



10 September 2020

Department of Children and Youth Affairs
Block 1, Miesian Plaza
50-58 Lower Baggot Street
Dublin D02 XW14

Dear Sir/Madam

Review of Child Care Act 1991 - Joint RCNI and One in Four Submission

Rape Crisis Network Ireland and One In Four

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland. Our members' role includes the provision of a range of specialist supports to child victims of sexual violence (mostly over the age of 14) and adult victims of child sexual violence.

One in Four provides a range of specialist counselling, accompaniment and other support services directly to survivors of sexual abuse. It also advocates at national level for positive changes to benefit survivors, and provides specialist programmes aimed at perpetrators.

We wish to make a joint submission on two areas of the CCA, firstly on the guiding principles and secondly on the impact of the CCA and the current child protection framework which depends on the CCA and how it impacts adult victims of childhood abuse.

1. The Current Consultation – Guiding Principles

RCNI and One in Four would like to make some brief points on the Child Care Act 1991 proposed new Guiding Principles.

- We agree wholeheartedly with the proposed new principles, here paraphrased: timely decision making, stability of care, promoting rights and development of children, ascertaining views of children and giving due weight to these views, having regard to the age and maturity of the children concerned;

- We would supplement these by saying that decision making as far as children are concerned should be not only timely (though this is extremely important), but also as far as possible, expert: everyone who must make a decision with grave implications for the future well-being and rights of a child should have a high level of specialist knowledge, based on intensive, high-quality initial and continuing training. In the case of child sexual violence, this should include an appropriate specialisation in sexual violence and related matters.
- This expertise and specialisation of those making assessments should be professionally recognised and accountable.
- Decision makers in child related cases should have access to personal support, if they need it – no matter the nature of their role, decisions about children’s welfare are personally as well intellectually challenging;
- Any intensive, initial and continuing training should include high-quality material on the nature and effects of child sexual exploitation and violence (and perhaps also, other forms of household violence);
- Any such training should also include high-quality material on how best to communicate with child victims of sexual exploitation and violence (and perhaps, other forms of household violence);
- There should also be a guiding principle that anyone who has suffered abuse as a child should be regarded as a victim of crime and therefore, in the context of assessments of child protection concerns as envisaged by Section 3, should have enumerated rights to certain information and support, including specialist support, analogous to the rights of victims as set out in the Criminal Justice (Victims of Crime) Act 2017.
- With regard to the possibility that parental participation should become a guiding principle, in our respectful submission this principle must be tempered by the certainty that abuse, both sexual and non-sexual, are far from rare in the familial context. This principle, if enacted, should be phrased in such a way that it is clear that parental participation where the participation consists of or contributes to abuse, or where it happens in order to initiate abuse – is excluded.

2 Rights of Adult Victims of Child Abuse as impacted by CCA 1991

We set out this background below in some detail to explain why we are interested in Section 3 of the Child Care Act 1991, which is still considered to be the statutory basis for the CFA assessment and determination process for mandated (and other) reports of sexual violence against children, regardless of whether its victims are still children or not.

RCNI and One in Four understand of course that Section 3 is not the subject of the present consultation. In our respectful submission, it is vital that if the Oireachtas decides that CFA

should retain the duty of investigating historic child sexual violence against survivors who are now adults, Section 3 should be amended to become fit for purpose so that it upholds the rights not only of children currently at risk and accused persons but also recognises and vindicates as far as possible, the significant rights of adult survivors and mandated persons.

- Sexual violence counsellors and therapists are mandated persons within the meaning of Schedule 2 of the Children First Act 2015. Therefore, they must make mandated reports regularly to the Child and Family Agency (CFA) about their knowledge, belief, or reasonable suspicions in relation to harm being caused to their clients. The mandated reporting process usually works in quite a straightforward way as far as current child clients are concerned, though it does require a sensitive and thoughtful response from counsellors as they explain the implications of the reporting process to minor clients.
- However, with adult survivors of child sexual violence, it becomes much more problematic. By no means all adult survivors are willing, or even able, to make a report to An Garda Síochána (AGS) about the sexual violence which they suffered as children. They often find it hard to accept that a mandated report must be made to CFA and shared with AGS, regardless of their wishes, even in circumstances where they have no information at all about any current risk to children from the person who abused them, and even more difficult to accept that their abuser will be informed that a report has been made on their behalf to the CFA. As far as the criminal aspects of the mandated report are concerned, they can decide not to engage with the criminal justice system. They can also decide to opt out of the CFA assessment (substantiation) process by declining to give an interview to CFA social workers charged with assessing the substance of the mandated report.
- Under current procedures, however, they cannot prevent the abuser from knowing that a mandated report has been made, even where they do not assist its investigation. The knowledge that intimate disclosures made in counselling sessions will come to the abuser's attention and will be investigated, as far as possible can be deeply violating of survivors' privacy. This situation can hinder access to counselling and the counselling process itself. But that is not the worst effect that it has. Some survivors find themselves at risk of physical or other attack once the abuser realises that an investigation has been opened on foot of a mandated report triggered in a counselling session. Others are so fearful of the consequences of the perpetrator finding out the origin of the report that they have made credible threats of suicide if this were to occur, to their counsellors. The only protection which they have is anonymity, that is, not naming the abuser and/or themselves. As this is not always possible, many survivors choose to not take up much needed supports in order to



protect themselves from mandatory reporting. It hardly needs saying that this is not a situation conducive to reducing any current risk to children.

- It will be seen that knowledge of the risks faced by their clients if a mandated report is made and knowledge that the mandated reporting process itself inhibits the counselling (and therefore, healing) process itself – taken together, put the counsellors into an unenviable position, caught between statutory obligations and their professional duty to their client.
- RCNI and One in Four are doing our best, working alongside our colleagues, to find a workable solution for this situation by working with CFA as far as possible. So far, no satisfactory resolution has been found and it is clear to us that urgent reform of the CCA Section 3 is a part of the solution.

Please do not hesitate to contact either one of our organisations if you would like further information on any point. We will each do our best to help.

With best wishes and thanks

Yours faithfully

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