific homeless centre/unit.

619 It has not appeared in the monthly HSE Performance or Supplementary Reports. See Health Service Executive (2012) October 2012, *Supplementary Report, National Service Plan*, Dublin: Health Service Executive; and Health Service Executive (2012) October 2012, *Performance Report, National Service Plan 2012*, Dublin: Health Service Executive.

620 Health Service Executive (2013) *National Service Plan 2014*, Dublin: Health Service Executive.

621 EPIC, *Aftercare Advocacy & Support Programme*, May 2010, <http://www.epiconline.ie/aftercare-advocacy--support-programme.html> [accessed 12 February 2014].

622 This provision places a duty on the HSE to accommodate a child who is homeless or at risk of homelessness.

623 Department of Children and Youth Affairs (2013) *Every Child a Home: A Review of the Implementation of the Youth Homeless Strategy*, Dublin: Department of Children and Youth Affairs.

624 Department of Children and Youth Affairs, 'Cabinet approves policy proposal to strengthen legislative provisions for aftercare' [press release], 6 November 2013.

625 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs on 12 December 2013.

626 Minister for Children and Youth Affairs Frances Fitzgerald TD, Parliamentary Questions, Written Answers, 26 September [40138/13].

627 Ibid.

628 Minister for Children and Youth Affairs Frances Fitzgerald TD, Parliamentary Questions, Written Answers, 18 July [36657/13].

finalised between the Child and Family Agency and the housing authorities to provide a framework for good practice in identifying aftercare accommodation for care-leavers. It will also commit local authorities to consider the needs of young care leavers when carrying out their statutory assessments of housing need.<sup>629</sup>

## Comment

Youth homelessness gets a 'C+' grade in *Report Card 2014*, an improvement on last year's 'C' grade. This grade reflects the completion of the review of the *Youth Homeless Strategy* and the commitment by the Government to introduce a statutory right to an aftercare plan. However, the narrow definition of homelessness contained in the *Youth Homeless Strategy* does not take into account all young people who may find themselves without a home. The definition used in the Strategy captures only those who are in temporary accommodation, sleeping rough or sleeping in shelters. It does not include young people who are part of a homeless family or young people who are temporarily staying with friends but who have no home.<sup>630</sup> Children and young people who are homeless as part of a family group require a different policy response which falls within the remit of the Department of the Environment, Community and Local Government.

Any action on youth homelessness must be rooted in the UN Convention on the Rights of the Child. A child who is homeless is an extremely vulnerable and the State is obliged under the UNCRC to provide special protection to children deprived of their family environment, so that appropriate alternative family or institutional care is available to them (Article 20). Under Article 27(3) (right to adequate standard of living) States have an obligation to assist parents and guardians and 'in cases of need provide material assistance and support programmes particularly with regard to nutrition, clothing and housing.' The UN Committee on Economic, Social and Cultural Rights has stated that: '[t]he right to housing should not be interpreted in a narrow or restrictive sense which equates it with [...] merely having a roof over one's head [...]. Rather it should be seen as the right to live somewhere in security, peace and dignity.'<sup>631</sup>

*Children with their Families at Risk of Homelessness*: The number of homeless families in Dublin has doubled in the last six months of 2013 with 16 families losing their home each month. This means on average five children a week are being made homeless.<sup>632</sup> Homeless families may be accommodated in domestic violence refuges or provided with private emergency accommodation. This may mean living in a Bed and Breakfast, with whole families living in one small room, together with all of their belongings, leaving little to no space for children to play or do homework. This accommodation is neither suitable for families with children nor cost effective for the State. For children, the frequent accommodation moves and subsequent difficulty in inviting friends over to their home, means they often find it difficult to develop and maintain friendships.<sup>633</sup> Reform is urgently needed.

In Budget 2014 the Government announced a pilot phase for a new model of financing social investment which is seeking private sector investment partners to provide long term stable homes for families. The project is aimed at providing families and in particular children with better lives through increasing levels of social participation and reducing levels of homelessness.<sup>634</sup> The Government has indicated that 5,000 social housing units will be provided in 2014.<sup>635</sup> In 2013, 142 people in Cork, including 50 children, were moved out of homelessness by the charity Threshold through its access housing unit helps homeless people transition in private rented accommodation.<sup>636</sup> This scheme demonstrates the potential for public-private partnerships to address the issue of homeless families in an effective manner.

629 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs on December 2012

630 Department of Health and Children (2001) *Youth Homelessness Strategy*, Dublin: Department of Health and Children.

631 Committee on Economic, Social and Cultural Rights (CESCR) General Comment No.4: The right to adequate housing (Art.11 (1)):13/12/1991.

632 'Rise in Dublin families Becoming Homeless says Focus Ireland', *The Irish Times* [online], 8 December 2013 <http://www.irishtimes.com/news/social-affairs/rise-in-dublin-families-becoming-homeless-says-focus-ireland-1.1621063> [accessed 17 December 2013].

633 A.M. Halpenny, A.F.Keogh and R. Gilligan (2002) *A Place for Children? Children in Families Living in Emergency Accommodation: The Perspectives of Children, Parents and Professionals*, Dublin: Children's Research Centre, Trinity College, p. 39.

634 Minister for Public Expenditure and Reform Brendan Howlin TD, Budget 2014 speech to the Dail, 15 October 2013, <http://www.budget.gov.ie/Budgets/2014/EstimateStatement.aspx> [accessed 18 December 2013].

635 Tanaiste and Minister for Foreign Affairs Eamon Gilmore TD Leaders Questions 7 November 2013.

636 Michelle Hennessy, 'Housing Charity in Cork moved 50 children out of homelessness this year', *The Journal*, <http://www.thejournal.ie/cork-homeless-1224431-Dec2013/> [accessed 18 December 2013].

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**“The narrow definition of homelessness contained in the Youth Homeless Strategy does not take into account all young people who may find themselves without a home. The definition used in the Strategy captures only those who are in temporary accommodation, sleeping rough or sleeping in shelters. It does not include young people who are part of a homeless family or young people who are temporarily staying with friends but who have no home.”**

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*Children in Care at Risk of Homelessness*: The publication of the 2001 *Youth Homelessness Strategy Review* is to be welcomed. The review concluded that the introduction of another Youth Homeless Strategy was not necessary and instead proposed that a wider integrated approach to the issue of youth homelessness needed to be adopted. The review noted young people accessing emergency homeless services through Garda Stations as an area of concern. Lefroy House Nightlight, in Dublin city centre, is now the only centre providing emergency accommodation to lone children under 18 years in the country.<sup>637</sup> A child must be known to the service before he or she can access it directly. From 9pm onwards, those not already known to the service – newly homeless young people often in crisis – must present at a Garda station to access this service. Young people who participated in the Ombudsman for Children 2012 report, *Homeless Truths, Children's Experiences of Homelessness in Ireland*, recalled the experience of attending a Garda station to access accommodation to be embarrassing and felt ashamed or anxious.<sup>638</sup> The Review recommended that this practice end where possible and that alternative responses to Garda stations should be developed where practical.

Youth homelessness is closely associated with leaving state care or youth detention;<sup>639</sup> addiction problems; familial abuse or neglect, poverty and household instability; disconnection from the education system or poor mental health.<sup>640</sup> The review of the *Youth Homeless Strategy* found that 62% of stakeholders felt that the needs of children and young people being discharged from criminal detention were either poorly met or not at all met.<sup>641</sup> The legal duty to provide accommodation and care to homeless children will transfer from the HSE to the new Child and Family Agency.

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637 A child can refer themselves in person (8pm-2am), if already known to the service or by agency referral through the Out of Hours Service for young people. After 2am referrals will still be accepted but only through the Out of Hours Service. The Nightlight project also has a reception centre (8pm-2am) where up to 14 young people can access emergency accommodation. The project is open until 9.30am Mon-Fri and 2pm Sat-Sun & bank holidays. Nightlight is run by the Salvation Army in cooperation with the HSE crisis intervention. Families with children who present as homeless are accommodated separately.

638 Ombudsman for Children (2012) *Homeless Truths, Children's Experiences of Homelessness in Ireland*, Dublin: Ombudsman for Children's Office.

639 P. Mayock and E. O'Sullivan (2007) *Lives in Crisis: Homeless Young People in Dublin*, Dublin: The Liffey Press; P. Kelleher, C. Kelleher and M. Corbett (2000) *Left Out on their Own: young people leaving care in Ireland*, Dublin: Oak Tress Press; EPIC (2011) *Summary of EPIC Research Findings on Outcomes for Young People Leaving Care in North Dublin*, Dublin: EPIC, p. 3.

640 Geoffrey Shannon (2010) *Fourth Report of the Special Rapporteur on Child Protection, A Report Submitted to the Oireachtas*, <http://www.dcy.gov.ie/documents/publications/Rapporteur-Report-2010.pdf> pp. 33-35 [accessed 12 February 2014].

641 Department of Children and Youth Affairs (2013) *Every Child a Home: A review of the implementation of the youth homelessness strategy*, Dublin: Department of Children and Youth Affairs, p.28.

The Child and Family Agency needs to play a critical role for children who find themselves homeless. The Agency must ensure that the new policy maps out the necessary links with other departments and agencies across professions to effectively tackle youth homelessness. This will include improving working relationships between child protection services and the care system, mental health, domestic violence, education, family services and housing. There needs to be an acknowledgement that a continuum of care exists for young people who are homeless. To this end, there needs to be flexibility in relation to access to aftercare provision. The intention of the Minister Fitzgerald to create a legislative right to an aftercare plan is to be welcomed. It is vital that the staff and resources are put in place to ensure that assessments take place in a timely manner and that the aftercare supports are put in place.<sup>642</sup> It is also crucial that multi-agency aftercare planning takes place to prevent a young care leaver experiencing homelessness. The transition for a young person from child to adult services is at a critical stage. Radical improvements are needed to ensure that young people are properly supported during this transition and their vulnerability is recognised by the adult services. This must be the case for vulnerable care leavers and also for those older teenagers who only become involved with the social services in the lead up to their 18th birthday and therefore do not qualify for aftercare support.

2012 figures show that 39 children spent up to 10 nights accessing emergency accommodation.<sup>643</sup> There has been progress made since 2001 in reducing youth homelessness (in particular rough sleeping) which may be linked to improvements in the care system for at-risk children. A broader range of children's residential centres – including high support and special care units – and better trained staff, are now available to meet the needs of children with behavioural and emotional difficulties. Homelessness in the past was often linked to a placement breakdown or lack of appropriate placement. A number of hostels for homeless children, including Grove Lodge, Dublin, have closed over the past few years or have been designated as mainstream residential children care homes. Such closures may reflect a recognition that hostel living is not appropriate for children and concerns over the suitability of the specific centres. It is important that we interrogate the changed pattern of children presenting as out of home or in an emergency situation to ensure that the decrease is not masking a reluctance to present to services.

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642 Focus Ireland, Press Release: 06 November 2013, <http://www.focusireland.ie/about-homelessness/resource-centre/press/press-releases/828-press-release-06-november-2013> [accessed 18 November 2013].

643 Catherine Shanahan, '39 Children Placed in Homeless Centres', *The Irish Examiner*, 10 July 2013.

## Immediate Actions for 2014

### **Invest in appropriate accommodation for homeless families**

The Department of the Environment, Community and Local Government and relevant housing agencies, must consider flexible and creative approaches to ensure homeless families are provided with family-friendly emergency accommodation and then supported to move on to stable accommodation. Both emergency and longer term accommodation must provide adequate homework and play facilities and residents must be allowed to stay at the hostel during the day rather than being forced out onto the street.

### **Ensure that appropriate emergency accommodation facilities are available for children and young people presenting as homeless**

The review of the Youth Homelessness Strategy found that the current mechanism of presenting at a Garda station in order to access emergency homeless services was inappropriate and could be intimidating for children or young people.<sup>644</sup> It recommended that the Child and Family Agency develop an alternative wherever practical.

### **The Child and Family Agency must ensure that there is interagency co-operation on the issue of youth homelessness particularly when a new strategy is not going to be put in place**

The Agency must ensure that appropriate protocols and procedures are put in place to ensure that all agencies working with homeless children or children at risk of homelessness are cooperating effectively to accommodate and care for these children.

### **Introduce a statutory entitlement to aftercare support for all children leaving care and detention**

The necessary legislation should be drawn up and implemented without delay. It is vital that the staff and resources are put in place to ensure that assessments take place in a timely manner and that aftercare supports are put in place.

<sup>644</sup> Department of Children and Youth Affairs (2013) *Every Child a Home: A Review of the Implementation of the Youth Homeless Strategy*, Dublin: Department of Children and Youth Affairs, p.30.

## 5.4 Children in Detention

# Grade B+

### Government Commitment

The *Programme for Government* commits to ending the practice of sending children to St. Patrick's Institution.

### Progress

**On track**

### What's happening?

**Construction work is underway on the new National Detention Facility at Oberstown. All 17 year olds serving a custodial sentence have been transferred from St Patrick's Institution to a dedicated unit in Wheatfield Prison with the exception of the small number of those on remand<sup>645</sup> who remain at St. Patrick's Institution.**

In April 2012, the Minister for Children and Youth Affairs, Frances Fitzgerald TD, announced that Government had committed to build a new National Children Detention Facility at Oberstown, Co. Dublin,<sup>646</sup> which will allow for an end to the detention of 16 and 17-year-old boys in St. Patrick's Institution. The Oberstown campus currently houses three detention schools: Oberstown Boy's School, Trinity House School and Oberstown Girl's School.<sup>647</sup> The new facility will encompass six detention units the first three of which will be used to house 17 year olds and are due to be operational by autumn 2014. The other three units, to replace the existing accommodation in the Oberstown campus, are expected to be finished in 2015.<sup>648</sup> The completed development will integrate the three existing detention schools with the newly constructed units into one single national children detention facility. This will accommodate all children on remand or serving a custodial sentence, as originally provided for in the Children Act 2001. An amendment to the Children Act 2001 is planned in early 2014 to provide a secure legal framework for the operation of the campus as a single integrated facility.<sup>649</sup>

645 A person 'on remand' is someone who is charged/detained in custody but who has not yet been convicted of a crime and is awaiting trial or sentencing. The initial remand period can be extended.

646 Department of Children and Youth Affairs, 'Minister Fitzgerald to End Detention of 16 and 17 Year Olds in St. Patrick's Institution' [press release], 2 April 2012, <http://www.dcy.gov.ie/viewdoc.asp?DocID=1842> [accessed 12 February].

647 The total current operational capacity on the campus is 44 places for males and eight places for females. Under current arrangements, the children detention schools are authorised to detain males up to the age of 17 years and females up to the age of 18 years. The buildings accommodating Oberstown Boy's School are in need of replacement.

648 Department of Children and Youth Affairs, 'Oberstown construction demonstrates Government commitment to implementing long-awaited reforms – Fitzgerald' [press release], 14 October 2013, <http://www.dcy.gov.ie/viewdoc.asp?Docid=2994&CatID=11&mn=&StartDate=01+January+2013> [accessed 10 January 2014].

649 Minister for Children and Youth Affairs, Frances Fitzgerald TD, Parliamentary Question: Written Answers, 17 December 2013 [53846/13].

Three-year capital funding of €56 million has been granted to the Oberstown redevelopment project.<sup>650</sup> Work commenced on site in September 2013 and Budget 2014 released €31 million in capital funding for building works with a further €6.4million approved to cover the full cost of the work.<sup>651</sup>

In addition, a programme of operational reforms is ongoing aimed at enhancing the effective management and capacity of services on the Oberstown campus in advance of, and to support, the expanded facilities to be provided.<sup>652</sup> In 2012, the Minister for Children and Youth Affairs appointed 12 members to the Oberstown Board of Management chaired by Joe Horan, for a two year period.<sup>653</sup> The Directors of the three detention schools report to the Board<sup>654</sup> which in turn reports to the Minister for Children. Pat Bergin was appointed as Campus Manager for the entire Oberstown site in December 2013 and will report to the Board of Management.<sup>655</sup> Under a Labour Relations Commission agreement with the Irish Youth Justice Service a third party arbitrator was appointed to oversee a joint review by management and staff of the operation of the staffing roster which began implementation in February 2013 and is ongoing.<sup>656</sup> A recruitment programme for 67 new care staff has been approved by Government; they are expected to be recruited on a staged basis from early 2014.<sup>657</sup>

In July 2013, the Inspector of Prisons published his 2012 Annual Report calling for the complete closure of St Patrick's Institution due to 'very disturbing incidents of non-compliance with best practice and breaches of the fundamental rights of prisoners'.<sup>658</sup> On foot of this report, the Minister for Justice, Equality and Defence, Alan Shatter TD, announced his intention to close St Patrick's Institution and transfer all 17 year olds to a dedicated unit in Wheatfield prison until the completion of the three new units in Oberstown in autumn 2014.<sup>659</sup> In December 2013, all of the 17 year olds serving sentences were transferred to the interim unit in Wheatfield prison. As of the December 31 2013, three 17 year olds remained in St Patrick's Institution on remand as they cannot be transferred to Wheatfield for legal reasons.<sup>660</sup>

The current capacity on the Oberstown campus comprises 24 male detention places in Trinity House School, eight female detention places in Oberstown Girls School, and 22 male detention places in Oberstown Boys School (which represents an increase of two places from October 2013).<sup>661</sup> From March to November 2013, there were a total of 88 boys remanded in custody and 29 boys committed to a period of detention to either Trinity House School or Oberstown Boys School.<sup>662</sup>

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650 Department of Children and Youth Affairs, 'Oberstown construction demonstrates Government commitment to implementing long-awaited reforms – Fitzgerald' [press release] 14 October 2013. <http://www.dcy.gov.ie/viewdoc.aspx?Docid=2994&CatID=11&mn=8&StartDate=01+January+2013> [accessed 10 January 2014].

651 Department of Finance Budget 2014, Expenditure Allocation 2014-2016 <http://budget.gov.ie/Budgets/2014/Documents/Part%2011%20-%20Expenditure%20Allocations%202014%20-%202016.pdf> [accessed 10 January 2014].

652 Minister for Children and Youth Affairs, Frances Fitzgerald TD, Parliamentary Questions, Written Answers, 17 December 2013 [53846/13].

653 The Board comprises Mr. Joe Horan (Chair), Mr. Dan Kelleher, Mr. Gerard McKiernan, Dr. Ursula Kilkelly, Mr. Diego Gallagher, Ms. Sylva Langford, Mr. Colin Fetherston, Mr. Pat Rooney, Mr. Elizabeth Howard, Mr. Deirdre Keyes, Mr. Barry Rooney and Rachel Grimes.

654 Irish Youth Justice Service, Children Detention Schools, [http://www.iyjs.ie/en/IYJS/Pages/WP08000052#Board\\_of\\_Management](http://www.iyjs.ie/en/IYJS/Pages/WP08000052#Board_of_Management) [accessed 13 January 2014].

655 Minister for Children and Youth Affairs, Frances Fitzgerald TD, Parliamentary Questions, Written Answers, 17 December 2013 [53846/13].

656 Ibid.

657 Communication received by the Children's Rights Alliance from a meeting with Minister for Children and Youth Affairs, Frances Fitzgerald TD on 17 October 2013.

658 Inspector of Prisons (2013), *Annual Report 2012*, Inspector of Prisons: Tipperary, p. 23.

659 Department of Justice, Equality and Defence, 'Minister Shatter publishes Inspector of Prisons Annual Report for 2012: An Assessment of the Irish Prison System by the Inspector of Prisons and announces plans for the future use of St Patrick's Institution' [press release], 3 July 2013, <http://www.merrionstreet.ie/index.php/2013/07/minister-shatter-publishes-inspector-of-prisons-annual-report-for-2012-an-assessment-of-the-irish-prison-system-by-the-inspector-of-prisons-and-announces-plans-for-the-future-use-of-st-patricks-in/> [accessed 10 January 2013].

660 Communication received by the Children's Rights Alliance from the Irish Prison Service on 31 January 2014.

661 Minister for Children and Youth Affairs, Frances Fitzgerald TD, Parliamentary Questions, Written Answers, 26 November 2013 [50860/13].

662 Ibid.

In November 2013, the Health Information and Quality Authority (HIQA)'s inspection report highlighted that the overall care provided to young people in Oberstown was of a good standard.<sup>663</sup> However, HIQA was concerned by the frequent use of 'protection rooms' in Trinity House; these rooms had been used 67 times in one month and the duration of confinement was not recorded. The inspectors called for a review of the use of 'protection rooms' as they did not consider them suitable or necessary.<sup>664</sup> The inspectors were also concerned at the failure, due to staffing issues, to implement the comprehensive programme to reintegrate young people into the community.<sup>665</sup>

The Assessment, Consultation and Therapy Service (ACTS) was operating in three special care units by November 2013<sup>666</sup> but the rollout of its clinical services to children in detention schools is ongoing.<sup>667</sup> Young people detained in Oberstown will have access to either the Central Mental Hospital or a forensic psychologist if necessary.<sup>668</sup> Under the ACTS service, all children in detention can be screened using an evidence based assessment tool to see if they require clinical services and will be referred on to the clinical team for treatment.<sup>669</sup> This new procedure should allow court reports to focus on the young person's risk of offending rather than whether they require assessment for services.<sup>670</sup>

In December 2013, 10 of the 33 children in detention had been in care prior to being sent to Oberstown and 25 had an allocated social worker.<sup>671</sup> Given that many children who are known to the social services also come into contact with the youth justice system, in 2012 the Irish Youth Justice Service and the Health Service Executive (HSE) issued a Joint Protocol for social workers and those working in Children Detention Schools which was reviewed in October 2013.<sup>672</sup> The protocol outlines a number of measures to achieve interagency working including the continuing involvement of the social worker with a young person who had an allocated social worker before arriving in a detention school, direct input by the social work team into the assessment process, placement plan and reintegration home plan; ensuring that the allocated HSE social worker is informed about incidents and any other relevant information regarding the child; the appropriate sharing of information including the provision of a copy of the young person's care plan to the children detention schools and ensuring a complaints procedure is put in place for children.<sup>673</sup>

## Comment

Children in Detention receives a '**B+**' grade in Report Card 2014, the same as last year's grade. This recognises the ongoing construction work on the new Oberstown facility as well as the positive measures to improve the operation of Oberstown. While the transfer of 17 year olds from St. Patrick's Institution is a welcome step, the transfer to a new interim facility at Wheatfield prison must be a short-term solution. It is unfortunate that St. Patrick's Institution cannot completely close until a suitable alternative for 17 year olds on remand is put in place.

The commitment to the Oberstown project represents a unique opportunity to build a world class facility and put in place a child-centred, education-focused regime in the new facility, rooted within a children's rights framework. Critical to this is delivering a rights based approach to youth justice and an understanding that, first and foremost, all those under 18 years are children. Oberstown is designed to be a children's detention school rather than a prison where children can receive therapeutic interventions and education. The UN Convention on the Rights of the Child is clear that States treat children in conflict with the law in a manner that promotes the child's sense of dignity and worth, reinforces the child's respect for human rights, and takes account of the child's age and the desirability of promoting reintegration (Article 40(1): administration of juvenile justice).

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663 Health Information and Quality Authority, *Inspection Report of a Children Detention School on Oberstown Campus*: Report ID No. 636, 15 November 2013. [www.hiqa.ie/system/files/inspectionreports/636.pdf](http://www.hiqa.ie/system/files/inspectionreports/636.pdf) [accessed 12 February 2014].

664 *Ibid.*, p. 22.

665 *Ibid.*, p. 12.

666 Frances Fitzgerald TD, Minister for Children and Youth Affairs, Parliamentary Questions: Written Answers, 20 November 2013 [41818/13].

667 Communication received by the Children's Rights Alliance from the Child and Family Agency on 13 January 2014.

668 Frances Fitzgerald TD, Minister for Children and Youth Affairs, Parliamentary Questions: Written Answers, 20 November 2013 [41818/13].

669 Communication received by the Children's Rights Alliance from the Child and Family Agency on 13 January 2014

670 *Ibid.*

671 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs on 15 January 2014.

672 Health Service Executive and the Irish Youth Justice Service, Protocol for Working Together: HSE Social Workers & Children Detention Schools, 1 October 2013, <http://www.iyjs.ie/en/IYJS/Protocol%20CDS%20and%20SW%20Final%20Version.pdf/Files/Protocol%20CDS%20and%20SW%20Final%20Version.pdf> [accessed 13 January 2014].

673 *Ibid.*, pp. 4 – 5.

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**“The commitment to the Oberstown project represents a unique opportunity to build a world class facility and put in place a child-centred, education-focused regime in the new facility, rooted within a children’s rights framework.”**

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In 1989, on the international stage, the Irish Government lodged a reservation to Article 10 (2b) of the International Covenant on Civil and Political Rights (right to liberty) which states that: ‘Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.’<sup>674</sup> Given the positive measures which will result in the removal of 16 and 17 year olds of St. Patrick’s Institution, we urge the Government to withdraw this reservation. The Department of Children and Youth Affairs has stated that it will consider withdrawal of this reservation following the transfer of all 17 year olds to Oberstown campus in the third quarter of 2014.<sup>675</sup>

The detention of children in an adult prison that operates a penal regime was previously criticised as a glaring human rights violation by a number of domestic and international bodies<sup>676</sup> as it is in direct contravention to Article 37 of the UN Convention on the Rights of the Child (torture and deprivation of liberty).<sup>677</sup> St. Patrick’s Institution was considered to be the most violent prison in Ireland, responsible for one third of all assaults in the prison system.<sup>678</sup>

The decision to close St Patrick’s Institution is a positive and long overdue development. However, the decision to transfer 17 year olds to an interim unit in Wheatfield Prison is to be cautiously welcomed as long as it remains ‘a temporary, short-term measure’, as articulated by Emily Logan, Ombudsman for Children.<sup>679</sup> An adult prison, even one where a dedicated unit has been put in place, is entirely unsuitable for young people in the longer-term. The units for 17 years olds are expected to be complete towards the end of 2014. While there are a small number of 17 year olds remaining in St Patrick’s Institution they cannot be transferred to the Wheatfield facility as they are held on remand but given the previous criticisms of the poor conditions in St Patrick’s Institution, an alternative needs to be put in place until the new facility is operational.

The issue of inadequate capacity in the existing three detention schools in Oberstown continues to be of concern as the high level of demand for detention places for young males has meant that Trinity House School and Oberstown Boys School are frequently at full occupancy with no available spaces.<sup>680</sup> On the other hand, there has been no shortage of spaces at Oberstown Girls School over the past two years. The Ombudsman for Children has warned that care must be taken in relation to space, ‘not to place institutional interests ahead of the interests of children’.<sup>681</sup> It is equally important that the detention of children is always used as a measure of last resort, in line with the Children Act 2001.

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674 UN General Assembly, International Covenant on Civil and Political Rights, A/RES/21/2200, 999 U.N.T.S. 171,(16 December 1966).

675 Communication received by the Children’s Rights Alliance from the Department of Children and Youth Affairs on 15 January 2014.

676 For further detail see Children’s Rights Alliance (2013) *Report Card 2013*, Dublin: Children’s Rights Alliance, pp. 77-78.

677 Article 37(c) states that “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances”.

678 Cormac O’Keeffe, ‘30% of St Pat’s inmates on protection and locked up for over 20 hours a day’, *Irish Examiner*, 28 September 2012.

679 Ombudsman for Children’s Office, Address by the Ombudsman for Children to the Joint Oireachtas Committee on Health and Children, 17 July 2013 <http://www.oco.ie/assets/files/Statements/PresentationtotheOireachtasCommitteeonHealth&ChildrenJuly2013.pdf> [accessed 13 January 2013].

680 Based on daily occupancy reports from the Irish Youth Justice Service in the period 1 March - 25 November 2013, it is estimated that there were 108 days where there was a male detention place available in either Trinity House School or Oberstown Boys School. On most other days, both sites were at maximum occupancy and no further places were available. The estimate excludes weekends and public holidays.

681 Ombudsman for Children’s Office, Address by the Ombudsman for Children to the Joint Oireachtas Committee on Health and Children, 17 July 2013, <http://www.oco.ie/assets/files/Statements/PresentationtotheOireachtasCommitteeonHealth&ChildrenJuly2013.pdf> [accessed 13 January 2013].

In 2013, 103 young people were detained on remand for 138 different periods which ranged from one day up to several months,<sup>682</sup> as the same young person may be remanded more than once before being convicted or sentenced. In December 2013, there were nine young people on remand.<sup>683</sup> However, in the same month, the High Court ruled that the lack of provision for remission of a sentence for those detained in Oberstown, in the same manner as adult prisoners, was a breach of Article 40.1 of the Constitution (the right to equality before the law).<sup>684</sup> On foot of this ruling, the applicant and six other young persons were immediately released from Oberstown under the rules of remission where a person who has reached three quarters of their sentence is entitled to be released.<sup>685</sup>

However, another issue of concern is that young people on remand who have not been convicted are detained alongside those who have been convicted contrary to Article 10(2)(a) of the International Covenant on Civil and Political Rights (right to liberty). While in Oberstown 'where practicable',<sup>686</sup> accused young people are held in a separate location from those who have been found guilty of a crime, this should always be the case.

The Irish Youth Justice Service is due to finalise its Youth Justice Action Plan 2014-2018 in early 2014 as part of the Children and Young People's Policy Framework 2014-2018.<sup>687</sup> It will also form part of the National Anti-Crime Strategy. The plan aims to improve the effectiveness and efficiency of interventions in addressing the behaviour and needs of children to achieve better outcomes for children who get into trouble with the law. It is expected that the strategy will be published in spring 2014. It is important that the Youth Justice Action Plan embodies key children's rights principles and conforms to international youth justice standards in particular Article 40 (administration of juvenile justice) of the UNCRC.

A 2013 report by the Children's Mental Health Coalition<sup>688</sup> examined the mental health needs of children in the youth justice system. While it welcomed the rehabilitation and diversionary options available to young people who come into contact with the law, it also noted a lack of diversionary options specifically addressing the mental health of young offenders to enable access at the earliest opportunity to divert them to community services that can address their mental health needs.<sup>689</sup> The report highlighted the need to amend the Mental Health Act 2001 and the Children Act 2001 to allow for more robust sentencing options for young offenders with mental health problems, which could include community orders with a mental health dimension and hospital orders.<sup>690</sup> It was also recommended that there be a review of practices in youth detention schools to assess the extent to which positive mental health is promoted in the facilities.<sup>691</sup>

It is important that the needs of those leaving detention are met in a similar manner to those who are leaving care. The intention of the Minister for Children and Youth Affairs to introduce a statutory right to an aftercare plan (see section 5.3) should be extended to include those leaving detention to help ensure their reintegration into society following their release.

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682 Communication received by the Children's Rights Alliance from the Department of Children and Youth Affairs on 15 December 2013.

683 Ibid.

684 *Byrne (a minor) v Director of Oberstown School* IEHC 562, 12 November 2013.

685 The Irish Times online, 'Judge says prison rules on remission apply at Oberstown', 11 December 2013, <http://www.irishtimes.com/news/crime-and-law/courts/judge-says-prison-rules-on-remission-apply-at-oberstown-1.1623634> [accessed 3 February 2014].

686 Children Act, 2001 s.88 (8).

687 Minister for Children and Youth Affairs, Frances Fitzgerald TD, Parliamentary Questions, Written Answers, 13 November 2013 [48467/13].

688 R. McElvaney et al (2013) *Someone to Care: the mental health needs of children and young people with experience of the care and youth justice systems*, Dublin: Children's Mental Health Coalition.

689 Ibid., p.129.

690 Ibid., p.130.

691 Ibid., p.130.

## Immediate Actions for 2014

### **Immediately withdraw the reservation to Article 10 (2b) of the International Covenant on Civil and Political Rights**

Given the positive measures taken in relation to St. Patrick's Institution and towards the building of a dedicated National Children Detention Facility, the Government must withdraw this reservation without delay.

### **Ensure the legislative entitlement to aftercare for children extends to those leaving detention**

Young people leaving detention have ongoing and complex care needs similar to young people leaving care. The commitment by the Minister for Children and Youth Affairs to introduce a statutory right to an aftercare plan should be extended to include those in detention.

### **A review should be carried out on the use of remand for children and young people to ensure that it is used appropriately**

Data on the use of remand should be reviewed to ensure that children and young people are not held on remand longer than necessary and that their cases come before the court within a reasonable period of time. Resources must be made available to ensure that children and young people held on remand are kept separately to children who have been convicted and are serving a sentence.

### **An individual case tracking system should be put in place to track the outcomes for young people who leave detention**

There is a need to adopt an evidence based approach to youth justice and interventions by examining trends in the behaviour of young people following their release from detention in order to determine whether they have been rehabilitated, reoffend or end up in adult prisons. This would allow the Irish Youth Justice Service to plan resources and ensure that best practice is put in place to prevent reoffending.