**Presentation by the Ombudsman for Children, Dr. Niall Muldoon, to the Oireachtas Committee on Education and Social Protection - 21/10/15**

I would like to thank the Chairman for the invitation to meet with the Committee this morning. After working for nearly twenty years as a psychologist, the majority of it spent in the area of child protection, and two and a half years as Director of Investigations at the Ombudsman for Children’s Office I was deeply honoured to be chosen as Ombudsman for Children. I received my Warrant of Appointment from President Higgins in February of this year and I welcome the opportunity to make my first appearance in front of this Committee to discuss the role and functions of my Office.

As you are aware the Ombudsman for Children’s Office is an independent human rights institution established under the Ombudsman for Children Act, 2002 to promote and monitor the rights of children in Ireland.

My Office has a unique combination of statutory functions. The one that may be most familiar to the members of the Committee is my statutory function to examine and investigate complaints made by or on behalf of children in relation to the administrative actions, or inactions, of public bodies that have had, or may have had, an adverse effect on the child or children concerned. In carrying out this function, my Office observes fundamental Ombudsman principles:

* my Office is independent and impartial, acting neither as an advocate for the child nor as an adversary of the public body complained against;
* we respect local complaints procedures and seek at all times to promote the resolution of complaints at a local level;
* we endeavour to achieve systemic change through our complaints and investigations function by considering the root causes of complaints we receive.

My investigatory remit, as provided for under the Ombudsman for Children Act, also comprises two unique elements, which reflect two fundamental children’s rights principles as recognised under the UN Convention on the Rights of the Child. Firstly, in the performance of my complaints-handling function, I am obliged to have regard to the best interests of the child concerned. Secondly, I am obliged, in so far as practicable, to give due to consideration to the wishes of the child, in accordance with her or his age and understanding. In this regard, my Office has developed considerable expertise in relation to engaging directly with children and young people when examining complaints made by them or on their behalf.

**Responsibilities under Section 7 of Ombudsman for Children Act**

In addition to examining and investigating complaints, I have a complementary statutory remit, which is broadly concerned with promoting and monitoring the rights and welfare of children. The Oireachtas conferred a range of functions on the Ombudsman for Children in this regard under section 7 of the 2002 Act. These positive obligations include:

* encouraging public bodies to develop policies, practices and procedures, which are designed to promote children’s rights and welfare;
* advising any Minister of Government on matters relating to the rights and welfare of children, including relevant developments in legislation and public policy;
* consulting with children and highlighting issues relating to their rights and welfare that are of concern to children themselves; *and*
* promoting awareness among members of the public, including children, of matters relating to children’s rights, including the principles and provisions of the UN Convention on the Rights of the Child.

In respect of the Office’s function to advise on legislation and public policy, members of the Committee will be aware that the Office has provided independent advice on a wide range of legislation affecting children since its establishment in 2004. Given that matters concerning education are a key focus for the work of this Committee, I will highlight that the Office provided advice on the then General Scheme of the Education (Admission to Schools) Bill 2013.

Through our rights education programme, the Office has engaged with primary and post-primary schools throughout the country and facilitated thousands of children and young people to explore and develop their understanding of children’s rights. In addition, we have developed a seminar programme for postgraduate students pursuing qualifications in social work, social care, education, and child protection and welfare, which hundreds of students from universities and ITs in different parts of the country have participated in.

The Office’s different functions inform and support each other. Work undertaken in accordance with one particular statutory function may trigger complementary work under a different function. Similarly, where there is an obstacle to tackling a children’s rights issue – due to an exclusion to the OCO’s investigatory remit, for example – we can use another function to address the problem. Which is what we did in relation to St. Patricks Institution where we engaged the young people about how they found the place and the concerns they had? This was done when the OCO had no investigatory remit, prior to July 2012. My intention in setting out this example is to demonstrate that a broad mandate that blends different functions can offer a range of options to address children’s rights issues; this is a very important aspect of the strong and robust mandate that the Oireachtas has given my Office.

The link between our investigative and legislative advisory functions can also be seen in the development of the Education (Admissions to School) Bill which includes a proposal that Education Welfare Officers will be able to designate a school to admit a child where they feel it is appropriate. This was recommended by my Office, on foot of an investigation where an unaccompanied minor from outside the EU was in foster care in Ireland but found it impossible to get a place in Secondary School despite applying to 26 schools over a two year period. The power to designate a school will provide a positive support to any child who is being adversely affected by the inability to gain admission to a school.

My Office also commissioned the ESRI and the Children’s Research Centre, Trinity College Dublin to undertake a piece of research on education for children in care which was published in 2013. This study underscored our belief that children in care can face significant challenges to pursuing their education, including attitudinal barriers, placement breakdowns, inadequate care planning and review, and shortfalls and delays in assessment. When encountered, these challenges place children in care at higher risk of suspension, exclusion, absenteeism and early school leaving. The adverse consequences for children can be immediate and long-term.

**Complaints and Investigation remit**

My Office is handling approximately 1,600 complaints a year and while we saw a slight fall, of 5%, in the number of complaints received in 2014 over 2013 we still dealt with 10% more complaints than two years ago. The majority of complaints last year were in relation to Education (47%) and the next most significant proportion of complaints received related to family support, care and protection (25%). The vast majority of complaints (75%) are brought by parents on behalf of their children.

The complaints received range in levels of complexity and we maintain our focus on seeking to resolve each one within the local procedures mechanism and as quickly as possible. It is important to realise that the Office uses various mechanisms to resolve issues before escalating to a full investigation. In regard to education complaints my team have engaged with parents, children, principals, boards of management and patrons throughout the country in various ways to assist both parties move forward to resolve matters in the best interest of children. However, when the issues raised are of a more complicated nature these may be more difficult to resolve locally and therefore could require a full investigation to achieve a resolution. Examples of issues, from all areas, we have investigated previously include the handling of child protection notifications by a Social Work area; the refusal of a Section 10 payment to a family; access to support for a pre-school child with special needs in the Early Childhood Care and Education scheme; resource allocation for children with special needs; and the admission policy within a school.

As evidenced above, education accounted for the highest proportion of complaints received by this Office in 2014 and that has been the case for many years. I have looked especially closely at the issues and outcomes in this regard. It is clear to me that the concerns raised consistently, by my Office, over the years in relation to the complaints architecture within Education have not been heeded.

To date the Education Act (1998) still represents the key legislative framework in which we seek to determine how schools operate. Successive Governments have failed to implement fully the provisions of Section 28 of that Act which sets out how grievances and concerns of a student may be dealt with and remedied. Part V of the Teaching Council Act (2001) is designed to examine teachers fitness to practice and this too is still to be commenced, meaning that two major elements of the complaint structure for the general public are only available in theory.

Parents are entitled to expect to be able to raise concerns about how their children are being taught and to assume there is a standardised complaints system within all schools – however, neither of those is available to them at present. While the OCO was set up with the expectation that it would be one part of the complaints landscape in regard to schools, it has de facto become the only element available to many parents – and that is not good enough. I would urge this Committee to seek to have both of those missing elements brought into being as soon as possible. During 2013, the then Minister for Education and Skills, Ruairí Quinn stated that the his Department was looking to eliminate the need for Section 28 to be enacted by proposing the establishment of both a Parents and Students Charter within schools. That proposal is now part of the Education Admissions Bill. The position of the current Minister for Education and Skills, Jan O’ Sullivan indicates that these charters will not act as complaints mechanisms but rather will be designed to generate a better culture of communication and transparency between the schools and both groups. I welcome the commitment of Minister O Sullivan to introduce such Charters and to reduce the number of complaints in each school. However, as we know there will always remain a need for a formal complaints system and therefore I would urge the government to commence Part V of the Teaching Council Act (2001) and also Section 28 of the Education Act (1998) without delay.

ISSUES IN EDUCATION COMPLAINTS TO OCO

1. **Handling of allegations of inappropriate professional conduct**

* See paragraph above, in relation to commencing Part V of the Teacher Council Act 2001, for how OCO believes this matter should be dealt with.

1. **Handling of bullying**

* OCO has engaged, via our Education and Participation unit, with children and young people around this issue to determine their views on how it happens and what needs to be done to stop it. This resulted in the publication of ou*r “*[*Dealing with Bullying in Schools: A Consultation with Children and Young People*](http://www.oco.ie/wp-content/uploads/2014/03/OCO-Bullying-Report-20121.pdf)*”* in 2013 which fed into the Department of Education’s *Anti-Bullying Procedures for Primary and Post-Primary Schools* issued later that year.
* While I welcome the introduction by the Department of Education and Skills of new Anti-Bullying Procedures for Primary and Post-Primary Schools, I do have concerns regarding the monitoring of implementation of the Procedures in schools. It would appear that no agency is tasked with examining schools’ annual reviews or any trends or anomalies that may emerge from them. As a result it is not clear how the State will fully track progress at a national level in relation to how different forms of bullying are being tackled in schools. It is for this reason that I have recommended in my report to the UN Committee on the Rights of the Child (UNCRC), of April 2015 that the State should build on the monitoring framework contained in those procedures “*by examining schools’ annual reviews of their implementation of the procedures*” (Recommendation 30).
* For my own part, my Office will continue to promote positive communication within schools and between parents and schools when we are dealing with such complaints.

1. **Complaint handling, decisions and policy**

* The complaint handling structures in the education sector are incomplete. It was originally envisaged that in order to bring about higher standards and consistency in schools’ complaints-handling practice, the Minister for Education and Skills would prescribe procedures for schools to deal with grievances raised by students or their parents, as well as the remedial action to be taken in response to those grievances.
* These provisions never came into operation. This has been a matter of concern to the Ombudsman for Children’s Office for many years, as many of the education-related complaints examined by the Office highlight difficulties with the handling of complaints in individual schools. While I appreciate current proposals to amend Section 28 of the 1998 Act to require every school to have a Parent and Student Charter according to principles set down in legislation which will set a national standard. I am of the view that additional measures are needed to strengthen complaint handling in, and by, schools.
* Thus in my recent report to the UNCRC I have included a recommendation that “*The State should ensure that a comprehensive and consistent complaints-handling framework is put in place in the education sector***”** (Recommendation 50)

**Areas where we have commented on the role of Boards of Management**

In the OCO’s advice to Government in relation to the General Scheme of the Education (Admissions) Bill 2013 we commented that we felt it was a mistake to take the right of appeal on admission away from the S.29 Appeals Committees, and give it to Boards of Management, as they are entirely independent of school in respect of which the appeal is lodged.

”*Submitting the matter to an institutionally independent body such as a section 29 Appeals Committee removes the possibility of parents encountering biased decision-making or indeed perceiving the process to lack independence...it is axiomatic that determination by an independent body is preferable to that of a body (in this case the Board of Management) that works very closely with the initial decision-maker (the Principal)*” (page 21).

The previous Ombudsman for Children has also spoken publically about the difficulty for voluntary members of Boards of Management, who are very closely tied to the local community, being the final arbiters of what can be a difficult and contentious decision and therefore this may not be a change that they would wish for themselves.

In addition, throughout many of our Annual Reports the Ombudsman for Children’s Office has commented on Public Bodies and Schools and how this Office has often seen reasonable or well-grounded decisions being briefly accounted for to complainants thereby damaging the perception of the complainant as to the rigour and fairness of the decision making.

Finally, through the course of its examination of complaints in the education sector, the OCO has formed the view that the degree of autonomy afforded to Irish schools has operated in such a way that the State has not been able to exercise responsibility and oversight in the manner required of it as a duty-bearer under the UN Convention on the Rights of the Child. The OCO has observed this systemic problem in investigations relating to admissions and child protection, for example. That is why, in my Alternative Report to UNCRC in April of this year, I recommended that “*the State should recalibrate the balance between schools’ autonomy and oversight by Central Government in order to ensure that the State assumes an appropriate level of responsibility for advancing and protecting children’s rights within the education system*”(Recommendation 48(b)).

I would like to thank the Committee for its attention this afternoon. I am very happy to address any queries the Committee may have in relation to these or other aspects of my role and functions as Ombudsman for Children.