



OPENING STATEMENT

TO

**MEMBERS OF THE
JOINT COMMITTEE OF THE OIREACHTAS
ON CHILDREN AND YOUTH AFFAIRS**

Wednesday, 31st July 2019

**Mr Pat Smyth
Interim Chief Executive
Tusla – Child and Family Agency**

Introduction

Chairman and members of the Committee, thank you for the opportunity to address the Joint Oireachtas Committee today to provide context and information on the role and remit of Tusla's Early Years' Inspectorate. I am joined today by my colleagues Brian Lee, Director of Quality Assurance, Cormac Quinlan, Director of Transformation and Policy and Fiona McDonnell, National Director, Children's Services Regulation.

Firstly, as the regulator of this sector, and as the state's dedicated agency for child protection and welfare the adult behaviours towards children and the serious breaches of regulations at Hyde & Seek crèches shown in the RTE broadcast were shocking, unacceptable, and worrying to say the least.

My opening submission today will cover the following areas:

- Introduction to the Early Years' Inspectorate
- Current Powers of the Early Years' Inspectorate
- Key Achievements of the Early Years' Inspectorate
- Information Known and Actions Taken prior to RTE Broadcast
- RTE's 'Crèches behind Closed Doors'
- Children First, Reporting Concerns and Child Protection
- Conclusion

Introduction to the Early Years' Inspectorate

Tusla's Early Years' Inspectorate is the independent statutory regulator of early years' services in Ireland, and the largest children's regulator in the state. It has responsibility for the registration and inspection of pre-schools, playgroups, nurseries, crèches, day-care and similar services which cater for children aged up to six years. Every single registered service, provider in Ireland of which there are 4,435, has been inspected by Tusla's Early Years' Inspectorate.

The Early Years Inspection service was introduced in 1997, under Part VII of the Child Care Act 1991, which gave effect to the Child Care (Pre-School Services) Regulations 1996. The regulations were subsequently revised in 2006 and placed greater emphasis on the health, welfare and development of the child. The Child Care Act 1991 (Early Years Services) Regulations 2016 and the Child Care Act 1991 (Early Years Services) (Amendment) Regulations were published on 4th July and 30th December 2016 respectively and provide powers to register and deregister services and enhance the enforcement powers of the Inspectorate.

Whilst Tusla actively works with service providers all around the country to highlight areas where improvements are necessary to ultimately improve the standards in services that promote the safety and wellbeing of children, it is important to note that it is the responsibility of the registered provider to ensure they are fully compliant with the regulations.

Key statistics in relation to the Early Years Inspectorate include:

- There are currently 4,435 (2018) registered early years services
- 2,513 inspections were conducted in 2018, an increase of 90% since 2014 (1,326)
- In 2018 the inspectorate managed 413 unsolicited information cases regarding early years' services
- 4,855 inspection outcomes reports published on the Tusla website
- 254 incidents were notified to the inspectorate in 2018 by service providers

- 1,384 “change in circumstances” requests by providers received by the inspectorate in 2018
- One prosecution of early years’ service taken by Tusla in 2018
- 138 services closed in 2018 – some because of Tusla interventions
- Five services were removed from the Early Years register by Tusla in 2018 and 2019 to date

Current Powers of the Early Years’ Inspectorate

Since the introduction of legislative reform under the Part 12 of the Child & Family Agency Act 2013 and the Child Care Act Early Years Services Regulations 2016, it is an offence to operate a service that was not approved to operate under this regulation. Tusla has the following powers to enforce the legislation in any relevant early years setting:

1. Maintain a register of early years’ services
2. To place persons wishing to become a provider of an early years’ service on that register
3. To place conditions on that registration, or to refuse to register, or to remove a service from the register where that service is not operating in accordance with the regulations
4. To prosecute a service that has not complied with a condition of registration
5. To prosecute a person or persons who are operating an unregistered service
6. To re-examine the registration status of every service on at least a three-yearly cycle
7. To approve change of circumstances applications

As a regulator it is vital that Tusla exercises its regulatory powers in a proportionate manner, firstly to drive improvement and secondly to respond to continuous and serious breaches of regulations within its remit while balancing the rights of providers to fair procedures and natural justice. This is an important and difficult balance to achieve at times as de-registering a service can have big impact on a community.

The quality and safety of care received by children is the end result of a wide range of decisions made by a number of different stakeholders. For example:

- Providers: their policies and guidance, local governance and internal control arrangements, and compliance with the regulations
- Professionals: education, training, continuing professional development, compliance with regulations and legal obligations as mandatory reporters under Children First where they have a concern regarding the welfare of a child
- Parents/guardians: selection of services, accessing publications and guidance available through Tusla Early Years Inspectorate and making informed decisions
- Commissioners: through contracting arrangements
- Regulators: monitoring and enforcement of standards against the regulations for the sector, controlling entry to the market, and taking action in response to concerns
- Other bodies: any organisations that have an impact on standards of practice, such as, professional organisations, colleges, numerous stakeholder groups, and government departments
- Legislation: for example, data protection, food safety, consumer protection, health and safety, planning and fire safety

While regulation and inspection is an essential component in identifying and addressing risks within the early years sector, the Early Years Inspectorate alone cannot regulate for individual behaviours which are not in evidence during inspections or not reported to Tusla through other appropriate channels such as Children First Mandatory Reporting or the Early Years Inspectorate. It is the professionalism of individuals that keeps children safe and also ensures the delivery of good care

Key Achievements of the Early Years' Inspectorate

Key achievements of the Early Years Inspectorate since 2014 include:

- Establishment of national governance to ensure standardisation of inspection practices across the country and intelligence based model of inspection which identifies and targets services at higher risk
- An unsolicited information office was established in January 2018 to process information, concerns and complaints about early years' services. An online system to submit unsolicited information to the inspectorate is also available
- A stakeholder Consultative Forum was developed in 2015 to ensure that the inspectorate listen to the voice of the stakeholders, the DCYA and relevant authorities
- Established a National Regulatory Support Forum in 2017 to provide supports to providers and parent queries
- The Early Years Inspectorate, following extensive consultation with the sector published a Quality and Regulatory Framework which is underpinned by research and best practice to make explicit what the requirements are under each regulation available for providers, students and parents
- Recently recruited a new senior manager post – head of registration and enforcement, to strengthen enforcement processes
- The number of inspectors increased from 37 to 58 WTE

Information Known and Actions taken prior to RTE Broadcast

Tusla's Early Years' Inspectorate had acted appropriately as the regulator and was applying its regulatory and prosecutorial powers proportionate to the risks and issues in each of the crèches in question, based on the verifiable information available to it. Tusla had concerns regarding repeated breaches of compliance with regulations in all the Hyde and Seek services which were informed by inspection, some of which was triggered by information received through the Unsolicited Information Office.

The continued breaches of regulations resulted in enforcement actions, including:

- Hyde & Seek Glasnevin was successfully prosecuted by Tusla in 2019 for the operation of an unregistered service (under Section 58 (d) of the Childcare Act, 1991 (as amended). Enforcement activity began in January 2018 when this was first brought to our attention
- Hyde & Seek, Shaw Street, was inspected in September 2018, and again in July 2019, and it is subject to on-going enforcement action.
- Hyde & Seek, Tolka Road, has been subject to a significant level of regulatory enforcement activity and referrals have been made to Tusla's child protection and welfare services

However, it is most important to state in the clearest possible terms that Tusla's Early Years Inspectorate had no evidence of the serious child protection concerns or the high degree of serious non-compliance with standards that was shown in the RTÉ programme. Indeed, the behaviours displayed are unlikely to be evident during an inspection and we rely on good professional practice and appropriate mandatory reporting under Children First, or through Tusla's Unsolicited Information Office for the notification of child protection concerns. Furthermore, if issues of non-compliance are evident during an inspection these are brought to the attention of the service provider for immediate action.

RTE's 'Crèches behind Closed Doors'

RTE's programme '*Crèches behind Closed Doors*' contained distressing footage which caused upset and anxiety for parents/ guardians and the general public.

Tusla first received information from RTE in late July in relation to serious concerns regarding the quality of care in these services which provided evidence of poor practice and allowed the Early Years Inspectorate to take additional action further to that set out earlier.

Tusla contacted RTE to seek any further information that would assist us to take further action to protect children and footage of a chronology of incidents identified by them since they commenced their undercover investigation last April was provided and there is on-going liaison with them in relation to this to identify and address any child protection concern.

Children First, Reporting Concerns and Child Protection

Tusla has a primary responsibility to promote the safety and wellbeing of children and should always be informed when a person has reasonable grounds for concern that a child may have been, is being or is at risk of being abused or neglected. These concerns are screened and assessed as appropriate under Children First. Where there is an immediate and serious risk to a child, Tusla provides an immediate response. All cases of suspected child abuse are reported to An Garda Síochána. Whilst this is a very separate and distinct role in the protection of children to that of the Early Years Inspectorate there are clear links between the two.

Every early years provider must ensure that their employees are trained in their obligations under Children First, and every single childcare worker in an early years' service has a legal mandate under Children First to immediately report child protection or welfare concerns, or any observation of harm to a child to the relevant social work department. Every organisation and professional also has a professional and ethical responsibility to report their concern.

Where Tusla's Early Year's Inspectorate receives a child protection concern it is referred to the child protection team who follow up accordingly.

Conclusion

I would like to conclude on two points of assurance for members of the committee, firstly the practice and behaviours broadcast in the Primetime programme are an exception in the sector, are unacceptable and are a clear breach not only of the regulations but of the trust placed by parents in the owners of Hyde and Seek.

Secondly, I can offer assurance that having inspected all 4,435 registered service providers across 26 counties, most facilities are compliant with the majority of regulations and where non-compliances are identified the majority of service providers work closely with Tusla to implement the necessary improvements.

Thank you.

Pat Smyth

Interim Chief Executive

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