

**Opening statement to the Joint Oireachtas Committee on Children and Youth Affairs,  
31<sup>st</sup> July 2019**

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I would like to thank the members of the Joint Oireachtas Committee for the invitation to speak on behalf of the Department of Children and Youth Affairs.

Last week's Prime Time Investigates programme was deeply distressing for all of us to watch. The appalling mistreatment of children and the terrible management practices were unacceptable and inexcusable. I know that Tusla, in collaboration with the Gardaí and the Fire Safety authorities, are pursuing those responsible. Tusla has the full support of the Department of Children and Youth Affairs in conducting its work.

The vast majority of early learning and care services in this country are safe and caring places. This is based on the findings of thousands of visits by the Inspectorates of both Tusla and the Department of Education and Skills, and by the observation of Better Start, a quality development service that has worked with 3,300 services across the country. The actions we saw in the RTÉ programme were, we believe, a horrific exception.

The Department of Children and Youth Affairs takes its responsibilities in the area of early learning and care very seriously. We are working intensively to improve quality in services and to ensure that there is robust regulation. We believe that Hyde and Seek does not represent the standard of care and education offered by the 4,500 services. But one case such as this, is one case too many, and we are working extremely hard with Tusla, and via other means, to ensure that all children have access to loving and nurturing services, and to ensure that services which do not meet required standards are closed down as soon as legally possible.

### **Tusla's actions and powers**

Tusla officials here today will focus on their powers and actions. I will use the time available to me to focus on the Department's role.

The Minister for Children and Youth Affairs wrote to the Chair of Tusla last Friday highlighting the importance of the work of the Early Years Regulator and to offer the continued assistance of her Department with ensuring their optimal performance.

I would like to echo the words of the Minister in recent days to assure members of the Committee – and the public – that we believe the Tusla Early Years Inspectorate is doing its job and using its powers in a very effective manner.

The Department gave Tusla significant new powers in 2016. They include: the power to refuse registration to a service; the power to deregister a service without going through the Courts; and the power to add conditions to a service's registration. Now that Tusla's Inspectorate is well established, we are seeing the steady application of those new powers. Since the beginning of 2018, Tusla has deregistered 5 services. In this year alone, Tusla has attached conditions to the registrations of 95 services. 138 services closed down in 2018, some for personal reasons, but some because they knew they could not meet the standards required by Tusla in its inspections. Tusla has prosecuted 2

services. More prosecutions and more de-registrations will follow and we will continue to work intensively with Tusla to ensure that the system and processes are meeting need.

Many people who watched the programme have asked if it took RTE to discover the breaches of regulations, and why it has taken so long for Tusla to act on previous findings. The Department is satisfied that Tusla was intensively engaged with Hyde and Seek long before RTE became involved, had already taken the operators to court, had forced the unregistered service to register, had attached conditions to their registration, was acting on unsolicited information: all this with a view to escalating enforcement action.

The due process which Tusla follows before a new inspection report can be published, or a service closed, inevitably takes time. For example, while Tusla has the power to deregister a service, the Child Care Act 1991 requires Tusla to give a service 21 days' notice of deregistration, and gives services the right to appeal to the District Court. These legal provisions take time and these processes currently occur in private so as to avoid prejudicing any legal case which may arise.

### **Balancing strong regulation with supports for better quality**

Ireland lags behind many developed countries in terms of the affordability, and some of the quality aspects, of early learning and care. As such the policy and regulatory approach is predominantly to support services to develop, to upskill the workforce, to improve governance; all of this to improve the quality of the experience for children.

When Tusla observe non-compliance with Regulations, their approach is to encourage the provider to fix the problems, rather than to close down the service. This approach works in the vast majority of services because most services are anxious to provide children with the best possible service. Tusla is assisted in this objective by other support services the Department has developed, including Better Start and 30 City and County Childcare Committees.

It would not be in the interests of children or parents if Tusla closed down services immediately whenever they observe non-compliance. We know that parents rely on the continued operation of services in order to go to work every day. Closing down a service at short notice can cause enormous inconvenience to families. Wherever possible, and where there is no serious risk to children, helping services to improve is the right thing to do. Clearly, where there is evidence of a serious risk to children, and a failure of the operator to immediately address it, all the force of the law must be applied to closing the service. There is also a need to keep parents informed of what is happening, although this poses challenges to due process.

### **Minister's instructions to officials**

Yesterday, Minister Zappone asked officials to review regulatory powers nationally and internationally to ascertain if Tusla had sufficient powers. She asked us to focus particularly on those powers required to close services immediately where a threshold of poor standards has been crossed. Minister Zappone has asked officials to consider whether both our primary and secondary legislation needs to be amended to provide for such enhanced powers, and to work closely with Tusla in this review.

The Minister has also asked officials to examine ways to ensure that parents are informed at the earliest possible date of the findings of its investigations. This could, for example, involve requiring

services to prominently display on the premises their registration certificate – including any conditions attached to their registration.

### **Resources to support regulatory and quality development**

Since 2016, an additional €4.3 million of dedicated funding has been given to the Early Years Inspectorate. This additional funding has enabled a major increase in the scale of Tusla’s registration, inspection and receipt of unsolicited information activities.

Another of Minister Zappone’s commitments yesterday was that she would continue to do her absolute best to increase investment in quality. This includes investment in the workforce and investment in the regulatory and inspection regime.

### **Link between public funding and quality**

Questions have also been asked about why public funding continues to go into services where there is non-compliance with regulations. Most public funding takes the form of subsidies to parents, which enable parents to send their children to the service for free, in the case of the ECCE programme, or for reduced fees. in the case of the various subsidy schemes. If the DCYA was to cut this funding at present when there is little spare capacity in the system, it is parents who would suffer most through facing increased fees for the same service. In the case of the 3 Hyde and Seek services to which public funds have gone, 99% has taken the form of subsidies to parents. Of the €1.25 million in public funding to Hyde and Seek over the last 5 years, only €10,000 has taken the form of grants to the services. I should also stress that no public funding whatsoever has gone to the service that was unregistered.

Nevertheless, it is right that the State should set limits on the services through which public subsidies are made available. This is already occurring to some extent through the restriction of public funding only to services that are registered with Tusla.

*First 5*, the Whole-of-Government Strategy for Babies, Young Children and their Families, published by the Department last year, includes commitments to further strengthen the link between public funding and quality standards, through development of a new funding model for early learning and care services, and through a commitment to withdraw funding where quality standards are not met.

### **Actions since 2013 to improve quality**

Last week’s RTÉ investigation offered many reminders of the 2013 RTÉ investigation, *A Breach of Trust*. One significant difference is that this time the independent regulator was already taking enforcement action when RTÉ went in. Another difference is that last week’s programme showed footage from only one service owner. We have come a long way since 2013, and standards have risen across the board.

Following the 2013 programme, Government announced an 8-point “Quality Agenda”. Every one of those 8 commitments has now been delivered. We have introduced:

- Minimum qualification requirements
- A registration system

- A national inspection system
- New Regulations
- A Quality and Regulatory Framework
- Published inspection reports
- New powers to deregister services and attach conditions.
- The Better Start Quality Development Service.

Other actions to raise quality standards have also advanced, supported by a 117% increase in Government funding over the last 4 budgets. These include a “Learner Fund” to support higher qualification of staff, new Department of Education Inspectorate education-focused inspections, additional capitation for services with Inclusion Coordinators, a 7% increase in ECCE capitation payments to enable staff be paid more, and a pilot paid CPD scheme. This year we introduced Regulations for School-Age Childcare.

### **Current and future developments to improve quality**

There is of course much more to be done, and a number of major initiatives are now under way to further improve quality standards over the years ahead. These initiatives include:

- The development of a Workforce Development Plan. The Minister yesterday requested that as chair of this group, I prioritise an element of the work which is to develop a professional regulatory body for those who work in the sector;
- The development of a new funding model that will support improved quality of provision and also address affordability. The Minister will announce the establishment of an externally chaired expert group on this in the coming weeks;
- National consultation on a draft Childminding Action Plan, which will map out a pathway to regulation and support of all paid childminders and offer parents real choice with regard to the type of subsidised childcare they wish to avail of.
- Establishing a structure to improve the quality of education programmes for the early years workforce
- Development of a resource for parents to assist them in understanding what good quality looks like in an early learning and care service

None of these new actions will be much consolation to the parents of children attending the Hyde and Seek crèches. However, I know I speak on behalf of the Minister, the Department and Tusla when I say that every effort will continue to be made to improve the quality of early learning and care services. Reform on the scale we are undertaking inevitably takes time. Objective analysis shows that we have already made huge strides. The sector has been transformed in the last decade and the Department of Children and Youth Affairs is committed to ensuring that this transformation continues.