



INCLUSION IRELAND

National Association for People with an Intellectual Disability

Submission to the Department of Children and Youth Affairs

**on the review of the Child Care Act
1991**

February 2018

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Easy to Read Summary

This submission is about a review of a law called the Child Care Act 1991.



The Child Care Act 1991 deals with issues that are important for protecting children who might not get enough care.



Children with disabilities are more likely to be abused or neglected than other children.

Children with disabilities are taken into care more often than other children.



Parents who have disabilities do not get enough support to look after their children and their children are often taken into care.



Inclusion Ireland is asking that the Government make changes to the Child Care Act to make it work better for children with disabilities.



Tusla is the Child and Family Agency that looks after the welfare and protection of children in Ireland.



At the moment Tusla do not include children with disabilities in the work that they do.

Tusla should change the way they work to include children with disabilities.



Tusla should focus more on supporting families and stopping abuse or neglect before they happen instead of stepping in afterwards.



The HSE and Tusla and other organisations that support families should work together more to support children and families in better ways.



Parents with disabilities need more support to stop their children being taken into care. The Act needs to be stronger on this.



There is a part in the Act about doing research to make supports better. This should be used to do research on how parents with disabilities experience child welfare support and protection.



The act needs to change to make sure it includes everything needed in line with assisted decision making capacity laws.

The act should make sure the voice of the child is included in all parts of the act



Child care cases happen in court at the moment. This should change so that the cases can happen in other places outside court that are better for parents and children.



In child care cases where decisions are being made, children and parents need access to advocacy and legal aid services to support them when they need it.



The Act should change to protect children from all abuse, neglect and harm in all kinds of situations including abuse in the family home and not just in care homes.



Children with disabilities should get the same treatment as other children when they are taken into care.

The Act should use UN Conventions on the rights of children and the rights of people with disabilities to make sure this happens.



All of these changes to the Child Care Act will help children with disabilities and parents with disabilities to be treated as equal and to be supported in better ways.

1. About Inclusion Ireland

Established in 1961, Inclusion Ireland is a national, rights based advocacy organisation that works to promote the rights of people with an intellectual disability.

Inclusion Ireland uses a human rights-based approach to its work. This recognises persons with an intellectual disability as rights holders with entitlements, and corresponding duty bearers and their obligations. Inclusion Ireland seeks to strengthen the capacities of persons with an intellectual disability to make their claims and of duty bearers to meet their obligations.

The vision of Inclusion Ireland is that of people with an intellectual disability living and participating in the community with equal rights as citizens, to live the life of their choice to their fullest potential. Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy.

2. Introduction

Inclusion Ireland welcomes the opportunity to make a submission on the review of the Child Care Act 1991. The Act seeks to promote the welfare of children who may not receive adequate care and protection and covers a number of areas such as the promotion of the welfare of children, the functions of Tusla and laws in relation to children in care.

Children with disabilities are three to four times more likely to be abused and neglected than non-disabled children. They are more likely to enter into the care of the state. It is more likely that this care will be in a residential setting rather than foster care, which is deemed best practice and to which the UN Convention on the Rights of Persons with Disabilities states they have a right. Disabled parents are more likely to have their children taken into care but less likely to be offered supports to help them to parent.

All this would suggest that Ireland is performing poorly in protecting families where a child or parent has a disability. While some of these failures come down to poor operational practices, many could be rectified by reforming the Child Care Act so that it is more inclusive of children with disabilities.

This submission sets out some key issues for consideration in the review of the Child Care Act 1991 and draws on Inclusion Ireland's advocacy work with people with disabilities and families.

3. Promotion of the welfare of children

3.1 Strengthening family support

It has been demonstrated that prevention and early intervention initiatives help children to realise their full potential, support children and families to be more resilient and are more effective and more cost effective than later interventions¹.

'Better Outcomes, Brighter Futures', the national policy framework for children and young people recognises "the importance of supporting parents to provide a safe and secure, stable and caring home environment for their children".

Yet in practice, the focus of Tusla, the Child and Family agency to date has been primarily on child protection rather than on promoting welfare and supporting families. Where there is a child or parent with a disability in the family, family supports appear to be non-existent.

Inclusion Ireland is in contact with families where there is a disability through its 'Connect Family Network'. Both families and professionals working with families have reported a lack of supports for families where there is a disability with a heavy focus on child protection issues, as described below.

Parents are not being provided for under the Child Care Act 1991 and supports for families with a disability are exceptionally thin on the ground.

Families are often wary of having a Social Worker as it is perceived as a step on the ladder towards the possibility of losing their child.

The communication is poor and interagency cooperation is limited.
Social Worker, Early Intervention Team

¹ Prevention and Early Intervention Network. Key messages of prevention and early intervention.
http://www.pein.ie/images/uploads/docs/Key_Messages_of_Prevention_and_Early_Intervention.pdf

When our service commenced most of the families were referred for practical, emotional, and self-esteem support. The families referred by Tusla are families referred for a very wide range of reasons and their needs are assessed in conjunction with the family themselves. Approximately 60% of the parents are referred by a Public Health Nurse and 40% by Tusla. Some have children with complex needs and some children have either suspected or diagnosed autism. The priority for Tusla referrals are children with child protection issues. Of the 40% referred by Tusla, half would be for child protection and the other half would be a mix of welfare and those recently discharged from a child protection proceeding.

There is great demand on our service. This is a program with 20 volunteers. We provide comprehensive training prior to starting as a volunteer and ongoing training in family support. Volunteers offer regular support, friendship, and practical help. There is no other equivalent parental support program in the region. There are many families that need simple support that are not being reached.

Parenting Programme Coordinator

There is a definite lack of knowledge around how to parent a child with a disability in parenting programmes across the board.

Interagency work is not happening.

Family Support Worker

Inclusion Ireland spoke to a parent with an intellectual disability who was in receipt of a parenting support programme. Despite accessing the programme, this parent told Inclusion Ireland that was not aware of the role of Tusla in her life or in her child's life. She was not clear on the role of the social worker and it does not appear that the parent was given any information on this during the referral process.

Parent with an intellectual disability

The Parent Support Champion project was rolled out in 2016 with recognition of the need to support welfare concerns of families. However, most social workers who were trained and took on this role, find that this training and prevention work is a very small aspect of their work, as described below.

Very little of the welfare work would be on developmental family work or support. Referrals come through a team leader, already prioritised. The priority will always go to child protection, not welfare concerns. Supports are not at an adequate level.

The intention with parenting support programmes within Tusla is to move toward welfare concerns, but that the “stigma” associated with being involved with Tusla prevents families from engagement for purely family support.

Opportunities for early intervention are lost as families are increasing more reluctant to engage with a “child protection” agency. Families with children with disability, who have welfare issues, are not in the queue.

Family Support Worker

A review of child care law in other countries indicates that in many countries, the law has shifted to focus more on prevention, early intervention and strengthening families with a view to preventing abuse and neglect and reducing the need for more intensive intervention, such as court proceedings².

For example, in Australia, the government has acknowledged the need to be more proactive and to invest earlier in children and families in order to shift away from a reactive child protection system. The law there has been amended to provide support to families early on, to involve other agencies in supporting families, and to provide continuity of support from first contact with a family³.

Data from Scotland indicates that its model, which emphasises early intervention and supports for families, has reduced the numbers of children entering care proceedings⁴.

3.2 Functions of Tusla

Section 3 of the Child Care Act sets out the functions of the Child and Family Agency, Tusla. Tusla, took over many of the HSE’s functions in

² Centre for Effective Services (2016). International Review of Childcare Legislation. Dublin: CES

³ Ibid

⁴ Scottish Government (2014) Children’s Social Work Statistics Scotland, 2012- 13, <http://www.gov.scot/Publications/2014/03/8922>

2014, aiming to take a new approach to child protection and family support which was “responsive, inclusive and outward looking”.⁵

The decision was made at the time to exclude children’s disability services from the remit of Tusla. This has resulted in many children with disabilities being unable to access child and family services. It has led to a situation where Tusla, its staff and its agencies, particularly the 106 Family Resource Centres throughout the country, are not adequately resourced and trained to support children with a disability and their families.

Inclusion Ireland has come across a number of situations where Tusla has refused to get involved where there are clear concerns for children with a disability. These include the restraint and seclusion of children in schools and refusing to work with a disabled child in a family whilst being prepared to support a child without a disability in the same family. In fact, Inclusion Ireland, on occasion, receives calls from Tusla social workers seeking support in regards to children with a disability. Some cases are

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- Inclusion Ireland contacted Tusla on behalf of a family of a boy who was inappropriately restrained in school. Tusla refused to investigate despite the fact that there was a clear child protection concern.
 - A lone parent of two children sought support to care for her child with complex support needs. She was told by the disability service that they could only get funding to support her if they reported the woman to Tusla for neglect. As this woman’s health was poor and she desperately needed help she agreed to this. Nothing was done and Tusla did not take any action. One year later an agent of Tusla came to see her to follow up on the report of neglect. She said she might be able to offer support with regard to care for one child but not with regard to her son with a disability. There was no subsequent follow up by this Tusla agent.
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described below:

⁵ Tusla Newsletter, January 2014 http://www.tusla.ie/uploads/content/News_Newsletter_Jan_2014.pdf

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- In another case a Social Worker from Tusla contacted Inclusion Ireland for assistance. Tusla suspected a girl with an intellectual disability had been subject to sexual abuse. The Social Worker wanted to know where they would obtain a service to communicate with the girl to find out what had happened. Tusla had no in-house experience of intellectual disability to communicate with the girl.
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The Ombudsman for Children has expressed concern over the treatment of children with disabilities. One recent report, into the case of 'Molly' highlights that the decision to exclude children with disabilities from Tusla's remit is leading to poorer outcomes for children with a disability⁶.

In addition, Ireland's Special Rapporteur on Child Protection has expressed concern on "whether Ireland's child protection programme is sufficiently inclusive from the perspective of protecting children with disabilities"⁷.

Both UNICEF and the UN Economic & Social Council have highlighted the need for child protection systems and services to be non-discriminatory.⁸ The UN Convention on the Rights of the Child and other United Nations Conventions which Ireland has ratified together with the Irish Constitution, national law, legal precedent and the European Convention on Human Rights⁹ create clear obligations for the Irish state to protect all children from harm equally.

A UN report on the rights of children in Ireland¹⁰ recommended that Ireland should adopt a human rights-based approach to disability. This means children should be seen as children first and foremost in government policy and planning.

By excluding children with disabilities from its remit, Tusla has not only reneged on its promise to take an inclusive approach but, in the view of Inclusion Ireland, has directly discriminated against children with

⁶ Ombudsman for Children's Office (2018). Molly's* case: How Tusla and the HSE provided and coordinated supports for a child with a disability in the care of the State. Dublin: OCO

⁷ Shannon, G (2016). 9th report of the special rapporteur on child protection

⁸ United Nations Economic & Social Council, UNICEF Child Protection Strategy, 2008 – available at - https://www.unicef.org/protection/CP_Strategy_English.pdf

⁹ Transposed into domestic law by the European Convention on Human Rights Act, 2003

¹⁰ UN Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, March 2016.

disabilities, leaving them without an effective agency which ensures their support, welfare and protection.

The review of the Child Care Act provides an opportunity to review the decision to exclude children from the remit of Tusla. Such a review should examine what restructuring needs to take place to ensure an inclusive child and family agency and whether increased funding is required to do this.

Section 8 of the Act requires Tusla to produce an annual report on the adequacy of the child and family support services available. Section 8 (2) specifies that attention should be paid in the report to certain groups of children that are particularly at risk of not receiving adequate care and attention.

Section 8 (2) of the Act should be amended to include children with disabilities as one of the specific groups of children that Tusla should report on.

3.3. Interagency working

Interagency work between Tusla and the HSE has been particularly poor and has had a negative impact on children and families where there is a disability. A joint HSE/Tusla review into agreements on interagency collaboration found that:

“CFA staff at operational levels are not implementing or adhering to the protocol. As a consequence, significant challenges are emerging within local areas for children presenting with a disability.....In addition, the CFA has developed a framework describing the categorisation of need for children. This appears to discriminate against children with a disability and may exclude them from accessing child protection services”¹¹

In March 2017, Tusla and the HSE issued a 'Joint Protocol for Interagency Collaboration Between the Health Service Executive (HSE) and Tusla to Promote the Best Interests of Children and Families (the Joint Protocol).¹²

On the day of publication, the Minister for Children, Katherine Zappone and Minister for Disability, Finian McGrath issued a joint statement confirming that “its objective is to provide clarity for children and families

¹¹ Ombudsman for Children's Office (2018). Molly's* case: How Tusla and the HSE provided and coordinated supports for a child with a disability in the care of the State. Dublin: OCO, P.18

¹² HSE & Tusla (2017). Joint protocol for interagency collaboration between the HSE and Tusla, child and family agency to promote the best interests of children and families

whose needs cross between the HSE and Tusla” and “to ensure that services are child and family centred and eliminate the potential for fragmentation or duplication”.¹³

Through our advocacy work, Inclusion Ireland has anecdotal evidence that would suggest that the Joint Protocol has had little impact. Inclusion Ireland has received reports that Tusla is still referring cases concerning children with intellectual disability back to the HSE without consultation, collaboration, examination of individual circumstances or subsequent follow up.

Should the remit of Tusla be reviewed and the decision made to include children with disabilities, this would address some of the issues that have resulted in children with disabilities falling between the gaps. However, the need for effective interagency working to ensure the welfare of children and families is a much broader issue and requires cooperation across a number of sectors.

The benefits of effective interagency working have been well established. It can have a positive impact on children and families through improved and faster access to services and supports, more involvement from families and a more holistic approach taken to addressing a child’s support needs¹⁴.

Since the Child Care Act 1991 was commenced, the state has put in place a number of mechanisms to support interagency working, including Children and Young People’s Services Committees (CYPSC’s) and Meitheal, the National Practice Model. However, there is little evidence in the public domain to say whether these structures are supporting families where there is a disability.

In addition, the Progressing Disability Services Programme consists of a national working group and a number of local implementation groups and aims to bring together the disability service organisations in an area. Performance in delivering the proposed changes has been disappointing, with only 56 of the planned 129 network teams in place as of September 2017¹⁵.

¹³ Department of Children and Youth Affairs, Joint Statement of Katherine Zappone & Finnian McGrath - <http://www.childrensdatabase.ie/viewdoc.asp?DocID=4164>

¹⁴ Statham, J. (2011). A review of international evidence on interagency working, to inform the development of Children’s Services Committees in Ireland. Dublin: DCYA

¹⁵ HSE (2017). Performance reports, July - September 2017 quarterly report

The need for legislation to underpin interagency working was one of the recommendations made at the Open Policy Debate on the review of the Child Care Act in September 2017¹⁶. It was suggested that the Act should consider how it can facilitate access to other services such as disability, mental health and addiction services.

It was also recommended that structures for interagency working set out under Better Outcomes, Brighter Futures, such as CYPSC's, are put on a statutory footing with clear accountability and reporting requirements¹⁷.

In other jurisdictions, joined up or interagency working is seen as a core preventative strategy and is underpinned by legislation¹⁸. For example, England's law in this area recognises the responsibility of different agencies in relation to child protection, information sharing and a continuum of pathways of care and support.

Legislation in Australia, requires "the development of interagency procedures and protocols with government departments and agencies and the community sector to promote the care and protection of children and young persons and to ensure that these procedures and protocols are implemented and regularly reviewed"¹⁹.

3.4 Research

Section 11 of the Child Care Act states that the Minister or Tusla may conduct or assist other persons in conducting research into any matter connected with the care and protection of children or the provision of child care and family support services.

Little evidence is available in Ireland on how parents with intellectual disabilities experience child welfare, support and protection services and so we can only guess at the extent of the issue, especially the lack of accessible supports such as disability rights training for social workers. We are also unsure if foster parents receive disability awareness training or supports.

In the context of reviewing the Act, the Department might note such gaps in the evidence base and implement Section 11 to commission a comprehensive piece of research in this area.

Recommendations:

¹⁶ A Report on the findings of an Open Policy Debate on the Review of the Child Care Act 1991. September 2017. <https://www.dcy.gov.ie/documents/legislation/20171212ReportFindingsOpenPolicyDebateReviewCCA1991.PDF>

¹⁷ Ibid

¹⁸ Centre for Effective Services (2016). International Review of Childcare Legislation. Dublin: CES

¹⁹ Ibid, p.10

- Amend the Child Care Act to reflect a greater focus on prevention, early intervention and strengthening families in line with international best practice
- Review the functions of Tusla as set out in Section 3 of the Child Care to ensure that children with disabilities come within its remit
- Amend Section 8 (2) of the Act to require Tusla to report on the adequacy of the child care and family support services available to children with a disability
- Amend the Act to explicitly recognise the role of other government departments and agencies in supporting and protecting children and families.
- Use Section 11 of the Act to carry out research into how parents with intellectual disabilities experience child welfare, support and protection services

4. Care proceedings

4.1 Supporting parents with a disability in their parenting role

One of the underpinning principles of the Child Care Act 1991 is that “it is generally in the best interests of a child to be brought up in his own family”²⁰.

Parents with intellectual disabilities have the same rights and duties as any other parent, including the right to family life. They also have a right to access support services to assist them to parent, on an equal basis with others.

Children have the right to be safe and protected and for their welfare to be paramount. They also have a right to receive the necessary supports for themselves and their families so that they can remain living with their parents.

However, evidence from the Child Care Law Reporting Project would suggest that, in practice, these rights are not upheld for either parents with a disability or disabled children.

The Child Care Law Reporting Project notes that parental disability was the most common reason for instigating child care proceedings (15% of

²⁰ Child Care Act, Section 3 (c)

all cases).²¹ In addition, children with a disability are the largest category of children involved in child care proceedings (30% of cases).

Disproportionate numbers of children are taken into State care due to the fact their parents have an intellectual disability. This is not a result of limited capacity but rather, a lack of appropriate supports for parents to ensure the welfare and development of the child.

The author of the reports, Carol Coulter, notes that the prevalence of parents with disabilities before the courts highlights the lack of services available to this group. She notes that in many cases where the parent has a 'cognitive disability', there is no evidence of provision of appropriately tailored parenting supports.

In some cases, some services were offered to parents with intellectual disabilities to support their parenting abilities, but these supports were not tailored enough to be of tangible benefit to the parent, ultimately failing them and their children²².

Research by the National Disability Authority²³ cites a number of challenges for parents with intellectual disabilities, including poverty, anxiety and social exclusion. It found that across a range of different countries, parents with an intellectual disability are more likely than other parents to have their children taken into care, and up to 48% of children of parents with intellectual disability were likely to be in care. Yet it also stated:

"A consistent finding from the literature is that maternal IQ is not systematically correlated with parenting competence". A substantial body of evidence demonstrates that parents with an intellectual disability can adequately care for their children given appropriate support"²⁴.

Through our advocacy work, Inclusion Ireland has experienced the lack of available supports for parents with a disability and the lack of knowledge of Tusla staff regarding supporting parents with a disability, as described below.

²¹ Coulter, C. (2015). Final report, Child Care Law Reporting Project.

²² Coulter, C. (2015). Childcare Law Reporting Project.

²³ NDA (2010) Research on intellectual disability and crisis pregnancy, parenting and sexual health for caregivers, health professionals and service providers. Dublin :NDA

²⁴ Willems, D. L., De Vries, J.-N., Isarin, J. & Reinders, J. S. (2007) Parenting by persons with intellectual disability: an explorative study in the Netherlands. *Journal of Intellectual Disability Research*, 51, 537– 544; Booth, T & Booth, W. (1993) Parenting with learning difficulties: lessons for practitioners. *British Journal of Social Work*, 23: 459-480.. McConnell, D., Mayes, R. & Llewellyn, G. (2008a) 'Women with Intellectual Disability at Risk of Adverse Pregnancy and Birth Outcomes.' *Journal of Intellectual Disability Research*, 52, 6, pp 529-535.

Inclusion Ireland was approached by a state agency to find out what state and non-state supports are available to parents with intellectual disabilities in relation to a child care case where Tusla had exhausted the services and programmes they could provide to the parent.

Basic parenting training had already been undertaken by the parent but this was not satisfactory enough for Tusla to ensure the welfare and protection of the child. The specific challenges the parent with an intellectual disability experienced in raising her child were not addressed by state supports.

Issues also arise for parents with a disability when determining their parental capacity. Professionals working with parents with disabilities have reported to Inclusion Ireland that the approach often taken by Tusla once the parent presents to the agency, is an assessment of their parenting skills, rather than a cognitive assessment of the parent which could provide an insight into what supports could be beneficial. Although a parenting assessment is necessary, this should not be relied on solely to determine whether a parent with an intellectual disability is fit to be a parent.

The Assisted Decision Making (Capacity) Act 2015 establishes the right of a person with a disability to the presumption of capacity. It also establishes that an individual's capacity can fluctuate over time and depending on the complexity of the issue.

However, according to one professional supporting parents with disabilities who have been referred from Tusla, Tusla automatically see the disability rather than the child at the centre of the case.

In reviewing the Child Care Act and in particular Part 5 which looks at care proceedings, care should be taken to ensure that the Act is in line with the Assisted Decision Making (Capacity) Act 2015.

4.2 Access to Justice for children with intellectual disabilities

Ireland's court based system for deciding childcare cases is overly legalistic, cumbersome and intimidating, not only for parents with intellectual disabilities but also children.

Good practice in promoting and protecting the rights of the child in legal proceedings is through creating a space for the voice of the child to be heard, in particular children with additional support needs.

Though Section 5 (24) of the Act does state that the court should “in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child” it is not sufficiently robust to ensure that a child’s voice is heard and respected, particularly where the child may need support to communicate their will and preference.

The Child Care Law Reporting Project notes that different weight has been given to the voice of the child in child care proceedings by social workers. In one case the voice of a young adult was not relied on as a legitimate expression of the wishes of the child and in another case a toddler’s reaction was noted by the social worker as the basis for her opinion about the capability of a parent.

In reviewing the Child Care Act, good practice in other jurisdictions might provide useful learning for Ireland. The Scottish model of child care proceedings provides one such example and is described below.

The Scottish model of child welfare proceedings is a non-court based lay tribunal, known as Children’s Hearings. This model incorporates key principles and rights from the Convention of the Rights of the Child (CRC) regarding participation of the child, reference to the right of a child to express a view and this view being considered in the decision-making. The non-adversarial approach taken also incorporates principles of minimum intervention in the child’s life and best interests of the child. Children also have access to legal aid in child welfare hearings.

As a non-court based system which relies to a certain degree on community volunteers, the system is more cost effective. The intention is participation by the community in decision-making about the needs of children and young people, directly involving children and their families in the discussion of needs and solutions in the child’s best interests.

Children with intellectual disabilities in the court system are provided with accessible documents, including similar documentation for parents with intellectual disabilities and advocacy is currently being developed.

Recommendations:

- Ensure the Act is sufficiently robust in its provisions for parents with a disability to prevent the commencement of care proceedings and also for those parents who have already entered into care proceedings. This could include explicit reference to access to services for families with a disability in Part 2 (9) 'Provision of services by voluntary bodies and other persons'
- Amend the Act to ensure it is in line with the Assisted Decision Making (Capacity) Act 2015 and the standards set out in the UNCRC and the UNCRPD
- Amend the Act to strengthen the voice of the child throughout its provisions
- In reviewing Part 5 of the Act, amend this section to allow for the consideration of child care cases outside the court-based system, in line with best practice
- Amend Part 2 (9), 'Provision of services by voluntary bodies' to include an explicit reference regarding access to advocacy and legal aid for parents and children

5. Children in care

Children with an intellectual disability are more likely to be in care than their non-disabled peers. In the age group 10-19 they are 14 times more likely to be in care (71 per 1000 versus 5 per 1000)²⁵.

The Child Care Act 1991 sets out the provisions for children in different types of care situations, such as foster care or residential care. However, throughout the Act, there are repeated references to the exclusion of children with disabilities.

In its definition of 'children's residential centre', Section 2 of the Act specifically excludes "an institution for the care and maintenance of children with a disability".

²⁵ McConkey, R. (2013). Why family centred practice, presentation. <http://www.fedvol.ie/fileupload/Seminars/Family%20Centred%20Practice%20Roy%20McConkey%20Event/Roy's%20presentation%20Why%20family-centred%20practice%20%20NFVB%20March%202013.pdf>

Section 36 of the Act looks at children in the care of the child and family agency with Section 36 (3) stating: "Nothing in this section shall prevent a health board sending a child in its care to any hospital or to any institution which provides nursing or care for children suffering from physical or mental disability."

Of children in care more than 90% are in foster family placements. Among children with an intellectual disability, this type of care setting occurs less frequently, with only 50% of children with a disability in care, in foster care settings²⁶.

This raises the question of whether children with a disability are placed in residential care without first exploring fostering, considered to be best practice, as an option.

In 1991, when the Child Care Act was written, it was more common to place people with disabilities into institutional settings. The UNCRPD sets out the standard that is required for children with disabilities in care situations and places an obligation on states to "undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting"²⁷ where the immediate family is unable to provide care.

If a child with a disability is in care they should be supported to live in a (foster) family home in a local community where they can have friends like all other children.

Where a young person with a disability is leaving care at age 18, they should have equal access to supports to make the transition to independent living, including a detailed aftercare plan with accompanying supports.

In reviewing the Child Care Act, those sections dealing with children in care should be updated to reflect developments in equality legislation, human rights standards and best practice.

5.1 Abuse of children with disabilities in care

Ireland ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992²⁸. Article 19 obliges the state (including its agencies) to protect all children from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment...".

²⁶ Coulter, C. (2015). Final report, Child Care Law Reporting Project,

²⁷ CRPD, Article 23 (5)

²⁸ Ireland has also ratified the Optional Protocol to the UNCRC which allows complaints to the Committee on the Rights of the Child

Children with disabilities are three to four times more likely to be abused and neglected than non-disabled children.²⁹ Children in care are particularly at risk of experiencing abuse.

The case of 'Grace' illustrates the failures of the state and its agencies to protect children with disabilities in its care. 'Grace' was a young woman with intellectual disabilities who experienced horrendous abuse in a foster home where she had been placed by the state. Despite repeated allegations of abuse, the HSE failed to act to ensure Grace's safety. In total, 47 children were placed in this foster home over two decades up to 2013.

When questioned by the Public Accounts Committee on why the HSE did not intervene to remove a young woman referred to as 'Anne' from the same foster home, Tony O'Brien, Director of the HSE stated that he was not clear if the HSE has a legal capacity to take such action as the young woman had been placed there privately³⁰.

The response of the HSE following the enquiries into the Grace case raise questions as to the effectiveness of the Child Care Act in protecting children with disabilities from abuse, where this abuse happens in the care of the state or in private foster arrangements.

It has led some legal professionals to question if "the legislation that protects the child from enduring such abuse in the family home [does] not protect the child in the same way if the abuse happens in a State funded home"³¹.

Recommendations:

- The Act's provisions on welfare and care should be subject to the statutory standards set out in the Equality Acts and UNCRPD, in that they are accessible to people with disabilities and that children with disabilities are not treated differently in the care system once they are taken into care
- The Child Care Act should be reviewed to ensure that it provides sufficient protection from abuse for children with disabilities in all kinds of care situations as well as from abuse within the family

²⁹ Ofsted (2012). Protecting Disabled Children: thematic inspection.

<https://www.gov.uk/government/publications/protecting-disabled-children-thematic-inspection>

³⁰ <http://www.thejournal.ie/hse-abuse-scandal-pac-2580144-Feb2016/>

³¹ Gibbons, L. (2016). What happened to 'Grace'? (Children in State Care)

<http://familylaw.ucc.ie/2016/04/01/what-happened-to-grace/>

6. Conclusion

'Better Outcomes, Brighter Futures' the national policy framework for children and young people recognises that:

"All forms of...discrimination are unacceptable and must be challenged in schools, youth organisations, communities, at work or online, and the State has a duty to ensure its laws, policies and practices do not discriminate³²".

Yet, there are many aspects of the Child Care Act and its implementation that result in discriminatory outcomes for families where there is a disability.

The Child Care Act 1991 predates Ireland's equality legislation as well as the ratification of the UN Convention on the Rights of the Child and the impending ratification of the UN Convention on the Rights of Persons with Disabilities.

Review and reform of the Act is necessary to ensure that it is inclusive of all children and families where there is a disabled family member. The review must encompass the key provisions set out in equality legislation and the Conventions, including, provisions on accessible supports for disabled persons to have a family, access to justice and respect for the voice of the child.

Legislation which specifically states that all children have a right to be cared for and receive the support of child and family agencies equally, creates a culture of child protection where there is no doubt that children with disabilities must be treated equally to other children.

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³² DCYA. Better outcomes, brighter futures. National policy framework for children and young people, 2014-2020. p.79.