

**Oireachtas Joint Committee on Children, Equality, Disability, Integration and Youth:
Discussion on Child Protection, 20th September 2023**

OPENING STATEMENT

Caoilfhionn Gallagher KC, Special Rapporteur on Child Protection

Good evening, Chair, Members of the Committee, and Committee staff, may I begin by thanking you for extending this invitation to appear before you today, in my capacity as Special Rapporteur on Child Protection. I was appointed to the role in February of this year, and this is the first occasion on which I am appearing before you. I am grateful for the opportunity, and for the Committee's timely focus on the issue of child protection.

As Special Rapporteur, a key focus of my role is ensuring that children's rights principles are embedded in legislative and policy frameworks in order to ensure that Ireland meets its obligations under the United Nations Convention on the Rights of the Child ("UNCRC") and Article 42A.1 of the Constitution with respect to child protection.

The Taoiseach began his current term with an ambitious vision: to make Ireland the "*best country in Europe to be a child,*" echoing the language of the Government's August 2019 Children and Youth Policy: "*the Government aims to improve outcomes for children and young people and make Ireland one of the best countries in which to grow up and raise a family.*"¹ I acknowledge at the outset that there have been a number of recent significant steps taken in respect of child protection which indicate the Government's commitment to that vision. In particular, I highlight three recent developments:

- (i) The establishment of the Child Poverty and Well-Being Programme Office in the Department of An Taoiseach, and publication of its initial programme plan for July 2023 – December 2025 at the start of last month.² I welcome the Government's prioritisation of addressing child poverty, and I return to this topic below;

¹ <https://www.gov.ie/en/policy/e9b63e-children-and-youth/#>

² <https://www.gov.ie/pdf/?file=https://assets.gov.ie/266235/6c4bf557-373d-4cb6-a91e-36f27106fe8b.pdf#page=null>.

- (ii) Commencement of the process of reform (albeit long overdue) of the statutory framework concerning child welfare and child protection, through both the Child Care (Amendment) Act 2022 last year and now the progression of the Child Care (Amendment) Bill 2023. As I indicated in my written submission to the Committee in May 2023 regarding the general scheme of the Bill, I welcome and support the Government's commitment to reform child care and child protection law, and to deliver more child-centred legislation. Whilst there are a number of outstanding matters to be resolved regarding the Bill, it undoubtedly represents an important step towards a more meaningfully child-centred system; and

- (iii) The Online Safety and Media Regulation Act 2022 has established the new Coimisiún na Meán and granted it significant powers within a new regulatory framework to guarantee the safety of children using online platforms. The Commission also provides valuable educational resources on child sexual abuse, cyberbullying, suicide/ self-harm and eating disorders in the online context.

I also greatly value the constructive relationship I enjoy with the Minister for Children, Equality, Disability, Integration and Youth and with departmental officials, and it is clear that there is a deep commitment to improving systems and practices to greater protect children.

However, whilst acknowledging that these steps are meaningful and important, and welcoming An Taoiseach's ambitious vision, there are persisting significant and grave concerns regarding child protection in a range of areas. In my view, there is a realisation gap: undoubted respect for and commitment to children's rights in principle, which is to be commended, but in practice there remain significant difficulties, resulting in children being at risk.

As I commenced my role in February 2023, the United Nations Committee on the Rights of the Child was publishing its Concluding Observations on the combined fifth and sixth periodic reports of Ireland.³ The Concluding Observations raise a very wide range of serious concerns, spanning diverse issues, and detailed extensive cross-sector reforms required to give effect to

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https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FCO%2FIRL%2FCO%2F5-6&Lang=en.

the UNCRC. Of most concern are six areas in which the UN Committee made plain that “*urgent measures*” must be taken by Ireland, namely:

- (i) Non-discrimination (see paragraph 15 of the Concluding Observations);
- (ii) Violence against children (see paragraph 24);
- (iii) Mental health (paragraph 32);
- (iv) Standard of living (paragraph 35);
- (v) Education (paragraph 37); and
- (vi) Child justice (paragraph 45).

Each of these six areas is, in turn, broken down into a lengthy list of measures which the UN Committee consider need to be urgently addressed. The scale and depth of the problems laid bare by the UN Committee is extensive and should not be underestimated. It is clear that there is substantial work to be done for Ireland to meet its international legal obligations, and this must be undertaken urgently. Thus, key questions for the Government are whether, and if so, when, they will be implementing the urgent measures identified as necessary by the UN Committee.

For my part, I wish to draw to the Members’ attention six topics which I consider to be particularly pressing in respect of child protection in Ireland at present.⁴ I summarise them briefly in this Opening Statement, below. It should be noted that each raises general, systemic concerns, and I do not doubt the commitment and expertise of many of the professionals involved in the systems in question. Indeed, whilst my focus is upon risks to children and young people, I recognise that professionals (social workers, psychiatrists, doctors, Gardaí, legal professionals and others) are also placed under great professional and personal strain working within systems which are not fit for purpose or which are creaking at the seams.

(1) Mental Health Services

First, I highlight the crisis in Child and Adolescent Mental Health Services (“CAMHS”), one of the urgent topics identified by the UN Committee and now laid bare in the findings of Mental

⁴ Please note that, given the remit of this session and this Opening Statement, I do not address other important matters which I will be addressing in my annual report, including issues arising from the Independent Review into the handling of historical child sexual abuse within St John Ambulance Ireland (“SJAI”) conducted by my predecessor in this role, Judge Shannon.

Health Services Inspector Dr. Susan Finnerty in her recent final report.⁵ She has identified “*ongoing and serious deficits*” in Ireland’s mental health services for children and young people, which is increasing the risk to them. Her findings include severe understaffing in child mental health services around the country, with the vast majority of teams being significantly below recommended staffing levels. She found also that care planning for some children was either non-existent or of such poor quality as to be effectively meaningless and tokenistic. She also found that CAMHS does not have a proper IT system for monitoring patients and, speaking at the launch of the report, said that Ireland is “*amongst the worst in the world for IT infrastructure in youth mental health services.*”⁶

This is a key child protection issue, and extremely pressing. The root and branch reform which Dr Finnerty has identified is critical. Resourcing is plainly a key issue, as the final report identified and as other stakeholders have made clear, and as many children and young people, and their families, know all too well given lengthy waiting lists. Some children wait up to two years for an appointment. The number of children on the list waiting to access the service increased from 2,755 in December 2020 to 4,434 at the end of February 2023. One liaison psychiatrist in CAMHS in Dublin responded to the report, stating, “*funding levels are really, really low so I think we should ask ourselves if we’re taking ourselves seriously. There’s a lot of political discussion but the funding levels remain low.*”⁷

(2) Retired District Judge Simms

In May 2023, a letter written by recently retired District Judge Dermot Simms was published by the Child Law Project.⁸ The Judge expressed his “*utmost concern*” for children in the care of the State, whose care is supervised by the State or who rely on services provided by the State. He described being informed in court over the past year by Tusla and its lawyers that the system is in a state of “*unprecedented crisis.*”

He highlighted two issues in particular: staffing and retention shortages; and the lack of properly regulated suitable placements for foster care, residential placements and special

⁵ <https://www.mhcirl.ie/news/mental-health-commission-publishes-final-report-child-and-adolescent-mental-health-services>.

⁶ This was widely reported. See, for example, <https://www.independent.co.uk/news/uk/hse-child-cho-lgbti-b2382211.html>.

⁷ Professor Elizabeth Barrett, quoted here: <https://www.irishtimes.com/health/2023/06/02/a-pill-for-social-ills-wont-solve-the-growing-mental-health-crisis-for-children-and-young-people-experts-say/>.

⁸ <https://www.childlawproject.ie/wp-content/uploads/2023/07/01-2023vol1.pdf>.

(secure) care. He also noted difficulties with inter-agency communication, and called for coordinated, immediate action to address a failure by the State in its duty of care to vulnerable children.

The lack of suitable placements has again been an issue this month. A recent distressing example which the Committee should consider dates from 4th September 2023, when the President of the High Court, Mr Justice David Barniville, ordered “*with a heavy heart*” that a chronically suicidal 16-year-old girl now attempting to take her life on a near daily basis must remain in an inappropriate placement, in a psychiatric unit, as a special care place has not so far been allocated to her.⁹ The Irish Times reported that the court was told staff interventions are keeping the girl alive, but the situation sometimes requires up to six staff to restrain her suicide attempts and she is kept in seclusion in special clothing on occasions. The President’s reported remarks are important in relation to the realisation gap between children’s rights in principle and in practice which I have referred to above. He queried why Ireland is a country with not enough places for these children “*while awash with money in other areas.*”

Many specialist civil society organisations (including the Children’s Rights Alliance and Empowering People in Care, EPIC) have emphasised that the problems identified by District Judge Simms are the result of a number of factors, including chronic issues of recruitment and retention of social workers, inadequate suitable residential and foster placements, and the ongoing housing crisis which has a particularly adverse impact upon children in care and care leavers.

(3) Child Sexual Exploitation

In June 2023, UCD’s Sexual Exploitation Research Programme (“SERP”) delivered deeply concerning findings on the extent of organised child sexual exploitation (“CSE”) in Ireland.¹⁰ Many of the SERP findings echoed findings made in the Independent Inquiry into Child Sexual Abuse in England and Wales (“IICSA”) investigation into CSE by organised networks, which reported in February 2022.¹¹

⁹ See <https://www.irishtimes.com/crime-law/courts/2023/09/04/chronically-suicidal-girl-must-get-appropriate-care-place-by-next-week-says-high-court-president/>.

¹⁰ <https://serp.ie/wp-content/uploads/2023/06/Protecting-Against-Predators-FULL.pdf>.

¹¹ <https://webarchive.nationalarchives.gov.uk/ukgwa/20221214211258/https://www.iicsa.org.uk/key-documents/28314/view/child-sexual-abuse-organised-networks-investigation-report-february-2022.pdf>

There is a particularly grave concern regarding the safety of children and young people – especially girls – in residential care or who go missing while in State care, who are being targeted for sexual exploitation in an organised manner by coordinated networks, or gangs, of predatory men. SERP identified a concern that CSE is hidden as people in authority are not recognising or understanding the risks and signs; and there are barriers to reporting.

I am aware that efforts have been made by Tusla and An Garda Síochána in recent times to address these challenges, including through staff training and the provision of clear reporting pathways. I support SERP’s call for targeted nationwide action, in the form of *“a national policy on protecting children from sexual exploitation, for which the DCEDIY would hold responsibility.”*

(4) Child Trafficking and Information Gaps

Last week the Irish Human Rights and Equality Commission (“IHREC”), as independent rapporteur on trafficking, published its second evaluation of the implementation of the EU Anti-Trafficking Directive.¹² Of particular concern to me are the figures concerning child victims of trafficking, based upon official data regarding victims of trafficking referred into Ireland’s National Referral Mechanism (“NRM”). No child victims whatsoever were identified in 2020 and 2021. In 2022, five child victims were identified.¹³ In total, only five children have been identified over the past three years. IHREC reports that the majority of these five children were trafficked for sexual exploitation.

These statistics mean that children represent only 8% of all identified trafficking victims in Ireland, which is significantly below the EU average of 23%.

Both the very low absolute figure (five children in three years) and the percentage (8% of all victims) suggests that, first, there is significant under-identification of child victims of trafficking in Ireland; and second, there is likely to be disproportionate under-identification of child victims in comparison to adult victims. This is a serious child protection concern. I note,

¹² See <https://www.ihrec.ie/documents/second-evaluation-of-the-implementation-of-the-eu-anti-trafficking-directive/>. Please note that I have been recently appointed a Commissioner of IHREC, but I played no role in this evaluation.

¹³ See Digest, pages 6 and 45.

also, that the UN Committee on the Rights of the Child highlighted information gathering gaps as a concern in their Concluding Observations earlier this year.¹⁴

(5) Separated Children/ Unaccompanied Minors

Tusla’s annual report for 2022 makes clear that the agency has faced a significant increase in separated or unaccompanied children requiring accommodation and services.¹⁵ There are a number of factors which have contributed to this, which other witnesses today will be better placed to speak to, but they include the Russian invasion of Ukraine in February 2022 resulting in an immediate and urgent need to accommodate Ukrainian children arriving as unaccompanied minors; and an increase in the numbers of unaccompanied and separated children seeking international protection from countries other than Ukraine (primarily Afghanistan and Somalia).

Coinciding with this increase in demand for Tusla services have been a number of child protection concerns, raised in HIQA inspection reports and recent press reports regarding a Tusla internal report dating from March 2023.¹⁶ The internal report reportedly found that there is a lack of oversight in Tusla’s management of reports to Gardaí of suspected abuse of unaccompanied minors in State care from Ukraine and other countries seeking asylum; Tusla could not be assured it was notifying Gardaí “*in a timely manner*” of suspected sexual or physical abuse of child refugees and asylum seekers in its care. The internal report identified “*insufficient resources*” as one aspect of the failures identified, along with inadequate planning.

(6) Child Poverty

Child poverty is a child protection issue, and it is endemic in Ireland. The most recent Survey of Income and Living Conditions (“SILC”) revealed that child poverty is increasing.¹⁷ The number of children experiencing enforced deprivation rose to over 236,000 from 202,000; and there was a sharp increase in the number of children living in consistent poverty, up by more

¹⁴ Ibid., para. 10.

¹⁵ https://www.tusla.ie/uploads/content/Tusla_Annual_Report_FS_2022.pdf.

¹⁶ See <https://www.irishtimes.com/ireland/social-affairs/2023/09/01/internal-report-criticises-tusla-care-of-unaccompanied-child-refugees/#:~:text=Tusla%20is%20responsible%20for%20caring,suspected%20abuse%20of%20unaccompanied%20minors.>

¹⁷ Central Statistics Office, SILC, February 2023.

than 40% in just one year, to over 89,000 children. Lone parenthood, ethnicity, disability and family size have all been associated with persistent poverty.¹⁸

Last week was End Child Poverty Week (11th - 15th September 2023). Marking the week, the Children's Rights Alliance called for Budget 2024 to be a Children's Budget, designed to break the cycle of poverty affecting children, young people and families across the country. They specifically called for a 10% increase to Tusla funding in the budget,¹⁹ with their Chief Executive Tanya Ward stating: *"our services are at breaking point. We are witnessing a massive demand surge in child protection, welfare and family support services as a result of socio-economic factors like poverty, homelessness, youth crime, global movement, as well as the impact of the pandemic, and the unmet need in relation to mental health, addiction, disability and psychological support services."*

Conclusion

These six issues indicate how far Ireland has to go to achieve An Taoiseach's ambition, to make Ireland the greatest place in Europe to be a child. I welcome the changes which have taken place and the fact that there is a clear commitment within Government to address children's rights and child protection issues. However, the gap between the laudable principle and the reality in practice is a large and troubling one.

I respectfully request that the Committee consider carefully this vital question of resources. Funding and staffing shortfalls are at the heart of all six issues I have summarised above. Tusla's 2022 Annual Report documented an increase both in the number of referrals for its child protection and welfare services (a 13 per cent rise since 2021) and the complex needs of individuals and families referred to services.²⁰ I recognise that Tusla has been facing a combination of challenging issues. Since 2019, the cumulative increase of referrals to Tusla amounts to 46 per cent. However, there has not been a proportionate increase in Tusla's funding or resource allocation during that time, to meet the increased demand. This is at the heart of the Children's Rights Alliance call for a Children's Budget in 2024, and in my view this has much to commend it.

¹⁸ Child Poverty Monitor 2023: https://www.childrensrights.ie/sites/default/files/submissions_reports/files/Child%20Poverty%20Monitor%202023.pdf.

¹⁹ <https://www.childrensrights.ie/resources/press-release-child-protection-and>

²⁰ <https://www.tusla.ie/publications/annual-reports/>.

I note, also, that allocation of resources was an issue of concern to the UN Committee on the Rights of the Child in their Concluding Observations on Ireland earlier this year: they expressly recommended that Ireland “*incorporate a child rights-based approach into the State budgeting process.*”²¹ I agree. Incorporation of the UNCRC includes duties on child rights-based budgeting: Article 4 of the UNCRC incorporates a duty on States to use their “*maximum available resources*” to realise children’s rights. Ireland is one of the most prosperous countries in Europe and last year, Ireland’s economy was the fastest growing in Europe.²² We owe it to the children of Ireland – and we are duty-bound under Article 4 UNCRC – to commit greater funding and resources to rapidly and urgently improve our struggling child protection systems and services.

²¹ Ibid., para. 9.

²²²² <https://www.irishtimes.com/business/economy/2023/01/30/irish-economy-grew-by-122-last-year-despite-price-squeeze-and-slowdown-internationally/>