

March 2018



Irish Foster Care Association

Submission to the Department of Children and Youth Affairs

On

Review of the Child Care Act 1991

## Introduction

The Irish Foster Care Association (IFCA) welcomes the opportunity to contribute to the review of *the Child Care Act 1991*. IFCA's submission is informed by its experience of being the representative body for foster care in Ireland and of the lived experiences of foster carers who support children and young people in foster care. The placement of children in alternative care is legislated for in the Child Care Act 1991<sup>1</sup>, and governed by the UN Convention of the Rights of the Child and ratified by the Irish Government in 1992<sup>2</sup>, ensuring that it take all appropriate, legislative, administrative and other measures to implement the Convention, (CRC Article 4). Two of the most important articles are; Article 3, the "Best Interest", principle, and Article 12, The Voice of the Child. Article 12 can be said to be one of the most advanced Articles, in that it is a vehicle to realise other rights.

Subsequent government policy, National Children's Strategy (2000)<sup>3</sup>, Brighter Outcomes Better Futures (2011)<sup>4</sup>, The National Policy Framework for Children and Young People (2014-2020)<sup>5</sup>, National Consultation Policy (2015)<sup>6</sup>, and National Youth Strategy (2015)<sup>7</sup>, informs national objectives and outcomes for *all* children in Ireland and the revised Child Care Act should be informed and reflect all of the above named policies. Specifically, the review of the Act should be informed by the 31<sup>st</sup> amendment of the Constitution<sup>8</sup> where the rights of the child are enshrined, the Children and Family Relationships Act (2015), The Child and Family Agency Act (2013)<sup>9</sup>, The Child Care (Amendment) Act (2015)<sup>10</sup> the Amendment to the Adoption Act (2017<sup>11</sup>), and the Children First Act (2015)<sup>12</sup>.

## Introduction to The Irish Foster Care Association

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<sup>1</sup> The Child Care Act (1991) Department of Health

<sup>2</sup> UN Convention of the Rights of the Child (1989)

<sup>3</sup> National Children's Strategy (2000) Department of Children and Youth Affairs.

<sup>4</sup> Brighter Outcomes Better Futures (2014) Department of Children and Youth Affairs

<sup>5</sup> The National Policy Framework for Children and Young People (2014), Department of Children and Youth Affairs

<sup>6</sup> National Consultation Policy (2015) Department of Children and Youth Affairs.

<sup>7</sup> National Youth Strategy (2015) (DCYA).

<sup>8</sup> Irish Constitution

<sup>9</sup> Children and Family Agency Act 2013

<sup>10</sup> Child Care (Amendment) Act 2015. Department of Children and Youth Affairs.

<sup>11</sup> Amendment to the Adoption Act 2017, Oireachtas

<sup>12</sup> Children First Act 2015. Oireachtas

## Mission Statement

*The Irish Foster Care Association is the representative body for foster care in Ireland.*

*Child-centred and rights-based, IFCA promotes excellence in foster care for all those involved.*

## Vision

Supporting excellence in foster care so that children in care have the best chances in life

## IFCA Values

- The paramount importance of the protection and welfare of children
- Open, respectful, transparent ways of working
- The role of foster carers in the lives of children
- A partnership approach between all those involved in foster care
- Equality and inclusion
- Family based care for children who for various reasons cannot live with their own families
- The work of volunteers at all levels within the Association

## IFCA believes

- That foster care is complex and foster carers require a range of supports, and expert advice to enable them provide the best possible care for the child in their care
- In the value of foster care as an effective alternative for children who, for various reasons, are unable to live with their own families.

## What we do

- IFCA provides information, support and learning opportunities, based on evidence research and best practice, for all those involved in foster care
- We deliver targeted support to foster carers through our National Support and Branch/Regional Development Services
- We promote the development of positive change for children in alternative care
- We influence policy, legislation and opinion through our Advocacy work.

## Promotion of the Welfare of Children (Part11)

### 1.0

#### 1.1 Family Support

Part 11, section (3) of the Child Care Act 1991 requires for the provision of, “child and family support services”. Current government policy, Brighter Outcomes Better Futures, The National Policy Framework for Children and Young People, 2014-2020 sets out 6 Transitional Goals and 5 National Outcomes for children. Two Goals specifically identify the need for;

(1) Support for Parents

(2), Earlier Intervention and Prevention.

The National Child Well-Being indicators (2005) also sets out key indicators for children and young people, across the domains of health, education, school and community, health and safety, social emotional and behaviour development, economic status and demographic characteristics.

Research demonstrates that early intervention and prevention through a range of family support systems offers children and families the best supports which enable children to grow and develop within the family unit and within their community.

The recent developments by the Tusla, the Child and Family Agency of Meithal and the Primary Preventative Family Support strategy strives to offer early intervention to families. Every effort should be made to support families and children to strive to retain children growing up within their family of origin, and resources will be required to ensure delivery nationally that is consistent and comprehensive in meeting the needs of children and families to strengthen initiatives to support families and children.

#### Recommendation

1. Include and strengthen the critical role that the Public Health Nurse plays pre and post-natal and into the early formative years in the revised CC Act.
2. Include the Public Law Act (for breast-feeding in public places and in the workplace) to promote breast-feeding of babies

3. Specify the importance of targeted early intervention programmes
4. Reiterate the role of the Voluntary sector in supporting families with the required resources
5. Provide some funding streams for family support services directly through DCYA to ensure objectivity in funding arrangements
6. Legislate for a more robust requirement for both the Health Service Executive and Tusla to provide seamless services to children, e.g. speech and language therapy, occupational therapy and mental health services for children and adolescents.
7. Specify the need for National Standards to be developed and independently monitored for the provision of services to children and families across the HSE and Tusla
8. Retain section 7 – (1) for the establishment of independent childcare advisory committees to Tusla, and for the provision of the effectiveness of delivery by means of annual reports using the National Well- Being indicators for children
9. Provide for the protection of children in the use of social networking and their increased exposure to on-line content

## 1.2 Children’s Rights

Article 3, (UNCRC), Best Interests of the Child Principle, requires that the best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is in the best interests for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

The Child and Family Relationships Act (2015), sets out the criteria for the court in determining the “best interest” and the Amendment to the Adoption (Amendment) Act (2017) also specifies criteria for such a determination.

Article 12 (UNCRC) (Respect for the views of the child): When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. This Convention encourages adults to listen to the opinions of children and involve them in decision-making. Article 12 does not

interfere with parents' right and responsibility to express their views on matters affecting their children. Moreover, the Convention recognizes that the level of a child's participation in decisions must be appropriate to the child's level of maturity. When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account.

Article 42a of the Constitution requires the securing, as far as practicable, that in all proceedings referred to in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.

### Recommendation

1. The revised Act should contain all reference to the Best Interest principle and of its requirement to be demonstrated by all State agencies and the Courts in determining decisions for children located within the Best Interests principle., in particular, decisions to remove children from their family or origin, and specifically, in respect to all decisions made by social workers where a child is placed in Care.
2. The revised Act should take into consideration the Rights for children as set out in the UNCRC and the Constitution.

### 1.3 Voluntary Care

Where a concern exists for the care and protection of the child, section 4 of the Child Care Act provides for the provision whereby parents/guardians may place their child in the care of the state in a voluntary capacity. Section 4 (3) b, states that "it shall be the duty of the Board, (subject to the provisions of this section), to have regard to the wishes of a parent having custody of him or her, or any other person acting in *locus parentis* in the provision of such care.

Recent statistics indicate that 59% of children were placed in care by voluntary agreement by their legal guardians<sup>13</sup>, and 42% of Voluntary Care Orders do not receive

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<sup>13</sup> Child and Family Agency, "Annual Review of Adequacy of the Child and Family Support Services" (2015). [http://www.tusla.ie/uploads/content/Review\\_of\\_Adequacy\\_2015\\_Final.p65](http://www.tusla.ie/uploads/content/Review_of_Adequacy_2015_Final.p65)

court scrutiny.<sup>14</sup> It is further noted by Kilkelly, U, (2008: pp335) in Coulter’s Law Reporting Project that:

*The long-stay nature of the care system is a very worrying feature and it suggests a lack of compliance with the UNCRC principle that alternative care should be in most cases temporary in nature.*

#### Recommendation

1. The constitutional rights of children must be taken into consideration where decisions are made to place children into Voluntary Care.
2. The placing of children in Care should take all of their rights within the UNCRC into consideration and be demonstrated to do so.
3. Provision be made for the regular review of Voluntary care arrangements by the courts or an independent body, taking into consideration all of the rights of the child and of whose recommendations are binding.
4. National and International models of eliciting “the views of the child” be employed where decisions affecting children
5. are made, and training of suitably qualified adults be developed, standardized, offered, monitored and evaluated
6. Where it is deemed, (by an independent panel), that a child remains placed in Voluntary Care for an unreasonably long period of time, the Child and Family Agency, should pursue full care orders to offer security to the child, and stability to the child’s placement, of which 93% are in foster care.

#### 1.4. Guardianship

The Children and Family Relationships Act (2015) amended the Guardianship of Infants Act 1964 to develop a wider range of persons who may apply for Guardianship of children. The new Act recognises the wide range of family forms and arrangements for child rearing in Irish Society today. Shannon (2016)<sup>15</sup>, references the number of registered births outside of marriage in Ireland as being 36.1% in 2014. The “new” family

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<sup>14</sup> Coulter, C., (2013), Child Care Law Reporting Project.

<sup>15</sup> Shannon, G., (2016), Children and Family Relationships Law In Ireland, *Practice and Procedure*.



can consist of lone unmarried parents, unmarried and cohabiting couples, same sex couples, and various types of blended families.

The current Child Care Act 1991 reflects the legal definition of the “family “at the time of enactment and which does not recognise the changes in Irish society since that time.

The 2015 Act provides seven categories of persons who can apply for and be recognised as having Guardianship of a child;

1. Automatic Guardianship
2. Guardianship by Statutory Declaration
3. Guardianship by the Court
4. Non-parental Guardianship
5. Temporary Guardianship
6. Testamentary Guardianship
7. Guardianship acquired on Other Jurisdictions

The Act also extends to categories of persons of persons who may apply to the court and which may include two guardians, if deemed in the best interest of the child, as the appointment of a guardian will not affect the guardianship of a previous guardian. The provision of a wider type of guardians will be required to be reflected in the review of the Child Care Act, particularly where decisions affecting children are being made in respect of voluntary placement into Care and Consent.

### **Recommendation**

1. Section 4 of the Child Care Act 1991 be aligned with the Child and Family Relationships Act and specifically the rules for Guardianship.
2. The revised Child Care Act define who can give consent to agree to the placement of a child in voluntary care
3. Where a child is placed in Voluntary Care, specify the name/s and role of the Guardian in the Care Plan.

### 1.5 Section 12 Power of the Garda Síochána to take a child to safety

The Child Care Act 1991 gives power to An Garda Síochána to remove a child to a place of safety if there is reasonable grounds for believing that;

- a. There is an immediate and serious risk to the health or welfare of a child, and
- b. It would not be sufficient for the protection of the child from such immediate and serious risk to await the making of an application for an emergency care order by a health board under section 13.

Recent research has demonstrated a requirement for greater interagency between An Garda Síochána and Tusla as a key finding.

#### Recommendation

1. Make provision in the revised Child Care Act for the inclusion of all the recommendations of the Shannon Report on section 12 (2016)<sup>16</sup>

### 1.6 Provision of accommodation for the purposes of part 111

This section of the 1991 Act requires a health board to provide for or make arrangements with registered providers of children's residential centres or with other suitable persons for the provision of suitable accommodation.

Of the 6,250 children currently in the care of the State, 93% of them reside in foster care, either with relatives or general foster carers, with 29% residing within relative foster care.<sup>17</sup> . A review of the Child Care Act must reflect the current data and specify strengthened supports to foster carers to provide for children in care. A dilemma for foster carers is that the legal parental responsibility is either held by the birth parents or Tusla but the day to day activity of parenting is carried out by the foster carer. This pertains in particular to the area of Consent.

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<sup>16</sup> Shannon., G. (2016) Audit of the use of Section 12 of the Child Care Act 1991 by an Garda Síochána.

<sup>17</sup> Tusla Child and Family Agency (2017) Q3 Data set.

Recommendation

1. Provide for the strengthening of the role of foster cares in children’s lives
2. Provide for greater supports to be offered to foster carers to ensure that the Best Interests of the child are met referencing the Child and Family Relationships Act (2015) criteria
3. Provide for an independent review panel to adjudge decisions made by the Child and Family Agency to ensure that they are made in the Best interests of the Child.
4. To amend section 43A of the Child Care Act (1991) to mirror Section 6c of the Guardianship of Infants Act 1964 as inserted by Section 49 of the Children and Family Relationships Act 2015. The provision will allow for a foster carer/relative carer who has a child in care of a continuous period of 12 months or more to apply, if in the best interest of the child, for a court order to have specific and limited guardianship rights, subject to periodic reviews, without the withdrawal of support or involvement from the Child and Family Agency. This provision will aim to support children in their day- to- day upbringing while in the care of the State. In particular it could address the circumstances of children who have been in voluntary care for a long period of time- where there is no prospect of reunification – to give a secure foundation and a sense of permanency. The court could make an order dispensing with the consent of the guardian of the child, if satisfied that the consent is unreasonably withheld and that it is in the best interest of the child to male such an order.
5. Provide for greater levels of autonomy by foster carers for consent for the day to day decisions which affect the child, and which are integral to day to day parenting.
6. Require the National Standards for Foster Care (1995) to be reviewed<sup>18</sup>

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<sup>18</sup> National Standards for Foster Care 2005

## 1.7 Access

Access is the contact between children in care and their families or significant figures in their lives and is essential in their right to their identity. Access can be described as any and all arrangements whereby parents, relatives or other named persons are given access to a child in care. The importance and complexities surrounding access of Foster Children to family is highlighted in Tusla's Alternative Care Practice Book (2014)<sup>19</sup> where it states that, "foster carers must be involved in the planning and implementation of access visits prior to placement, or as soon as practicable after, and these arrangements should be reviewed at Child in Care (CIC) reviews"<sup>i</sup>. It also states that "all access arrangements" should be arranged in consultation with the child, SW, FC, and family of origin.

### Recommendation

1. Every child should have an access plan that is understood and agreed by the foster carer on receipt of the child
2. Access plans should be made in the best interest of the child and taking their view into consideration
3. Access plans clearly articulates a formal process for requesting a review of access arrangements
  - o The process to be clarified from point of request to completion
  - o The process to include and address involvement and role of the child, FC, SWs and other relevant parties. The process to address the following specific situations at minimum: SW is informed of child or FC concerns and request review, child's access to be addressed by a court, or significant changes are court ordered.
4. Access should delineate the role and responsibilities of the foster carer and social worker
5. Three monthly reviews should take place to ensure arrangements are positive and realistic.
6. Access environments should be child -friendly

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<sup>19</sup> Tusla (2014) Alternative Care Handbook

## 1.8 After Care

The Child Care (Amendment) Act (2015)<sup>20</sup> provides for the preparation by The Child and Family Agency of aftercare plans and the provision of assistance to young people leaving care, although enacted, the provision for after care have not yet commenced; positions the importance of the needs of young people leaving care on a Statutory footing.<sup>21</sup>

### Recommendations

1. The age of support to the young person leaving care to be increased to the age of 24 to reflect the National Youth Strategy (2015).
2. The stated outcomes of the After Care (Amendment) Act be translated into key statements which are measurable, and which should be inspected by HIQA.
3. All young people in alternative care should have the right to an after-care service as a right.
4. Services should not be discretionary to those in decision making positions in government departments, dependent on education status, and is not dependent on the discretion of the young person's social worker.
5. All young people leaving care should be consulted for and included in their after-care life plan.
6. A full needs assessment be undertaken of every young person moving from alternative care to independence (where it is appropriate and/or possible for them to do so).
7. In considering the needs of young people moving to independent living, where possible, both the social and emotional needs should be assessed independent living.
8. A comprehensive care planning process is initiated for all young people prior to leaving care by the Child in Care Social Worker, similar to the rigor of that at the entry into care.

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<sup>20</sup> Child Care (Amendment) Act 2015. Department of Children and Youth Affairs.

<sup>21</sup> Child Care (Amendment) Act 2015. Department of Children and Youth Affairs.

## 2.0 Part (IV) Care Proceedings

2.1 The 1991 Act provides for a health board to apply to the courts for a care order or supervision of a child who is in need of care and protection. Current provision for care orders is categorised as;

- a. Emergency Care Order
- b. Supervision Order
- c. Interim Care Order
- d. Full Care Order

The requirements for a Care Order sets the criteria for which it can be obtained;

- a. The child has been or is being assaulted, ill-treated, neglected, or sexually abused
- b. The child's health, development or welfare has been or is being avoidably impaired or neglected,
- c. The child's health, development or welfare is likely to be avoidably impaired or neglected

The demonstration and evidence of the above requirements can be difficult to prove in court and hence the high numbers of voluntary care orders, 59% in 2015. The requirements of the Child and Family Relationships Act (2015) whereby the Best Interests criteria are clearly identified will make the decision process more transparent as to the thresholds to making such care orders. The constitutional rights of the child should also inform such decisions.

For children who remain in long-term care placements, consideration should be given to the addition of a Permanency Order as in other similar jurisdictions. Thoburn's (1994)<sup>22</sup> model of permanence focuses on concepts such as security, belonging, knowing the past and fitting in with the present suggests that this is an appropriate consideration for children who will remain in long-term foster care and who have little chance of returning to their family of origin. Schofield and Beek (2002)<sup>23</sup>, contend that

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<sup>22</sup> Permanent Family Placement for Children of Minority, and Ethnic Origin. Thorburn, J., Nordford, L, & Rashid, S., (2000), Kingsley, London.

<sup>23</sup> Schofield, G., & Beek, M, (2002) Foster Carers 'Perspectives on Permanence; Adoption and Fostering, Vol 26 Number 2.

where foster carers are to be entrusted with the care of children, through to adulthood, that they should be treated more like adoptive parents, carefully assessed, and matched with the child, offered some parental autonomy, along with the systems and supports, and with inspection and monitoring playing a secondary role.

#### Recommendation

1. Require that the criteria as set out in the Children and Family Relations Act (2015) are employed by the courts in determining the need to make a full care order
2. Provide training for all court personnel on the application of the Best Interests Criteria
3. Include the constitutional rights of children in making such orders
4. Provide for regular review of the application of full care orders
5. Consider the creation of “Permanence” as a category Care ordered by the Court.

### 3.0 Part (V) Jurisdiction and Procedure

3.1 Section 24 of the current Act makes reference to the Welfare of the Child being paramount and that in any court proceedings that the court have regard to the rights and duties of parents, and shall;

- a. Regard the welfare of the child as the first and paramount consideration, and
- b. In so far as is practicable, give due consideration, having regard to his age and understanding to the wishes of the child.

There is no definition as to what constitutes the “Welfare” of the child in the current Act. Both the Child and Family Relationships Act (2015) and the Adoption (Amendment) Act 2017 clearly define a list of factors and criteria for consideration by the courts for Best Interests.

The District Court and the Circuit courts are the predominant domains where Family Law matters are heard. Coulter (2015) observes that in Dublin and the major cities, childcare cases are listed on the regular family law lists. Whereas, in some of the smaller towns, Family Law can be combined in general with civil and criminal

matters.<sup>24</sup> She observed that there can be a lack of clarity as to Thresholds for reception of children into care, and an absence of consistency of the use of Orders nationally. Complex family situations require dedicated time and trained personnel in the court system, and the requirements to make decisions in the Best Interest of the Child, requires a particular level of training and expertise. Consultations between foster carers and social workers during 2016 identified the need for dedicated Family Law courts nationally and for training for those professionals involved in meeting the requirements of the rights of children within the Constitution, the UNCRC and other recent government legislation<sup>25</sup>.

The Child Care (Amendment) Bill (2009) became law as the Child Care (Amendment) Act 2011 provides for Special Care Orders. The Act remains to be commenced, and has no statutory regime, no rules, nor protocols that need to be adhered to for assessing the suitability of the secure regime, Coulter (2015).

#### Recommendation

1. Dedicated Family Law Courts should be available nationally
2. All personnel hearing Family Law cases should receive the appropriate training, where the constitutional rights of children are being determined.
3. National Government guidelines for “hearing the voice of the child” should be employed in Family Law Cases
4. Regular seminars to demonstrate “best practice” in eliciting the voice of the child should be held.
5. A systematic review of cases where Care Orders are obtained through the courts, should be held annually to adjudge if the “Best Interest Principle”, is applied consistently to child care orders.
6. Review the process and protocols for Special Care Orders.

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<sup>24</sup> Child Care Law Reporting Project. Coulter, . C. (2015)

<sup>25</sup> Consultation between Foster Carers and Social Workers (2016) Irish Foster Care Association and Tusla, Child and Family Agency., <http://www.ifca.ie>



### 3.2 Appointment of Guardian Ad Litem

Section 26 of the Child Care Act 1991 states that if in any proceedings under parts IV and V, the child to whom the proceedings relate is not a party, the courts, if it is satisfied that it is necessary in the interests of the child and in the interests to do so, appoint a Guardian ad Litem. It is noted that the reform of the current Guardian ad Litem arrangements is being progressed separately by the Department of Children and Youth Affairs.

#### Recommendation

1. That all children who are subject to Care Orders are appointed a Guardian ad Litem to ensure that their Constitutional Rights to be heard in court proceedings is upheld.

### 4.0 Part VI Children in the Care of Health Boards

**4.1** Part 36 Accommodation and maintenance of children in care requires that where a child is in the care of the health board, the health board should provide such care for him, subject to control and supervision in such of the following ways as it considers to be in his best interests-

- a. by placing him with a foster parent, or
- b, by placing him in residential care or a school or other suitable place of residence.

93% of children in the care of the State reside in foster care homes, either with relative carers, 29% or general, non-relative carers.

Section 41 requires for regulations in relation to the making of arrangements by health boards with relatives, and section 42 requires the review of the case of the child placed in care. Farmer, (2009) states that Kin Care, (relative foster care), is a very effective form of foster care if good assessments are made, kinship carers receive adequate remuneration and support and are monitored.<sup>26</sup>

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<sup>26</sup> Farmer., (2009), Making Kinship Care Work. Adoption and Fostering, Volume 33 No 3, (2009).

The concept of Permanence has been identified as an area for consideration in long-term foster care. Permanence is described as;

A framework of emotional physical and legal conditions that gives a child a sense of continuity, commitment and identity.<sup>27</sup>

Permanence is also integral to the Care system in New Zealand, and Rayburn in Ward (2004) describes it as;

The fulfilment of parenting tasks within the context of family relationships which are expected to nurture a child's individual development and growth.<sup>28</sup>

The challenges experienced by foster carers, both general and relative where they are caring for a child in long-term foster care is their endeavours to assimilate the child into the rhythms and norms of their own family, in the context of regular monitoring by the Child and Family Agency, which is appropriate. However, where a placement is of a long-term duration and is unlikely to change, the system should reflect this, ensuring an appropriate level of monitoring, whilst allowing the child to live his/her life similar to that of other children, and Scholfield and Beek (2002) have posted an alternative approach as elicited from focus groups with foster carers who care for children in long-term placements.

The issue of Consent for everyday child events, such as going on school outings, haircuts etc should be part of the fabric of parenting for children in long-term foster care, without the necessity to continue to seek permission or consent.

The voice of the foster carer is equally important where they care for children on a long-term basis and should be listened to and respected.

Foster care is alternative care of a child in a family home, and this core ethos must be retained. Whilst it is important to ensure that the safety and wellbeing of the child in foster care is paramount, a balance must be struck with the need for safety and family life.

The National Standards for foster care stipulates the required standards for all involved in foster care, and they are overseen by HIQA. The Regulations provide for Tusla to

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<sup>27</sup> Department of Education and Skills, UK (2004), pp 20.

<sup>28</sup> Ward, P., Special Guardianship, Adoption and Fostering, Vol 28, Number 4, (2004).

commission foster care services outside of its own agency. This is known as “Private Foster Care”. There several Private Foster Care Services in the state and who provide a valuable service for children and foster carers, and they too are governed by HIQA.

#### Recommendations

1. The review of the Child Care Act should give consideration to the concept of permanency for long-term placements
2. Relative carers should be assessed, trained and supported similar to that of General foster carers, and acknowledge the complexities of inter familial care
3. The area of Consent for long-term foster care should be reconsidered to reflect the norms of a child and family’s life
4. Greater recognition to be given to the role of foster care in children’s lives reflecting that 93% of children reside in foster care.
5. The required supports for all children in should be placed on a statutory footing, ensuring that their Rights under the UNCRC are upheld.
6. Retain the requirement of the need to support foster care as stipulated in the Health Acts
7. Position foster care as being the most preferred option of care for children within the revised Act.
8. Provision should be made in the revised Act for independent monitoring of action plans by Tusla in response to HIQA reports and recommendations.

#### 4.2 Section 47 Reviews

Pursuant to Section 47 of the Child Care Act, 1991 where a child is in the care of the State, the District Court may, of its own motion or on the application of any person, give such directions and make such order on any question affecting the welfare of the child as it thinks proper and may vary or discharge any such direction or order.

The Irish Foster Carer Association would hope that this important piece of legislation remain. Presently, Foster Carers engage solicitors themselves to make such applications which can range from the applying for the cost of orthodontic treatment to applying for a passport for the child in care.

In a Judgment published as number 27 in Vol 1 2015 of the CCLRP reports on its website, Ms Justice Baker wrote that it was a matter of “some concern” that the costs of the District Court proceedings as well as those of the judicial review were far greater than those of the original monies sought for dental treatment for a child in care.

The Court process can be unfamiliar territory for Foster Carers. The thoughts of incurring the cost of litigation is daunting. Foster Carers may be reluctant to challenge the decisions made by the CFA in light of the Best Interests principle and, as a result, Sec. 47 may be underutilised and inaccessible for the large majority of Foster carers.

#### Recommendations

1. Training for Foster Carers in a number of areas to include the making of a Section 47 application
2. The cost of taking such an application to be covered by the State
3. The revised Act should allow for an Independent Mediator to be engaged where there is disagreement between the CFA and a Foster Carer in relation to the welfare of a child and, in particular, where the issue in question relates to the provision of medical, dental, educational, psychological or mental health services.
4. Training for case workers in dealing with applications for medical, dental or educational services.

## 5.0 Children in the Care of the Child and Family Agency

Tusla (the Child and Family Agency) was established in January 2014 under the Child and Family Agency Act, 2013. Under Sec 8 of the Act, Tusla is required to;

- Support and promote the development, welfare and protection of children
- Support and encourage the effective functioning of families.

In order to allow children in care reach their full potential it is essential that there is open and clear communication between children, their Foster Carer(s) and the CFA. Part 9 of

the 2013, Act deals with the area of Complaints against the CFA. Presently complaints against Tusla can be made directly to Tusla or through the Ombudsman for Children and the Ombudsman. In July 2017 the Office of the Ombudsman drafted a report titled “Taking Stock”. This report identified systemic failures by the CFA in investigating complaints.

The Ombudsman for Children issued a report in January 2018 titled “Molly’s case: How Tusla and the HSE provided and coordinated supports for a child with a disability in the care of the State”. Failures in communication again led to lack of supports for a child in care who suffered from a disability. A further review of the supports received by approximately 471 other children currently in care who suffer from a disability is underway.

#### Recommendations

1. Requirement that the recommendations as put forward by the Office of the Ombudsman in the “Taking Stock” report be implemented
2. Requirement that the recommendations as put forward by the Ombudsman for Children in the “Molly’s case” review be implemented
3. A “Chinese wall” type separation between the Complaints department and other CFA agencies to prevent conflicts of interests between colleagues
4. An Independent Auditor be employed to oversee the effective running of case workers and, in particular, the complaints process. The Auditor should report to an Independent review panel.
5. To facilitate openness and transparency the employment of trained mediators to assist in the resolution of complaints between Foster Carers and the CFA
6. The development of a separate complaints platform for Foster Carers. This system would allow easier access to a designated member of the complaints team, complaints could be submitted via an online portal with a specified turnover time.
7. Training to be provided to all case workers, team leaders etc on a regular basis.

## Conclusion

Foster care is the backbone of the care of children in the State in Ireland. The Child Care Act 1991 sets out the requirements of the need to support children and families and where the family, cannot provide for the care and protection of the child, the Act provides for the placement of children in alternative care.

The Irish Foster Care Association welcomes the opportunity to contribute to the debate and consultations in the preparation of legislation for the review of the 1991 Act.

Much change has taken place in Irish Society since the commencement of the 1991 Act which at the time of emergence, was welcomed as progressive and reflecting Irish society at that time.

The development of legislation nationally and internationally has placed the Child centre stage in society affording him/her the position of Rights holders. In particular Article 12 of the UNCRC is specifically a vehicle for the child to realise all other rights.

The Irish Foster Care Association's recommendations to the review of the revised Child Care Act are summarised as follows;

1. The revised Act should contain all reference to the Best Interest principle and of its requirement to be demonstrated by all State agencies and the Courts in determining decisions for children located within the Best Interests principle., in particular, decisions to remove children from their family or origin, and specifically, in respect to all decisions made by social workers where a child is placed in Care.
2. The revised Act should take into consideration the Rights for children as set in the UNCRC.
3. Include and strengthen the critical role that the Public Health Nurse plays pre and post-natal and into the early formative years in the revised CC Act.
4. Include the Public Law Act (for breast-feeding in public places and in the workplace) to promote breast-feeding of babies
5. Specify the importance of targeted early intervention programmes
6. Reiterate the role of the Voluntary sector in supporting families with the required resources
7. Provide some funding streams for family support services directly through DCYA

- to ensure objectivity in funding arrangements
8. Legislate for a more robust requirement for both the Health Service Executive and Tusla to provide seamless services to children, e.g. speech and language therapy, occupational therapy and mental health services for children and adolescents.
  9. Specify the need for National Standards to be developed and independently monitored for the provision of services to children and families across the HSE and Tusla
  10. Retain section 7 – (1) for the establishment of independent childcare advisory committees to Tusla, and for the provision of the effectiveness of delivery by means of annual reports using the National Well- Being indicators for children
  11. Provide for the protection of children in the use of social networking and their increased exposure to on-line content
  12. The constitutional rights of children must be taken into consideration where decisions are made to place children into Voluntary Care.
  13. The placing of children in Care should take all their rights within the UNCRC into consideration and be demonstrated to do so.
  14. Provision be made for the regular review of Voluntary care arrangements by the courts or an independent body, taking into consideration all the rights of the child and of whose recommendations are binding.
  15. National and International models of eliciting “the views of the child” be employed where decisions affecting children are made, and training of suitably qualified adults be developed, standardized, offered, monitored and evaluated
  - 18 Where it is deemed, (by an independent panel), that a child remains placed in Voluntary Care for an unreasonably long period of time, the Child and Family Agency, should pursue full care orders to offer security to the child, and stability to the child’s placement, of which 93% are in foster care. Section 4 of the Child Care Act 1991 be aligned with the Child and Family Relationships Act and specifically the rules for Guardianship.
  19. The revised Child Care Act define who can give consent to agree to the placement of a child in voluntary care
  20. Where a child is placed in Voluntary Care, specify the name/s and role of the Guardian in the Care Plan.

21. Make provision in the revised Child Care Act for the inclusion of all the recommendations of the Shannon Report on section 12 (2016)<sup>29</sup>
22. Provide for the strengthening of the role of foster cares in children's lives
23. Provide for greater supports to be offered to foster carers to ensure that the Best Interests of the child are met referencing the Child and Family Relationships Act (2015) criteria are met
24. Provide for an independent review panel to adjudge decisions made by the Child and Family Agency to ensure that they are made in the Best interests of the Child
25. Provide for greater levels of autonomy for consent for the day to day decisions which affect the child, and which are integral to day to day parenting by foster carers.
26. Require the National Standards for Foster Care (1995) to be reviewed
27. Every child should have an access plan that is understood and agreed by the foster carer on receipt of the child
28. Access plans should be made in the best interest of the child and taking their view into consideration
29. Access plans clearly articulates a formal process for requesting a review of access arrangements
  - o The process to be clarified from point of request to completion
  - o The process to include and address involvement and role of the child, FC, SWs and other relevant parties. The process to address the following specific situations at minimum: SW is informed of child or FC concerns and request review, child's access to be addressed by a court, or significant changes are court ordered.
31. Access should delineate the role and responsibilities of the foster carer and social worker
32. Three monthly reviews should take place to ensure arrangements are positive and realistic.
33. Access environments should be child -friendly
34. The age of support to the young person leaving care to be increased to the age of 24 to reflect the National Youth Strategy (2015).<sup>30</sup>

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<sup>29</sup> Shannon., G. (2016) Audit of the use of Section 12 of the Child Care Act 1991 by an Garda Síochána.

<sup>30</sup> National Youth Strategy 2015-2020. Department of Children and Youth Affairs



35. The stated outcomes of the After Care (Amendment) Act be translated into key statements which are measurable, and which should be inspected by HIQA.
36. All young people in alternative care should have the right to an after-care service as a right.
37. Services should not be discretionary to those in decision making positions in government departments, dependent on education status, and is not dependent on the discretion of the young person's social worker.
38. All young people leaving care should be consulted for and included in their after-care life plan.
39. A full needs assessment be undertaken of every young person moving from alternative care to independence (where it is appropriate and/or possible for them to do so).
40. In considering the needs of young people moving to independent living, where possible, both the social and emotional needs should be assessed independent living.
41. A comprehensive care planning process is initiated for all young people prior to leaving care by the Child in Care Social Worker, similar to the rigor of that at the entry into care.
42. Require that the criteria as set out in the Children and Family Relation Act (2015) are employed by the courts in determining the need to make a full care order
43. Provide training for all court personnel on the application of the Best Interests Criteria
44. Include the constitutional rights of children in making such orders
45. Provide for regular review of the application of full care orders
46. Consider the creation of "Permanence" as a category Care ordered by the Court.
47. Dedicated Family Law Courts should be available nationally
48. All personnel hearing Family Law cases should receive the appropriate training, where the constitutional rights of children are being determined.
49. National Government guidelines for "hearing the voice of the child" should be employed in Family Law Cases
50. Regular seminars to demonstrate "best practice" in eliciting the voice of the

child should be held.

51. A systematic review of cases where Care Orders are obtained through the courts, should be held annually to adjudge if the “Best Interest Principle”, is applied consistently to child care orders.
52. Review the process and protocols for Special Care Orders.
53. That all children who are subject to Care Orders are appointed a Guardian ad Litem to ensure that their Constitutional Rights to be heard in court proceedings is 44. The review of the Child Care Act should give consideration to the concept of permanency for long-term placements
54. Relative carers should be assessed, trained and supported similar to that of General foster carers, and acknowledge the complexities of inter familial care
55. The area of Consent for long-term foster care should be reconsidered to reflect the norms of a child and family’s life
56. Greater recognition to be given to the role of foster care in children’s lives reflecting that 93% of children reside in foster care.
57. The required supports for all children in Care should be placed on a statutory footing, ensuring that their Rights under the UNCRC are upheld.
58. Retain the requirement of the need to support foster care as stipulated in the Health Acts
59. Position foster care as being the most preferred option of care for children within the revised Act.
60. Training for Foster Carers in a number of areas to include the making of a Section 47 application
61. The cost of taking such an application to be covered by the State
62. The revised Act should allow for an Independent Mediator to be engaged where there is disagreement between the CFA and a Foster Carer in relation to the welfare of a child and, in particular, where the issue in question relates to the provision of medical, dental or educational services.
63. Training for case workers in dealing with applications for medical, dental or educational services.
64. Provision should be made in the revised Act for independent monitoring of action plans by Tusla in response to HIQA reports and recommendations upheld. Requirement that the recommendations as put forward by the Office of

- the Ombudsman in the “Taking Stock” report be implemented
65. Requirement that the recommendations as put forward by the Ombudsman for Children in the “Molly’s case” review be implemented
  66. A “Chinese wall” type separation between the Complaints department and other CFA agencies to prevent conflicts of interests between colleagues
  67. An Independent Auditor be employed to oversee the effective running of case workers and, in particular, the complaints process. The Auditor should report to an Independent review panel.
  68. In order to facilitate openness and transparency the employment of trained mediators to assist in the resolution of complaints between Foster Carers and the CFA
  69. The development of a separate complaints platform for Foster Carers. This system would allow easier access to a designated member of the complaints team, complaints could be submitted via an online portal with a specified turnover time.
  70. Training to be provided to all case workers, team leaders etc on a regular basis













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<sup>i</sup> Tusla (2104) Alternative Care Practice Handbook, pg. 76.