Submission on the review of the Child Care Act 1991

February 2018

Introduction

Barnardos welcomes the opportunity to make a submission to the Department of Children and Youth Affairs on the review of the Child Care Act 1991 (CCA). Barnardos works with more than 14,000 families each year. For many of these families the CCA has a profound effect on their lives. The CCA provides the legal framework for the intervention of the state in family life to ensure that all children receive the protection and care they need and that families are supported, where possible to provide this. In practise, however there are shortcomings both in the legislation and in how it is put in to practice.

This legislation was enacted more than a quarter of a century ago. During this time there have been huge developments in our thinking on child development, child protection and welfare practice, as well as legislative and constitutional changes in relation to children. It is appropriate this legislation is updated in line with these developments and with a new generation of children in mind. In general, the focus of the CCA should move away from responding to issues when they arise and towards putting measures in place to prevent problems arising. In recent years investigations have highlighted many cases in which the State failed to protect children in its care. If the State is to act in loco parentis it must act as a parent should and provide the ongoing safety, care, security and consistency a child needs.

Tone and Accessibility

Barnardos recommends the Act and any supporting regulation should set a positive tone which promotes the belief that when parents seek help it is an indicator of strength, rather than proof of a failing or weakness on their part. Care proceedings are stressful, complex, intensely legalistic and difficult for everyone involved. Care proceedings are also highly emotive as so much is often at stake for both parent and child. Creating an environment in which parents feel positive about accepting support

from the State or other organisations when they need it in order to improve the lives of their children should be an aim of this legislation.

A more positive approach should extend into practice. Judges, social workers and other professionals who come into contact with families under the CCA should be open, approachable and supportive to families. Clear communication is key, with an emphasis on equality and partnership between parents, children and State social services. Under the current system social workers and other service providers, who may have been working with a family for a number of years, find they must prove the failings of the parent in order to get an order made which is necessary for the welfare of the child. This process is extremely detrimental to ongoing relationships and in many cases works against the possibility of safe reunification. Using different approaches, such as Alternative Dispute Resolution and mediation should be promoted in the Act.

The CCA should be framed in line with the *Signs of Safety* strengths based approach to child protection adopted by Tusla. When families come in contact with the State under the Act it can be an intimidating and confusing process. It is important families understand the interventions taking place and the reasons behind them. Such interventions must be proportionate and supportive in line with the Constitutional amendment inserted in 2012. Whilst Barnardos recognises the need for the CCA to be legally sound, efforts should be made to use more accessible, plainer language. Furthermore, all care arrangements (including voluntary care) should be in language parents can understand, with a full explanation of the implications of their agreement in an accessible format.

It must never be forgotten, however, that at times children will need the care and protection of the State. While there must be adequate safeguards for the rights of adults, the Act must always have at its core, the safety and welfare of children.

Services

The next iteration of the CCA will only be as strong as the support services available to families. Children and families must have access to high quality services when they need them either delivered by the State or through organisations in receipt of State funding. Supports such as addiction services, child and adult mental health supports, family support and specialist services are essential. The State must ensure, not only are these services available countrywide, but they are easily and quickly accessible.

As reported recently by the Child Law Reporting Project the separation of the Child and Family Agency and the Health Service Executive has worsened the likelihood of many vulnerable children and families receiving timely therapeutic services as their needs fall between two Departments.[1] Additionally, difficulty within Tusla with recruitment and retention of social workers has resulted in frequent turnover of social workers assigned to cases thereby undermining the trust in the system to adequately and appropriately respond to the needs of vulnerable children and families. Barnardos sees first-hand the impact delayed access to services has on children. Children who are allocated or whose parents are allocated services under this Act are extremely vulnerable and must receive priority access to services. Children in care as a group are particularly vulnerable, and this should be recognised by all services providing support. Furthermore, all agencies of the State with responsibility for children, including but not limited to Tusla, the HSE and Government Departments, must work together and prioritise vulnerable children.

Promotion of welfare of children (Part II)

a. Comments

The CCA needs to be brought up to date and in line with other legislation in ensuring due regard is given to the best interests and views of the child (e.g. as per Child and Family Agency Act). This section could be inserted under Part II or might be more appropriate as a standalone section under Part I as it pertains to the whole Act. Under Section 3 the Act places a duty on Tusla, as service provider to identify children at risk and provide child care and family support services. It also places an obligation on Tusla to promote the welfare of children who are not receiving adequate care and protection. Lack of sufficient social workers and particularly a comprehensive out-of-hours social work service means Tusla is not completely fulfilling this duty. This inadequate level of service prevents Tusla from taking a proactive approach, engaging with families in the community when they need support when problems first arise. The separation of Tusla and the HSE has presented further issues in ensuring appropriate and timely responses to child protection and welfare cases. Greater collaborative practice is needed between these two key organisations.

Section 3 of the Act also places a duty upon Tusla to assess retrospective disclosures of childhood abuse. Retrospective disclosures are defined in our National Child

[1] Child Law Reporting Project, (2018) *Case Histories 2017 Volume 2*

Protection and Welfare Guidance as “abuse that an adult discloses that took place during their childhood”.[2] Such disclosures can often contain information regarding potential future risk. However, reports by HIQA, the Office of the Ombudsman and others have shown significant issues regarding Tusla’s assessment and management of such disclosures. Retrospective disclosures were first included in Irish child protection policy in 1999 and therefore were not foreseen as a function of the then Health Boards at the point of enactment in 1991.

The Child and Family Agency’s mandate under Section 3 of the Child Care Act 1991 to identify children not receiving adequate care and protection is therefore not being fulfilled due to legal complexities and lack of clear and delineated statutory authority regarding adult disclosures of childhood abuse. A clear legislative mandate is required to assess disclosures of childhood abuse made by adults. Such a mandate should draw upon existing legal precedent in this area and the EU Victims Directive to ensure reduced exposure to harm for those adults coming forward or those obliged to engage. It would also lead to the proactive identification of risk and protection of children from future abuse.

The use of voluntary care under Section 4 in Ireland is very frequent, accounting for as much as half of all care arrangements.[3] There are a number of issues which arise in practice. Children can be left in voluntary care arrangements for long periods of time. The carers of children in voluntary care- whether relative carers or foster carers- have limited parental powers; they cannot, for example, agree to sleepovers or consent to medical treatment. Long periods of voluntary care give rise to uncertainty for the child and their carer, as they are unsure when the parent may resume care. Children in open ended voluntary care are effectively left in limbo, with only their parent able to make key decisions affecting their life. All children in care must be allowed to live as normal a life as possible, including those in voluntary care.

In Barnardos we have noted that the status of a child as being in voluntary care instead of under a statutory order can affect the quality of the service they receive, in that there will be no independent oversight of their care arrangements or guaranteed additional supports for their carers. According to Coulter, 50 per cent of children in care proceedings will have a Guardian ad Litem (GAL) appointed. Even where no GAL is appointed the court has scrutiny over care arrangements. In many cases of extended

[2] Department of Children and Youth Affairs, (2017) *Children First: National Guidance for the Protection and Welfare of Children.*
[3] EPIC, (2011) *Children in Care Briefing Paper.*

voluntary care we have encountered children have had no access to a social worker or care planning processes for long periods. Barnardos has also worryingly encountered parents whose consent to voluntary care has been compromised. For example, where the parent felt pressure to consent rather than be 'taken to court' or where a parent didn't have full understanding or capacity to consent.

Children should, where possible, live with their families of origin, but where this is not possible, care arrangements must provide them with stability and security. Multiple moves, whether in and out of care, or within care, are extremely damaging to children and can affect all areas of their wellbeing. Therefore, when planning for children it is crucial there is attention paid to the risk of 'drift' and there is active attention paid to long term plans for children.

The Youth Homelessness Strategy states that '*emergency accommodation should be a point of entry only for those in a crisis……It should not form part of a routine pattern of response to young homeless people*.' Yet the sharp rise in child homelessness in recent years has meant huge numbers of children are in emergency accommodation for lengthy periods.[4] In December 2017 there were 3,079 homeless children living in emergency accommodation.[5] Thousands more are homeless and living with relatives or friends and unaccounted for in the homeless statistics. Section 5 is not currently being utilised to house homeless children; however it is important parameters are placed on the length and type of accommodation available under the Act for future use. Accommodation should be open and accessible 24/7 as well as suitable for a child or young person's needs (e.g. private, with space to play or study, cooking facilities). Children and young people should be housed in emergency accommodation for not more than six months before being rehoused.

For some children in care adoption may be the only means through which that child can live in a family that has parental responsibility for them. Many of these children grow up with only the State as parent when opportunity for adoption is available but not utilised. The Adoption Act 2017 represented a step forward in allowing children in care to be considered for adoption. Yet still greater integration is needed between the adoption and care processes under the CCA. Children and young people's care plans should allow for adoption pathways with adoption seen as a real and viable option.

Family support services are vital in realising Tusla's obligation to protect and promote the welfare of children. The provision of these services needs stronger enshrinement in the CCA. The Community and Voluntary Sector (CVS) plays a crucial role in the provision of these services to families. The role of the CVS under Sections 9 and 10 should be strengthened. The CVS offers families an independent and trusted source of support. Such a source of support is invaluable to children and families who have had negative prior experience with State agencies. The independent expertise offered by the CVS is especially valuable in certain areas. For example, home-based family support work carried out by the CVS is extremely effective, in child contact arrangements during care proceedings supervision by an independent organisation can best facilitate maintaining a meaningful parent- child relationship and in some areas therapeutic services which may not be widely available are often only provided by the CVS.

This neutral source of services must be protected and promoted by the CCA as a unique resource to families and children. Furthermore, Children and Young People's Services Committees (CYPSC) should be included in the CCA in recognition of their key role in the planning and co-ordination of services. By promoting interagency co-operation they offer a unique opportunity to ensure children and their families' needs are at the centre of services they receive.

There is a need for more research and robust data on children and families interacting with the care system. Section 11 should be strengthened to include reports by the Health Information and Quality Authority (HIQA) and give HIQA powers to direct State and other agencies to implement its recommendations.

b. Recommendations

- Include regard for the best interests and views of the child section under Part II or as an additional section under 'best interest and views of the child' in line with the definition used in the Children and Family Relationships Act.
- Include statutory recognition of Tusla's role in respect of assessing retrospective disclosures of childhood abuse. Incorporate relevant provisions of the EU Victims Directive to ensure the role is victim-centred and ensures support is provided to adults and children who disclose abuse.
- Limit the period of voluntary care to one year with six monthly reviews. After this period a formal assessment of the child's interests should be carried out. The assessment should investigate the possibility of returning the child to the family of origin (including extended family) and take the child's views into account. If it

is decided the child should remain in care formal proceedings should be initiated.

- Voluntary care agreements should be in writing in accessible language and parents should be provided with legal advice.
- Children in voluntary care should have access to a care plan and independent review of their care. For example, in other jurisdictions Independent Reviewing Officers are used. This could be included as a responsibility of the new GAL service currently under development.
- Set parameters on the type of accommodation and length of stay under Section 5.
- Include access to adoption in children's care plans when it is not possible for them to return to their families of origin.
- Strengthen the commitment in Sections 9 and 10 to the provision of services by voluntary bodies and other persons by mandating the Child and Family Agency to ensure such services are available.
- Include a section giving legislative footing to the structure and role of the Children and Young People's Services Committees.
- Strengthen the provision of family support services.
- Strengthen Section 11 to include HIQA reports and give HIQA powers to direct State and other agencies on the implementation of its recommendations. .

Protection of children in emergencies (Part III)

c. Comments

Being taken into the State's care by An Garda Síochána is extremely traumatic for a child or young person and should only occur where there are no other suitable alternatives to protect them. Section 12 is an extreme measure which should only be used in exceptional circumstances. There have been some legislative developments since the enactment of the CCA which have extended responsibility for child protection across more public agencies; most notably the Withholding Information Act 2012, the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 and the Children First Act 2015. Despite these changes there is an over reliance on Section 12 of the CCA due to the lack of a comprehensive nationwide out of hours social work system. This means children and young people are needlessly suffering and receiving inappropriate care due to the lack of available social workers. The 2017 audit of Section 12 carried out by the Special Rapporteur on Child Protection highlighted this

issue along with many others including the inadequacy of the Garda Pulse system, woeful interagency communication and co-operation and a dearth of child protection training for members of the Gardaí.[6] Barnardos supports the recommendations contained in that report, including better training for Gardaí and introduction of a comprehensive out of hours social work system.

d. Recommendations

- Make provision for a comprehensive nationwide out of hours social work system.
- Implement the recommendations of the Special Rapporteur's audit of the exercise by An Garda Síochána of the provisions of Section 12 of the Child Care Act 1991.

Care proceedings (Part IV)

a. Comments

There must be adequate room in proceedings under the CCA for appropriate assessments of parenting capacity to be made. These assessments must be pragmatic and focus on the practical things parents need to care for their child. Parents' ability and willingness to change and better care for their child must be assessed. The current maximum duration of an interim care order is 29 days. While Barnardos recognises the need to have orders reviewed, in some instances returning to court after 29 days hampers progress by parents and doesn't allow sufficient time for assessments to be conducted. Court visits are often stressful for families and – particularly in the case of repeat interim care orders- knowing another visit is only a month away can become the focus for parents and prevent them taking the steps they need to make the practical changes needed to better care for their child or children. The duration is particularly disruptive for children, especially when interim care orders are repeated frequently. In some regions there is a heavy use of short term care orders under Section 18 of the Act. Barnardos recommends an interim assessment order of up to 90 days should be permitted following the expiry of a first or second interim care order to allow for a short term focussed assessment to take place without the requirement to return to court on a monthly basis.

[6] Shannon, G. (2017) *Audit of the exercise by An Garda Síochána of the provisions of Section 12 of the Child Care Act 1991.*

There is a need for consistency in granting orders across all courts and jurisdictions. The variance of thresholds for orders and the types of orders most frequently granted has been raised as an issue by Barnardos and others (e.g. the Child Law Reporting Project, the Special Rapporteur on Child Protection, the Children's Rights Alliance) for a number of years. The grounds for granting orders must be clear and consistent. In Barnardos' experience the threshold for granting orders under Section 18 has risen in some areas meaning there is an increased onus on the Child and Family Agency to present a large volume of evidence in order for an intervention to be made. Consideration should be given to stipulating the desired time frame in which child care proceedings should be completed, as is the case in the UK where a 26 week limit is set.

At present the Act states only a party can apply to extend an Interim Care Order; however the court of its own motion or application of any other person can extend a Care Order as long as it is satisfied the grounds continue to exist. The court should have the same power to extend an Interim Care Order as a Care Order.

Barnardos would echo the recommendations of the Child Care Law Reporting Project on family reunification and access.[7] Family reunification should be the aim in the vast majority of cases. In applying for care orders the Child and Family Agency must clearly outline the conditions which must be met for family reunification to take place. Contact between parents and children during the duration of the care order is key to successful family reunification. In all but exceptional cases courts should set minimum access levels which are sufficient for the child or children to maintain a meaningful relationship with their parent and extended family when making care orders. Supervised access should take place in child friendly environments where adequate support and supervision (if necessary) is in place. It is important that contact is facilitated at a convenient time and location, which is suitable for children. In some cases, reunification is not possible or in the best interest of the child. In such cases repeated attempts at reunification where there is little hope of success can be harmful to the development of the child.

There should be provision in the Act for mandatory plans to accompany Supervision Orders. These plans should be devised by the Child and Family Agency using the Signs of Safety approach to assess parenting capacity. The child's voice should be listened to when devising a plan. They should be detailed, specific and include access

[7] Child Care Law Reporting Project (2015) *Final Report.*

to services. Families who are subject to Supervision Orders should be given preferential access to support services. GALs can be appointed to applications for Supervision Orders and may remain appointed while the order is in place. However, they have limited ability to review the terms or operation of the order or to seek to amend any conditions. Recent shortages in social workers has resulted in Supervision Orders being left unmonitored. It is key that plans devised by the Child and Family Agency would be monitored and reviewed. Supervision Orders should be granted with interagency collaboration in mind and should not include any restrictions on Tusla in respect of sharing information regarding the existence of an Order with relevant third parties such as An Garda Síochána, schools and other professionals involved in the child's life. While granted *in camera*, it is important that Tusla are able to discuss the granting of a Supervision Order, and any associated conditions, with relevant parties.

b. Recommendations

- Retain the 29 day duration for Interim Care Orders in the first instance but allow a 90 day duration 'Interim Assessment Order' if a second or third order is required. If further time is needed beyond the second 'Interim Assessment Order' the duration should revert back to a 29 day Interim Care Order. An 'Interim Assessment Order' should have clearly defined pathways with resources agreed and allocated from the outset.
- Give clear guidance in regulation to ensure greater consistency across the court system.
- Give the Courts the same power to extend Interim Care Orders as Care Orders.
- Ensure the Child and Family Agency outlines the conditions for family reunification when applying for a care order.
- Set up a system of independent child contact centres to facilitate consistent, meaningful and safe access for children and their parents during the duration of court orders.
- Include mandatory, monitored plans as part of Supervision Orders.
- Clearly set out the role of GALs in the application and implementation of Supervision Orders.

Children in special care and protection (Part IV. A)

a. Comments

Our Special Care Provision does not have any integrated step down facilities - that is, non-secure residential care situated as part of the Special Care campus, allowing for continuing or completion of therapeutic interventions and/or education.

Times of transition are exceptionally difficult for young people who have experienced trauma and disruption, and many young people struggle with the move from Special Care to other care arrangements which may be located far from the Special Care unit. Both the legislation and the provision of care should be reviewed to allow for onsite step down while remaining under the supervision of the court that made the Special Care Order. This allows children to experience continuity of care.

The way in which the criminal justice system interacts with children and young people in need of high level care needs to be improved. Where issues arise within special care placements the criminal justice system may step in and the young person can be subsumed with the criminal justice system. Many judges are reluctant to use criminal detention for children in care and Barnardos recommends this approach is standardised within the Act. Barnardos is aware of ongoing issues relating to transitioning children and young people from special care back into the community or to onward placements. It is vital services such as therapeutic supports are in place to facilitate successful reintegration back into a family, foster care or residential care setting. Without proper supports in place the State is setting children and young people up to fail and ensuring further intervention is likely in the future.

b. Recommendations

- Establish integrated step down facilities in each Special Care Unit.
- Ensure children and young people remain within the care system during criminal justice proceedings.
- Guarantee adequate and timely supports are in place well in advance of a child or young person transitioning back into the community.

Private foster care (Part IV. B)

a. Comments

The lack of adequate nationwide out-of-hours social work service with access to emergency TUSLA foster care placements has meant that private agency foster placements are being used when children require emergency placement. The report by

the Special Rapporteur into the use of Section 12 of the CCA by Gardaí noted in many instances individual Garda were unsure of the statutory footing of such private fostering organisations and sometimes weren't aware they were private companies.[8] Funding and support services to private foster agencies has been severely cut in recent years meaning they have not been able to provide the level of support and wrap around care to children. The model of outsourcing social services to private businesses is often costly and unsustainable. Market pressures can result in a service being withdrawn at short notice. Sufficient State provision of services, which may be further enhanced and supplemented by private services, is preferable.

b. Recommendations

- Provide a dedicated nationwide out-of-hours social work system and sufficient foster placements to reduce dependency on private providers for what should be a statutory service.

Jurisdiction and procedures (Part V)

a. Comments

As stated earlier, that the best interest of the child is paramount should be stated explicitly at the start of the CCA and pertain to every section. A variety of mechanisms should be made available to courts to fulfil their obligation to hear the voice of the child (e.g. GALs, judge seeking child's views directly, use of child's view expert). Section 30 (1) relating to the power to proceed with a case without the child present is redundant; however Section 30 (2) allowing a request by the child to be present to be granted provided it is in their best interests should be captured somewhere. It is important that court practice directions are in keeping with the CCA and other legislation. Children should not be precluded from having dual representation by a solicitor and a GAL.

At present, Section 23 of the Children Act 1997 allows for hearsay of children to be admitted in lieu of them giving direct evidence if it is not in their interest to do so. It is widely accepted to be undesirable for children to have to give evidence in their own care proceedings for a number of reasons. The onus is, however, on the court to be satisfied that hearsay can be admitted in lieu of direct evidence. This law needs to be changed to allow children's disclosures and statements to third parties to be admissible as evidence as a matter of course.

[8] Shannon, G. (2017)

In 1996 the Law Reform Commission reported a court system which was 'buckling under the pressure' of cases, with a lack of support services for children and judges who lacked the necessary experience or aptitude to hear family law cases.[9] Now, 20 years later little has improved for families. It is not appropriate for family law proceedings to be heard in a general district, circuit or high court setting. Courts are by nature formal places; however there is much that can be done to assist children to actively participate in proceedings should they wish to do so. The right of the child not to participate must also be respected. Families and children would benefit from a dedicated court structure with child appropriate facilities, specifically trained staff and ancillary child court welfare services available.

b. Recommendations

- Establish a dedicated Family Court and Child Court Welfare Service as a priority.
- Allow children dual representation.
- Allow children's testimony via third party to be admissible as evidence as a matter of course.

Children in the care of Child and Family Agency (Part VI)

a. Comments

There should be meaningful examination of the level of benefit to a child remaining within their family of origin. All possible steps should be taken to support extended family members to care for children who cannot live with their parents. Where possible children should be cared for in their own families or at least within their own community. This gives children a much needed sense of stability and consistency in often a worrying time for them. Currently there is a severe shortage both of foster care and residential placements nationally. This results in children and young people being sent to placements around the country and far away from their own community (e.g. children from Dublin being placed in Donegal or children from Cork placed in Monaghan). The onus should be on the State to provide foster care placements within a child's own community unless there are specific reasons not to so do. This should be enshrined in the CCA to end the practice of children being placed many miles from their own familiar surroundings.

[9] The Law Reform Commission. (1996). *Report on Family Courts.*

There is a need to tighten the language used in Section 36 (1) (d) which allows for 'other suitable arrangements' to be put in place by Tusla to place children removed from their family of origin. The wording is too broad and in practice has resulted in children being placed with unassessed carers or sometimes even carers who have failed to meet the criteria to become foster carers. Barnardos is aware of cases where these unassessed or unapproved carers are not relatives or known to the child.

Whole family residential placements are required in certain circumstances for families with high levels of need; usually time limited and for the specific purpose of assessment and support planning. This approach would provide a safe, secure environment for families to receive wrap around therapeutic and practical supports, providing a high level of child protection while also giving the family a much greater chance of successfully transitioning back into the community. Such facilities should be available to both parents.

Placement in care with relatives helps with a child's identity formation, allows them to maintain contact with family and friends, offers a more stable placement and means they are more likely to stay with or near siblings.[10] Regulations under Section 41 set out clear responsibilities and obligations for relative carers; however there is no formal recognition of this caring role. In cases where there may be child welfare and child protection concerns relating to the child's parents, children are being placed with other relative carers under informal arrangements without falling under the CCA; this means these placements are not being adequately supported by the State.

There is a big gulf between relative care placements under Section 18 and informal care arrangements, the latter offering little support for the carer or legal protection for the child. A half way measure between the two which gives financial, legal and practical supports to relative carers would be more beneficial for the child and more cost effective than foster care for the State. For example, relative carers could be given responsibilities for the day to day care of the child without taking away parental rights.

The Aftercare Act gives each care leaver entitlement to an aftercare plan; however there is no obligation on the State to implement the plan. There is no obligation on the

[10] O'Brien, V. (2012). The Benefits and Challenges of Kinship Care. *Child Care In Practice*, *18*(2), 127-146.

State to change a young person's plan or to have it reviewed upon turning 18 meaning many young people have aftercare plans which don't meet their needs. The current Tulsa policy is focused heavily on young people who are in education, training and employment. While the rationale for such a focus is clear, a consequence is those care leavers who have experienced high levels of trauma and may struggle to participate in training or education are often the ones with least support and are most in need of aftercare. Care leavers are amongst the most vulnerable people in society and are at higher level of risk for experiencing homelessness, poor mental health, early school leaving and unemployment. Stability and supports are key for allowing a care leaver to flourish into an independent adult.

TUSLA's aftercare policy requires that three conditions are fulfilled before a child is eligible for financial support. The young person must; have turned 18 years old in the care of the Child and Family Agency having spent 12 months in the care of the Agency between the ages of 17-18 years; be attending an accredited education course, third level course or training programme as outlined in the young adult's Aftercare Plan; and agree to engage with Aftercare Service requirements and provide progress updates on their course. This means that children who leave care even days before they are 18 (for example through a late adoption, placements with relatives or return home) will not qualify for aftercare financial support. In some instances ending foster care abruptly at 18 years is not in the best interests of the young person and in these cases Barnardos would support extending care beyond 18 years.

Case Study One: John came into care at 17 and a half along with his two younger siblings aged ten and 12 as a result of ongoing chaotic family circumstances that had been in place for many years. He was not entitled to an aftercare allowance to support him in an apprenticeship. The foster carers who continued to look after his younger brothers were not supported to provide ongoing care for him after he was 18 years old.

Case Study Two: Marianne lived with her foster family from the age of two. When she was 17 the family sought to adopt her and this was completed a month before her eighteenth birthday. As a result of leaving care before she was 18 years old, Marianne was not eligible for financial support to go to college.

b. Recommendations

- Ensure all children in foster and relative care placements have access to a social worker.
- Strengthen the State's obligation to provide foster care placements within a child's community.
- Remove the wording 'other suitable arrangements' from Section 36.
- Develop a residential family care placement for families with high levels of need to be assessed and have support plans put in place.
- Require the Child and Family Agency to provide a detailed report into possible relative care placements in the first instance and placements within the child's community in the second instance prior to making of a Care Order.
- Provide greater legal protection and supports to relative carers by legislating for a specific 'Relative Care Order'.
- Give statutory obligation to implement aftercare plans.
- Ensure all children who have spent a substantial time in care or who are part of a family group in care are provided with financial aftercare supports.

Supervision of pre-school services (Part VII and VIIA)

a. Comments

While there has been significant investment in the development of early years services in Ireland since the Child Care Act 1991, gaps still remain as the system continues to be fragmented. Barnardos believes childminding should be included under Part VII of the CCA. The current system of regulation and supports for childcare has been developed primarily for centre-based care. This leaves a large portion of children who are cared for by childminders. The vast majority of child-minders are excluded from regulations contained in the CCA due to exemptions. Furthermore, the regulations are not suitable for childminders caring for children in their home (e.g. regulations pertaining to changing and sleeping arrangements). This acts as a barrier to childminders registering with Tusla and puts children at risk by being cared for in an unregulated and unmonitored setting. There are approximately 120 childminding services currently registered with Tusla's Early Years Inspectorate, down from 257 childminders notified to the HSE in 2011.[11] Yet, around 13% of families use a form of

[11] Start Strong, (2012) *Towards a Scandinavian Childcare System*

paid home-based childcare service meaning the majority remain outside of regulation under CCA.[12]

The CCA exempts child-minders caring for three or fewer pre-school aged children, child-minders caring for children from just one family and the care of school-aged children; this excludes the majority of childminding services operating in Ireland from regulation under the Act. It is important these services are brought within the remit of the CCA. There is a need for a more comprehensive definition of childminding services than what is currently in the Act. This definition should specifically outline the characteristics of childminding which make it separate from centre based services and relative carer childminding arrangements. Relative child-minders should be excluded from the CCA; however child-minders who also care for children they are not related to should be included. Nannies and au pairs should also be excluded from the Act as they are employed by the child's parents and are classed as domestic employees by the Irish Workplace Commission.[13] The description of childminding services should also explicitly state the age ranges of children and it should not limit services to the care of 'pre-school children'.

Barnardos was a contributor to the Summary Report of the Working Group on the Reform and Support of the Childminding Sector '*Pathway to a Quality Support and Assurance System for Childminding*' which was submitted to the Department of Children and Youth Affairs in January 2018. As per this report, Barnardos feels it is important childminders are included in the ongoing reforms of the early years sector as envisaged through the Affordable Childcare Scheme.

b. Recommendations

- Include a more comprehensive definition of childminding services in the Act, such as 'A childminding service means a childcare service, which may include an overnight service, offered by a person who single-handedly takes care of children aged from 0-15 years old, which may include the person's own children, in the person's home for payment for a total of more than two hours per day.'[14]

[12] Central Statistics Office, (2017) *Quarterly National Household Survey 2016 Quarter 3*
[13] Workplace Relations Commission, (n.d.). *Employment Rights of Domestic Workers in Ireland*
[14] Working Group on the Reform and Support of the Childminding Sector, (2018) *Pathway to a Quality Support and Assurance System for Childminding* [Unpublished]