



Dublin Metropolitan District,  
Child Care Courts (44, 45 and 46),  
Chancery Street,  
Dublin 7.

17<sup>th</sup> May 2023

Dear ,

I am a Judge of the Dublin Metropolitan District and have, for upwards of four years, been assigned to the Child Care Courts which deal with cases relating to the welfare of children in the context of the Child Care Acts and the Mental Health Acts.

The purpose of my writing to you is to express my utmost concern for the immediate predicament and welfare of children who are in the care of the State or whose care is supervised by the State and who require services provided by the State. There is also the risk, or indeed likelihood, that the State will face claims in the future arising out of its failure to comply adequately with its duty of care and statutory duty to many of these children.

While it has become increasingly clear to me over the past year that the Child and Family Agency (CFA) (Tusla) has faced increasingly difficult challenges, I have now been told by the CFA and its legal advisers, in the Court and on record, that it is in an unprecedented crisis. Two significant components have been identified to me:-

- lack of properly regulated suitable placements for foster care, residential placements and special (secure) care;
- unfilled posts, shortage of qualified personnel and staff retention.

Notwithstanding the crisis, I wish to make it absolutely clear from my perspective that the social workers and their team leaders, who are working with the most challenging of cases and who give their evidence on a daily basis, are above reproach, with commitment and work ethic far beyond any possible job description.

It is apparent to me that the reasons for the crisis have their genesis in systemic failures, not just in the Agency as mentioned, but also in its interaction with other State Agencies, and their interaction with each other, eg.:-

- The HSE / Disability Service, CAMHS - inadequate discharge planning at the end of involuntary detention from special care and in some cases under the Mental Health Act;
- Education – provision of school places, psychological and other assessments of need, special needs assistants, adequate places on social-related third level courses to ensure sufficient suitably qualified social care workers are available in the economy at all levels;
- The Prison Service – access between prisoners and their children, provision of facilities for DNA testing, co-ordinated planning for children detained in Oberstown;
- An Garda Síochána – communication to the CFA on progress of complaints to An Garda Síochána of child sex abuse, conduct of specialist interviews, children missing in care and involved in criminality, adequate monitoring of children in care especially where there is evidence of children engaged in prostitution.

While policies, protocols and regulations are necessary and are established to ensure good practice in a macro sense, the difficulty for a Court is frequently how the care of a child or children siblings at a micro (individual child) level can be achieved where the “crisis” has undone, undermined and frustrated those protocols and regulations.

It is in the context of the foregoing that I now refer to Child A, age 9, in the care of the CFA and with his parents’ approval and permission, and the consent of the CFA I am enclosing a Report (Document 1) by his Guardian ad Litem outlining his situation, circumstances and wishes to which the Court must have regard. While this may seem to be a particular case to make points about the general, it is but one of many such cases of children whose circumstances are a variation on the same theme (recently a six year old girl was placed in what the CFA described to the Court as unsuitable (unapproved) special emergency residential placement (SEA) following the



breakdown of four foster placements). These types of cases, too numerous to outline, have featured in the Court on a daily basis.

Arising out of Child A's case, Mr. Donal McCormack, the Regional Senior Manager of the National Private Placement Team prepared a Report of the implementation of a system of teams and efforts to find a suitable placement for Child A – a copy of this Report (Document 2) dated 15<sup>th</sup> February 2023 is enclosed. The Court requested Mr. McCormack to prepare a Report setting out generally the evidence which he had given to the Court about the placement/regional crisis and he kindly did so straight away and presented to the Court the following week. I also enclose a copy of that Report (Document 3) dated 28<sup>th</sup> February 2023.

I am also enclosing a redacted Affidavit (Document 4) provided to the Court by Ms. Eilidh Mac Nab, Regional Chief Officer, CFA, Dublin North East in the case of another Child and the immediate difficulty of finding a placement. Ms. Mac Nab explained to the Court that the special emergency arrangements (SEA) are unapproved and unregulated, albeit that the CFA are seeking to move to a form of approval using its tools of analysis, but perhaps such approval would be at a lesser standard. She also mentioned that the Affidavit omitted reference to some 40/50 other SEA placements (she didn't have a precise figure in Court). This would bring total such placements to 120/130. On 3<sup>rd</sup> May 2023 a Report (Document 5) setting out SEA figures as of 25<sup>th</sup> April 2023 was filed in Court by the CFA.

You will see from Ms. Mac Nab's aforementioned Affidavit that the placement of children in such arrangements are reported to the State Claims Agency Health and Safety Authority.

The CFA has asked me to enclose its Strategic Plan for Residential Care Services for Children and Young People 2022-2025 (Document 6).

A separate issue of concern relates to a limited number of cases where parents do not qualify for legal aid, notwithstanding that the CFA are seeking to remove their children from their care. Given the serious and complex issues which arise, it would seem that it would be desirable, in the interests of justice for both those parents and

their children, that the Scheme be extended to all proceedings arising under the Child Care Acts. Perhaps this might be reviewed and considered.

Having regard to the interests and responsibilities of Ministers and other State Agencies, I am writing to them in similar terms, and the appropriate Dáil Committee. I am also providing a copy of this letter, the information and Reports to the Child Reporting Project.

In writing to you, and in the best interest of all the children concerned, it is my earnest hope that immediate and coordinated action will be taken to address and remedy the crisis, which indeed may ultimately mitigate possible future claims against the State.

Mise le meas.

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Dermot Simms

District Judge