

Garda Inspectorate Report

“Responding to Child Sexual Abuse – A Follow-up Review December 2017”

FOURTH PROGRESS REPORT OF THE INTER-AGENCY IMPLEMENTATION GROUP

Chaired by Caroline Biggs, SC

23 July 2021

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1. INTRODUCTION

1.1 Implementation Group

This is the Fourth Progress Report of the independently chaired inter-agency Implementation Group established to examine and drive forward the implementation of recommendations in the Garda Síochána Inspectorate's report "Responding to Child Sexual Abuse – A Follow-up Review."

This final progress report should be read in conjunction with the Group's reports dated 11 October 2018, 8 May 2019 and 23 July 2021.

1.2 Assessment and Evaluation

During the first stage of its work, the Implementation Group examined and assessed all 24 substantive recommendations and 103 key actions in the Garda Inspectorate's Report, together with the suggested timeframes for implementation, i.e. short, medium or long term. The vast majority of recommendations and key actions were accepted by the Group but there were some reservations in relation to others. Arising from this initial examination, recommendations and key actions were categorised as;

- Accepted in full (Green)
- Accepted with modification (Amber)
- Not accepted – further evaluation needed (Blue)
- Not accepted – clarification required (Grey)
- Rejected (Red)

2. CONSULTATION AND VALIDATION PROCESS

2.1 Consultation

From February 2019 to October 2019, the Group continued its assessment of the implementation of recommendations and key actions, informed by bilateral meetings and discussions between the Chair and relevant stakeholders. Further and detailed consideration was given to Recommendation 2.1 and the review of section 3.

The substantive work of the Implementation Group was carried out in 2018 and 2019, with the last in-person meeting of the Group taking place in October 2019. The Chair, accompanied by the Secretary to the Implementation Group, consulted and met with additional offices, agencies and officials to explore the key issues around the recommendations and key actions.

As with the previous stage of meetings, the issues identified in this process were conveyed to the Group for consideration and discussion, in order to reach a definitive view. A full list of the Implementation Group's meetings and the Chair's consultative meetings with relevant agencies/offices/officials during this period is set out on page 19 of this report. As noted in the Third Progress Report, since October 2019, significant progress has been made in some areas covered in the Third and Fourth Progress Reports, and it was decided to include relevant developments up to October 2020. A few more recent major updates were also included up to July 2021, when the Group agreed the report, in order to provide an accurate overview of the implementation of the Garda Inspectorate Report.

2.2 Validation Process

At the time of compiling the information for this report, indications are that at least 51 of the 103 key actions have been addressed and achieved. The Implementation Group engaged in a verification process to substantiate implementation of these actions on the group. This took place through bilateral meetings held by the Chair and the Secretary to the Group. Minutes of these meetings were shared with the Implementation Group and information was presented to the Group for discussion and approval. In addition, the Group were provided with written reports from An Garda Síochána to substantiate implementation of relevant recommendations and key actions to date. These reports were presented to the group for discussion and approval.

3. REVIEW OF SECTION 3 OF CHILDCARE ACT 1991

Subsequent to the establishment of the Implementation Group, the Chair and Group were requested to consider whether a review of section 3 of the Child Care Act 1991 could be regarded as being within the Group's Terms of Reference, and if so, whether the matter could be examined and reported upon. The Group agreed to examine section 3 of the Child Care Act 1991.

To assist the Implementation Group in this aspect of its work, Dr Miriam Delahunt BL was engaged to conduct an examination of certain State agency responsibilities drawn from legislation and current procedural guidance and documentation in respect of section 3 of the Child Care Act 1991. The Implementation Group thanks Dr Delahunt for her detailed and thorough work in relation to this matter. A research document¹ which examined the relevant issues was submitted for consideration to the Implementation Group in October 2019. Below is a summary of that research paper.

¹ Review of Section 3 of the Child Care Act 1991: Consideration of the roles and responsibilities of the Child and Family Agency and An Garda Síochána in the investigation of persons who are subject to abuse allegations. Caroline Biggs SC, Dr. Miriam Delahunt BL, 4th October 2019

Legal Framework

Section 3 of the Child Care Act 1991 (as amended) states that:

- (1) It shall be a function of the Child and Family Agency to promote the welfare of children who are not receiving adequate care and protection.
- (2) In the performance of this function, the Child and Family Agency shall—
 - (a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection and co-ordinate information from all relevant sources relating to children ;
 - (b) having regard to the rights and duties of parents, whether under the Constitution or otherwise—
 - (i) regard the welfare of the child as the first and paramount consideration, and
 - (ii) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child; and
 - (c) have regard to the principle that it is generally in the best interests of a child to be brought up in his own family.
- (3) The Child and Family Agency shall, in addition to any other function assigned to it under this Act or any other enactment, provide child care and family support services, and may provide and maintain premises and make such other provision as it considers necessary or desirable for such purposes, subject to any general directions given by the Minister under section 69.

Section 3 of the Child Care Act 1991 has been interpreted in the case of *MQ v Gleeson*² as placing a responsibility on the HSE (as was) and currently Tusla, (the Child and Family Agency established in 2014) to protect children in this jurisdiction in terms of abuse which may occur. In his Discussion Paper for the Expert Assurance Group in 2019, Dr. O'Mahony summarised the principles set out by Justice Barr in *MQ v Gleeson* in that the Section 3 duty applies both to children in immediate risk and to children who, although not immediately identifiable, may become subject to a risk which the Health Board (as it then was) reasonably expects may come about. In addition, the obligation to protect children is not confined to responding to abuse that has already occurred, but to mitigate the risk of abuse that has yet to occur.³

The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 came into operation on 29th April 2016 and there has been limited examination of its provisions by the Higher Courts. However, in the case of *MP v Teaching Council*,⁴ a teacher's conduct had given rise to

² *MQ v Gleeson* [1998] 4 IR 85

³ Dr Conor O'Mahony, University College Cork Discussion Paper for the Expert Assurance Group, *Retrospective Allegations of Child Abuse: The Legal Framework*. DCYA 10 April 2019, page 7

⁴ *M.P. v the Teaching Council of Ireland* [2019] IEHC 102; [2019] IECA 204

a communication to the National Vetting Bureau and a subsequent challenge was made. Mr Justice Allen found that:

the Act of 2012 provides for a coherent and proportionate assessment of the quality and reliability of the information collected, and the necessity, proportionality and reasonableness of any disclosure, which takes into account the rights of the subject and the requirements of fairness and justice. In my view it is clear from the legislation that a lower threshold is intended to apply to the collection of information than to its release, including any application for a vetting certificate otherwise than with the required declaration of consent of the subject.⁵

The Children First Guidance,⁶ updated in 2017, outlines the roles of An Garda Síochána and Tusla in child protection, noting that joint working between Tusla and An Garda Síochána forms an integral part of the child protection and welfare service. If Tusla suspects that a crime has been committed and a child has been wilfully neglected or physically or sexually abused, it will formally notify the Gardaí without delay. The specific focus of An Garda Síochána concerning child abuse and neglect is on preserving life; vindicating the human rights of each individual; and preventing, investigating and detecting criminal offences. On the basis of the investigation, An Garda Síochána may prepare a file for the Director of Public Prosecutions, who will decide whether to initiate a prosecution. If, in the course of their duties, the Gardaí become aware of a child welfare and protection concern, it should be formally reported to Tusla. As members of An Garda Síochána are mandated persons under the Children First Act 2015, if the concern is at or above the threshold of a mandated concern, this should be reported to Tusla, as outlined in Chapter 3 of the Guidance.

Further documents and reports also detail particular inter-agency collaborations. The Joint Working Protocol for An Garda Síochána/ Tusla – Child and Family Agency Liaison⁷ delineates the roles of Tusla and An Garda Síochána in respect of child protection in Ireland. The HIQA report *'Report of the investigation into the management of allegations 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'* published in June 2018 also highlighted procedural concerns in respect of Tusla and the management of retrospective cases.⁸

⁵ M.P. v the Teaching Council of Ireland [2019] IEHC 102; [2019] IECA 204 at para. 115

⁶ Children First National Guidance for the Protection and Welfare of Children Minister for Children and Youth Affairs December 2017

⁷ The Joint Working Protocol for An Garda Síochána/ Tusla – Child and Family Agency Liaison https://www.tusla.ie/uploads/content/CF_Joint_Protocol.pdf (accessed 7th May 2021)

⁸ 'Report of the investigation into the management of allegations 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' 14 June 2018 Health Information and Quality Authority. At pps. 7-8 <https://www.hiqa.ie/sites/default/files/2018-06/HIQA-Investigation-Report.pdf> (Accessed 7th May 2021)

An Expert Assurance Group (EAG) was established to oversee and advise on the implementation of the HIQA recommendations. The EAG report of June 2019 refers to the issue of retrospective allegations and the inadequacy of the current policy and legal framework. 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.

In a discussion paper prepared for the Expert Assurance Group, Dr Conor O'Mahony also outlined specific difficulties in respect of section 3 and the parameters of its reach:

As such, the general terms of section 3 of the Child Care Act 1991 are arguably unfit for purpose as a legal basis for this specialised and technical area of child protection work. Section 3 was not drafted with retrospective investigations in mind. It contains no detail about the nature of Tusla's obligation to investigate complaints; about the procedural requirements that such an investigation should adhere to; or about the steps that Tusla may take in the event that a complaint is substantiated. All of this crucial detail has had to be filled in "on the job" by Tusla in its policy documents and by the courts in case law.⁹

One of the initial and significant issues raised was if there is a means by which there can be an interagency amalgamation which would provide a 'fenced in overlap' providing means by which assessment, communication and expertise be potentially facilitated through what could be called a quasi-judicial body.¹⁰ This area was mentioned in the Eleventh Report of the Special Rapporteur on Child Protection which outlined the issues as well as giving suggestions in relation to how the difficulties may be addressed through a multi-disciplinary team/ quasi-judicial body/decision making forum.¹¹

In relation to an examination of the bilateral engagement between Tusla and An Garda Síochána the HIQA report indicated that Tusla has statutory responsibility for child protection and welfare services but that in order to do this effectively, 'Tusla and An Garda Síochána need to work closely together in the best interest of those children who are the subject of child sexual abuse allegations and those adults who allege that they were sexually abused when they were children.'

Delays in respect of requests for information from and to both agencies were also noted. However, 'good informal working arrangements' between members of the Gardaí and Tusla

⁹ Dr Conor O'Mahony, University College Cork Discussion Paper for the Expert Assurance Group, Retrospective Allegations of Child Abuse: The Legal Framework. DCYA 10 April 2019

¹⁰ Review of Section 3 of the Child Care Act 1991: Consideration of the roles and responsibilities of the Child and Family Agency and An Garda Síochána in the investigation of persons who are subject to abuse allegations. Caroline Biggs SC, Dr. Miriam Delahunt BL, 4th October 2019 at page 17.

¹¹ Prof. Geoffrey Shannon Eleventh Report of the Special Rapporteur on Child Protection - A Report Submitted to the Oireachtas, 2018 at p. 24

staff was highlighted in addition to the fact that a 'planned new Tusla and An Garda Síochána Children First joint-protocol' for liaison between both agencies, agreed in December 2017, should formalise these processes.

Many of the recommendations in the Garda Inspectorate's Report – "Responding to Child Sexual Abuse" affirmed the concerns and recommendations in the HIQA report. Further, the Inspectorate's report placed great emphasis on interagency cooperation, joint interviewing of children and sharing of information.

Dr O'Mahony in his Discussion Paper notes that section 3 Child Care Act 1991 is arguably not fit for purpose in respect of retrospective allegations and explores three solutions: the need for legislative change, the use of an interdisciplinary team and using the National Vetting Bureau as a model for assessments in respect of child protection by Tusla.¹²

With regard to the latter solution which focuses on an enhanced role for the Vetting Bureau, it is noted that the 2012 act imposes a limitation on the role of the Vetting Bureau in sharing information. Dr O'Mahony suggests:

If the Bureau were to be in possession of information which it did not share in the absence of a vetting application being received, and the person in question were to abuse children in the meantime, it would be highly arguable that the State was in breach of its substantive ECHR obligations by failing to take steps to mitigate a risk of which it was aware. The current Tusla Policy supplements the work of the Vetting Bureau to fill this gap, any reformed structure would need to ensure either that the Bureau is given a more proactive role or that its current role remains supplemented by proactive sharing by another agency.

In respect of Section 3 of the Childcare Act 1991, Tusla's view is that the current legislative framework is unclear on the scope and limits of Tusla's powers to promote the welfare of children who are not receiving adequate care and attention. Tusla's functions in relation to the protection of yet to be identified children is highlighted as a key issue. While case law has established that Tusla has a duty to assess current and retrospective allegations of abuse in order to protect any children that may be at ongoing risk.

In a submission to the Inter Agency Implementation Group, the then Department of Children and Youth Affairs (DCYA),¹³ stated that:

In addition to taking action to promote the welfare of a child or children who have been identified and assessed by the agency as having been harmed or at risk of

¹² Dr Conor O'Mahony, University College Cork Discussion Paper for the Expert Assurance Group, Retrospective Allegations of Child Abuse: The Legal Framework. DCYA 10 April 2019 at page 17 (5 POSSIBLE OPTIONS FOR REFORM (FOR DISCUSSION))

¹³ Now Department of Children, Equality, Disability, Integration and Youth

harm, judgments of the courts¹⁴ have been interpreted to provide that under Section 3 Tusla must also conduct an investigation in relation to the person who is the subject of an abuse allegation (PSAA) in order for it to take action to protect other, not yet identifiable, children who may be at risk from the PSAA now and in the future. The primary action taken by Tusla in this regard is to share information with employers or other organisations where PSAAs are involved with children. The 1991 legislation, however, does not provide any express statutory powers or authority to Tusla to undertake this role and Tusla's actions in this area continue to be challenged in the courts.

The DCYA observed that Section 3 is a broad enabling provision that has provided Tusla with sufficient flexibility to fulfil its child protection obligations. However, in not defining the limits of Tusla's obligations, and in the absence of specific child protection legislation, the agency's duties in this area have been driven by case law. Under section 3, Tusla conducts investigations into adults who have allegations of abuse made against them (both current and retrospective) in order to allow Tusla to inform an employer, or other organisation where the adult currently works with children, that the person poses a risk. They can only do this on reaching a "founded" conclusion.

DCYA also note that the landscape of child protection legislation has changed in recent years with the enactment of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 -2016 which makes *'provision for the protection of children ...and for that purpose, to provide for the establishment and maintenance of a National Vetting Bureau (Children and Vulnerable Persons) database system; to provide for the establishment of procedures that are to apply in respect of persons who wish to undertake certain work or activities relating to children...'*.

National Vetting Bureau (Children and Vulnerable Persons) Act 2012

The issue of re-vetting where new allegations or information comes to light is one that was envisaged in the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 and is provided for under Section 20 of the Act. ¹⁵ The envisioned re-vetting process, which has not

¹⁴ 'The seminal judgment of Mr Justice Barr in MQ v Gleeson[1998] found that the duty of the then Health Boards to promote the welfare of children who were not receiving adequate care and protection "extends also to children not yet identifiable who may be at risk in the future by reason of a specific potential hazard to them which a board reasonably suspects may come about in the future'

¹⁵ Re-vetting. 20.— (1) A relevant organisation that, following receipt of a vetting disclosure^{F15}[under this Act in respect of a person or, vetting information issued in respect of a person by the Garda Central Vetting Unit before the commencement of section 12,]— (a)employ s(whether under contract of employment or otherwise)the person to undertake relevant work or activities, (b) enters into a contract for services with the person for the provision by the person of services that constitute relevant work or activities, or (c)permits the person(whether or not for commercial or any other consideration) to undertake relevant work or activities on its behalf, shall, after the expiration of such period as may be prescribed from the issue of the previous vetting disclosure, ,and such intervals thereafter as may be prescribed, make

been commenced at time of writing, would set a time limit by which vetting disclosure would expire and require a re-vetting to be carried out. These time limits are to be prescribed and set down by the Minister through regulations under the Act. It appears that there is no provision in the legislation which allows for an immediate 're-vetting process' to be triggered on receipt of specified information by an individual or organization.

It is proposed by DCYA that obligations on Tusla under section 3 Child Care Act 1991 may be satisfied by notification to the National Vetting Bureau. However, as Dr O'Mahony has noted in his Discussion Paper to the EAG (and as DCYA has noted), this will need modification in terms of amending the National Vetting Bureau's reactive role in child protection.¹⁶ The suggestion of a notification has been made as outlined here:

An amendment to the Vetting Bureau Act requiring notification to an employer to seek re-vetting of a person currently working with children at the time a notification is made by Tusla under section 19 would significantly strengthen this aspect of child protection.¹⁷

Professor Conor O'Mahony was appointed as the Government's Special Rapporteur on Child Protection in July 2019. He also analysed and considered in detail Tusla's role in investigating and responding to complaints of abuse as part of his first annual report. Among the priorities for reform he highlighted were:

- Providing a robust statutory basis for the balance of rights between the person subject to an abuse allegation (PSAA), the complainant and other children who may be at risk

aF15[application for vetting]disclosure(in this Act referred to as an“application for re-vetting disclosure”) in respect of that person. (2) The Minister may in relation to the periods and intervals of time referred to in subsection (1)— (a)prescribe periods of time and intervals of time in respect to different relevant organisations or classes of relevant organisations, and (b) prescribe different periods of time or different intervals of time in respect of different circumstances or classes of circumstances or in relation to different types of relevant work or activities or classes of relevant work or activities. (3) A person who F15[without reasonable excuse fails to comply with] subsection (1) shall be guilty of an offence. (4) This Part (other than section 12) shall, with any necessary modifications, apply to an application for re-vetting as it applies to an application for vetting disclosure under section 13. Annotations

Amendments: F15 Substituted (29.04.2016) Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016(4/2016), s. 23(a),(b), S.I. No. 215 of 2016.

This section is not commenced as of 7th May 2021.

¹⁶ 'However, the 2012 Act also imposes one significant limitation on the National Vetting Bureau: its role in sharing information is purely reactive under the current law. Although it may be notified of information to the effect that there is a bona fide concern that a particular person may harm children, it has no obligation (and indeed no power or discretion) to share that information unless and until an application for Garda vetting is made (whether upon initial employment; a re-vetting application upon expiration of an earlier vetting; or a retrospective vetting application).'

Dr Conor O'Mahony, University College Cork Discussion Paper for the Expert Assurance Group, Retrospective Allegations of Child Abuse: The Legal Framework. DCYA 10 April 2019 at page 21

¹⁷ See Appendix 2

- Separating the investigative function (i.e. receiving and assessing the complaint) from the decision making function (i.e. on whether it is necessary to share information with third parties such as employers or voluntary organisations)
- Streamlining the process to make it more sensitive to the needs of complainants and to reduce the burden imposed on social workers, while maintaining protection for the constitutional rights of the PSAA
- Addressing data protection issues so as to provide a clear basis for refraining from notifying PSAs that complaints have been made against them in cases where the complainant has no desire to engage and where making a notification may place that complainant's safety or well-being at risk.

Following a thorough analysis of the issues the report identifies the National Vetting Bureau Act as a suitable framework for deciding to disclose information on foot of a complaint while recognising that the role of the Bureau would be limited to this aspect of the process as it is not equipped to investigate complaints and would remain dependent on An Garda Síochána and/or Tusla to provide it with information on foot of investigations undertaken into complaints. The report towards this end recommends that the NVB Act should be amended to provide that in cases where Tusla notifies specified information to the NVB which indicates that a PSAA is working in a relevant organisation, re-vetting (or initial vetting if vetting has not previously taken place) of the PSAA will be immediately required. This separation of functions would also alleviate the burden on complainants mitigating against victim re-traumatisation.

View of the Chair

The Chair is of the view that Section 3 is not broad enough, clear enough or resilient enough to deal with the ramifications of the Barr judgement, and Tusla is consequently left without statutory guidance or protection.

Members of the Implementation Group had a range of views on the way forward. DCYA have proposed the re-vetting by the Vetting Bureau of a person employed or undertaking relevant work with children when Tusla notify the Vetting Bureau of a bona fide concern regarding that person. They note that this would streamline and strengthen child protection measures while removing the need for Tusla to disclose information to employers and the resource implications that involves. Further an option proposed by DCYA is for Tusla to continue to notify the Vetting Bureau of bona fide concerns under section 19(2) of the Vetting Bureau Act and no longer proceed with section 3 investigations for the purposes of informing an employer or other relevant organisation.

The Chair had considerable concerns about these suggested approaches as the Vetting Act was not designed to cure the deficiencies in section 3. In the absence of clear statutory or judge made

law to the effect that Tusla's obligations as determined by Barr J. in relation to unspecified children are discharged under the Vetting Act, it would be very unwise to assume otherwise.

In relation to the proposal to amend the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 in order to trigger a re-vetting of a person on the transfer of information from Tusla to the Bureau also caused the Chair considerable concerns. It must be emphasised that the Act is limited in terms of employment, self-employment, or voluntary activities in relation to scheduled organizations regarding persons who have given their consent to be vetted. Many persons may come outside of these parameters. Further in order to allow for the proactive form of re-vetting as proposed it would involve not just a full implementation of section 20 as the Act as drafted, it would require legislative change. The Bureau is designed as a reactive agency. The balancing of rights is a critical feature within the legislation and concerns arise as to whether such an amendment might upset that balance.

There continues to be ongoing engagement between the Department of Children, Equality, Disability, Integration and Youth and the Department of Justice on how to resolve the issues relating to section 3 and notifications to employers as to potential risks to children be persons working for them. This continues to be considered by both Departments in the context of the National Vetting Bureau Act and possible amendments to that Act.

The Implementation Group notes this continued engagement and as such the issues relating to section 3 remain outstanding and require ongoing review by both Departments.

4. RECOMMENDATION 2.1

The Inspectorate recommends that the Department of Justice and Equality convene an inter-departmental and multi-agency representative group to develop a National Strategy for Child Sexual Abuse, Child Sexual Exploitation and Online Risks to Child Safety. (Short term)

Recommendation 2.1. proposes that the Department of Justice and Equality convene an inter-departmental and multi-agency representative group to develop a National Strategy for Child Sexual Abuse, Child Sexual exploitation and Online Risks to Child Safety, within a short term timeline. It is explicitly referred to in the Government decision of 27 February 2018 establishing this Group, and the Group is mandated to examine its feasibility. The Groups' terms of reference further require that as part of these deliberations the group should also seek to agree a common position as to which Government Department should assume overall responsibility for developing any such National Strategy or overarching framework. The Group further notes that several of the Garda Inspectorate's overall recommendations include in their listed key actions a reference to the fact that they might also be considered as part of recommendation 2.1. i.e., to develop a national strategy.

This Recommendation was the subject matter of discussion by the Group from the earliest stages and the subject matter of the early bilateral meetings with Tulsa, DCYA and the Garda Síochána and the Inspectorate. As a consequence of those meetings and at an early stage of its work the Group reported in its first report as follows:

“The Group accepts the objectives behind this recommendation without question. The group also accepts that a national approach is required. How this is to manifest itself is in need of further evaluation. Various Departmental Groups and Sub-Groups exist whose functions include child protection. These include but are not limited to the Children First Interdepartmental Implementation Group, National Child Safeguarding Strategic Liaison Committee, National Children First Liaison Management Committee, National Steering Group for Sexual Abuse, Interdepartmental Group on Child Sexual Abuse Support Services and the Working Group on Investigation and Prosecution of Sexual Offences. The Group recognises that this could be a key opportunity to align existing groups and progress child protection issues and any consultation process would have to be meaningful. The Inspectorate’s references to the National Strategy on Domestic Sexual and Gender Based Violence are noted for comparison”.

The Group had hoped to have responded to this recommendation by the second report, however during the course of the discussions on same it became clear that there were differences in opinion relating to the best method to achieve the laudable objectives behind 2.1. It was decided that the Chair engage in a number of bilateral meetings to seek out expert view and opinions.

As was noted in the second report, the objective of those meetings was to provide the Group with an enhanced understanding of the needs of sexually abused children in the context of the Garda Inspectorates’ recommendations and give further insight into national strategies already in existence and under development and what oversight measures might be appropriate for consideration.

The Chair and Secretary to the Group held bilateral meetings with the following: the Ombudsman for Children, Rape Crisis Centre Ireland (RCNI), COSC, the Equality Division of the Department of Justice and Equality, the CEO of the CARI Foundation, and Geoffrey Shannon, Special Rapporteur for Children at the time of the meetings.

From those meetings a number of points became clear:

- a. The Inspectorate confirmed that once the spirit of the recommendation is achieved it matters little what model is used. Some stakeholders were legitimately concerned that to create a National Strategy modelled on COSC i.e. starting from scratch could pause good work being done in the area and ultimately would take away from services provided to users. It is noted that the first COSC national strategy which ran from 2010 to 2014 was developed by COSC after consultation over three years with relevant stakeholders. The successor to that Strategy is the Second National Strategy on

Domestic, Sexual and Gender-based Violence 2016-2021. The Migrant Integration Strategy took three years to develop.

- b. The key objective of a National Strategy is that it contains practical, workable and an achievable action plan, implementation of a series of actions that have been identified and development of a coordination mechanism with the remit to oversee implementation of the actions and assess whether further action is required. By way of example the Migrant Integration Strategy proposes 76 key actions, identifies the responsible body and a timeframe for implementation.
- c. The Group considered that a number of National Strategies particularly in the context of the concept of Action Plans devised are very similar to the 24 Recommendations and 103 Key Points methodology employed by the Inspectorate. It must be remembered that the Inspectorate Report is a second report, both reports took a number of years to develop and involved consultation with many stakeholders and organisations (over 37 separate stakeholders were consulted for the second report). The second report involves recommendations that apply to and affect not only An Garda Síochána but in many instances Tusla, DCYA, the Department of Justice and Equality, DPP, Probation Services, Prison services to name but a few. A critical objective advocated for by the Inspectorate is of course the fostering and encouragement of multi-agency working arrangements.
- d. Representatives from COSC and the Department of Justice made it absolutely clear one can achieve a carefully thought out, extensive and complex strategy, but it is of no consequence if it is not implemented.
- e. The Ombudsman for Children, RCC, CARI, and Geoffrey Shannon agree that the contents i.e. key points and recommendations of the Inspectorate's report would be in their view sufficient to form the basis of a core national strategy.
- f. The Inspectorate's report has been the subject matter of extensive examination. Save for one recommendation, the Group has accepted all of the recommendations. The Group took time to review and further evaluate certain Key Actions in the course of the preparation of these reports and on final review, in total 82 Key Actions have been accepted, 16 have been accepted with modification, and 5 have been rejected. The report has therefore been the subject matter of a second level of examination and by and large the views and recommendations of the Inspectorate have withstood that review.

Proposal

A. National Strategy

Based on the above, the Group would propose that the Inspectorate report becomes the core document that would form the basis of a National Strategy. Further, the Group proposes that the balance of the key points and recommendations not achieved within the lifetime of the Group would be converted into an "Action Plan".

Like the COSC model, The Second National Strategy on Domestic, Sexual and Gender-based Violence 2016–2021, the Action plan must be viewed as a live document. The Garda Inspectorate’s report is three years old at the time of writing. While it might be said that the balance of the actions not achieved to date could be the core of the strategy it will need to be revised, added to and updated on an ongoing basis and the group would suggest the method employed for the second National Strategy on Domestic, Sexual and Gender-based Violence might be utilised. It has been formulated as a living document that will change, evolve and grow year on year.

In this regard, an important aspect that has come to the attention of the Group over the course of its work is related to child therapy for sexual abuse when appropriate. In the view of the Group, this is an area that must be advocated for and recommended. The group understands from its meetings with CARI that there is a waiting list for such services provided for by both Tusla and CARI, this is something that the Group would hope will be added to the list of actions in need of implementation.

Further and in the context of Recommendation 4.4 that the Garda Síochána, in consultation with key partner agencies, conduct an annual joint strategic assessment process on the threats posed by the internet to the safety of children, the Group has reported previously on the existence of the Action Plan for Online Safety 2018-2019. The main actions therein included at the point of its initiation include:

- Legislation for new criminal offences
- Strengthen links and processes with industry for removing illegal and harmful material
- Work with online platforms based in Ireland to advance online safety measures
- Work with EU and international partners to actively promote online safety.

It can be readily seen that there is an overlap in the above objectives with the objectives of Chapter 4 of the Inspectorates Report. Indeed, an Interdepartmental Sponsors’ Group chaired by the Department of Education and Skills has been established to drive the implementation of the Action Plan, and an Advisory Council for Online safety identifies emerging issues where Government intervention might be needed. The online safety plan, which includes safety for children, is a whole-of-Government approach and the first action plan for online safety was launched by the Taoiseach in July 2018. This Group would share the view of the then Department of Communications, Climate Action and Environment to the effect that online safety Action Plan is a measure that might assist in ensuring a coordinated implementation of actions under Chapter 4 of the Inspectorate’s report. The Group is informed that there has been little advancement in preparations for a successor to the 2018-2019 Online Safety Plan. This Group would recommend that a successor to the Online Safety Plan be prepared and that that in the course of that work, input would be sought from the criminal justice agencies in

assisting the Department of the Environment, Climate and Communications in placing a greater focus on law enforcement concerns. As noted in the online safety plan mid-year progress report, online safety is for all but children are especially vulnerable to the risks associated with the internet. The Group notes that the Action Plan for online safety is not a once off initiative but it is intended to be a rolling programme of work that will be periodically refreshed. The successor to the Action Plan with the requisite focus on law enforcement issues will assist in achieving Recommendation 2.1. and 4.4. There would be a clear and defined link between any oversight body involved in a National Strategy for CSA and Child Exploitation and the oversight body for Online Safety.

B. Oversight and Implementation

The Group takes the view that there should be oversight at an operational level of the advancement of the “Action Plan” of recommendations by the Garda Inspectorate. The Group also recognises that the inspectorate’s report trespasses into the working and functions of many agencies and organisations other than An Garda Síochána.

The Group was wholly cognisant of the report of the Commission on the Future of Policing in Ireland (CoFPI) and the emphasis placed upon same on the concept of interagency work and cooperation. The Policing Authority and its successor under the new *Policing and Community Safety Bill* currently being drafted will no doubt have a role to play in overseeing a large number of the actions in the Garda Inspectorate report. However on a practical level there must be oversight also of the actions that are not solely within the remit of An Garda Síochána.

It will be paramount to ensure alignment of the different strategies in the area of child protection. It would therefore be envisaged that a broad oversight role would be provided by either the Criminal Justice Policy Function or a relevant Strategic Committee.

The Policy Function within the Criminal Justice Pillar is the think tank for the Department with responsibility to develop long term, evidence-based policy through research and analysis of information and data from multiple sources. It will also take a proactive and strategic view of Justice policy and formulation and review. The purpose of the Strategic Policy, Planning and Research team is to establish the Department’s medium term policy agenda, advise on policy priorities and oversee the policy lifecycle. The team will manage strategic planning and identify and prioritise medium (2-3 years) and longer term (3-5 years) policy requirements. It will also develop consult on and manage the approach of Strategic National Policy. This team will also be responsible for research and evaluation activities. By conducting primary and secondary research, the team will support development of the policy agenda, manage stakeholder consultation on specific policy matters, produce research reports, conduct regulatory impact assessments that will feed into policy development implementation and evaluation activities, and undertake evaluations of applied and strategic policies.

It is suggested that oversight could be provided by the Strategic Policy, Planning and Research team, and by extension the Department of Justice, subject to the identification of an appropriate oversight group or committee. It would seem that between the Authority and the Department of Justice, the tools are there to provide for oversight and implementation. If one of the objectives of the transformation programme was to achieve alignment, then it may be that this report will get the benefit of the transformation.

The Policing Authority has noted that policing, while a critical element of the response to this type of crime, is not the only element, and in recognition of the multi-agency response required any oversight arrangements must be capable of holding all actors to account, including those outside the Justice sector. The Authority has suggested that the oversight mechanism entrusted with this work might either be led by the Department of the Taoiseach, or alternatively should have an independent Chair who should report to the Department of the Taoiseach. The Authority further notes that the safety of children is central to community safety and the proposed Policing and Community Safety Authority (PCSA) will retain the oversight role in relation to policing performance by the Garda Síochána. However, given its intended new role in relation to community safety, the Authority deems it appropriate that it should have legislative standing in relation to all the relevant agencies involved in community safety and child protection for the prevention and investigation of Child Sexual Abuse. The Authority notes this would also allow for the effective discharge of the PCSA's role in relation to its oversight of the Garda Síochána. Engagement with all relevant agencies is not a matter of assuming a regulatory relationship with these agencies but rather allowing for a clear sense of the scope of what the Garda Síochána can deliver and the interdependencies that exist and which require commensurate effort from other organisations to keep children safe. The views of the Policing Authority are appended to this report.

The agreed oversight mechanism should hold two meetings per year and should report to the Government, though reporting mechanisms should not be onerous. Terms of reference for the oversight group should be clear. A clear vision and priorities should be identified from the beginning of the process, and there should be input sought from relevant stakeholders, including the Courts, the Law Society and Tusla.

Conclusion

- The Implementation Group considers that the Inspectorate's report is the core document for a National Strategy going forward.
- It will be important to keep this updated to ensure that it is a live document.
- The appropriate oversight mechanism should ensure from an operational perspective that the balance of actions are implemented, and those currently implemented are monitored and supervised to ensure continued best practice.

- At an operational level clearly the soon to be established PCSA will have a critical role in oversight and supervision. The Group recommends that legislative provisions are considered to ensure that the objectives of interagency work and cooperation are placed on a statutory footing. In the interim, this role should be fulfilled by the Authority, the Inspectorate and Tusla.
- Either the Department of Justice or an identified Interdepartmental Group (convened at senior level) should supervise oversight and alignment of the actions. The Authority takes the view that this function should be undertaken by the Department of An Taoiseach as this would assist in ensuring that this work is continued and supervised at the highest levels.
- The Cabinet Committee should receive regular updates on progress, with an annual report going to Government and submitted to the Oireachtas library. Progress in relation to this recommendation should be kept under review, and is not currently implemented. Once the appropriate oversight mechanism has been confirmed the spirit of this action can be considered implemented.

5. ACKNOWLEDGEMENT AND FINAL OBSERVATIONS

The overarching principle that has been derived from the Implementation Group meetings and the Chair's bilateral meetings is that there is clarity on what remains to be done, and implementation needs to happen. There has been a lot of good work done since the Inspectorate's report was published, and indeed since the last meeting of the Implementation Group.

The Implementation Group has endeavoured to record in these reports all relevant information in its possession at the material time. It may be that by the time of publication some of these observations are out of date or need to be revisited. The Policing Authority has provided the Group with assurance that detailed oversight of An Garda Síochána's progress against the recommendations in relation to both ongoing and completed actions will be a continuing part of their oversight role. The Authority will continue to give keen attention to these matters in its oversight and in its twice yearly published reports on policing performance.

There are some specific positive initiatives that the Group has discussed that deserve a mention. The rollout of Divisional Protected Services Units will provide a consistent and professional approach to the investigation of domestic and sexual crimes across the country. The Victims of Crime Act 2017 and Sexual Offences Act 2017 provide for important support to both witnesses and victims who come before the Criminal Justice System. There have been some very welcome examples of successful interagency work, including the Sex Offender Risk Assessment and Management structure. The launch of the Onehouse Barnahus pilot project in Galway is very positive. The Onehouse Barnahus Galway project brings together health,

medical, therapeutic and policing services for children and adolescents in a child centred way where sexual abuse is suspected. It will provide a safe space where children can access teams of Gardaí, social workers and other professionals working together under one roof.

As significant disappointment has been the failure to implement the recommendations in relation to data sharing, an issue that has been recognised as critical in many recent reports. This issue goes beyond the Inspectorate's report and affects a wide range of work areas.

The Chair would like to acknowledge the hard work and commitment of the Group Members, in particular the contributions of Detective Chief Superintendent Declan Daly as well as Grainne Whelan and Amy Sheils, Secretaries to the Group. It should be further clearly acknowledged that over the course of 50 meetings every person, agency, organisation gave freely of their time, advice and information to help us.

On behalf of the Implementation Group, I would like to thank for their engagement and contributions Dr Moling Ryan, Professor Geoffrey Shannon, Dr Niall Muldoon, Tom O'Malley, Caroline Counihan, Dr Susan Leahy, Emma Little, Mona O'Leary, Dr Conor O'Mahony, Tom Ward, Peter Mullan, Barry Donoghue, Helena Kiely, Ana Nicolescu, Michael Flahive, Marion Walsh, Tara Storey and Liz Cullen. I would also like to thank the Garda Inspectorate for facilitating the work of the Group with any necessary clarifications. I would like to thank the Policing Authority for its input in relation to verification and oversight matters, and in particular to thank Helen Hall and Margaret Tumelty for their continued assistance, support and guidance.

There is no doubt that very positive changes have come about and the will is there for more to come, this bodes well for future progress. While we have endeavoured to ensure that we did examine and drive forward the recommendations of the Inspectorate's report thus far, it is critical that attention and progress does not stagnate and the work continues.

As Chair of the Implementation Group, I would like to thank its individual members for their participation in such a comprehensive review of the recommendations and key actions in the Garda Inspectorate's Report.

Caroline Biggs SC
Chair to the Implementation Group

6. APPENDICES

Action/Meeting/Consultation	Date
Government Decision S180/20/10/1307A to establish multi-agency Implementation Group	27 February 2018
Departments invited to nominate members to Implementation Group	23 April 2018
Chair's meeting with Det Chief Supt Declan Daly - background briefing	21 May 2018
Chair's meeting with Policing Authority	23 May 2018
Chair's meeting with D/Justice & Equality, 94 St. Stephen's Green	28 May 2018
First meeting of Implementation Group	11 June 2018
Second meeting of Implementation Group	23 July 2018
Chair's meeting with Liz Cullen DCYA, Linda Creamer & Boyd Dodds Tusla	10 September 2018
Chair's meeting with Det Chief Supt Declan Daly AGS	17 September 2018
Chair's meeting with DPP	19 September 2018
Preliminary Progress Report issued to D/Taoiseach for information of Senior Officials Group Cabinet Committee on Social Policy	20 September 2018
Chair's meeting with Mark Toland, Garda Inspectorate	21 Sept 2018
Chair's meeting with Michael Flahive, Marion Walsh, D/Justice & Equality	26 September 2018
Third meeting of Implementation Group	28 September 2018
First Quarterly Progress Report	11 October 2018
Chair's Meeting with Policing Authority	16 October 2018
Chair's Meeting with Cybercrime Unit, DJE	3 December 2018
Chair's Meeting with AGS Verification Process	3 December 2018
Fourth Meeting of the Implementation Group	6 December 2018
Chair's Meeting with National SORAM Office	8 January 2019
Chair's Follow-up Meeting with AGS re Verification Process	8 January 2019
Chair's Clarification Meeting with Garda Inspectorate	9 January 2019
Chair's Follow-up Meeting with Criminal Law Reform, DJE	10 January 2019
Chair's Follow-up Meeting with Office of the DPP	15 January 2019
Chair's Meeting with Tom O'Malley BL, Chair of Expert Group	22 January 2019
Fifth Meeting of the Implementation Group	23 January 2019
Chair's Follow-up Meeting with Policing Authority	11 February 2019
Chair's Meeting with Cosc	14 March 2019
Chair's Meeting with Equality Division	14 March 2019

Chair's Meeting with OnCE Unit re Chapter 4 and Online Safety	15 March 2019
Chair's Follow-up Meeting with DCYA	15 March 2019
Chair's Meeting with Rape Crisis Network Ireland (RCNI)	19 March 2019
Chair's Meeting with Ombudsman for Children	21 March 2019
Chair's Meeting with AGS Legal & Compliance Unit	22 March 2019
Chair's Further Follow-up Meeting with Policing Authority	9 April 2019
Second Quarterly Progress Report	8 May 2019
Chair's Meeting with the CARI Foundation	6 June 2019
Chair's Meeting with the Special Rapporteur for Children	6 June 2019
Chair's Meeting with Courts Service	10 June 2019
Chair's Meeting with AGS re Verification	10 June 2019
Sixth Meeting of the Implementation Group	13 June 2019
Chair's meeting with Ombudsman for Children	5 September 2019
Chair's meeting with DCYA (re Section 3 of Child Care Act)	10 September 2019
Chair's meeting with Dr Moling Ryan (Chair of Expert Assurance Group)	10 September 2019
Chair's meeting with Policing Division and Crime Policy, DJE (Rec 2.1 and future oversight)	11 September 2019
Chair's meeting with the Special Rapporteur on Child Protection Dr Conor O'Mahony (re Section 3 of Child Care Act and Chapter 4 Recommendations) via conference call	11 September 2019
Chair's meeting with Cybercrime Policy, DJE (re Chapter 4 Recommendations)	12 September 2019
Chair's meeting with Courts Service (re potential for prioritisation of cases involving children)	27 September 2019
Chair's meeting with CEO of Hotline.ie	27 September 2019
Chair's meeting with Director of Public Prosecutions' office (re delays and training in cases involving children and vulnerable witnesses)	10 October 2019
Seventh Meeting of the Implementation Group	17 October 2019
Chair's Meeting with the Policing Authority	11 January 2021
Chair's Meeting with the Policing Authority	30 March 2021
Meeting with Yvonne Furey, D/Justice	23 April 2021

ANNEX 1: RECOMMENDATIONS AND KEY ACTIONS FINAL UPDATE SPREADSHEET

ANNEX 2: Letter from the Policing Authority 18 March 2021