

**Expert Assurance Group to Oversee and Advise on the Implementation of  
the Recommendations of the HIQA Statutory Investigation into Tusla's  
Management of Referrals**

**3rd Quarterly Report to the Minister for Children and Youth Affairs**

**June 2019**



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## Executive Summary

The first quarterly report of the Expert Assurance Group (EAG) was submitted to the Minister in December 2018 and published on the website of the Department of Children and Youth Affairs (the Department). The second quarterly report was published in April 2019. The first quarterly report focussed on a number of areas that featured in the HIQA report and in the subsequent action plan developed by Tusla. The second quarterly report looked at areas of progress, the management of referrals, safety planning, the workforce strategy and educational pathways (recommendation 2) and the status of the international review on regulatory structures (recommendation 3).

In this third quarterly report, the EAG again reports on progress to date in respect of the HIQA report's recommendations.

In summary, the EAG considers that the Tusla Executive is approaching the main findings in a sustainable way, seeking to embed the outcomes and learning into the wider goals and culture of the organisation. The EAG is satisfied that there is ongoing progress in the delivery of the actions under theme 1 (management of child protection and welfare referrals) and theme 2 (safety planning - definition and process) of its strategic action plan.

The EAG notes that Tusla has advised that its 2018 annual report refers to this strategic action plan, in line with ongoing requirements outlined in recommendation 1(e) of the HIQA report. Tusla's 2019 business plan clearly references the action plan, and key actions from the action plan are included.

With respect to the management of retrospective allegations of abuse it was confirmed that the existing 2014 policy remains operational and that Tusla is committed to its duties as a statutory body in the management of retrospective allegations. A service improvement plan was noted as making progress in addressing the number of unallocated retrospective cases. Tusla has reported that the recruitment of principal social workers to lead the implementation in the regional retrospective teams is well advanced. Otherwise, these regional teams are reported as being in place.

The EAG has had sight of drafts of the new Child Abuse and Substantiation Procedures and is satisfied that progress has been shown. It has also been noted that an impact analysis of the policy is to be carried out by Tusla's policy and operational directorates.

This is welcome and demonstrates considerable progress by the Executive. However, the EAG has not yet received a publication timeline for the new policy. The EAG remains concerned about the delay to the publication of the policy and the potential for a knock-on effect on the implementation phase. The EAG is expecting, in keeping with the express intention of the Executive, to see considerable progress and completion of actions under the management of retrospective allegations theme by the Autumn.

With the assistance of Dr Conor O'Mahony, UCC, and Tusla's Executive, the EAG examined the underlying legal framework for managing retrospective cases. Starting from a different viewpoint, the EAG concluded that the legal environment posed a significant challenge to managing retrospective cases. It was noted that the absence of express powers for Tusla placed it in a deeply uncertain position. On the EAG's behalf, the Chair communicated their views to the Minister and the Tusla Chair as a contribution to the ongoing work on this issue by Tusla and the Department.

The EAG understands that the workforce strategy and related implementation plan were approved by the Board in March 2019, subject to minor amendments. The EAG notes that the findings from piloting the strategy will influence the final form of the implementation plan to be applied across all 17 areas. The EAG has received an advance draft of the implementation plan and phase one of the workforce strategy, and will discuss these with the Executive over the next series of meetings.

## 1. Introduction

This is the third quarterly report of the Expert Assurance Group, covering the period from the start of March 2019 to the end of May 2019.

The establishment by the Minister for Children and Youth Affairs (Minister) of the Expert Assurance Group (EAG<sup>1</sup>) was in response to recommendation 4 of the "Report of the investigation into the management of child sexual abuse against adults of concern by the Child and Family Agency (Tusla) upon the direction of the Minister for Children and Youth Affairs", as published by the Health Information and Quality Authority (HIQA). This report will be referred to as the "HIQA report".

The quarterly reports of the EAG are submitted to the Minister for Children and Youth Affairs and to the Board of Tusla. They have, subsequently, been published on the website of the Department of Children and Youth Affairs (the Department).

The first quarterly report addressed a number of areas that featured in the HIQA report and in the subsequent action plan developed by Tusla, including the workforce strategy, governance, performance management, the new policy on managing retrospective cases (substantiation, teams etc.), interagency working and financial resources. The second quarterly report considered progress of Tusla's strategic action plan under recommendation 1 of the HIQA report, the updated position of the workforce strategy and educational pathways under recommendation 2, and the status of the international review of regulation in the areas of children's social services under recommendation 3. The second quarterly report highlighted areas of progress, including the management of referrals, safety planning, the roll out of the National Child Care Information System (NCCIS) and the development of the Service Performance and Improvement System.

This report discusses progress of the action plan, the management of retrospective allegations and an update on recommendation 2, workforce and educational pathways, and recommendation 3, the international review of regulation as it pertains to children's social services.

## 2. Matters arising from the Terms of Reference

The EAG has been asked by the Minister for Children and Youth Affairs to advise on the likely timeframe for its work. A formal recommendation on the duration of the work of the Group will be made to the Minister by the EAG in August 2019. The EAG notes the progress to date in respect of the HIQA report's four recommendations and, as indicated in its previous report, the Group expects to conclude its work in Autumn 2019.

## 3. Meetings of the Expert Assurance Group

Recommendation 4 of the HIQA report was addressed by the setting up of the Expert Assurance Group. The recommendation stated the following:

The Department of Children and Youth Affairs should establish an expert quality assurance and oversight group to support and advise Tusla and the Department on the implementation of the recommendations of this investigation report and Tusla's Child Protection and Welfare Strategy and Corporate Plan. The Department of Children and Youth Affairs should provide regular updates on its website to inform the public of the progress being made.

The Expert Assurance Group has met a further 3 times since the start of March 2019, and discussed the management of screening and preliminary enquiries for referrals, the management of retrospective cases, workforce planning, educational pathway issues and the international review with respect to

<sup>1</sup> The membership and role of the EAG are included in appendix 1 to this report.

regulation. There have been a total of nine meetings held up to the end of May 2019. The EAG has now given consideration to the three key areas identified in the HIQA report: Screening/preliminary enquiries, safety planning and the management of retrospective cases. The tenth meeting of the EAG took place on 12 June 2019, and the eleventh is scheduled to take place at the beginning of July 2019.

Summaries of the meetings to the end of May 2019 are included in Appendix 2.

#### 4. EAG Engagement with the Tusla Executive

The EAG appreciates the continued and extensive engagement by the Executive. As noted in this and previous reports, there is a clear commitment on the part of the Executive to the core issues involved in each of the themes under the action plan, including the actions under theme 6 which address the workforce planning and educational pathways referred to under recommendation 2 of the HIQA report. As the action plan is evolving, the Executive has been better placed to provide assurances on the implementation of the plan and its implications. The EAG acknowledges the assistance provided by the interim CEO and the Executive in its discussions on the legal framework on the management of retrospective cases, in particular the additional verbal briefing provided by the Chief Operations Officer and the Director of Policy and Transformation.

#### 5. Recommendations contained in the HIQA Report

The HIQA report contained four summary recommendations. This section and sections 7 and 8 outline and assess progress to date in the implementation of Tusla's strategic action plan published following the HIQA report. In addition, the EAG provides comment on the legal framework involved in the management of retrospective allegations in section 6.

##### a. Recommendation 1: Tusla's Strategic Action Plan

###### Recommendation 1

The Child and Family Agency (Tusla) should:

- A. review all of the findings of this investigation, including the identified non-compliances with the National Standards for the Protection and Welfare of Children as set out in this investigation report;
- B. review these findings as they relate to all other child protection and welfare referrals, which follow the same referral pathway as all child sexual abuse referrals;
- C. review all of the recommendations made by the Investigation Team throughout this report;
- D. publish an Action Plan on its website outlining in clear language and with clear timelines the measures it proposes to take to implement the actions identified in the recommendations A to C above. This Action Plan should include a named person or persons with responsibility and accountability in Tusla for implementing these recommendations and actions;
- E. ensure it continually reviews and updates this Action Plan and that updates on progress being made against these recommendations and actions are included in its annual report.

The HIQA report sets out three areas in need of urgent attention:

- Screening and Preliminary Enquiry: practice inconsistencies that meant not all children at potential or actual risk were assessed and protected in a timely manner;
- Safety Planning: practice inconsistencies meant some children were adequately safeguarded whereas others were not. Plans that were in place were not always re-evaluated and updated;
- Management of Retrospective Cases: the current policy did not include a standardised approach for staff, resulting in variations in practice and delays.

Additionally, the HIQA report includes a summary of more detailed recommendations in the concluding chapter of the report. These include:

- a) putting in place a uniform waiting-list management system to review and monitor all referrals awaiting allocation to a named social worker;
- b) reviewing and adopting the draft National Procedures for Determining an Outcome to Allegations of Retrospective and Extrafamilial Abuse Cases and Protecting Children at Potential Risk of Harm<sup>2</sup>, and its accompanying draft practice guidance, and ensuring its implementation across Tusla;
- c) developing standard approaches to support the implementation of the above policy and procedures for managing retrospective referrals of allegations of abuse, to include prioritisation levels and timelines for assessments;
- d) putting in place strong and effective assurance arrangements to ensure that staff are educated and trained in applying this guidance and ensuring that routine quality assurance controls are in place to measure its effectiveness;
- e) supporting the Sexual Abuse Regional Team (SART) in the Dublin North East Region and other dedicated service-area-based teams to quickly and effectively complete risk assessments and, where appropriate, putting in place the required protective measures to ensure children's safety;
- f) reviewing and ensuring its current processes for case-record identification and closing cases are safe and effective;
- g) ensuring all persons who are the subject of an allegation of abuse are informed in a timely manner that an allegation has been made against them.

Tusla's strategic action plan, developed in response to the issues identified and recommendations made in the HIQA report, contained 46 proposed discrete initiatives and included other underpinning requirements at an organisational level needed to support the operational outcomes. This plan was prepared by the Executive and approved by the Tusla Board. In effect, this meets the requirements to review the findings of the HIQA report and publish an action plan, as outlined in recommendation 1(a) to 1(d).

The EAG notes that Tusla's action plan has been updated on its website and the EAG has been advised that its annual report for 2018 refers to this strategic action plan, in line with the requirements outlined in recommendation 1(e) of the HIQA report. Tusla's 2019 business plan references the action plan clearly and key actions from the strategic action plan are included.

<sup>2</sup> This is expected to be published in the "National Child Abuse Substantiation Procedures"

### b. Timeframes in the Strategic Action Plan

Tusla's Executive has not reported the completion of any additional actions since the previous quarterly report. However, the EAG has noted that progress has been made overall and considers that there is clear evidence of key milestones being reached.

The EAG notes that the timeframes were set originally by the Executive and are those against which an observer might evaluate progress generally. From an outside perspective it can sometimes be difficult to comprehend why changes to timeframes may be necessary. The EAG is aware that timeframes will be affected with real world implementation in the context of a wider ecosystem of responsibilities. The updates to the EAG by the Executive on its wide-ranging action plan show progress and a determination to deliver the substantive improvements. Nonetheless, the EAG considers some adverse comment must be expected if timeframes are not met or are re-profiled.

The Executive provided the EAG with the following update to 5 June 2019, indicating the status of the strategic action plan by theme (the second column refers to the number of actions per theme):

Theme	No. of Actions	Completed	On Track	Partial implementation within existing resources	Delayed/Not achievable in current form
1. Management of Child Protection and Welfare Referrals	5	0	2	3	0
2. Safety Planning	3	0	3	0	0
3. Management of Retrospective cases of abuse	5	0	4	1	0
4. Interagency Working	8	0	6	2	0
5. Data and information management	3	0	3	0	0
6. Workforce Planning	5	0	3	1	1
7. Governance management and oversight	7	0	5	2	0
8. Organisational risk management	6	1	4	1	0
9. Collaborative systems to embed learning	4	2	1	1	0
<b>Total</b>	<b>46</b>	<b>3</b>	<b>31</b>	<b>11</b>	<b>1</b>

#### *Response to EAG comments on timeframes for actions on the management of retrospective cases*

In its 2nd quarterly report the EAG commented on the apparent drift of the timeframes from those indicated in the strategic action plan as first published for theme 3 on the management of retrospective cases.

The Executive has asserted its commitment to a realistic and sustainable response to the findings of the HIQA report. While accepting this, the EAG cannot ignore that the original timeframes have not been met and it appears that the re-profiled timeframes are in danger of not being met either.

The EAG confirmed with the Executive that the existing 2014 policy remains operational and that Tusla was committed to its duties as a statutory body in the management of retrospective allegations.

In challenging the Executive on these timeframes, the EAG has observed strong determination and attention given by the Executive to addressing this issue. Later in this report the EAG outlines its view on the challenges facing Tusla in managing such cases within the current legal framework.

### c. Assessment of Achievements and Progress of Tusla's Strategic Action Plan

The EAG is satisfied that there has been sufficient evidence of progress on the action plan to take a view that the planned outcomes are on track to being realised.

#### (i) Progress

The EAG has noted supporting information from the Executive, and notes some examples of positive progress being made:

#### *Improving the Management of Child Protection and Welfare Referrals*

Action 1.1: *Strengthening the systems, structures and processes in each area:* By end Q1 2019, the ICT programme to 'mobile-enable' all social workers was completed, with approximately 1,800 staff being provided with a smart phone, laptop and mobile Wi-Fi ('MiFi') connectivity devices. Social workers are no longer desk bound to complete or transcribe notes collected in the field and they have reported significant time savings as a result. Tusla is progressing with the development of bespoke application programmes to reduce administrative burdens from current manual processes.

#### *Improvements to Student Placements*

Action 6.3: *Increasing the numbers and variety of modes of social work education:* Tusla established a working group in January 2019 to work on a more consistent approach by Tusla with respect to student placements. This group has reviewed current practices and is developing a guidance document to be in place for the new academic year. This group will also make recommendations on co-ordination and relationships with education institutions. The EAG understands that this work by Tusla is expected to contribute to Tusla's participation in the sector-level Social Work Education Group being chaired by the Department, see recommendation 2 below.

#### *Service Performance and Improvement System*

a) Action 7.1: *Service Performance systems:* Progress on this action means that it is still well advanced. Phases 3 and 4 out of a 5 phase project, i.e. the design of the performance and the accountability frameworks, are on track for completion. The new system will improve management information at all levels and assist local and national managers to respond to variances in expected performance.

b) Action 7.4: *Schedule of annual audits and shared learning:* Good progress has been reported under this action. An annual audit plan and audit charter were developed in Q4



2018. In Q1 2019, a total of 22 audits were conducted across Tusla's services. The findings reflected and highlighted both areas of good practice by staff and also where risks were identified as requiring attention. During Q2 2019, it was planned for there to be engagements between area managers and service directors to inform overall improvements to the delivery services to children and families across the organisation.

c) Action 7.6: *Organisational change strategy*: The Tusla Equality, Diversity and Inclusion (TEDI) programme has been developed to influence change and encourage a supportive and accepting work environment. Initiatives from the TEDI agenda are linked to the targeted goals of the organisation via inclusion in the Workforce Planning, Business and Strategic Plans.

### *Interagency Co-operation*

Action 4.3: *Tusla/HSE information sharing protocol*: A draft has been developed with the HSE and, following a joint meeting in May 2019, Tusla reports they are on track to provide a final draft of an agreement for discussion with the HSE.

### *Shared learning and participation of young people*

Themes 1 and 9: The EAG welcomes evidence of the participation of children and young people in shared learning and improving participatory practice. The Minister for Children and Youth Affairs launched a website in March 2019, which Tusla based on a concept from young persons with lived experiences of care, <https://changingfutures.ie/>. Also, this year saw the 4th Tusla Child and Youth Participation Conference, with over 400 participants in Athlone on 4 April 2019. Included in the presentations were a journey from foster child to president of an international organisation; a young person's view of Signs of Safety; a group of 6-12 year olds who launched their own sensory garden; and a video produced by a youth initiative group raising awareness of LGBTI+ issues. The EAG congratulates all the young persons who participated, spoke and presented at the conference.

### *Teams to manage retrospective cases:*

Action 3.5: The management of retrospective allegations: Tusla has advised that the recruitment of the principal social work posts is at an advanced stage. An overview of the team structures by region has been provided and the Executive has indicated that the majority of the posts involved were filled by dedicated staff, with the principal social work posts to follow. The EAG welcomes this progress in light of the HIQA report comments that such teams aid in streamlining processes and improving efficiency in the management of retrospective referrals.

(ii) Key areas identified by HIQA as needing urgent action - Progress:

- *Screening and preliminary enquiry:*

The EAG is satisfied that there is ongoing progress in the delivery of the actions under theme 1 of the strategic action plan. The EAG considers that the Executive has demonstrated to it that the required degree of coherent management oversight is in place to deliver on the actions and for them to have a sustainable effect. Under the roll out of Signs of Safety approach to practice, there has been extensive training and each region has identified core staff who are to receive

training to hold 'practice intensive' workshops on a more regular basis to directly support cross area/region learning. This new capacity will help consistency at the front door, including care prioritisation and safety planning.

The Child Welfare and Protection Strategy structures are to be a vehicle for the implementation of phase 1 of the workforce model, linking to theme 6 of the strategic action plan and recommendation 2 of the HIQA report. This will focus on additional support for frontline social workers and strengthen screening and preliminary enquiries.

- *Safety Planning:*

The workshops to address immediate safety planning have been completed and the safety planning approach is being built into the business processes for child protection and welfare. Practice intensive workshops to roll out both case prioritisation and safety planning have been approved and are reported by Tusla as being due to take place from end Q2 to end Q4 2019. The timeframes for this theme are considered by the EAG to be on track.

- *Management of retrospective cases*

Action 3.1 and 3.4: *Child Abuse Substantiation Procedures and prioritisation system:* The EAG has received drafts of the new policy and is satisfied that progress has been shown. The EAG has been informed that consultations are ongoing and that work is to take place concurrently on the implementation plan, not due until Q3 2019, prior to publication. The new policy also incorporates a revised prioritisation procedure for retrospective cases waiting allocation. The rationale for a link to the implementation plan has been noted.

The Executive outlined key components of its proposed operating model, including a standardised screening tool, establishing regional networks or 'communities of practice'; defining measures to gauge performance; close operational co-operation with social work teams; developing a knowledge repository and standardised recording across all 17 areas.

The EAG asked the Executive if the new policy could minimise the possibility of another case as referred to in the third interim report of the Disclosures Tribunal (McCabe family). The Executive outlined the governance structures now in place and advised that the new policy, if implemented fully, would prevent any similar issues from happening.

The EAG recognises the clear progress that has been made but remains concerned about the delay to the publication of the policy and the potential for a knock-on effect on the implementation phase. The EAG considers that the uncertainty in the underlying legal framework needs to be addressed, and this uncertainty needs to be taken into account when evaluating progress of the strategic action plan. The EAG comments on the legal framework in the next section of this report. The EAG is expecting, in keeping with the express intention of the Executive, to see considerable progress and completion of actions under this theme by the Autumn.

(iii) Concerns

- *Action 7.7: Performance Achievement and Development System:* The EAG acknowledges the steps being taken by the Executive to move this issue forward. It is to their credit that they have made themselves part of the first group to adopt the new performance

achievement system. The EAG notes the engagement with unions and that the workforce implementation plan proposes clear deliverable timeframes. The scope of the system is a matter for Tusla as an organisation and the EAG offers no prescription as to its content. Nevertheless, the EAG considers that the absence of a system remains an issue and its implementation would be a significant contributory factor to the successful implementation of the overall workforce strategy.

- *Action 4.2: Data sharing agreement between Tusla and An Garda Síochána:* A protocol has been drafted. The EAG understands that advice has been sought on a number of issues. The Executive has indicated that An Garda Síochána may have difficulty with aspects of the draft protocol. The delay on this action is unlikely to be resolved solely by either the Executive or the Department which is now assisting in seeking a possible resolution.
- *Theme 3: Indicator % unallocated retrospective cases:* The EAG raised with the Executive the increase in unallocated retrospective cases, rising from approx. 30% to over 50% since Q1 2018. The Executive advised that a national service improvement project was in place and that the percentage of unallocated retrospective allegations had reduced to 48% (868 out of 2047 open retrospective cases) by end April 2019. The number of unallocated cases reduced by close to 40% in April (868) when compared with the total reported for February 2019 (1,391). The Executive noted that the increase in referrals and of open cases was affecting performance here. The quality of some referrals had been identified by Tusla as needing some improvement. The Executive indicated that it intends to provide additional support for referrers regarding thresholds for submitting reports under the Children First Act 2015.
- *Action 5.1: The development of a record management policy and procedure for social work practice:* The timeframe for this action has been revised from Q4 2019 to Q4 2020. The EAG challenged the Executive on this and is satisfied that the change is a prudent revision influenced by the learning provided in three pilot areas together with additional insights gained from completing a full record on the nature and scope of the activities involved.

## 6. Management of Retrospective Cases - the Legal Framework

The EAG is grateful to Dr Conor O'Mahony, UCC, for his expertise in preparing this section of the report. The following is intended as a contribution to the discussion on the subject. A paper prepared by Dr O'Mahony has been provided to the Minister and to the Chair of the Tusla Board, and this section draws heavily on that paper.

### *Context*

While the EAG considers that progress on the actions for the management of retrospective cases is being made, as referred to above, the challenges involved in this area of Tusla's work are significant. It is noted that the Child Care Act 1991, as amended, is currently undergoing review and the Department is giving attention to this issue as part of that review.

Tusla's Executive has indicated that, for the purposes of managing such cases, a retrospective case is where an adult makes a disclosure about abuse experienced in childhood. In its policy, Tusla seeks to balance the rights of the person making the complaint and the fair procedures required under Irish law to be applied where a person is subject to an allegation of abuse. Tusla's role is primarily establishing if there is a current risk to a child and, having undertaken relevant fair procedures, the sharing of

appropriate information with third parties. Tusla can also assist the complainant to access appropriate support services provided in the main by the HSE.

There are clear child protection actions required in managing retrospective allegations. There is also a clear need to support those who have suffered the trauma of childhood abuse. The EAG considers that reform of this area is needed to minimise the risk of challenge to the State in national and international courts. To assist policy makers, and in the context of Tusla's management information to the Department, the EAG recommended that the Executive develop data sources on the outcome of cases of retrospective allegations. The Executive has indicated that the definition of relevant metrics will be considered in the development of new standard business processes for managing retrospective allegations.

#### *National and International Law*

Where Tusla becomes aware of a retrospective allegation of child abuse, it is under a clear legal duty to investigate the allegation and to take steps to mitigate any risks to children that are identified. To date, the newer provision in the Irish Constitution on children has not been tested in the Courts with respect to child abuse. Nevertheless, children have well established constitutional rights including the right to bodily integrity and the right to freedom from inhuman and degrading treatment that are violated by sexual abuse. In addition, it is well established that the European Convention on Human Rights obliges States, under Article 3, to protect children against abuse at the hands of private actors. This is not merely a reactive duty. States are obliged to take reasonable measures that mitigate foreseeable risks of ill-treatment occurring. An effective investigation is required to demonstrate that a procedural violation has not occurred.

What has become known as the Barr judgement, or 'Barr Principles', clarifies that section 3 of the Act authorises and obliges Tusla to take steps to protect children, including sharing information with third parties, in circumstances where an individual poses a risk that children will be abused. The judgment has subsequently come to be recognised as establishing the foundational principles governing the investigation of retrospective allegations and has been repeatedly cited in later policy documents and case law. The European Convention of Human Rights Act 2003 effectively means that the convention and case law around it must be taken into consideration.

In the context of retrospective allegations of abuse, the case law shows that ECHR obliges Ireland to take steps to protect children, whether identified or unidentified, against a risk of sexual abuse in circumstances where State authorities are or ought to be aware of the existence of that risk. Once this has been identified, the State is obliged to mitigate it. The positive and procedural obligations involved are placed on the Irish State rather than on any particular agency.

#### *Tusla's role established in case law - some key points*

A comprehensive survey is outside the scope of this report, but key points established in the case law include:

- Tusla's duty to investigate complaints and to communicate information regarding risks that are identified arises independently of the criminal justice process.
- Investigations should always occur at the earliest possible time after the risk to a vulnerable child is apprehended and before the risk crystallises.
- Investigations are to be conducted according to the civil standard of proof.
- Tusla may, in reaching its conclusions, rely on different types of evidence.
- The accused has the right to fair procedures in the conduct of the investigation. There is no fixed menu as to what is required by fair procedures.

- If the allegation is found to be established after appropriate investigation, it is then a matter for Tusla to select the appropriate means to protect any children it finds to be at risk from the person subject to the allegation of abuse.
- Any dissemination of information should be minimal and only to the extent necessary to protect children.

#### *Child Care Act 1991, as amended, and Tusla Policy*

While the obligation to act is clear, the legal parameters governing how Tusla should conduct such investigations and what measures it may take on foot of them are quite unclear. An investigation of such an allegation places two sets of constitutionally-protected rights in direct competition: the right of children to protection from harm, the right of the accused to fair procedures and the right to a person's good name. Placing undue emphasis on one set of rights may result in a violation of the other.

Further, Tusla has no clear legislative guidance on how to perform this delicate balancing act. Section 3 of the Child Care Act 1991, as amended, is the only relevant provision. It speaks in broad terms of a duty to promote the welfare of, and to identify, children who are not receiving adequate care and protection. It cannot be said that it was drafted with the complexity of retrospective allegations in mind. The Act provides no information on the format of investigations; on safeguards to ensure fair procedures; or on the actions Tusla is authorised or obliged to take to protect children, either during an investigation or in the aftermath of an allegation being deemed credible.

Instead, Tusla has had to design the process for investigating retrospective allegations in its own policy documents, and then respond to clarifications of the law provided by the courts in judicial reviews of investigations. This is unsatisfactory, since the clarification of the law by the courts takes place after the event and is unpredictable in nature due to the absence of legislative guidance. Moreover, a policy document is more susceptible to successful judicial review than one underpinned by requirements in legislation. While legislation aimed at balancing rights enjoys a particularly strong presumption of constitutionality, and is thus very difficult to challenge, this does not apply to a policy document; thus, its comparative vulnerability invites legal challenges. This, combined with the lack of detail in the existing legislation, leaves Tusla in a position where it has to conduct sensitive and legally complex investigations in an unpredictable legal environment, and having to frequently revise its practice in response to ad hoc judicial development of the law.

Since all judicial reviews to date have been brought by the accused party, the potential for defensive practice by Tusla is clear. It gives rise to the potential for ineffective investigations and failures to adequately respond to real child protection concerns. This gives rise to a risk, however remote, based on the information at the time, of avoidable instances of child abuse. This in turn creates the potential for litigation against Tusla or the Irish State on foot of such avoidable abuse. There is no legislative guidance on how the competing rights of children and the accused should be weighed against each other. Legislation might resolve this if it were couched in such a way that strikes a balance so far as possible but clarifies which set of rights is to receive priority in circumstances where they cannot be reconciled. Detailed consideration needs to be given to potential reform of the law in this area.

#### *Consideration of reform - for discussion purposes*

One of the key challenges is in having an Agency act as both investigator and adjudicator. In his 11th report (2018), the Special Rapporteur on Child Protection recommends that the final determination on whether the allegation is substantiated be made by an independent and impartial decision-maker, and that:

"the 1991 Act be updated to address specifically situations where retrospective allegations have been made, setting out the powers of the Agency to act to protect yet to be identified children who may come into contact with the alleged abuser. There needs to be greater clarity on the defined role of Tusla, supported by specific statutory powers to assess retrospective abuse—in particular, allowing Tusla to have the authority to share relevant information with relevant persons for the protection of children potentially at risk due to their contact with an alleged abuser."

Alternative approaches may see the closer involvement of An Garda Síochána as a State agency that has a range of powers not available to Tusla. The main advantage would be that An Garda Síochána is better equipped than Tusla to engage in forensic investigations of alleged past crimes. However, the EAG suggests that consideration be given to a holistic approach when bringing together policing, care or counselling methodologies.

#### *The 'bona fide' test*

It is understood by the EAG that Tusla's current advice is that, in a situation where a number of significant allegations about a person do not reach the threshold of 'founded', the picture of concern formed by a composite of such allegations is not in of itself sufficient grounds to reach a conclusion of 'founded' and to consequently share information. This is an example of the challenges and limitations for Tusla in fulfilling its role.

The EAG has noted the reference to specified information and the subject of a vetting application in section 2 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012. This appears to be relevant for sharing information "which is of such a nature as to reasonably give rise to a *bona fide* concern that the person may ... harm any child...., cause any child or vulnerable person to be harmed, ...put any child or vulnerable person at risk of harm" etc. A number of court decisions have suggested that the approach in the National Vetting Bureau Act generally is fair and proportionate. It balances between the need to protect children and the need to protect the right to a good name and to fair procedures. This may provide a model for future consideration on the sharing of information when managing allegations involving adults of concern.

#### *Conclusion*

The EAG has presented this discussion on retrospective cases in the spirit of contributing to the ongoing review of legislation and practice in this area. It is not, by any means, a comprehensive summary of all the potential issues nor is it intended to recommend a particular course of action.

The EAG acknowledges that Tusla continues to perform its role in respect of the management of retrospective cases and must do so in a legal environment that will continue to evolve.

## 7. Update on Recommendation 2: Educational Pathways, Staff Review

### *Recommendation 2*

- As a matter of urgency, Tusla and the Department of Children and Youth Affairs should seek the assistance of the higher education and training establishments to create formal career-path mechanisms for students and graduates to support current and future workforce needs in Tusla, with the aim of providing a sustainable child protection and welfare service.
- In the interim, Tusla and the Department of Children and Youth Affairs should review the current operational arrangements in Tusla to identify efficiencies and improvements in workflow. This should include a review of the existing social worker, social care worker and support staff skill-mix, and the development of a workforce strategy.

### *Educational Pathway for Social Workers*

The EAG recalls that there is an overlap between recommendation 2 and the Tusla strategic action plan at recommendation 1, specifically theme 6, which address the skills and supports for frontline staff. The role of the Department is at a national or sectoral level. Tusla is, as might be expected, very much involved as a sectoral body in discussions at national level.

The EAG met with the Principal Officer in the Department's External HR business support unit. It was noted to the EAG that the Department did not hold the national policy remit for policies, regulation, and workforce planning governing social worker employment. An example of support provided by the Department was securing the necessary approvals for the role and recruitment of Family Support Practitioners.

The Department's External HR unit outlined the establishment of a Social Work Education Group which has been set up in the context of health and social care workforce planning nationally. The Department chairs this Group which first met in January 2019. The Social Work Education Group is working in the context of the 2017 National Strategic Framework for Health and Social Care Workforce Planning. It provides a forum for stakeholders to raise issues and identify solutions. The education group comprises representatives of Tusla, four CORU accredited education institutions, two education institutions where the necessary CORU accreditation is pending, Solas, the Higher Education Authority and the Department of Education and Science.

The education group has identified that the key obstacle to new or expanding courses was the availability of appropriate student placements, and formed a subgroup to develop a national framework to direct and develop the provision of placements for social work students. A researcher has been commissioned to report on the current provision of social work placements, on the barriers to additional placements, on how additional placements might be provided and to offer proposals on a national placements framework for consideration by the subgroup.

The EAG is satisfied that there are clear roles defined between the Department and Tusla and that suitable structures have been established with the higher education institutions, CORU, the HSE and other relevant stakeholders. The EAG notes that an education group comprising all relevant stakeholders is in place and is framing the key issues for suitable actions. The EAG is aware that the

expansion of existing courses that are CORU approved and the support for courses recently established is likely to be the quickest way to increase capacity. Proceeding in the absence of suitable placements, the EAG would suggest, creates a risk to quality and staff retention. The structures in place will allow Tusla to engage directly with all stakeholders to develop, for example on fast tracking, bursaries or conversion courses. However, the EAG notes that any courses must meet the requirements of CORU and require the availability of placements. This has a consequent impact on the speed that higher education institutions can deliver additional courses to the benefit of the health and care sector generally.

#### *Operational Review, including a Workforce Strategy*

The EAG questioned the External HR unit of the Department about the ambitious targets previously set by Tusla for recruitment as these have not been achieved. The Department commented that this is due in part to an increasing demand in the care sector as a whole. The Department considered that retention was a key pillar to the implementation of the Workforce Strategy, and the results of the areas in which the model is to be piloted by Tusla would be informative for the final shape of the implementation plan. The Department recalled that, in the main and subject to its establishing Act, Tusla determines the roles, grades and duties of its employees. The Department informed the EAG that a steering group on the implementation plan being chaired by Tusla had met at the start of April, and it was agreed that the Department representatives were to attend in an advisory capacity.

Tusla's Executive provided the EAG with its draft implementation plan and phase one of the workforce strategy. The EAG considers that the alignment of Child Protection and Welfare Strategy governance with the workforce plan is welcome and is likely to be a key to its success. Phase one will focus on supporting frontline social workers.

The EAG has agreed with the Executive that the workforce strategy and its implementation will be a standing item at the next sequence of meetings.

## **8. Update on Recommendation 3: Review of Regulatory Frameworks**

### *Recommendation 3*

- The Department of Children and Youth Affairs, with the assistance of the Health Information and Quality Authority (HIQA), should undertake an international review of best practice in the regulation of children's social services in order to inform the development of a regulatory framework for these services in Ireland. This is with the view to providing independent assurance to the public that the State's child protection and welfare services are safe and effective.

The Department outlined the high level findings from its paper on a review of the practice of regulations. This paper is near completion and includes survey responses from at least 13 jurisdictions on the regulation of children's services. The EAG is aware that a companion paper is being prepared by HIQA to accompany this international review. The HIQA paper was noted in a proposal shared with the Department in April and has a completion date of the end of Q2 2019. The EAG will review both papers in the context of the HIQA report as a whole and currently expects that these papers will meet the requirement for this recommendation.



Some of the key points from the Department's international survey were:

- Regulation and inspection are seen as an important safeguard.
- Regulation arrangements can be complex and are specific to the country involved.
- Few jurisdictions have a single national regulatory body, with only one of the survey respondents, Malta, adopting this model.
- A minority surveyed had a stand-alone independent inspection body.
- In some of the countries surveyed there was a range of different services with responsibility for inspection, e.g. official visitor schemes, oversight bodies and Ombudsman offices.
- Most inspection bodies had some form of enforcement powers, e.g. a restriction on service, deregistration, improvement based on quality standards.
- Prosecution was the power of enforcement used least frequently.
- Only a minority of those surveyed published inspection reports.

The EAG was informed that in the UK there had been developments that seek to emphasise partnership approaches and to direct focus on to the outcome and experience of children and young people. The EAG was advised that this was consistent with international literature which indicated a move away from a 'one size fits all' approach. The international literature also indicates greater participation of young people, e.g. as inspection volunteers, and self-evaluation as part of the inspection process. The regulation and inspection regime needs to be agile and adapt to change within the sector. Attention to the behaviours, attitudes and culture of the organisation being regulated is needed.

Enforcement appears to be most effective, if needed, where the service being provided has a discrete role and can be sanctioned without affecting the overall service provision. For example, a children residential service may be deregistered without undue impact on wider service availability. However, it is less clear how enforcement actions might be used where a service is not centre based or a central service, for example where it is provided by a series of community or family based supports, through outreach, or are part of general services provided by the State. The literature, in particular from the UK, suggests a focus on action plans, supports for recommended improvements and repeat inspections may play a greater role for regulating community based or general State services.

Following consideration of both papers, as referred to above, the EAG expects to make its final observations on this recommendation in its next quarterly report.

## **9. Concluding Comments and Matters for Consideration**

The EAG considers that there has been good progress made by the Executive in advancing the key goals from its strategic action plan. There remain areas where the EAG would like to see greater progress and this will be pursued in the forthcoming meetings with the Executive. The Executive has demonstrated that there has been a considerable effort resulting in progress on the substantive elements of the strategic actions involved. It is evident that Tusla as an organisation is much changed since its inception and that it is in the midst of a major change in organisation, practice, governance and strategy.

The EAG notes that the overall success rests heavily on the delivery of the Child Protection and Welfare Strategy, and the implementation of Tusla's new workforce model, which is founded on the creation of multi-disciplinary teams. The governance of the Child Protection and Welfare Strategy integrates the national and local approaches to its implementation. The strength of these structures will be tested with the roll out of the workforce model. The EAG understands that this roll out will

focus on providing additional support to frontline Social Workers and strengthening the front door for child protection and welfare services.

The EAG considers that it is disappointing not to be in a position to report on the completion of more actions than it has already. The complexity of what is being delivered is difficult for the interested observer to assess. The EAG would recall there is a deeper narrative of progress and success that cannot be represented by timeframes alone and updates published on its website by the Executive to its action plan may assist the public in this regard.

The EAG received an advance copy of the implementation plan for the first phase of the workforce model. This plan has received a high degree of attention from the Tusla Board and the Executive. The EAG considers the pilot approach being integrated into the plan is a positive step to ensure that the goals and governance are calibrated to real-world conditions. The challenge for an optimal recruitment outcome has been fully demonstrated, and this remains even though Tusla's HR continues to expend considerable effort in recruiting the requisite staff. The EAG has agreed with the Executive that the implementation of the workforce model will be a standing item for future meetings with a key focus on how this is building on the cumulative effect of all of the themes of the strategic action plan.

The EAG notes that the recruitment of social workers takes place in the health and social care sector and that a key determinant of course expansion and graduates entering the workforce is the availability of suitable placements. The EAG notes that the Department has established a National Social Work Education Group to address key issues. Also, Tusla has a liaison group that can both address, for example, the quality of the placements it provides, and its work nationally on the issue. Drawing on the past experience of members, the EAG considers that these structures are essential for the long term plans for future development of educational pathways into child protection social work.

The EAG has not yet received the final papers from the Department and HIQA on best practice in the regulation of children's social services, although a summary has been presented by the Department on their findings. It is notable that the issue is considerably broader than the issues that were addressed in the context of the statutory investigation. The EAG plans to give its final views on this recommendation in its next quarterly report.

The EAG will continue its focus in the next quarter on the following:

- that actions are underway and are being rolled out consistently across all areas,
- how staff are supported and managed where there are staffing deficits and challenging work,
- where improvements to governance and service delivery are now evident,
- the feedback mechanisms to self-correct the implementation of reforms,
- how sharing of good practice is part of Tusla's culture.

In conclusion, progress has been made in the key themes of the recommendations from the HIQA report. It is apparent that the urgent issues identified in the HIQA report have been advanced as far as possible at this stage, and the Executive is approaching the main findings in a sustainable way, seeking to embed the outcomes and learning into the wider goals and culture of the organisation.

*Moling Ryan*

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Dr Moling Ryan  
Chair, Expert Assurance Group  
21 June 2019

## Appendix 1: Membership and Role of Expert Assurance Group

The Expert Assurance Group (EAG) was established with the appointment by the Minister of the Chair of the group, Dr Moling Ryan, on 29 June 2018 and the full membership on 23 August 2018. The first meeting of the full group was on 30 August 2018.

On 30 August, the EAG adopted its terms of reference. It was agreed that the secretariat would be provided by the Department of Children and Youth Affairs ('the Department'). The EAG agreed that it may from time to time invite persons to attend meetings as needed or where specialist knowledge has been identified as needed for the EAG to complete its work.

The membership of the EAG encompasses a wide range of relevant expertise and is as follows:

- Governance: Dr. Moling Ryan (Chair) - retired public servant,
- Child Protection: Dr. Helen Buckley, retired lecturer, Fellow Emeritus at the School of Social Work and Social Policy, Trinity College, Dublin,
- Human Resources: Gerry Verschoyle, retired, former Head of HR Services at An Post,
- Legal: Dr. Conor O'Mahony, lecturer, currently employed in University College, Cork,
- Member of HIQA expert advisory group on the preparation of its report: Mr Andrew Lowe, Director of Social Work for Scottish Borders Council (retired), public policy consultant,
- Social Work: Michele Clarke, Chief Social Worker, Department of Children and Youth Affairs.

Mr Andrew Lowe, in addition to having been a member of the advisory group for the statutory investigation, was also involved in the preparation of the governance review for HIQA that was included as part of the published report of HIQA's Statutory Investigation.

### Role of the Expert Assurance Group

The Minister approved the terms of reference on 23 July 2018 and the EAG formally adopted these at its meeting on 30 August. The role of the EAG is outlined in the terms of reference as being to:

- a. Review the recommendations contained in the report of the HIQA Statutory Investigation
- b. Consider the Action Plan prepared by Tusla in accordance with recommendation one of the HIQA Statutory Investigation
- c. Evaluate the work planned by Tusla under the Child Protection and Welfare Strategy and its Corporate Plan in the context of the Action Plan
- d. Take into account the report of the Garda Síochána Inspectorate "Responding to Child Sexual Abuse" and other relevant reports
- e. Provide support and advice to Tusla, and to the Department as considered necessary, on the plans to implement the recommendations of the investigation report
- f. Review the progress achieved on implementation in order to assure the Department and Tusla of the effective and timely realisation of the Action Plan.

## Appendix 2: Overview of Meetings of Expert Assurance Group with Tusla, and the Department

### *7th Meeting: 6 March 2019 - Workforce Strategy (incl. Retention)*

- Representatives of the EAG to meet the Tusla Board at the end of the month.
- The workforce strategy was approved by the Tusla Board, subject to minor amendments.
- Noting that the strategy took a continuum of care approach, it was commented that the recruitment challenge was not likely to be resolved in the immediate future.
- Interim measures, including enhanced skill mixes, reconfiguring of teams, improved business support and bespoke recruitment campaigns were noted.
- The Executive indicated that it would implement a performance management system at senior level as the first implementation phase. A timeline was to be developed but it was not expected that full implementation could be achieved in 2019.
- Supports for retention included business supports, ICT, learning for health and well-being actions and Signs of Safety training, and family friendly policies. A retention strategy framework document, dated January 2019, was noted.
- Tusla reported that investment in business support was in hand and the ICT developments were assisting staff, making them less reliant on manual or paper based systems.
- Empowering Practitioners in Practice (EPPI) was highlighted as a forum for shared learning to support practice and it was accessible to all staff.
- Tusla's health and well-being unit provides resilience training and supports for debriefing following difficult cases.
- The Executive reported that feedback from Signs of Safety training indicated it was supporting a positive work environment.
- The Executive noted that a fifth area was being included for targeted additional support under action 6.2, which called originally for such supports to four areas only. Supports include bespoke recruitment campaigns.

### *8th Meeting: 10 April 2019 – Management of Retrospective Allegations of Abuse*

- The Chair updated the Group on the presentation of the 2nd quarterly report to the Minister and the Tusla Board, noting that it was expected that the EAG would remain in place until the Autumn.
- The Minister commented that she felt reassured as a result of the work of the EAG. There was a good engagement with the Tusla Board.
- The EAG welcomed the inclusion of rationales for changes in the timeframes provided by the Executive.
- With respect to recommendation 2 of the HIQA report, the EAG requested that, at the next meeting, the Department make a presentation on its role.
- With respect to recommendation 3, the Department reported some high level findings from its international survey on the regulation of children's social services. The Department was to meet HIQA on this recommendation before the next meeting.

- The EAG acknowledged the considerable work of the Executive in bringing the workforce strategy and implementation plan forward.
- Tusla's case prioritisation methodology is under development (action 1.2). Approval was expected shortly.
- Tusla indicated that the joint training protocol with An Garda Síochána (AGS) was needed to advance an increase in training places.
- The EAG queried if there was a risk of actions on retrospective allegations being too narrowly defined currently or if a solely criminal justice focus were adopted.
- Tusla's revised retrospective document, Child Abuse Substantiation Procedures, was undergoing a final legal review. The policy was intended to capture current legislation and case law.
- Although approaching the issue from separate viewpoints, it was concluded that the EAG and Tusla were in broad agreement that the legal environment posed a significant challenge to managing retrospective cases.
- It was noted that the absence of express powers for Tusla placed it in an uncertain position. It was commented that an interagency or similar approach may be relevant.
- The EAG raised the *bona fide* concern test as included in the National Vetting Bureau Act. Tusla's advice was that under current legislation it could proceed on the basis of 'founded' and 'unfounded' on a case by case basis only.
- The EAG queried the data on a decrease of allocated retrospective cases under the current operational policy. Tusla noted that a service improvement plan was to be implemented.
- The pressures on staff working on emotionally difficult cases were commented on by the EAG and Tusla as a concern and occupational health was a key issue.

*9th meeting: 3 May 2019 - Management of Referrals and Unallocated Cases*

- The Principal Officer of the External HR Unit in the Department of Children and Youth Affairs made a presentation on the Department's role in supporting Tusla in the development of the health and social care workforce.
- The Social Work Education Group, with representatives of higher education institutes, the HEA, Department of Education and Skills, Tusla and the HSE, was chaired by the Department.
- It was noted that research to address the issue of a framework for placements had been commissioned by DCYA, expecting to begin by end Q2 and an update on progress by Q3.
- The Department presented the executive summary of the international review of best practice in the regulation of children's social services.
- The Department reported that a companion paper from HIQA was in preparation and was expected by end Q2/early Q3 2019.
- The Tusla Executive indicated that the Child Abuse Substantiation Procedures was to undergo an impact analysis and review by policy and operations directorates. Timeframes for actions within the policy were devised under legal advice.
- A service improvement plan was being put in place to address unallocated retrospective cases.
- Tusla reported that, as Signs of Safety was being rolled out, there was evidence of improved practice and more informed decisions.

- A Lean management review was planned to examine the recording of case closures on NCCIS, and an update would be provided when available.
- A look back at referrals, including those from An Garda Síochána, indicated some feedback on thresholds in the Children First Act 2015 might be of benefit to the referring community.
- The EAG asked about tracking of cases to Prevention, Partnership and Family Support (PPFS) Programme and Tusla acknowledged there remained some inconsistencies but that there were good interactions across the agency also.
- Tusla reported that learning of the prioritisation of cases within Signs of Safety was being embedded and the auditing programme was progressing.
- No social workers had received joint interview training with AGS and Tusla was seeking additional places and a tailoring of the programme for social worker participation.