



United Nations Committee on the Rights of the Child
United Nations Day of General Discussions on Children's Rights and
Alternative Care

Submission – Key Points

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Contact:

Karla Charles

Policy Manager, EPIC

karlacharles@epiconline.ie

John Murphy

Advocacy and Research Officer

johnmurphy@epiconline.ie

This submission is signed by Members of EPIC's National Youth Council; Rory Brown; Jessica Duffy; Roisin Farragher; Mark Hennessy; Katelyn Kelly; Juliette Kurlink; Angelika Majer; Dillon Nolan; Clara O'Shea; Lauren O'Toole.

Key Points

EPIC (Empowering People in Care) has focused on “recommendations for change where policies and practices have not been successful” and reflects the reality of our day-to-day work. We would like to draw the following issues to the attention of the United Nations Committee on the Rights of the Child.

1. Lack of Data and Research.

EPIC calls for increased data gathering on children in care, aftercare and beyond. A longitudinal study on children leaving care was proposed as an action by the Health Service Executive in response to a recommendation by the Report of the Commission to Inquire into Child Abuse¹. This action was subsequently included in the *National Strategy for Research and Data in Children’s Lives, 2011- 2016* (DCYA, 2011), but has yet to be carried out. Such a longitudinal study is a much-needed addition to the data currently being gathered by Tusla.² The ability to analyse data for children in care and leaving care, over an extended period, and to be able to compare this to the non-care population would provide a level of insight and understanding that is currently unavailable.³ The lack of data for analysis stymies the ability of policy makers and practitioners to develop informed and robust measures to meet the needs of this cohort.

Many issues that EPIC deal with on a daily basis through its advocacy work have no empirical or independent reports to support this work. Examples of these include children in care living outside of Ireland; lack of independent community accommodation for those with a disability; lack of continuity of social workers; lack of engagement of young people in their care reviews; timely access to therapeutic supports; children being placed in homeless services under Section 5, Child Care Act 1991, and therefore not technically in care and then not entitled to

¹ Ryan, Mr. Justice S. *Commission to Inquire into Child Abuse*. 2009, Vol. IV. Chapter 7.

² As part of the implementation of this Strategy the HSE commissioned a scoping study to identify and document the key issues for consideration in undertaking a research project of this kind. Following this, a feasibility study built on that scoping exercise. This latest study was published in 2018 entitled *The Feasibility of Conducting A Longitudinal Study on Children in Care or Children Leaving Care Within the Irish Context*. Devaney, C.; Rooney C; 2018; *The Feasibility of Conducting A Longitudinal Study on Children in Care on Children Leaving Care Within the Irish Context*; available at: [Feasibility Study on Longitudinal Study.pdf \(tusla.ie\)](#) [accessed January 2021].

³ The *Growing up in Ireland* study and the *State of the Nation’s Children* should both have included separate cohorts of children in care to understand fully how they are developing relative to children in the general population. Available at: [Growing Up in Ireland – National Longitudinal Study of Children](#) and [gov.ie - State of the Nation's Children \(www.gov.ie\)](#) [accessed 05.21].

aftercare. For improvements to be made and sustained for young people in care, research into all aspects of care must be regularly carried out.

2. Aftercare.

Aftercare in Ireland must be extended to the age of 26 in line with the age at which the average person leaves home. Barriers which hinder children in care accessing aftercare must be removed, and children must be appropriately supported in accessing the right kind of higher education or training which will allow them to be independent later on.

Aftercare legislation in Ireland,⁴ states the nature of the assistance “that *may* be provided”⁵ to the eligible child on or after they have attained the age of 18. A needs assessment will be carried out to determine eligibility, and considers factors such as need, age and length of time in care. Further barriers also apply in relation to young people who come into care shortly before their 18th birthday, as the current law requires that the young person must have spent at least 12 months in care between the ages of 13 and 18.⁶

“To qualify for an Aftercare Allowance at 18 years of age an eligible adult must:

- Have turned 18 in the care of the Child and Family Agency having spent 12 months in the care of the Agency between the age of 17-18 years
- Be attending an accredited education course, third level course or training programme as outlined in the young adult’s Aftercare Plan.”⁷

The difficulty is not all young people leaving care go on to further education or entering training and therefore “access to aftercare is therefore not a guaranteed right for young people who have lived in State care”⁸ beyond the age of 21.

⁴ *Child Care (Amendment) Act 2015*. <http://www.irishstatutebook.ie/eli/2015/act/45/enacted/en/html> [accessed: 2 June 2021].

⁵ *Ibid.*

⁶ McNamara, Dr. D.E., *Developing a Right of Aftercare for Young People Transitioning Out of State Care*, Irish Journal of Family Law, 2020. p.3.

⁷ Tusla, *Financial Support in Aftercare*. Child and Family Agency, 2017.

⁸ McNamara, Dr. D.E., *Developing a Right of Aftercare for Young People Transitioning Out of State Care*, Irish Journal of Family Law, 2020. p.3.

Tusla's latest published figures outline 2,243 young people in the 18-22 age group in receipt of an aftercare service. However, only 1,697 are in education or training.⁹ This leaves 546 young people (24%) that are in receipt of an aftercare service but are not attending an education placement or in training. As a result, this cohort will not have supports beyond 21 years of age, and for many this will mean only basic employment options and limitations on their future prospects.

A member of EPIC's Youth Council spoke with the homeless charity Focus Ireland on the eve of last year's General Election. He stated that when he "turned 18, that stability ended. I came into the risk of homelessness and insecure housing because it was suddenly deemed, overnight, that I was an adult now and able to support myself independently. I was now an adult that had to learn about renting, learn how to live on my own and to actually have a roof over my head. I also had to learn how to cope with loneliness when living on my own."¹⁰

Many of these issues are common among care leaver in EPIC's experience and show that aftercare payments and supports need to be expanded to all who leave care. EPIC is also lobbying to have the age of aftercare supports and services extended to 26, an age more in line with the average age that young people in the general population leave home.¹¹

3. Educational Outcomes

Educational outcomes and training must be prioritised in order to achieve independence for young people leaving care. As a specific cohort, children in care have, on average, some of the lowest levels of educational attainment in comparison to their non-care experienced peers, and their outcomes continue to be a major concern in all the countries in which relevant data is collected. The implications of this are far reaching and extend beyond education, since the educational outcomes of children and young people with care experience are strongly linked to subsequent employment (Hook & Courtney, 2011), housing (Davison & Burris, 2014), mental and physical health (Dixon, 2008) and offending (Cusick et al. 2012). Under achievement at primary and secondary level means that young people who have been in the care system are significantly less likely to go to on to further and higher education than not

⁹ Tusla, *Quarterly Service Performance and Activity Report Quarter 4 2020*. March 2021, pgs. 39 & 40. https://www.tusla.ie/uploads/content/Q4_2020_Service_Performance_and_Activity_Report_V1.0.pdf [accessed: 3 June 2021].

¹⁰ Focus Ireland., *We need the next government to understand the urgency of the housing crisis*. <https://www.focusireland.ie/nextgovernment-needs-to-understand-urgency-of-housing-crisis/> [accessed: 3 June 2021].

¹¹ Eurostat; 2018; [Bye bye parents: when do young Europeans flee the nest? - Products Eurostat News - Eurostat \(europa.eu\)](#) (accessed 05.06.21)

only their non-care experienced peers, but also other disadvantaged cohorts of young people. Educational data in Ireland must be improved and published so that essential supports can be put in place.

4. Sibling Access.

EPIC calls for greater emphasis and resources for family access. One of the main recurring issues presented to EPIC for advocacy over the last number of years is family contact and sibling access. In EPIC's last report, family contact was the third highest request for advocacy totalling 11% of referrals.¹² Unfortunately no research is available regarding sibling access in Ireland. A recent study in Scotland "found very high rates of sibling estrangement with seven in ten relationships between a child in out-of-home care and a sibling classified as estranged and half of all siblings classified as strangers."¹³ There is no reason to believe that the numbers and situation in Ireland would be significantly different.

Most children in the care system emphasise the importance of their sibling relationships.¹⁴ Benefits of sibling contact reported by children and carers include improved family relationships, reassuring a child of a sibling's welfare, and the promotion of identity and belonging.¹⁵

Indeed, the Commission to Inquire into Child Abuse¹⁶ made the recommendation to ensure that "Children in care should not, save in exceptional circumstances, be cut off from their families. Priority should be given to supporting ongoing contact with family members for the benefit of the child."¹⁷ This was an important recommendation as part of this report examined the loss of family contact and the impact that this had on children and as adults in later life.

¹² Daly, F., *Report on Advocacy Cases*, EPIC, August 2020 (unpublished). p. 25.

¹³ Jones, C., Henderson, G., and Woods, R., *Relative strangers: Sibling estrangements experienced by children in out-of-home care and moving towards permanence*, Children and Youth Services Review, August 2019, Vol.103 pgs. 226-235. p. 227.

¹⁴ Wojciak, A. S., McWey, L. M., & Helfrich, C. M. *Sibling relationships and internalizing symptoms of youth in foster care*. Children and Youth Services Review, 2013, 35(7), 1071-1077.

¹⁵ Neil E., Cossar J., Jones C., Lorgelly P.&Young J. *Supporting Direct Contact after Adoption*, 2011. London: BAAF.

Neil, E., Beek, M., & Ward, E. *Contact after adoption: a follow-up in late adolescence*. 2013. Norwich: The Centre for Research on Children and Families, University of East Anglia.

¹⁶ Ryan, Mr. Justice S. *Commission to Inquire into Child Abuse*. 2009, Vol. IV. Chapter 7.

¹⁷ *Ibid*, Recommendation 7.19.

Research into the area of sibling access must be a priority for Tusla¹⁸ and action to ensure that siblings have consistent and positive experiences of their time together must be undertaken.

The recommendations from the General Assembly are clear in relation to sibling access, and this should be reiterated.¹⁹

5. Privatisation of Care.

The increase in privatisation of care in Ireland needs to be examined. The number of children in care placements provided by private providers has risen by over 75% in the last 7 years. Tusla's first recorded figures from March 2014 stated that 417 children were in private placements.²⁰ The number by December 2020 was 729.²¹ In 2014 a total of 6,504 children were in care,²² 6% were in private placements. In 2020 5,882 children were in care, and those in private care had doubled to 12%.²³

An Irish TD²⁴ in an opinion piece to an online news platform expressed concerns when he acknowledged that “private companies recruit and support their own foster carers and charge Tusla to place children in care in one of the agency's families. While these companies plug a gap in services, a gap that can leave children at risk, ultimately they lead to negative outcomes across the system.”²⁵

A total²⁶ of €192,962,018²⁷ was spent on residential care in 2019, and of that total €109,559,728²⁸ or 57% of the total spend was on private residential services.

¹⁸ The Child and Family Agency www.tusla.ie

¹⁹ “Siblings with existing bonds should in principle not be separated by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes or interests.” United Nations General Assembly, *Guidelines for the Alternative Care of Children*, 24 February 2010, 64/142 p.4.

²⁰ Tusla, *Integrated Performance and Activity Report Quarter 1 2015*. May 2015. p.21.

²¹ Tusla, *Quarterly Service Performance and Activity Report Quarter 4 2020*, p.32.

²² Tusla, *Integrated Performance and Activity Report Quarter 1 2015*. May 2015. p.19.

²³ Tusla, *Quarterly Service Performance and Activity Report Quarter 4 2020*, p.29.

²⁴ A member of parliament.

²⁵ Costello, P., *Opinion: Foster care is in trouble in Ireland and its privatisation is not the answer*. The Journal. 14 September 2020. <https://www.thejournal.ie/readme/fostering-coronavirus-5160844-Sep2020/> [accessed: 1 June 2021].

²⁶ including administrative and development cost.

²⁷ R. Branigan & C. Madden, *Spending Review 2020 Tusla Residential Care Costs*. DCYA, October 2020. p. 37

²⁸ *Ibid.* p. 38.

The rate of increase for private residential services over the four -year period 2016-2019 was 87%.²⁹ Tusla has stated that the “basic private ‘mainstream’ placement rate increased from €5,000 to €6,000 per week. Dual occupancies were set at €8,500 and single occupancies at €13,500 per child per week.”³⁰ A value for money analysis, as well and an evaluation of outcomes should be carried out.

6. Statutory Care versus Voluntary Care.

The use of voluntary care arrangements in Ireland, especially in the longer term, must be reviewed. The number of children in care under a voluntary arrangement is 1,532 or 26% of all those in care of the State.³¹

The Ombudsman for Children’s Office (OCO) reported that “parents may not always fully understand what voluntary admission to care entails prior to making a decision. A number of cases suggest that there can be confusion about the differences between a placement with relatives and voluntary admission to care.”³² The potential imbalance of power leaves parents at a distinct disadvantage.

The OCO highlighted the Council of Europe document on rights of families of children in contact with social services.³³ This report recommended that “[F]rom their first involvement with the social service system, children and families should be promptly and adequately informed and advised, inter alia, of: a. their rights to services including the instruments available to remedy possible violations of these rights; b. the range of services available and the procedure by which they are delivered; c. the role the child may exercise in different procedural steps and the actors that may accompany or support the child in her or his dealings with the social services.”³⁴

The Ombudsman then directly criticised the legislation for voluntary care and wrote that “[S]ection 4 of the 1991 Act provides legislative underpinning for the system of voluntary care. It does not provide for the right of the child or his or family to receive information and advice

²⁹ *Ibid.* p. ix.

³⁰ *Ibid.*

³¹ Tusla, *Annual Review on the Adequacy of Child Care and Family Support Services 2019*. November 2020, p.62.

³² Office of the Ombudsman’s Office, Department of Children and Youth Affairs, Submission by the Ombudsman’s Office. 23 February 2018.p.19.

³³ Council of Europe *Children’s rights and social services friendly to children and families*. Recommendation CM/Rec (2011)12 2011.

³⁴ *Ibid.* p.11.

about the operation of the voluntary care arrangement.”³⁵ This is an important intervention regarding the issue of voluntary care.

The OCO further recommended, and EPIC supports, that “Explicit statutory provision should be made for the right of children and their parent(s)/guardian(s) to receive timely, accessible and comprehensive information about any decisions or actions taken under the 1991 Act, which affect them.”³⁶

The Child Care Law Reporting Project demonstrated in a recent publication how legislation impacts on practice, stating the “[N]eed to formalise [the] situation of a girl in voluntary care for almost eight years”³⁷. This was the case of an almost eight-year girl who had been in a foster placement since she was two days old. When replying to the judge’s question of what would happen if an interim order was not granted, the social worker replied that “[F]rom an emotional point of view, [the child’s] attachment is to her foster parents and from a mental health point of view, [she is involved with] her school and friends. I can’t imagine the trauma it would cause.”³⁸ The Guardian *ad Litem* who had been appointed also worryingly stated that “she was looking at the child’s files and noticed a certain level of drift in the case between 2011 and 2014.”³⁹ The judge noted that “[V]oluntary care orders going on for this length lead to complications.”⁴⁰

A recent report published by the School of Applied Social Studies and School of Law at UCC also raised many issues. It stated that “voluntary care agreements are concluded between the parent (s) and Tusla with no independent oversight at the point of entry to care. Thus, there is no safeguard at the outset to ensure that the placement and care plan are adequate to meet the child’s needs.”⁴¹

Concerns around the statutory obligations “have been raised [and] about the effectiveness of periodic reviews in voluntary care placements, particularly in long-term voluntary care

³⁵ Office of the Ombudsman’s Office, Department of Children and Youth Affairs, Submission by the Ombudsman’s Office. 23 February 2018.p.19.

³⁶ *Ibid.* p.20.

³⁷ Child Law Reporting Project, *Case Reports 2018 Vol. 1. No.16.*

<https://www.childlawproject.ie/publications/need-to-formalise-situation-of-girl-in-voluntary-care-for-almost-eight-years/> [accessed: 16 March 2020].

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Brennan, Dr. R., et al. *The rights of the child in voluntary care in Ireland: A call for reform in law, policy and practice.* Children and Youth Services Review 125, 2021. p.3.

placements, which may be less visible within the system than care order cases involving more complex needs or more serious abuse or neglect.”⁴²

As evidenced above, the concerns around voluntary arrangements are numerous, and this significant issue must be rectified.

7. Mental Health and Therapeutic Intervention

EPIC calls for mental health support and therapeutic support for all children in care as a matter of course, as well as continued therapeutic support in aftercare and beyond. The current access route is too slow, and often inaccessible to those who have aged out of care but still require support. Unresolved trauma can shape how young people respond to everyday life experiences, including how they respond to the services provided by professionals.⁴³

Trauma-informed practice is a framework that is based on knowledge and understanding of how trauma affects people’s lives and their service needs. Many children in care will have been removed from their family in very traumatic circumstances and will have experienced feelings of fear, rejection and powerlessness. Unfortunately, similar feelings re-emerge when children and young people prepare to leave care, and then leave care at 18. This highlights the need for priority access to mental health supports for children in care, leaving care, aftercare and ageing out of care.

8. Conclusion.

The care of children living out of home in Ireland still presents many issues for the young people and for organisations like EPIC who advocate for them. A lack of research creates many difficulties to show empirically the issues and the number of young people affected.

EPIC recommends greater resources to ensure aftercare for all young people turning 18.

A great emphasis much be placed on keeping families together and when this is not possible, to support sibling access.

⁴² *Ibid.*

⁴³ Gary Broderick of the [Learning Curve Institute](#) (an organisation that provides training to those working with trauma-affected groups) has highlighted how unresolved trauma can determine how young people respond to everyday experiences, and how they respond to professionals.

In everyday care, more funding and accessibility for mental health services, therapeutic interventions and emphasis and supports for education must be realised immediately.

In broader terms, privatisation of care must be lessened, and a greater emphasis placed on children being in care under a statutory basis.

It is only when these are accomplished that children in care in Ireland can begin to have equality of opportunity with their peers.

EPIC welcomes the opportunity to highlight these issues to the United Nations Committee on the Rights of the Child.