STATEMENT TO JOINT COMMITTEE ON CHILDREN AND YOUTH AFFAIRS

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THE AUTHOR HAS BEEN A SOLICITOR SPECIALISING IN CHILD LAW, DISABILITY LAW AND HUMAN RIGHTS SINCE 2006. HE ACTS FOR CHILDREN IN THE JUVENILE JUSTICE SYSTEM, IN CARE PROCEEDINGS AND ACTS FOR CHILDREN AND FAMILIES IN RESPECT OF ACCESS TO EDUCATIONAL, SOCIAL AND MEDICAL CARE INCLUDING MENTAL HEALTH SERVICES.

Chair, Vice chair and members of this Committee, I would like to thank you for inviting me here this morning to address some of the issues concerning the rights and challenges children and young people have in accessing appropriate mental health services. At the outset, I would also pay tribute to the Committee in supporting a consultation day to highlight these issues with a view to taking forward substantive proposals to government, the HSE and others to ensure that our mental health services are fit for purpose.

Ireland has a poor record in protecting and vindicating the welfare needs of children and a number of significant reports have highlighted, and indeed continue to highlight, these issues across a range of areas. This is an important opportunity to remedy the continuing breaches of rights in relation to children, which in recent times taken on even greater focus as a result of the referendum in 2012 to afford children greater constitutional protections and status in their own right.

I address you as someone who acts for children and young people and their families in a range of welfare cases and through my work I have witnessed at first hand the challenges families face in accessing mental health services at times of trauma and crisis. I have spoken to and advocated for many children directly who struggle with their mental health and well being. I have collaborated closely with frontline staff employed by the HSE, TUSLA and other public bodies who recognise and share many of the frustrations families and young people express and who feel powerless to effect meaningful change. Such change they feel can only come about when there is clearer direction and meaningful policy change from management and from government.

The seminal document in reforming Ireland's mental health strategy was published in 2006 – the year I qualified as a solicitor - and was entitled 'A Vision for Change'. The strategy aimed to modernise our system and ensure better co ordination and better practices. A vision that would deliver a nationwide service to ensure that community based responses through CAMHS teams targeted resources in an effective way thereby intervening early to ensure a young person had a clear and speedy pathway to recovery. I regret to say that this vision has not been progressed and in many respects children are in a much worse position than they were prior to Vision for Change. The recent removal of 11 beds from Linn Dara in West Dublin for inpatient care for children, the fact that some 2,419 children and their families, in the most recent figures, are waiting in excess of twelve months for an appointment from CAMHS, the fact that 15 counties in Ireland remain without an out of hours and weekend crisis service and the fact that up to 67 children were admitted to inappropriate adult wards in 2016, represents an unacceptable series of ongoing breaches of children's rights and constitutes a serious dereliction in our duty of care towards them.

I wish to offer the Committee some observations in relation to a number of these issues:

The admission of children to adult psychiatric wards.

I strongly welcome and support the publication of a Bill by the vice chair of this Committee in December 2016 to ensure that no child under the age of 18 is placed in an adult psychiatric unit. As far back as November 2006, the Mental Health Commission issued a code of practice relating to such admissions pending the ending of such a practice by 2011. This has never been done. It is my view that such a continuing practice is a potential breach of many legal rights instruments including Article 24 of the UN Convention of the Rights of the Child and indeed our own constitution in relation to the personal rights guaranteed by Article 40.3, Article 43 and most recently by Article 42 A . At a European level the practice could well constitute a breach of Article 3 of the European Convention of Human Rights which, inter alia, prohibits degrading treatment. Article 8 of the same Convention promotes and provides a right to respect of one's private and family life. There are serious legal issues which arise out of this continuing practice.

Adult psychiatric facilities aren't the American celebrity clinics we see on television with a gym and samba lessons. They are challenging and difficult environments populated by very vulnerable individuals who often present with a range of mental health concerns. Some exhibit huge levels of distress and on occasion can be physically threatening. Such situations are difficult to manage and deal with for all concerned and yet we are asking the most vulnerable of teenagers who are exposed to such situations to cope with them on top of their own challenges. My experience is they can't and nor should they have to. I have seen examples of young people returning home having been exposed to such environments and being lost forever as a result of such trauma. Effective recovery can only happen within the confines of a dedicated, safe and appropriate facility. I have spoken to many young people and families who talk about the sense of loneliness, rejection, fear and isolation in adult psychiatric facilities – often far from home. In contrast I have visited adolescent facilities where I have seen at first hand how young people supporting one another do so within a context where their care is managed by appropriate specialists in adolescent care and where that sense of fear and isolation can be massively mitigated. We have a moral, political and legal duty to children and this Bill is a crucial first step in achieving better outcomes for children in situations of crisis and their families.

Care in the Community for Adolescents and CAMHS teams

I have seen a number of instances where admissions to adult units are sanctioned most reluctantly by treating professionals who accept the undesirability and problems inherent in such admissions. It is also clear that professionals are most anxious that children do not remain in hospital any more than is required. It is important however that such discharges are in the context of an appropriate stepdown plan in the community and which involve services such as those provided within the multidisciplinary framework of CAMHS. I have spoken to many parents who leave hospital facilities with their children without an appropriate onward community based plan to ensure a continuum of care. Some leave without having been reengaged in community services or who have to go on waiting lists

once again to access such services. Reintegration plans with an appropriate suite of supports are essential if children and young people are to move on with their lives. We have all seen reports from the coroners courts of the particularly fragile position of many young people discharged from inpatient care without the necessary supports and the truly awful consequences that such a lack of care may ultimately lead to.

Similarly, long awaited protocols must be fast tracked to ensure that every young person nearing the end of their childhood and who may require ongoing care beyond the age of 18, have a transition plan in place and be consulted in relation to it. It is to be noted in this regard that some conditions such as ADHD, diagnosed in childhood, is not a condition that adult mental health services provide for.

I have referred earlier to the scandalously long waiting times for appointments with CAMHS. This is not the only observation, gravely serious though that issue is. It is of some concern and note that CAMHS have not issued an operating report since 2014, notwithstanding the fact that annual reports were envisaged by 'A Vision for Change'. If children and and their parents were to report to members of this committee and to the wider public, what would they say? Would they point to the fact that staffing levels required in relation to an increase in demand for such services haven't ever been provided? Would they point out that many CAMHS teams are excluding many young people from their services because they don't fit within the increasingly strict confines of their criteria and the lack of flexibility in relation to same? Children with a dual diagnosis, who experience mental health concerns but are also on the autism spectrum and children with mental health challenges but have also substance misuse issues are often falling between the cracks in accessing services. 'Someone else's responsibility', 'a different service required', 'join the end of that queue' and the game of pass the parcel gets into full swing is an all too familiar experience for so many. The lack of meaningful engagement and support by service providers is leading to infinitely more pressure on children and families and a sharp deterioration in the quality of life for such people, with all the added costs which ensues as a result of such an approach.

<u>Children between the ages of 16 and 18</u>

Children within this age bracket we often refer to as the 'Cinderella' age in accessing mental health services. Too old to avail of adolescent care, too young to access many other services. Whilst children at the age of 16 can often provide consent for general health services and procedures, it remains a grey area in respect of psychiatric care and interventions. This has been acknowledged by the Mental Health Commission and further clarity in law is urgently required. Paediatric emergency departments are often accessible to children under 16 and therefore the emergency presentation of children between 16 and 18 occurs at adult hospitals, most if not all of whom have woefully inadequate child psychiatry cover. We have seen instances in the past where young people aged 16 or over present at an Accident and Emergency Department and require urgent assessment. Disputes have arisen between adult and child services as to which team should assess the young person.
Officially, CAMHS refer to services being provided for young people up until they reach adulthood. On the ground however there is massive inconsistency in this approach with a lack of referrals being accepted for children beyond their 16th birthday. Given that in 2010, 16 and 17 year olds constituted 68% of inpatient hospital admissions, the provision of care

for this age group remains woefully inadequate. A full review of CAMHS and services and supports for this particularly vulnerable age group is required as a matter of priority. This is all the more important given the lack of clarity over the level of provision envisaged within the new National Children's Hospital for this age group and also noting the fact that new capacity legislation doesn't apply to minors.

Children in the Criminal Justice System

It is reported by the Irish Penal Reform Trust and others that many prisoners in our system have undiagnosed and often untreated mental health conditions. Within the adult penal system however prisoners who meet the criteria for various mental health conditions can be treated at designated centres such as the Central Mental Hospital in Dundrum.
In the juvenile detention centre at Oberstown, young people with complex needs including mental health concerns are assisted by teams referred to as ACTS (Assessment and Consultancy Therapeutic Service). In contrast to the position for adults, such treatment can only be done within the confines of the Oberstown facility. There doesn't exist a designated centre within the child detention system as exists in the adult prisons through the Central Mental Hospital. For children with such acute difficulties, the ability and availability of professionals to treat such cases is avoidably compromised.

Listening to the voices of Young People and Their Families

The consultation day provided by members of this committee and the invitation of submissions is an important first step in identifying the strengths and challenges within our adolescent mental health services. Young people and their parents often fear the consequences of raising complaints and concerns, however valid. It is a reality that many parents who struggle to access vital services and who express concerns about their ability to cope with the challenges of a mental health crisis are often characterised in a manner which seeks to shift blame onto their ability and capacity to parent. I have acted for a number of parents, who in articulating their concerns about their ability to safeguard their children without appropriate supports, find themselves on the receiving end of a referral to TUSLA. This has a chilling effect on parents and their ability to speak out. It is also a massive abuse of power to utilise TUSLA in such a manner and a distraction from providing a pathway for much needed stabilisation and therapeutic recovery for the young person.
When a child is detained by the District Court on an involuntary basis upon application by the HSE, under the Mental Health Act 2001, certain provisions of the Childcare Act 1991 may also apply, including the giving of court directions concerning the welfare of the child and the appointment of a legal representative or a Guardian ad litem to act as a voice for the child in those proceedings. We have seen in recent days through the Child Law Reporting Project further examples of just how important it is to ensure that the views and wishes of children in such proceedings are fully represented. It is vital therefore that any reforms of the Guardian ad litem system ensure that the ability of the child to participate through their Guardian is meaningful. This must continue to be provided for on an equal basis to other participants in court proceedings and must not, as appears to be proposed, dilute the voice of the child to 'witness status'. This is against the interests of children and is in any case constitutionally dubious.

Conclusion

This Committee has demonstrated in its support for the public consultation day, a proactive approach to leading a conversation on the specific requirements of a modern mental health services from the perspective of a child. Statutory obligations in relation to children refer to the rights and needs of the child being of 'paramount consideration'. Using this as our guiding principle, we need to develop policies and services that truly do put children first. Senator Freeman's Bill is certainly consistent with that approach and I and many others at the frontline urge the speedy progression and implementation of that Bill.

Thank you for giving this your attention.