

National Youth Council of Ireland

Submission to Department of Children and Youth Affairs

Children First Heads of Bill

June 2012

Introduction

The National Youth Council of Ireland (NYCI) is the representative body for national voluntary youth work organisations in Ireland. It represents and supports the interests of over 50 national voluntary youth organisations and uses its collective experience to act on issues that impact on young people.

Following the recent publication of the Children First Heads of Bill, we were very pleased to be invited to present to the Oireachtas Committee on Health and Children on the 10th of May 2012. We presented our initial thoughts to the Committee and outlined our role as a representative body for the youth work sector. We did not have a sufficient time to consult with our members before the presentation, so we have spent some considerable time since receiving feedback from youth work organisations over recent weeks.

The additional information in this submission has been produced following a comprehensive consultation process with the youth work sector and represents the views of over 20 national youth work organisations.

The youth work sector has had a long and committed history of compliance with Children First and implementing best practice in child protection. Therefore a lot of what is proposed in the Bill is already in place for most youth work organisations. However, this proposed legislation will still have a significant impact on the youth work sector and we believe our contribution at this consultation stage is very important and we are grateful for this opportunity to share our views.

This submission will address the proposed legislation under its three key areas – Reporting, Safeguarding and the HSE. We are aware of previous submissions made by other organisations, so as to avoid repetition of shared concerns we will again focus on issues specific to the youth sector.

The youth work sector very much welcomes the intention by this Government to place Children First Guidance on a statutory basis. We believe that this development will help to ensure that current Children First Guidance is strengthened and this will assist in the protection of our children and young people.

The work of the youth sector is based on principles of equality, participation, valuing and listening to young people: we therefore welcome the introduction of a statutory obligation to place children's safety as a priority for all organisations who work with children.

Reporting Requirements

The youth work sector broadly welcomes the statutory obligation to report contained in this proposed legislation. We believe that this will help in ensuring that children and young people are protected and safe from those who may wish to harm them.

Structures

We welcome the proposal that the most senior person/decision maker in an organisation should be appointed as the Designated Officer (DO). We also welcome the provision for the delegation of DO's responsibilities, whilst retaining accountability at the most senior level. This is particularly relevant for our organisations with regional or local structures. However, the responsibilities of each role (DO and delegated DO's) must be clearly outlined in the legislation so as to ensure clarity for all involved.

Consideration must also be given to appropriate arrangements for other structures, such as federations, and structures of independent youth groups who receive some informal support through a national organisation, but who are not directly affiliated to the organisation. It is very important all of these contexts are considered in the outlining of 'organisational' child protection responsibilities in this legislation.

A very significant concern also exists for some smaller volunteer led organisations, which do not have any employed staff. In these circumstances, this current Heads of Bill requires the role of DO to be held by a volunteer. This would be a very serious responsibility for a volunteer, who may not have access to the same levels of support, training and resources as a staff member in this position. As a result, this legislation could potentially act as a significant barrier to volunteering.

Over Reporting

With the introduction of mandatory reporting, experience in other jurisdictions indicates a potential risk of over reporting. DO's may decide to report all situations to err on the side of caution, feeling less competent or confident to use their judgment, and also due to the fear of a very serious penalty for non-reporting. This would place an additional burden on an already over whelmed social work system, which could result in periods of assessment lengthening and as a result, potentially increased/prolonged risk for some very vulnerable young people.

We welcome the inclusion in the proposed legislation to allow for a 'reasonable excuse' to be used by the DO. However, the definition of this excuse is very important as interpretation could vary and be misconstrued, and so detailed consideration must be given to what is deemed as 'reasonable' and this must be communicated widely.

The proposed legislation currently does not allow for the HSE advice on reporting to be used as a defence for non-reporting. Although we recognise the role and responsibilities that

everyone has to play in protecting children, we believe this unfairly places the burden of decision making on those who are not professionally trained in, or statutorily charged with, child protection responsibilities.

We recommend that HSE advice should not be excluded from any potential judicial proceedings that may arise as a result of this legislation.

We believe that the Departments 'Guidance on Reporting' is a critically important document and we strongly recommend that it is available prior to, or on publication of the legislation. We also recommend that this 'Guidance on Reporting' provides clarity on the following areas:

- Thresholds of welfare and neglect – particularly situations whereby children are experiencing circumstantial neglect and are in need of family support intervention.
- Reporting underage sexual activity and underage pregnancies - circumstances where there is no known power difference, coercion or other relevant factors.
- Reporting concerns involving young LGBT young people, including those who are not 'out' to their families - situations which could involve the potential disclosure to parents of sensitive information which may increase the risk of harm to the child.
- Reporting concerns involving young people from Traveller and ethnic minority backgrounds and those with issues regarding their emigration status – particularly situations which relate to vulnerable children such as separated minors, asylum seekers etc...
- Reporting concerns regarding children with serious drug or alcohol misuse, and/or those engaged in criminal activity.

Best Interest

Reporting disclosures or grounds for reasonable concern is already a requirement on all of those working in our sector. However, a common feature of our work with vulnerable and 'at risk' young people often involve situations which are not clear cut.

Although it is not the intention of this legislation, adults may feel obliged to report to fulfill a legal obligation, even when they believe this is not in the best interest of the child. Indeed reporting in these circumstances may potentially result in situations whereby young people are removed from services such as the youth service so have little or no support whilst they have to continue to live in a potentially unsafe situation. The example below highlights a common youth work sector concern which was raised during our consultation.

Example: The situation of a child attending a youth service, with noticeable hygiene issues, poor dress and occasional missed meals. Both child and parents are positively engaged with

the service and the child's attendance is consistent and the relationship is good between the family and the service. The child attends a breakfast club and homework support club with the service, both of which are valuable supports to the young person and their family.

Reporting to the local social work services, where known thresholds for intervention may be unlikely to result in the family receiving additional supports, could potentially lead to the disengagement of the family from the service and the child not receiving supports currently available to them.

Penalties

There is recent legislation to deal with deliberate 'withholding of information' relating to sexual abuse, and also 'reckless endangerment' under the Criminal Justice Act. Both of these pieces of legislation allow for the prosecution of those who do not report known situations of children who are being abused or are known to be in danger.

Therefore, we would strongly recommend that the current penalties contained in the Bill are reduced (e.g. a fine in place of custodial sentence) or changed to a civil offence.

We also believe that the prosecution of an offence should distinguish between deliberate non-reporting and/or gross negligence, and a case of a DO making informed judgments which is based on the best interest principle.

We would strongly recommend that for volunteer led groups particularly, the penalty is placed on the organisation rather than on the individual.

Safeguarding Requirements

The youth work sector broadly welcomes the safeguarding requirements in this proposed legislation. Many of these requirements are currently in place in youth work organisations and we believe that these safeguards will be strengthened by this legislation.

The safeguarding provisions in this legislation provide clarity regarding the legal obligations for all organisations working with young people, and therefore ambiguity and inconsistency in practice should be reduced. This should result in improved and standardised practice and the increased protection of children and young people.

Stakeholders

The youth work sector relies on approximately 2,200 staff and over 40,000 volunteers to work with children and young people. We are pleased to see the important role of the volunteer recognised in this legislation.

We also welcome the inclusion of the requirement on boards of management to sign off on the organisational ‘keeping children safe plan’. This should reinforce the governance responsibilities of boards, which have overall child protection responsibilities.

Parents of young people attending our services can also be reassured as to the safety requirements in place. This legislation should increase confidence around practice in organisations and also help to highlight issues of safety or concern which may need to be addressed.

Record keeping

It should be noted that administrative requirements and record keeping, although important, could become a very onerous task on a small volunteer led group or organisation. The administration and resources required may be seen as a barrier to volunteering or to taking on a role of responsibility within an organisation.

Consideration needs to be given to the data protection implications for holding sensitive information. For example, a Garda vetting form contained indefinitely in a personnel file could be considered a breach of data protection.

Also, with regard to Garda vetting, it is essential that there is consistency in language to ensure that the obligations and definitions of who is to be vetted under the forthcoming National Garda Vetting Bureau Bill and Children First legislation is clear – i.e. does Children First requirements and Garda Vetting Bureau Bill clearly outline responsibilities for organisation’s vetting all existing staff, or of all *new* staff?

Auditing

The proposed auditing system in the Heads of Bill outlines an internal system whereby the organisational child protection policies and procedures are examined annually. We welcome the intention of this quality assurance mechanism, which should help towards ensuring compliance with Children First requirements.

Some concerns exist however, regarding the internal system proposed, as to its integrity (as opposed to an external audit). We also have concerns in situations of smaller organisations who have limited capacity, personnel or training/information to carry out an audit. We recommend flexibility for organisations in how best they meet their obligations regarding auditing which takes account of their size, capacity, volunteer led structures etc...

Training

Appropriate training is an essential element in the safeguarding of children and young people. We recommend the inclusion of ‘appropriate training for all levels and roles in an organisation’ to be contained in the standards of training in the HSE Safeguarding Guidance document. Recognition of quality child protection training programmes in the community and voluntary sector such as that developed and delivered by NYCI’s child protection programme, as well as the HSE’s training programmes, must be considered in any recommendation of standards. This will help to ensure that training is accessible, available and tailored to the context and needs of the role and organisation.

We would strongly recommend that there is an implementation phase, prior to commencing the monitoring of compliance for organisations, to allow appropriate arrangements to be put in place, in order for organisations to meet their legal child protection requirements.

We would also welcome the opportunity to be consulted on the development of the HSE Safeguarding Guidance document, as this document will influence our work practice. NYCI Child Protection Programme has considerable experience in the development of training programmes, guidance documents and resource material on child protection requirements in organisations and we believe that this valuable input would help to ensure that the guidance material can be easily implemented.

Role of the HSE

Partnership

The recognition of youth work as being a valued support in a young person's life by the statutory services is very important, particularly in ensuring a 'partnership approach' as outlined in Children First Guidance. We believe that recognition by the HSE and An Garda Síochana of the importance of young people's existing relationships and links with community based services, is a critical element in the assessment and intervention decisions which they make for the young person.

Concerns have been raised within our sector regarding the lack of focus on partnership with the community and voluntary sectors in this Bill. While the emphasis on legal requirements is focused on compliance by organisations, similar requirements on the statutory services statutorily charged with child protection investigations or assessments are not referred to in the Bill, . This proposed legislation sets out in considerable detail the responsibilities and obligations placed on voluntary organisations. We recommend that the legislation also sets out the responsibilities and obligations of the statutory services.

Capacity

The role of the HSE outlined in the Heads of Bill is very far reaching and concerns have been expressed about the capacity of the HSE to deliver on all of the requirements listed. There is ample evidence that the HSE's existing capacity to meet its current requirements are already stretched, so the introduction of these additional requirements, such as registration and monitoring, without additional resources being diverted to enhance current capacity, will present huge challenges and may impede effective implementation.

Investigations

We understand the intention behind the language of 'assisting with the investigation'; however this could also be potentially misinterpreted. Youth services and other services may feel they are obliged to undertake investigative action, which is the responsibility of the statutory services. This could be very problematic for the potential future prosecution of a case.

We recommend that clarity is given to the term ‘investigate’ and that the guidance document clearly outlines the role and responsibilities of both organisations and the statutory services with regard to ‘investigating’.

Additional Observations

With the forthcoming establishment of the ‘Child and Family Support Agency’, this proposed legislation is very timely. However, the standardisation of social work assessment frameworks should positively impact on how reports will be handled by this new agency. We would therefore strongly recommend that the assessment frameworks should be in place and fully operational, before the implementation of the full reporting requirements proposed in this Heads of Bill.

The omission of the definition of ‘Emotional Abuse’ from the Heads of Bill is also an issue which has been raised by youth organisations. Although we understand that emotional abuse is not ‘criminal’ due to issues of burden of proof, we believe an effort should be made to include it in the legislation, to ensure consistency with Children First Guidance.

Conclusion

The intention and principles of this important legislation are welcomed by the National Youth Council of Ireland and its member organisations.

Legislation underpinning Children First is a very welcome development. Placing the safety and protection of children and young people as a legal obligation should improve practice and ultimately improve the lives of all of our young people.

We wish the Government every success in its efforts to secure a safer future for all of our children and young people.

Note on Schedules

Schedule One

‘Youth worker providing services in accordance with the Youth Work Service Act’

We would recommend that this wording is replaced by:

‘Youth worker providing services in accordance with the Youth Work Act 2001’

Schedule Two

- **Community organisations providing support and activities to children**
- **National groups such as Scouts, Guides’**

We would recommend that this wording is replaced by:

- ‘Community and youth organisations providing support and activities to children’
- National youth organisations such as Scouts and Guides’