



**empowering people in care**

## **Submission to Public Consultation on the next Government Policy Framework for the Participation of Children and Young People in Decision Making**

EPIC, Empowering People in Care  
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## Introduction

EPIC, Empowering People in Care, is the only independent organisation in Ireland which works with, and for, children and young people in the care system or with care experience. A core part of the work of EPIC is the provision of an individual advocacy and support service to this cohort. The policy development undertaken by EPIC seeks to create positive change for children and young people in care and with care experience at a systemic level.

EPIC is also informed by our Youth Councils, which consist of children and young people with care experience. Our Youth Councils act as a consultative group that informs the EPIC Board and staff on specific issues and supports our policy, research, and advocacy work.

All of EPIC's work is grounded in the UN Convention of the Rights of the Child (UNCRC), particularly Article 12, which provides for the child's right to be heard and to participate in decision-making.

EPIC acknowledges the progress made by the state in enhancing the rights of children and young people in care or with care experience, both directly and indirectly. The enactment of the Child Care (Amendment) Act 2022 has made further progress for children and young people in care engaging with the courts and legal system, most notably by placing the appointment of Guardian Ad-Litem (GAL) on a statutory footing but also the requirement to have the views of the child expressed and considered in proceedings in Section. 5, which we hope to see commenced soon.

We believe the establishment of specialised Family Courts offers an opportunity to rethink how the views and participation of children and young people that are subject to child and family law proceedings can be sought in spaces that are safe and welcoming.

Tusla's Child and Youth Participation Strategy 2019-2023 highlights the specific need for child-informed practice and requires the agency to ensure the views of children are ascertained and given due weight.

Against this backdrop, we welcome the progression of the National Framework for Children and Young People's Participation in Decision-making and look forward to seeing the commitments of government. **It is our position that for the strategy to be meaningful, it must involve all states services and government departments that interact with children and young people.**

## Underpinning the Child's Right to be Heard via Independent Advocacy in Alternative Care

Where the State is acting in loco parentis for children and young people it bears significant responsibility for their health, wellbeing, and socio-economic outcomes.

The right of the child to be an active participant in this relationship is underpinned by Article 12 of UNCRC, which explicitly calls for legislation to be introduced to ensure that "children in all forms of alternative care, including in institutions, are able to express their views and that those views be given due weight in matters of their placement".<sup>1</sup>

To this end, EPIC's Advocacy Service works with children and young people to enable them to have their views and concerns heard and taken seriously, to empower them to speak for themselves, to help to resolve the issues and challenges they experience in care, to assist them in accessing the

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<sup>1</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, CRC/C/GC/12, available at: <https://www.refworld.org/docid/4ae562c52.html> [accessed 14 December 2022]

services and resources they need, and to bring about positive change in their experience of care and in their lives.

Children in care and young care leavers are often expected to contend with life changing decisions and formal meetings on a frequent basis throughout their young lives, without the statutory right to independent advocacy. Advocacy helps to make that right a reality for those children and young people who, for whatever reason, would not otherwise be able to share their views.

Furthermore, independent advocacy demonstrates a clear value-for-money proposition by often resolving issues which might otherwise result in lengthy and costly court proceedings that are rarely in the best interests of the child.

While the underpinning of the child's right to be heard in judicial proceedings (via GAL) is hugely welcome and brings us some way towards realising this right, the UNCRC is explicit in stating that this right should be facilitated not only in judicial settings but in all significant matters relating to care placement, where decisions beyond a care order are made.

Furthermore, the 2009 Report of the Commission of Inquiry into Child Abuse (the 'Ryan' report) unambiguously affirmed the need for children in care to have the support of an independent Advocate, stating:

*"Children in care are often isolated with their concerns, without an adult to whom they can talk. Children communicate best when they feel they have a protective figure in whom they can confide. The Department of Health and Children must examine international best practice to establish the most appropriate method of giving effect to this recommendation."*<sup>2</sup>

In July 2009, the Irish Government committed to fully implementing all 99 actions from the Ryan Report, including the realisation of the child's right to be heard via independent advocacy.

In the context of the ongoing review of the Child Care Act 1991, **we stress the importance of facilitating this right via legislation to place independent advocacy for children and young people in care on a statutory footing.**

## **Facilitating the Participation of Children and Young People in Decision Making on their Care.**

The role of EPIC is to advocate that a child or young person's views are heard and taken into account in decisions affecting them, and that their rights are upheld throughout their care journey. We therefore welcome the adoption by DCEDIY of the Lundy Model of Participation, which is grounded in the UNCRC as its preferred model of practice.<sup>3</sup> Tusla has also adopted this model to underpin its approach and training in participatory practice.<sup>4</sup> We strongly support the adoption of this model by other state bodies and government departments that deal directly with children and young people.<sup>5</sup>

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<sup>2</sup> Commission to Inquire into Child Abuse Report, Vol. IV, Dublin, 2009, p.463.

<sup>3</sup> UNCRC, [Convention on the Rights of the Child | OHCHR](#)

<sup>4</sup> [Tusla, Child and Youth Participation Strategy 2019-2023, 2019, p.10.](#)

<sup>5</sup> This model provides a new way of conceptualising Article 12 of the UNCRC, which is intended to focus decision makers on four elements of the provision:

- Space: Children must be given the opportunity to express a view
- Voice: Children must be facilitated to express their views
- Audience: The view must be listened to.
- Influence: The view must be acted upon, as appropriate.

At a fundamental level, there are areas where the participation of the child or young person in care is essential and can often be crucial for their personal health and well-being, as well as for their development. However, due to ongoing pressures in Ireland's child protection and welfare system, including in relation to the recruitment and retention of adequate social work numbers, **it is essential that additional measures are put in place to ensure children and young people's right to participate is observed.** EPIC believes a child in care's best interests are served when an advocate works in collaboration with social workers, GALs and other professionals in the child's life. Independent Advocates often serve an essential function in the following areas.

### *Child in Care Reviews*

One of the pivotal opportunities for a child or young person's views to be heard is at their Care Review meetings.<sup>6</sup>

As identified by the Ombudsperson for Children: "*Children in care have a right in Irish Statute to participate in the decisions made about their individual care. This is closely linked to their rights for care and protection.*"<sup>7</sup>

Child in Care reviews were placed on a legislative footing with the enactment of the Child Care Act 1991, which allows for the assessment of needs and review of placements to be conducted by Tusla. There is a statutory requirement that Tusla shall afford the child an opportunity "to be heard in person on the review or otherwise to be consulted" as far as is practicable and shall have regard to "any views or information furnished by the child."<sup>8</sup> The quotes taken from Tusla's regional inspection reports (*see appendix*) highlight that there is a dearth of cases where a child's right to participate is not being fully realised at a critical point in their care.

Notwithstanding there is a clear difference in the standard in legislation and current practice nationally, EPIC believes that the **DCEDIY needs to review the effective participation of children and young people in care in care reviews and provide guidance on how this can best be resourced and facilitated.**

### *Aftercare Planning*

Young people leaving care with whom EPIC work often report a similar challenge when seeking to participate in the planning for their transition from care to independent living upon turning 18.<sup>9</sup>

Tusla is obliged to provide an aftercare plan for eligible young people at least six months before the young person turns 18. The transition from care is often a "cliff edge" for young people who cannot access family or community supports, who may be struggling with trauma or mental health issues, who may have a disability or additional needs, and who are financially dependent on an aftercare service. In the absence of sufficient aftercare worker numbers, many young people need support from

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Lundy, L., "*Voice in not enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child.* British Educational Research Journal, Vol. 33, No. 6, pp.927-942, at 933.

<sup>6</sup> Care Reviews form part of the care planning process for young people in alternative care. They involve a meeting of all the relevant stakeholders, including young people, to make decisions about various aspects of their welfare, for example, their current placement, family contact, education, etc.

<sup>7</sup> The Ombudsman for Children (2014) A Meta-Analysis of Repetitive Root Cause Issues Regarding the Provision of Services for Children in Care available at <https://www.oco.ie/app/uploads/2013/12/OCOMeta-analysisofservicesforchildrenincare.pdf>

<sup>8</sup> Detailed in Regulations pursuant to Child Care Act 1991 Section 42(2)(b): (S.I. No. 550 of 2004, Section 28), (S.I. No. 261 of 1995, Section 18) (S.I. No. 260 of 1995, Section 18) and (S.I. No. 259 of 1995, Section 25)

<sup>9</sup> Aftercare planning is one of the five main presenting issues for which young people seek independent advocacy from EPIC, particularly so their views and concerns to be addressed in a way which they find meaningful.

EPIC on assessing their higher education and training opportunities, identifying whether they are eligible for grants, and information on how to access housing. Timely and effective aftercare planning and associated services remain for many, a geographical lottery.

At the close of Q3 2022, 2,999 young people were in receipt of an aftercare service. However, 14% (471) were awaiting an aftercare plan.<sup>10</sup> At the time of writing, EPIC awaits the publication of Tusla's updated National Aftercare Policy for Alternative Care, which we hope may rectify some of these issues. However, **aftercare planning should be part of a continuum, which is considered from the point a child is taken into care.** Planning for leaving care should be included and monitored throughout the care plan and be discussed regularly with the child or young person in reviews prior to assessment of eligibility for aftercare. Their views should be the basis for this, and they must be supported to articulate these, including through provision of an independent advocate if necessary.

### **Participation of Children and Young People in Decision Making must be a cross-governmental effort**

Through our advocacy service, we often observe organisational disjuncture between state agencies which contributes to a failure to uphold the rights and best interest of the child. It is EPIC's position that a **well-coordinated Whole-of-Government approach is necessary to vindicate children's rights, particularly those for whom the state is acting in loco parentis.**

Additionally, we see that government can be unaligned in state budgeting and legislation and that this impacts on children and young people in care. Broader societal issues such as the housing and cost of living crises can have an acute impact on children and young people in care who often have less resources and supports to fall back on and who can quickly fall into precarious circumstances as a result.

More broadly, the DCECIY needs to consider the development of this strategy from the view that all of government have responsibility when the state is the "corporate parent" of a child or young person. While considerable progress has been made by both DCEDIY and Tusla in recent years, unless this responsibility is upheld by all arms of the state, we will fail to provide the holistic, wrap-around support necessary to ensure children in care thrive and achieve the same outcomes as their non care-experienced peers.

The new Child Poverty and Wellbeing Unit in the Taoiseach's Office is a welcome development and should have a specific focus on the children who are in the care of the state.

### *Participation in decision-making for those in marginalised groups*

As an ongoing objective to ensure participation of children and young people in decision-making, it should be ensured that persons in different marginalised groups have their lived experience acknowledged and respected. Children and young people in care or with care experience are often subject to stereotyping, stigma, and discrimination, and this can also happen in their interactions with the state. Children and young people with multiple marginalities, such as those whose care identity intersects with disability, race and ethnicity, or sexual orientation and gender identity, for example, are even more susceptible to exclusion from opportunities to participate. The state, in facilitating their views, in matters that are important to them, must actively work to reduce this discrimination and ensure those that are seldom heard have a platform. This can be done in partnership with civil society and representational groups, and by creating visibility and inclusive spaces.

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<sup>10</sup> Tusla, Quarterly Service Performance and Activity Report, Quarter 3 2022. p.39.

## Appendix: Child's Participation in Child in Care reviews

- 183 children (3%) did not have a care plan, four more than Q2 2022 (179). Tusla, *Quarterly Service and Performance Report Q3. 2022.* p.35
- Only about a third of children, that is, one in three children, reported that they attended their child in care review meetings where their care plans are discussed.  
Altogether out of 91 children who responded to the question about participating in their child in care reviews, 33 said they had attended their review, two said they sometimes attended, 53 said they did not attend, and three children said they did not know. HIQA, *Statutory Foster Care Inspection Report- Louth, Meath.* 2020, p.8.
- One child who met with inspectors said that they found child in care review meetings 'formal,' and they felt that the 'words social workers use are complicated for children' such as access and care plan.  
Of the 55 children who completed the questionnaires, 34 said that they had attended their child in care review meetings, one child said they did not know if they attended, and 20 children said they did not attend. HIQA, *Statutory Foster Care Inspection Report- Mayo.* 2020, p.12.
- The number of children attending reviews was low; however, the majority of children's views were obtained prior to the child-in-care reviews.  
Of 129 children who completed the section of the questionnaire in relation to child-in care reviews, 54 (42%) said that they had either attended or been invited to attend their child-in-care review, two (2%) children were unsure and 73 (56%) said that they had not. Some children indicated that they did not like attending meetings where they are talked about. HIQA, *Statutory Foster Care Inspection Report- Waterford, Wexford.* 2020, p.9.
- While children did not routinely attend child in care reviews, their views were sought and represented. Children reported that they were encouraged to attend by their families and social workers.  
Out of the 72 children who responded to the questionnaire, 39 children replied that they had attended or been invited to their child in care review. Some children who spoke to the inspector indicated that they had been asked to attend their child in care review meeting but had chosen not to attend. HIQA, *Statutory Foster Care Inspection Report- Dublin South Central.* 2020, p.15.
- Out of the 56 children who were aged between six and fifteen who responded to the questionnaire, 21 children replied that they had attended their child in care review. Thirty-three children said they had not while one child said they had "sometimes," and one was unsure. The child-in-care reviewing officer told inspectors that participation of children in review meetings had improved since Covid 19 restrictions were lifted. She outlined that improving participation had been a major focus of their work. HIQA, *Statutory Foster Care Inspection Report- Dublin South Central.* 2020, p.15.
- "Of the 198 children who responded to the question about participating in their child in care reviews, 81 (41%) said they had attended their review, seven said they sometimes attended, 102 (52%) said they did not attend, and eight children said they did not know. Three children who spoke with inspectors said they had been invited to attend their reviews, but they preferred not to go." HIQA, *Statutory Foster Care Inspection Report-Galway, Roscommon.* 2020, p.24.
- Good attention was paid to encouraging children to participate in their reviews, with evidence that most children (over the age of six years) were supported to complete their pre-review form. A total of 29 out of the 40 records (73%) evidenced active involvement of the child whether through completing their review form and/or attendance at their review. Social workers encouraged children to be involved in their meeting whether face-to-face, or more recently, virtually. HIQA, *Statutory Foster Care Inspection Report-Cork.* 2020, p.35.